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CRITICAL STUDY ON JOHN RAWLS' THEORY OF JUSTICE

by

Jae-Wan Chung

A Thesis  
Submitted to the  
Faculty of The Graduate College  
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requirements for the  
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Jae-Wan Chung

# CRITICAL STUDY ON JOHN RAWLS' THEORY OF JUSTICE

Jae-Wan Chung, M.A.

Western Michigan University, 1994

In discussing John Rawls' theory of justice, my main concern is to examine his theory, especially in difference principle, and to criticize the principle. The difference principle is that without improving the conditions of those who are worst off, the advantages of all those better off should not be permitted. The principle has some problems.

First, the principle is against our common judgment. There is no reason that we choose the principle under "original position," and the principle brings about a result to disregard others' important advantages for the least favored's profits. Secondly, according to Robert Nozick's entitlement theory, since individuals use and dispose their means according to their will, the difference principle infringes on individuals' property right. Third, according to Marxism, the principle does not try fundamentally to resolve the inequalities, and minimizing inequalities by permitting inequalities is contradictory because the inequalities are due to the exploitation of the ruling class.

In conclusion, after summarizing Rawls' theory and criticizing Nozick's and Rawls' theory, I offer Marxism as a proposal to resolve social inequalities because Marxism is based on our history not on a hypothetical situation and requires the fundamental solution of inequalities.

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## CHAPTER I

### INTRODUCTION

Human beings' goal in life is to pursue happiness. Although we do not cite Aristotle, we sympathize with such aim in life and have considered how we can achieve that happiness. In a complex society like ours, when the question of happiness is considered in connection with the system of society as well as with individual positions, we arrive at a meaningful conclusion. If any goals that human nature pursues rely on the systems of society, like politics, economics, and culture, the pursuit of happiness is also inseparable from the character of the systems of society.

After modern ages, many philosophers have tried to compose the principle of the system of society based on the general moral theory. Utilitarianism unfolded their ethical explanation in order to propose systematic and rational views of morality, whereas the theory of social contract emphasized the system of society as a device for realizing human beings' end of life. Both of those traditional views are concerned with what the best life is and how the best life is possible. Happiness as general conception was connected with conceptions like pleasure, good, liberty, and equality, or expressed such conceptions.

In considering the most desirable type of society, the conceptions that come frequently into our mind are liberty and equality because liberalism, which was result from the enlightenment after modern ages,

has left one of the most effective system of society. In spite of ideals of liberty and equality, our society faces the problems of political and economical inequality and injustice. We began to raise some new questions. Is our society just? Are liberty, chance, and other social value distributed justly? How can we dissolve economical inequality in distribution? As a result, our society has begun to take justice as a very important social issue.

John Rawls in A Theory of Justice presents a new social theory called "justice as fairness" centering around rather justice than the idea of liberty or equality. In his book, he argues about the principles of justice and studies on how the processes of the principles of justice can be justified. To realize just society, he tries to combine liberty and equality.

To confirm such ideas, he proposes two principles of justice: the principle of equal liberty and the difference principle. How can we come to the principles of justice? Rawls presupposes an "original position" as a hypothetical point, and under the original position contracting parties agree to the principles of justice. Also, to come to the principles of justice, the parties are excluded from their circumstances. The parties must be covered by "veil of ignorance". As the parties covered by the veil of ignorance decide the basic structure of society under the original position, they come to the principles of justice.

Also, Rawls says, "what I have attempted to do is to generalize and to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant."<sup>1</sup> In saying that, he clearly

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<sup>1</sup> John Rawls, A Theory of Justice (Massachusetts: The Belknap Press of Harvard UP, 1971) viii.



explains that his theory of justice reflects contractarian moral and political ideas, but his argument is not the reappearance of traditional liberalism.

According to liberalism, since human beings' liberty is inviolable, nobody can infringe on others' liberties. Liberalists' justice deals with performing the protection of individual liberties or rights, and the distribution of goods must be left through individuals' free competition.

Generally, we say that Rawls' theory of justice has a tendency to egalitarian liberalism. Rawls explains his theory of justice as an egalitarian conception of justice by arguing that his difference principle considers the principle of redress, reciprocity, and fraternity. In addition, he emphasizes that the first principle is prior to the second one. This is the principle of the priority of liberty. To establish just society, Rawls adds egalitarian factors to liberalism. From this we know that his theory of justice supports welfare capitalism.

Rawls' theory of justice, however, has some problems. First, since his original position is not an actual situation but a hypothetical one, he cannot prove the justification of his theory. Second, why must we firstly consider the welfare of the least advantaged? It is against our common judgment, and his theory is unhistorical. Third, why must all those better off use their natural talents or assets only for the least favored? His theory of justice infringes on personal liberties. Finally, although he tries to minimize human inequalities by permitting inequalities, his theory never resolves the problems of inequalities. Although his theory resolves

absolute inequalities (poverty), there are still relative inequalities (poverty) in our society

In this paper, I will discuss Rawls' theory of justice and offer criticisms on his theory. For this work, I will, first of all, consider Rawls' theory of justice by using his book A Theory of Justice. Although his book is divided into three parts, I will focus most of my attention on the part titled 'Theory'. Secondly, I will offer some criticisms on his theory of justice; One critique is on the theory itself, the second is by Nozick's entitlement theory, and the last is criticism from Marxists' position. My reasons for offering the three criticisms are because we, first of all, need to consider the problems concerning his theory itself, and if he takes the position of egalitarian liberalism, he is criticized by pure liberals because he will restrict personal liberties for establishing just society, and he is also criticized by Marxists in point of that he justifies inequalities in distribution. Finally, after examining his theory and criticisms, I will offer conclusion along with a brief summary of this paper.

## CHAPTER II

### RAWLS' THEORY OF JUSTICE

#### Hypotheses of Rawls' Theory of Justice

##### The Original Position

The basic subject of Rawls' theory of justice is to form the principles of justice that judge whether the structure of society distributes social profits, rights, and duties justly or not. Such principles are justified because they would be agreed to in an initial situation of equality called the original position. The starting point of Rawls' theory of justice is the original position. The original position corresponds to the state of nature in the traditional theory of the social contract, but it is not thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice. It is to agree to the principles of justice in order to lay down the principles which decide the basic structure of a society. Essential features of this situation is that:

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. ... This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design

principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain.<sup>2</sup>

By holding onto the original position, contracting parties are treated on the same footing as moral persons. Since the original position is the appropriate initial status quo, the fundamental agreements reached in it are fair. As a result, "justice as fairness" is endowed with proper meaning in his theory of justice.

According to Rawls' view that emphasizes "justice as fairness", since the principles of justice must be made through a fair procedure, he attaches importance to fair procedure, and the principles in the procedure come to be the principles of justice. He tries to apply "pure procedural justice" as a model of fairness to the original position. According to the pure procedural justice, the result is always fair as long as we follow the procedure. "Pure procedural justice obtains when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed".<sup>3</sup>

The original position is a purely hypothetical situation designed to induce the concept of justice. Due to the hypothetical situation, we reach the situation of a contract only in our thought. By following some circumstances proposed in the original position, we become contracting parties and enter the starting point of a hypothetical situation. Rawls says,

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<sup>2</sup> Rawls, 12.

<sup>3</sup> Rawls, 86.

Principles of justice should be chosen under certain conditions. To justify a particular description of the initial situation one shows that it incorporates these commonly shared presumptions. One argues from widely accepted but weak premises to more specific conclusions. Each of the presumptions should by itself be natural and plausible; some of them may seem innocuous or even trivial. The aim of the contract approach is to establish that taken together they impose significant bounds on acceptable principles of justice. The ideal outcome would be that these conditions determine a unique set of principles; but I shall be satisfied if they suffice to rank the main traditional conceptions of social justice.<sup>4</sup>

In short, the principles of justice themselves are accomplished by some circumstances. Accordingly, the representatives who take part in establishing principles of justice perform their task by following some conditions. First of all, contracting parties are ignorant of their own advantages of natural and social circumstances. The parties are situated behind the veil of ignorance. Secondly, the parties are mutually disinterested and rational individuals. And finally, the principles which the parties make should correspond with the formal conditions of justice.

### Some Circumstances of Justice

#### The Veil of Ignorance

The veil of ignorance is a defined system in which the contracting parties who form principles of justice do not know their own advantages. They do not know their own fortune in the distribution of natural assets and abilities, their intelligence and strength, and the likes. Nor do they know their place in society, its economical or political situation, or the

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<sup>4</sup> Rawls, 18.

level of civilization and the information as to which generation they belong. Nobody knows the conception of the good, their rational plan of life, their psychology, or the contingencies that set them in opposition.<sup>5</sup>

The reason for proposing the veil of ignorance in establishing fair principles is to interrupt certain influences coming from personal advantages of circumstances. If the contracting parties know of their own particular cases, they try to enter into contract to get advantages which are suitable to their own conditions. Coming up with a unanimous contract would, then, be very difficult because of their mutually different profits. Furthermore, even if they did come up with an agreement, it is most likely that the agreement would not be fair. For these reasons, Rawls tries to cover individuals' particular characteristics through the veil of ignorance. As a result, the veil of ignorance is probably the most important condition in the original position.

As the original position becomes a logical, abstract space and a general, universal view point by the veil of ignorance, everyone who is placed in the position comes to the same conclusion. This means that the veil of ignorance turns contracting parties to anonymous and general persons.

In spite of the designed system, not everything is covered by the veil of ignorance. The parties know that they are under the circumstances of justice. Also, they understand the political affairs, the principles of economic theory, the basis of social organization, the laws of human

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<sup>5</sup> Rawls, 137.

psychology, and so on. In short, there are not any limitations on general information.<sup>6</sup>

Rawls' veil of ignorance is a condition for an assumption that after nullifying individuals' innate and social inequality and returning to initial equal situation, what fixes the principles of justice is fair. If so, what is the meaning of the initial situation? It means that social goods or personal talents are not distributed. However, how can we nullify human nature that is distributed with birth? According to Rawls, individuals' natural goods given with birth - natural inequality - have to be nullified naturally because we do not have any moral grounds for justifying such natural distributions.

#### Mutually Disinterested Rational Individuals

Although Rawls suggests the original position and the veil of ignorance as logical and hypothetical conditions, they are not whole presupposition of his theory of justice. Another part that supports his theory of justice is the circumstances of justice. We need to explain why justice is required and why justice can be a social virtue.

Rawls regards society as a community for the benefit of members. He points out the fact that the community is a place for the conformity of advantages as well as conflicts. Once again, there is an agreement of interests in point of having possibility of better life through social cooperation rather than individual endeavor, whereas there is a conflict because individuals want to not only nullify the contribution of profit

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<sup>6</sup> Rawls, 137-138.

produced by cooperation but also get greater shares for pursuing their ends than others'.

If so, what are possible conditions to make the system of cooperation? Rawls points out that the first condition is "moderate scarcity" as an objective circumstance. This condition means that "natural and other resources are not so abundant that schemes of cooperation become superfluous, nor are conditions so harsh that fruitful ventures must inevitably break down".<sup>7</sup>

The second condition is concerned with the subjects of cooperation who are mutually disinterested. While the persons have similar desires, concerns, and interests, so that it is possible for them to cooperate, they nevertheless have their own ends of life. Due to these plans of life or their sense of value, they not only have different ends and desires but also conflicting requirement of natural and social resources. The parties consider the interests of the self because they are interested in realizing their plans of life. In short, Rawls' circumstances of justice "obtain whenever mutually disinterested persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity."<sup>8</sup>

In addition to the above contents, Rawls defines more concrete properties of the parties. First of all, they will have rationality, and secondly, they are not under the influence of envy. Thirdly, they must have mutual disinterest.

