

## RECONCILING LIBERTY AND EQUALITY: JUSTICE AS FAIRNESS

### 1. Two Principles of Justice

John Rawls's *A Theory of Justice* presents a theory called "justice as fairness." That theory comprises two principles of justice, which are to guide citizens' judgments about their constitution, laws, and basic social policies.

❶ The first principle—the principle of equal basic liberties—says that each citizen has an equal right to the most extensive system of equal basic personal and political liberties compatible with a similar system of liberties for others. Whereas the choice-based libertarian endorses a basic right to liberty as such—choice, irrespective of content and subject-matter, receives stringent protection—Rawls' principle of liberty requires stringent protections for certain specific liberties—of thought and conscience; political liberties (rights of participation); liberty of association; liberty and integrity of the person; and rights and liberties associated with the rule of law. His first principle also includes a strong requirement of political equality. Political liberty is to be assured a *fair value*: chances to hold office and to exercise political influence ought to be independent of socio-economic position, that people who are equally motivated and equally able ought to have equal chance for political influence.

❷ Rawls says that his principles "express an egalitarian conception of justice."<sup>1</sup> Thus his second principle of justice states that socio-economic inequalities are permissible only if they satisfy two conditions. First, legitimate inequalities must be attached to offices and positions open to all under

conditions of *fair equality of opportunity*. We met with this principle already in our discussion of the strong requirement of starting-gate equality. The principle says that people who are equally talented and motivated must have equal chances to attain desirable positions—that a person's fate in life should not depend on the social circumstances of their birth and upbringing.

Second, the difference principle states that socio-economic inequalities must be to the greatest benefit of the least advantaged members of society. A society that guarantees equal basic liberties and fair equality of opportunity may still show considerable inequalities. In particular, suppose some people have highly marketable skills based on relatively scarce natural talents, and that others lack similarly high-end marketable skills. Assume people in both groups work hard, and contribute. Still, they will receive substantially different rewards in the labor market, and those differences will have a large impact on what they aspire to, and on the extent to which they can achieve those aspirations. How, in a society dedicated to the proposition that we all are created equal, can such inequalities—founded on the contingencies of natural talent—be acceptable?

In response, the difference principle requires an economic system that mitigates inequalities owing to differences in natural talents. In particular, it requires that we maximize the economic expectations of the least advantaged group. So that everyone shares in the benefits that flow from the diversity of talents in the population.<sup>2</sup> Put otherwise, the second principle requires that we

mitigate inequalities owing to differences in inherited starting positions and differences in natural talent.

③ Rawls's two principles of justice are an alternative to utilitarianism and libertarianism. An alternative to utilitarianism, because the right to equal basic liberties and distributive fairness take priority over maximizing general welfare. Particularly because of this emphasis on the priority of liberty, Rawls's *justice as fairness* is squarely in the liberal tradition of political thought. But they also are an alternative to libertarianism, because justice does not require stringent protection for liberty as such, but for basic liberties; and because justice requires—in the second principle—regulation of choice in the name of equality.

## 2. What, more exactly, do the principles say?

Two comments on the meaning of the principles: first, about the priority of liberty; second, about the difference principle.

① First, I said that the protections of the basic liberties are especially stringent. Because Rawls's equal basic liberty principle has *priority* over the second principle, Rawls may seem to be endorsing a libertarian view. But his first principle is about specific liberties, not liberty as such. In particular, the market liberties that were the concern of the Lochner Court are not covered by his first principle of justice. So those liberties can be regulated to achieve the aims of the second principle of justice.

What the “priority of liberty” means, then, is that justifications for limiting a basic liberty must show how the proposed limit improves the protection of the

basic liberties overall. For example, to better protect the religious liberty of religious minorities, we may limit political liberty by restricting the scope of majority rule and establishing a basic constitutional right to liberty of conscience that ensures the free exercise of religion, even against the judgments of a majority. So one liberty (political liberty) is restricted in order to better protect another basic liberty (religious liberty). But it is not permissible to restrict political liberty in order to improve the economic conditions of the least advantaged: for example, it is not permissible to restrict the voting rights of the better off in order to improve the economic circumstances of the less well-off.

② Second, the difference principle says that inequalities are permissible only if they work to the maximum benefit of the least advantaged. To see how this might work, consider two cases: Someone might legitimately be paid more than someone else because the higher income *compensates* for expensive training and education that enable them to take on socially desirable tasks; or inequalities might make sense as *incentives* encouraging people to take on tasks they would otherwise be unable or simply unwilling to take on. According to the difference principle such inequalities are just only if they work to the advantage of all. More particularly, they are to be no greater than necessary to maximally benefit the least advantaged. The natural workings of labor markets are not likely to satisfy this principle, because those workings reward people with scarce talents. So tax rates and income transfers must be adjusted with the aim of ensuring that any increase in tax rates, for example, would worsen the conditions of the least advantaged and any decrease would do so as well.

The requirement of fair equality of opportunity, then, condemns a society in which class background is a source of social or economic privilege; the difference principle condemns a society in which natural talents are a source of social or economic privilege. Stated more generally, Rawls urges, in effect, that we reject the idea that our economic system is a race or talent contest, designed to discover and reward those who are swift or otherwise gifted. Instead, it is one part of a fair scheme of cooperation, designed to ensure a reasonable life for all members, understood as free and equals persons: "In justice as fairness," Rawls says, "men agree to share one another's fate. In designing institutions they undertake to avail themselves of the accidents of nature and social circumstance *only when* doing so is for the common benefit."

