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Is Rawlsian Justice Bad for the Environment?*

There is enough in the world for everybody's
need, but not enough for anybody's greed.

Mahatma Gandhi

Abstract: In this paper I show that Rawls's contract apparatus in *A Theory of Justice* depends on a particular presumption that is in conflict with the goal of conserving environmental resources. He presumes that parties in the original position want as many resources as possible. I challenge Rawls's approach by introducing a rational alternative to maximising. The strategy of satisficing merely goes for what is good enough. However, it seems that under conditions of scarcity Rawls's maximising strategy is the only rational alternative. I therefore scrutinise the common account of scarcity. I distinguish between absolute and relative scarcity in order to show that scarcity is influenced by our decisions. If we would not accept the claim to as much as possible without further legitimisation, like Rawls does, then scarcity might not be as severe a problem. Finally, I reject Rawls's proposed solution for dealing with problems of sustainability, namely his idea of the just savings principle. I conclude that Rawlsian Justice as Fairness is bad for the environment.

0. Introduction

As human beings we rely on the conservation of natural resources. We value nature for the instrumental value it has for us as a means of survival, but we might also regard it as valuable in itself, e.g. when we consider the beauty of wilderness. At least in their first function natural resources are now accepted to be proper objects of distributive justice. One important theory of distributive justice is Rawls's justice as Fairness. In this paper I want to argue that his account has detrimental effects on sustaining nature, because it relies on an initial individual claim to a maximal share of goods, whereas sustainability can only thrive on a more moderate approach.

Egalitarians often do not put much effort into justifying an egalitarian platform of distributive justice in the first place. Their concern is 'equality of what?', while taking distributive equality for granted. It seems that for them distributive egalitarianism is already implied by the idea of equality of moral status.

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This is understandable because if we start from the claim that all persons are equal and count for one, which is of course widely accepted today, it may seem reasonable that we end up on an egalitarian platform and the only question left is which kind of equality we should achieve, e.g. equality of resources or equality of opportunities for welfare. But in the last few years the rationale of egalitarianism has come under dispute. The question “why equality?” has been raised. I will not contribute to this debate, but it is worth mentioning, because I will criticize a particular argument in favour of distributive egalitarianism by analysing its implications for environmental sustainability. In a word my claim is that Rawlsian egalitarianism is indeed bad for the environment because it has no means for asking the question what people need, absolutely—not comparatively—speaking. Using a common metaphor of distributive justice, I want to show that Rawls’s theory of justice is bad for the environment because it tends to share out the whole cake without asking if people are at all hungry. Instead, I believe, we should focus on what people need and what is enough for them to live a decent life.

Generally speaking, egalitarianism rests on the claim that inequalities in distribution need to be justified. Undeserved disadvantages ought to be equalised. Many egalitarian theories argue for this claim by a presumption for an equal distribution, and I now want to briefly introduce this argument in a standard form, put forward by John Rawls. Rawls interprets his two principles of justice as “a special case of a more general conception of justice” which holds: “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 1999, 54)

The reason why an unequal distribution of goods cannot be accepted unless a justification is provided (e.g. in terms of special need, desert or utility) consists in a particular assumption: Rawls presupposes that everyone wants the biggest possible share of goods and that persons are normatively justified in their reluctance to settle for less. Only if reasons are provided to justify a greater (or lesser) share, would a rational person agree to an unequal distributive scheme. Again, Rawls is quite explicit about this assumption:

“Now consider the point of view of anyone in the original position. There is no way for him to win special advantages for himself. Nor, on the other hand, are there grounds for his acquiescing in special disadvantages. Since it is not reasonable for him to expect more than an equal share in the division of social primary goods, and since it is not rational for him to agree to less, the sensible thing is to acknowledge as the first step a principle of justice requiring an equal distribution.” (Rawls 1999, 130)

We know, of course, that later in his book Rawls justifies unequal distributions of social primary goods in cases where distributional inequality is to the benefit of the least advantaged group. But this is without significance for my subject.