Rawls interprets the concept of rationality in narrow economical

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<sup>7</sup> Rawls, 127.

<sup>8</sup> Rawls, 128.



sense of "taking the most effective means to given ends".<sup>9</sup> He thinks that every contracting party must have such rationality, then the parties can choose the principles of justice that improve their plans of life. The parties consider maximizing primary value regardless of what their contents of the plan of life are. As a result, they choose the principle that maximizes the basic value by two facts what are called the knowledge of general facts and the preference of primary value.

Although the parties are intercepted from several information by the veil of ignorance, they try to keep their freedom, to extend their advantage, and to magnify their means to realize their ends. Accordingly,

A rational person is thought to have a coherent set of preferences between the options open to him. He ranks these options according to how well they further his purposes; he follows the plan which will satisfy more of his desires rather than less, and which has the greater chance of being successfully executed.<sup>10</sup>

A rational person does not make unreasonable contract that he cannot keep. Under such a basis, the agreement of contract is possible. Also, their agreement is not forced to arbitrary principle. For example, since a principle like "give a person with curly hair a privilege" is arbitrary, we have neither any reason to keep it, nor the principle improves general profits. Therefore, while such a principle is denied, general or universal principles are chosen.

Secondly, the characteristic that the parties do not have envy is very important because if they have envy, they do not agree to the difference principle that admits inequality. Since a person who has envy

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<sup>9</sup> Rawls, 14.

<sup>10</sup> Rawls, 143.

is hostile to other persons who have better social or economical positions, and since he tries to reduce others to lower position, the envy produces social disadvantage.<sup>11</sup> What chooses the principle of justice in original position is reduced to the distribution of social primary value. However, if parties have envy, social primary value cannot be distributed equally. The person who has envy tries to get more shares than others, while others deny this because they are also envious. In such cases, envy only aggravates their situation. Accordingly, the assumption that the parties are not moved by envy means that in the choice of principles men should think of themselves as having their own plan of life which is sufficient for itself.

Thirdly, contracting parties in the original position are supposed as being mutually disinterested and try to maximize their own social primary value. What are mutually disinterested means that they do not have any interests in others' profits. "The parties do not seek to confer benefits or to impose injuries on one another; they are not moved by affection or rancor."<sup>12</sup> Rawls compares the indifference to terms of a game.

They strive for as high an absolute score as possible. They do not wish a high or a low score for their opponents, nor do they seek to maximize or minimize the difference between their successes and those of others. The idea of a game does not really apply, since the parties are not concerned to win but to get as many points as possible judged by their own system of ends.<sup>13</sup>

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<sup>11</sup> Rawls, 143.

<sup>12</sup> Rawls, 144.

<sup>13</sup> Rawls, 144-145.

Rawls' intention to presuppose mutual disinterest is to form the conditions of choice called the original position, because if the parties have an interest in one another's advantages, communicate with one another, and change their concerns, the choices in the original position will be very complicated. Also, if the parties have benevolent incentive, Rawls' principle of justice cannot work. One who has benevolence will identify his own satisfaction with others' so that the person, after all, tries to maximize the total amount of satisfaction of social wants.

However, since the contracting parties in the original position are concerned with improving their own profits, they do not have any desire to maximize the total amount of satisfaction. If everyone is interested in the total amount of satisfaction, the principle of justice will be similar to classical Utilitarianism. Since Rawls does not want such a result, he grants the parties a property called mutual disinterest.

Accordingly, the rationality that contracting parties have is defined for their exact account of profits, and if we have more shares than ones in originally equal condition by permitting unequal distribution, it is rational for us to choose unequal distribution. Also, the condition that the parties do not have envy is presupposed for exposing the difference principle which recognizes inequality, and the mutual disinterest is considered to be presupposed for simplifying the process leading to the difference principle in the original position. In short, to extract the difference principle, Rawls assumes that rational people have no envy and are mutually disinterested.

### The Formal Constraints of the Principle of Justice

When the mutually disinterested rational individuals covered by the veil of ignorance frame and choose the principles of justice, there are some formal constraints in making an alternative plan to be the morally valid principle of justice. According to Rawls, "the propriety of these conditions is derived from the task of principles of right in adjusting the claims that persons make on their institutions and one another."<sup>14</sup> By these conditions, the various forms of egoism are excluded and the forms of egoism do not have any moral force. Also, he asserts that the justification of these formal conditions is not proved by definition or the analysis of concepts but by the reasonableness of the theory of which they are a part.<sup>15</sup> These can be summarized into five conditions.

1. Principles should be general. In formulating principles, they must not use proper names or rigged definite description. Namely, the predicates used in their statement should express general properties and relations.

2. Principles are to be universal in application. They must hold for everyone in virtue of their being moral persons.

3. The condition is the principle of publicity, which arises naturally from a contractarian standpoint. The contracting parties will know that they are choosing principles for a public conception of justice.

4. A conception of right must impose ordering on conflicting claims.

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<sup>14</sup> Rawls, 131.

<sup>15</sup> Rawls, 131.

This requirement springs from the role of its principles in adjusting competing demands.

5. The condition is the principle of finality. This principle means that it should have authority as the highest norm to resolve practical and ethical problems.<sup>16</sup>

Among alternative proposals that satisfy the above formal constraints, the parties choose the principles of justice which regulate a society to which they will belong. If some alternative proposals do not fulfill such formal conditions, the proposals are disqualified for the principles of justice because regardless of contents having the proposals, the conditions are formal ones which the principles of justice should fulfill.

## Two Principles of Justice

### The Reasoning Leading to the Two Principles of Justice

In Rawls' theory of justice, the parties in the original position choose the principles of justice through the process of rational decision of a thought. Rawls makes it clear that the composition of the original position is concerned with rational choice. If so, how do the contracting parties in the original position evaluate the principles of justice? In the view of rational choice, the choice in the original position is under uncertainty because of the veil of ignorance. Although there are several rules for choice under uncertainty, Rawls insists that the parties will choose the principles of justice by a maximin rule among the rules. They will adopt the alternative the worst outcome of which is superior to the

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<sup>16</sup> Rawls, 131-135.

worst outcome of the others, and then by the outcome of choice, they will escape a risk that loses the fundamental freedom and the minimal social and economical conditions which are necessary conditions in planning their life.<sup>17</sup>

How is Rawls' insistence that the original position is a situation to which the maximin rule is applied connected to the concrete process leading to the principles of justice? Rawls thinks that in deciding the principle of the distribution of social primary value, the parties, first of all, consider equality.<sup>18</sup> Rawls, however, insists that there is no reason that the rational parties receive such simple equality as ultimate end because if an inequality can improve everyone's circumstances by comparing with the simple equality, the rational person must accept the inequality. "An equal division of all primary goods is irrational in view of the possibility of bettering everyone's circumstances by accepting certain inequalities".<sup>19</sup> Since such inequalities function as incentives for productive efforts, the inequalities can be justified by contributing to improving everyone's profits. The view that inequalities which contribute to joint profits are not unjust corresponds with the traditional concept of meritocracy.

Since the contracting parties in the original position are not interested in others' advantages, "their acceptance of these inequalities is only the acceptance of the relation in which men stand in the circumstances of justice."<sup>20</sup> As a result, they accept that the inequalities

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<sup>17</sup> Rawls, 152-155.

<sup>18</sup> Rawls, 150-151.

<sup>19</sup> Rawls, 546.

<sup>20</sup> Rawls, 151.

are just. In addition, since the parties are not possessors of envy who are discouraged by the bare knowledge or perception that others were better situated, they will accept a gradation which permits inequality.<sup>21</sup>

The above mentioned assumption is connected to the maximin rule. Accepting this rule means that as social inequalities are permissible, the contracting parties assume that they can be the worst men, and in this case they will choose an alternative which secures the most fortunate result. This means that they look at the inequalities from the standpoint of the least advantaged. Thus, Rawls comes to a conclusion that "inequalities are permissible when they maximize, or at least all contribute to, the long-term expectation of the least fortunate group in society."<sup>22</sup> This conclusion suggests that inequalities are not accepted by merit or desert, but is to be accepted as long as improving the prospects of the least advantaged. Rawls comes to the general conception of justice through this process of reasoning.

### The General Conception of Justice

According to Rawls, the general conception of justice is that "all social primary goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored."<sup>23</sup> He is, however, not satisfied with the general conception of justice, so he thinks two principles of justice. In short, he considers the

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<sup>21</sup> Rawls, 151.

<sup>22</sup> Rawls, 151.

<sup>23</sup> Rawls, 303.

special conception of justice because the general conception of justice imposes no restrictions on what sort of inequalities are permissible and requires that everyone's position be improved.<sup>24</sup> Although Rawls says that "we need not suppose anything so drastic as consenting to a condition of slavery,"<sup>25</sup> it is possible, at least theoretically, for us to suppose that slavery is accepted as being beneficial to the least advantaged men. To prevent such a situation, Rawls pays attention to the problem of priority between the social primary goods and tries to establish principles that treat the problem.

Rawls thinks that the principles of justice derived from the procedure is in accordance with moral judgment that we consider. His principles of justice are justified not only by congruence that the principles accord with our moral judgment<sup>26</sup>, but also by a conclusion followed from the process of demonstration corresponding to deduction from the original position that Rawls thinks as a fair moral view. His method treats congruence between the principles of justice, moral judgment, and the original position so that he pursues reflective equilibrium in wide meaning.

### Two Principles of Justice

Rawls thinks that principles applied to the basic structure of society must be chosen by persons controlled by the principles through fair procedure and the agreement of unanimous consent. His position

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<sup>24</sup> Rawls, 62.

<sup>25</sup> Rawls, 62-63.

<sup>26</sup> Rawls, 409.



obviously shows that his theory of justice is based on a contract theory. He presupposes an initial contracting situation and presents some principles that the contracting parties that participate in the initial situation will choose. The principles are formulated as the two principles of justice.

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.<sup>27</sup>

According to Rawls' interpretation, the first principle is concerned with the aspect of social system that defines and secures the equal liberties of citizenship. The extensive basic liberties of citizens are political liberty, freedom of speech and assembly, liberty of conscience and freedom of thought, and so on.<sup>28</sup> Such freedoms reflect on modern liberties of citizens based on the thought of the natural law. Since every citizen has rights to enjoy the freedoms, the basic liberties have to be equal. Because we can find the idea of equal liberty in the first principle, we characterize the first principle as the principle of equal liberty.

The second principle is the aspect of concretizing social and economical inequality. According to this principle, "while the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time, positions of authority and offices of command must be accessible to all."<sup>29</sup> After Rawls explains (a) of the

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<sup>27</sup> Rawls, 60.

<sup>28</sup> Rawls, 61.

<sup>29</sup> Rawls, 61.

second principle as the difference principle and (b) of the second as the principle of fair equality of opportunity,<sup>30</sup> he clears and develops the principles. The principles can be rearranged as follows:

1. The first principle: principle of equal liberty (in extensive basic liberties)

2. The second principle : (a) the difference principle (in distribution of social, economical advantages); (b) principle of fair equality of opportunity (in positions of authority and offices of command in a community)

However, social and economical inequality must be formed for everyone's advantage under the principle of fair equality of opportunity, and the first principle must be prior to the second.