③ The large ambition of justice as fairness is to effect a "reconciliation of liberty and equality." Instead of pitting these values against one another, justice as fairness aims to accommodate elements of both liberal and egalitarian political thought.

Consider how the two principles work in combination. Assume first that what matters to people is not only to have legally protected liberties, but for those liberties be meaningful or valuable: for them to be worth something. Assume, second, that the value of our liberty is importantly fixed by the resources available to us for using the liberty. In particular, assume that the worth or value of my liberties to me is an increasing function of the resources over which I exercise control: as my command of resources increases, I can do more with my liberties.

Now conjoin the two principles: the first principle ensures equal basic liberties; the second guarantees that the minimum level of resources is maximized. If, as I just suggested, the worth of a person's liberty — its value to the person — is an increasing function of the level of her resources, then by maximizing the minimum level of resources, we also maximize the minimum worth of liberty. Thus the two principles together require that society "maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all." Maximizing the minimum worth of liberty "defines," Rawls says, "the end of social justice."

### **3. What are the arguments for the two principles?**

❶ Rawls's main argument for the two principles of justice is based on the idea of a social contract: the two principles would, he argues, be agreed to in an initial contract among the members of a society about the principles to guide their society. But Rawls also offers another, more *informal* argument for the second principle, and the difference principle in particular. And I want first to consider that informal argument, which we find in secs. 12-13 of *Theory of Justice*.

❷ Both arguments driven by the fundamental idea in justice as fairness: the idea that justice requires that we treat individuals with respect as free and equal persons, and that such treatment requires that society mitigate the effects on people's lives of the "arbitrariness of natural contingency and social fortune." The problem is to connect this abstract idea of treating people as free

and as equals—the ideal of a fair society, whose members are free and equal—with specific principles of justice. The contract argument and the informal argument represent two ways to bring out the content of this ideal of a fair society. But they develop this idea in different ways.

② In the informal argument, we start from the principle that if there are socio-economic inequalities they should be attached to positions "open to all" (equality of opportunity), and should serve the "common advantage." How should we interpret this principle? Rawls considers three conceptions of justice with different interpretations of the notions "open to all" and "common advantage," and calls them the system of natural liberty, of liberal equality, and of democratic equality. The idea of the informal argument is to bring us to the idea of democratic equality by examining certain difficulties in the other two: basically, from a very formal understanding of equal opportunity to a more demanding idea of equality. (As you will see, the three systems correspond to the ideas of the capitalist ethic, starting gate equality, and democratic equality that I alluded to at the end of the discussion of Friedman's libertarianism.) The driving force in the argument is the contention that the other views—natural liberty and liberal equality—are implicitly committed to the ideal of mitigating the effects of natural and social contingencies on our lives, but fail to carry through on that idea.

#### **4. Why not natural liberty (NL)?**

① Consider first, then, the system of natural liberty—a Friedman-esque libertarian view. According to the natural liberty conception, a distribution of resources is just if and only if it results from a social system with

- Equal basic liberties (the first principle of justice),
- “Formal equality of opportunity,” that is in which positions are open to all in the sense that there are no legal obstacles to the attainment of positions and offices; and
- An economy that operates for the common advantage (or general welfare) in that it works efficiently: no change in the institutions could make some people better off without making others worse off.

Suppose institutions satisfy these conditions. There will be many possible distributions of income and wealth that could emerge; some will be more equal, some much less equal. But according to the natural liberty conception, whichever distribution results from the choices people make under conditions that meet the conditions noted earlier is just.

② The fundamental idea of natural liberty is that if a society ensures liberties and equal opportunity, then the distribution of resources will depend on people’s choices—not artificial limits imposed by government. The distribution just, whatever it is, because it reflects these choices. So assure liberties and equal opportunity; in so doing, establish a framework in which outcomes reflect choices; and then the outcome is just, whatever it is. Because the procedure protects freedom of individual choice, the result is just.



③ The natural liberty view rejects any requirement of ensuring more substantial equality among citizens. For example, it does not require that the opportunities faced by citizens be independent of their social background. So inequalities in the system of natural liberty may well reflect inheritance, natural talent, preference and aspiration, and simple good luck: the four determinants of market inequalities that we explored in our discussion of Friedman. Put otherwise, under the natural liberty scheme, the final distribution does result from individuals decisions about production, exchange, and consumption; but those decisions are made from very different initial starting positions: different social positions, different native endowments, and different motivations that develop in light of that position and those endowments.

④ Why might someone object to this ideal? Recall our discussion of why we might reject a feudal system, which does not have formal equality of opportunity, in favor of natural liberty. The most plausible rationale is that opportunities should not be determined simply by social background, as they would be in a feudal system with legal obstacles on citizens in virtue of their social class. If citizens fare differently in their lives, we want those differences to have a rationale—that they not be arbitrary. And the fact that they reflect differences in social class—rather than qualifications for positions, or choices they make in light of their values—does not provide a rationale.

