

Hayek's Theory of Justice

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Several of the major works of political philosophy such as John Rawls' *A Theory of Justice* and Robert Nozick's *Anarchy, State, and Utopia* have attempted the formulation of a theory of justice. Friedrich Hayek as well has also attempted to derive principles of justice consistent with a liberal social order. The purpose of this chapter is to examine Hayek's attempt.

Our discussion of Hayek's theory of justice will begin with a review of some alternative theories of justice and Hayek's view of these theories. In the second section we examine Hayek's views on the concept of justice. After our consideration of Hayek's views of justice we turn to the concept of social justice and Hayek's critique of that subject. Our treatment of the topic would be incomplete without thoroughly examining the similarities and differences between Hayek's procedural theory of justice and that of John Rawls. Finally we conclude with a discussion of Hayek's theory of justice.

I. Review of Some Alternative Theories of Justice

Despite the fact that philosophers have spent considerable time in attempting to formulate theories of justice, the concept still today has no settled meaning. By this whether certain policies of actions are just but rather men continue to disagree about what the concept of justice itself means.

There are difficulties with the concept of justice. The word is often one of several concepts which are felt to be related. One concept which is often linked with justice is equality. While there are clearly uses of the term justice which do imply equality, we speak of equality under the law and often regard certain forms of inequality as arbitrary and

unjust, there is often friction between the concepts. For example, justice may not sanction equality of reward to individuals with widely differing skills and productivities or family sizes. Hayek has been associated with the view that the attempt to impose material equality on unequal people is destructive of the rules of law and necessitates totalitarianism and hence injustice towards individuals. Thus Hayek's theory of distribution is also connected to his views social justice.

An understanding of Hayek's theory of justice and the concept of justice in general is perhaps impossible without a much more precise delineation of the subject than we have currently provided. It will perhaps be helpful if we can delineate certain types of theories justice so that we may compare Hayek's views on this issue with those of other contemporary philosophers and other types of theories of justice. Four different types or approaches to the problem of justice and distribution can be isolated. The four that we shall deal with are legal positivism, procedural justice, end-state justice, and utilitarian.

Legal positivism, which we have discussed in two previous locations, is the doctrine that there is no rational conception of justice outside the positive law. It holds that justice is an idea created by positive law, that there is no objective conception of justice positive law by an external criterion of morality are nothing more than metaphysics. The implications of this view are that justice is purely a relative concept that only has meaning in connection with a particular system or systems of positive law. This view implies that the words just and unjust have no meaning outside the law, law for legal positivism "being purely the command of a legislature or sovereign.

This view takes the position that meaningful statements must be either analytically true or empirical propositions which are verified by experience, all other statements, including ethical statements, being metaphysical. Since justice is about a conflict of values, and since values are subjective, reason cannot settle questions of justice. Absolute justice is an illusion. Theories are only interest of human beings and hence conflicts of interest. Justice in an abstract sense has no application to such problems since all statements about justice are relative to positive law which is a product of will and not reason. In fact, legal positivists argue that justice and liberty have meaning only as expressions of the majority in society.

Hayek objects to this view of justice on the grounds that is based upon a false assumption about the nature and origin of law. In Hayek's theory of law, as we have seen, the law may exist independently of legislative action. These systems, which have emerged

by a process of adaptive cultural evolution, have a validity independent of command. Once it is shown that there are rules of the evolutionary type in a legal system, then it follows that decisions reached in this process are not a product of the will of a sovereign but are product of reason within that system. It is the process of reasoning within a system of general rules that constitutes the objective nature of justice. Decisions of judges in a common law system are not policy decisions or merely attempts to settle conflicts of competing interests but are attempts to determine what is implied by the rules of the system.

An alternative theory of justice is the end-state patterned view of justice. An end-state patterned theory of justice does not see justice as a property of individual conduct but as a property of certain states of affairs or outcomes of the social process. The proposed pattern of a just society will in all probability not correspond to the pattern which emerges from the economic and social order produced by free exchange within the framework of the general rules of law. Thus end-state justice may well require that same form of centralized authority to implement the desired pattern. A patterned theory of justice need not be egalitarian in nature though many of its advocates are desirous of greater equality.

One of the prevailing theories of Hayek's social philosophy has been his belief that to make the distribution of income and wealth in a society correspond to some preconceived pattern of social justice is destructive of a free social order. This has been by and large the main basis of his critique of the welfare state. A commitment to a certain pattern would require government determination of incomes and ultimately occupations as well. A democratic approach would never be possible because of the inability of a complex society to achieve agreement on distributive shares.