### The Principle of the Priority of Liberty

That the first principle must be prior to the second in Rawls' explanation means that equal liberty is prior to social and economical advantages or wealth. The principle is based on a faith that the priority of liberty is agreed and chosen by the rational consideration of initial contracting parties in the original position. This shows that Rawls' principle of the priority of liberty depends on intuition to some extent. According to him, "if the persons in the original position assume that their basic liberties can be effectively exercised, they will not exchange a lesser liberty for an improvement in their economic well-being."<sup>31</sup> Such basis for the priority of liberty is as follows:

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<sup>30</sup> Rawls, 75-90.

<sup>31</sup> Rawls, 542.

As the conditions of civilization improve, the marginal significance for our good of further economic and social advantages diminishes relative to the interests of liberty, ... . Beyond some point it becomes and then remains irrational from the stand point of the original position to acknowledge a lesser liberty for the sake of greater material means and amenities of office.<sup>32</sup>

Why is this so? First of all, "as the general level of well-being rises only the less urgent wants remain to be met by further advances,"<sup>33</sup> whereas a growing insistence upon the right for the exercise of the equal liberties will be more important problem. The second reason is that human beings have self-respect and the desire to express their nature in free social union with others.<sup>34</sup>

According to Rawls' explanation, self-respect is the most important primary good. Self-respect is "a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out."<sup>35</sup> And it means "a confidence in one's ability to fulfill one's intentions."<sup>36</sup>

As we feel that our plans of practice are of little value, we cannot pursue or realize them with pleasure. If so, "we cannot continue in our endeavors, and without self-respect nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them."<sup>37</sup> As a result, "the contracting parties in the original position would wish to avoid

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<sup>32</sup> Rawls, 542.

<sup>33</sup> Rawls, 542.

<sup>34</sup> Rawls, 543.

<sup>35</sup> Rawls, 440.

<sup>36</sup> Rawls, 440.

<sup>37</sup> Rawls, 440.

at most any cost the social conditions that undermine self-respect."<sup>38</sup> From these views, we see that his justice as fairness gives more support to self-respect than other principles do.

Human beings' self-respect is supported through self-realization accomplished in relationship between others and social union. They distinguish their own ability and excellence in social relationships, receive recognition from others, and, as a result, they have self-respect. Accordingly, we must set the free activity of social union forth as a premise to grow self-respect because what restricts free activity unjustly is a main cause in hurting self-respect.

The reason why Rawls holds fast to the principle of the priority of liberty in basic structure of society is because without a premise of free activity, self-respect is impossible. If we think that economical incomes or social positions grow self-respect, we may do our best to promote our incomes and social positions. However, since it is natural that a person's increase in income or his gaining of a higher position results in others' decrease in income and position, there is a discord between the components of society, and the discord injures their self-respect.

The damage of self-respect does not occur in just society that Rawls pursues because the society is designed so that liberty which supports self-respect precedes income or position. There are, however, still desires for higher income and higher position in his just society. In spite of the desires, the society does not expose serious problem like discontent about the priority of liberty because "the basis for self-esteem in a just society is

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<sup>38</sup> Rawls, 440.

not then one's income share but the publicly affirmed distribution of fundamental rights and liberties."<sup>39</sup>

### The Second Principle

The Difference Principle. The difference principle is that without firstly improving the conditions of those who are worst off, the advantages of all those better off should not be permitted. As there is no better way for improving conditions of all those worst off and better off, this principle requires equal distribution. Inequalities can be permitted in only when all those worst off get advantages. In applying this principle, Rawls tries to distinguish between the two cases.

The first case is that in which the expectations of the least advantaged are indeed maximized (subject, of course, to the mentioned constraints). No changes in the expectations of those better off can improve the situation of those worst off. The best arrangement obtains, what I shall call a perfectly just scheme. The second case is that in which the expectations of all those better off at least contribute to the welfare of the more unfortunate. That is, if their expectations were decreased, the prospects of the least advantaged would likewise fall.<sup>40</sup>

This principle does not allow the excessive expectations of all those better off, whereas it tries to maximize the expectations of all those worst off.

The maximin rule is a principle for choice under uncertainty and ranks alternatives by their worst possible outcomes. In short, "we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others."<sup>41</sup> The difference principle that requires

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<sup>39</sup> Rawls, 544.

<sup>40</sup> Rawls, 78.

<sup>41</sup> Rawls, 153.

maximizing the advantages of the least favored is logically identified with the maximin rule that turns the worst case into the best one.

Rawls thinks that under the situation of a particular condition called the original position, it is rational for us to choose the maximin rule, and he offers three features of situations that give plausibility to this unusual rule. First of all, the rule takes no account of the likelihood of the possible circumstances. Secondly, the person choosing has a conception of the good that he is satisfied with the minimum guaranteed by following the maximin rule. The last one is that the rejected alternatives have outcomes that one can hardly accept.<sup>42</sup> Since choosing the maximin rule is rational in the original position, the original position is a typical situation equipping such conditions.

The original position, first of all, cannot try to probabilistic calculations because the veil of ignorance gets rid of knowledge that can be the foundation of probabilistic calculation. Secondly, the second principle of justice guarantees the satisfying minimum. Since other conceptions of justice like utilitarian conception of justice contain grave risks like loss of freedom, such conceptions of justice cannot be accepted in the original position. Under these conditions, everyone will agree with the difference principle because they have to choose under uncertainty that they do not know their actual positions.

The justification of the difference principle is accomplished not only by the strategy of maximin rule but also by appealing to our common consideration and judgment. Rawls thinks that since natural assets are

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<sup>42</sup> Rawls, 154.

morally arbitrary, the assets are permitted in only case that they give the least favored benefits.

This difference principle starts from the principle of redress that undeserved inequalities require compensation. Rawls thinks that since the inequalities of birth and natural endowment are undeserved, these inequalities must be redressed. "The principle holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social position."<sup>43</sup>

His intention behind the difference principle is to consider every possibility for the practical equalization of his principle and trying to fully utilize the gist that the principle of redress has. For example, he thinks that in order to improve the long-term expectation of the least favored we can allocate resources in education.<sup>44</sup> This contributes to practical equalization. Also, he says that "this end is attained by giving more attention to the better endowed, it is permissible; otherwise not."<sup>45</sup> In this, we can also get a glimpse of his egalitarian view.

In addition, his egalitarian view regards natural talents as common assets. Thus, those who have been favored by nature can neither use their gift as more favorable starting place in society nor gain more advantages merely because they are more gifted. Only on the terms that improve the situations of those who lost out, all those favored by nature may gain advantages from their good fortune. The naturally advantaged

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<sup>43</sup> Rawls, 100.

<sup>44</sup> Rawls, 101.

<sup>45</sup> Rawls, 101.

cover the costs of training and education that help the less fortunate.<sup>46</sup> The favorable conditions and inequalities given by natural and social contingencies can be corrected through such distributive methods.

According to Rawls, both the distribution of natural talents and contingencies of social circumstances are neither just nor unjust. They are simply natural facts. What is just and unjust is how institutions treat these facts. The reason why aristocratic and caste societies are unjust is because the society adopts the contingencies as a basis for belonging to specified social classes. The social system is only a pattern of human action so that there is no necessity that men should resign themselves to these contingencies.<sup>47</sup> Accordingly, the difference principle not only undertakes that the contingencies avail only when doing so is for the common benefit, but also can be a fair way of treating the arbitrariness of fortune.

Also, the difference principle expresses a principle of mutual benefit based on a conception of reciprocity. Let us assume that there are two representatives A and B, and B is the less favored. If we apply this situation to the difference principle, since A's advantages have been obtained in ways that improve B's prospects, B can permit A's being better off. In this point, we find that both A and B are satisfied with the condition of mutual benefit. However, we can think a counter-argument that due to A's better off conditions regardless of B, A has qualification for gaining more advantages. On this counter-argument, Rawls says that "no

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<sup>46</sup> Rawls, 101-102.

<sup>47</sup> Rawls, 102.



one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society."<sup>48</sup>

Perhaps, someone thinks that the person who has better off endowments deserves superior character that made their development possible. Rawls thinks that since one's character relies largely on fortunate family and social circumstances, the assertion that he deserves the superior character that enables him to make the effort to cultivate his abilities is problematic.<sup>49</sup> Accordingly, the representative who is more advantaged cannot secure the basis for requiring a scheme of cooperation in which he can gain his advantages without contributing to the welfare of others.

If so, which case is the most ideal in the more advantaged A's contributions to B? If we draw the contribution curve, a society tries to avoid the region that A's marginal contribution are negative and operate on the upward rising part of the contribution curve.<sup>50</sup> In addition, B who expects that A's the marginal contribution is rising should permit A's more advantage.

Although we permit A's advantages under supposing that A's advantages improve B's situation, there still leaves inequalities. In short, we cannot get rid of the difference between A's advantages and B's. After all, Rawls' egalitarian standpoint is a question of adjustment to some questions like how we reduce the difference between A and B or how we always improve the less favored upwards. If such a question of control is

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<sup>48</sup> Rawls, 104.

<sup>49</sup> Rawls, 104.

<sup>50</sup> Rawls, 104.

failed, there is little difference between Rawls' the system of democratic equality and the liberal system structured by the principle of efficiency and fair equality of opportunity.

The difference principle embodies the idea of fraternity. The idea of fraternity implies a sense of civic friendship as well as social solidarity. This idea corresponds naturally with the difference principle that without the benefit of others who are less well off we do not want to have greater advantages. At least, to support a system or a policy that we think just, the system or policy must satisfy the idea of fraternity. Accordingly, two principles of justice that Rawls' justice as fairness wants to show include traditional ideals like liberty, equality, and fraternity. "Liberty corresponds to the first principle, equality to the idea of equality in the first principle together with equality of fair opportunity, and fraternity to the difference principle."<sup>51</sup>

The Principle of Fair Equality of Opportunity. The fair equality of opportunity in Rawls' theory of justice means open positions. The important reason for requiring open positions is to get rid of some cases like that someone who is suitable to a place gets the damage of self-respect by being ruled out from the place because some places are not open on a basis fair to everyone. Although those kept out benefited from the greater efforts of those who were allowed to hold them, they would be right in feeling unjustly treated because "they were debarred from experiencing

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<sup>51</sup> Rawls, 106.

the realization of self which comes from a skillful and devoted exercise of social duties."<sup>52</sup>

The principle of fair equality of opportunity that Rawls emphasizes does not give formal meaning in law but practical meaning, and then it performs a role of opening new progress of modern democracy because liberal democracy is forced to problems called deepening of social and economical inequality, which raises the questions of political philosophy like social or distributive justice. Rawls' this principle keeps logical resolution in itself against such situations. The practical meaning of this principle is to fix on a foundation for realizing social or distributive justice.

Liberal equality will also pursue the fair equality of opportunity. Since this system, however, is closely connected with the principle of efficiency and permits distribution of wealth or advantages by natural and social contingency, it does not compose positively conditions realizing the idea of fair equality of opportunity,<sup>53</sup> whereas democratic equality combined with the difference principle offers conditions coming true the fair equality of opportunity. In short, since the system concretizes the principle in the system of nation or public policy that does not permit advantages by contingency, it can labor for the fair equality of opportunity practically.

