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The Inadequacy of justice as foundation ethical norm: A Kenyan perspective

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Abstract

By comparing the philosophical approaches of Amartya Sen and John Rawls's theory of justice, this paper shows that some similarities are based on different rationales. It follows that any attempts to find a common ground in Sen and Rawls provide a reasonable guidance for socio-political justice and ethics. And this can only be possible if we find the common ground from two approaches. While analyzing the rationales behind the role of philosophy and theology in this process, the paper will focus on justice as commutative, contributive and distributive from a Kenyan perspective. The libertarian concept of justice and ethical normative justifications will be taken as examples demonstrating practical difficulties in the applicability of justice. Then the question of whether or not justice could be the foundation ethical norm concludes.

Keywords: philosophical foundation, justice, libertarian, solidarity, social justice, ethics, finite, finality, common good, normative justifications.

Background

There is 'no single way of defining justice and no single theory of justice that satisfies all' (Lebacqz,1986, p.9). These words from Karen Lebacqz's book, Six Theories of justice: Perspectives from Philosophical and Theological Ethics, are critical to the thesis under discussion. Questions and concerns to be examined here are about allocation of goods, powers, and opportunities, about access to decision-making processes, about fundamental respect among people, and about the basic structures of society (Lebacqz, 1986, p. 10). Issues of justice and ethics are not only about 'who gets how much of the pie? But also, what kind of pie is it to be? And, who is to decide?

To situate these questions in the context of the topic; The inadequacy of justice as foundation ethical norm: A Kenyan perspective, this thesis is divided into eight sections. First, is the abstract,

followed by the background. The question of philosophy as foundation of justice and ethics comes third. It examines various theoretical frameworks of justice. While the fourth section focuses on similarities and differences between Amartya Sen's treatise on justice and that of John Rawls, the fifth section deals with libertarian concept of justice. The argument here is that, the adequacy of justice as foundation ethical norm may well be discussed from both philosophical and political perspectives. However, the reconciliation sought between the two approaches renders such attempts practically problematic. Sixth, the article discusses conceptual and practical linkages between the various forms of justice, focusing on social justice and the common good. Seventh, is conclusion and eighth, references.

Philosophical approaches to justice: a summary discussion.

Debates about the extent to which the concept of justice could receive reasonable discussions in academic fora, have become pounce today more than ever before. There seem to be a wide acceptance in philosophic as well as political science scholarship of the fact that, the linkage between justice and other related concepts such as morality and ethics, remain philosophically founded. The conceptualization of justice and ethics today could not be adequately deciphered without reference to the shaping of the philosophic mind during the Ancient period. Without revisiting the Ionian cosmologists, during Socratic period (Kirk & Raven,1960), divergent positions on justice and truth did not deter Socrates (Roger,1933, Taylor, 1959, Santas,1979) from dying for what he held as truth. While on one hand, Platonic epistemology, psychology and political philosophy was inseparably linked to virtue, which constituted the corpus of the ideal state. On the other, Aristotelian metaphysics was founded on transcendental attributes of being. Justice being one of those attributes and therefore the measure of all cosmic – finite beings. Post-Aristotelian philosophization was witnessed by various philosophical trends - some among them mixed with spirituality. Plotinus for example developed a doctrine of Salvation in Mystical Union with God. Here the idea of God could not be adequately discussed without justice.

If there was any time witnessing the confluence of philosophy and theology, it must have been the Medieval period. Two Christian philosophic schools of thought emerged. The Franciscan as well as the Dominican schools of thought. While the Franciscan school, which was fundamentally platonic in nature was led by Saints Augustine and Bonaventure, the Dominican school, profoundly Aristotelian in nature, was championed by Saints Thomas Aquinas and Albert the Great. St. Augustine employs the assumptions of platonic epistemology as well as cosmology to develop his Christian theology and political thought. Based on those ideas, Augustine develops the doctrine of natural law, legalpositivism and justice(Whitney,1948). In his book, Socrates to Sartre:A History of Philosophy, SamuelEnoch Stumpf argument reinforces this philosophic discourse.

> For Augustine, public or political life was under the same rule of the moral law as human's individual or personal life. There is a single source of truth for both realms, and this truth he considered "entire, inviolate and not subject to changes in human life. "All humans recognize this truth and know it, for the purposes of conduct, as natural law or natural justice. Augustine considered natural law as man's intellectual sharing in God's truth, or God's eternal law. Since eternal law is God's reason commanding orderliness, man's intellectual grasp of the eternal principles is called natural law. When a political state makes a law, said Augustine, such temporal laws must be in accord with

> the principle of natural law, which in turn is derived from the eternal law-the basis of justice and ethics(Stumpf,1982,p143).