Procedural justice can be best understood as a contrast to end-state or patterned conception of justice. Instead of social situations being compared in terms of such criteria as merit, desert or need, they are evaluated by reference to rules and procedures; if this rules and procedures are adheres to then the resulting social outcome is termed just. This is in essence John Rawls' justice as fairness approach which limits the application of the concept of justice to determining the fairness of the rules. Many theories of procedural justice would thus maintain that an attempt to impose a particular pattern of distribution would involve a breach of the rules guaranteeing procedural justice.

An example of procedural justice would be the rules of a game. A fair game is not one in which the winner is already decided upon before the race but one in which there is no

cheating or unfair advantage. In fact Hayek uses the analogy of a game to defend the resulting inequality of the game of catallaxy as he calls it (Hayek [8], p. 115).

This does not mean that theories of procedural justice see the social order as exactly like a game or a race. In a race if a man breaks his leg it causes no problem for the fairness of the race but analogous problems in the social order do present serious problems. What an advocate of procedural justice would maintain would be that that these problems are not problems of justice. A proper theory of social welfare would always be concerned to justify policies to help the least fortunate member of society, i.e., individuals who could not survive within a social system governed by the rules of fairness, but such policies would not be justified by the principle of justice. Furthermore, position in the outcome of a social process should not depend upon another's opinion of his desert or neediness.

One particularly rigorous version of procedural justice is Robert Nozick's entitlement theory of justice. In Nozick's view there are only three principles of justice - acquisition, transfer and rectification. This means that an individual is entitled to his property if he acquired them fairly, without force or fraud, or if they are transferred voluntarily by requests and gifts. The purpose of the principle of rectification is to justify procedures to rectify past injustices in the acquisition of property. From this set of principles Nozick concludes that if each person's holding are just then the total distribution of property is just (Nozick [14], pp. 151~153).

Though utilitarianism is not usually thought of as a theory of justice, the principle of utility has been used as a means of justifying redistribution of income. Economists A. Marshall & F. Y. Edgeworth argued on utilitarian grounds that maximization of social welfare required equality in income distribution. This is not necessarily the outcome that a utilitarian calculus must always arrive at. In the case of Marshall & Edgeworth it was the result of their assumption of equal capacity for enjoyment that produced that particular result. In its simplest form, utilitarianism means that the policies are right so long as they maximize happiness or pleasure for society as a whole. Thus it has no necessary connection with any distributive criteria at all. It might well be that under utilitarian calculus the worst-off in a society may have no claim in justice against the better-off if any redistribution would produce a net loss in total utility.

Hayek rejects utilitarianism on the basis of two arguments. Firstly, utilitarianism presupposes that the utilities of each individual can be measured and added so as to produce a utility function for a whole community. Hayek maintains that utility is not a

common measuring rod, and therefore interpersonal comparisons of utility are illegitimate. This reasoning, which is the heart of the new welfare economics, is not directed only against utilitarianism but against any attempt to derive collective choices from individual preferences.

I. Hayek's View on Justice

The prevailing theme of Hayek's discussion of the concept of justice is the notion that justice is purely a property of individual conduct. Generally when we talk of justice and injustice the words do not refer to the desirability of states of affairs but to the rules and procedures that characterize social interaction and to the actions of individuals in that interaction.

In this narrower conception justice is normally seen to be a property of individuals. Of course at times we will also speak of states of affairs as unjust such as the occurrence of natural disasters. Hayek attributes this use of the term largely to the anthropomorphic nature of our language. However, even in our condemnation of this type of injustice our sense of outrage is largely directed against those who we might hold responsible for bringing about such a state of affairs - God or Zeus perhaps. But as Hayek relates :

Strictly speaking, only human conduct can be called just or unjust. If we apply the terms to a state of affairs, they have meaning only in so far as we hold someone responsible for bringing it about or allowing it to come about... To apply the term just to circumstances other than human conduct or the rules governing them is a category mistake (Hayek [8], p. 31).

Hayek's concept of justice is thus a type of communitive justice.

A second major aspect of Hayek's theory of justice is the relationship between justice and rules of conduct. An act can only be called unjust if it is a breach of some general rule. Actions not violating rules of just conduct cannot be assessed as unjust whatever the consequences might be. The question is, what are the general rules that make certain forms of conduct unjust? Clearly, a rule that is general is not a rule of just conduct for that reason alone. One can think of instances where equality of treatment under law results in unjust

laws. If the state was to require that all male babies under the age of two were to be put to death without exception, such a rule would be equal in treatment but certainly unjust.