But if this is the reason for eliminating legal barriers to social opportunity, then that elimination does not go far enough. For a person's social background can impose effective barriers on his/her attainment of desirable

social opportunities, even if those positions are, formally speaking, open to all. Suppose, for example, that those positions—doctor, engineer, lawyer, teacher—have high training costs. Suppose, too, that the ability to bear those costs depends on one's social background (e.g., parental income). Then, if we hope to free life chances from class background, the system of natural liberty is inadequate. It aims only to eliminate legal barriers to opportunity, even though the reason for condemning those barriers carries over to the social obstacles as well. So it is an unstable alternative to feudalism and liberal equality.

This same basic point can be put in two other ways. First, the reason for preferring natural liberty to a feudal or caste system is that we thereby make people's life prospects dependent on their choices: the justice of the outcome reflects its pedigree in choices. But natural liberty permits social inequalities to accumulate over generations and to generate vast differences of social starting position, vast differences in advantages at birth. So differences in the fate of different people over the course of their lives will also depend on matters entirely outside the range of *their* choices. But if the reason for eliminating legal barriers is to ensure that the distribution of advantages depends on people's choices, then we have reason to go further than natural liberty and to avoid substantial inequalities. In aiming to do so, we do not reject the idea that outcomes should depend on free decisions made under fair conditions; instead the aim is precisely to uphold that idea by ensuring that the accumulation of inequalities does not undermine it.

Second, I said earlier that a virtue of the system of natural liberty is that it eliminates legal obstacles to social mobility. But is that really so? The legal system in the natural liberty system enforces property rights arising, for example, from inheritance. So initial inequalities in life—the fact that Jones is less advantaged at birth than Smith—are in part a consequence of the legal system; they are not simply a system of private ordering that exists apart from legal enforcement. Suppose, in particular, that the legal system were different; suppose, for example, that there were no right to transmit resources to one's children; or suppose, as in the case of school financing, states did not rely on local property taxes. Then the significance of initial inequalities in determining life chances would be diminished. So the law is implicated in the initial inequalities. And it is wrong to say in the perfected system of natural liberty legal barriers to social mobility are removed.

## 6. Why not Liberal Equality (LE)?

① LE aims to mitigate the dependence of life chances on social background by adding a condition of *fair equality of opportunity*: *People who are equally endowed and equally motivated ought to have equal chances of attaining desirable positions and offices*. In short, “The expectations of those with the same abilities and aspirations should not be affected by their social class” (63).

② We get to liberal equality by shifting the interpretation of the idea that positions must be “open to all” from formal equality of opportunity to the more

substantive Fair Equality condition. According to liberal equality, then, a distribution is just if and only if it results from actions undertaken within a social system whose basic structure meets four conditions:

- ° Equal basic liberties
- ° "Formal equality of opportunity"—positions are open to all in that there are no legal obstacles to the attainment of positions and offices;
- ° Fair equality of opportunity.
- ° The economy operates for the common advantage, in paretian terms: that is, any changes in the rules would reduce someone's expectations.

So when the liberties fair equality are ensured, then any distribution that emerges reflects the choices people make and so is a just distribution—regardless of the dispersion in the distribution. We have a strong condition of equal opportunity, but no constraints on inequalities of outcome.

③ I want to emphasize that the defender of liberal equality may see fair equality as required for liberty, not as hostile to it. The thought is that freeing individuals from legal and social constraints on developing capacities and realizing natural talents requires equality of initial conditions. Similarly, achieving equal opportunity should not in any way diminish human diversity: why should ensuring opportunity for each person, regardless of social class, lead to greater homogeneity, rather than greater diversity of values, aspirations, and achievements?

④ But liberal equality itself may still be troubling, and in two ways. First, people's aspirations, motivations, and realized abilities are plausibly shaped

by social background and upbringing: "Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances" (74). Not deterministically dependent, to be sure, but dependent all the same. But if that is true we will be dissatisfied with the system of liberal equality. Why?

Recall that liberal equality is preferable to natural liberty because the former seeks to prevent social background from determining life chances. Now the idea of Fair Equality component is that life chances may permissibly reflect aspirations, motivations, and realized abilities. But suppose that aspirations and abilities are influenced by social background. If so, then Fair Equality itself permits social background indirectly to determine life chances. Thus suppose people with equal abilities and motivations have equal chances. But suppose, too, that people born into different social classes develop different abilities and make different efforts. Then the fact that there is fair equality does not end the dependence of social advantage on social background. It simply changes the mechanism through which social background shapes life chances.

Second, in the perfected system of liberal equality "social inequalities exactly express natural inequalities."<sup>3</sup> But if inequalities in life chances ought not to reflect differences of social background, then why is it permissible for them to be determined by differences in natural endowment or fortune? The pedigree of inequalities in differences of natural talent provides us with no justification for those inequalities. Here we have Friedman's objection to starting gate equality: If we are troubled by the fact that differences in life

chances reflect differences of social background, then we also have reason for being troubled if they are determined by differences in natural endowment or fortune over the course of one's life. "There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune" (74).

## 7. Why Democratic Equality (DE)?

❶ Like Friedman, Rawls points to the intellectual instability in the ideal of liberal equality. But Rawls proposes to resolve that instability by defending a more egalitarian conception of justice. He calls his conception *democratic equality*. And the central idea is to sever life chances—in particular, our position in the distribution of income and wealth—from the contingencies of social starting position, natural endowments, and luck. The idea is to carry through on the idea of making outcomes depend on the decisions people make about to do with their lives, rather than the resources or talents that we happen to be born with—by establishing greater equality of circumstance.