Stumpf goes on to say that

> Augustine's chief argument regarding law and justice was that the political state is not autonomous, that in making laws the state does not merely express its power to legislate; the state must also follow the requirements of justice. Justice is a standard, moreover, which precedes the state and is eternal. What made Augustine's argument unique was his novel interpretation of the meaning of justice. He accepted the formula that said that "justice is a virtue distributing to everyone his due." But, he asked, what is "due" to anyone? He rejected the notion that justice is conventional, that it will differ with each society. For him, justice was to be discovered in the structure of human nature with its relation to God. By relating justice to the moral law, Augustine argued that justice was not limited merely to the relations between human beings. The primary relationship in justice is between humans and God (Ibid, p.144).

Scholasticism marks the apex of Medieval philosophy epitomized by Saint Thomas Aquinas through his philosophy and theology. Aquinas is more concerned with idea of natural law and justice as necessary for better understanding of societal systems. Thomistic concept of the natural law is normative in Christianmoral, ethical and justice systems. As Charles G. Haines observes in The Revival of Natural Law Concepts, the conviction that there is a certain higher law, which is the basis of the validity of the rules of positive law, seems to be one of the most persistent ideas in the history of legal thought. In The Constitution of Japan and Natural Law, Bernard Inagaki argues that, in search for the true concept of natural law and justice, the point of departure must be the understanding of these concepts by common sense; in the sense of an ordinary practical judgement. That such common or popular concepts could be obtained through a comparative study of diverse concepts of natural law and justice, such as the ancient Greek and Stoic concepts, the scholastic, and modern concepts, as well as the concept of natural law in Roman law and other legal systems(Inagaki,1955, p.1).

In spite of their diversity, these concepts seem to contain certain common elements. First of all, they assert the existence of a certain higher law or measure of justice, the authority of which is beyond the will of any individuals and that of the state. Secondly, this higher law has a definiteinfluence upon the rules of human positive law inasmuch as it is their source and the measure of their validity. Thirdly, this higher law is generally considered to be universal, eternal, and inviolable. Finally, this higher law is considered to be the basis of fundamental human rights and freedoms(Inagaki, 1955, p.1).

Basing his analysis on Thomistic concept of law and justice, Inagaki argues that, the existence of natural law and justice could be established through a posteriori, anthropological or historical method as well as through an a priori, metaphysical method. To understand this discussion, we begin with the presentation of some of the anthropological or historical arguments, and then summarize the metaphysical demonstration for the existence of the natural law and justice(Inagaki, 1955, p.2).

First of all, the very universality of the belief in the existence of a certain higher law of justice, which is manifested in various legends, primitive religions, and popular kinds of literatures among peoples, strongly suggests the actual existence of such a law. For, it is reasonable to presume that any conviction which is universally accepted by human for all times has its root in human nature, and consequently has objective validity. Secondly, the fact of gradual progress in the understanding of the natural law and in the juridical recognition of the concept of natural law proves the existence of the natural law. Thirdly, the tendency towards the formation of a system of world (private) laws which necessarily presupposes a certain universal law of justice and equality indicates the existence of the natural law(Inagaki, 1955, p.2). Finally, an analysis of our ability to distinguish what is morally just from what is merely legally just suggests the existence of a certain law higher than human positive law (Inagaki, 1955, p.2).

The metaphysical demonstration for the existence of the natural law is based on the premises of the existence of the eternal law and the rationality of human beings. On this count, Inagaki argues that:

> Now, the existence of the eternal law can be established as an aspect of the creative act of the first of the first cause of all beings, whose existence is demonstrable from an observation and analysis of existing contingent beings. The rationality of man, on the other hand, or his possession of reason and free will whereby he partakes of the eternal law by way of knowledge and not merely by way of natural inclinations, can be established through an observation of his intellectual operations.Hence, the existence of the natural, which is nothing else but the rational participation by humans in the eternal law, can be firmly established on a metaphysical basis(Ibid, p.6).

From medieval times, a philosophical paradigm shift is noticed in the interaction between philosophy and the unfolding world of science. Various philosophical trends emerge. From renaissance (Walter,1961, Bouwsma, 1973) interlude championed by protagonists such as Erasmus and Luther, Machiavelli and Montaigne, to methodic science of Francis Bacon and Thomas Ho bbes(Warrender,1957,Strauss,1963). From Rationalism of Descartes, Spinoza and Leibniz to empiricism of Locke,Berkeley, and Hume(Berlin,1956). The rise of positivism by Auguste Comte and utilitarianism of Jeremy Bentham and John Stuart Mill(Burns &Hart,1982) add to this debate. These philosophical orientations would have huge influence on contemporary philosophical and political thinking. As will be later discussed, Amartya Sen's neo-empiricist-positivistic thought and John Rawls's rationalist-transcendental Thomistic thought are influenced by all these philosophical trends when developing their thesis about justice.

