

AN EXPOSITION ON THE INFORMATIONAL BASE OF THEORIES OF JUSTICE

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Under what conditions do states oblige themselves to assist other states? This is the principal question that this exposition paper seeks to address by way of the various theories of justice available to political philosophy. These conditions are understood here as informational base which frames the evaluative judgments that states make on the question of assistance. Moreover, Amartya Sen's concept of informational base is used to explain that these conditions are consciously 'included information' for evaluative judgments in contrast to 'excluded information' which more profoundly sets different theories of justice apart. In *Development as Freedom*, Sen focuses our attention on the adequacy or inadequacy of informational base used for evaluative judgments by what he calls the standard theories of social ethics and justice – utilitarianism, libertarianism, and Rawlsian theory of justice. He argues that the information base used by these standard theories fail to account for substantive individual freedoms 'seen in the form of individual capabilities to do things that a person has reason to value (Sen 1999, 56-57).'

The paper will therefore be, first, organized in a manner that describes the information base of the standard theories of justice and defines the action of states within the context of promoting global justice. Second, Sen's alternative information base that supports his theory of justice is expounded together with Martha Nussbaum's capabilities approach. Finally, the paper explores the answer to the posed question using insights derived from previous discussions.

Theories of Justice

For classical utilitarianism, the informational base rests solely on the total utility of pleasure, happiness, or satisfaction rather than the actual distribution of utilities. In here, 'the utility of a person stands for some measure of his or her pleasure or happiness (Ibid., 58).' This exclusion, according to Sen, limits the potential of utilitarian ethics to render the proper evaluative judgment by states. This is not much different from modern utilitarianism where utility is derived from fulfillment of desire but retains 'indifference to freedoms, rights and liberties that is characteristic feature of utilitarianism in general.'

A utilitarian evaluative judgment is limited by its consequentialist, welfarist, and sum-ranking components. The first component consequentialism privileges results as a basis for judging all our choices. This then delivers us to the second component of welfarism where all actions are judged by the consequence in utilities of a certain state of affairs. Finally, the utilities are aggregated in order to derive the sum-ranking of all utilities irrespective of their unequal distribution. Here thus lies the 'classic utilitarian formula of judging every choice by the sum total of utilities generated through that choice (Ibid, 58-59).' Justice is only achieved when people are, in the aggregate, happy, the measurement of which usually escapes numerical representation.

The information base of utilitarianism is merited for taking account of a social arrangement which privileges well-being of the sum total of individuals as a result. However, it is greatly limited in its inability to account for distribution of happiness (*distributional indifference*), *neglect of rights, freedom and other non-utility concerns* such that it may condone slavery as long as they find ways to be happy which leads us to the third limitation of *adaptation and mental conditioning* (Ibid, 60-63).

A well-favored exposition of theory of justice in contrast to utilitarianism is that of John Rawls. The information base of his theory we can use for evaluative judgments is captured in the general conception of justice, which is, 'all social values-liberty and opportunity, income and wealth, and the social bases of self-respect-are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage (Rawls 1971, 54).' This

conception is broken down into three parts as a way to provide a system of priority.

First Principle – 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.

Second Principle – Social and economic inequalities are to be arranged so that they are both:

(a) to the greatest benefit of the least advantage, and
(b) attached to offices and positions open to all under conditions of fair equality of opportunity.

First Priority Rule (The Priority of Liberty) – The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty.

Second Priority Rule (The Priority of Justice over Efficiency and Welfare) – The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle (Rawls in Kymlicka 2002, 56).

It is the prioritization of the basic liberties in the form of civil and political rights where we can determine which is included or excluded for our information base. The priority of liberty, or what Sen calls its ‘asymmetric prominence,’ gives way to the understanding that the conditions for states to assist other states would largely depend on the violation of these absolute liberties. This then gives way to question of why the status of intense economic needs, which can be matters of life and death, be lower than that of personal liberties (Hart 1973). While we are not necessarily looking at exclusion of other social goods such as equal opportunity and equal distribution of resources, they are indeed secondary.

While the first principle unequivocally sets forth the priority of liberty principle and rendered secondary all other social goods, the second principle is an interesting way to look at issues of inclusion

and exclusion of information. In Rawls's Theory of Justice, social and economic inequalities are to be arranged in order that the least advantaged are benefitted and that in corollary no one should have claim to greater advantage even with one's overwhelming natural talents. Thus, no one deserves their plot no matter how base or privileged.

This is where Kymlicka questions the ability of the second principle to direct the social arrangements in favor of the least well off. He argues that Rawls's theory fails to account for what is morally arbitrary when it comes to those with lesser talents who managed to secure better income through hard work. Kymlicka's problem is in the inclusion of all forms of inequalities as working for the benefit of the least well off. He suggests that only certain kinds of inequalities should influence distribution of resources. Therefore, if one is unfortunate to have no talents at all but works hard to gain better income, his greater share in the resources which results from his choices and not his circumstances should justify his status even if the least well off are not benefitted (Kymlicka 2002, 60).