❷ The democratic conception results from adding the difference principle to the requirements of basic liberties, efficiency, and fair equality of opportunity. Thus a distribution is just if and only if it results from actions undertaken within a system whose basic structure assures basic liberties and fair equality of opportunity and in which inequalities can reasonably be expected to contribute to the maximum well-being of the least well-off. The difference principle does not itself place any direct restrictions on income

dispersion: on the distance between top and bottom, for example. But it does require that improvements at the top be tied to improvements elsewhere—in particular, to the maximum improvements at the bottom.

④ How might we get to this seemingly extreme requirement—extreme in attaching so much weight to the size of the minimum? Start with the idea that the distribution of economic advantage is not a product of nature, or simply of the separate choices of individuals, but at least in part a result of the rules of the economic game that we collectively choose to adopt and enforce: a product in part of what Rawls calls the “basic structure of society.” Suppose, too that we think that those rules—which we collectively choose to adopt and enforce—ought to be founded on the idea that people are to be treated as equals, irrespective of the reflect the decisions that people make about their lives, and ought to be severed from the contingent differences that distinguish among equal moral persons. But to see us as free and equal persons is to see us in abstraction from all the features that distinguish us—all the contingencies of social fortune and luck in the natural lottery. This naturally suggests an equal distribution of income and wealth. For if we regard all the sources of differences in fate as morally arbitrary, and then strive to eliminate the effects of the morally arbitrary on the distribution of resources, the result is equality of outcome, and not simply equality of opportunity.

But now suppose an unequal distribution—by providing incentives or compensation—would increase the size of the pie, and so could improve the circumstances of all. So the inequalities could work to the advantage of all:

permitting such inequalities, then, can itself be interpreted as a consequence of an equal concern for the good of each. This brings us to the second stage: we want to know what sorts of departures from equality are consistent with the fundamental idea of separating life chances from the contingencies of social and natural fortune. How are the gains that result when we move away from equality to be distributed? What conception of “advantage of all” is most compelling, given this fundamental idea?

According to the difference principle, the justification for some positions being more favored than others —e.g., for giving rewards to those whose natural abilities enable them to contribute more—is that by favoring them, benefits to those in less advantaged positions will be maximized. This is a way to gain the advantages to all that can result from inequalities while mitigating the effects on people's lives of the contingencies of social background, natural endowment, and good luck. It mitigates in this way: that no one is permitted to take advantage of his/her social position or natural endowments except and insofar as their doing so improves the conditions of the least advantaged. So the fact that someone is in the least advantaged group—because of the social background, or native endowments—has less effect on his/her material conditions than under alternative distributive principles.

④ Rawls says that “the difference principle represents, in effect, an agreement to regard the distribution of natural talents as in some respects a common asset and to share in the greater social and economic benefits made possible by the complementarities of this distribution. . . . The naturally



advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in ways that help the less fortunate as well" (87).

The difference principle treats the distribution of talents as a common asset in that it seeks to ensure that the variety of talents distributed in the population are used in ways that benefit all, and in particular benefit the least well-off. The difference principle does not mandate the use of one's talents in the socially most beneficial way. But it does state that people can legitimately expect greater rewards from the use of their talents and abilities only if the use benefits the least well-off. The point of the difference principle, as the idea of common assets suggests, is not to rail against the fact of the inequalities of natural endowments, or to eliminate them. Putting aside speculations about genetic modifications: that there are such differences is presumably a matter of natural fact. The question of political morality is what to do with such differences, given their potentially large consequences for the fate of morally equal persons.<sup>4</sup> The right response to these human differences between and among people is not to eliminate them: human differences are often of great value and make our activities complementary. The point is to ensure that our institutions enable people to benefit from these differences, in terms of social primary goods, only in ways that ensure fair treatment for all.

But while the informal argument has some force, it is not clear why the two principles, and maximizing the minimum in particular, are the best way to express the idea of treating people as free and equal moral persons. Offhand,

an equal distribution also satisfies that condition, as would a distribution that ensures a decent minimum without maximizing the minimum. In short, it is not clear from the informal argument that there are any determinate principles that express the ideal of a distribution of rights, duties, and advantages that nullifies or mitigates the contingencies of natural fortune, social circumstance, and simple good luck. This, then, is the role of the more formal argument for principles from the original position.

### **8. Why a social contract?**

I have suggested that Rawls's basic concern might be put this way: What is the most reasonable conception of justice for a society of free and equal persons? What principles should our society meet, if it is to be fair to persons conceived of as free and equal? In particular, should it be utilitarian, libertarian, a less liberal egalitarian society, a less egalitarian liberal society?

❶ To answer this question, Rawls revives the social contract idea associated historically with Locke, Rousseau, and Kant. The social contract theorists argued that the most reasonable ordering of a society is the ordering that the members of the society would *unanimously agree to* as the basis for their own association. Because of the requirement of unanimity, each person has veto power over the terms of the agreement, so the terms of the agreement must be justified to each person. And as Hobbes said: "that which every man will have so, no man can say is unjust."

