



How is Distributive Justice Possible?

Wanpat Youngmevittaya *

School of Social and Political Sciences, University of Glasgow, United Kingdom

Received 14 August 2018; Received in revised form 23 December 2018

Accepted 11 January 2019; Available online 26 June 2019

Abstract

Distributive justice is one of the most popular issues in late 20th century Anglo-American analytical political philosophy, at least since John Rawls' *A Theory of Justice*. This paper deals with the very broad conception of distributive justice – taking something coercively from someone and giving it to someone else – by asking the very fundamental question “how is distributive justice possible?” Even though this paper does not aim to tackle any certain theory of distributive justice, Rawlsian distributive justice is taken because it captures the heart of the concept of distributive justice in general. My main argument is that distributive justice would be theoretically possible only if the following conditions are true metaphysically and epistemologically: (1) the identity of the person must be perceived as “*I = WE, and WE = I,*” (2) moral ties among certain people must be perceived as “constitutive” rather than “instrumental,” and (3) a particular conception of the good or merit must be prior to a conception of the right; these conditions make state coercion possible without failing to respect a person as an ends in themselves.

Keywords

Distributive justice, John Rawls, Theory of the person, Moral ties, Conceptions of the good

Introduction

Distributive justice is one of the most popular issues in late 20th century Anglo-American analytical political philosophy, at least since John Rawls' *A Theory of Justice* (1971). Broadly speaking, distributive justice is concerned with the allocation and ownership of goods in a society: since different people would claim different principles of how goods should be allocated, so the question what the best principle should be arises. However, this paper would rather ask a very foundational question about distributive justice: how could we justify taking something coercively from someone and giving it to someone else? Some might see that it is easy to understand and justify distributive justice in this foundational sense – e.g. distributive justice is perfectly compatible with other universal values like liberty, rights, and respect. For them, the only problem about distributive justice is how to implement it in practice – e.g. how to get rid of many obstacles such as the opposition of the rich, capitalists, elites, and so forth.

In contrast to this view, I will go to the heart/foundation of distributive justice and argue that it is not as easy to justify distributive justice in a foundational sense as some might assume. I find it very relevant and necessary to discuss a theory of the person and of the community as the foundation of distributive justice, although many people, even political theorists, would ignore such a discussion. I believe that, with this discussion, we would be able to see how distributive justice, and other values like liberty and respect, might not go along together, and how we could justify distributive justice. My concern here is not about how to make distributive justice possible in practice, but how to make distributive justice possible in theory; how to justify state coercion through taxation and other forms of redistribution among certain people.

The paper consists of three sections. First, I will outline the idea of distributive justice that I aim to deal with in this paper. Second, I will show how distributive justice is impossible from the right-libertarian point of view. Finally, I will discuss how distributive justice would be theoretically possible.

Section I A General Outline of Distributive Justice

Distributive justice¹ is one of the most appealing terms and issues in contemporary

1 Since distributive justice here involves certain state coercions through taxation or other forms of distribution among certain people, the right-libertarian conception of distributive justice (e.g. Friedman, 2002; Hayek, 2001, 2006, 2013; Nozick, 1974), holding that the only kind of distributive justice which is just must be compatible with the entitlement theory or voluntary distribution, is not counted as distributive justice in this paper. In contrast, I hold that these right-libertarian thinkers are the opponents of distributive justice as such.

political philosophy, and it makes those – philosophers or politicians – who are opposed to the idea uneasy and even unacceptable in the view of the public (Hayek, 2013, p. 229). Even though I myself justify a general concept of distributive justice, I disagree with those who take it for granted, as if it is easy to understand and accept in theory, and simply confine the debate to the practical realm. This paper goes to the foundation of all theories of distributive justice and shows that it is not easy to understand and accept and that it is even incompatible with other good-looking values like freedom and rights, as many political philosophers – e.g. Dworkin (1977a; 1977b; 1981a; 1989b), Kymlicka (1989a; 1989b), Otsuka (2003), Rawls (1971) – would think. I agree with Hayek (2013) when he argues that we could achieve distributive justice only by sacrificing our personal freedom (p. 231), but disagree when he proposes that “we must fight when it becomes the pretext of coercing other men” (p. 230). In other words, like Hayek, I view distributive justice as incompatible with individual freedom and rights, and we must choose one of them, but, unlike Hayek, I rather think that we must choose the former rather than the latter.

What I mean by 'distributive justice' here is simply a general concept rather than a specific concept. The main difference is that while the former simply means the general idea that one is morally obligated to share their resources and fate with other people in some way or another, the latter exclusively goes into great detail about how to redistribute people's resources in order to achieve the most just society. In the *specific* sense, the discussion requires the examination of many different distributive theories, e.g. utilitarianism, Rawlsian, individualism, Aristotelianism, and so on (Anderson, 1999; Bentham, 2008; Harsanyi, 1975, 1977; Rawls, 1971; Sandel, 2009, 2012; Swift, 2014; Wolff, 1998). In the *general* sense, the discussion requires only the examination of how the idea of taking something from someone and giving it to others could be justified. My concern is about the *general* sense, not the *specific* sense.

In other words, I am concerned about distributive justice in terms of quality rather than quantity; the question is if the idea of distributive justice in general is morally justified, not about how much or in what way the state should take from one and give it to others. In this sense, although I may justify the idea of distributive justice *in general*, that is, certain people should be obligated to share their welfare and fate together in some way or another, it does not necessarily mean that I must justify *every* theory of distributive justice².

