Context of Justice: Rethinking the Notion of Balance and Reciprocity

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ABSTRACT: The hermeneutics of justice spans across development, economics, government and socio-political rights. Its conceptualization and utilization for divergent purposes however creates an enigma that fundamentally hampers its application. This paper creates a discourse around the context and content of justice by utilizing Rainer Forst's *Context of Justice* as a framework in interrogating the debates between the Liberal and Communitarian propositions of the self and community respectively. It envisages a midpoint between these dissenting views and concludes that since the communitarian thesis encounters problems with its approach at submerging the rights of the individual within the communal structure, justice can only be effectively responded to and applied within an intersubjective context that not only resonates with but also synchronizes the offerings of liberalism with community without being incongruous.

KEYWORDS: Justice, Liberalism, Communitarianism, Constructivism, Rights, Self.

INTRODUCTION

To tenant that justice is a concept universally comprehensible will be too close to stating the truth even when it is not so applied. The idea of justice is often utilized in representing the need to create a sense of equitable distribution of resources within a society. Sometimes, it is utilized as a principle towards ensuring that social and economic rights are constantly guaranteed through a fair distribution of benefits and punishments. In most cases, justice is essentially qualified by a measured sense of transparency on the part of governments. More importantly, it is assumed that social institutions must bring it, that is, justice, into the fray while interacting with individuals in the society or state.

On the peripheral, justice is to be applied and guaranteed for the sake of the society and the benefits of its members. When premised on the idea of a fair distribution of social rights and its attendant responsibilities, it is presumed that when benefits and punishments are appropriately dispensed then there is justice. It is also assumed that giving commensurate punishments and even, reprehensions that will help deter members of the society with dispositions to criminal activities, is justice. That justice is served when individuals commit any form of crime and they are punished accordingly.

These opinions and notions of justice stops short of addressing critical issues underlining how justice plays the most germane role in the sustenance of societies. For instance, these notions are often oblivious of the question of how justice can encumber the actualization of the 'self' within societies or even, that the polysemous interpretation of justice within communities can amount to the creation of a sense of injustice when the will of one is subsumed by that of others, to mention but two.

These assumptions of justice mentioned above exempt inadvertently, the very idea that the society, through its institutions, is unconsciously set up to make justice elusive if it fails to conclusively understand the place of the individual.

In earnest, this paper adopts Rainer Forst's *Context of Justice* in an attempt to unshackle the comprehension and deployment of justice from the unilateral, over-arching and somewhat monolithic descriptions that fail to stimulate and situate its meaning and practice appropriately.

OBJECTIVES OF THE STUDY

1. To investigate the core arguments of communitarian and liberalist notions of justice.
2. To contribute to the debates on moral universalism and contextualism as fundamental to justice.
3. To create a context for the conceptualization and deployment of justice.
4. To extend Rainer Forst's constructivist approach as an integrative notion of justice.

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STATEMENT OF THE PROBLEM

Modernist representation of justice is reinforced by a departure from the Kantian and Rawlsian dispositions. These representations further widen the lacuna by advocating for the sake of the individual or the community exclusively. It places too much premium on the pedagogy of liberalism, legality or communitarianism to the detriment of the self as an integral part of the society.

For context, Communitarians posit that justice must grow generically out of a community as a result of a time-tested process indigenous to it thereby resonating the offerings of Jean-Jacques Rosseau's situation of political power and sovereignty within the society in a social contract that binds all and sundry. Liberalism on the other hand, is explained as a cognitive attempt to portray the individual as decidedly disconnected but often unencumbered by the ethical standards of the society thereby determining justice as counteractive to the exercise of rights and priviledges.

STATEMENT OF THESIS

The content and context of justice is underpinned by the determination of what individual rights are. Hence, the constitution of the self, community and the determination of the extent to which legality can be stretched to accommodate the nuances of the individual and the society without breaching the moral fabrics of the state, is what justice is.

