

A Critique of the Maximin Principle in Rawls' Theory of Justice

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INTRODUCTION

The Maximin principle is one of the central concepts in John Rawls' celebrated work, *A Theory of Justice* (1971). He frames his theory of justice around the people of the original position who are covered by the veil of ignorance in the hypothetical situation. There comes a situation in the original position when the people have to choose among various competing alternatives. Rawls believes that using the Maximin principle, the people will choose his own principle of justice.

What then is this Maximin principle or rule and how adequate or otherwise is it compared with other rules of the decision theorists? In other words, what are the problems besetting the Maximin rule?. These and other questions shall constitute the focus of this paper. However in order to have a full comprehension of the maximin principle it is germane to come to terms with certain aspects contained in *A Theory of Justice*, such as the major aims of Rawls in his theory, the original position argument, and the veil of ignorance.

RAWLS AND THE PROBLEM OF JUSTICE

Rawls believes that determining the rational preference between the two principles of justice and the principle of average utility of the utilitarians is perhaps the central problem in developing the conception of justice as fairness as a viable alternative to the utilitarian tradition [1].

On the primary subject of justice, Rawls holds that corresponding to the different subjects of justice, there are different problems of justice. Rawls concentrates on the basic structure of society which he takes to be the primary subject of justice. The function of the basic structure of society is to distribute the burdens and benefits of social co-operation among the members of society. The benefits of social co-operation include wealth and income, food and shelter, authority and power, rights and liberties. The burdens include various liabilities, duties and obligations e.g. the paying of taxes. The primary subject of justice is the basic structure of society because the influences of the basic structure on individuals are present at birth and continue throughout life. The primary problem of justice then is to formulate and justify a set of principles which a just basic structure must satisfy. These principles of social justice would specify how the basic structure is to distribute prospects of obtaining what Rawls calls the primary goods[2].

Rawls advances and defends two principles as panacea to the problem of specifying what is to count as a just basic structure. The first principle is that: "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all". The second principle has two parts: "social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity" [3]. Rawls calls the first principle the principle of greatest equal liberty, the first part of the second principle as the Difference principle and the second part of the second principle as the principle of fair Equality of opportunity.

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Rawls arranges the principles according to their order of priority. According to him, the principle of greatest equal liberty is lexically prior to both the difference principle (maximin rule) and the principle of fair equality of opportunity, while the principle of fair equality of opportunity is lexically prior to the difference principle. One principle is lexically prior to another principle if and only if we are first to satisfy the requirements of the first principle before going on to satisfy those of the second. The need for priority rules arises because efforts to satisfy one principle of justice may conflict with efforts to satisfy another. Hence the priority of the principle of greatest equal liberty can only be compromised if such a step results in greater liberty [4].

Rawls calls his description of the hypothetical choice situation the “original position” to signify that it is the situation of choice from which the principles of justice originate or derive. The original position is like the state of nature in the contractarian conception of the formation of civil society. The original position includes certain elements. First, the parties to the contract are conceived of as being motivated to pursue their life plans in a rational way. Each wants as much primary goods as possible and is disinterested in others because he thinks of himself as an independent agent with a worth-while life plan which he desires to pursue. Second, the parties in the original position are subject to a set of informational constraints which Rawls calls the “veil of ignorance”. The idea is that the parties are deprived of certain information about themselves. The main purpose of depriving the parties of this information is to avoid a biased choice of principles. The principles are general, universal, public, adjudicative and final in application. Finally, Rawls’ description of the original position includes a list of competing principles of justice from which the parties are to choose [5].

From the foregoing, the ground has been prepared for the proper launching of the Maximin principle and it is to it that attention will be turned. The term “maximin” means the (maximum minimum) and the rule directs our attention to the worst that can happen under any proposed course of action and to decide in the light of that. Another backing for the maximin principle, according to Rawls, is that the person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the Maximin rule. It is not worth while for him to take a chance for the sake of a further advantage, especially when it may turn out that he loses much that is important to him. According to Rawls, it is useful as a heuristic device to think of the two principles, as the maximin solution to the problem of social justice. The maximin rule tells us to rank alternatives by their worst possible outcomes. We are to adopt the alternative the most outcome of which is superior to the worst outcomes of other [6].