In addition, “distributive justice” here is based on state coercion rather than voluntary distribution. The difference is that while the former not only views that everyone is demanded morally, but that they should also be commanded legally to share their resources

2 As we shall see, this paper takes the foundation of Rawlsian distributive justice into account considerably *not* because I want to argue if its specific characteristics are possible, *but* because his distributive justice goes directly into the heart of *all* distributive ideas.

and fates together in some way or another, the latter strongly opposes state coercion in any case. For the latter, the only kind of distributive justice which is just must be based on voluntary redistribution, and any coercive taxation for the sake of redistribution is the use of people, which is not less wrong than forced labor (Friedman, 2002, p. 174; Nozick, 1974, p. 169). However, even though I use the term “distributive justice” in the coercive sense, not the voluntary sense, I will overwhelmingly devote the discussion of distributive justice to the voluntary sense (but in the name of anti-distributive justice), as this is the perspective which makes distributive justice uneasy.

It is worth noting that to justify distributive justice is to justify state coercion; hence the question may be asked in different ways: How can we justify the idea that the state can forcibly take something from someone and give it to someone else? Is it possible to justify such a principle without giving up the principle of the respect of persons? A very important conception that I will use throughout this paper is the idea that any just action must be compatible with the respect of persons, that is, people must be treated as an ends in themselves rather than as a means for others' ends. Even though this idea really reminds us of Kant's (1988) categorical imperative, I rather use it as a general idea in the sense that any moral principle must be able to explain how it respects individuals. It would be absurd to say that one needs to do something for others' ends which has nothing to do with them in any way.

It is important to understand that the use of any coercive state apparatus indeed means that each individual must obey and abide by the state, regardless of whether they really accept them. This reflects the fact that to make a person really accept a certain moral principle which is imposed on them, is to convince them that that moral principle is truly good for them, although they may not actually accept and realize it by themselves. In this sense, to justify distributive justice is to argue that those whose resources are coercively taken for other people are not used as a means but are treated as an ends³.

Section II How Is Distributive Justice Impossible?

This section will explore how distributive justice is theoretically impossible under the liberal conception of the self. Rawls' *A Theory of Justice* (1971) is an outstanding and thought-provoking work about the relationships between individual freedom and distributive justice. His two principles of justice⁴ indicate that distributive justice could be achieved

3 Ironically, Rawls (1971) who himself criticizes utilitarian distributive justice for failing to respect the separateness of persons is, in turn, criticized by right-libertarian like Nozick (1974) for the same reason. I will show in the next section that their disagreements lie in their different theories of the person.

4 Rawls (1971, pp. 14-15) believes that rational beings in the original position would choose two

without sacrificing our individual freedom. His justification of state coercion (i.e. distributive justice) is that every *rational* human being ought to agree upon the idea that the least advantaged members of society should be maximized because we are all located to where we are in reality only by *accidence* without our own merit and choice. Rawls calls his distributive justice as “the difference principle.” Rawls does not view that a person being taxed to help other citizens is used as a means because of at least two important reasons.

One reason is that the definition of coercion is a situation where a person is forced to do or sacrifice something without their consent, but the difference principle is a situation where everybody hypothetically agrees to share their fate and natural/social resources with each other in the first place; in the original position. In this sense, to forcibly tax a person in reality for the sake of distributive justice is not to use them but to do what they would have hypothetically consented to do in the first place; the government simply enforces the social contract *everyone* has already agreed upon. Please notice that, for the first reason, the concept of rationality is crucial to the justification. Another reason is that distributive justice is simply the distribution of our attributes, of which no one could claim themselves as an absolute owner, rather than the distribution of our selves, which is inviolable. Therefore, what Rawls means by “the separateness of persons” is merely the purely physical body of the person, and only this conception of the self in which he disagrees with utilitarian conception of justice that puts even the physical self into the calculation of the welfare of others. The task now is to examine whether Rawls' project⁵, which is to base distributive justice on individual freedom, is defensible or not. Hayek (1948, p. 25) strongly criticizes any principle that tries to connect individual liberty to the concept of

principles of justice: “I shall maintain instead that the persons in the initial situation would choose two rather different principles: the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society. These principles rule out justifying institutions on the grounds that the hardships of some are offset by a greater good in the aggregate.”

- 5 Another way to name Rawls' project is to call it “liberal egalitarianism”: the argument that the distribution of income for the sake of equality among citizens is compatible with the respect of individual freedom. I will show how his project is indefensible as Friedman (2002, p. 195) argues that “one cannot be both an egalitarian and a liberal,” and Hayek (2006) argues that “not only has liberty nothing to do with any other sort of equality, but it is even bound to produce inequality in many respects” (p. 75), and that “the principle of distributive justice, once introduced, would not be fulfilled until the whole of society was organized in accordance with it. This would produce a kind of society which in all essential respects would be the opposite of a free society – a society in which authority decided what the individual was to do and how he was to do it” (pp. 87-8). The view that individual liberty is impossible under Rawls' egalitarianism can also be found in Buchanan (1980).

rationality, whatever the characteristics of the concept. He writes:

The belief that only a synthetic system of morals, an artificial language, or even an artificial society can be justified in an age of science, as well as the increasing unwillingness to bow before any moral rules whose utility is not rationally demonstrated, or to conform with conventions whose rationale is not known, are all manifestations of the same basic view which wants all social activity to be recognizably part of a single coherent plan. They are the results of that same rationalistic "individualism" which wants to see in everything the product of conscious individual reason. They are certainly not, however, a result of true individualism and may even make the working of a free and truly individualistic system difficult or impossible. [emphasis added]

According to Hayek, true individualism or true liberalism is incompatible with any attempt to bring any single coherent plan to a society, however reasonable that principle sounds, because we all have different conceptions of rationality and it is impossible to have a single principle really agreed upon by everyone. I agree with Hayek on this point⁶ and see that Rawls' secret of principles of justice is entirely based on his *own* conception of rationality, which is surely controversial and impossible to be agreed upon by everyone, rather than on the social contract as he claims. Rawls needs to assign certain characteristics, which he thinks are rational, to a hypothetical person in the original position, otherwise it is impossible to reach the conclusion that everyone would choose the same distributive justice (the difference principle).