② The idea of a unanimous initial agreement on the terms of social-political life has an obvious attraction: in a society of equals, we look for mutually acceptable terms. But it also presents an obvious and very serious problem. After all, a basic fact of social life is that people disagree about issues of morality, politics, and religion: for example, we disagree about what a fair distribution of resources is. How could there ever be unanimous agreement? If there is to be agreement, we need to impose some special conditions on the agreement. We cannot simply take a vote: that will simply reveal the points of disagreement, not generate a unanimous agreement. We might be able to get a unanimous agreement if we injected everyone with a drug that induces head-nodding and thus secures agreement, but that would not justify the results.

③ Perhaps, though, people who disagree about what justice demands—people who hold different ideas about what a fair distribution is—nevertheless agree, or might be brought on reflection to agree, on certain fundamentals. Suppose, then, that we could use these fundamental points of agreement to give more definition to the circumstances in which people make a social contract—to set acceptable conditions on the circumstances of agreement. Then perhaps we could get unanimous agreement about basic principles of justice.

④ Rawls suggests three fundamental points of agreement:

1. First, that certain particular practices are unjust—e.g., religious intolerance and racial discrimination. Convictions about the injustice of these practices are, Rawls says, "provisional fixed points which we presume any

conception of justice must fit." So the social contract condition is designed so that people in it will agree on these points, whatever else they agree on. It is simply built into the situation that the result has to fit there "data points."

2. Second, about a "conception of the person." By a "conception of the person," Rawls means a view about the features of human beings that are of fundamental importance and relevance about when it comes to addressing questions of public justice. For the utilitarian, what is most fundamental is our capacity to experience pleasure and pain. For justice as fairness, what matters most when it comes to issues of justice are not the differences among us—differences of race and sex, social background, native talents, and religious, moral, and personal ideals. These differences, as important as they are in some settings, we should regard, Rawls says, as "accidents of natural endowment and contingencies of social circumstance;" such accidents are "arbitrary from a moral point of view." Instead, what is relevant is that we are free and equal moral persons. Let me explain this important idea:

First, as part of being free and equal persons, individuals are assumed to have a conception of the good—that means a set of goals, attachments, and loyalties to which they have an allegiance, which serve to guide their conduct, and which they have an interest in pursuing, typically along with others who have common values. Conceptions of the good may be more individualistic or more communal: the essential point is that individuals have them and they vary across people.

Second, we have the capacity to form a conception of the good—that is, a capacity to decide on, to pursue, and to revise our conception of the good. We might undertake such revision in the light on new information, wider experience, new forms of self-understanding, and moral or religious reflection. We are not absolutely committed to our current understandings of what is good, nor are we simply a bundle of unrelated preferences and goals; instead we have aims and aspirations, and are able to revise them on reflection.

Third, we have the capacity for a sense of justice, i.e. to grasp the principles specifying fair terms of social interaction and to guide our conduct in light of that understanding.

These common potentialities—"moral powers," in Rawls's term—define us as free and equal moral persons. How so? We are *equal* in that each has, to a sufficient degree, the basic powers of choice and of acting on a sense of justice that enable us to participate as full members of the society. This is not of course to deny our many differences: of course we are very different from one another as well. But the point is to affirm that those differences—of talent and ambition, religious and gender, race and ethnicity—do not touch our standing as equals; for that status as equal members of the society, the possession of the moral powers is sufficient. Moreover, as possessors of the basic moral powers we are *free*. In particular, we have and are recognized as having the capacity to alter our goals, attachments, and loyalties without losing standing as citizens—for example, to undergo religious conversion or change of political commitment without loss of rights.

3. Finally, there is agreement about an abstract ideal of social cooperation—in particular, about the importance of fairness in society. While people have different ends and goals, different backgrounds and talents, we each ought to have a fair chance to develop our talents and to pursue those goals.

⑤ Rawls's idea is to take these deeper points of agreement, on which people who disagree about justice might nevertheless be brought on reflection to agree, as a basis of political argument, and construct a conception of justice around them by building the social contract to reflect them. Though we now disagree, perhaps deeply, about what a just society is, we agree—or could be brought to agree on reflection—with the very abstract idea that justice requires a society that is fair to its members considered as free and equal moral persons, a society whose basic structure works to "nullify the accidents of natural endowment and contingencies of social circumstance as counters in [the] quest for political and economic advantage." The problem is to work out the implications of these abstract commitments. What should the basic structure of our society be like if we are to live up to the ethical ideal of fair cooperation among moral persons, understood as free and equal?

### **9. What is the Original Position (OP)?**

The issue, then, is how to connect this abstract ideal of fair cooperation among free and equal persons—each with the basic powers required for full participation in society—to specific requirements of justice. Lincoln said that

this country was conceived in liberty and dedicated to the proposition that all men are created equal. Suppose we accept that statement. Still, we want to know what it would mean to live out that conception and dedication.

① Here is where the social contract idea comes into play. Rawls asks us to imagine a hypothetical situation—the Original Position—in which people are to make a social compact by choosing the principles of justice that will be used in their own society. That contract situation is constructed so as to reflect the fundamental points of agreement, in particular, the conception of the persons as free and equal. In particular, the essential idea of moral persons is that certain of our characteristics are not relevant in deciding what we are entitled to as a matter of justice. To represent or model that idea of irrelevance, Rawls proposes that we make the choice of principles behind a "veil of ignorance" in which we are *assumed to be unaware of* the irrelevant features. Behind the veil, we do not know, for example, whether or not we are blessed by natural chance, or whether the contingencies of social circumstance are favorable or unfavorable.