I will deal with possible justifications of the mentioned statement, which I

call the ‘maximising assumption’, shortly, but I now want to highlight an obvious environmental implication of Rawls’s claim: Since parties in the original position want to get as many social primary goods as possible (Rawls 1999, 123), and Rawls’s theory does not provide any means to dispute the moral desirability of getting the biggest possible share, environmental resources are completely up for grabs. Any appeal to moderation regarding the consumption of primary goods is merely secondary.

1. Are Natural Resources Social Primary Goods?

One might want to challenge my objection to Rawlsian egalitarianism by disputing my assumption that environmental resources are social primary goods. Admittedly, Rawls does not explicitly include them in a list, but I want to maintain that he needs to account of them in terms of primary goods which are to be considered for distribution in the original position. Rawls defines primary goods as “things that every rational man is presumed to want” (Rawls 1999, 54). These goods are all-purpose means, because they are useful for the pursuit of every possible rational life-plan. This feature makes primary goods especially apt to be regarded as *distribuenda*, because they do not presuppose a substantive theory of the good—which would likely end up in a perfectionist account so much loathed by liberal thinkers—but merely amount to a “thin theory of the good”.

Rawls distinguishes between *social* primary goods like rights, liberties, opportunities, self-respect, income and wealth, and *natural* primary goods like health, vigour, intelligence and imagination. Curiously, he maintains that by comparison natural primary goods are, though influenced by the basic structure of society, “not so directly under its control” (*ibid.*). Now it seems odd to draw such a distinction in the first place. Obviously, opportunities, to name but one example, are also not so directly under the control of social institutions, because they are related to characteristics listed under natural resources, e.g. health and intelligence. Secondly, a person’s state of health is directly under the control of health care by the treatment of diseases, so it would qualify as a social primary good. Hence, the difference between social and natural primary goods does not seem clear-cut. I believe that what Rawls is really up to is a distinction between internal and external goods, characteristics whose initial endowment is granted by nature, as it were, on the one hand and things which do not have a natural allocation but are distributed by decisions of people.

I only labour this point because someone might reject my argument so far by using Rawls’s distinction and insist that according to Rawls it is only *social* primary goods that are distributed in the original position, and that the environment—or natural resources for that matter—are *natural* primary goods. I have stressed that Rawls’s distinction does not seem straightforward to begin with and I now want to argue that natural resources are a concern for distribution in the Rawlsian framework, whatever we make of the distinction between natural and social primary goods.

It seems obvious to me that natural resources are primary goods because they

fit Rawls's generic definition of "all-purpose means". One could even argue that they are the very conditions of other primary goods, hence the most primary of primary goods (Partridge 1976, 210; Dobson 1998, 126; see Hayward 1998, 156ff.). Without natural resources like clean air, water and fuel we could not survive, let alone thrive. In addition, they are controlled by social institutions, for example by market prices and taxes on the consumption of raw materials or other commodities. So the environment is the epitome of Rawlsian social primary goods. Natural resources are sought by all rational human beings, they are under the control of the basic structure of society and they can be used, indeed they are necessary, for the pursuit of all kinds of life plans.

Having established that environmental resources are to be distributed in the original position, and that according to Rawlsian egalitarianism it is only for special justifications that rational people would settle for less than the largest share possible, I now want to scrutinise another likely defence of egalitarianism, namely that it is perfectly justifiable to claim as much as possible in the original position. This rebuttal has two different versions which, in economic terms, focus on demand and on supply respectively. Firstly, it could be argued that maximising is the only *rational* strategy in the original position. Secondly, it could be held that natural resources are scarce and that therefore my objection to the maximising assumption would only make sense if the very circumstances of justice would not apply. I will deal with both rejoinders separately.

2. Satisficing vs. Maximising

It can be argued that an appropriate theory of rationality justifies the maximising assumption. If there are no initial entitlements to certain goods, e.g. in an original situation that is used to establish just claims in the first place, then it is rational to try to get as much as possible. In the next section I will query the maximising assumption by pointing out that it might be rejected from a moral point of view. In this section I want to scrutinize maximising from the point of view of rationality alone. It will be shown that even if we merely assume formal requirements of rationality, there is still an alternative to maximising. This alternative approach is called satisficing. The term derives from economics and was coined by Herbert Simon (1955); it has since been developed for purposes in normative theory by Michael Slote (1989; see Stocker 1990, 281ff.; Byron 2004). Satisficing is not focussed on what is comparatively best for a person but what is good enough. It is therefore much better suited to an account of sustaining the environment for future generations.