The rule of just conduct have then to be given some content if they are to function so as to determine what is just and unjust behavior. Yet Hayek does not give on explicit numeration of the content of the rule of just conduct. He does however provide us with a view of the general conception of a theory of justice presupposed liberalism. According to Hayek :

The essential points of this conception of justice are (a) that justice can be meaningfully attributed only to human action and not to any state of affairs as such without reference to the question whether it has been, or could have been, deliberately brought about by somebody; (b) that the rules of justice have essentially the nature of prohibition, or in other words, that injustice is really the primary concept and the aim of rule of just conduct is to prevent unjust action. (c) that the injustice to be prevented is the infringement of the protected domain of one's fellow man, a domain which is to be ascertained by means of these rules of justice; and (d) that this rule of just conduct which are in themselves negative can be developed by consistently applying to whatever such rules a society has inherited the equally negative test of universal applicability - a test which, in the last resort, is nothing less than the self-consistence of the actions which these rules allow if applied to the circumstances of the real world (Hayek [7], p. 166).

Thus the content of the rules of just conduct is that they must protect against the infringement of the protected domain of one's fellow man. The phrase protected domain means that private sphere secured by adherence to the rule of law. Additional content is added to the rules by Hayek when he notes that:

It would indeed seen that wherever a Great Society has arisen, it has been made possible by a system of rules of just conduct which included what David Hume called the three fundamental laws of nature, that of stability of possession, of its transference by consent, and of the performance of promises, or, as a modern author sums up the essential content of all contemporary systems of private law, freedom of contract, the inviolability of property, and the duty to compensate another for damage due to his fault (Hayek [8], p. 40).

Hayek is reluctant to elaborate further on the substantial content of the rules of just conduct for a reason. Rules of just conduct emerge through a process of evolution and it is impossible for the human mind to construct all the rules in advance of experience. The only things that can be said about rules to existing systems of rules.

Although we can endeavor to find out what function a particular rule performs within a given system of rules, we can do so always only against the background of the whole system of other rules which together determine the order of action in that society. But we can never rationally reconstruct in the same manner the whole system of rules, because we lack the knowledge of all the experiences that entered into its formation. The whole system of rules can therefore never reduced to a purposive construction for known purposes, but must remain to us the inherited system of values guiding that society (Hayek [8], p. 5).

It would follow from this that the rules of just conduct are known negatively. By this we mean that we are in a better position to say what an injustice is rather than to say what justice is.

How do we know which rules are unjust? Hayek recommends the negative test of universality (Hayek [8], pp. 35~44). A particular rule can only be shown to be unjust if it cannot be universalized within a general system of rules. "Rules of just conduct are thus determined not by will or interest or any similar aim at particular results, but develop through inheritance by each generation." (Hayek [8], p. 40).

A rule is to be adjusted just or unjust by the method of imminent criticism, which is a test of its consistency with the system as a whole. What this amounts to is that in applying it (the test of consistency and universalizability) to any concrete circumstances it will not conflict with one of compatibility of the whole system of rules, not merely in a logical sense but in the sense that the actions which the permit will not lead to conflicts.

By applying the test of universalizability we thus progressively eliminate injustice. This test will be an adequate guide for developing an existing body of law but will not be sufficient foundation for building a wholly new system of law. But while Hayek admits that there are no positive criteria of justice, he does not admit that justice is therefore arbitrary as legal positivists would claim. Hayek denies that an objective theory of justice must be based on positive criteria.

His negative criteria of consistency lead not to arbitrary justice but to an objective solution in his opinion.

..... we may accept the contention of positivism that there are no positive criteria of justice; yet we can still maintain that the further development of the rules of just conduct is not a matter of arbitrary will but of inner necessity, and that solutions to open problems of justice are discovered, not arbitrarily decreased. The fact that there are no positive criteria of justice does not leave unfettered will as the only alternative. We may still be bound by justice to develop the existing system in a particular way (Hayek [8], p. 44).

Two additional aspects of Hayek's rules of justice should also be mentioned. Firstly, the rules of just conduct are typically negative in character, i.e., they exist in the form of prohibition rather than specific commands toward certain ends. Only in rare circumstances can individuals be directed toward specific ends as a consequence of justice. These Hayek defines as "rare exceptions confined to instances where accident has temporarily placed persons in a close community with others." (Hayek [8], p. 36). Normally, however, the rules of justice merely require the individual to desist from certain activities.