### The First Principle: Principle of Equal Liberty

In Rawls' theory of justice, we characterize the idea of liberty as equal liberty. Here, we find that 'equal' defines 'liberty'. Rawls' first

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<sup>52</sup> Rawls, 84.

<sup>53</sup> Rawls, 73-74.

principle that "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others"<sup>54</sup> expresses our common faith that we cannot infringe on others' liberty for our own liberty, and the expression 'to have an equal right to the basic liberty' is the basis for the idea of equal liberty.

Accepting the idea of equal liberty as the first principle means that Rawls' theory of justice is based on modern liberal idea. After amending this liberal idea, Rawls will embody democratic equality in the liberal idea. This can be founded in that the first principle is inseparably related to the second principle. If the first principle does not combine with the second principle, the principle of equal liberty leaves only a formal principle. The equal liberty can not be embodied until the first principle combined with the second. The second principle guarantees the equal liberty. According to Rawls, equal liberty "is defined by the pattern of rights and duties, powers and liabilities, established by a practice."<sup>55</sup> The principle of equal liberty is in harmony with the second principle.

In fact, enjoying liberty is practically possible when we take part in a social cooperation. That some practice differentiates in rights and duties, powers and liabilities, offices and positions and so on is a indispensable system for running a social community. In the case that we have a just practice, although the practice has a different system, it guarantees equal liberty. Accordingly, the conception of difference found in Rawls' second principle is regarded as an adequate conception that

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<sup>54</sup> Rawls, 60.

<sup>55</sup> John Rawls, "Justice as Fairness", in The Philosophical Review, 67 (1958. 4) 166.

substantiates the equal liberty. If a system is unequal, the inequality is not caused by differences in rights or duties in offices or positions but caused by differences in the benefits or the charges concerned with rights or duties.<sup>56</sup>

Accordingly, Rawls' main concern is on how a system distributes the benefits or the charges justly. To define the just distribution, Rawls tries to construct several principles to the system. The idea of equal liberty is possible when we add more extensive meaning in the ideals, such as differences of rights and duties and fair opportunity in a community, and fairness in distribution of benefits coming from the community under equal rights of fundamental freedoms.

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<sup>56</sup> Rawls, "Justice as Fairness", 167.

## CHAPTER III

### SOME CRITICISMS ON RAWLS' THEORY OF JUSTICE

#### Criticism on Rawls' Theory of Justice Itself

Rawls' theory of justice, which is professedly for democratic egalitarianism, is an attempt to resolve a long question 'freedom? or equality?' in political philosophy. In the first principle, Rawls insists on liberty as the idea of just society and emphasizes the priority of liberty. Also, to minimize social imbalance caused by the strong stress of liberty, he permits inequalities in the difference principle, and Rawls thinks that permitting inequalities is an assumption for realizing the idea of real egalitarianism.

Like long philosophical arguments on social justice, the fair realization of both liberty and equality holds many theoretical problems, and Rawls' theory of justice is no exception. Especially, the part of 'Theory' in his book needs several critical examinations and needs theoretical justification in some aspects. Rawls assumes some conditions to reach suitable principles of justice, and expresses the conditions to the conception of the original position. Under the original position he tries to construct two principles of justice. Accordingly, we need to examine the conception of the original position and the principles critically.

### Criticism on Hypotheses of the Theory of Justice

Rawls assumes that contracting parties do not know their own social and natural positions and even their sense of value or psychological inclination, whereas the parties have the knowledge of general facts. The general facts are the knowledge of understanding political problems or economical theories and the knowledge of the foundation of organization of society and rules of human psychology. If so, is it possible for the parties' knowledge to separate the general knowledge permitted to the parties from the individual knowledge not permitted to the parties?

The fact that the individual knowledge excluded by Rawls includes individual sense of value or the conception of 'good' means that the veil of ignorance must not only cover their own psychological characteristics but also cover information about political, economical, and cultural circumstances of their society. If so, what is the general knowledge? I think there is no general knowledge not based on individual knowledge or views. We have individual knowledge just after we get general knowledge, and the general knowledge is mostly based on individual knowledge. Accordingly, Rawls' theory of justice that does not obviously distinguish the border between general knowledge and individual one is ambiguous.

To establish the original position, Rawls assumes that while the information of individual facts is excluded, a general fact that their society is under circumstances of justice is informed to the parties. As offering circumstances of justice Rawls tries to resolve the reason why justice must be questioned in human society. Human community is under a situation

called 'moderate scarcity' of resources, and the parties must know that they are under the situation. However, the knowledge that they are under the situation is impossible without recognizing about several individual facts. Knowing the social circumstances in order to derive the principles of justice means that they can judge what is good or desirable and that they have the will to improve it. The will cannot be revealed without knowledge intercepted by the veil of ignorance. Because of these points, Rawls' veil of ignorance encounters theoretically difficult situation.

Also, there is room for the examination of Rawls' views on human beings that they are mutually disinterested rational individuals who lack envy. Can human characteristics have such a mutual meaning? According to Karl Marx, human nature is defined by the social relation of classes. The social relation of classes is formed by the conflicts of social, political, and cultural desires between classes, and the back of conflicts is acted by the consciousness of social positions, desires and a sense of value of individuals, and acted by the total of several individual knowledge. If Marx's views have a persuasive power, Rawls' understanding about human beings and society is an unhistorical and impracticable prejudice. As a result, his justification of hypotheses of theory of justice loses its persuasive power.

In addition, since contract in the original position is a hypothesis, the contracting parties do not have such knowledge, and the contract by a hypothetical knowledge is impossible. For example, both A and B are playing poker game, and when A almost wins the game they find that a card is short. Maybe, B can insist that if we make a rule about the



situation that a card is short before playing the game, we may agree with a rule that the game is invalid. Accordingly, let us nullify this game. However, since B's insistence is not an actual agreement but a hypothetical agreement, it does not have function as a contract. After all, the principles of justice derived from a hypothetical contract is not valid.

The powerlessness of a hypothetical contract is also connected with the anonymity of the parties that comes from intercepting information about their conception of "good," plans of life, and psychological characteristics. The parties covered by veil of ignorance do not have any information about self-identity, whereas realistic human beings know their conditions well and try to realize their ends by using their conditions, such as social positions, wealth and talent. If after sloughing off the veil of ignorance, someone regrets agreeing with the contract and insists that the contract is not binding because "I" in the original position is not actual myself, the hypothetical contract loses its effect and meaning.

The veil of ignorance has another problem in deducing the principles of justice. According to Rawls, the parties, first of all, choose the first principle of justice that guarantees equal liberty under the original position because choosing equal liberty is the expression of human original self-respect. However, in the case that equal liberties are conflicted one another, Rawls' theory cannot mediate between the troubles because in spite of requiring judgment about relative value between two freedoms or about a standard to resolve the problem, the parties cannot evaluate the values because of the veil of ignorance.

After all, although the veil of ignorance is presupposed for deriving the principles of justice under fair conditions that exclude interests of the parties, Rawls' view cannot form the actual principles of justice due to the veil. The principles to which the parties covered by veil of ignorance agree are only formal and hollow agreement.

### Criticism on the Principles of Justice

To find principles of justice, Rawls suggests the maximin rule. After offering three conditions, he shows that choosing principle of justice in the original position fits in the conditions.<sup>57</sup> The maximin rule, however, brings about paradoxical results. For instance, there is only one epidemic encephalitis vaccine for one person, and there are two patients seized with epidemic encephalitis. One patient will be completely cured and will live for a long time if he uses the vaccine, whereas since another patient has lung cancer as well as the encephalitis, even if he takes the vaccine, he can only live for several months.

According to the maximin rule, we have to give the lung cancer patient the vaccine because his situation is worse than the other. This prescription is against our common judgment. In other words, since the rule gives an absolute priority to consideration about advantages of the least favored, the maximin rule brings about a result to disregard others' important and large advantages for the least favored's little advantages. Since such a result is not common or natural, the rule cannot be a general way in choosing the principles of justice.

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<sup>57</sup> Rawls, *A Theory of Justice*, 154-156.

The first condition of the maximin rule that takes no account of the likelihood of the possible circumstances, also, has some problems. Rawls chooses the maximin rule that excludes probabilistic calculation, which is an insufficient basis for the rule to decide some judgment under uncertain original position. If the veil of ignorance is suggested to intercept the probabilistic calculation about several individual circumstances, the veil of ignorance loses its meaning because the offered maximin rule to escape from the worst possible outcomes is based on a particular probabilistic calculation that gives much weight to the worst situation. Since the contracting parties must judge which cases produce the worst outcomes, they cannot choose but use the probabilistic calculation about several alternatives. Rawls' index to the choice of principles loses its suitability.

As we think in connection with the original situation, the second condition of the maximin rule that guarantees minimum as much as the two principles are satisfied misses consistency. Since the parties in the original position are placed in a situation not to know their own conception of good by the veil of ignorance, there is no way to confirm whether they are satisfied with the minimum guaranteed by two principles or not. As Rawls argues satisfying minimum, he seems to think actual men not parties in the original position. This deviates from the composition of his argument on comparison with a mutual view of the parties in the original position.

His consideration and judgment of distribution of human beings' natural assets offered to justify the difference principle can be criticized. The least advantaged readily consent to the difference principle.

However, why must the better endowed willingly respond to the system of society based on the difference principle? And what are the grounds of the agreement?

Rawls' two principles of justice basically require equality in assigning individuals' basic rights and duties and express that if the less fortunate get advantages, social or economical inequalities can be accepted. Such inequalities exclude justifying persons' labor that strive for more advantages. Then, although what suffers a loss for others' advantages can be convenience, it cannot be justice.

According to Robert Nozick , natural common assets given to us must be used for our survival. To sustain the right to live, we must occupy some means from common assets, and labor makes the occupation possible. By investing our labor in common assets, we have rights to occupy them and have private ownership as much as invested amounts. This theory expresses a principle which maximizes individuals' freedom and which guarantees private ownership. The principle implies that distribution is not decided by some system but decided by the process of free exchange.

### Nozick's Criticism on Rawls' Theory of Justice

#### Comparison Between Rawls' and Nozick's Theory of Justice

Main difference between Rawls' and Nozick's views of justice is defined by whether they place the focus on equality or liberty. Rawls thinks of a state as a cooperation. Persons who want to produce goods more effectively for realizing their own plan of life gather together,

produce in cooperation, and deliberate on distribution by designated standards. Rawls' first concern is the basic structure of society that offers the above system, and his subject of justice is to distribute goods produced by cooperation and to distribute the cost expended in producing the goods. The principles of justice in his theory are the stand of such distributions.

On the other hand, Nozick takes a non interfering stand that leaves the distribution of goods in markets of open competition, and his subject of justice is to control the processes of acquisition and transfer to protect individuals' rights. His theory of justice deals with carrying out the protection of individual liberties and rights. Therefore, Nozick's just society guarantees personal liberties and rights, and the components of the society realize their sense of value to the full under such guarantees.

Both Rawls' and Nozick's views of justice are to compose the theory of justice in two main parts called liberty and equality as the resolutions of conflicts between society and individuals. Nozick's view that does not disturb personal liberties and rights is in a good contrast to Rawls' difference principle that accepts some inequalities for the least advantaged.

Let us concretely examine theoretical differences between Rawls' and Nozick's views of justice. First of all, Rawls thinks of society as a cooperation, whereas Nozick regards it as voluntary system of exchange and considers the social cooperation as a by-product of the system of exchange.

