

The Difference Principle: Inconsistency in Rawlsian Theory?

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WEN ZHA, SEP 23 2012

In *A Theory of Justice (TJ)*, John Rawls develops two principles of justice. The first principle requires equality in the assignment of basic rights and duties. The second principle is divided into two parts. One requires equality of opportunity. The other is the difference principle, which holds that social and economic inequalities are just only if they maximize the benefit of the least advantaged members of the society. However, in *The Law of Peoples (LoP)*, Rawls argues that the difference principle should not be applied worldwide. According to Rawls, the duty to assist is limited in the international case. It is required only to burdened societies. And the purpose of the assistance is to help burdened societies to become well-ordered. Once the burdened societies cross the threshold, the duty to assist ceases.

Why does the difference principle demand less in the international than in the domestic case? Rawls and his supporters give various reasons. In this essay, the author discusses three major claims. First, at the international level, there is no need to nullify the negative effects of morally arbitrary factors, since they do not cause any difficulty to the development of a society. Second, if the problem of a society is caused by the bad policies it adopted in the past, other societies do not have the duty to assist this society. Third, a scheme of social cooperation is the foundation of distributive justice. However, this premise does not exist at the international level. The author demonstrates that none of these claims is plausible.

This essay compares the difference principle with other principles of justice. It aims to present a critique of Rawls's theory by exposing the inconsistencies between Rawls's domestic and international theory. Rawls makes it clear at the beginning of *TJ* that he will be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of a society isolated from other societies.[1] However, the author contends that a reasonable conception of justice as fairness should also be a coherent one. It is not justifiable to adopt two contradicting conceptions of justice as fairness and apply them to different groups of people. A double standard often leads to unfairness.

Morally Arbitrary Factors, Natural Resources and Political Culture

In the domestic case, Rawls believes that the distributive effects of natural differences ought to be nullified. He rejects a system of natural liberty, because it permits distributive share to be influenced by factors that are arbitrary from a moral point of view. Instead, Rawls views natural talents as a "common asset".[2] He argues that no one deserves his greater natural capacity nor merits a more favorable starting place in society[3]. Instead, natural differences and social contingencies require compensation. According to Rawls, the difference principle does not require society to even out handicaps as if all were expected to compete on a fair basis in the same race. However, it requires that those who are favored by nature may gain from their good fortune only on terms that improve the situation of the less advantaged. [4] Rawls argues that:

"The natural distribution is neither just nor unjust; nor is it unjust that men are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts." [5]

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In this sense, we can assess whether a basic social structure is just or unjust by examining whether it has mechanisms to nullify the effects of morally arbitrary factors.

However, at the international level, Rawls denies the necessity to nullify the distributive effects of natural differences without giving a valid reason. Take natural resources as an example. An undeniable fact is that the distribution of natural resources among societies is uneven. And which society is rich in natural resources is arbitrary from a moral point of view. Unlike talents, resources are not naturally attached to persons; resources are found “out there”.[6] Therefore, it is fair to ask: If individuals are not allowed to gain from their talents without improving the situation of those who are less favored by nature, why should a group of people be allowed to gain from the natural resources which happen to be under their control without improving the situation of others? The author is not arguing that natural resources in this planet belong to the humanity. Instead, the author contends that just as an individual has a right to his or her talent, a state has a right to its natural resources and is free to decide whether and how to use them. However, as Pogge argues, if state wants to market them abroad, it must be done on terms offered within a just global economic order. States rich in natural resources could not derive advantages from their good fortune without benefiting other states.[7]

The fact that agents have different natural endowments is critical in deciding which distributive principle rational agents would choose in the original position. As Nozick demonstrates, “the quest for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance...crucially shapes Rawls’s theory, and it underlies his delineation of the original position”.[8] In the original position, rational people reject the system of natural liberty and choose the difference principle because they know that there are differences in fortune, and that they may not be the lucky ones. It is reasonable to say if individuals know that they have the same talent and the same social position, rational people would probably choose another principle of justice. However, Rawls uses an entirely different assumption in *LoP* and does not justify the dis-analogy. Rawls proposes as a hypothetical example a case of an industrialized society and a pastoral society in *LoP*. He simply assumes that these two well-ordered countries start at the same level of wealth, and concludes that it is unacceptable to tax the industrialized society and transfer funds to the pastoral one.[9] However, as argued above, the difference principle is formulated on the basis of the assumption that different agents have different natural assets and that agents are aware of the risk of different fortune. Therefore, it is unfair to refuse the international difference principle simply by assuming that two societies start at the same level of wealth.