Secondly, the rules of justice are quite consistent with a wide area of discretion in terms of personal morality. The rules of just conduct in a spontaneous order do not have to embody any particular moral purpose beyond securing the continued existence of that order.

III. Social Justice and Hayek's Critique

The concept of social justice has, over the course of Hayek's career, become an increasingly more impotent element in his work over the past forty years. Hayek's earliest work in political philosophy, *The Road to Serfdom* [4], contains Hayek's initial critique of social justice. In that work Hayek saw the attempt at achieving distributive justice, as a peripheral issue within the larger issue of the desirability of central planning as a means of economic organization. Hayek's critique of the attempt to achieve distributive justice was that such an attempt through the imposition of central planning was inconsistent with

principles of a free society, specially with the rule of law. He object that

..... formal equality before the law is in conflict, and in fact incompatible with any activity of the government deliberately aiming at material or substantive equality of different people, and that any policy aiming directly at a lead to the destruction of the Rule of Law. To produce the same result for different people, it is necessary to treat them differently (Hayek [4], p. 79).

In latter years Hayek recognized that central planning was no longer the means by which the advocates of greater social justice were asserting their claims. The welfare state had become the new means by which the claims of social justice would be assuaged. Hayek felt that the welfare state was just as much a dangerous means of attaining social justice as was the imposition of socialism through central planning. Hayek asserted that

..... the fact is that almost everywhere the groups which pretend to oppose socialism at the same time support policies which, if the principles on which they are based were generalized, would no less lead to socialism than the avowedly socialist policies (Hayek [5], p. 107).

In *the Road to Serfdom*, Hayek had attempted "to show that the aims which our generation has set itself are incompatible or conflicting and that the pursuit of some of them will endanger even greater values." (Hayek [5], p. 109). He appeared to have regarded his attempt as a failure. In later works he essentially conceded that some means must be found to achieve both social justice and a free society. In this regard Hayek expressed his views by nothing that

..... in some respects during the last hundred years certain moral aims have firmly established themselves for the satisfaction of which in a free society suitable techniques can be found. Even if we should not altogether share the new viewpoint attached to some of these newer values, we shall do well to assume that they will determine action for a long time to come and carefully consider how far a place can be found for them in a free society. It is, of course, mainly the demands for greater security and greater equality I have here in mind. In both respect I believe very careful distinctions will have to be drawn between the sense in which security and equality can and cannot be provided in a

free society (Hayek [6], p. 109).

The task of determining to what extent the pursuit of social justice is consistent with a free society was undertaken by Hayek in *The Constitution of Liberty* [6]. His conclusions regarding the compatibility of social justice and a free society through the programs of the welfare state was that many of the aims of social justice were compatible with liberty under certain conditions. But there were others – “and they are those particularly dear to the hearts of the socialists—that cannot be realized in a society that wants to preserve personal freedom.” (Hayek [6], p. 259). Hayek felt that aspect of social justice the concerned with the distribution of income, particularly use of state powers to ensure a more just distribution of income, and the use of state powers in assuring given standard of living by protecting individuals against declines in their position in the market were those aspects of social justice incompatible with a free system.

In Hayek's most recent work, *Law, Legislation, and Liberty*, he devoted the bulk of the second volume subtitled *The Mirage of Social Justice* to the issue of distributive justice and its meaning. This marks a turning point of sorts of Hayek's views on this issue. He relates that in reexamining the issue of distributive justice he had attempted to construct as good a case in support of social justice as he could. “It was only then that I perceived that the Emperor had no clothes, that is, that the term social justice was entirely empty and meaningless.” By this Hayek means that he believes that the concept of social justice is meaningless when applied as a criteria of judging the goodness of the distribution of income in a market order. In effect, he neither just nor unjust, the concept of justice is misplaced in its application to that state of affairs. Thus argued Hayek:

I believe indeed that the greatest service I can still render to my fellow men would be if it were in my power to make them ashamed of ever using that hollow incantation. I felt it my duty at least to try and free them of that incubus which today makes fine sentiments the instruments for destruction of all values of a free civilization - and to try this at the risk of gravely offending many the strength of whose moral feelings I respect (Hayek [8], p. xii).

Thus in summary we may say that Hayek's attack on the concept has taken two forms. In his earlier work Hayek argued that the attempt to achieve social justice would bring

about the destruction of the market order and free society. In his most recent work his attack has taken the form of attempting to discredit the concept itself. For our purposes the second version of the is the more impotent because in the course of his attack upon the concept of social justice the epistemological basis of his theory of justice becomes apparent.