LITERATURE REVIEW

To start with, the task of this paper includes the examination of the debate between two schools of thought. It seeks to interrogate how the discourse on the establishment of the notion of '*self*' and its independence of the society can be comprehended against or in correlation with the standpoint of communitarianism within the context of justice and morality. It reviews how Rainer Forst (2002) interrogates the constitution of the nature of these propositions specifically against the backdrop of Immanuel Kant's deontology and John Rawls attempt to build a theory of justice exclusive of this foundation. The research highlights arguments on the veracity of Rawls' interpretation of Immanuel Kant and more importantly, his claims that disputes the notion of the state of nature as one typified by an 'inconsiderate self-centeredness'[1] depraved of any idea of justice. Rawls exposes a bid to project an integrative notion of the self within the whims of the society and. Here, he champions a theoretical inclination for reconstructing the individual or self as intersubjective and unable to interact appropriately within a society and as such attains its utmost goal of morality and subsequently justice without necessarily needing the supportive structure of the community.

In his critique of Rawls, Forst however, explains that 'the unclarity concerning the nature of the self-reflective process is also mirrored in the problem Sandel has in providing for the possibility of criticizing a community by the self whose identity is constituted by this very community'[2]. By this, Forst explains that the individual is intrinsically connected to the community in such a manner that his sense of justice cannot be evolved without the notion of communal wellbeing in the background.

Unlike Sandel, Forst points to the fact that Rawls proposition is highlighted by an attempt to strike a balance between 'social constitution of the individual and the independence of that same individual in making justice a priority for himself'[3]. He explained further that a conglomeration of individual cooperation is what begets the communal sense of justice within a community. Therefore, when an individual or self wills justice, his will cannot be in negation of what the community wills because the idea of justice within this context presupposes his craving for a just society.

It is apt to acknowledge that liberalists argue that the communitarian proposition of justice precludes a restraint on the individuality of the self. It is subsequently explained away by Sandel that the encumbrances the community foists on the individual becomes an attack on liberalism because it downplays the import of fundamental human rights since the individuality of the self is subsumed within a plethora of dissenting voices that ultimately denies the individual his rights of self-determination.

Rainer Forst engages the extant arguments on the debate or dispute about 'the priority of individual rights over communal conceptions of the good' [4]. He explained that if the law in the determination of what is just, can be neutral by wangling its way in between individual liberty and communal interests while also hoping to conceive justice in the best way, then there is a possibility of a complementary relationship between the two opposing viewpoints.

He draws a connection between Dworkin's arguments and Ackerman's philosophical justification of the liberal theory of justice by admitting that both positions share a notion of equality as the foregrounding basis for the determination of what is just. Unlike Dworkin (1978), Ackerman (1980) proposed the need to concretely determine the criterion for which law can assume neutrality by highlighting the different ways the idea of the neutrality of the law is deployed within the debate. Forst argues further that ethical values can in principle, become the basis for general norms or laws, but adds that this will only be tenable if these values are subjected to a different mode of validation. Thus, he explains that for the position of the liberals to become tenable, it must demand that for neutrality of law to be in place, social order must be capable of explaining itself at the tribunal of each person's understanding.

While highlighting what determines neutrality of law, Forst says 'that law is always the law of a particular political community and the subject matter of citizen's political discourse'[5]. It is however worthy to note that his description of liberalism as a political theory which has been developed over three centuries, highlights the essence of freedom from political tutelage and the need for tolerance and the justification of ethical values by general consensus which appears to lead back to a notion of communitarianism. Therefore,

it is correct to state that liberal principles can be misunderstood as norms that are justified by a general consensus among those who live according these norms, in this case, the individuals. In my opinion, this can only be tenable in the sense that ethical values of an individual precede the evolution of general norms considered requisite for citizenship in a state or membership of a community. In relation to the guarantee of rights, Friedrich Hegel posits that the task of reconciling the moments of generality and subjectivity without abrasion precludes justice. He explained that the task of reconciling the two apart from being fundamental to the creation of just society, also runs through the course of establishing a context for justice without unsettling the balance between the self and the community.

For him, this task in all its essence, underscores the debate on the praxis of democracy, that is, ensuring that individual rights do not relegate collective good to the background. He argues that it is in fact, intricately intertwined with the notion of justice its entirety. Hegel submits that this task is unfortunately made difficult by the fact that liberalist push the boundaries of 'self-affirmation beyond the tolerance expected (prescribed) for social cohesion and democracy'[6].

On the background of the aforementioned, Forst explores the plausibility of the ethos of democracy where citizens conceive of themselves as members of a political community and bear responsibilities in that community without playing subordinate roles or being subject to the denial of basic individual rights. The critique further ideates the notion that 'communitarianism conceives of citizenship as being ethically constituted and characterized by certain virtues oriented towards the common good while showing that liberalism on the other hand, comprehends citizenship as the primary legal status of equal liberties'[7]. This further accentuates the lacuna between the propriety of placing individual rights above the collective good of the community.