Rawls (1985; 1993; 2001) may argue that his theory of the person is merely political, not metaphysical nor comprehensive, in the sense that the characteristics he assigns to a hypothetical person in the original position are held true simply for the sake of reaching the best reasonable principle of justice, and actual persons are free to reject those characteristics in the reality. But I do not think that his argument here is defensible and can help his connecting principles of justice to his own conception of rationality less controversial and more acceptable (Sandel, 1994). It is important to understand that his conception of rationality does not mean only the device of representation in the original position, but also the crucial factor of judging what people in reality can and cannot do. I cannot deny my obligation to share my fate and resources with my fellow citizens by claiming that I have never contracted with anyone in the original position because, Rawls would argue, if I was rational enough I would have chosen to do so. But the problem is that though I may accept his idea on the original position, I do not need to agree with him that rational people should possess certain characteristics as he assumes; in fact, I may argue that a hypothetical

6 For the discussion of how Rawls fails to justify his principles of justice on the basis of rationality, please see Wanpat (2016a).

person in the original position should find the fact that we are all born accidentally and arbitrarily morally acceptable, and so on.

Rawls may argue further that those who hold different views about the characteristics of a hypothetical person in the original position simply reflects that they are not rational. To put it simply, they should not be given equal moral power to judge the best principles of justice *unless* they would accept that the appropriate characteristics of a hypothetical person in the original position *must* be as he himself sets up. Now we can see that without his *own* conception of rationality, his principles of justice, especially distributive justice, would be impossible, and that his claim that anyone being taxed is not used as a means, because everyone has already agreed upon the same social contract, is indefensible. Rawls cannot accommodate individual freedom with distributive justice because the language of liberty is incompatible with the language of rationality; insofar as I have the right to something, I am free to do anything with it, however irrational is my action (Hayek, 1948, p. 8).

Liberty differs from *liberties*, Hayek (2006, p. 18) argues, in that while “liberty” is the situation where a person is free to do anything as long as he does not harm others, “liberties” is the situation where a person is free to do a particular thing as long as he is allowed to do so by some specific rules or someone else, and only “liberty” is the true liberty. In this sense, Rawlsian distributive justice is incompatible with “liberty” as it requires a certain conception of rationality *prior* to individual freedom.

For the second reason, Rawls may argue that the separateness of persons is concerned only about the physical self rather than the attributes of the person; while killing one to save another is to use a person because his *self* is violated, taking one's wealth and giving it to others is not to use a person because his wealth is not part of his *self*. Given this argument, what left-libertarians like Rawls really disagree with right-libertarians like Hayek, Friedman, and Nozick is about what is counted as an essential part of the self and what is not; this is what Sandel (1982; 1984) and Taylor (1985a; 1985b; 1989) call a theory of the person. According to Rawls, no one can claim their attributes, whether natural talents or inheritances, absolutely and entirely because they are all arbitrary from a moral point of view Rawls (1971, p. 72) writes:

The existing distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets – that is, natural talents and abilities – as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and such chance contingencies as accident and good fortune. Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view. [emphasis added]

Please note that what Rawls means by 'arbitrary' also includes one's own efforts in the sense that it is impossible to distinguish one's natural influences from one's pure efforts. For example, if one was born naturally talented, then they must be affected by those talents for their own life. Because of this, the difference principle can apply to everyone all the time, as no one can successfully prove that their successes are the results of their pure efforts. We may articulate Rawls' argument for distributive justice as follows: we could not claim the *absolute* ownership of our natural talents and wealth because they simply come to us accidentally, arbitrarily, and contingently by chance and luck rather than by our own pure efforts and merits; since they are not *ours* in the absolute sense; they should be distributed among our fellow citizens for the sake of justice. While this, at first glance, seems to be a strong argument that one may find it hard to disagree with without the cost of rationality, this argument is indeed mistaken and inconsistent from a liberal point of view and even Rawls' first principle which assumes that there is no such thing as an antecedent moral tie or community *prior to* individuals (Rawls, 1971, p. 128). However important the existence of community is to his theory of justice, he cannot deny that it is important at best as the *choice* of individuals rather than the *constitution* of individuals which may command individuals in some ways or another.

Before I discuss Rawls' theory of the person and the community to see if his distributive justice is defensible and consistent, I now undertake to show that Rawls' argument about our luck and chance is merely one of many alternatives rather than the only way to think about it. Even though Rawls (1993) may be too embarrassed to accept that his argument is one of merit-based or desert-based thinking, as this seems to make his argument more or less moral and comprehensive rather than political, he cannot deny that his argument is based more or less on a merit system. No one could claim his attributes absolutely because everyone is influenced and affected by luck and chance which they have not chosen or put their efforts into. In other words, we could claim or *deserve* our attributes absolutely only if we come to possess them by our own *pure* efforts.

Hayek argues that a clear distinction between 'facts' and 'values' about private property must be made, otherwise a free society and individual freedom would be impossible or misused He (2013, p. 233) writes:

We are of course not wrong in perceiving that the effects of the processes of a free society on the fates of the different individuals are not distributed according to some recognizable principle of justice. Where we go wrong is in concluding from this that they are unjust and that somebody is to be blamed for this. In a free society in which the position of the different individuals and groups is not the result of anybody's design – or could, within such a society, be altered in accordance with a generally applicable principle – the differences in reward simply cannot meaningfully be described as just or unjust. [emphasis added]

Hayek (2001, pp. 105-106) never denies that the success or fate of a person is influenced by their intelligence, talent, or even pure luck and chance, but he never concludes from this 'fact' that we should 'value' the idea that what comes to us by chance should be distributed among our fellow citizens. In other words, the fact that someone is better-off than someone else as a result of their pure luck cannot be used to judge whether they should share their wealth with other unfortunates or not. If we hold that individual liberty is the most important virtue, then any *patterned* principle of distributive justice is clearly what makes individual liberty impossible (Nozick, 1974, p. 163)⁷. As long as I am entitled to a particular object which comes to me in any way except by stealing, forcing, cheating, and violating other people's rights, I should be the only person who has an absolute right to it. Since different people have different views on merit and desert, and about how certain resources should be distributed – some may view pure luck and chance as morally acceptable and others may view them otherwise, and so forth – any *patterned* principle of distributive justice could be stable only at the cost of individual liberty.