The concept of social justice has been perhaps most often associated with evaluating the goodness of the distribution of income in market economies. It is the central thesis of Hayek's attack upon social justice that the distribution of income in a market economy has no ethical content at all. Hayek does not say that distribution in a market economy is just, it is simply ethically neutral. To attack the concept of justice to remuneration in a market economy is to be guilty of the fallacy of misplaced concreteness as in the use of the term moral stone.

To understand Hayek's claim we must go back to our initial discussion of Hayek's theory of justice. In our discussion we noted that Hayek reserved the concept of justice strictly for application to the quality of human conduct. Secondly, we saw that for Hayek the justice or injustice of any action can be determined solely with regard to the content of the rules of just conduct. Thus only those aspects of human actions which can be determined by rules of just conduct raise problems of justice.

The rules of just conduct as we have seen refer to actions of individuals which effect others. In a market economy or spontaneous order in income received by any individual is the result of the activities of unknown numbers of individuals in which nobody has the responsibility or the power solely to determine anyone's income. In a market economy, assuming that the distribution of income is determined mainly by the prices of the factors of production and windfall gains and losses, we can see that the price of any factor is determined by an untold number of effects, it is largely the unintended consequence of human action. In purchasing product A, I in no way intend or can even know the effect my action separately upon the distribution of income. Because of this there can be in a market economy, no rules which will determine only certain abstract properties of the spontaneous order, but not the specific content of that order. If we ask the question of who has been unjust with regard to the fact of the existence of a certain distribution of income there can be no answer to that question in a market economy.

Hayek stresses, however, that despite the fact that the individuals in a market order might have allocated in accordance with the rules of just conduct, we cannot call such a

state of affairs just. To do so would be to commit a categorical mistake.

As in the case of a spontaneous order, the resulting state was not the intended aim of the individual action. Since only situations which have been created by human will can be called just or unjust, the particulars of a spontaneous order cannot be just or unjust: if it is not the intended or foreseen result of somebody's action that A should have much and B little, this cannot be called just or unjust (Hayek [8], p. 33).

The key to this view of justice is the claim by Hayek that justice is not concerned with those unintended consequences of a spontaneous order which have not been deliberately brought about by anybody. It is the unintended nature of the distribution which Hayek feels absolves it from ethical consideration. Why is it unintended? In answering this Hayek exposes the epistemological basis on which his theory of justice rests. The distribution of income is unintended partially because of the large number of individuals involved in the process. But this is not the central issue. The main reason is because of the inherent limitation of knowledge of all the effects of our action.

It should perhaps be pointed out here that in a society of omniscient persons there would be no room for a conceptions of justice: every action would have to be judged as a means of bringing about known effects, and omniscience would presumably include knowledge of relative importance of the different effects. Like all abstractions, justice is an adaptation to our ignorance - to our permanent ignorance of particular facts which no scientific advance can wholly remove. It is as much because we lack the knowledge of a common hierarchy of the importance of the particular ends of different individuals as because we lack the knowledge of particular facts, that the order of the Great Society must be brought about by the observance of abstract and end-independent rules (Hayek [8], p. 39).

We must be sure to make the point, however, that Hayek's opinion that social justice is irrelevant applies only to its application to the results of the process of a market economy. The concept certainly has relevance in a command economy. Indeed, Hayek admits that the distribution of income as apportioned, by the market mechanism would be regarded as unjust if it were the deliberate result of someone's intended action. According to Hayek:

Social justice can be given a meaning only in a directed or command economy (such as an army) in which the individuals are ordered what to do; and any particular conception of social justice could be realized only in such a centrally directed system. It presupposes that people are guided by specific directions and not by rules of justice individual conduct. Indeed, no system of rules of just individual conduct, and therefore no free action of the individuals could produce results satisfying any principle of distributive justice (Hayek [8], p. 69).

Of course, just because something that is not subject to human control cannot be just, that is not necessarily a valid argument for making it subject to human control. In so doing we may violate rules of just conduct. Social Justice then for Hayek is the justice of the intimate closed, face-to-face society, where people's abilities, efforts and merits can be known.

It should be noted that Hayek's objections to social justice do in fact turn upon the consequences of the implementation of scheme for social justice and not usually upon the meaninglessness of the doctrine. Of course, he hopes in exposing the meaninglessness of the doctrine that the attempts to achieve it will cease. This Hayek expressed by nothing that:

Yet it is the general belief in the validity of the concept of social justice which drives all contemporary societies into greater and greater efforts of the second kind and which has a peculiar self-accelerating tendency: the more dependent the position of the individuals or groups is seen to become on the actions of government, the more they will insist that the governments aim at some recognizable scheme of distributive justice; and the more governments try to realize some preconceived pattern of desirable distribution, the more they must subject the position of the different individuals and groups to their control. So long as the belief in social justice governs political action, this process must progressively approach nearer and nearer to a totalitarian system (Hayek [8], p. 68).