Going forward, it becomes evident here that Forst strives to draw a connecting line between the minimal assumptions of the liberalists about the primacy of individual rights and how reciprocal assurance of these rights guarantee democracy. He suggests Herbamas' proposition of 'ethical self-clarification'[8] as what legitimizes the existence of political communities with adequate recompense to the recognition of the self. From this, it appears that Forst's constructivism pinpoints liberalism as a 'self-undermining'[9] theory thereby undermining the potency of his attempt to evolve a common ground in the comprehension of justice. It is noteworthy too that Forst presented an analysis of four political models shared equally between the Liberalists and Communitarians. The two liberal models are Larmore's '*Modus Vivendi*'[10] and Rawls' '*Overlapping Consensus*'[11] while communitarianism has '*Substantivism and Republican*'[12]. Forst wittingly explore how these theories address the core concerns of the discourse in this chapter. He shows that with *Modus Vivendi*, Larmore is unable to discuss his position in an argumentative dialogue thereby debarring his proposition from reaching a productive and fair compromise upon which consensual agreements can be consummated. This unfortunately, further highlights the problems and inadequacies of the liberal theory according to Forst.

Rawls *Overlapping Theory* on the other hand, is shown by Forst to represent a 'skeptical theory of morality'[13]. He explained that the theory conceals the fact that 'reasonability' and 'truth' are not necessarily of the same value when it comes to ethical evaluation. He concludes that Rawl's conception amounts to a private use of reason with political-public intent as it were, not to a truly public discursive use of reason because it is both too demanding and too undemanding for citizens in a cognitive respect. He submits that Rawl's conception of the citizen is 'thin' as long as it highlights social pluralism and relates the overlapping consensus solely to political principles and it only becomes formidable when it visualizes political virtues that extend far enough to permit and advance the different principles of social justice within communities. He thereby foregrounds his bias against Liberalism.

On the other side of the divide, Forst claims that the *Substantivist* and *Republican* arguments project the central theme of the communitarian position that political communities must be anchored on a culturally integrated ethical consciousness closely-knitted to the ideals of democracy. He argued that it 'pummels the liberal theory's 'bureaucratic individualism as lacking the ethos of political communality'[14] which is *sine qua non* for common good. Forst substantiates this position by arguing that the Aristotelian, Hegelian and Rousseauian motifs flow together in their critique of the liberal model as an exhibition of 'public purposelessness'[15].

Although, he claims that there are distinguishing features between a substantivist and a Republican-Participatory communitarian theory which determines the ethos of a democratic community in each case differently, he submits that they are both ideal crystallisations of the communitarian approach in their articulations and practices of justice, hence, preferable to the liberalist approach.

Summarily, Forst explores arguments from the likes of Hegel (1967), Sandel (1982), Walzer (1983), Marshall (1992) and more pertinently, a counter-critique of Rawls notion of justice to draw out these three essential points for the conception of justice explained as follows

1. The difference principle which can be interpreted on the basis of procedural principle of general justification, that is, social inequalities have to be justified to the social groups that benefit least from a society's wealth.

2. A proceduralist theory can provide not only arguments for this procedure of general justification but also substantive viewpoints and arguments for social rights; for they are necessary for the equal worth of individual liberty rights or political participation. They are rights for the realization of rights and are not to be separated from them. They prevent economic power from becoming political power, and avert social and political exclusion.

3. In justice discourses, finally, it is a matter of the self-referential determination of citizens, what it means to be a citizen, is to be a full member of the political community[15] without which the citizen can only lay claim to rights or justice in a void.

CONTEXTUALISM AND UNIVERSALISM: A SYNTHESIS

This section extends the debate between liberalism and communitarianism by focusing on the resolution of the debacle and how the notions of the ethical person who is a product of the community and the legal person constituted abstractly, can relate complementarily and not competitively. Here, the paper begins to lay the foundation of the constructivist thesis which apparently, extends the debate on the *Context of Justice* beyond the narrow constraints of these two contending theories.

To secure a midpoint between the two dissenting positions, the paper drives toward a theory of justice grounded on a general legitimacy that avoids both the liberal minimal and the communitarian maximal conceptions of political community and a differentiated conception of citizenship, that is a position that stimulates the need to create a compromise that accommodates both sides of the debate.