As long as we hold that we are all *independent* selves who exist prior to any ends given by the present community or any *antecedent* moral ties (Rawls, 1971, p. 128), the community must be regarded as a voluntary association of individuals rather than an independent place which could have a claim on us. To force someone to help someone else is to force them to do things regardless of their consent. Distributive justice, therefore, becomes impossible because it is incompatible with a liberal theory of the person and the community.

7 Literally speaking, Hayek and Nozick also have certain *patterned* principles of distributive justice, but they are compatible with individual liberty in general. Philosophically speaking, we could say that they are not really patterned because each individual is still free to distribute their things as they want. In the case of Hayek (2006, p. 85), a patterned principle is "what determines our responsibility is the advantage we derive from what others offer us, not their merit in providing it." In the case of Nozick (1974, p. 160), a patterned principle is "from each as they choose, to each as they are chosen." However, I do not think that even such principles are patterned-free as they claim, but this discussion needs much more space than this paper can provide. For those who are interested in this discussion, please see Cohen (1985), Wanpat (2016b), and Wolff (1991).

Section III How Is Distributive Justice Possible?

In this section I will discuss a theory of justice and the relationship between the self and the community which makes distributive justice theoretically possible. Now it is time to examine whether Rawls' theory of the person and the community can support his distributive justice or not. For Rawls (1971), to use one's natural talents for other people's welfare is not to use *their* person⁸, which is consistent with the principle of the separateness of persons, because they are not parts of the person in the first place; without them, the person still exists. Such things as natural talents and skills are treated by Rawls merely as arbitrary contingencies "from a moral point of view" (p. 72). In this sense, when he says that "each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override" (p. 3), it simply means that the society as a whole has no right to use each person's physical body for the sake of others, but it does *not* preclude using each person's natural talents and skills.

Any natural talents and skills are simply what I happen to possess by accident. As Rawls (1971, p. 12) writes:

No one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance.

This means that my own *self* and my natural assets and abilities are two *separate* things in the first place; it is simply a matter of (mis)fortune which determines *my* natural attributes⁹. The further question is that if *my* natural talents and skills are not *mine* in the first place, then whose are they? Rawls (1971, pp. 101-102) has a very clear answer for this question:

8 Rawls (1971, p. 183) himself states that his principles of justice "rule out even the tendency to regard men as means to one another's welfare. In the design of the social system we must treat persons solely as ends and not in any way as means."

9 Nozick (1974, p. 228) is very clear on this point when he argues that Rawls could avoid the claim that using people's natural assets for other's welfare is the use of people "only if one presses very hard on the distinction between men and their talents, assets, abilities, and special traits."

We see then that the difference principle represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be. Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out ... Thus we are led to the difference principle if we wish to set up the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or receiving compensating advantages in return. [emphasis added]

Rawls argues that our natural talents and skills belong to the community as common or collective¹⁰ assets in the first place, and then they are accidentally distributed to us. Those who happen to receive good talents and skills are morally obligated to help those who are less lucky. One may argue that nothing is coercive here because no one is entitled to those common assets absolutely in the first place; to take them from some and give them to others is simply to redistribute those common assets *unowned* by everyone. But this is somewhat misleading. According to the definition of common or collective assets, they are *owned collectively* rather than *unowned* by everyone. The difference is that things being *owned collectively* can be said to belong to everyone in the first place and everyone has the right to collectively decide how they are to be used and distributed, but things *unowned* by everyone cannot be said to be *mine* nor *yours*.

Sandel (1982, p. 96) clearly sets out how natural talents and skills could be understood in relation to our own self in three different ways: (1) they belong to each individual absolutely – I am the *owner* of my natural talents; (2) they belong to a certain community – I am the *guardian* of my natural talents; and (3) they belong to no one or any community – I am the *repository* of my natural talents. For the first interpretation, any redistribution through coerced taxation is the violation of individual freedom because it takes my own *absolute* assets and gives them to others without my consent. As we have seen, Rawls strongly opposes this interpretation and explicitly embraces the second interpretation (“*the distribution of natural talents as a common asset*”). Only this interpretation can make sense of Rawls' above passage that “*no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or receiving compensating advantages in return,*” which treats them as if those natural talents are fixed and limited assets in which if one has more another must have less (Nozick, 1974, p. 228). Only this interpretation can make sense of the proposal that the more advantaged *must* help

10 Rawls (1974, p. 145) writes that “the natural distribution of abilities is viewed in some respects as a collective asset.”

the less advantaged because the former takes more from the common assets than the latter does; the former must compensate the latter because the former takes what was owned by the latter.

However, Nozick argues that even if we rule out the first interpretation, it does not necessarily mean that we must automatically take the second interpretation, although Rawls believes that it is the only alternative to the first interpretation. Instead we should go for the third interpretation (Sandel, 1982, p. 97). For the third interpretation, no one nor community can be said to be entitled to natural talents and skills in the first place; they are *unowned* by everyone. According to this view, even though I am not the owner of my talents in the absolute sense, it does not automatically mean they must belong to the community rather than no one at all (Sandel, 1982, p. 96). It should be concluded that if my talents are not mine nor anyone else's at all, then I either should still be entitled to them in the *absolute* sense or should not be less entitled to them than everyone else, and to take them from me and give them to others is to violate my rights in the same way as to take what I receive from *unowned* nature without violating other people's right and give it to someone else.