In a slogan: *model irrelevance through ignorance*. In particular, we do a thought experiment. Imagine, hypothetically, that we are to make a choice of principles of justice for our society on the assumption that we, as the parties making the choice, do not know their social class position, their natural talents, sex or race, conception of the good, or anything else that distinguishes any one of them from other free and equal moral persons. Because the parties must reason as if they did not know these things, they cannot tailor principles to

advantage themselves, or members of their class, sex, race, religion, or moral tradition. Not knowing these facts, people have a chance of arriving at a unanimous agreement. Or of the idea of ignorance seems too far fetched, even as a thought experiment, then imagine that we are making the choice of principles, and that when we propose a principle we have to give an argument for it, and that, at no point in the argument, can any reference be made to any of the factors that are placed behind the VI.

Rawls proposes, then, that if people reason about issues of justice as though they were unaware of the social contingencies and the accidents of natural endowment, then they would chose his two principles of justice—with their assurance of maximin worth of liberty—over alternative conceptions.

② Because the aim of the original position is not simply to reach an agreement (we can get that with a head-nodding drug), but to find principles suited to the ideal of fair cooperation among free and equal persons, we are to place behind the veil of ignorance all the features that distinguish among free and equal moral persons—including their religious ideas, moral philosophies, and views of social justice. Though these are important to who we are, and to how we conduct our lives. But they distinguish people, understood as free and equal citizens, so we put them aside. The parties in the original position know only that they represent the interests of a person who has some conception of the good, perhaps a religious outlook (though they do not now what that conception is); a person who has an interest in be able to choose and revise their ends; and who has an interest in forming and acting on a sense of justice.



Once they know that, however, they know something else as well: that advancing those basic interests requires certain goods—"social primary goods"—and so the parties to the social contract know that they need these goods. In particular, the social primary goods are:

i. The basic liberties, including freedom of thought and conscience, the political liberties, liberty of association, the liberties associated with the integrity of the person, and the liberties associated with the rule of law.

ii. Freedom of movement and choice of occupation, under conditions in which there are a variety of opportunities.

iii. Powers and prerogatives of office and positions of responsibility.

iv. Income and wealth.

v. Social bases of self-respect.

④ What is special about these goods? Why are we permitted to know about our interests in them behind the veil of ignorance? Think of them as a specification of the basic needs of free and equal citizens. Given the conditions of social cooperation among human beings, free and equal citizens need these goods whatever their particular conception of the good may be. They need them because these goods are required for pursuing a wide range of ends, and for developing and exercising the potentialities or basic "moral powers" that define a moral person. Of course, we need other goods as well, but these social primary goods are more directly dependent on social institutions than are other primary goods ("health and vigor, intelligence and imagination").

For example, consider the basic liberties. Liberty of thought and conscience is a primary good in part because it is required for the pursuit of the various moral, religious, and philosophical conceptions that serve to support our conceptions of the good: in particular, it is required if we are to fulfill the obligations that our moral and religious views (if we have them) assign to us. Or in the case of income and wealth: we typically need resources to pursue our aims and ambitions. The case of self-respect is especially important, and I will come back to it later on.

So we disagree about requirements of justice. Nevertheless, we agree (or can be brought on reflection to agree) on certain fundamentals: the ideal of fairness and a conception of persons as free and equal. The aim of the original position is to turn agreement on those fundamentals into an account of justice. Though conditions like the veil of ignorance may seem artificial, the idea is simply “to make vivid to ourselves that it seems reasonable to impose on arguments for principles of justice, and therefore on those principles themselves” (16).

### **10. What is the intuitive idea behind the OP argument?**

Under the veil of ignorance, the parties are to choose principles of justice in terms of the consequences of those choices for their level of primary goods. The central claim, then, is that parties in the original position would prefer their expected level of primary goods under the two principles than under any of the alternatives, and therefore would choose those principles.

❶ The argument itself is complicated, so it will help to have the intuitive line of thought in mind: You are asked to choose principles that will regulate the society you live in. You will make the choice under conditions of ignorance about yourself, your ideals, and your social position. Because you do not know which person you will be, but have to live with the principles you choose, you want to be sure—if this is possible—that your situation is (roughly) acceptable whatever it turns out to be. Because of the veil of ignorance, you want to be sure that the society is acceptable from the point of view of each person—because you may be that person. In particular, you want to be sure that it will be acceptable even if you land in the lowest social position, where it is least likely to be acceptable. And, according to Rawls, this is just the insurance — the strong downside protection — that the two principles provide: they ensure that social arrangements are acceptable to all members of a society of equals.

❷ If this seems strange, think of the point from another angle. The fundamental idea in Rawls's view is not choice under ignorance. Instead, that is a device used to bring out the crucial idea of political morality, which is that, in a society of free and equal moral persons, circumstances should be acceptable from the point of view of each person. The veil of ignorance is imposed to make us focus on that question—of the acceptability to each member of a society of equals—by preventing us from knowing which person we are.

❸ But why focus so much on downside protection? To see the force of the question, consider the contrast between Rawls' two principles and the

principle of average utility. According to the principle of average utility, an action or institution is right or ought to obtain just in case it maximizes the sum of utility divided by the number of people, rather than just the sum of utility (with evident differences for questions of population policy).