In Hayek's opinion, many of the advocates of distribution on the basis of social justice have advocated that distribution should correspond more closely to need and merit than market allocation do. Thus Hayek's views on this issue are important in understanding Hayek's views on distribution in a liberal society.

It is important to distinguish Hayek's sense of desert or merit from other meanings of the

terms. By merit he means moral merit. In matters of income distribution he maintains that the pattern of incomes in a market order should not, and probably will not reflect moral merit at all. Some economists, however, mistakenly believe that the only justification for the distribution of incomes in a market order lies in the fact that it corresponds to individual merit. An example of this is given us by Milton Friedman who argues that, "The ethical principle that would directly justify. The distribution of income in a free market society is, To each according to what he and the instruments he owns produces." (Friedman [1], p. 161).

This view is very similar to that of John Bates Clark, one of the developers of the marginal productivity theory of distribution who argued that distribution in a market economy was just because under certain condition each factor of production will earn its marginal product, its' contribution to final output (Rima [17], pp. 250~253). The difficult with this is that marginal productivity theory is only a theory of demand for particular factors, neglecting supply effects. More importantly, however, in a complex production process with products emanating from joint and cooperative activities it may be impossible to determine anyone's marginal product. For Hayek it is an empirical coincidence that the distribution of income in market economies have on occasion reflected moral merit in the sense of personal worth, effort and still.

The resulting distribution of income in a market economy, according to Hayek, reflects value, and this is quite a different thing from merit. The value of a person's services or product is determined by the impersonal forces of the market. As a result this means that in the market process a person's earnings may reflect luck or windfall gains and losses rather than any correspondence with merit.

It ought to be freely admitted that the market order does not bring about any close correspondence between subjective merit or individual needs. It operates on the principle of a combined game of skill and chance in which the results for each individual may as much determined by circumstances wholly beyond his control as by his skill or effort. Each is remunerated according to the value of his particular services have to the particular people to whom he renders them, and this value of his services stands in no necessary relation to anything which we could appropriately call his merits and still less to his needs (Hayek [7], p. 172).

Hayek also regards rewarding certain people at rates different than market rates because of the nature of their work as illegitimate. Coal miners are paid high wages because the value of what they produce is high, not because of the danger of the occupation. Other workers may earn very low wages while performing unpleasant tasks, but this is unfortunately the only means by which they can earn in income. Entertainers and sports figures and speculators may receive high incomes with little apparent effort or merit. Yet for Hayek no objection can be made on the grounds of infringement of justice.

The point of this to reinforce the fact that for Hayek, no ethical standards of any kind can be applied to situations that are the unintended consequences of human action. Praise and blame can be attached to individuals in the performance of their actions, and breaching a general rule is an responsible for the resulting distribution of income, this cannot be evaluated by standards of social justice.

Though Hayek rejects the attempts to justify the distribution of their equivalence with merit, he nonetheless defends the market distribution as desirable on the grounds of efficiency. A person's earnings merely reflect his contribution to the total output of a market economy and there is no analytical distribution to be made between production and distribution. The function of the market, therefore, is not to distribute income on grounds of merit or any other criteria but to draw the factors of production into those uses where their marginal productivity is highest. In terms of rewards for services rendered Hayek assets that :

Their function is not so much to reward people for what they have done as to tell them what is their own as well as the general they ought to do... to hold out a sufficient incentive for those movements which are required to maintain a market order, it will often be necessary that the return of people's efforts do not correspond to recognizable merit (Hayek [8], p. 72).

Thus the distribution of income is simply another of those means by which the market operates as a signaling device to transmit knowledge efficiently.

Hayek is relating the fact that market rewards do not correspond to merit nonetheless recognizes that the belief that rewards do correspond to merit has been an important argument in defense of market.

It is unquestionably true that, particularly among those who were very successful in the market order, a belief in a much stronger moral justification of individual success developed. Indeed, few circumstances will do more to make a person energetic and efficient than the belief that it depends chiefly on him whether he will reach the goals he has set himself. For this reason this belief is often encouraged by education and governing opinion But it leads no doubt also to an exaggerated confidence in the truth of this generalization and it bodes ill for the future of the market order that this seems to have become the only defense of it which is understood by the general public It is therefore a real dilemma to what extent we ought to encourage in the young the belief that when they really try they will succeed, or should rather emphasize that inevitably some unworthy will succeed and some worthy fail.....(Hayek [8], p. 74).