Nozick (1974, p. 199) asks:

Do the people in the original position ever wonder whether they have the right to decide how everything is to be divided up? Perhaps they reason that since they are deciding this question, they must assume they are entitled to do so; and so particular people can't have particular entitlements to holdings (for then they wouldn't have the right to decide together on how all holdings are to be divided); and hence everything legitimately may be treated like manna from heaven.

The original position would make sense only if the people assume that they are entitled to them and have the right to decide how they are to be distributed among them. But the difficulty of this fact is that Rawls *must* assume that there already exists a certain community *prior to* individuals, which is clearly contradictory to the principle of the separateness of persons. Anyway, Nozick does not make it clear why we should hold that treating natural talents as unowned assets is more appropriate than Rawls' treating as common assets. In this sense, we may say that both of them are arbitrary, and we are unable to decide between them. Despite that, I propose that we could decide between them by testing the consistency of their theories. I summarize Rawls', Nozick's, and Sandel's theories of the person in Table 1.

Table 1 The Ownership According to Three Theories of the Person

| | Ownership | | |
|---------------|-----------------------------|----------------------|---------------------------------|
| | Self (Myself) | Community (Others) | Distribution of Natural Talents |
| Rawls | Me | My Attributes | My Attributes ---> Others |
| Nozick | Me + My Attributes | None | Myself ---> Others |
| Sandel | Me + My Attributes + Others | Myself (<i>WE</i>) | Myself ---> Myself |

From Table 1, Rawls' theory of the person holds that any attribute, including our talents and inclinations, is not part of our personhood, but part of the community as a whole. To redistribute *my* attributes is not to use *me* as a means because those attributes are not *mine* in the first place. While the society as a whole has no right to intervene with my own self, which simply means my physical body, it has the right to intervene with my attributes because they belong to the community. So, the difference principle does not violate my right. In contrast, Nozick's theory of the person holds that my self and my attributes are inseparable, and my attributes do not belong to the community or anyone else but me alone. The difference principle violates my right as it uses me as a means for others' welfare. Please notice that this view can even fit the third interpretation of ownership. If my natural talents are not mine in the first place, they are also not anyone else's; to take them from me and give them to others is to say that I *less* deserve the *unowned* talents *than* others. But if I do not deserve them, then neither do others; if you take them from me, and need to avoid using me as a means, then you must give them to where they first come to exist, which is the ownership of no one.

Sandel's theory of the person¹¹ holds that my natural talents not only belong to me, but also to the community as a whole; others have the right in me and I have the right in others. Nozick (1974, p. 172) writes "this process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you." A person is now perceived as the "*I = WE, and WE = I*" identity, and the right is no longer prior to the good because a community is also perceived as the *antecedent* moral ties between individuals rather than the *voluntary* association of individual choice. To take my natural talents and give them to others is not to use me as a means because if I have the right in

11 For those interested in Sandel's theory of the person, please see Wanpat (2019).

others and vice versa, then it simply takes from a part of my person (myself) and give it to another part of my person (others/community). This is the theory of the person which I claim must be true, otherwise any distributive justice would be theoretically impossible. Let us call Sandel's theory of the person a communitarian theory of the person.

One may wonder why we must hold such a communitarian theory of the person, why is it not enough to hold Rawls' theory of the person to make distributive justice possible? A very short answer is because Rawls' theory of the person suffers a great inconsistency which makes his own theory impossible. Even though it is true that Rawls can avoid using people as a means by making any natural talents belong to the community as a whole in the first place, this requires the assumption that there exists a certain community *prior to* individuals and the community may have a claim on individuals. This is clearly impossible in Rawls' theory of the person which assumes the separateness of persons. How does such a community come to exist *before* individuals? Who creates such a community in the first place? It should be noted that Rawls does not really wish to place his theory of justice, including the idea of the original position and the veil of ignorance, upon the whole world; instead he seems to argue that some society may be legitimately non-liberal.

Rawls (1971) seems to suggest that since what is just or unjust must be decided in the original position only, because existing societies may be grounded on some unfair circumstances, a just society must be the result of the social contract within the original position. In this sense everyone around the world is to be governed by just principles only if they are all governed by the two principles of justice. It may be true that I cannot choose to be a member of the U.S. or somewhere else and must accept my place in my country, but it is not true to say that I must accept everything my country imposes on me, including an economic system, laws, and political regime. Indeed, my country must follow the two principles of justice, otherwise my country would be unjust. Let me recall how Rawls (1971, p. 61) defines the first principle of justice, which is the basic liberty principle:

The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights.

Rawls (1993) also argues that his two principles of justice, especially the first principle, are essential to a democratic society. All of this implies that every society, to be called just, must be governed by the two principles of justice. But Rawls (1999, p. 92) suggests that liberal people must tolerate some non-liberal societies and even "benevolent

absolutism.” If this is the case, then Rawls does not mean to apply his principles of justice to every society, but only some societies, maybe his own country. Does this not suggest that the two principles of justice are far from universal justice but are appropriate only to some countries? Does this not suggest that he implicitly holds that the actual community is prior to individuals and can have a claim on individuals?

Rawls (1971, p. 176) explicitly argues that people in the original position would not choose the utilitarian principle of justice because, under the veil of ignorance, no one wants to take a risk in such a society, and this also includes other unfair societies based on racism, extreme egalitarianism, and extreme *lassis-fair*. People must accept their actual places only if they accept such a social structure in the original position. For instance, people would choose the society where there are rich and poor and the poor must be helped by the rich, rather than the society where everyone has the same amount of wealth, or the society where the rich and the poor have no moral obligation to each other at all. This is because if one turns out to be talented, he would prefer the social structure that allows him to use his talents for his own sake (private property), but, on the other hand, if he turns out to be otherwise, he would prefer the social structure that compels the more talented ones to help him (distributive shares). This implies that other social structures are unjust and the people in such a society can claim that it is unjust and unacceptable.