A society regulated by either democratic equality or average utility would include a range of different levels of primary goods, associated with different social positions. Let's focus for a moment only on the economic implications of the principles. Thus, the minimum income under the two principles is a maximized minimum; it must be at least as high as the minimum level in a society which aims not to maximize the minimum but to maximize average utility. But because the average under AU is a maximized average, it must be at least as high as the average under the two principles; moreover, the maximum level may well be higher. That is, the average level of utility may well be greater if a society permits greater dispersion and allows inequalities that do not contribute to the well-being of the least well-off group.<sup>5</sup>

Here, then, is the question: From behind the VI, is it rational to take a chance with AU, or to opt for the two principles? Notice two considerations that are important to the decision, and they work in different directions. If you opt for democratic equality, you buy strong downside protection: in effect you buy insurance against luck, or inheritance, or talent, or some moral contingency not working out well, since you ensure that the minimum is as high as possible. But insurance has a cost: you may end up doing less well than you might otherwise have done—if things work out well for you, you end up (so to speak)

paying the premium and not collecting. How then are parties in the OP to balance the high security level provided by the two principles against the possible gains that could be won by choosing average utility.

### **11. How does self-respect lead to the two principles?**

So what leads the parties in the original position to be so concerned about ensuring the highest possible minimum? Why tradeoff possible gains higher up for the highest possible minimum? The rationale has a great deal to do with the stakes of the choice, and one consideration that brings those stakes out with particular force is Rawls's account of self-respect. The point, in essence, is that when we make our choice in the original position, we need to be very conservative in part because a profoundly important good is at stake in our decision, namely our self-respect. In a nutshell, our chances of living a good life will depend on achieving self-respect, our achieving self-respect will depend on how we are regarded and treated by others in our society, and how we are regarded and treated by others in our society will be represented in the principles of justice for the society.

❶ What is self-respect? According to Rawls, the basic elements of self-respect are: (i) that the person has reasonable hopes for success in achieving those aims; (ii) that a person believes that his/her aims are worth achieving (440), in part because others acknowledge the worth of those aims. But why is self-respect relevant to the choice of principles?

❷ That relevance reflects three features of self-respect.

The first is that self-respect is a fundamental good—perhaps the fundamental primary good—whose presence is almost certainly required if conditions are to be acceptable. Without self-respect, "All desire and activity becomes empty and vain, and we sink into apathy and cynicism" (440). The fundamental importance of self-respect suggests the following test for the acceptability of each position under the two principles: consider whether each position ensures conditions favorable to the self-respect of the person in it.

Now it may seem strange to treat self-respect as a social primary good; after all, self-respect is not something that society has to distribute to people, as a social primary good is supposed to be: it is not like income, or wealth, or liberties, or opportunities. But—here I come to the second main idea—while self-respect itself is not socially distributed, certain social conditions that support self-respect are: Rawls calls these conditions the "social bases" of self-respect, by which he means social conditions that foster self-respect. It is useful to distinguish two kinds of social bases, corresponding to the two aspects of self-respect I distinguished earlier: (i) It is important that our circumstances enable us to develop aspirations and to pursue them with reasonable prospects of success: call this the "objective side" of self-respect; (ii) It is important that we associate with others in such a way that we experience their respect for us; without such experience, our sense of our own worth and that our aspirations are worth pursuing may be hard to sustain. Call this the "cultural side" of self-respect.

Third, the other primary goods (other than self-respect)—basic liberties, opportunities, income and wealth, powers and positions of authority—provide social bases of self-respect, both objective and cultural. Later I will explain in more detail how this connection between primary goods and social bases works. Suffice it to say that the concern with self-respect leads to a concern with the social bases of self-respect. And the concern with social bases, both objective and cultural, leads to a concern with the distribution of the other primary goods since they provide those social bases.

③ So self-respect has very great value; and it has social foundations. To ensure that they have an acceptable situation, then, the parties in the original position need to ensure that social conditions will be supportive of their self-respect. Consider, then, how a concern for the social foundations of self-respect leads to a case for the two principles.

Thus, it counts in favor of the two principles that they provide equal basic liberties, basic liberties at every social position including the minimum. Why? Because the liberties enable citizens, whatever their social position, to form associations with others in which common ideals can be pursued, and such common pursuits in association with others who share their concerns and ideals will help to provide subjective support for their self-respect. By ensuring the liberties to all, then, regardless of their social position, the two principles help to ensure in particular that the minimum position is satisfactory or acceptable because they help to establish the conditions of self-respect at that position.

⑥ Considerations of self-respect also give the parties reason for concern about the material resources available to them. They want to ensure that they can pursue their aims with self-confidence: the objective basis of self-respect. But for that purpose they need more than simply the liberty to pursue those aims. They need to be sure that their liberties are worth something, that the liberties are not just formally protected, but also genuinely valuable. So they want to ensure what Rawls calls the "worth of liberty" (204): a decent standard of living that will enable them to use their liberties in pursuit of their aspirations, no matter what position they end up in.

But concern about a decent standard of living—say, a reasonable floor under income, or a threshold—is one thing; ensuring that the minimum is maximized is another. Why do considerations of self-respect lead to the DP as a way to ensure that decent standard of living?

Consider how the difference principle supports self-respect at the least advantaged position.