Some of the modern philosophers, such as Thomas HobbesWorrender,(1957),Strauss,(1963),H obbes,(1958), J.J. Rousseau (Rousseau,1978,1976,Roche,1974, Grimsley,1973), and Charles Montesquieu interpret the term natural as signifying a certain historical period or hypothetical state in which people have yet no organized social life. According to these philosophers, the natural law is called natural because it is the law which prevailed in this pre-social, natural state of human life. This kind of interpretation of natural law has been criticized by neo-scholastics, who argue that, another noteworthy error concerning the interpretation of the term natural is that of the rationalistic jurists of 18th century, such as Samuel Pufendorf, Christian Thomasius, and Christian Wolff.They proceeded to the deduction of the entire system of the natural law in an a priori manner

from an analysis of human nature, on the premise that the natural law is that which properly belongs to human nature. His position fails to take account of concrete conditions in relation to which alone our conduct and consequently its morality can properly be evaluated.

The reshaping of philosophic mind is witnessed during contemporary period with the emergence of philosophical trends such as existentialism and phenomenology. From Fredrick Nietzches's revaluation of values and all morals to the emergence of "superman" (Nietzche,1956,1959,Copleston,1975,Kaufmann,1968,Heidegger,1979) and Willard Van Orman (W.V.O.) Quine's"Ontological Relativity" to Sir Alfred Jules(A.J.) Ayer's thesis: "The Elimination of Metaphysics" (A.J. Ayer,1936). This thesis contained in his book, Language, Truth, and Logic, advances a version of the positivist's criterion of verifiability or test of the literal significance of any given purported proposition(Lindberg,2001, p.159). Ayer argues that if we apply this criterion to the various kinds of propositions often met with in philosophy, we will discover that all of the propositions of "transcendent metaphysics" are completely(Lindberg, 2001, p.159) philosophically untenable.

Ayer's criterion shares an affinity with a classic criterion of David Hume: "If we take in our hand any volume; of divinity or school metaphysics, for instance, it is important to ask, does it contain any abstract reasoning concerning quantity or numbers?(Lindberg, 2001, p.159); does it contain any experimental reasoning concerning matter of fact and existence? Ayer criticizes the metaphysical thesis that philosophy affords us knowledge of a reality transcending the world of science and common sense. That to define metaphysics and account for its existence discover the possibility of becoming a metaphysician without necessarily believing in a transcendent reality, due to many logical errors often committed. He says that one way of attacking a metaphysician who claimed to have knowledge of a reality which transcended the phenomenal world would be to enquire from what premises his propositions were deduced(Lindberg, 2001, p.159).

This discussion provides a base for the next section, which critiques the assumptions two philosophers of our time are making about the concept of justice, as a relevant theme for socio-political, economic as well as philosophical debates as to the adequacy of justice as foundation ethical norm.

Amartya Sen & John Rawls: A critique of their concept of justice

Whether justice is conceptualized and approached from an Aristotelian- Thomistic perspective as one of the transcendental attributes of metaphysical being, constituted by existence and essence as principles of identity (influencing Rawls's position) or from a historical-anthropological perspective- comprised by finite beings constituted by existence and essence as principles of individuation and differentiation - where law, ethics and justice are concrete and extrinsic and not intrinsic to society (influencing Sen's position), what is clear is that, as a concept, justice is practically problematic. The evolution of the concept of justice and its meaning has generated many theories about it. This is because justice is complex and multidimensional. The pursuit for justice political,social,economic- has sparked political debates ever since the great American and French revolutions at the end of 18th century. It is an elusive ideal, seen of in part by the claims of custom and tradition, the presence of inequalities and power struggles. But of interest is the critique by Karen Lebacqz, who presents six theories propounded by various philosophers. One of them –utilitarianism whose relevance today,continues to elicit divergent views.

Lebacqz argues that whatever its shortcomings, classical utilitarianism sets an important agenda for other theories of justice. The strengths of utilitarianism in the arena of justice are two: (1) it provides-in theory at least – a concrete method for making difficult decisions;(Lebacqz,1986,p.32) and (2) it recognizes the importance of happiness or the general good as part of a theory of justice. But also utilitarianism presents problems for justice: it appears not to honor individual persons(Ibid, p.32) and it has implications for the common good.

John Rawls' conceptualization of justice

The task that John Rawls sets himself in A Theory of Justice is to propose an alternative theory of justice that avoids the weaknesses of utilitarianism while demonstrating similar strengths(Rawls, 1971, p.11). He hopes to construct a theory that takes persons seriously and does not risk their well-being or right for the sake of the good of others, but also offers a concrete method for making the most fundamental decisions about distributive justice. The result is "justice as fairness," which has its roots in two places: the social contract theories of Locke and Rousseau, and the deontology of Kant. Rawls' aim is to use the concept of a social contract to give a procedural interpretation to Kant's notion of autonomous choice as the basis for ethical principles. Principles for justices (and moral philosophy in general) are to be the outcome of rational choice (Rawls, 1971, p 39).