In response to such criticism, Rawls argues that natural resources cause no difficulty to the development of a society. Instead, a society’s political culture, religious, philosophical, and moral traditions that support the basic structure of political and social institutions, as well as the “industriousness and cooperative” talents of its members, play an important role in deciding the development of the society.[10] Without substantiation, Rawls’s claim that natural resources cause no difficulty to the development of a society is implausible. Nevertheless, let us assume Rawls’s proposition on natural resources is valid. Rawls implies that though a society could not decide how much natural resources it has, this morally arbitrary factor does not matter. Instead, people in a well-ordered society should be held responsible for their own political culture, traditions and talents of its members. One question we need to consider is: Can a people choose their political culture or tradition?

Admittedly, the industriousness and cooperative talents of social members can be promoted by education, and thus are related with social policies. However, social policies can hardly change political culture and religious, philosophical traditions, the development of which may have taken hundreds of years. We can understand the arbitrariness of political culture and tradition better if we consider the following case. Suppose a young generation in a pastoral society acquires a new political culture. They learn from the success of other industrialized societies. Now they actively seek to change the old political culture and tradition, which have been hindering the development of their society in past centuries. However, due to the influence of the old political culture in the past, their society is not as developed as other industrialized societies. They are disadvantaged compared with the young generation in other industrialized societies. Should they be held responsible for the choice made by their parents or grandparents? They are more like the captives of political culture and tradition than the designer. It happens that they were born in a society with a political culture which does not favor industrialization. From a moral point of view, they should not be disadvantaged by their birth. Moreover, as Thomas Pogge argues, in Rawls’s international theory, ‘peoples’

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('nations') are recognized as the "ultimate unit of moral concern" and individuals are not so recognized. The interests of individuals are excluded.[11] If we view individuals as the units of concern, the arbitrariness of political culture and traditions becomes more obvious, since individuals can exert very limited influence on the political culture of their society. In sum, people who support the domestic difference principle but oppose the international difference principle should justify why in the domestic case morally arbitrary factors need to be nullified, while in the international case they do not.

Denying the impacts of morally arbitrary factors at the international level, Rawls's international theory is actually a reaffirmation of the familiar principles of international law[12] and leaves limited space to distributive justice. Rawls imagines an international original position. He argues that justice among societies is determined by the principles that would be chosen in the original position. These principles include the principle of equality, the principle of self-determination, the principle of *pacta sunt servanda* (treaties are to be observed).[13] Rawls does not explain why rational representatives would not choose the international difference principle. There is no need to appeal to a single unified global original position, which is supported by Rawls's cosmopolitan critics. Knowing that they represent different nations, rational representatives would try to advance their national interests, which is in accordance with their personal interests. Not knowing the social conditions of their own society, representatives of a people would make provisions for the worst scenario. They would not simply assume that their society is a wealthy one. Instead, they would choose the difference principle, which ensures that they can attain assistance from other societies if their society happens to be less favored by nature.

Responsibility and the Difference

When it comes to the question which principle of distributive justice should be adopted, many political theorists keep asking one question: Who should be held responsible for a society's poverty? For instance, David Miller argues that if the world poverty was caused by rich societies, then the citizens of those societies would have remedial obligations of justice which are enforceable, and that if rich societies played no role in causing the problem, their responsibilities would be humanitarian only.[14] This approach leads people to the empirical level and an intractable question. Given the complexities of the real world, there is no way to figure out a single causation of poverty and an applicable principle of distributive justice. However, the application of the international difference principle does not presuppose a definite answer to the question: "who should be held responsible for a society's poverty". Even if a society's problem is self-caused, a just basic structure of international society should provide mitigation mechanisms.