Rawls's theory of justice however is easily redeemable after Kymlicka's criticism because of the provisional nature of the social contract that Rawls's theory admits. It might even be said that his 'original position' in the manner of 'veil of ignorance' is provisional to the point of accommodating the question of secondary social goods as well as the less clearer plight of those who were able to go beyond their original talent-less state by choice. This 'reflective equilibrium' gives way for what he calls 'mutual support of many considerations, of everything fitting together into one coherent view' (Rawls 1971: 19). Thus, Rawls says,

We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to the principle, I assume that eventually we shall find a description of the initial situation that both expresses

reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. (Rawls 1971, 18).

So, who is the least well off, really, in Rawls Theory of Justice? Whom should we include for our information base? To whom shall the difference principle favor in cases of inequalities? Kymlicka complains that “while Rawls appeals to this choices-circumstance distinction, his difference principle violates it in two important ways. It is supposed to mitigate the effect of one’s place in the distribution of natural assets. But because Rawls excludes natural primary goods from the index which determines who is least well off, there is in fact no compensation for those who suffer undeserved natural disadvantages” (Kymlicka 2002, 74).

To respond to Kymlicka’s questions on Rawls exclusion of natural primary goods from the index of the least well off, we take from Dworkin his theory on equality of resources. His account of ambition-sensitive and endowment-insensitive information base for justice clarifies further how we treat those who are least well off because of natural disadvantages. He imagines a society where all members having equal amount of purchasing power participate in an auction of resources. If everyone prefers their bundle of goods then the scheme has passed what he calls the ‘envy test’.

However, in the real world, there will be members who would have natural disadvantages. It would then lead Dworkin to suggest that there be compensation for the least well off before the auction. Once this is satisfied, then they can already participate in the auction with equal amount of resources. But, what about those severely mentally retarded members? No amount of compensation can bring them to a sound mental state and this will forever bar them from participating fully in the auction. Kymlicka believes that the reason why Rawls excluded natural disadvantages in the index for the least well off is because full equality of circumstance is never achievable. The proposal therefore is “we give each person an equal share of resources – the 100 clamshells – and ask them how much of their share they are willing to spend on insurance against being handicapped, or otherwise disadvantaged in the distribution of

natural talents... If we can make sense of of this hypothetical insurance market, and find a determinate answer to the question of what insurance people would buy in it, then we could use the tax system to duplicate the results. Income tax would be a way of collecting the premiums that people hypothetically agreed to pay, and the various welfare, medicare, and unemployment schemes would be ways of paying out the coverage to those who turned out to suffer from the natural disadvantages covered by the insurance... Rightfully, this is a 'middle ground between ignoring unequal natural assets and trying in vain to equalize circumstances.' This is summarized by what Dworkin calls the theory of 'second best'. A second best option is needed because we cannot fully equalize unequal circumstances. If we do, the talented will end up paying for the costs of equalizing in vain the circumstances of the naturally disadvantaged" (Kymlicka 2002, 75-76).

The more libertarian approach to justice is that of Robert Nozick whose information base rests solely on entitlements. A just distribution for him is one in which everyone is entitled to their possessions. Thus, his general theory of justice is constituted by three principles of justice on holdings—the principle of acquisition of holdings, the principle of transfer of holdings, and the principle of rectification of violations of the first two principles. The acquisition of holdings takes a Lockean turn when acquisition is taken to mean "laboring on something improves it and makes it more valuable; and anyone is entitled to own a thing whose value he has created" (Nozick 1974, 175)." Using an original position where the 'world were wholly just', the principles would specifically mean

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.

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3. No one is entitled to a holding except by (repeated) applications of 1 and 2. (Nozick 1974, 150-151)

The prioritization of property rights as characteristic of distributive justice is inescapable in Nozick. This is based on full self-ownership and the moral inviolability of individuals. In *Anarchy, State, and Utopia*, he says that “individuals have rights, and there are things no person or group may do to them (without violating their rights)” (Nozick 1974, ix). In its extreme form, Nozick’s libertarianism will exclude many individuals who are not able to appropriate resources because there are none left for them or are physically unable to make such appropriation. In such cases, those who are able to actualize their self-development through appropriation are expected to compensate for those who lost in the process of appropriation. Unfortunately, the principle of compensation is vague in many respects.

First of all, that principle does not entail that the individual who, through his appropriation, worsens the situation of others should stop appropriating resources. Second, full application of the principle of compensation presupposes that a universal medium of exchange has been already introduced in society and guaranteed by the state. Third, Nozick does not provide a method by which compensation can be satisfactorily measured. (Papaioannou 2008,273)

The theory of justice of Amartya Sen goes beyond the information base of utilities or primary social goods. His theory of justice includes in its information base not just sum total of welfare for individuals or the prioritization of liberties in the form of civil and political rights or property rights. Sen’s evaluative judgment of (distributive) justice lies in the capabilities of individuals to choose the life one has reason to value. The capability approach begins with the concept of functionings which “[reflect] the various things a person may value doing or being.” On the other hand, the concept capability “refers to

the alternative combinations of functionings that are feasible for her to achieve. Capability is thus a kind of freedom: the substantive freedom to achieve alternative functioning combinations (or, less formally put, the freedom to achieve various lifestyles)” (Sen 1999, 74-75). This approach is not surprisingly popular among development theorists and practitioners because of its promise to capture the strengths of previous theories of justice from utilitarianism to Rawls and the libertarians. Sen explains that