Thus Hayek, in effect, argues for the removal of one of the most important moral elements justifying the market order for the general public. In doing so Hayek moves the defense of liberty to higher ground by removing the end-state principle of distribution in accordance with merit or the fruits of one's labor from the liberal defense of freedom.

Hayek on the other hand does justify rewards not in accordance with merit. He does so on two grounds. The first is that :

We all owe the benefits we receive from the operation of this structure not to anyone's intention to confer them on us, but to the members of society generally obeying certain rules that nobody is to coerce others in order to secure for himself a particular income. This imposes upon us the obligation to abide by the results of the market when it turns against us (Hayek [8], p. 95).

Secondly, Hayek justifies the market distribution on the grounds that it brings about a greater use of knowledge than alternative social structures and is an indispensable condition for liberty.

The fact is simply that we consent to retain, and agree to enforce, uniform rules for a procedure which has greatly improved the chances of all to have their wants satisfied, but at the price of all individuals and groups incurring the risk of unmerited failure. With the acceptance of this procedure the recompense of different groups and individuals becomes exempt from deliberate control. It is the only procedure yet discovered in which

information widely dispersed among millions of men can be effectively utilized for the benefit of all- and used by assuring to all an individual liberty desirable for itself on ethical grounds (Hayek [8], p. 71).

It should be quite clear by now that Hayek is opposed to all end-state or patterned theories of justice. Hayek's theory is much closer to a procedural form of justice, though with some differences. One of the most important recent developments of a theory of procedural justice is that of John Rawls. How Hayek's theory relates to Rawls' still remains to be examined.

IV. Hayek's and Rawls' Procedural Theory of Justice

Rawls attempts to show that under certain specified conditions rational individuals would choose a particular set of principles to guide and restrain them in their actions. These principles are Rawls' principles of justice. The specified conditions are attained by the requirement that rational individuals should choose these principles behind a veil of ignorance. By veil of ignorance Rawls means that individuals are assumed to be ignorant of their special interests and abilities which may be rewarded in any future society. One cannot know beforehand whether one will be born black or white, to rich or poor parents, with great mental and physical capacities or not. Such men are capable of following moral rules, they are not pure egoists, but will only choose those rules that maximize their primary goods - liberty, opportunity, income and wealth, and self-respect. Furthermore, they wish to maximize their advantages and are not concerned about the position of the best-off in a future society as long as their own position is better than any alternative. They are also risk-averse.

From this description of the original position as Rawls terms it, he hopes to demonstrate by logical argument what principles would be chosen to govern behavior in a social system. The hypothetical agreement would therefore be unanimous and the principles chosen universalizable. The principles chosen, Rawls maintains, are the principals of justice. The principles that would be chosen are as follows:

- (1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
- (2) Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity (Rawls [16], p. 302).

Both principles (1) and (2) and the two principles within principle (2) are arranged in lexical order. By lexical order we mean that one principle has priority over the other. Thus consideration of liberty trump considerations of efficiency for Rawls.

Hayek has not made extensive commentary and criticism of Rawls' principles. He does relate that in the preparation of the second volume of *Law, Legislation, and Liberty* he thought to delay publication in order to justify his position on justice vis-a-vis that of Rawls. "But after careful consideration I have come to the conclusion that what I might have to say would not assist in the pursuit of my immediate object because the differences between us seemed more verbal than substantial." (Hayek [8], p. xiii).

A complete treatment of the similarities and difference between the two thinkers would occupy more space than we can allow at this point. Let us restrict our discussion to a comparison of the two viewpoints on the second of Rawls' principles - the difference principle. this is justified in as much as there arrears to be substantial agreement that both hold procedural theories of justice. As Hayek has commented,

I have no basic quarrel with an author who, before he proceeds to that problem, acknowledges that the task of selecting specific systems of distributions of things as just must be 'abandoned as mistaken in principle This is more of less what I have been trying to argue (Hayek [8], p. 100).

Principle (2) of Rawls' theory is the aspect which treats the issue of income distribution. In effect principle (2) maintains that inequality is only justified if it is to the advantage of the worst-off in society. This principle is known as the difference principle. Rawls maintains that individuals in a state of ignorance, and being risk-averse, would opt for a rule that was to the benefit of the least-advantaged just in case they turned out to be members of that group.