For Rawls, the choices made by each individual in society ought to be based on certain knowledge and awareness of the availability of what is claimed. Because ignorance would give them unfair advantage in any bargaining position and in a choice of a range of principles for the distribution of rights and duties and of the benefits and burdens of social cooperation (Lebacqz,1986, p35). These principles govern the basic structure of society – the network of institutions that determines to a large extent what their life chances will be. People choose a "well-ordered society," that is a society in which they can expect that the concept of justice chosen is public and that people comply strictly with its requirements (Rawls,1971, p.8). Rawls note explicitly that he is looking for an "ideal" situation of justice because the "nature and aims of a perfectly just society is the fundamental part of the theory of justice" (Rawls,1971, p.9). Taking this "ideal" approach has the advantage of avoiding questions about compensatory or reparative justice. It will be a choice of principles.

Rawls argues that under such conditions, the parties choosing in the original position would choose two principles of justice. First, they would be concerned to secure their liberty, and they would establish a principle to that effect:

> Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all (Rawls,1971, p.302).

That is, they would separate out basic human liberties and secure them against any unequal division. Rawls argues that except under very stringent circumstances, the parties in the original position would never want to permit any compromising of basic liberties for the sake of other social or economic benefits. Thus, not only is equal liberty the first principle, but it stands in serial ("lexical") order, so that liberty can be restricted only for the sake of liberty and not for the sake economic or other social gains (Rawls, 1971, p.302).

Rawls distinguishes two circumstances under which liberty might be limited. A less extensive liberty for all is sometimes permissible in the interest of strengthening the total system of liberty. A less than equal liberty must be acceptable to those with the lesser liberty presumably because it strengthens their future liberties. Rawls does acknowledge that under circumstances extreme duress, there may be times when people would prefer greater economic gains to liberty: however, these are only for situations of dire stress (Rawls, 1971, p.542). The final formulation of Rawls' second principle of justice for institutions is as follows: Social and economic inequalities are to be arranged so that they are both:

a) to the greatest benefits of the least advantaged, consistent with just savings principle, and
b) attached to offices and positions open to all under conditions of fair equality of opportunities(Rawls, 1971, p.302).

The two principles form the core of Rawls' theory of justice for the basic structures of society. The two are a "special case" of a general concept of justice. The general concept is that social values "are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage(Rawls, 1971, p.62)." In contrast to the utilitarian "greatest good" criterion, Rawls' conception requires that each person benefits from any social inequalities. The requirement that each person benefit becomes the requirement that the least advantage benefit under the stipulations of the original position. He suggests that the utilitarian approach requires too much identification with the plight of others (Rawls, 1971, p.198), and that social cooperation requires reciprocal advantages (Rawls, 1971, p.33).

The full theory, therefore, takes the form of a fundamental affirmation of liberty and a limited acceptance of certain inequalities, judged from the perspective of their impact on the position of the least advantaged (Rawls, 1971, p.110-117). These principles are those that would be chosen by autonomous individuals situated in a "fair" setting. They are thus, in Rawls' view, "categorical imperative" expressing the autonomy of "free and equal rational beings"(Rawls, 1971, p.253). Having reviewed what constitutes the corpus of Rawls' concept of justice, it is important to present the main ideas of Amartya Sen's conception and position.

Amartya Sen's position on justice

As a long-time contemporary of Rawls, Amartya Sen attempts answers to one of the fundamental questions as to what has centuries' pursuit of justice yielded practically across the world? His book *The Idea of Justice*(Sen, 2009) provides a challenging alternative approach to this question. Sen, unlike some scholastics and rationalists in the past, does not think we need a conception of an ideal world in order to improve the one we live in. One of the recurring themes of the idea of justice is to contest the assumption that a theory of ideal justice is either necessary or desirable. Much of his book is a critique of John Rawls. While Rawls' work has shaped academic debates for decades it has had less impact on the political scene, because his theory leaves little room for politics. For Rawls, justice is a unique set of principles, which reasonable people would choose to ensure impartiality. Once these principles have been chosen all that remains is to set the right institutions in place. Conflicts about the scope of basic liberties and the distribution of resources will be settled by the application of justice, which is a legal rather than a political process.

