

## A Defense of the Maximin Principle in Rawls' Theory of Justice

Robert C. Robinson

Department of Political Science, University of Georgia, 102 Baldwin Hall, Athens, GA 30602, USA

---

### INTRODUCTION

In his celebrated work, *A Theory of Justice* (1971), John Rawls argues that, from behind the veil of ignorance, parties in the original position will employ the maximin decision rule to reason to his two principles of justice [1]. In this journal, Olatunji Oyeshile offers a brief and concise outline of some of the historical criticisms of that argument. Oyeshile offers two important criticisms of Rawls' argument. Both, however, are somewhat misplaced, as I shall show. First, he claims that decision theory offers parties in the original position other decision procedures. In fact, none of the alternatives are suitable, given the situation. And second, parties in the original position would first guarantee some minimum of libertarian goods and then seek additional profits [2]. This objection demonstrates a misunderstanding of the place of the maximin decision rule, as I shall show.

I believe that both criticisms stem from a close and careful reading of Buchanan's essay on Rawls [3]. Unfortunately, Buchanan himself seemed to have misunderstood Rawls' original arguments. I rely on problems in Buchanan's original work to defend Rawls' theory against Oyeshile's criticisms.

**Rawls' Argument:** For Rawls' project to be successful, he must accomplish two tasks. First, he must show both that conditions in the original position make it appropriate to employ the maximin decision rule and if so, using the maximin rule, they would choose Rawls' two principles of justice. It is worthwhile here to briefly outline his argument.

Assume a hypothetical situation in which the parties present are deprived of certain knowledge of themselves and of the society which they inhabit. They are not to know their own social or economic status, their natural assets and abilities, their particular psychological makeup, or their place in society. They're even ignorant of their own conception of the good. We place them behind a *veil of ignorance* and call this situation the *original position*. Assume, then, that the parties in the original position are economically rational and mutually disinterested. Then if they were to choose principles to govern the basic structures of society, we could be assured that the principles that they would choose would be fair. No one would choose principles that would disadvantage him/herself in the real world. In this way, beginning with widely accepted but weak premises, the fair principles that they would choose would constitute the principles of justice. Rawls identifies the principles they would choose as the liberty principle, the principle of fair equality of opportunity and the difference principle.

Rawls argues that the decision procedure that the parties in the original position will use must be the *maximin decision rule*. Under uncertainty, decision science offers many procedures for making decisions. However, given the special features of the veil of ignorance, only the maximin rule is uniquely appropriate [4].

The maximin rule guides participants to choose the principle that maximizes the expected benefit to the minimum group or individual. Remember that in the original position, parties know none of their own individual characteristics. But, given that they're perfectly rational, they'll want to ensure that their own situation in the real world is the best one that they can guarantee. When they find themselves in the world, they want to ensure that, in the case that they're severely

---

**Corresponding Author:** Dr. Robert C Robinson, Department of Political Science, University of Georgia,  
102 Baldwin Hall, Athens, GA 30602, USA

socially or economically disadvantaged, that that position is the best that it can be. Intuitively, then, it's easy to see that they'll reason from the maximin decision rule. But can a stronger, more formal argument be given?

Rawls reminds us that parties in the original position have three special characteristics:

- There are no bases for probabilistic reasoning in the original position. They're unable to compute the probable profits from any particular situation, as they have no knowledge of the structure of the world they'll inhabit.
- Their situation causes them to avoid risk. They care about guaranteeing some minimum and are unwilling to risk that minimum for the opportunity at additional profits.
- They'd find some options so intolerable (e.g., being born into slavery), they'd eliminate them altogether [5].

Given those special features of the situation in the original position, parties could only reason from the maximin decision rule. Any further decision procedure is ruled out by their special characteristics.

**The First Objection:** Oyeshile begins his criticism by objecting to (1), above. He correctly notes that decision theory offers many additional decision procedures that would be available to parties in the original position. In situations of decisions under uncertainty (not to be confused with decisions under risk), the science of decision theory offers several competing procedures for reasoning under uncertainty. At minimum, these include the minimax regret rule, Bayes' rule (or, the principle of insufficient reason), Hurwitz- $\alpha$  rule and the maximax rule [6]. If parties in the original position can actually reason from any of these decision rules, Rawls' conclusions do not follow from his given reasons.