While Rawls would require that in order for capitalism to be a just social system it must

adhere to the difference principle as a rule. Hayek on the other hand offers the suggestion that capitalism is justified because it has the tendency to raise the incomes of the worst off.

The widespread aversion to capitalism is closely connected with this belief that the undeniable growth of wealth which the competitive order has produced was purchased at the price of depressing the standard of life of the weakest elements of society A more careful examination of the facts has, however, led to a though refutation of this belief in so far as one takes so one's test the effect on the standard of life of the large number of the toiling classes, there can be little doubt that this effect was to produce a general upward trend (Hayek [7], pp. 205~214).

And in *The Constitution of Liberty*, Hayek argued that: "the existence of groups ahead of the rest in clearly to the advantage of those who are behind." (Hayek [6], p. 46).

While Rawls argues that individuals under the evil of ignorance would accept the difference principle, a conclusion based on his assumption of risk aversion. Hayek suggests that it would be rational to choose a society where one's position was determined by accident or chance. He argues this with the proviso that the general rules of that society provide for anyone, selected at random, to improve his life prospects more than any alternative; for example, an egalitarian order.

A policy making use of the spontaneous ordering forces therefore cannot aim at a known maximin of particular results, but must aim at increasing, for nay person picked at random, the prospects that the overall effect of all changes required by that order will increase his chances of attaining his ends The aim will have to be an order which will increase everybody's chances as much as possible - not of every moment, but only on the whole and in the long run (Hayek [8], p. 114).

Rawls' theory is a theory of distributive justice which picks out a particular pattern, the one of that maximizes the well-being of the worst off, as a just distribution. Apart from saying that capitalism tends to improve the status of the poor. Hayek, when speaking of welfare, says that in a market order those who cannot earn a satisfactory income in the market can be given at least a minimum income which would advance as the general standard of living advanced. But for Hayek, this provision has nothing to do with justice- it is not owed to them as a consequence of a general rule of just conduct. The existence of

individuals who cannot earn their way in the market as a social problem, this Hayek does not deny. But in a liberal society no one has a right to such provision.

The existence of rights creates a duty to others to satisfy that rights claim. "But there can be no such right in the abstract determined by a rule of just conduct without the particular circumstances being stated which determine on whom the obligation rests." (Hayek [8], p. 102). Hayek argues that in a spontaneous order, the obligation to provide for others, with whom we have not entered into an obligation, does not exist.

Justice does not impose on our fellows a general duty to provide for us; and a claim to such a provision can exist only to the extent that we are maintaining an organization for that purpose. It is meaningless to speak of a right to a condition which nobody has the duty, or perhaps even the power to bring about. It is equally meaningless to speak of right in the sense of a claim of a spontaneous order, unless this is meant to imply that somebody has the duty of transforming that cosmos into an organization and thereby to assure the power of controlling its results (Hayek [8], p. 102).

Rawls' approach is in the tradition of the social contract. Social contract theorists hope to derive political rules from hypothetical contracts made in the absence of law and government. Hayek has long argued that the social contract view of society is essentially constructivist in nature. Whereas Rawls seems to think that the principles and rules of a free society can be determined logically, Hayek believes that such rules are stumbled upon through experience, and can never be known in their entirety. Despite this methodological difference, it is true that a Rawlsian society would resemble a Hayekian society more closely than most alternatives. Both hold essentially procedural theories of justice, and Rawlsian principles are certainly consistent with competitive capitalism. Perhaps the most common element is that just as Hayek's rules that deal with an unknown number of future instances. Rawls' principles of justice are designed for min who do not have knowledge of what abilities will be rewarded in a future social system. Thus both formulations rest on the fact of ignorance and limited knowledge as the basis of their theories.

V. Conclusion

In this paper we have attempted to analyze Hayek's arguments concerning one of the most perplexing issues of all time, the question of justice. Hayek's views on this issue are somewhat unique, though they have much in common with those of John Rawls in the sense of viewing justice as a procedural principle.

Justice, for Hayek, is a condition solely defined in the context of rules of just conduct. It is an idea which applies solely to human conduct and actions as defined by rules. But rules define to what extent we are responsible for the consequences of our actions. In Hayek's opinion we cannot be held responsible for all the consequences of our actions, only those we can reasonably foresee or know. Since the distribution of income in a market economy is an unintended consequence of thousands of individual actions justice cannot be ascertained by appeal to rules of just conduct. Thus it is not amenable to consideration of justice. In so formulating his theory of justice, Hayek illuminates the consistency of his political philosophy with our thesis. His theory of justice solidly rests upon the fact of limited knowledge.

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