A cursory look at Forst submission shows how he discusses Michael Walzer's objection to Rawl's theory, a theory he described as an example of an 'undemocratic theory of democracy' because it conceives justice from an abstract situation. Walzer's condemnation of the inclination to a complex idea of equality seeks to aggregate the general will of citizens into a political community as against his notion of simple equality that amplifies individual good as a means of escaping the communitarian dilemma in reference to justice. Although Walzer adopts a radical approach in showing his disagreement with Rawls, his arguments however points toward the direction of an interpretative community that is normative and critical.

Having abandoned the supposedly flawed opposition between universalism and contextualism especially the views highlighted in Rawls proposition, it is apt to admit that Walzer offers a hybridized thesis of contextual universalism where the moral criticism of a community becomes justified if and when the community fails to guarantee the minimal criteria of morality especially as it affects the individual.

Walzer's theory of contextual universalism provides for the first time, a similitude of a theoretical framework where the concerns of the collective and of the self are brought into synchronization. With this theory, there are really no fears or assumptions about 'the good that is to be realized, it can provide space for the concrete conceptions of the good jointly inherited or created by members of a community'[17]. It also creates a context for person and community interrelationship where the moral person as a member of the community is elevated beyond a particular context and actions can be justified or condemned on the 'basis of reasons that are shareable in the strict sense'[18].

Although in response to Walzer, Rawls denounces the atomist elevation of the self or individual above the society. He argued that Walzer has only succeeded in placing the individual above communal interests thereby ensuring a form of injustice to the collective. It is however instructive to raise a point of concern by enquiring if Rawls' dependence on practical reason which is culturally and historically steeped, raises a claim to universality when it satisfies specific contexts which are not beyond prescribed confines.

To therefore create a basis for our proposition and also go beyond Rawls and Walzer, and Rainer Forst's constructivist resolution, the paper suggests the followings; extrapolation of the basic assumptions of a deontological theory of justice, discussion of Rawls' justification models in *A Theory of Justice*(1971) and their alteration in the Dewey lectures, examination of the theory of *Constructivism* and finally, interpret the theory in the direction of universalist-contextualist ideal suitable for the accommodation of a mixed variant.

A CONSTRUCTIVIST NOTION OF JUSTICE

Forst complements all the previous and ancillary discussions starting from the reconstruction of the communitarian critique of liberal theories, to the critique and counter-critique of the composition of the individual and the "redefinitions of the concept of citizenship, legal person"[19], the justification of values, the basis for communities and the possibility of harnessing opposing views to formulate a 'mediating position beyond communitarianism and liberalism'[20]. He explains that the import of this task is in the fact that 'the thesis of the context connectedness of all justice principles has to be related to the diversity of contexts from an ethical substantive to a moral universalist kind in which persons are members of communities, but very different ones and from this multiple constitution of the normative world there would follow different modes of reciprocal recognition and normative justification.'[21]

I. Justice and the Good

Forst claims here that the distinction between the ethical person and the legal person, more importantly, the distinction between the different modes of justifying ethical values and the norms that claim to be generally valid; whether legal or moral is a farce. He explained that it is a communitarian fallacy to infer the impossibility of any deontological legal or moral principle from the thesis of the intersubjective constitution of the self. This so because the communitarian thesis subsumes the different conceptions of the person and the relations of recognition of the liberty of the self within any society or community.

Forst further identified salient points in Sandel's criticism of Rawls' construction of the original position as 'too atomistic and elevative of justice over good'[22]. He concluded that in order to understand the complex connection between ethical person and the legal person, one must make a conceptual clarification between them, that is, the two spheres, because their differences are grounded in the different validity modes of general norms and ethical values. He therefore concludes that a theory of justice cannot afford to 'obsolutise itself while it shapes others into oblivion'[23] because justice recognizes ethical persons as persons 'in need of protection and grants them general rights and the liberties of personal and political autonomy under the minimal standards of moral respect'[24].

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II. Context of Justification

Here, Rainer Forst explains that in terms of normativity, persons are 'situated in different contexts i.e., ethical, legal, political and moral'[25]. Resulting from this, we must begin the conceptualization of a theory of morality in an intersubjectivity-practical context to be able to reconstruct the varied modes of validity and justification. He proceeds to deal with three fundamental theoretic objections and problems in the comprehension of this context and concludes that moral justification requires that one does not objectivate one's own perspective from outside but expand it discursively towards others since moral reasons have a character that is independent of subjective reasons in as much as they are justified by the self to other persons.