Secondly, in questions of justice Rawls considers the fair distribution of produced wealth, while Nozick tries to resolve the fair

distribution under a stand-point called the protection of personal liberties and rights because the protection of personal liberties and rights becomes the foundation of the behavior of exchange.

Thirdly, Rawls considers the subject of justice as the basic structure of society that makes fair distribution possible, whereas Nozick thinks of it as individuals' concrete economical behavior like acquisition or transfer, and regards the distribution by the system of society as by-subject of justice. Here, the basic structure of society that Rawls asserts is like several forms of system of nation, the constitution, and so on. Rawls' intention is to propose the fundamental principles of justice, which make the primary system of society just, and to offer the grounds of the argument.

Fourthly, Rawls asserts the realization of equality as the ideal of social justice, but Nozick insists on the protection of personal liberties and rights. To fairly distribute wealth produced by the cooperation of the components of society, Rawls pursues desirable equality even though he permits some inequalities. Nozick asserts the protection of personal rights and liberties which is the basis of the behavior of exchange as the idea of social justice with regarding the distributive justice as a secondary consideration.

Finally, to improve social welfare as much as Rawls wants, we must continuously extend the authority and function of nation. If so, Rawls' two principles of justice require a wide nation that treats numerous requirements coming from the principles of justice, and the nation cannot help accompanying with inclination to limit personal liberties. Nozick's

view to nation is the minimal state. The state guarantees utmost individuals' rights and liberties. The distribution of economical goods leaves in the free competition market. The state merely watches whether the liberties and rights of participants in the market are infringed or not, and plays an passive role to prohibit the act destroying the market.

After all, Nozick's social justice is to guarantee individuals' rights and liberties without infringing on others. Nozick's theory of justice focuses on the esteems of liberties and rights rather than equality, and he is interested in personal possessions or means to resolve the questions of justice. If so, what are questions in Nozick's justice? And what are contents of the principles?

Playing a major role in Nozick's theory of justice is the entitlement theory that individuals use and dispose their means according to their will. The subject of the entitlement theory is composed of three main topics. The first is "the original acquisition of holdings, the appropriation of unheld thing."<sup>58</sup> This includes issues on how unheld things come to be held, the process of coming to be held and the things that come to be held by the process, and the extent of what comes to be held by a particular process.<sup>59</sup> Nozick calls the principle of original acquisition as the principle of justice in acquisition.

The second topic concerns the transfer of holdings. Through which processes does a person transfer his holdings to another? And how may he get a holding from another? This is the principle of justice in transfer.

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<sup>58</sup> Robert Nozick, Anarchy, State, and Utopia (New York: Basic Books, Inc., 1974) 150.

<sup>59</sup> Nozick, 150.

The third is the rectification of violation in holdings. What can we do to rectify injustices? In the case that past injustice has formed present holdings, what obligations do the performers of injustice have? How are things changed if beneficiaries and those made worse off are not direct parties in the action of injustice but their offsprings? This is the principle of rectification of violations of the first two principles.

According to Nozick, if the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holdings.

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

3. No one is entitled to a holding except by (repeated) applications of 1 and 2.<sup>60</sup>

In summary, "a distribution is just if it arises from another just distribution by legitimate means."<sup>61</sup>

Nozick's theory of justice emphasizes the process. He does not question what just systems are, but by what processes being acquired is just. In explaining the principles of justice, he classifies some types and tries to show that his theory is different from Rawls' theory.

1. Current time-slice principles : The justice of a distribution is determined by how things are distributed as judged by some structural

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<sup>60</sup> Nozick, 151.

<sup>61</sup> Nozick, 151.



principles.<sup>62</sup> In deciding justice, this principle makes the matrix presenting distribution to the data of judgment, and it does not need complex explanation like historical processes or theories.

For example, suppose that there are two situations A, B and two cases I, II about distribution. The first case in distribution (I) is that A has five and B has ten, and the second (II) is that A has six and B has nine. The total amount of distribution in I is fifteen ( $5+10$ ), and the total amount in II is also fifteen ( $6+9$ ). Each total amount in I and II is the same. However, from the difference of amount distributed in B and A, we know five difference ( $10-5=5$ ) in I and three difference ( $9-6=3$ ) in II. Although each total amount in I and II is the same, the distribution in II is more equal than in I. As a result, utilitarian chooses case II, and the distribution in II becomes current time-slice principle. By choosing which cases, the principle of justice is determined.

2. Historical principle : The current-slice principles do not ask why someone gets less shares in distribution, but only choose better systems in distribution. In this point, Nozick leaves the current-slice principles in unhistorical principles in distributive justice. The historical principles of distributive justice hold that people have rights and qualifications occupying appropriate distribution according to their past circumstances or actions. Nozick illustrates a traditional socialist's view as the historical principle. According to the socialist's view, workers are entitled to the product and full fruits of their labor, and not giving workers what they are entitled to, the distribution is unjust.<sup>63</sup>

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<sup>62</sup> Nozick, 153.

<sup>63</sup> Nozick, 154.

3. Patterned principles : Nozick divides these principles into patterned historical principles and patterned unhistorical principles. He thinks that most principles presenting distributive justice are patterned. For example, in the principle of distribution according to moral merit, "no person should have a greater share than anyone whose moral merit is greater."<sup>64</sup> Only when we measure moral merit (a historical principle) and materialize the result structurally (a patterned principle), the distribution of shares is possible. Therefore, the principle of distribution in accordance with moral merit is a patterned historical principle.

Also, a principle of distribution according to I.Q. measures each I.Q. and is labeled by I.Q. scores. This is a patterned principle. This distribution is different from the distribution according to moral merit because it only requires the distribution according to I.Q. given naturally and does not consider the merits. Accordingly, the principle of distribution according to I.Q. is a patterned unhistorical principle. Besides, most utilitarian principles, egalitarian principles, and socialists' views belong to patterned principles. "To think that the task of a theory of distributive justice is to fill in the blank in "To each according to his \_\_\_\_\_" is to be predisposed to search for a pattern."<sup>65</sup>

4. Unpatterned principles : This principle is opposed to the patterning of principles. Because the patterning of principles infringes on personal rights whether it is equal distribution or not. Nozick's principle of entitlement is historical, but it is different from other historical principles because while other historical principles are patterned, Nozick's

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<sup>64</sup> Nozick, 156.

<sup>65</sup> Nozick, 159-160.

is not patterned.<sup>66</sup> His historical principle does not define the distribution according to historical achievements or merits but is achieved through the processes of acquisition and transfer of holdings itself. In short, Nozick's principle of distributive justice is an unpatterned historical principle.

### Nozick's Criticism on Rawls' Theory of Justice

Patterned principles premise redistributive activities and go necessarily with them. Regardless of what kind of redistribution except the redistribution according to the principle of the rectification of injustices, the patterned principles of distributive justice infringe on personal rights.<sup>67</sup> For example, in the case of taxation of earning from labor, taking the earnings of  $n$  hours labor is like taking  $n$  hours from the person, and it is like forcing the person to work  $n$  hours for another's purpose. Then, we object to forced labor. Here, we find a self-contradiction that we object to forced labor and, at the same time, do not object to the tax system taking  $n$  hours.<sup>68</sup>

Another example, suppose that there are two persons. One chooses to work longer to make more money, and the other chooses not to work extra time to enjoy leisure activities. In such case, if it would be illegitimate for us to seize some of a man's leisure time and to be forced to work for others during his leisure time, it is also illegitimate for a tax

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<sup>66</sup> Nozick, 155, 157.

<sup>67</sup> Nozick, 168.

<sup>68</sup> Nozick, 169.

system to seize some goods of a man who works the extra time for others.<sup>69</sup>

From the above examples, "seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities."<sup>70</sup> After all, most patterned principles "institute partial ownership by others of people and their actions and labor."<sup>71</sup> Accordingly, since the principles institute right which can own others' body or their labor as wealth, the principles are apt to violate moral side constraints.<sup>72</sup>

In Nozick's view that maximizes individuals' rights and liberties, the problems in the patterned principles are very serious. Nozick rejects all patterned principles and proposes unpatterned principles optionally acquired in individuals' free exchanges process. His principle of justice based on the entitlement theory is founded on Lockean proviso. According to Locke,

The earth and all that is therein is given to men for the support and comfort of their being. And though all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of nature; and nobody has originally a private domination exclusive of the rest of mankind in any of them as they are thus in their natural state; yet being given for the use of men, there must of necessity be a means to appropriate them some way or other before they can be of any use or at all beneficial to any particular man. ... He hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour

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<sup>69</sup> Nozick, 170.

<sup>70</sup> Nozick, 172.

<sup>71</sup> Nozick, 172.

<sup>72</sup> Nozick, 172.

something annexed to it that excludes the common right of other men.<sup>73</sup>

In short, as investing his labor in the common state of nature, men have right to appropriate the inputted things as much as he inputs.

Locke recognizes private ownership by labor with insisting that nobody has the rights about things owned by labor. With recognizing the private property, he also elucidates the limitation of ownership, that is, "at least where there is enough and as good left in common for others."<sup>74</sup>

Nozick names the limitation as Lockean proviso, which means to ensure that the situation of others is not worsened.<sup>75</sup> From Nozick's stress, we can guess his hidden meaning that his entitlement theory does not violate Lockean proviso and, at the same time, is possible.

How is Nozick's entitlement theory possible? If something among natural common assets has its limitation, how can the persons who have different personal and social abilities own it without violating Lockean proviso? Nozick distinguishes the case that private ownership is impossible from the case possible. In the former case, by illustrating the only water hole in the desert, Nozick makes it clearly that nobody can own privately the water hole. The behavior that owns privately and sells after discretionally marking the price on the hole violates Lockean proviso.<sup>76</sup>

Is it possible to own objects privately in certain cases without violating Lockean proviso? For example, a medical researcher synthesizes

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<sup>73</sup> John Locke, The Second Treatise of Government, ed. J.W. Gough (Oxford: Basil Blackwell, 1966) 15.

<sup>74</sup> Locke, 15.

<sup>75</sup> Nozick, 175.

<sup>76</sup> Nozick, 180.

a new substance that effectively treats a certain disease with chemicals that we use easily available. The researcher sells the new substance according to his wanting price. In this case, it does not violate Lockean proviso because others can easily possess the same materials he appropriated, and the researcher's appropriation or purchase of chemicals does not make those chemicals scarce.<sup>77</sup>

Another example, someone finds a new substance in a solitary place. This case also does not worsen others' situation because if he did not discover the substance no one else would have, and the others would remain without it.<sup>78</sup> Since an inventor's patent does not aggregate others' situation it also does not violate Lockean proviso. However, we can expect the possibility of damage coming from excluding the chances of actual independent invention by applying for the patent. To prevent the possibility of damage, we can suggest placing a time limit on patents.<sup>79</sup>

Through the above explanation, Nozick would show that the unrestricted operation of a market system based on the entitlement theory does not conflict with Lockean proviso. Let us summarize Nozick's theory. First of all, his principle of justice is to maximize personal liberties. Secondly, men can acquire freely wealth in Lockean proviso. In addition, distribution is not decided by a system or matrix but is acquired optionally through the free processes of exchange. From these views, we define Nozick's theory of justice as a liberal theory of justice.

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<sup>77</sup> Nozick, 181.

<sup>78</sup> Nozick, 181.