In particular, the freedom-based perspective can take note of, *inter alia*, utilitarianism’s interest in human well-being, libertarianism’s involvement with processes of choice and the freedom to act and Rawlsian theory’s focus on individual liberty and on the resources needed for substantive freedoms...This extensive reach is possible because the freedoms of persons can be judged through explicit reference to outcomes and processes that they have reason to value and seek. (Sen 1999, 86)

This extensive reach is made fuller by Nussbaum in her listing of basic human functional capabilities such that “a life that lacks any one of these capabilities, no matter what else it has, will fall short of being a good human life. So it would be reasonable to take these things as a focus for concern, in assessing the quality of life in a country and asking about the role of public policy in meeting human needs” (Nussbaum 1995, 83-85).

1. Being able to live to the end of a human life of normal length;
2. Being able to have good health;
3. Being able to avoid unnecessary and non-beneficial pain;
4. Being able to use the senses;
5. Being able to have attachments to things and persons outside ourselves;

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6. Being able to form a conception of the good and to engage in critical reflection about the planning of one's own life;
 7. Being to live for and to others;
 8. Being able to live with concern for and in relation to animals, plants, and the world of nature;
 9. Being able to laugh, to play, to enjoy recreational activities;
 10. Being able to live one's own life and nobody else's;
 11. Being able to live one's own life in one's own surroundings and context.

Summative Discussion on the Information Base of the Theories of (Global) Justice

The several theories of justice have given us opportunity to reflect on the information base which would have consequences for how states would most probably make evaluative judgments on the question of assistance to other states. For a state which adopts a utilitarian approach to global justice, the consequentialist, welfarist, and sum ranking of welfare or utility for the people in the troubled state are bases for any justified assistance. Utilitarianism works its way to convince the assisting state to assist based on the perceived results to the improvement of the general welfare of the assisted people. For John Rawls, this paper has intentionally zeroed in on the prioritization of liberty as core for all evaluative judgments made by states on the question of assistance. In a sense, states may make a cause for assistance or intervention if and when basic liberties are violated. The primacy of basic liberties over other goods such as economic or cultural makes the liberal position potent for assistance dwelling mainly on liberating peoples, say, in dictatorial states.

From the utilitarian's welfarist approach to Rawl's prioritization of basic liberties, we proceed with Dworkin's notion of second best option. Given that inequalities, most especially natural inequalities, are impossible to rectify, states are led to assistance by way of compensating for the least advantaged in other states. In the frame of global justice, states through international institutions (financial or

aid-driven) may lobby for compensatory policies in the troubled state. In a rather aggressive manner, assisting states or institutions force open domestic policies to accommodate cushioning of the least advantaged, for example, in free-trade determined globalization. This makes compensatory justice within the context of global justice difficult. There is a sense of unease in the manner of assistance which tinkers on the domestic policies of other states. Structural adjustments in economic policies, taxation, and the like have an interventionist appeal which is not easily justified domestically. The value of compensatory justice may work well when one state decides for it domestically. If and when this is exported to other states in a flimsy veil of assistance, this may only, at its worst, work against global justice.

Nozick's entitlement approach is also another difficult framework for global justice. While states validly promote entitlements to their own people by fixing ownership rights, this cannot easily constitute the information base or serve as condition for assistance to foreign states. The determination of property rights has become so attached to citizenship that for assisting states to question the justness of ownership rights is to necessarily violate sovereignty. The potential of course of this approach for the purposes of global justice is to influence states to come up with just property rights using the United Nations or other international institutions as available venue.

Finally, Sen and Nussbaum's capabilities approach deliver to global justice a universal mandate for states to ensure the proper functionings of peoples by providing them the capabilities required of living a desired life, one that they have reason to value. Unlike the previous theories of justice, the list of capabilities, especially by Nussbaum, broadens the information base and holistically appreciates global justice by making evaluative judgments not only on welfare, basic liberties, or entitlements. The information base covers the whole gamut of quality of life, of human development. The center therefore of any assistance by states is the promotion of the indexes of human development that now even includes gender equality index. The information base is made richer while the opportunity for assistance, more accessible. Assistance on the basis

of quality of life is justifiable than those which requires obvious structuring of domestic policies which under normal circumstance are violative of sovereignty.

Given the above discussion, we generate some insights on the limitations of assistance. In discussing global justice, we are reminded to pause and think twice for the consequences of any assistance. Exploring various theories of (global) justice, we see that ‘assisted’ states may resist on the basis of sovereignty. If resistance is absent, still, violation of sovereignty may be claimed by peoples of that state. The question of global justice therefore is a question of content of assistance, not only motives. Is the content of assistance *comprehensive* enough to promote actual functionings of individuals and, most importantly, is it *sovereignty sensitive*? These are questions which call for exploration not anymore of theories but of illustrative cases where we may learn from the variegated experience of assistance in our history. Interrogations of which may lead to us come up with insights that make us more equipped for future requirements of global justice.

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