The question is if people in the original position would choose a society where some people have no right to vote? This is clearly unavailable in Rawls' assumption that everyone is free and equal. But if this is the case, then how could Rawls justify “benevolent absolutisms¹²” which is ruled out in the original position? Does this not mean that the two principles of justice are meaningless? If people in the original position rule out any non-liberal society in the first place, then any non-liberal society must be unacceptable. Moreover, he does not view that the difference principle must be held *between* societies. Rawls (1999) disagrees with Beitz (1979) and Pogge (1994) who argue that distributive justice should be governed *between* societies; Rawls rejects this claim by using two cases; one of them (1999, p. 117) is as follows:

Two liberal or decent countries are at the same level of wealth (estimated, say, in primary goods) and have the same size population. The first decides to industrialize and to increase its rate of (real) saving, while the second does not. Being content with things as they are, and preferring a more pastoral and leisurely society, the second reaffirms its social values. Some decades later the first country is twice as wealthy as the second. Assuming, as we do, that both societies are

12 Rawls (1999, p. 4) defines “benevolent absolutisms” as the societies where their members' human rights are respected, but “are denied a meaningful role in making political decisions”, and because of this “they are not well-ordered.”

liberal or decent, and their peoples free and responsible, and able to make their own decisions, should the industrializing country be taxed to give funds to the second? According to the duty of assistance there would be no tax, and that seems right; whereas with a global egalitarian principle without target, there would always be a flow of taxes as long as the wealth of one people was less than that of the other. This seems unacceptable. [emphasis added]

While Rawls is right in saying that the difference principle does *not* mean to reduce the gap between the wealth of people, given that the least advantaged's utility is maximized, he seems to be *careless* in suggesting the two countries with different levels of wealth are not governed by the same difference principle. It is relevant here to recall what Rawls (2001, pp. 59-60) means by “the least advantaged” and how they are helped by the difference principle:

To say that inequalities in income and wealth are to be arranged for the greatest benefit of the least advantaged simply means that we are to compare schemes of cooperation by seeing how well off the least advantaged are under each scheme, and then to select the scheme under which the least advantaged are better off than they are under any other scheme.

Since this is a complex issue, I will explain this through Table 2.

Table 2 How the Difference Principle Works

| | Society A | Society B | Society C |
|---------------|------------------|------------------|------------------|
| Rich | 80 | 75 | 100 |
| Middle | 50 | 45 | 60 |
| Poor | 15 | 25 | 20 |

From Table 2, suppose there are three societies with three different systems, and the least advantaged is the Poor in each society. According to the difference principle, people in the original position must choose Society B because “*the least advantaged are better off than they are under any other scheme*” (Rawls, 2001, p. 60). This suggests that the difference principle is a *comparative* theory which concerns the difference *between* different societies *at all times*¹³. In this sense, from Rawls' above illustration, after some decades when the first country becomes twice as wealthy as the second, it is very reasonable to think that the least advantaged of the first country would by now be better-off

13 By “*at all times*” I mean that the difference principle must make sure at all times that the least advantaged must be better-off in the best social system. Therefore, if in the next decades, for example, Society A becomes the society where Poor may receive the most pay-off among three of them, then the difference principle must make every Poor receive as much as Poor in Society A.

than that of the second. According to the difference principle, the least advantaged of the second country must be helped *until* they receive as much as that of the first country. I do not intend to argue here whether Rawls misuses his own difference principle or not, but that if Rawls insists that the difference principle is not meant to govern *between* societies, then he must accept that he justifies the claim of different actual communities that they are the owners of *certain* natural assets in the first place.

Now we see that Rawls, indeed, holds that natural assets and skills are not only *not* unowned but also owned by a very certain community in the first place; my natural assets belong *not* to the whole world, but to a certain community only. In this sense only my actual community can have a claim on my natural talents and skills, while other communities cannot. The problem is that if Rawls holds that individuals are prior to the community and the community is merely a voluntary association of individuals, then where does such a community come from? Why should natural assets be owned by a certain community rather than every community? How does he know that certain natural assets belong to “this” community rather than “that” community? Who determines this fact? How could such a community exist *prior to* individuals? If the people in the original position have the right to choose any principle of justice and any social structure which they see just, then how do they have *no* right to hold that any natural assets should be owned by everyone around the world? We may summarize Rawls' idea of the original position in relation to this conception of the community in Table 3.

Table 3 Rawls' Original Position When the Community is Prior to Individuals

| | | |
|--------------------|--------------------------------------|---|
| Community “a” ---> | The Owner of Natural Assets “A” ---> | The Original Position for the community “a” |
| Community “b” ---> | The Owner of Natural Assets “B” ---> | The Original Position for the community “b” |
| . | . | . |
| . | . | . |
| Community “n” ---> | The Owner of Natural Assets “N” ---> | The Original Position for the community “n” |

From Figure 3, it may be read concretely that, for example, community “a” is the U.S., and community “b” is the U.K., and so on, and different communities are the *absolute* owners of their natural assets. In this sense if I was a member of the community “a” I must accept that my natural talents and skills belong to Natural Assets “A” owned by the community “a,” and I must decide which principles of justice to be chosen in the original position only with my fellow citizens of the community “a.” Therefore, even though the two principles of justice would be chosen, this simply demands me to share my welfare only with my fellow citizens, *not* members of other communities (“b” to “n”). Only this interpretation can

make sense of Rawls' argument that some non-liberal societies may be tolerated and the difference principle is not meant to govern *between* communities.

The question is why we should accept our place in a certain community, and that a certain community is the owner of certain natural assets in the first place? Rawls may argue that this is because no one can alter the fact that they are members of a particular community they do not choose, and all we can do is to make 'our' society as just as possible. I would argue that this argument is unsatisfactory. Why don't we hold instead that a sub-community of community "a" is the absolute owner of some of Natural Assets "A"? For example, the U.S. may not be the absolute owner of Natural Assets "U.S." as the Chicago community may be the absolute owner of some of Natural Assets "U.S." in the sense that a member of the Chicago community is obligated to help the least advantaged members of the Chicago community only, while treating the rest of the U.S. community as "others." Or why don't we hold that our natural talents belong to the world as a whole rather than *this* or *that* particular community?