Suppose you have just had a light meal and, although not hungry anymore, you could bear a little snack. Your employer keeps a stock of free chocolate bars in a fridge for common consumption. You would really enjoy the taste of chocolate and it would only cost you the effort to go across the hall to fetch a bar, but you nevertheless decide to forbear because you believe that your lunch was good enough. Slote, who has introduced this example (Slote 1989, 10f.), asserts that the mentioned person acts as a satisficer. If rationality always demanded maximisation, then the decision not to have the chocolate bar would be plainly

irrational. But such a verdict would strike most people as implausible. Going for what is good enough just seems like a rational strategy.

There are of course a lot of objections to this approach which I cannot deal with adequately on this occasion. For example, it has been argued that the modest person follows a maximising overall strategy, e.g. by implying that her enjoyment of chocolate will be even greater next time if she forgoes the enjoyment now. Local satisficing might therefore fit well into an account of global maximising (Richardson 2004, 108).

I do not consider this objection, but I want to discuss two other serious problems for an account of satisficing. Firstly, it needs to be established what ‘good enough’ might mean. Secondly, the example used looks like a situation that does not mirror the distributive problem posed in Rawls’s original position. After all, the chocolate bars were on offer in abundance. It might be objected that in situations of scarcity, i.e. under circumstances of justice, only maximising will do as a rational strategy.

As regards the first point, if ‘good enough’ means ‘good enough to suit a particular person’s preferences’, then satisficing can indeed be a very demanding strategy. Oscar Wilde, for example, famously said: “I have very simple tastes, I am always satisfied with the very best.” Satisficing may also seem to lose its distinctiveness, because it may just as well be described as an individual maximising strategy. If what is good enough for a person is measured according to her subjective preferences, we may maintain that she is following a strategy of maximising, where the best choice for her is determined by her actual wants, though it may happen that she does not want to get as much as she actually could get, because of her modest preferences. So the person forgoing a chocolate could be described as a moderate maximiser. A theory of rational choice need not claim that maximisers go for the best possible result, measured independently of a person’s preferences. Hence, in order to be distinguishable from maximising, satisficing needs to be described as a strategy aiming at a good enough result, where what ‘good enough’ means is measured according to a non-subjective standard, e.g. a standard of basic human needs (see van Roojen 2004, 158).

It might be objected that this is just another version of maximising, after all, because if we opt for a non-subjective standard of ‘good enough’, we ask for the maximisation of related goods, e.g. maximal satisfaction of human needs. To be sure, this would not ask for overall maximising, but for maximising in a certain respect. However, it would still be a maximising strategy. I accept the objection, but I don’t regard it as significant for my objection to the Rawlsian maximising assumption. First of all, even though we might regard satisficing in terms of fulfilling basic needs as a qualified maximising strategy, there is nevertheless a clear substantive difference between aiming at the maximal fulfilment of a particular standard like needs and the maximisation of goods *tout court*. Therefore, we might draw a terminological distinction between qualitative and quantitative maximising (or optimising vs. maximising). Whilst Rawls allows for claiming the biggest possible share of goods as a rational strategy, the fulfilment of basic needs asks for much less. I believe that the different consequences of these two strategies in a Rawlsian original position should be evident.

The result so far tells against Rawls's account, because his theory relies on the assumption that rational persons would want the best possible result, where "best" does not simply mean "best according to their actual or revealed preferences" but best in terms of the largest possible share of social primary goods. Both in terms of modest maximising and non-subjective satisficing we can describe rational alternatives to Rawls's maximising assumption.

However, the second point seems again to tip the scales in favour of Rawls's assumption, because the sought after primary goods are in short supply. Under conditions of scarcity only non-modest maximising seems to be a rational strategy. In order to reject this point I need to deal with the concept of scarcity in more detail.

In this section I have defended an alternative rational strategy, satisficing, against the common maximising assumption. Although it needs to be further explored how scarcity may alter the rationality of a more moderate account, Rawls's theory is clearly not without alternatives.