The author interprets Rawls's difference principle in the following way: First, the difference principle does not deny that agents should be responsible for their own choices. Some critics of the difference principle point out that the difference principle is not sensitive to people's desert. They argue that some people deserve a greater share of primary products because of their hard work. Admittedly, the original position ensures that no shadow of desert considerations will enter the calculations of rational people. However, when the veil of ignorance is lifted and when it comes to the end-state of distribution, the difference principle leaves enough space to desert. For instance, though the advantaged are taxed, taxation does not lead to strict equality. Though the basic social structure is designed to maximize the benefit of the least advantaged, what the least advantaged can get from the favorable policies is still less than what they can get through hard work and what the advantaged get. It cares more about the absolute gain of the least advantaged than their relative gain. In this sense, "individuals are held responsible for gaining a greater or less share of primary goods".[15] Similarly, the international difference principle also allows differences in wealth between societies. Consider the case of pastoral and industrialized societies. The international difference principle does not require the restoration of the initial equal position. It is not unjust that a better endowed society gets greater share of primary goods than a worse endowed society as long as the latter benefits from the inequality. In this sense, the difference principle holds that the pastoral society is responsible for the decision it makes.

Second, in Rawls's domestic theory, one purpose of the difference principle is to mitigate individual responsibility. Agents' own decisions might be the immediate cause of their poverty, but their decisions are influenced by morally arbitrary factors. In *TJ*, Rawls argues that "the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him." [16] Justice as fairness requires the mitigation of self-caused disadvantage because given the same natural endowments and social environment anyone could have made the

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same decision. The same argument can be used to support the application of the international difference principle. Even if the poverty of a decent society could be attributed to a bad policy adopted in the past, just international institutions should mitigate the negative effects, since the bad policy was adopted under the influence of factors which are arbitrary from a moral point of view, and any society could have made the same choice. For instance, a society decides to develop agriculture instead of heavy industry probably because this society does not have the capital, technology or easy access to natural resources which are necessary to the development of heavy industry. And this society chooses to export agricultural products and import industrial products, since this is the only way that it can benefit from its comparative advantages. However, in the international market the price of agricultural products is set at a relatively low level compared with the price of industrial products. As a result, this society accumulates less wealth from international trade than industrialized societies do. This case presents a more realistic scenario than Rawls's case of industrial and pastoral society. It seems to me that the principles of justice as fairness would require some compensation to the less advantaged society. A basic structure which fails to provide mitigation mechanisms cannot be viewed as just.

One possible objection to the proposition is that though we have duty to mitigate the responsibility of our fellow nationals, we do not have a similar duty to people in other countries. For instance, Miller admits that mitigation in the international case goes less far than in the domestic case. He defends this double standard by appealing to the principle of fraternity. He argues that relations among peoples are governed by a "principle of equal respect, which manifests itself practically in mutual toleration"; while relations among individuals within a political community are governed by the principle of fraternity[17]. For Miller, the principle of fraternity requires each to justify to the others his relative share of primary goods, and thus the difference principle becomes necessary. [18]He also argues that "Rawls does not see the fraternity principle as applying at the international level" because "he is concerned that there is not enough affinity between peoples even to support the weaker duty of assistance".[19]

Miller's argument is a misinterpretation of Rawls's difference principle. Rawls argues in *TJ* that a merit of the difference principle is that it provides an interpretation of the principle of fraternity.[20] What Rawls means is that the difference principle is not incompatible with the principle of fraternity. In fact, to establish justice as fairness, the principle of fraternity should never become the principle informing the design of basic social structure. Moreover, it is not the ties of sentiment that require one to justify to the others his relative share of primary goods. For Rawls, the basic social structure should be justifiable because only reasonable terms can facilitate social cooperation. Indeed, fraternity can enhance the stability of the scheme of social cooperation to some extent. So does distributive justice. In a word, Miller's proposition on the principle of fraternity is implausible. The author is not arguing that the principle of fraternity is unjust. In fact, the international difference principle does not deny that we have more extensive obligations to our fellow nationals. However, there is no obvious reason why we should base objective moral principles on sentiments.