If it is arbitrary from a moral point of view that a person deserves natural talents and even inheritance in the first place because he does not create them by himself, then it should be arbitrary that a particular community deserves natural assets in the first place for the same reason¹⁴In addition there are many communities which claim to be the owners of the *same* natural assets: Natural Assets "A" may belong to the community "a," but may also belong to other communities such as a sub-community of the community "a" or even the world as the biggest community. Why should we justify that community "a" can claim to be the owner of Natural Assets "A"? This suggests that we must hold that a certain community is a non-arbitrary and moral agent like individuals, which is justified by itself and can exist independently of and prior to individuals.

All of this implies that Rawls' argument for distributive justice is inconsistent. On the one hand, he holds that there are *not* any antecedent moral ties or community prior to individuals, and the community is a voluntary association of individuals. On the other, he holds that people belong to a certain community they did not choose *before* entering into the original position. He cannot have it both ways: if he takes the former, then he must

14 If Rawls really holds that any actual person does not deserve his inheritance from his "family" because this is contingent, then why doesn't he also hold that any actual person does not deserve his inheritance from his "community" because he does not choose to be born in this particular community in the first place? Likewise, the reason that everyone in the original position has the equal chance of being born in *any* family, however rich or poor, we should say from this logic that everyone has the equal chance of being born in *any* country, however rich or poor. But the latter case is ruled out by Rawls himself as he already holds that each actual community has a claim on certain natural assets, and the difference principle is not meant to apply *between* societies.

abandon his distributive justice, if he takes the latter, then he can make his distributive justice possible only at the cost of individual liberty. Looking back to the Figure 1, one may question that even if Rawls may accept a communitarian theory of the person, that the community is prior to individuals, he does not need to agree with Sandel that "*I = WE, and WE = I*", as to distribute natural talents from *others* to *others* is not the use of a person. Rawls may argue that since my attributes belong to the community and are *not* parts of my self in the first place, the community can use my attributes for the sake of the community without violating my self. But the question is how does he know how much and when exactly the community demands from us? Who actually *owns* the community?

I would argue that this argument is flawed. There are three possible answers: (1) *the majority*, (2) *everyone*, and (3) *the community itself*. For the first answer, if the community is the owner of natural assets, and each person cannot claim that he is the owner of them, then no one is entitled to decide how to use these natural assets; and if no one can dictate the community, then how could the majority? If anyone can dictate the community, then he or she is a part owner of the community. Thus, the majority cannot dictate how to use natural assets as this would violate the separateness of persons. For the second answer, if this is the case, then the difference principle would be impossible because everyone must be free to decide how to use natural assets among them without any coercive apparatus.

For the third answer, if this is the case, then the community must be *independent of* any individual. The question is how can we know what the community *itself* wants and demands from us if it is beyond and independent of us? Even if Rawls *may* be right in distinguishing my *self* from my *attributes*, and "*I*" is simply a physical body while all of "*my*" attributes belong to the community, he is wrong to think that this way of distinction would avoid using people as a means. If the community is the owner of my attributes and the community is *unowned* by any thing or person in return, then how can we, ordinary persons, know how the community wants to use its own natural assets? I suggest that the only way to make sense of the claim that we can know this process is to *assume* that we are also the community itself, or at least *part* of the community. But if "*I*" can claim this, everyone else can too. At the end, everyone is a part owner of the community [*I = Community*]. If the identity of everyone is "*I = Community*," then everyone shares the same identity, "*I = WE, and WE = I*." Rawls' theory of the person does not support his distributive justice, and at the end he must choose to lean on *either* Nozick's theory of the person *or* Sandel's, and my suggestion is that if distributive justice is to be made possible, the latter must be the only answer.

So far I have dealt with a specific question of distributive justice: How could we justify distributive justice, which is a state coercion, while still respecting the person who is

under a scheme of distributive justice? This question is quite theoretical (moral and philosophical) rather than practical (impact on reality). Readers might wonder how my argument could make an impact on distributive justice in reality. The reason that I do not discuss the impact of my argument on the real world is that it simply goes beyond the aim of the paper. I am not against distributive justice as such, but I am against the belief that distributive justice could be justified on a liberal ground. Furthermore, I do not claim that my argument (conditions of distributive justice) actually exists in reality, but I do claim that if one wants any scheme of distributive justice and the respect of the person to go along, then my argument (conditions) should be held in the minds of policy makers and ordinary citizens. I believe that my argument may be used to explain some facts. For example, my argument could make sense of the fact that some persons would accept domestic distributive justice more than international distributive justice: they see the former as more relevant and obligatory to them than the latter. My argument can make more sense of their feelings than Rawls' argument because I take the deeper meaning of the existence of a community and the identity of the person.

Conclusion

I have argued that distributive justice is theoretically impossible as long as we hold that there are *not* any antecedent moral ties or community prior to individuals, which is the essential characteristic of a liberal theory of the person advocated by right-libertarians like Hayek and Nozick. Even though Rawls tries to reconcile individual liberty with distributive justice, I have argued that his project is inconsistent and doomed to fail. For *any* distributive justice to be possible, the following conditions must be met. First, the “*I = WE, and WE = I*” identity of the person: to take something from one and give it to others is not the use of the person because they all are the same persons. Second, the “*constitutive*” conception of the community: the community is prior to individuals in the sense the community may dictate individuals in some ways. Finally, a *particular* conception of the *good* or merit must be prior to a conception of the right: *any* distributive justice must be based on a particular conception of merit or desert which cannot be compatible with everyone's liberty.