<sup>79</sup> Nozick, 181.

As previously stated we characterize Rawls' theory of justice as egalitarian justice. Especially, his difference principle expresses his egalitarian principle in distribution. Although he insists on the principle of the priority of liberty, the principle cannot be explained without equal distribution. In short, Rawls' liberty is defined by equality. Now, let us examine Rawls' egalitarian position through Nozick's criticism.

### The Problems of Social Cooperation and Distribution

The subject of Rawls' distributive justice is on how we distribute interests coming from social cooperation. Nozick adopts the very point as the starting point of criticism.

Let us imagine  $n$  individuals who do not cooperate together and who each live solely by their own efforts. Each person  $i$  receives a payoff, return, income, and so forth,  $S_i$ ; the sum total of what each individual gets acting separately is

$$S = \sum_{i=1}^n S_i \quad .80$$

Let us assume that we can gain a larger sum total  $T$  by cooperating together. Rawls' concern is not  $S$  but  $T$ . Nozick understands  $T$  in the following two ways and criticizes Rawls' theory.

1. How is the total  $T$  to be allocated?
2. How is the benefits of social cooperation  $T-S$  to be allocated?

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<sup>80</sup> Nozick, 184.

(This formulation assumes that each individual  $i$  receives from the subtotal  $S$  of  $T$ , his share  $S_i$ )<sup>81</sup>

According to Nozick's interpretation, in (1) a distribution of  $T$  may give a particular individual  $i$  less than his share  $S_i$  (The constraint  $T_i \geq S_i$ ), while in (2) a distribution of  $T-S$  may not yield a distribution of  $T$ .<sup>82</sup>

According to Nozick's criticism, Rawls concerns the first one, that is, how the total sum  $T$  is to be distributed. To assist this formulation, Rawls insists that due to the enormous benefits of social cooperation, the non cooperative shares  $S_i$  can be ignored because the  $S_i$  are so small in comparison to cooperative one  $T_i$ . However, we have to note that people entering into cooperation would not agree to conceive of such a formulation of distribution one another.

Why is distributive justice questioned only in social cooperation? If there is no social cooperation at all, is there no problem of justice and no need for a theory of justice? What is it about social cooperation that brings about issues of justice? If it is a conflict of gains, how can we say that there are no conflict between individuals who produce independently and fend for themselves? As if there were several Robinson Crusoes, each working alone on separate islands, who discovered each other, if it were possible to transfer goods from one island to the next, could they not make claims on each other? Also, if one of them lives in a naturally poorest island, and he is starving, is it unfair to claim that justice demands that he should be given some more by others?<sup>83</sup>

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<sup>81</sup> Nozick, 184.

<sup>82</sup> Nozick, 184.

<sup>83</sup> Nozick, 185.



From Nozick's above descriptions that aim at Rawls' theory,

1. The problem of distributive justice occurs in non cooperative situation as well as in cooperation.
2. The system of distribution which disregards individual abilities to earn their objects without participating in cooperation is unfair.
3. The system of how the total T is to be allocated, after all, infringes on personal ownership.
4. Therefore, Rawls' distributive justice cannot be received.

On the other hand, thinking of the criticisms in Rawls position, we can explain it as follows;

1. All problems of distributive justice are not to bring about only in cooperation. They can happen to anywhere there are conflicts of interests. Rawls chooses only the cooperation as a typical case to occur conflicts of interests.
2. Since the consideration of personal abilities in gaining objects without taking part in cooperation was already to be approved with a contract in the original position, there is no reason to make it in question.
3. To be completed by a spontaneous contract, the system does not infringe on personal ownership.
4. Nozick does not get out of a system of distribution of liberal market economy.

### The Problems of the Difference Principle

Rawls believes that people in the original position, at least, choose the following two principles.

1. They requires equality in the assignment of basic rights and duties.

2. Social and economical inequalities are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.<sup>84</sup>

The former requires equality in rights and duties, and the latter offers conditions to permit inequalities of wealth and authority. The principle (2) as the basic idea of Rawls' difference principle excludes justifying labors of a small number of people for larger good of whole members. If some people who have more advantages improve circumstances of all those worse off, it is not unjust to approve their advantages.

On the Rawls' egalitarian difference principle, Nozick will question why individuals in the original position would choose a principle that focuses on groups, rather than individuals.<sup>85</sup> Nozick is displeased with Rawls' theory that excludes the question of justice in holding achieved from individuals' free exchange activities. However, since Nozick does not concern the problem of justice in systems like cooperation, Rawls is also displeased with Nozick's theory. Rawls' argument on justice in systems is due to his faith that the realization of distributive justice is carried out rather through systems than any other ways.

Rawls' difference principle is applied not only to participants in a cooperation but to the whole important system of society. In point of that human beings, in some meaning, cannot live without others' help or

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<sup>84</sup> Rawls, *A Theory of Justice*, 14-15.

<sup>85</sup> Nozick, 190.

cooperation, the difference principle may be interpreted to the principle which is applied to every groups to permit distribution as well as cooperation by spontaneous agreement.

According to Nozick, the difference principle, no doubt, presents terms on the basis of which those less advantaged would be willing to cooperate.<sup>86</sup> We know that there is inequality in the difference principle because according to the principle, the less endowed are profitable, but the better endowed are disadvantageous. Seeing in Nozick's position, the difference principle justifies inequality and infringes on personal rights by a system.

#### The Problems of Natural Assets

According to Rawls, natural assets are "arbitrary from a moral point of view."<sup>87</sup> Rawls does not recognize natural assets given by the accidents of natural endowment and the contingencies of social circumstance as the holdings which each of them naturally has.

Nozick would ask why holdings should not partially depend on natural assets, and refutes Rawls' position through the following some arguments. He proposes the following possible arguments through the positive argument to establish that the distributive effects of natural differences ought to be nullified and the negative argument that the distributive effects of natural differences ought not to be nullified.

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<sup>86</sup> Nozick, 192.

<sup>87</sup> Rawls, A Theory of Justice, 15, 74-75.

The Positive Argument. Argument A:

1. Any person should morally deserve the holdings he has; it should not be that persons have holdings they do not deserve.
2. People do not morally deserve their natural assets.
3. If a person's X partially determines his Y, and his X is undeserved then so is his Y.
4. People's holdings should not be partially determined by their natural assets.<sup>88</sup>

In argument A, Rawls could not accept the first premise because Rawls rejects the distribution according to moral desert. Rawls says, "There is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert. ... Now justice as fairness rejects this conception."<sup>89</sup> If we summarize the above, it is that the holdings should not be distributed according to moral desert. Then, this summary is contradictory to the first premise of argument A that the holdings he has should be morally deserved, which means 'should be distributed according to moral desert'. Accordingly, argument A cannot support Rawls' position, and by this Rawls' assertion that 'should not be distributed by natural assets' (which means premise 2) loses its persuasive power.

Argument B:

1. Holdings ought to be distributed according to some pattern that is not arbitrary from a moral point of view.

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<sup>88</sup> Nozick, 216-217.

<sup>89</sup> Rawls, A Theory of Justice, 310.

2. That persons have different natural assets is arbitrary from a moral point of view.

Therefore,

3. Holdings ought not to be distributed according to natural assets.<sup>90</sup>

Then, "differences in natural assets might be correlated with other differences that are not arbitrary from a moral point of view and that are clearly of some possible moral relevance to distributional questions."<sup>91</sup> For instance, Hayek argued that under capitalism distribution generally is according to perceived service to others, and this principle is not distribution in accordance with natural assets.<sup>92</sup> However, under a system whose principle is distributed according to perceived service to others, differences in natural assets will lead to differences in holdings because the differences in natural assets give rise to the differences in capacity serving to others. Therefore, argument B cannot support Rawls' insistence.

Argument C:

1. Holdings ought to be distributed according to some pattern that is not arbitrary from a moral point of view.

2. That persons have different natural assets is arbitrary from a moral point of view.

3. If part of the explanation of why a pattern contains differences in holdings is that other differences in persons give rise to these differences

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<sup>90</sup> Nozick, 217.

<sup>91</sup> Nozick, 218.

<sup>92</sup> Nozick, 218.

in holdings, and if these other differences are arbitrary from a moral point of view, then the pattern also is arbitrary from a moral point of view.

Therefore,

4. Differences in natural assets should not give rise to differences in holdings among persons.<sup>93</sup>

Through premise 3, we know that "any pattern will have some morally arbitrary facts as part of the explanation of how it arises."<sup>94</sup> As far as Rawls' principle of justice is a patterned principle, it cannot evade distribution by moral arbitrariness.

According to Nozick,

The difference principle operates to give some persons larger distributive shares than others; which persons receive these larger shares will depend, at least partially, on differences between these persons and others, differences that are arbitrary from a moral point of view, for some persons with special natural assets will be offered larger shares as an incentive to use these assets in certain ways.<sup>95</sup>

Nozick's this view attributes distribution as an incentive of the difference principle - the naturally advantaged can gain interests about their natural advantages only for using their endowments in ways that help the less fortunate as well<sup>96</sup> - to distribution by moral arbitrariness. According to Rawls, however, the principle regards natural assets of the naturally advantaged as common assets and distributes the common assets to the less fortunated. After all, this distribution means that

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<sup>93</sup> Nozick, 218.

<sup>94</sup> Nozick, 218.

<sup>95</sup> Nozick, 219.

<sup>96</sup> Rawls, A Theory of Justice, 101-102.

though the naturally advantaged may enjoy the given happiness, they must return some things of their own to improve circumstances of the less favored. How can we justify such requirements? Rawls would say that natural assets are morally arbitrary, but his explanation cannot be sufficient conditions for his argument.

Argument D:

1. Holdings ought to be equal, unless there is a (weighty) moral reason why they ought to be unequal.

2. People do not deserve the ways in which they differ from other persons in natural asset; there is no moral reason why people ought to differ in natural assets.

3. If there is no moral reason why people differ in certain traits, then their actually differing in these traits does not provide, and cannot give rise to, a moral reason why they should differ in other traits (for example, in holdings).

Therefore,

4. People's differing in natural assets is not a reason why holdings ought to be unequal.

5. People's holdings ought to be equal unless there is some other moral reason (such as, for example, raising the position of those worst off) why their holdings ought to be unequal.<sup>97</sup>

On the premise 1, Nozick asks that why people's holdings should be equal in the absence of special moral reason to deviate from equality, why there should be any particular pattern in holdings, and why deviation

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<sup>97</sup> Nozick, 222.

from equality may be caused only by moral forces.<sup>98</sup> Subsequently, Nozick would emphasize that many "arguments" for equality merely assert that differences between persons are arbitrary and must be justified, and ask once again that why differences between persons must be justified and why we must change, or remedy or compensate for any inequality which can be changed, remedied, or compensated for. Perhaps, to answer to the questions, Rawls uses the conception of social cooperation. Nozick, however, thinks that not all persons who cooperate together explicitly agree to equality among all persons cooperating together as one of the terms of their mutual cooperation because in the case of entering into such social cooperation, although the cooperation can be beneficial to those less well off, it may worsen the position of the well-off group.<sup>99</sup>

According to Nozick, since the argument that unless there is moral reason, holdings ought to be equal assumes equality as a norm, the argument cannot be used to establish any such conclusion about equality.<sup>100</sup>

The Negative Argument. Argument E:

1. People deserve their natural assets.
2. If people deserve X, they deserve any Y that flows from X.
3. People's holdings flow from their natural assets.

