

Chapter 3: "Global Justice" by Amartya Sen

Introduction

In this chapter, Sen tries to criticize a certain concept of justice that many social scientists tend to rely on, namely "organization focused understanding of justice", and insists that justice, especially if it should be considered in global perspective, means "the basic idea of realized justice." He terms the former "*niti*" and the later "*nyaya*", the concepts from Sanskrit.

In contemporary political philosophy, Rawls's concept of justice, "justice as fairness", is very much influential in present day's arguments on substantial justice. Rawls's principles of justice are a social contract made by impartial parties of a polity under the "veil of ignorance" (none of those parties knows their statuses or talents in the polity that would be made by their contract).

Sen criticizes Rawls's concept of justice as fairness for two points. First, Rawls's principles are institutional one, *niti*. Institutional justice may not assure the realization of justice for people whose freedoms and opportunities are deprived due to their given condition. It means that those people have less capability to convert institutional justice to real ones. (**Capability question**)

Secondly, Rawls supposes perfect justice. In the global context, the principles for perfect justice are not to give a way for advancement of justice (or reduction of injustice). Thus, comparative perspective on more justice or less justice is necessary. In addition to this, Rawls supposes a polity established by social contract among members of this polity. However, global justice does not have such condition. Therefore, **the room of disagreement and the possibility of impartiality** should be questioned.

1. Rawlsian theory of Justice as fairness (A Theory of Justice, 1971)

- Opposing to utilitarianism ("*the greatest happiness principle*") --> "justice"
- Reconstruction of the **social contract** --> social co-working among free and equal contracting parties.
- Original position --> "veil of ignorance" (any party does not pursue agreement that is in favor of his own social status, and parties are not detained by envy.)
- Each party should try to minimize their losses resulted from the agreement they made when they did not know who they were.

Principles of Justice:

- Each person has an equal right to fully adequate scheme of equal basic liberties which is compatible with similar scheme of liberties for all. (**Equal liberty principle**)
- Social and economic inequalities must satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity (**equal opportunity principle**); and second, they must be to the greatest benefit of the least advantaged members of society (**differential principle**).

Liberty is prior to the second principles

Liberty should not be constrained for the purpose of social and economic interest. (*c.f.* utilitarianism)

Why is the differential principle necessary?

Rawls considers that because natural talents are given at random, talents of each person are social common goods.

--> It is legitimate for a government to allocate primary goods equally to the least advantaged members. (*e.g.* affirmative actions)

Application

Constitution based on the first principle --> legislations to maximize expectation of the least advantaged members in compatible with fair equal opportunity --> implementation

2. Sen's stance

(1) Critical evaluation of Rawls

- Rawls's principles
 - a. "... are aimed at setting up 'just institutions,' take the form of specifying organizational requirements mainly in the sense of *niti*, rather than judging the societies as a whole, in the sense of *nyaya*."
 - b. Justice as fairness in a polity
- Sen --> "what do we want from a theory of justice?" (p.59) --> Rawls's principles can not give an answer to global justice (= plural world).
- Citing Nagel (p.63), --> "It seems to me very difficult to resist Hobbes's claim about the relation between justice and sovereignty", and "if Hobbes is right, the idea of global justice without a world government is a chimera" (Nagel 2005: 115). In the global context, Nagel concentrates, therefore, on clarifying other demands, distinguishable from the demands of justice, such as "minimal humanitarian morality" (*ibid.*: 130-3, 146-7)"

(2) Points to be questioned:

- **The comparison question**
comparative approach: comparing less fair societies (\neq transcendental approach: perfectly fairness)
--> matter for comparing (or sequencing) implementation and achievement (for example, "despite such durable ambiguity, we may still be able to agree readily that there is a clear social injustice involved in the persistence of endemic hunger or exclusion from medical access, which calls for remedying for the *advancement of justice* (or reduction of justice), ..." (p.64))
- **The room for disagreement question**
- **The impartiality question**
--> relating to justice in a plural global world.
- **The capability question**
Capability: "persons' capability to achieve particular combinations of valued functionings. All the achievable combinations of functionings are called a person's capability set, and it is on this that the capability approach concentrates." (p.68)
--> "The idea of capability is, thus, oriented towards freedoms and opportunities (to wit, the capability to live the kinds of lives that people have reason to value), rather being concerned only with the one particular life that the person choose to live." (p.69)

Factors preventing achievement = deprivation of basic freedom

e.g. poverty, discrimination, violence (crimes and conflicts), exclusion from participation ...
--> Sen considers that the development is to protect those freedoms ("**Development as freedom**")
"...[T]he realization of legal rights of women depends not only on legislation but also on the ability of women to read and write and on other social opportunities that women may or may not have. If illiteracy prevents women from exercising their rights, then it seems right to say that her legal rights were not realized, rather than to assert that her legal rights were all realized but she did not actually use them because of illiteracy." (Sen, World Bank Legal Review: 47)

(3) Sen's stance to legal development

a. Conceptual integrity and causal interdependence

- Legal development is a constitutive part of development (conceptual integrity view)
"We cannot very well say that development process has gone beautifully even though people are being arbitrarily hanged, criminals go free while law-abiding citizens end up in jail and so on. ... [W]e must at least begin by noting the basic fact that legal development is constitutively involved in the development process, and conceptual integrity requires that we see legal development as crucial for the development process itself."

- Thus, legal development should not be looked as something to serve for other concern of development (e.g. economic development). (causal interdependence view)
In causal interdependence view, legal development can be replaced something else that support, say, economic development. --> This view is very clear in "Asian value" discourse or development authoritarianism.

b. Interrelation among legal development and economic development (p.42)

capitalism - property rights

economic exchange - freedom of contract and effective enforcement

investment - control of corruption

finance - developed credit institutions and enforcement of contract

labor productivity - educational arrangement (right to basic education, duty to educating, government's commitment on higher education...)

Sen, Amartya, "What is the Role of Legal and Judicial Reform in the Development Process?", in *World Bank Legal Review vol 2: Law, Equity and Development*, Martinus Nijhoff Publishers, 2006, pp.33-49.