References

- Anderson, E. (1999). What is the Point of Equality? *Ethics*, 99(2), 287-337.
- Beitz, C. (1979). *Political Theory and International Relations*. Princeton: Princeton University Press.
- Bentham, J. (2008). An Introduction to The Principles of Morals and Legislation. In M. Curtis. (Ed.). *The Great Political Theories Volume 2: A Comprehensive Selection of the Crucial Ideas in Political Philosophy from the French Revolution to Modern Times* (pp. 117-120). New York: Harperperennial Modern Classics.

- Buchanan, A. (1980). A Critical Introduction to Rawls' Theory of Justice. In H. G. Blocker & E. H. Smith. (Ed (s).). *John Rawls' Theory of Social Justice: An Introduction* (pp. 5-41). Athens: Ohio University Press.
- Cohen, G. A. (1985). Nozick on Appropriation. *New Left Review*, 150, 89-105.
- Dworkin, R. (1977a). *Taking Rights Seriously*. Cambridge, MA: Harvard University Press.
- Dworkin, R. (1977b, November 10). Why Bakke Has No Case. *New York Review of Books*, pp. 11-15.
- Dworkin, R. (1981a). What Is Equality? Part 1: Equality of Welfare. *Philosophy and Public Affairs*, 10(3), 185-246.
- Dworkin, R. (1981b). What Is Equality? Part 2: Equality of Resources. *Philosophy and Public Affairs*, 10(4), 283-345.
- Friedman, M. (2002). *Capitalism and Freedom* (40th Anniversary ed.). Chicago: University of Chicago Press.
- Harsanyi, J. C. (1975). Can the Maximin Principle Serve as a Basis for Morality? A Critique of John Rawls's Theory. *The American Political Science Review*, 69(2), 594-606.
- Harsanyi, J. C. (1977). Morality and the Theory of Rational Behavior. *Social Research*, 44(4), 623-656.
- Hayek, F. A. (1948). *Individualism and Economic Order*. Chicago: the University of Chicago Press.
- Hayek, F. A. (2001). *The Road to Serfdom*. New York: Routledge Classics.
- Hayek, F. A. (2006). *The Constitution of Liberty*. London: Routledge Classics.
- Hayek, F. A. (2013). *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*. London: Routledge Classics.
- Kant, I. (1988). *Fundamental Principles of the Metaphysic of Morals*, translated by T. K. Abbott. New York: Prometheus Books.
- Kymlicka, W. (1989a). *Liberalism, Community and Culture*. Oxford: Clarendon Press.
- Kymlicka, W. (1989b). Liberal Individualism and Liberal Neutrality. *Ethics*, 99(4), 883-905.
- Mulhall, S. & Swift, A. (1996). *Liberals and Communitarians* (2nd ed.) Oxford: Blackwell Publishing.
- Nozick, R. (1974). *Anarchy, State, and Utopia*. New York: Basic Books.
- Otsuka, M. (2003). *Libertarianism without Inequality*. Oxford: Clarendon Press.
- Pogge, T. (1994). An Egalitarian Law of Peoples. *Philosophy and Public Affairs*, 23(3), 195-224.
- Rawls, J. (1971). *A Theory of Justice*. Cambridge, MA: Harvard University Press.
- Rawls, J. (1974). Some Reasons for the Maximin Criterion. *The American Economic Review*, 64(2), 141-146.
- Rawls, J. (1985). Justice as Fairness: Political not Metaphysical. *Philosophy and Public*

- Affairs*, 14(3), 223-251.
- Rawls, J. (1993). *Political Liberalism* (Expanded ed.). New York: Columbia University Press.
- Rawls, J. (1999). *The Law of Peoples: With "The Idea of Public Reason Revisited."* Cambridge, MA: Harvard University Press.
- Rawls, J. (2001). *Justice As Fairness: A Restatement*. E. Kelly. (Ed.). Cambridge, MA: The Belknap Press of Harvard University Press.
- Sandel, M. J. (1982). *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press.
- Sandel, M. J. (1984). The Procedural Republic and the Unencumbered Self. *Political Theory*, 12(1), 81-96.
- Sandel, M. J. (1994). Political Liberalism. *Harvard Law Review*, 107(7), 1765-1794.
- Sandel, M. J. (2009). *Justice: What's The Right Thing to Do?* London: Penguin.
- Sandel, M. J. (2012). *What Money Can't Buy: The Moral Limits of Markets*. London: Penguin.
- Swift, A. (2014). *Political Philosophy: A Beginners' Guide for Students and Politicians* (3rd ed.). Cambridge: Polity Press.
- Taylor, C. (1985a). *Human Agency and Language: Philosophical Papers 1*. Cambridge: Cambridge University Press.
- Taylor, C. (1985b). *Philosophy and the Human Sciences: Philosophical Papers 2*. Cambridge: Cambridge University Press.
- Taylor, C. (1989). *Sources of the Self: The Making of the Modern Identity*. Cambridge, MA: Harvard University Press.
- Wanpat Youngmevittaya. (2016a). Justice and the Public Sphere: A Critique of John Rawls' Political Liberalism. *Prajna Vihara*, 17(2), 79-120.
- Wanpat Youngmevittaya. (2016b). Ethics, Freedom, and Capitalism: A Critical Account of Marxism and Libertarianism. *Journal of Social Sciences, Naresuan University*, 12(2), 71-111.
- Wanpat Youngmevittaya. (2019). A Critical Reflection On Michael J. Sandel: Rethinking Communitarianism. *Journal of Social Sciences, Naresuan University*, 15(1), 83-116
- Wolff, J. (1991). *Robert Nozick: Property, Justice and the Minimal State*. Cambridge: Polity Press.
- Wolff, J. (1998). Fairness, Respect, and the Egalitarian Ethos. *Philosophy and Public Affairs*, 27(2), 97-122.