This is a utopian conception of how any society should operate. But Sen's criticism has least to do with the lack of realism in Rawls' theory. It is the very idea of the presuppositions of perfect society that he questions. The reasons why society may be unjust are many and various; there is no reason to think that there is a set of just principles that everybody will accept. A just society will accord its members a range of basic liberties but also the capabilities needed to make use of them. Borrowing Isaiah Berlin's terminology, it will protect both negative and positive freedoms(Berlin,1956). More often than not reasonable people will always disagree as to the priority list of which of these freedoms are most important.

Again, though Sen argues strongly that justice should have a global dimension, what is clear is that people will reasonably disagree about how wide the scope of particular requirements of justice should be. Hence instead of pursuing what he calls "transcendental institutionalism" (Sen,1999, p.5)-the attempt to design an ideally just framework for society- Sen proposes a comparative approach as an alternative, which recognizes the pluralistic demands of justice while maintaining the struggle for a less unjust world.

To show why those who pursue justice do not need an ideal of a perfectly just society, only a view about what world make the world a more just place. The idea of justice is a major advance in contemporary thought. The book attempts debunking rationalistic philosophies that claim to formulate principles of justice to which everyone is conditioned to subscribe. It is one thing to accept that the demands of justice are plural, another to recognize that they can be rivals – and not only in the sense that they must be ranked on a scale of comparative urgency because they cannot all berealized at the same time. At this point Sen argues that, thinking about justice, presents a dialectical situation as first, we are unlikely ever to agree on what is a "just society."
The idea of justice is multifaceted, multidimensional, not smooth-cut. And to illustrate the "pervasive plurality" of the idea of justice, Sen presents an allegory of three children rivaling over a musical instrument-the flute. The first claimed that the flute belonged to her on the basis of her expertise and ability to play it; the second demanded it on the basis of his poverty which had denied him ownership of even a toy; the third wanted her long labor of making it rewarded, and that denying her ownership of it, would be unjust(ibid, p.13). This proves how practically problematic and dialectical the application of justice could get.In actual conflicts justice and injustice are not always as distinct and opposed as they would seem to be. Quite often they are closely intertwined.

Justice as commutative, contributive and distributive: need for orthopraxis- the Kenyan case.

The centrality of the notion of justice in thoughts of Sen and Rawls could be encapsulated presented the main ideas and issues emerging from two scholarly approaches and reinforced by the debates around social justice and the common good, and especially the conceptual and practical nexus made between them. Both scholars are concerned with the minimum conditions which make life possible in the community. This section concretizes these conditions.

In order to attempt to define social justice it is important to mention that this term is closely related to other terms: commutative justice, contributive justice and distributive justice. Commutative

justice concerns the private exchange between individuals or between groups in a purely private and non- political arrangements. The contracts are made freely and fairness in exchange is called for. The element of freedom here is very important as it brings in the idea of free choice in entering contracts. Distributive justice deals with the right of individuals to have some share in the goods of society which we call the common good. Even the invalid and the children are entitled to share in this common good, including cases where their contribution could be non- existent. The state has the obligation to guarantee this participation by all in the common good. Distributive justice establishes strict duty on society to guarantee these rights.

Having thus described its co-related concepts, social justice, which unlike commutative justice, is a political virtue; is based on the form of interdependence which occurs through the state. Citizens have an obligation mediated through political obligation to contribute to the common good so that distributive justice can be effected for the benefit of all in the society. In otherwords, "social justice concerns institutionalized patterns of mutual action and independence that are necessary to bring about the realization of distributive justice." This definition of social justice essentially equates social justice to contributive all that is necessary for the common good. Social justice covers the entire process from commutative justice but at institutional level.

The logic behind the entire process is that if each contribute to the common good, distributive justice will take place as each will draw from the common good and this then leads to commutative justice in a just manner in which there will be no marginalization. Marginalization here would mean only a few individuals would monopolize the free exchange at commutative level. In this sense social justice adds to the classic notion of commutative justice in which it was a question of willing buyer, willing seller. This is not enough to say that justice had been done.

This concept of social justice can help shape the Church's contribution to the alleviation of poverty in Kenya in the sense that, this concept calls for fair distribution of the country's resources. Kenya is a country where a great number of the population is languishing in abject poverty while the minority has monopolized the goods that should be common to all, but yet upholds exudes just, moral and ethical principles. Some of the religious systems like Christianity hold that:

> Solidarity is not "a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far. On the contrary, it is a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all" (John Paul II,1987, no.38).

Social justice strives to ensure that the government works out modalities of ensuring that each contributes to the common good thereby obliging it to see to it that the common good is available to all resulting in commutative justice. If social justice were to be enforced in this country equitable or fair distribution of the goods would ensure consequently that the lot of the poor would improve their standards of living, hence enhancing the government's contribution to the alleviation of poverty. Having engaged with the people at the heart of poverty of Kibera and Mathare slum areas, I know the great chasm that separates the rich and the poor in Kenya. Social justice therefore gives a base to what the continually cries out on poverty in this country. Kenya is not a very rich country,

but it certainly has enough resources for each person to come above the poverty line, but because distributive justice is not functioning well, the gap between the rich and the poor is so big that there is therefore minimal contribution to the common good. And at the level of commutative justice, marginalization comes to play and unfairness is dealt with at person to person level and at group level.