But if we take a look at each decision rule in turn, we are actually able to rule out all but the maximin rule, based on the special features of the original position. Let's look at each procedure more carefully.

To employ the minimax regret rule, one finds the difference, in each possibility, between the best and worst outcome. In applying this decision rule, one minimizes regret by choosing the situation in which the difference between best and worst is least.

To employ Bayes' rule, one attributes equal probability to each possibility and calculates the expected utility of any decision. Bayes' rule allows for updating of probabilities as new information is received.

To employ the Hurwitz- $\alpha$  rule, one simply averages across the expected utility of each possible outcome.

The maximax decision rule is the alternative with the highest possible return. To employ this rule, one finds the alternative that maximizes the maximum outcome for every possible alternative [7].

However, a closer look at each of these decision procedures rules them out as appropriate candidates for use by parties in the original position. Remember that from behind the veil of ignorance, parties have no knowledge regarding the structure of the world they'll inhabit. They won't know the distribution of resources, or even the possible arrangements of those resources. However, each of the above decision rules, save the maximax rule, requires that parties know enough about the possible distributions of resources to apply probabilities to them. But since that information is held from them, they could not possibly reason from those decision procedures.

Furthermore, the very makeup of the individuals in the original position excludes the possibility that they would apply the maximax rule. As perfectly rational and mutually disinterested, there are certain priorities that they'll hold. They care about guaranteeing some minimum of goods and avoiding intolerable outcomes. Simply maximizing the maximum neglects those fundamental priorities, making it inconceivable that parties in the original position, from behind the veil of ignorance, would employ the maximax rule. Indeed, it appears that, contrary to Oyeshile's arguments, the minimax rule is the only decision procedure available to the parties in the original position.

**Gains Above the Minimum:** Nonetheless, remember that Rawls has two tasks: First show that parties in the original position will employ the maximin rule and then show that after doing so, parties will arrive at the two principles of justice. Therefore, even if I'm correct and Oyeshile has not shown that parties in the original position may employ an alternative decision procedure, he may still undermine Rawls' arguments by demonstrating a failure in the latter task.

Oyeshile's argument here is much more clever, but unfortunately, it is based again on Buchanan's apparent misunderstanding of Rawls' theory. He objects again to Rawls' claim that the special features of the original position only allow parties to utilize the maximin rule – this time criticizing characteristic (2). Remember claim (2):

Their situation causes them to avoid risk. They care about guaranteeing some minimum and are unwilling to risk that minimum for the opportunity at additional profits.

It may be true, Oyeshile concedes, that parties in the original position care more about guaranteeing some minimum than they do about additional gains and are unwilling to risk the former at a chance at the latter. But, he claims, it does not then follow that after guaranteeing this minimum, they'll be uninterested in pursuing those additional gains.

**The Second Objection:** Oyeshile borrows this objection from Buchanan and so we can look to him to help unpack it. According to Buchanan, Rawls is committed to the claim that beyond some minimum  $m$  (which is guaranteed by the difference principle), the marginal value of the nonlibertarian goods (such as wealth, power, etc) drops so far and rapidly that parties need not consider gains above  $m$ , once assured of obtaining  $m$ . But further, as Oyeshile notes, it may be true that they are unwilling to risk losing  $m$  to gain nonlibertarian goods. But it is not true that they will be uninterested in those goods once they are assured of  $m$  [8]. According to the objection, Rawls has neglected to notice that parties in the original position will seek additional nonlibertarian goods once they are assured of receiving  $m$ .

But this is just to confuse the work that the maximin decision principle is doing in the original position, with the principles that they subsequently derive. The nonlibertarian goods above  $m$  would be pursued by people living in the real world and Rawls accounts for these as a series of incentives. Pursuing nonlibertarian goods is not within the domain of the parties in the original position. Nor is  $m$  (which is guaranteed by the difference principle) an option, much less guaranteed at all, in the original position. The difference principle has not yet been established and indeed, has no place in the original position.

Recall what the parties in the original position are doing: From behind the veil of ignorance, they're choosing the principles of justice. Those principles will then guide the creation of the basic structures of society (e.g., policies, institutions, etc). It *is*, of course, an open question whether individuals, once certain of attaining  $m$ , would seek additional profits. But this question does not occur from within the domain of, nor apply to the parties in, the original position. Their role is simply to act as mutually disinterested and economically rational individuals, suitably constrained and decide on the principles of justice. Minimum  $m$  is a level of nonlibertarian goods that applies to persons in a well-ordered society, not to the parties in the original position. To accuse them of seeking additional profit is to lose sight of the structure and the function of the individuals themselves.

