
A THEORY OF JUSTICE

Revised Edition

JOHN RAWLS

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CHAPTER II. THE PRINCIPLES OF JUSTICE

The theory of justice may be divided into two main parts: (1) an interpretation of the initial situation and a formulation of the various principles available for choice there, and (2) an argument establishing which of these principles would in fact be adopted. In this chapter two principles of justice for institutions and several principles for individuals are discussed and their meaning explained. Thus I am concerned for the present with only one aspect of the first part of the theory. Not until the next chapter do I take up the interpretation of the initial situation and begin the argument to show that the principles considered here would indeed be acknowledged. A variety of topics are discussed: institutions as subjects of justice and the concept of formal justice; three kinds of procedural justice; the place of the theory of the good; and the sense in which the principles of justice are egalitarian, among others. In each case the aim is to explain the meaning and application of the principles.

10. INSTITUTIONS AND FORMAL JUSTICE

The primary subject of the principles of social justice is the basic structure of society, the arrangement of major social institutions into one scheme of cooperation. We have seen that these principles are to govern the assignment of rights and duties in these institutions and they are to determine the appropriate distribution of the benefits and burdens of social life. The principles of justice for institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances. These two kinds of principles apply to different subjects and must be discussed separately.

Now by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as

tions of political justice. In general, all that can be said is that the strength of the claims of formal justice, of obedience to system, clearly depend upon the substantive justice of institutions and the possibilities of their reform.

Some have held that in fact substantive and formal justice tend to go together and therefore that at least grossly unjust institutions are never, or at any rate rarely, impartially and consistently administered.⁶ Those who uphold and gain from unjust arrangements, and who deny with contempt the rights and liberties of others, are not likely, it is said, to let scruples concerning the rule of law interfere with their interests in particular cases. The inevitable vagueness of laws in general and the wide scope allowed for their interpretation encourages an arbitrariness in reaching decisions which only an allegiance to justice can allay. Thus it is maintained that where we find formal justice, the rule of law and the honoring of legitimate expectations, we are likely to find substantive justice as well. The desire to follow rules impartially and consistently, to treat similar cases similarly, and to accept the consequences of the application of public norms is intimately connected with the desire, or at least the willingness, to recognize the rights and liberties of others and to share fairly in the benefits and burdens of social cooperation. The one desire tends to be associated with the other. This contention is certainly plausible but I shall not examine it here. For it cannot be properly assessed until we know what are the most reasonable principles of substantive justice and under what conditions men come to affirm and to live by them. Once we understand the content of these principles and their basis in reason and human attitudes, we may be in a position to decide whether substantive and formal justice are tied together.

11. TWO PRINCIPLES OF JUSTICE

I shall now state in a provisional form the two principles of justice that I believe would be agreed to in the original position. The first formulation of these principles is tentative. As we go on I shall consider several formulations and approximate step by step the final statement to be given much later. I believe that doing this allows the exposition to proceed in a natural way.

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

There are two ambiguous phrases in the second principle, namely "everyone's advantage" and "open to all." Determining their sense more exactly will lead to a second formulation of the principle in §13. The final version of the two principles is given in §46; §39 considers the rendering of the first principle.

These principles primarily apply, as I have said, to the basic structure of society and govern the assignment of rights and duties and regulate the distribution of social and economic advantages. Their formulation presupposes that, for the purposes of a theory of justice, the social structure may be viewed as having two more or less distinct parts, the first principle applying to the one, the second principle to the other. Thus we distinguish between the aspects of the social system that define and secure the equal basic liberties and the aspects that specify and establish social and economic inequalities. Now it is essential to observe that the basic liberties are given by a list of such liberties. Important among these are political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are to be equal by the first principle.

The second principle applies, in the first approximation, to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility. While the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time, positions of authority and responsibility must be accessible to all. One applies the second principle by holding positions open, and then, subject to this constraint, arranges social and economic inequalities so that everyone benefits.

These principles are to be arranged in a serial order with the first principle prior to the second. This ordering means that infringements of

6. See Lon Fuller, *The Morality of Law* (New Haven, Yale University Press, 1964), ch. IV.

the basic equal liberties protected by the first principle cannot be justified, or compensated for, by greater social and economic advantages. These liberties have a central range of application within which they can be limited and compromised only when they conflict with other basic liberties. Since they may be limited when they clash with one another, none of these liberties is absolute; but however they are adjusted to form one system, this system is to be the same for all. It is difficult, and perhaps impossible, to give a complete specification of these liberties independently from the particular circumstances—social, economic, and technological—of a given society. The hypothesis is that the general form of such a list could be devised with sufficient exactness to sustain this conception of justice. Of course, liberties not on the list, for example, the right to own certain kinds of property (e.g., means of production) and freedom of contract as understood by the doctrine of *laissez-faire* are not basic; and so they are not protected by the priority of the first principle. Finally, in regard to the second principle, the distribution of wealth and income, and positions of authority and responsibility, are to be consistent with both the basic liberties and equality of opportunity.