Rawls description of a just society as one whose basic structures allows the most extensive basic liberty and at the same time takes care of differences, presents a nuance in the specific considerations of justice. While distributive justice places a strong emphasis on the individual's merits, the reward must also take into consideration other principles, notably equality and needs. Most liberals stress that individuals are responsible for the matters over which they have control and would argue that no society can afford to provide complete equality of circumstance (Carson,2002). The work of Amartya Sen tries to find a middle ground between ignoring and equalizing such circumstances. He argues that because people have inherently different capabilities, arising from natural or social differences, they cannot take up equality of opportunities to the same degree (Amartya,1992, pp.39-55, Knof,2000). In essence, he reminds us to think about individual and community capacity building as a pre-condition to reducing human suffering that results from the inability of some to satisfy their own needs.

These principles have been held up as guides toward making substantial changes in our institutions and practices. Miller notes that:

> To achieve social justice, we must have a political community in which citizens are treated as equals in an across-the- board way, in which public policy is geared toward meeting the intrinsic needs of every member, and in which the economy is framed and constrained in such a way that the income and other work – related benefits people receive correspond to their respective needs (Miller,1999, p. 250).

From the above analysis two fundamental questions emerge. First, how would one categorize the idea of justice under the libertarian conception of the world? And second, what role has the state to play in relation to individual justice and ethical normativity?

Libertarian concept of justice and ethical normative justifications

The modern social and political theory of libertarianism derives its originality from its radical commitment to the defense of individual freedom. Libertarians attach specific rights to individual freedom and attribute to the state the duty to protect them against any interference. It is obvious that individualism is an essential component of the libertarian system since individual rights are given absolute primacy, and from an anthropological point of view, the human being within the society is conceived as a monad. Is there any room for justice and ethics in such a system? Does it respect the essential social nature of human beings (Lebacqz,1986, p.67, Sen, 1999, p. 91)?

Given the evident divergence of perspectives between libertarianism and ethics, we are forced to ask if the libertarian concept of justice can be reconciled with ethical principles. In other words, can a true libertarian be upholding justice and ethical norms? Such a question is not neutral for it already

presupposes that the reconciliation sought might be difficult. It is actually the task of this section to clarify the terms of this difficulty and evaluate its genuineness.

Some of the basic distinctions of libertarianism as a theory of human freedom, is its refutation of determinism. It is 'the thesis which attempts to vindicate the freedom of the will and responsibility for action, by denying the principle of determinism at least in the case of some spheres of human activities'(Urmson,1960,p.214, Anderson, 1981,pp. 391-404). This form of libertarianism asserts that our in-built character does not determine our decisions and actions in an absolute way. We are therefore sovereign authors of our actions and should be held responsible for them.

The second meaning of Libertarianism, the one we are using in this paper, is political and philosophical. It is a variant of Liberalism. "Liberalism is a political theory of limited government, providing institutional guarantees for personal liberty" (Rosenblum,1989, p.5). Its father is John Locke, the 17th century English Philosopher who was the first to develop the notion of minimal state with regard to the primacy of individual freedom. Today, classical liberals, also called libertarians (Reiman,1990, p.238), (Hayek, R. Nozick, 1974) are opposed to welfare liberals or liberal egalitarians (J. Rawls,1971, R. Dowrkin). The formers defend the free market and the minimal state whereas the latter hold that a limited state interference with the market mechanisms is necessary for social justice.

There are also variants of libertarianism but what binds them together is the common commitment to the defense of the inviolability of the natural rights of individuals, especially the right to freedom, the right to life and the right to private property. According to J. Hospers, libertarianism is:

> The doctrine that every person is the owner of his or her own life, and that no one is the owner of anyone else's life: and that consequently every human being has the right to act in accordance with his or her own choices, unless those actions infringe on the equal liberty of other human beings to act in accordance with their choices (Hosper,1984, p.17).

It follows from the above definition that concepts like self-ownership, freedom of choice, individual rights, and equal liberty are fundamental to the understanding of libertarianism. I am the master of my life and the only limit to my freedom is the equal right of the other to the inviolability of his or her realm of freedom.