3. The Concept of Scarcity

Needless to say that it was David Hume who introduced moderate scarcity as one feature of the circumstances of justice, the other features being individual motivation by self-interest and rough equality of power (Barry 1978; Hubin 1976). Rawls endorses the first two elements, but I will only deal with the first, because it is the only one which is threatening my conclusion. It seems that my insistence on a proper justification of the maximising assumption stands on weak grounds because it could only be put into doubt if there were more resources available than asked for, hence in conditions of abundance. And in these conditions, of course, there is no need for justice.

Maximising indeed seems to be a rational strategy in situations of scarcity, because these seem to involve the impossibility to fulfil all legitimate claims. However, the argument that primary goods are scarce already implies the *prima facie* justification of individual claims to as much as possible. So the alleged fact of scarcity actually depends on accepting the legitimacy of the maximising assumption, whereas the rationality of the maximising strategy is justified by the situation of scarcity. To me such an argument involves a vicious circle. I hope this will be more obvious when I have dealt with the concept of scarcity more thoroughly.

I want to take issue with the definition of scarcity, which is implied by Hume's and Rawls's account, and I want to show that its basis in wants or desires rather than needs lacks the necessary justification. There may be enough for human needs, though not for the fulfilment of all human wants, so there may indeed be enough for everyone even if resources are not provided in abundance. Since demand has a significant effect on the degree of scarcity it is a question of justice whether we ought to accept maximising claims.

I believe that scarcity is often implicitly identified with limitation. And it is of course true that many resources are available only in a limited amount; that is why they are regarded as scarce. As far as the topic of environmental justice

is concerned, there is an ongoing debate whether these limited resources can be kept accessible for longer than it used to be assumed, or whether they can be substituted by other resources, which are still available in a larger amount (Beckerman 1974). However, it seems indisputable that at least some natural resources like crude oil or coal are indeed limited on a long-term basis. But are they really scarce?

If we talk about scarcity as an absolute concept, i.e. if we refer to limitation, then many natural resources are indeed scarce. But scarcity can also be interpreted as a relational concept: Goods are scarce for someone in order to do something. And if we see scarcity in that way, then it transpires that whether a specific resource is scarce or not depends on demand as well as on supply, because the goals we need resources for can be contested. If we only focus on the supply side, like most theorists of justice do, then we end up with the assertion of limited, i.e. allegedly scarce, resources. So let us focus on the demand side for a change.

The demand of a certain resource is influenced by at least two aspects: Firstly, the amount of resources we consume in order to fulfil a certain goal depends on the consumption we instrumentally need, e.g. to run a machine. If a certain technology, for instance a petrol engine, becomes more efficient, then we may need less resources. This aspect concerns only the means we use in the pursuit of goals which are taken for granted. It is mainly an empirical and of course technological issue. Secondly, the amount of resources we consume also depends on our goals. Whether the ends are legitimate or justified is a normative question. It might be possible, for example, to question the legitimacy of a specific practice because it is not environmentally-friendly.

Rawls systematically avoids raising this question of legitimate aspirations and therefore misses an important aspect of scarcity. He only deals with the problem of how to justly distribute all available goods to people who want to have as much as possible. Therefore, on his account, all finite goods are scarce by definition; not all demand can be fulfilled. But whether we ought to acknowledge the claim for the maximal share, i.e. whether we should accept the desire for as much as possible, is a normative issue that needs to be raised prior to the questions that Rawls deals with. If we do not regard the desire for the biggest possible amount of primary goods as justifying a *prima facie* entitlement, then we may achieve a situation where goods are not scarce—seen from a normative perspective—because the actual supply can fulfil all the *justified* demand. Therefore, whether a certain claim is justified and amounts to an all-considered entitlement can, and to my mind should, be decided independently of the amount of goods available for distribution. Again, using the common metaphor of the cake, it may happen that it is possible to save a certain amount even where several slices of the cake are shared out. So although the cake is of limited size it nevertheless happens not to be scarce for the fulfilment of legitimate demands. In Rawls contract apparatus, however, all resources that are available are to be distributed, because the maximal demand is not challenged.