He agrees that just like reflections, moral justification must be context bound although it does not require strictly reciprocal or general reasons that are rational in an intersubjective sense and that no sense of morality relieves persons of their responsibility for their good or their relationships to others within their communities. He states further that the position been proposed does not 'defend any form of *moral purism*'[26], that is, actions that are morally autonomous in relation to reciprocally and generally justified reasons do not presuppose pure motives in such a way that the action motivating reasons are not personal reasons affirmed on the basis of moral insight.

It is also important to note that Forst admits that communities can not relieve individuals or ethical autonomous persons of the responsibilities they have for the ends and values that define them and their lives since they are ethically autonomous, that is, individuals that are in a position to give reasons justifying their plans and actions. This does not however for him, overrule the fact that ethical justification for a community in terms of what is good for us can be retrieved from the community by ethical values, and as such reinstating that communal ethical justification despite being within the purview of the community remains dependent on the autonomous person.

Forst concludes that persons are therefore to be called ethically autonomous when they are in a position to answer meaningfully and with justification, the question of their good on the basis of a reflection on their 'communally and value-dependently constituted identity'[28].

III. Context of Recognition

Here, Hegel's concept of recognition is subjected to philosophical evaluations in relation to theories of subjectivity, morality and society. Forst explains that the endgame of this approach is to 'find the core of the idea of recognition since the qualitative self-understanding of a subject develops through its recognition'[27].

For him, recognition means reciprocal recognition as an individual and as a communal being in all these spheres which are of course, linked to one another because the process is intertwined and the other is connected in more than one way to the others. Therefore, the community connectedness of law, democracy and morality will not be understood in a 'one dimensionally' way. Context of recognition allows for the fact that 'ethical persons are recognized in ethical communities as unique persons with an individual and singular biography'[28].

This is further stressed by Forst that when the uniqueness of the individual is recognized, as individuals and communal beings who for a community cannot be substituted by others, the notion of justice becomes particularly entrenched for the person and the community itself. He however warned as customary, that 'one should not place the level of ethical community in false competition with the level of equal rights. He opined that these ethical communities of identification (recognition) are communities of value and the closer and more stable the communities are, the more intensively persons recognize one another both as 'unsubstitutable members and unique individuals within the ethical community'[29].

CONCLUSION

The communitarian thesis encounters problems with its approach at situating the individual within the community and this problem can only be effectively responded to within an intersubjective context that not only resonates but also synchronizes the offerings of liberalism.

The discussions above extend Rainer Forst's thesis of constructivism as it seeks to fabricate a midpoint between the propositions of the Liberals and the Communitarians. He attempts to string together a theory that foregrounds the interconnectivity of both strands of arguments for the context of justice through the effectiveness of arguments from legality, morality, individualism and societies since for him a person's self-esteem is connected not solely with the values of one community and not necessarily just with the particular values of local communities but rather as Herbamas would put it, 'the idealization of certain ethical standards with the community'[30].

The attempt to re-conceptualise justice by adopting a constructivist approach creates the possibility of a compromise between individual rights and communal wellbeing. The arguments pursued in the constructivist approach shows that the relationship between these two entities is practically engaging since they both present a mutually benefitting approach to the notion of justice as long as the inherent peculiarities and boundaries are respected for the sustenance of societies and individual rights.

For context, it is apt to add to Rainer Forst's proposition that positive liberalism already envisages the position championed in his constructivism by accommodating a strand of socialism that allows the hybridization of individual rights and communal sanctity in

order to attain justice within societies while 'the state take a positive or proactive role in guiding the economy'[31] John Stuart Mill and Jeremy Bentham underscored this position by noting that individual rights are not sacrosanct in such a manner that it becomes mutually exclusive and independent of social institutions, secularism and the promotion of moral faculties.

Justice in a society is therefore to be measured by how conveniently government is able to rein in the activities of the citizens in conformity with the general good of the state through sanctions and punishments without necessarily subsuming individual rights. To ensure justice therefore, governments must uphold all standards of ethical considerations regarding how its institutions deliver justice to the citizens.

In essence, the general good must involve the community and all moral agents concerned in the particular action being evaluated or what consists of justice while maintaining the equilibrium.

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