As mentioned earlier, private property is one of the fundamental natural rights in the libertarian system. Economy is concerned with the production, circulation, and acquisition of goods. For libertarians, the only economic system compatible with the inviolability of the right to private property is the free market economy where individuals are free to make transactions as they wish without the interference of the State. That, one needs the right to freely dispose of personal holdings in order to plan the future in pursuit of his or her conception of happiness implies that, the right to private property is a necessary condition for the exercise of one's freedom. R. Nozick, one of the contemporary radical libertarians questions the neutrality of the notion of 'distributive justice' and makes an apology of a free society for free individuals. Within the framework of his 'entitlement theory', he writes:

> There is no central distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of in the voluntary exchanges and actions of persons (Nozick,1974, Bonevac,1992, p.425).

Libertarians list among violations of private property actions like confiscation, nationalization, robbery, fraud, abusive taxation, and any other form of forced expropriation. In such a free market society, what then is the role of the State in the administration of justice? Central to the libertarian theory is the concept of 'minimal state' as opposed to totalitarianism. As R. Nozick puts it, "the minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights"(Nozick,1974). Minimal here refers to extent of authority and power attributed to the state. It defines the role that the state is supposed to play with regard to rights of individuals. How minimal should the role of the state be? J. Hosper says "the only proper role of government, according to libertarians, is that of the protection of the citizen against aggression by other individuals. The government, of course, should never initiate aggression; its proper role is as the embodiment of the retaliatory use of force against anyone who initiate its use' (Hosper,1984, p.24).

The role of the State is therefore limited to the protection of individuals against internal and external aggressors, so that each one can manage personal life in security. Beyond these judicial and security functions, the state has no right to protect an individual against himself, for this will amount to interfering with one's private life. Each one being the owner of personal life, and thereby, of the product of one's labour or transactions, the state has no redistributive function with regard to a property justly acquired. From the libertarian point of view, "private property is viewed as part of its owner's freedom. Any attempt to limit people in the use of property they have accumulated without force or fraud amount to slavery and is for that reason unjust" (Reiman,1990, p.238).
Following the steps of Adam Smith who strongly advocated the free market ideology(Smith,1977), libertarians also believe that market natural mechanisms will automatically take care, and even better than the state, of the regulation and allocation of goods. According to (Nozick,1974) there is only one exception to the above rule of the non-interference of the state with economic processes. He argues that redistribution policies are justified if and only if they aim at rectifying past injustices. Otherwise, they violate individuals' right to private ownership.

Justice: foundation ethical norm?

We have established from the preceding sections that, the concept of justice is complex and dialectical. The central question in the present section discusses the implications this dialectical complexity and divergence of perspectives on justice, have for foundation ethical norm.

Can the normative justification of the conception of justice as foundation ethical norm rely on diverse political, philosophical and cultural approaches discussed above? Classical universalism may suggest an affirmative response to this question on the basis of metaphysical-transcendental suppositions challenged by Amartya Sen. Without being reductionist in this case, the level at which justice could become not only foundation ethical norm, but also criteria for other normative

justifications of systems, structures and policies, remains problematic.

From the above discussion, it emerges that, justice has been conceptualized differently because of its dialectical nature, making its scope as foundation ethical norm quite narrow and relative. To adopt such a dialectic approach to justify a universal foundation of liberty and freedom, whilst considering the demands for their promotion in international order, becomes fundamental to this critique. The question is: what should be the starting point for discussions and normative justifications of justice as foundation ethical norm? Liberties, freedoms or human rights?

For instance, the controversy of a philosophical justification of universal human rights lies in the difficulty of isolating the philosophical conception of rights from a particular context of manifestation, be it a state's legal system, community's norms or other forms of collective legitimization, and providing a universal foundation for it. Does this process require a comprehensive moral-ethical theory which might ultimately require an ontological, absolute foundation? This point is problematic as already indicatedabove from Sen's criticism of Rawls conception of justice and human rights.

As Rawls underlines in his Law of Peoples, human rights do not depend on any particular comprehensive moral doctrine or philosophical conception of human nature. An attempt to justify them from a moral perspective would require a metaphysical foundation upon which hierarchical societies might dispute. Moreover, it would require a binding theory of "comprehensive" ethics that would hardly obtain a generalized consent in pluralistic societies. Therefore, Rawls claims that human rights should rather be conceived as expressing basic standards of well-ordered political institutions that belong to a political society of peoples (Rawls,1993, p.68).

There is therefore need for a deeper theoretical investigation of the possibility of justice becoming foundation ethical norm that would have a global applicability.This requires a new paradigm emerging from deconstruction of traditional conception of justice and ethics.

Conclusion

The concept of justice is not new. It has been reflected on by philosophers, theologians, political scientists, moralists, ethicists from time to time. This thesis critically evaluated the evolution of the concept of justice from ancient period to contemporary age.The influence of Christian thinking on modern conception of justice cannot be overstated. The critique of John Rawls and Amartya Sen's conceptualization of justice reveals how complex it is. Social justice demands commitment to the common good. From a libertarian perspective, justice means absolute freedom from determinism. But of importance, is the need to rethink and conceptualize justice and ethics.