The two principles are rather specific in their content, and their acceptance rests on certain assumptions that I must eventually try to explain and justify. For the present, it should be observed that these principles are a special case of a more general conception of justice that can be expressed as follows.

All social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.

Injustice, then, is simply inequalities that are not to the benefit of all. Of course, this conception is extremely vague and requires interpretation.

As a first step, suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life. For simplicity, assume that the chief primary goods at the disposition of society are rights, liberties, and opportunities, and income and wealth. (Later on in Part Three the primary good of self-respect has a central place.) These are the social primary goods. Other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control. Imagine, then, a hypothetical initial arrange-

ment in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and differences in authority would make everyone better off than in this hypothetical starting situation, then they accord with the general conception.

Now it is possible, at least theoretically, that by giving up some of their fundamental liberties men are sufficiently compensated by the resulting social and economic gains. The general conception of justice imposes no restrictions on what sort of inequalities are permissible; it only requires that everyone's position be improved. We need not suppose anything so drastic as consenting to a condition of slavery. Imagine instead that people seem willing to forego certain political rights when the economic returns are significant. It is this kind of exchange which the two principles rule out; being arranged in serial order they do not permit exchanges between basic liberties and economic and social gains except under extenuating circumstances (§§26, 39).

For the most part, I shall leave aside the general conception of justice and examine instead the two principles in serial order. The advantage of this procedure is that from the first the matter of priorities is recognized and an effort made to find principles to deal with it. One is led to attend throughout to the conditions under which the absolute weight of liberty with respect to social and economic advantages, as defined by the lexical order of the two principles, would be reasonable. Offhand, this ranking appears extreme and too special a case to be of much interest; but there is more justification for it than would appear at first sight. Or at any rate, so I shall maintain (§§2). Furthermore, the distinction between fundamental rights and liberties and economic and social benefits marks a difference among primary social goods that suggests an important division in the social system. Of course, the distinctions drawn and the ordering proposed are at best only approximations. There are surely circumstances in which they fail. But it is essential to depict clearly the main lines of a reasonable conception of justice; and under many conditions anyway, the two principles in serial order may serve well enough.

The fact that the two principles apply to institutions has certain consequences. First of all, the rights and basic liberties referred to by these principles are those which are defined by the public rules of the basic structure. Whether men are free is determined by the rights and duties established by the major institutions of society. Liberty is a certain pattern

of social forms. The first principle simply requires that certain sorts of rules, those defining basic liberties, apply to everyone equally and that they allow the most extensive liberty compatible with a like liberty for all. The only reason for circumscribing basic liberties and making them less extensive is that otherwise they would interfere with one another.

Further, when principles mention persons, or require that everyone gain from an inequality, the reference is to representative persons holding the various social positions, or offices established by the basic structure. Thus in applying the second principle I assume that it is possible to assign an expectation of well-being to representative individuals holding these positions. This expectation indicates their life prospects as viewed from their social station. In general, the expectations of representative persons depend upon the distribution of rights and duties throughout the basic structure. Expectations are connected: by raising the prospects of the representative man in one position we presumably increase or decrease the prospects of representative men in other positions. Since it applies to institutional forms, the second principle (or rather the first part of it) refers to the expectations of representative individuals. As I shall discuss below (§14), neither principle applies to distributions of particular goods to particular individuals who may be identified by their proper names.

The situation where someone is considering how to allocate certain commodities to needy persons who are known to him is not within the scope of the principles. They are meant to regulate basic institutional arrangements. We must not assume that there is much similarity from the standpoint of justice between an administrative allotment of goods to specific persons and the appropriate design of society. Our common sense intuitions for the former may be a poor guide to the latter.

Now the second principle insists that each person benefit from permissible inequalities in the basic structure. This means that it must be reasonable for each relevant representative man defined by this structure, when he views it as a going concern, to prefer his prospects with the inequality to his prospects without it. One is not allowed to justify differences in income or in positions of authority and responsibility on the ground that the disadvantages of those in one position are outweighed by the greater advantages of those in another. Much less can infringements of liberty be counterbalanced in this way. It is obvious, however, that there are indefinitely many ways in which all may be advantaged when the initial arrangement of equality is taken as a benchmark. How then are we to choose among these possibilities? The principles must be specified so that they yield a determinate conclusion. I now turn to this problem.