Scheme of International Cooperation and the Difference Principle

As mentioned above, for Rawls, the basic social structure should be justifiable because only reasonable terms can facilitate social cooperation. Rawls views a society as a "cooperative venture for mutual advantage". In *TJ*, Rawls argues that in domestic society the well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life.[21] For Rawls the difference principle realizes a harmony of interests, in the sense that the better endowed acquires collaboration and the worse endowed receive certain compensation. However, it is fair to ask: Don't the less well endowed need the collaboration of the better endowed? For instance, Nozick challenges Rawls's theory by arguing that:

"That the well-being of all depends on social cooperation without which no one could have a satisfactory life could also be said to the less well endowed by someone proposing any other principle, including that of maximizing the position of the best endowed."

The same objection can be made to the international difference principle. Some people, who support the difference principle in domestic case, refuse to apply it at the international level because of the problem of feasibility. A question they raise is why the better endowed societies will accept the difference principle. In domestic society, the well-being

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of the well-endowed depends on a scheme of social cooperation. However, this kind of interdependency does not exist at the international level. The better endowed societies can maintain a relatively high living standard without extensive international cooperation. In view of the problem of motivation, critics of the international difference principle may argue that in the original position representatives would not choose a principle which is not feasible, or that even if they agree on the international difference principle in the original position, when the veil of ignorance is lifted, the system will soon degenerate to the familiar international system. The better endowed simply want to benefit from their natural endowments as much as they can.

The author argues that benefiting from their better endowments, some societies attain a greater share of the benefit generated by international cooperation than the worse endowed societies do. Generally speaking, compared with developing countries, developed countries have a larger stake in international cooperation. They have more citizens living overseas and their citizens own most multinational corporations in the world. They are more reliant on foreign markets and import more energy from other countries. Moreover, developed countries take a greater share of the benefit generating from international cooperation. For instance, multinational corporations benefit from the cheap labor in developing countries. Though local workers and government also benefit from the cooperation, the company keeps a larger share of the profits. Therefore, once the basis of cooperation is ruined, the loss of the better endowed societies is more than that of the worse endowed. This explains why the better endowed societies have motives to espouse the international difference principle.

People may reasonably argue that in domestic case solid cooperation sets the foundation on which distributive justice can be realized. They doubt the feasibility of the international difference principle by emphasizing the instability of international cooperation. The author rebuts this proposition by arguing that cooperation is not the premise of distributive justice. Instead, cooperation and distributive justice support one another, in both the domestic and the international case. The principle of distributive justice decides how the benefit generated by cooperation is divided among the participants, and thus significantly influences participants' willingness to cooperate. In the international case, to a large extent the instability of international cooperation is caused by the lack of distributive justice.

The application of the international difference principle will contribute to the stability of international cooperation. Pogge describes international relations today as a *modus vivendi*. [22] Under a *modus vivendi*, participants judge whether terms of cooperation are fair to them by assessing whether these terms appropriately reflect the distribution of power. However, the relative power of states constantly changes. States go to war to test their relative power and seek to change the existing terms. In contrast with a *modus vivendi*, under the international difference principle, fairness is ensured because this principle is the one that reasonable people would choose when the veil of ignorance is imposed on them. It contributes to the stability of international cooperation because once the principle is applied the basic structure of international cooperation will not be influenced by the shift of power equilibrium any more. There may still be disagreements on specific terms of cooperation. But there would be a fixed conception of justice as fairness. Moreover, the difference principle ensures that the least advantaged would have a tolerable status within the system and thus increases their willingness to cooperate. Indeed, the basic structure of international society designed according to the difference principle tilts toward the least advantaged societies. However, extensive international cooperation will generate huge benefits. As a consequence, every society receives more than what it can get under a *modus vivendi*.