1. The difference principle only permits inequalities that contribute to lifetime expectations at the least well-off position. Smaller inequalities would reduce expectations, as would greater inequalities.

2. Assume now that the value or "worth" of liberties to a person depends on the level of resources available to the person. (This is much less plausible for the case of the political liberties. But their worth is ensured by the proviso in the first principle requiring the fair value of political liberty.)



3. Therefore, the minimum value of the liberties with the difference principle is greater than the minimum value under the alternatives. Indeed, if the value of the liberties is, as proposed, an increasing function of (absolute, not relative) income and wealth, then the value of the liberties achieves its maximin when the difference principle is satisfied.

4. But self-respect depends on the value of the liberties. For self-respect requires confidence in one's ability to successfully pursue one's aims: it requires objective supports. But that confidence is increased as resources increase. In short, then, the great value of self-respect encourages the choice of principles that maximize the minimum worth of liberty.

5. So the two principles together provide strong insurance for the social bases of self-respect, even at the minimum position.

6. Therefore, the two principles provide strong insurance of acceptability.

Furthermore, under the difference principle occupants of the least well-off position are not only guaranteed the worth of the liberties; this guarantee is part of a public understanding in the society. But with an acceptable minimum defined as a maximized minimum, the society in effect agrees to ensure advantages regardless of the particulars of social position, natural endowment, and good fortune that distinguish the free and equal members of a well-ordered society. To forgo possible advantages because accepting them would reduce expectations at the minimum, and the worth of liberties at the minimum, is to express respect for those at the minimum position and fully affirms their

worth. And in view of the importance of self-respect, it is rational to want public institutions to show respect for people.

So the choice of the difference principle strengthens the foundations of self-respect both by ensuring the resources required for the self-confident pursuit of aims (the objective aspect of the social bases of self-respect) and by contributing to the experience of respect (the cultural aspect of the social bases of self-respect). It builds a respect for each member of the society, as free and equal, into the basic principles regulating the society.

In effect, what Rawls has said in this argument is the following: in a modern political society, the distribution of income is not natural and fixed, or simply the result of separate individual decisions. Instead, it results in part from our collective decisions, about the rules of the economic game concerning property, contract, taxation, education, training—our collective decisions about laws and policies. Because outcomes are dependent on the rules we adopt collectively—on the basic structure of the society—and not simply the choices we make individually, the stakes in ensuring a fair distribution of income are very high: in particular, increasing material well-being for citizens who are least well-off is not simply a matter of increasing their welfare. Instead, it is a way of providing a kind of social recognition of equal worth, by ensuring them the resources they need to formulate and to pursue their plans of life on an equal footing. Just as we show respect for members as equals by providing rights to personal and political liberties—an entitlement to pursue personal aims and to participate as equal members of the sovereign people in deciding the rules of

the society—so too we show respect for members as equals by establishing rules of the economic game that foster a fair distribution of the resources people need to pursue their aspirations, in particular by ensuring that we maximize the value of liberty to those for whom the value is lowest. Under any structure of laws we can imagine, the prospects of some citizens will be less attractive for their entire lives than the prospects of other citizens. In a society of equals, we need to be able to explain, to those whose prospects are worse, why we have not chosen a different arrangement under which their prospects would be better. Under Rawls principles, the explanation is that the prospects for those who are worst off are as good as they can be.

## **12. Conclusions**

Rawls's basic contention is this: Start from the fundamental ideal of a fair system of cooperation among free and equal moral persons, who have divergent moral and religious convictions. Consider which principles of justice are suited to fair cooperation among persons thus understood. Beginning with that basic ideal, we will want to find principles acceptable to each person, whatever his/her social position, talents, sex, race, religious creed, aspirations. Acceptability turns crucially on support for self-respect. And if we want to find such principles, then we will arrive at the two principles, those principles having the property that would be acceptable even if we turned out to be the least advantaged.

Starting from the fundamental ideal of fair cooperation among free and equal moral persons, we will be led to a political conception mandating both security of basic liberties and socio-economic equality: a "reconciliation of liberty and equality." What this suggests is that we ought not to think of liberty and equality as independent values that need to be balanced much less as warring principles, nor should we suppose that the combination of the two into a single conception of justice is simply a matter of political compromise. Instead, liberty and equality have a common foundation in the ideal of a society that recognizes its members as free and equal, and provides fair conditions of cooperation among them. That ideal both supports such fundamental convictions as that religious intolerance and racial discrimination are unjust and at the same time provides egalitarian guidance on controversial questions about the distribution of social and economic resources.

---

<sup>1</sup> *TJ*, p. 86.

<sup>2</sup> "The difference principle represents, in effect, an agreement to regard the distribution of natural talents as in some respects a common asset and to share in the greater social and economic benefits made possible by the complementarities of this distribution. . . . The naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in ways that help the less fortunate as well" (87).

<sup>3</sup> *Ibid.*, p. 377.

<sup>4</sup> "The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts. Aristocratic and caste societies are unjust because they make these contingencies the ascriptive basis for belonging to more or less enclosed and privileged social classes. The basic structure of these societies incorporates the arbitrariness found in nature. But there is no necessity for men to resign themselves to these contingencies" (87-88).

<sup>5</sup> This is a rough approximation to the difference: it needs to be adjusted for the fact that the two principles specify a distribution of primary goods, while average utility operates in utility space.