Decision theorists have proposed various rules for making decisions under conditions of uncertainty. Rawls argues that the appropriate decision rule for the parties in the original position to employ is the maximin rule. Rawls’ appeal to decision theory (maximin rule) in defending the contractarian argument for his principles of justice has two stages. First, Rawls argues that the condition in the original position makes it rational for the parties in the original position to employ the maximin decision rule. Second, he argues that if the parties employed the maximin decision rule, they would as a matter of course, choose his principles of justice over any other principles. According to Rawls, the principle of Greatest equal liberty, along with the principle of fair equality of opportunity and the difference principle ensure the best worst outcome of any of the sets of principles on the list [7].

Rawls compares his maximin rule with utilitarianism and argues that utilitarianism is likely to lead to restrictions of liberty of some to produce the greatest overall utility. Due to this, the worst outcome under utilitarianism might be slavery or servitude. Rawls believes that since utilitarianism may sacrifice the interests of a minority to produce greater aggregate utility the life of the worst off under utilitarianism may be pathetic, very badly off indeed. However, his lexical priority of the principle of greatest equal liberty removes this possibility by ensuring that nobody’s basic liberty is sacrificed for the sake of maximizing overall utility. Also the difference principle which he later equates with the maximin principle requires that inequalities in wealth, income and authority must work to the greatest benefit of the worst off, subject to lexical priority of the principle of greatest equal liberty and the principle of fair equality of opportunity.

To demonstrate the maximin principle, it is said that if action A guarantees 1 dollar at worst but offers only 1.01 dollars at best, while action B guarantees 0.99 dollar at worst and 1,000,000 dollars at best, then maximin dictates that one should choose action A. To this, Rawls says that the difference principle is not intended to apply to such abstract possibilities [8].

According to Rawls, when the two principles are satisfied, each person's liberties are secured and there is a sense defined by the difference principle in which everyone is benefited by social co-operation. Therefore we can explain the acceptance of the social system and the principles it satisfies by the psychological law that persons tend to love, cherish and support whatever affirms their own good. Since everyone's good is affirmed, all acquire inclinations to uphold the scheme [9].

According to Norman P. Barry, Rawls intends to show that under certain carefully specified conditions rational agents would choose a set of principles which are consistent with our intuitive ideas of distributive justice and which when followed produce outcomes which whatever they might be, are morally acceptable. He persistently stressed that all departures from equality have to be rationally justified. This presumption of equality contrasts strongly with various versions of the entitlement theory. Maximin principles apply in situations of uncertainty when individuals have no knowledge of the probabilities of various outcomes occurring. Under these conditions rational agents, not knowing their propensity to gamble, will have a conservative attitude towards risk and will choose those principles which maximize the position of the worst off, just in case it should turn out that they are the worst off, in terms of talents and skills, in any future society [10].

It has been argued that Rawls' maximin decision rule arrangement does not fully exhaust his contractarian justification for his principles. He is said to have sketched several informal contractarian arguments which do not employ the decision rule. Among these are the argument from self respect, the argument from the strains of commitment and the argument from stability. What is being stressed here is that the contractarian arguments used by Rawls do not have any link with the maximin rule and this is an inconsistency on the part of Rawls which is a minus for his maximin principle since the maximin rule is expected to be applied throughout his theory.

W. Fellner, a decision theorist states that there appears to be three features of situations which give plausibility to the use of the maximin rule. These are: (a) there is no basis for probabilistic reasoning in the original position; (b) each party in the original position cares very little for what he might gain above the minimum stipend by following the maximin rule and (c) the worst outcomes of the options other than that option which has the best worst outcome are such that one can hardly accept them. Rawls then contends that the original position manifests these three features [11].

These three positions above have been criticized accordingly. First, it is said that probabilistic reasoning is in no way peculiar to situations in which employment of the maximin rule is appropriate. Inability to estimate probabilities of outcomes is the key feature which marks the branch of the decision theory which deals with decisions under uncertainty. The maximin rule is only one of several decision rules which have been proposed for use in making decisions under uncertainty. There are others like the minimax regret rule, the Bayes rule, that is, the principle of insufficient reason, the Hurwitz rule and the maximax rule. Hence to say that the original position does not allow estimates of probabilities of outcomes is not to say anything that indicates that the maximin rule, rather than any of the other rules for decision under uncertainty, is the rule to employ in the original position.

Secondly, it may be plausible to assume that there is some minimal level of non-libertarian goods 'M' such that gains above 'M' are of negligible value compared with the utility of falling below 'M'. But from this it does not follow that once they are assured of this minimum the parties will view gains above it as negligible.

Thirdly, granted that the people in the original position reject the utilitarian principles and they choose the principle of greatest equal liberty and principle of fair equality of opportunity. Once they have secured these two principles, it is still an open question as to whether they will choose the difference principle or some other principle for the distribution of non-libertarian goods such as wealth and income [12].