References

Amartya, Sen. 2000. Inequality Reexamined. New York: Russell Sage Foundation (2009). The Idea of Justice. London: Penguin.

Anderson, L.S. 1981. The Libertarian Conception of Freedom. In International Philosophical Quarterly., Vol. 21. No.4.

Ayer, Alfred Jules. 1936. Language, Truth, and Logic. 2nd edition, 1946.London: Victor Gollancz.

Barry, B.1989. Theories of Justice.California:Harvester-Wheatsheaf.

Berlin, Isaiah (ed). 1956.Age of Enlightenment: The 18th CenturyPhilosophers.New American Library of World Literature,Inc. 1961.The Empiricists: John Locke, George Berkeley, David Hume. New York: Dolphin Books,Doubleday &Company, Inc.

Bonevac,D. 1992. Today's moral issues. Classic and contemporary perspectives. Mountain View,California: Mayfield Publications.

Bouwsma,W.J. 1973. The Culture of Renaissance Humanism. Washington: American Historical Association.

Burns, J.H., & Hart, A.L.A.1982. An Introduction to the Principles ofMorals and Legislation. London: Methuen.

Copleston, F.1975. Friedrich Nietzsche, Philosopher of Culture. New York: Barnes &Noble,Inc.

Grimsley,R.1973. The Philosophy of Rousseau. Oxford University Press: Fair Lawn.

Haines, Charles G.1930. The Revival of Natural Law Concepts. Cambridge: Harvard University Press.

Heidegger, Martin. 1979. Nietzsche Vol. 1: The Will to Power asArt. San Francisco: Harper & Rowe Publishers, Inc.

Hobbes, Thomas. 1958. Leviathan.New York: The Liberal Arts Press,Inc.

Hosper,J.1984. The Libertarian Manifesto.In J.P. Sterba, (ed).Morality in Practice. Belmont: California:Wodsworth Publications.

John Paul II. 1987. SollicitudoReiSocialis.

Kaufmann,W. 1968. Nietzsche, Philosopher, Psychologist, Anti-Christ,3rd edition. Princeton: Princeton University Press.

Kirk,G.S., and J.E.Raven.1960. The Pre-Socratic Philosophers. Cambridge University Press, New York.

Lebacqz, Karen.1986. Six Theories of Justice: Perspectives from Philosophical and Theological Ethics. Minneapolis: Augsburg publishing house.

Lindberg, Jordan J.2001. Analytic Philosophy: Beginnings to the Present.London: Mayfield Publishing Company.

Nietzsche, Friedrich.1956. The Birth of Tragedy and the Geneologyof Morals. New York: Doubleday & Company,Inc., Garden City.

Miller,D.1999. Principles of Social Justice.Cambridge, MA:Harvard University Press.

Nozick,R. 1974. Anarchy, State, and Utopia. New York: Basic Books.

O'Neill,O.2000.Bounds of Justice.Cambridge:Cambridge University Press.

Pater, Walter.1961. The Renaissance. Cleveland:The World Publishing Company.

Smith,A.1977. The Wealth of Nations. New York: Penguin Books.

Stumpf, Samuel Enoch.1982. Socrates to Sartre: A History of Philosophy. New York: McGraw-Hill

Book Co.

Rawls, John.1971. A Theory of Justice. Cambridge, Mass: Harvard University Press.

Reiman,J. 1990. Justice and the Modern Moral Philosophy. New Haven: Yale University Press.

Rogers, A.K. 1933. The Socratic Problem. Yale University Press: New Haven.

Rosenblum,N.L, (ed). 1989. Liberalism and the Moral life. Cambridge (Massachusetts): Harvard University Press.

Rousseau, Jean-Jacques.1978. On the Social Contract,with Geneva Manuscript and political Economy, trans.Judith R. Master, St. Martin's Press, Inc., New York. 1976.Social Contract, including Discourses. New York: E.P. Dutton & Co., Inc.

Roche, K.F. 1974. Rousseau, Stoic and Romantic. London:Methuen &Co.,Ltd.1959.Beyond Good and Evil. Chicago: Henry Regency Company.

Taylor, A. E. 1959. Socrates. New York: Doubleday & Company,Inc.

Strauss,Leo.1963.Political Philosophy of Hobbes.University of Chicago Press. Chicago.

Urmoson, J. O, ed. 1960. The Concise Encyclopedia of Western Philosophy and Philosophers. New York: Howthorn Books Inc.

Whitney,Oats J(ed).1948. Basic Writings of St. Augustine. New York:Random House,Inc.