Rawls's account might be defended by pointing out that people have legitimate demands on the biggest possible share, because environmental resources

are produced by their labour. After all, I have already argued that these resources are social primary goods, i.e. controlled by social institutions; they are not manna from heaven. Disregarding the problem of the relation between individual contributions, it is still the case, one might say, that every person who is member of a community producing these goods in social cooperation has a legitimate claim to a maximal possible share. But it seems that my alternative, granting only what is good enough, completely ignores the contributions of people in producing these resources.

I don't agree that this defence will work, because in my alternative approach legitimate claims may as well be grounded on contributions, hence they can be acknowledged. My objection to Rawls does not doubt the rationale of asking for *something* on grounds of contribution, but challenges the justification of a claim to as much as possible on this basis. Clearly, on my account, legitimate demands ought to be settled *before* production, although they may require a contribution in production. In Rawls's scheme, however, production is not restrained by prior considerations of what people need.

The reason why Rawls, and of course other egalitarian theorists, avoids a discussion of the legitimacy of initial claims, prior to the issue of just distribution of limited resources, is that he believes we would need a substantive theory of the good in order to query the legitimacy of desires. Since he does not want to endorse a view he regards as perfectionist, his theory of the good for persons centres around the idea of a life-plan, which supposedly amounts to a purely formal definition of the good (Rawls 1999, 372). A request addressed to persons to moderate their desires cannot be put forward on Rawls's account. Neither can their initial maximising demand be disregarded on the basis of a theory of human needs. It is only the actual limitation of resources and the maximal claims of other people which result in the non-fulfilment of desires.

I believe that although primary goods may indeed be finite, and therefore scarce according to this interpretation of the term, it might nevertheless happen that there are enough goods around for the fulfilment of all legitimate demands, if and when the rationale of maximising the individual share of primary goods is put into doubt. In order to mitigate the consumption of resources we have to conceive of scarcity in a normative perspective. Accordingly, a theory of legitimate demand has to be based on a more ambitious theory of the good for human beings than Rawls's idea of a rational life-plan. This is, as I pointed out, the very reason why many liberal thinkers reject the approach I have defended. However, I believe that it is possible to develop such a theory without sacrificing basic liberal ideals, for example by setting the focus on the concept of absolute need (see Xenos 1987). I also believe that satisficing is a strategy which might be employed for determining just claims in the first place. In terms of theories of justice an alternative to egalitarianism, sufficientarianism, has been developed in the last few years, which can provide a more positive account of my mainly negative claims in this paper. Unfortunately, I cannot deal with this now, but it will suffice to stress again that Rawls's maximising assumption is not without alternatives.

4. The Just Savings Principle

It may be objected that Rawlsian justice is not supporting over-consumption, after all, because it can provide for an inter-generational theory of justice. Indeed, although egalitarian theorists usually do not deal in-depth with problems of environmental justice, Rawls, at any rate, includes a just savings principle, which supposedly serves as an instrument of sustainability. Egalitarianism can supposedly deal with the problem of future people, because it presumes an equal share for these individuals too. If, behind the veil of ignorance, we don't know which generation we are members of, then it seems reasonable to save some natural resources and restrict our initial maximal demand.

Rawls obviously toyed with the idea of an original position which directly represents future generations as well as the several contemporary age groups. Accordingly, some scholars have read his just savings principle as an inter-generational difference principle (English 1977, 100; see Paden 1997, 31). But even if the amount of fantasy put in a choice situation, endowed with people whose very existence depends on our present decisions, might be tolerable, an inter-generational difference principle would clearly pose serious problems of determining who the least advantaged are. For these and other reasons (due to Rawls's initial ad hoc solution of imposing an altruistic motivation of parties towards their immediate descendants), Rawls later explicitly opted for a so-called 'present time of entry interpretation' of the original position and rejected a reading of his savings principle as an inter-generational difference principle (Rawls 1999, 254). Instead, he made it clear that his savings principle asks from us to save as much as we would want preceding generations to have saved (Rawls 1993, 274; see Wissenburg 1999). This may demand very little but also very much, depending on expectations. Rawls is not specific about the amount of goods or wealth to be saved for future generations, but he sometimes sets the realisation and preservation of a just society as a benchmark by calling it the end of the savings process (Rawls 1999, 257; see Paden 1997; Wall 2003).