Allen Buchanan objects to the difference principle (maximin rule) in a number of ways. First, the extreme generosity demanded by the difference principle would itself be intolerable from the standpoint of individual freedom. In particular, the implementation of the difference principle would place several restrictions on the individual's freedom to choose an occupation and this would prevent him from engaging in what J.S. Mill calls 'experiments of living'. Second, which is related to the first, there is no freedom of occupational choice under Rawls principle of greatest equal liberty to prevent conscription for the sake of realizing that institutional arrangement which maximizes the prospects of the representative worst off man. To many people the right to pursue the career of their choice is worth more than higher pay or other benefits. Also, the maximin principle limits freedom by ruling out any and every institution or association whose existence is not compatible with the establishment of that particular arrangement which maximizes the prospects of the representative worst of man. And by requiring too much of the socio-economic arrangement, the difference principle would require too much of us. To accept a principle which requires that the minimum be continuously raised, no matter what the cost and how high the minimum already is, would be to view society as a monolithic machine straining after an ever-receding production goal [13]. It has also been stressed that the lexical prior principle of greatest equal liberty can not meet these shortcomings identified above.

Robert Wolff is of the view that when persons in the original position emerge from the veil of ignorance, the ablest, most energetic and most productive members of society are likely to regret that they have chosen a conservative principle of distribution and this will dilute their commitment to the principles.

The logical status of Rawls theory is unclear according to Wolf, because in addition to his conception of rational choice and his settled moral convictions about particular matters of social justice, he also has an extremely powerful commitment to an idealist conception of the harmonious and organic society. His theory is a vision of a harmoniously integrated, stable social and political order whose structure is articulated by the two principles of justice, which in turn are altered and adjusted in order to strengthen the hope that a society lived under their direction will in fact maintain its harmony and stability. These answers, however, do not cohere. The demands of each undermine the requirements of the others [14].

According to Nozick [15], the maximin principles can only be applied if primary goods fall from heaven like manna and in that case no one would have special entitlement to it. But if people exert their labour in the production process then the maximin principle is unjust. It is even the case that the workability of the maximin principle depends on the fact of the structure of the state as to whether production and distribution are privately owned or collectively owned through the state. Nozick believes that the individuals only transfer their rights to the state or association. Following this line of thought it will be unjust for the association to use individual gains for the benefits of others or the worst off.

Nozick also argues that the maximin principle is neither reasonable nor just. This is because it prevents the better off from enjoying their entitlements which they have acquired through their effort and ingenuity. This means also that Rawls is treating persons as means to ends of other persons and this violate the categorical imperative doctrine of Kant which Rawls purports to be following.

Nozick argues that the state should have minimal interference in the activities of the individuals. He likens the role of the state to that of the night watchman who is limited to the narrow function of the protection of its members against fraud, violence and so forth. He argues further that it is not the function of the state to provide welfare facilities and consequently argues against any form of taxation by the state which Rawls maximin principle will uphold. However, Nozick theory has to provide answer to how social cooperation is possible without recourse to the maximin rule.

The term worst off man is vague. It is a sort of blank blanket. There may be within the so-called advantaged class persons whose positions are more worst off than persons in the disadvantaged class. Also, the conception of justice by Rawls seems to be backward looking. Rawls' maximin principle discourages hard work. This is because whatever gains an individual makes has to be viewed and controlled in relation to the worst off. In fact, it can be said that the maximin rule places limitation on the acquisition of wealth.

Following from the above, one can argue that the maximin principle curtails individual's liberty to a great extent and for this the maximin principle might be said to be a defense of injustice. However, one can be charitable to Rawls' maximin principle in the sense that unrestricted liberty or freedom makes the term to lose its meaning. Therefore if freedom or liberty is not restricted, then a state of anarchy is likely to result.

CONCLUSION

The plausibility of Rawls' maximin principle lies in the fact that social harmony is indispensable in maintaining a given social order. And if this is the case, the society has to operate with such principles of justice that cater for the well being of the less fortunate members of the society. This, we think, is the essence of the maximin principle. The problems of the maximin principle notwithstanding, it is a useful axiom for an egalitarian society.

ACKNOWLEDGMENT

I gratefully acknowledge the insight provided by V. Rev. Msgr. (Prof.) F.A. Adeigbo on Rawls during my postgraduate studies at the University of Ibadan. Many thanks to Barrister Godwin Idjakpor of the Ambrose Alli University, Ekpoma, who read and made useful suggestions in the first draft of this paper.

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