There is a tendency among readers of Rawls to equate the maximin decision rule with the difference principle. To do so, of course, is to mis-represent Rawls' project and his argument and to risk committing to predictable and problematic conclusions. Oyeshile falls into this trap more than once and so the mis-interpretation is predictable [9]. The distinction, of course, occurs regarding when and under what circumstances each is employed.

In describing and constructing the particular details of the original position, we are to consult our considered judgements about justice. That is, we should look to obvious and intuitive truths about the nature of justice. We then compare them to the considered judgements of others and test them against counter-examples. In light of both, we then revise our judgements and repeat the process. When we've refined them so as to minimize disagreement, we are said to be in *reflective equilibrium* [10].

Later, if new information is available, situations change, or novel problems are encountered, we may leave reflective equilibrium to once again consult and subsequently amend (or hold fast to) our considered judgements. At this time, we may again enter reflective equilibrium.

Notice, then, that there are two *levels* of judgement – the lower one in which we analyze and amend our considered judgements about justice and a higher one in which our considered judgements are at reflective equilibrium. When our considered judgements are at reflective equilibrium, we've described a suitable original position, from which parties can reason about the principles of justice. That said, Rawls defines a society as *well-ordered* when it's governed by principles of justice that all are willing to accept and basic social institutions satisfy these principles [11].

To conflate the maximin rule with Rawls' difference principle, is to simultaneously collapse these two separate levels of judgement into one. This simplification is uncharitable to Rawls' actual theory and illegitimately commits him to conclusions that he would not accept.

But that is just what Oyeshile does here. He notes that:

... the contractarian arguments used by Rawls do not have any link with the maximin rule and this is an inconsistency on the part of Rawls which is a minus for his maximin principle since the maximin rule is expected to be applied throughout his theory [12].

But no, the maximin rule is not employed throughout the theory. Instead, Rawls argues that the maximin rule is the decision procedure that will describe the structure of the choice problem in the original position [13]. This distinction is important because it leaves open the question of what policies and institutions people in a well-ordered society will create and what incentives individuals will pursue to seek gains above the minimum. But it *does not* leave open the question of how the parties in the original position will apply the difference principle. Such a statement is meaningless, for it ignores a fundamental difference in levels of reasoning by the individuals in the theory.

## **CONCLUSION**

Oyeshile has reproduced two thoughtful and influential objections which have surfaced repeatedly in the history of criticism of Rawls' theory. First, that other decision criteria are available to parties in the original position and second that parties in the original position will seek additional nonlibertarian goods above the minimum guaranteed by the difference principle. I hope to have shown that a closer examination of the text reveals that both criticisms, while thoughtful and well reasoned, fall short of hitting their mark.

## **ACKNOWLEDGEMENTS**

I am indebted to Alex Kaufman for discussing Rawls theory with me, for helping me to understand the defects in Buchanan's objections and for helpful criticisms on a draft of this essay.

## **REFERENCES**

1. John Rawls, 1971. *A Theory of Justice*, (Cambridge: Harvard University Press, 1971).
2. Olatunji, A. and Oyeshile, 2008. A Critique of the Maximin Principle in Rawls' Theory of Justice, *Humanity & Social Sciences Journal*, 3(1): 65-69.
3. Allen Buchanan, 1980. A Critical Introduction to Rawls' Theory of Justice. in H.G. Blocker and E.H. Smith (eds.), *John Rawls Theory of Social Justice: An Introduction*, (Athens: Ohio University Press, 1980).
4. Rawls, op. cit., pp: 133.
5. Ibid., pp: 134.
6. Oyeshile, op. cit., pp: 67.
7. Baumol, W.J., *Economic Theory and Operations Analysis*, 2nd edition, (Prentice-Hall, Englewood Cliffs, New Jersey, 1965), chapter 24.
8. Buchanan, op. cit., pp: 27.
9. Oyeshile, op. cit., pp: 66, 68.
10. Rawls, op. cit., pp: 18, 40-45.
11. Ibid., pp: 4-5.
12. Oyeshile, op. cit., pp: 67.
13. Rawls, op. cit., pp: 135.