Therefore,

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<sup>98</sup> Nozick, 222-223.

<sup>99</sup> Nozick, 223.

<sup>100</sup> Nozick, 224.



4. People deserve their holdings.

5. If people deserve something, then they ought to have it (and this overrides any presumption of equality there may be about that thing).<sup>101</sup>

Argument E is a counter argument about Rawls' view. Not confuting the counter argument, Rawls cannot hold onto his assertion that people's natural assets are not to deserve morally. Nozick's argument aims at the very point. However, if we examine this argument in Rawls' position, premise 1 in the argument fails because the premise already presupposed natural assets as deserving before arguing. In short, Nozick omits to offer valid grounds about his premise. Therefore, as far as the argument does not resolve the omitted part, the argument is useless in confuting Rawls' assertion.

Rawls asserts that since natural assets are arbitrary from a moral point of view, they cannot be deserved. Then, argument E does not offer counter evidence about Rawls' insistence. Nozick's works for counter evidence will be focused on a question why natural assets should be deserved in a moral point of view. After all, this question is reduced to the question of argument D.

Argument F:

1. If people have X, and their having X (whether or not they deserve to have it) does not violate anyone else's (Lockean) right or entitlement to X, and Y flows from (arises out of, and so on) X by a process that does not itself violate anyone's (Lockean) rights or entitlements, then the person is entitled to Y.

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<sup>101</sup> Nozick, 224.

2. People's having the natural assets they do does not violate anyone else's (Lockean) entitlements or right.<sup>102</sup>

Argument F insists that people are entitled to what they make, the products of their labor, and to what they get from others or exchange. For instance, it is not true that a person earns Y only if he is earned (or otherwise deserves) whatever he used (including natural assets) in the process of earning Y.<sup>103</sup> Therefore, we say that he may have some of the things he uses, not illegitimately. "It need not be that the foundations underlying desert are themselves deserved, all the way down."<sup>104</sup>

This description means that natural assets, after all, need not be themselves deserved. While Rawls' argument is that natural assets are not to deserve morally, Nozick's is that they need not be deserved morally.

Argument G:

1. People are entitled to their natural assets.  
2. If people are entitled to something, they are entitled to whatever flows from it (via specified types of processes).

3. People's holdings flow from their natural assets.

Therefore,

4. People are entitled to their holdings.  
5. If people are entitled to something, then they ought to have it (and this overrides any presumption of equality there may be about holdings).<sup>105</sup>

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<sup>102</sup> Nozick, 225.

<sup>103</sup> Nozick, 225.

<sup>104</sup> Nozick, 225.

<sup>105</sup> Nozick, 225-226.

Argument G explains that "whether or not people's natural assets are arbitrary from a moral point of view, they are entitled to them, and to what flows from them."<sup>106</sup> This is in accord with Lockean theory of the right of property as a natural right. Locke said that though the earth and all that is therein belong to mankind in common, men can have ownership of them. Namely,

Every man has a property in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands we may say are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.<sup>107</sup>

However, this Lockean thought has difficulties in sustaining its persuasive power in the modern world that is overlapped by new problems like population explosion, starvation, men's irrational mastery over nature, and complex aspects caused by advent of industrial society. The question is that how we can harmonize a right of property as a natural right with Lockean proviso. This may be possible in ancient society, but impossible in modern cultured society. To avoid such problems, Rawls offers his egalitarian justice .

#### Rawls' Difference Principle and the Principle of Distribution in Marxism

The difference principle is a standard on how we will distribute economical profits in social cooperation. Although this principle is a principle of distribution about interests gained by spontaneous

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<sup>106</sup> Nozick, 220.

<sup>107</sup> Locke, 15.

cooperation, if we extensively interpret the principle, we can say that the principle is offered for fair distribution in dividing important systems in a state.

In addition, there is an analogy between the difference principle and the maximin rule for choice under uncertainty.<sup>108</sup> To understand the maximin rule, suppose that there are three distributive situations S<sub>1</sub>, S<sub>2</sub>, and S<sub>3</sub>, and three decisions D<sub>1</sub>, D<sub>2</sub>, and D<sub>3</sub>. The first decision D<sub>1</sub> is that S<sub>1</sub> has 2, S<sub>2</sub> gets 8, and S<sub>3</sub> has 10 profits. The sum of profits in D<sub>1</sub> is 20. D<sub>2</sub> is that S<sub>1</sub> acquires 1, S<sub>2</sub> gets 7, and S<sub>3</sub> obtains 14 profits, and then the total profits in D<sub>2</sub> is 22. In the last case D<sub>3</sub>, S<sub>1</sub> has 5, S<sub>2</sub> acquires 6, and S<sub>3</sub> gets 8. The sum of profits in D<sub>3</sub> is 19.

Given distributive situations S<sub>1</sub>, S<sub>2</sub>, and S<sub>3</sub>, according to the maximin rule, we will choose D<sub>3</sub> because the safest choice is to choose a way allocating the most profits among several worst cases. In short, in a case choosing D<sub>2</sub>, although we acquire 14 as the maximum value in S<sub>3</sub>, we also gain 1 as the worst case in S<sub>1</sub>. As a result, we will choose D<sub>3</sub> that guarantees the maximum value among the minimum.

The difference principle is system in distribution, that is, as there are given distributive situations, the principle chooses a situation that gives everyone profits and, at the same time, maximizes the profits of those worst off. Therefore, according to the difference principle, we will choose D<sub>3</sub> in the above situations.

According to the principle of utility of utilitarianism, we will choose D<sub>2</sub> because the principle of utility supports the maximum rule. Even

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<sup>108</sup> Rawls, *A Theory of Justice*, 152.

though utilitarian has a risk having 1 in  $S_1$  when we choose  $D_2$ , they would not give up the maximum value in  $S_3$ . Also, since the principle of utility pursues the maximum of sum of profits (or happiness), they cannot help choosing  $D_2$ , because  $D_2$  ( $S_1+S_2+S_3=22$ ) brings more happiness than  $D_1$  ( $S_1+S_2+S_3=20$ ) or  $D_3$  ( $S_1+S_2+S_3=19$ ).

As we consider the two systems of distribution (the difference principle and the principle of utility), it is possible for the principles to be applied to only liberal or democratic society based on the capitalistic relations of product. Accordingly, Rawls' principle of distribution as the difference principle is criticized by socialistic theorists.

Dahrendorf summarized Marx's theory on the classes with three cases. First, the division of wealth in the sphere for distribution corresponds to the division of property in production, and a person's material condition of existence, or class situation, is based on his position in production. Second, the distribution of property in production determines the distribution of political power in society. The third is that the distribution of property in production shapes the ideas that mold the character of a period. Therefore, the ruling ideas of a period have always been nothing but the ideas of the ruling class.<sup>109</sup> From the above, we suppose that the primary factor to obstruct the realization of equality is classes.

Also, according to Hunt, Stalin denounced equalitarianism in the name of Engels in his report to the 17th Congress of 1934 and said that equalitarianism had nothing to do with Marxism or Leninism, and that

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<sup>109</sup> Ralf Dahrendorf, Class and Class Conflict in Industrial Society (California: Stanford UP., 1959) 12-14.

"by equality Marxism means not the equalization of individual requirements and individual lives, but the abolition of classes."<sup>110</sup>

From this citation, we can read the idea of socialistic equality from Marx and Engels to Stalin. Their ideas of equality are nothing but inequality of classes which means unequal circumstances of distribution between bourgeoisie and proletariat. Accordingly, the only way to resolve inequality between classes is to abolish classes. According to Engels,

"The elimination of all social and political inequality" is also a very questionable phrase in place of "the abolition of all class distinctions." ... there will always exist a certain inequality in the conditions of life, which it will be possible to reduce to a minimum but never entirely remove. ... the realm of equality is a one-sided French idea resting upon the old "liberty, equality, fraternity" - an idea which was justified as a stage of development in its own time and place but which ... should now be overcome, for it only produces confusion in people's heads.<sup>111</sup>

In short, if equality does not mean the abolition of classes, the equality only becomes an ambiguous conception. By citing Lenin, Hunt said again that "equality is an empty phrase unless by equality is meant the abolition of classes."<sup>112</sup> Accordingly, that the proletariat demand for equality means the abolition of classes themselves, not only the abolition of class privilege.

In addition, Dupré describes the communist society as the follows;

The only property that Communism wants to abolish is capitalist property. But for the great majority of people this

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<sup>110</sup> R.N. Carew Hunt, The Theory and Practice of Communism (New York: The Macmillan Company, 1962) 217.

<sup>111</sup> Frederick Engels, "Letter to A. Bebel, March 18-28, 1875," Karl Marx and Frederick Engels, Selected Works (Moscow: Progress Publishers, 1970) 35.

<sup>112</sup> Hunt, 217.

can only be a gain, for the capitalists have already swallowed up nine-tenths of all property. By making all capital common property, Communism converts accumulated labor from a mere means for accumulating more labor into a direct boon to the laborer himself.<sup>113</sup>

From the above citation, we extract two meanings concerning distribution: One is to return accumulated wealth of bourgeoisie to society, and the other is to convert the accumulated labor to the laborer himself. Through such processes, other systems of society will be replaced by "an association in which the free development of each is the condition for the free development of all."<sup>114</sup>

Then, how is the principle of distribution accomplished in the association? Marx's banner "from each according to his ability, to each according to his need"<sup>115</sup> can be a general principle of distribution in communism. Also, socialism as the preceding stage of communism seems to be governed by a principle 'from each according to his ability, to each according to his work'. Namely,

1. Socialism: work according to his ability, and distribute according to his work.

2. Communism: work according to his ability, and distribute according to his needs.

Case (1) is different from the system of distribution in capitalism although their formation is very similar. Capitalism is based on a system

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<sup>113</sup> Louis Dupré, The Philosophical Foundations of Marxism (New York: Harcourt, Brace and World, Inc., 1966) 201.

<sup>114</sup> Dupré, 203.

<sup>115</sup> Karl Marx, "Critique of the Gotha Program" The Marx-Engels Reader, ed. Robert C. Tucker (New York: W.W. Norton and Company, Inc., 1972) 388.

of natural distribution through free competition, whereas socialism is a distributive system of central government through the socialization of the means of production. If we choose pure capitalism, it is difficult for us to escape the excessive inequality of wealth, whereas if we choose socialism, it is difficult for us to escape withering of liberty according to the control of central government. Rawls' system of distribution by the difference principle seems to be based on the principle of distribution in capitalism and, at the same time, seems to have self-control to overcome the excessive inequality by improving system of distribution in the principle.

According to the principle of communism,

In a society where case the Socialist Principle of Justice\* regulates distribution, the requirement is that everyone use such talents as have been developed in him (though this need not entail any allocation of workers to jobs), and the payment of worker is contingent not upon their contributions but upon their needs.<sup>116</sup>

Rawls' difference principle as the principle of distribution requires that the basic structure of society be arranged in such a way that any inequalities in gaining the primary goods of wealth, income, power, and authority must work to the greatest benefit of those persons who are the less advantaged. Judging the principle from socialists' position, Rawls' principle of distribution has some weak points. First of all, Rawls does not sufficiently consider that social and economical inequalities are not simply ones between individuals or strata, but ones between classes. Rawls

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\* Nell and O'Neill regard the principle(2) as the socialist principle of justice. Edward Nell and Onora O'Neill, "Justice under Socialism" Justice: Alternative Political Perspectives (California: Wadsworth Publishing Company, 1980)

<sup>116</sup> Nell and O'Neill, 201.



largely ignores the conception of class and generally talks about classes in ways most bourgeois social scientists do, where class and strata are roughly interchangeable terms.