It is of course still impossible, on this account, to clearly establish what we should provide for future generations in terms of environmental goods. One might maintain that it at least contains a commitment to the provision for future basic needs, because a society that does not provide for these basic needs cannot be called just. Be that as it may, it seems to me that the just savings principle is in tension with the general egalitarian approach (see Beckerman/Pasek 2001; Wall 2003). A proper interpretation of the savings principle suggests provisions which secure the conditions of living a decent life for future generations. This calls for an absolute (non-comparative) principle like the principle of basic need (Beckerman 1999), not equality.

Egalitarianism also suffers from problems to establish future generations as claimants (Beckerman 2001, 11ff.). There is an extended debate whether future people can have rights or whether we can harm people who are not even conceived yet. Even if these problems might be overcome by egalitarianism (English 1977; Barry 1977; Kavka 1978), the alternative I have tried to establish in this paper seems to me much better suited for the task of sustaining the environment,

because it does not need to determine what we owe to future people and therefore what we have to save for them, but asks instead what *we* need *now* and therefore what we may demand now. To be sure, we probably moderate our claims only if and when we care for future generations. However, we should not establish what we ought to ‘save’ for the future, as if it were already our budget which we need to sacrifice to a certain amount. In Rawls’s account, if the minimum level is secured for future generations, there are no further limits on the consumption of goods for the present generations (Hubbard 1978, 332). I believe we should better ask what we may now consume than what we ought to save for the future. It is often said that the world is a common asset, but that seems to me wrong. We do not own the earth, either individually or collectively; we are custodians of the earth (Barry 1977, 284).

It might be objected that my plea for consuming only what we need appears unreasonable in case of natural resources that might just rot, hence, cannot be used by future generations under any circumstances. So doesn’t egalitarianism at least come into play when we need to decide what to do with surplus resources? Shouldn’t these resources be distributed according to an egalitarian scheme? I agree that it would be irrational to refrain from consumption of resources that are of no potential use for future generations. But I wonder how significant this point actually is. Firstly, there are not many natural resources that cannot be conserved. Secondly, there would only be very few resources that are likely to be on offer over and above the demand due to needs. It is true, of course, that Western countries actually produce goods to an amount that cannot be consumed in these countries. However, judged from a global perspective this does not call for letting these goods rot but for giving them to people who are in need now. Also, overproduction is clearly discouraged by a sufficiency approach. Hence, there won’t be many surplus resources.

To summarise: The question of what we owe to our descendants, i.e. considerations of justice applied to the future, cannot adequately be dealt with by Rawlsian Justice as Fairness. He subscribes to an initial entitlement of individuals to get as much as possible in a distributive scheme. This commitment to maximisation stands in tension with the idea of sustainability. An alleged egalitarian solution to the problem of inter-generational justice, like the savings principle, does not succeed and stands in contrast to the egalitarian spirit of the theory.

5. Conclusion

The rationale of Rawlsian egalitarianism relies on a maximising assumption. I have shown that the motive follows from a reluctance to deal substantially with the justification of entitlements and its commitment to supposedly formal elements like a theory of rationality. Seen from this point of view, matters of distributive justice need to be answered by a procedural approach, which does not include any reflections on whether a good should be distributed in the first place, or on its significance for living a decent human life. Rawls’s method of justifying his principles of justice in the original position is but one example of

formal egalitarian approaches. Therefore, I believe that my conclusion applies to many more theories, but I rest my case by rejecting only the Rawlsian contract apparatus.

The endorsement of maximising has implications for the task of safe-guarding the environment. Natural resources are goods we normally prefer more of rather than less, so the case can be made that it implies a prima facie claim on exploiting and consuming nature as much as possible. In the Rawlsian approach it is impossible to provide an argument that amounts to a consideration of what we need in the first place. This is because in terms of Rawls's theory this alternative would imply a reversal of the proper priority between the right and the good. Nevertheless, I have defended an account that starts from the idea of human needs and takes issue with the idea of maximisation. Maximisation leads to a distributive scheme that gives away all available social primary goods without taking into account whether they are at all needed. It clears the field, so to speak. I conclude that Rawlsian justice is bad for the environment because it fails to support its conservation.

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