Some political theorists rebut the international difference principle by doubting the existence of global basic structure.[23] Why is the existence of basic social structure critical to the application of the difference principle? In the domestic case, individuals do not enter the scheme of cooperation voluntarily. However, by defining political, legal and economic institutions, the basic social structure can exert great influence on each person's daily life. Therefore, the basic social structure needs a justification. In contrast, some political theorists believe that there is no similar global basic structure which exerts similar influence on different societies. Nowadays, international institutions are the products of treaties, which states signed voluntarily on the basis of equality. However, this proposition is implausible. There is an international basic structure which meets Rawls's definition. The basic structure does not presuppose an authority, single legal system or enforcement institutions. It is *basic* because it is "the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social

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cooperation.”[24] It is fair to say today’s basic structure of international society is the nominal equality of sovereign states. All international institutions are structured on this basis. And this structure defines the way how fundamental rights and duties of states are distributed, and how the benefit generating from international cooperation are divided. Though there is no authority or enforcement institution, we can still use the difference principle to assess whether this basic structure is just. We can say that the nominal equality among sovereign states does not ensure justice since it allows the better endowed to acquire benefits without contributing to the welfare of others. The fact that states enter the system voluntarily does not mean the basic structure is just. States choose to join the system simply because remaining isolated is even worse than participating in an unjust system.

Conclusion

This essay demonstrates that the quest for a conception of justice which nullifies the accidents of natural endowments and the contingencies of social circumstance is the foundation of Rawls’s domestic theory. However, to a large extent the negative effects of morally arbitrary factors are ignored in the international case. Three major propositions on why the difference principle should not be applied at the international level are examined. Yet, none of them is plausible. It is difficult to avoid the problem of inconsistency if the difference principle is applied only in domestic society. If two conceptions of justice as fairness are allowed and applied in different domains, it must be demonstrated why this double standard is justifiable.

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[1] John Rawls, *A Theory of Justice* (Oxford: Clarendon Press, 1972). 8.

[2] Ibid., 101.

[3] Ibid., 102.

[4] Ibid.

[5] Ibid.

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[6] Charles R. Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979). 139.

[7] Thomas Winfried Menko Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989). 251.

[8] Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Basil Blackwell, 1974). 215.

[9] John Rawls, *The Law of Peoples ; with, The Idea of Public Reason Revisited* (Cambridge, Mass.: Harvard University Press, 1999). 117.

[10] Ibid., 108.

[11] Thomas Pogge, "Do Rawls's Two Theories of Justice Fit Together?," in *Rawls's Law of Peoples: A Realistic Utopia?*, ed. Rex Martin and David A. Reidy (Malden, MA: Blackwell Pub., 2006), 211.

[12] Pogge, *Realizing Rawls*: 244.

[13] Rawls, *A Theory of Justice*: 378.

[14] David Miller, *National Responsibility and Global Justice* (Oxford ; New York: Oxford University Press, 2007). 260-1.

[15] David Miller, "Collective Responsibility and International Inequality in The Law of Peoples," in *Rawls's Law of Peoples: A Realistic Utopia?*, ed. Rex Martin and David A. Reidy (Malden, MA: Blackwell Pub., 2006), 197.

[16] Rawls, *A Theory of Justice*: 312.

[17] Miller, "Collective Responsibility and International Inequality in The Law of Peoples," 198.

[18] Ibid.

[19] Ibid.

[20] Rawls, *A Theory of Justice*: 105.

[21] Ibid., 103.

[22] Pogge, *Realizing Rawls*: 220-1.

[23] For instance, Samuel Freeman argues that political design of basic economic and legal institutions is primarily what the difference principle is all about. However, according to Freeman, at the international level, there is no global legal system or global system of property to which the difference principle can be applied to. Freeman also argues that in the absence of a world state, there can be no global basic structure on a par with the basic structure of society. Samuel Freeman, "Distributive Justice and The Law of Peoples," in *Rawls's Law of Peoples: A Realistic Utopia?*, ed. Rex Martin and David A. Reidy (Malden, MA: Blackwell Pub., 2006), 253.

[24] Rawls, *A Theory of Justice*: 7.

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