According to Nielsen, Rawls believes that "institutionalized inequalities which affect the whole life prospects of human beings are inescapable in complex societies"<sup>117</sup> Rawls' intention seems to me that since inequalities in our society are inevitable, it is better for us to find ways to minimize the inequalities. In addition, Nielsen says,

If, alternatively, we either think of classes, as a Marxist does, essentially in terms of the relationship to the means of production or as cohesive groups between which there are considerable differences in income, prestige or authority and because of these differences there are radically different life prospects, it is not so evident that we can safely assume, as Rawls does, that classes are inevitable.<sup>118</sup>

If we destroy the classes that hold most means of production, the abolition of classes is possible because classes are determined according to whether they have the means of production or not. Following Marx's theory, under situation that bourgeois hold most means of production and obtains the exclusive possession of powers deciding distribution of labor, inequalities ought to be understood to ones of classes. Accordingly, the realization of equal society is possible not by applying the difference principle, but by establishing classless society.

Secondly, according to Rawls, inequalities are justified only in the case that the less advantaged gain benefit. Although a capitalist invests

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<sup>117</sup> Kai Nielsen, "Class and Justice" in Justice and Economic Distribution ed. by John Arthur, William H. Shaw (New Jersey: Prentice-Hall, Inc., 1978) 228.

<sup>118</sup> Nielsen, 228.

his fund and gains some interests as the result of investment, if the result of investment gives workers as the less advantaged some benefit, the situation is just. This is an exact theory of (revised) capitalism. For example, we suppose that to produce ten dolls, a capitalist invests 1,000 dollars and hires the unemployed. The 1,000 dollars is divided to 200 dollars for machine, 400 dollars for materials, 300 dollars for wages (50 dollars per hour), and 100 dollars for depreciation cost. The real price of a doll is 100 dollars ( $100 \times 10 = 1,000$ ).

If the employer sells the doll to customers for 100 dollars, the deal does not give any meaning to the capitalist. Namely, the capitalist wants interests (200 dollars). The price of a doll as goods will be 120 dollars. Then, how can the employer gain 200 dollar as interests? Creating the value of goods is human being's labor. To make the interests, the laborer have to work more 4 hours ( $50 \times 4 = 200$ ). In fact, though the worker's true value of labor is 50 dollars per hour, he gets 30 dollars as his wages a hour. Namely, the 20 dollars is exploited from the worker, and the 20 dollars is the capitalist's interests.

Also, when the worker buys the doll for his baby, he must pay 120 dollars, not 100 dollars. Although he has exploited 20 dollars to make the doll in wages a hour, he also has to pay 20 more dollars to buy the doll. In short, he is exploited doubly. If the capitalist invests 200,000 dollars to make dolls and employs more workers, his profits are greater, and the employer may try to invest his profits in expanding his business or in beginning other businesses. Such processes go on other places. The exploitation of labor must be deepened continuously.

Is such a society just? Those who support that type of society say that when a capitalist begins his business he must think of the risk of the business so that acquiring interests as shares of the risk is just. Response to the view is not easy because we must think of other problems, that is, how does he achieve more wealth? And does he get his wealth accidentally or from exploitation? Since Marxists, at least, believe that his assets are the result of exploitation, the society is not just, and acquiring his profits is unjust. Accordingly, though Rawls' difference principle supports welfare capitalism, the principle does not resolve the question of justice in distribution.

After all, Rawls' difference principle never resolves inequalities in distribution, but the justified inequality supports modern welfare capitalism because the capitalism supports not only interests of bourgeoisie but also the less advantaged through the social security services. As returning some of interests of bourgeoisie to society, and as using the money for the less advantaged, Rawls' difference principle is justified in the welfare capitalism. However, we must know that the very money is to be exploited from the shares of the less advantaged. Accordingly, to remove inequalities in distribution, Marxists are to assert the abolition of classes and the socialization of wealth.

## CHAPTER IV

### CONCLUSION

In this paper, I examined the process on how the principle of justice is derived from a hypothetical point, considered two principles of justice in Rawls' theory of justice, and offered criticisms on the principle of justice in the aspects of Rawls' theory itself, Nozick's entitlement theory, and Marxism. According to Rawls, the basic requirement of the system of society is justice. As contracting parties agree to general principles governing their system, they will choose the principles of justice in a hypothetical position like the parties in the classical contract theory formed civil society through contract from the state of nature. Then, there are some circumstances to be the principles of justice. The circumstances of justice are that those who are mutually disinterested present the conflicting requirements of social interests under the moderate scarcity of resources. As those who are mutually disinterested would realize social cooperation, the adjustment of conflicting interests is inevitable, and the principles of adjustment will be the principles of social justice.

Also, to pass through fair procedure in contract, we need to nullify some factors that tempt contracting parties so as to use their natural and social circumstances advantageously. Thereupon, Rawls presupposes that the parties must be covered by the veil of ignorance. The parties neither know their sense of value and plan of life, nor their psychological

inclination and particular circumstances of their society, but to derive the principles of justice Rawls permits general knowledge and the knowledge that their society is under circumstances of justice.

Rawls' distinction between general knowledge and individual one is very ambiguous. Not only is general knowledge like politics or economy informed by backing of individual knowledge of political, economical, and cultural situations which belong to them, but also the principle of system of society is reconsidered and acquired in diverse social and historical events. Accordingly, if the situation that individual knowledge is nullified by the veil of ignorance is the original position, we cannot get any actual knowledge from the original position. Also, a hypothetical contract carries no actual binding force.

Rawls presents two principles of justice, and my main concern is on the difference principle that without improving conditions of all those who are worst off, the advantages of all those better off should not be permitted. It is, however, a hypothetical situation not an actual one. The principle under the hypothetical situation loses its validity in the actual one. Being one of the less advantaged in the actual one, I am willing to accept the principle, whereas if I was one of those better off, I would never accept the principle. In short, as someone acquires more social wealth through his labor and his talent than others', he never agrees with the difference principle. After all, to keep the difference principle, we must sustain the hypothetical situation. If the principle is actualized in our society, it infringes on personal rights. According to Nozick, we do not have any rights to control his right of ownership, and if we take

sanction against his right of ownership, this is to deprive him of his civil liberties or his natural right.

Also, according to Marxism, since human inequalities are caused by classes, we resolve the unequal situations only through the abolition of classes. Accordingly, the realization of just society is possible not by applying the difference principle, but by establishing classless society. After all, Rawls' difference principle never resolves inequalities in distribution, but the justified inequalities support modern welfare capitalism.

Rawls also thinks that since natural assets are arbitrary from a moral point of view, the individual ownership of value produced by such talents must be nullified. Since his natural assets are not the result of his own activity but formed accidentally by social conditions, social control must be permitted in the distribution of earning according to such benefits.

Whether or not someone has natural assets is not the question of moral arbitrariness because there cannot be moral reason behind the difference of natural assets. According to Nozick, if there is no moral reason about the ownership of natural assets, social control on values produced from it cannot be permitted. If someone is under social control because of his outstanding talents, such a system of distribution is unjust. It can be an infringement of fundamental rights in personal ownership.

From the summary of this paper, we know some characteristics of Rawls' theory of justice. First of all, he denies distributive system in pure capitalism because the distribution in the system permits the unequal

distribution of wealth as well as the justification of natural assets through free competition. In fact, under free competition, the better advantaged can acquire more social wealth than the less advantaged can. Accordingly, inequalities coming from natural assets are refused.

Secondly, Rawls considers a system that minimizes the inequalities of wealth with sustaining the merit of capitalism. Although we recognize the inequalities of wealth, the inequalities must be permitted only in order to maximize the profits of the less advantaged. Rawls' intention is on discovering how we can minimize the inequalities of social wealth under pure capitalism. This is his difference principle, which supports modern welfare capitalism.

Finally, according to Marxism, the ownership of natural assets is given neither by nature nor by accident. The history of ownership of natural assets began from exploitation. Since social inequality is caused by the exploitation of the governing classes, dissolving of social inequality is possible by the abolition of classes. Rawls' concerns in distributive justice are not to fundamentally resolve the problem of inequalities in society, but to minimize social inequality with sustaining the present system of society. Rawls' distributive justice is rather an alternative proposal to resolve social inequality deepened in capitalism than a fundamental solution about social inequality.

In spite of some problems, Rawls' theory of justice supports the theory of the welfare capitalism well. In fact, Nozick's entitlement theory fails in some points. His theory of right in holdings is very arbitrary. We have right not to lose our holdings without our agreement, and right to

own some objects as the result of our labor without violating Lockean proviso. Obviously, there is some intuitive appeal in his theory. However, we have rights prior to political or economical rights. If someone is in adversity, he has right to receive others' consideration. The assertion also has intuitive appeal. If we recognize such rights prior to political rights, Nozick's entitlement theory loses its persuasive power.

Also, although we agree that we should not infringe on others' rights, there are conflicts between rights. In such cases, which rights will be chosen? According to Nozick, the property right is prior to other rights. I doubt why we must firstly choose right in holdings, and why the right in holdings is more important than others.

To resolve inequalities coming from free exchange activities, prohibiting every free exchange activity is not good solution. From the fact that prohibiting every free activity is bad, it does not naturally follow that placing some restrictions on the free exchange to resolve inequalities is also bad. Rawls' theory of justice is an alternative proposal to resolve the problem of inequalities coming from free exchange activities.

Then, why can we not fundamentally resolve inequalities? Rawls' theory is not fundamental solution about social inequality but an alternative proposal to resolve social inequality deepened in capitalism. Although we are interested in the least advantaged and make their situations better, there are still inequalities. Rawls' difference principle resolves absolute inequalities (poverty) to some extent, but there are obviously relative inequalities (poverty) in our society, and the inequalities hurt human self-respect.



How can we resolve inequalities in our society? Marxism as an answer to the question has a persuasive power in two aspects. First, Marxism is based on our history not a hypothetical situation, and Marxism, secondly, requires the fundamental solution of inequalities.

Since inequalities are formed by the exploitation of governing class, the abolition of classes is only way to resolve the inequalities. The reason why Rawls' theory does not resolve inequalities is because he does not deal with the question of why inequalities occur in our history, and he excludes the fundamental problem called the abolition of classes. Rawls' difference principle justifies inequalities and tries to minimize the inequalities. However, minimizing inequalities by permitting inequalities is contradictory because the inequalities are due to the exploitation of ruling class. After exploiting 10 dollars, returning 5 dollars to society is not just.

According to Marxism, our history is the process of the struggle of classes and the process that the ruled classes retake their rights. If so, we have a possibility to resolve inequalities. Since inequalities are due to the exploitation of governing class in our history, when the ruling class is removed by the struggle of classes, the inequalities can be resolved. In short, inequalities are resolved by the abolition of classes.

After all, Marxism tries fundamentally to resolve inequalities by the abolition of classes. Is it possible to realize truly equal society? Although Marxists' classless society is not practical in our age, the classless society is theoretically possible. Since classes are defined by their social ownership, the abolition of private ownership means the abolition of classes, and the classless society will be equal society. The

realization of equal society by the abolition of classes is a faith based on our history.

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