I have already mentioned that since the phrases "everyone's advantage" and "equally open to all" are ambiguous, both parts of the second principle have two natural senses. Because these senses are independent of one another, the principle has four possible meanings. Assuming that the first principle of equal liberty has the same sense throughout, we then have four interpretations of the two principles. These are indicated in the table below.

"Equally open"	Principle of efficiency	Difference principle "Everyone's advantage"
Equality as careers open to talents	System of Natural Liberty	Natural Aristocracy
Equality as equality of fair opportunity	Liberal Equality	Democratic Equality

I shall sketch in turn these three interpretations: the system of natural liberty, liberal equality, and democratic equality. In some respects this sequence is the more intuitive one, but the sequence via the interpretation of natural aristocracy is not without interest and I shall comment on it briefly. In working out justice as fairness, we must decide which interpretation is to be preferred. I shall adopt that of democratic equality, explaining in the next section what this notion means. The argument for its acceptance in the original position does not begin until the next chapter.

The first interpretation (in either sequence) I shall refer to as the system of natural liberty. In this rendering the first part of the second principle is understood as the principle of efficiency adjusted so as to apply to institutions or, in this case, to the basic structure of society; and the second part is understood as an open social system in which, to use the traditional phrase, careers are open to talents. I assume in all interpretations that the first principle of equal liberty is satisfied and that the economy is roughly a free market system, although the means of production may or may not be privately owned. The system of natural liberty asserts, then, that a basic structure satisfying the principle of efficiency and in which positions are open to those able and willing to strive for them will lead to a just distribution. Assigning rights and duties in this way is thought to give a scheme which allocates wealth and income, authority and responsibility, in a fair way whatever this allocation turns

out to be. The doctrine includes an important element of pure procedural justice which is carried over to the other interpretations.

At this point it is necessary to make a brief digression to explain the principle of efficiency. This principle is simply that of Pareto optimality (as economists refer to it) formulated so as to apply to the basic structure.⁷ I shall always use the term "efficiency" instead because this is literally correct and the term "optimality" suggests that the concept is much broader than it is in fact.⁸ To be sure, this principle was not originally intended to apply to institutions but to particular configurations of the economic system, for example, to distributions of goods among consumers or to modes of production. The principle holds that a configuration is efficient whenever it is impossible to change it so as to make some persons (at least one) better off without at the same time making other persons (at least one) worse off. Thus a distribution of a stock of commodities among certain individuals is efficient if there exists no redistribution of these goods that improves the circumstances of at least one of these individuals without another being disadvantaged. The organization of production is efficient if there is no way to alter inputs so as to produce more of some commodity without producing less of another. For if we could produce more of one good without having to give up some of another, the larger stock of goods could be used to better the circumstances of some persons without making that of others any worse. These applications of the principle show that it is, indeed, a principle of efficiency. A distribution of goods or a scheme of production is inefficient when there are ways of doing still better for some individuals without doing any worse for others. I shall assume that the parties in the original position accept this principle to judge the efficiency of economic and social arrangements. (See the accompanying discussion of the principle of efficiency.)

7. There are expositions of this principle in most any work on price theory or social choice. A perspicuous account is found in T. C. Koopmans, *Three Essays on the State of Economic Science* (New York, McGraw-Hill, 1957), pp. 41-66. See also A. K. Sen, *Collective Choice and Social Welfare* (San Francisco, Holden-Day, Inc., 1970), pp. 21f. These works contain everything (and more) that is required for our purposes in this book, and the latter takes up the relevant philosophical questions. The principle of efficiency was introduced by Vilfredo Pareto in his *Manuel d'économie politique* (Paris, 1909), ch. VI, §53, and the appendix, §§9. A translation of the relevant passages can be found in A. N. Page, *Utility Theory: A Book of Readings* (New York, John Wiley, 1968), pp. 38f. The related concept of indifference curves goes back to F. Y. Edgeworth, *Mathematical Psychics* (London, 1888), pp. 20-29; also in Page, pp. 160-167.

8. On this point see Koopmans, *Three Essays on the State of Economic Science*, p. 49. Koopmans remarks that a term like "allocative efficiency" would have been a more accurate name.

THE PRINCIPLE OF EFFICIENCY

Assume that there is a fixed stock of commodities to be distributed between two persons, x_1 and x_2 . Let the line AB represent the points such that given x_1 's gain at the corresponding level, there is no way to distribute the commodities so as to make x_2 better off than the point indicated by the curve. Consider the point D = (a, b). Then holding x_1 at the level a, the best that can be done for x_2 is the level b. In figure 3 the point O, the origin, represents the position before any commodities are distributed. The points on the line AB are the efficient points. Each point on AB can be seen to satisfy Pareto's criterion: there is no redistribution that makes either person better off without making the other worse off. This is conveyed by the fact that the line AB slopes downward to the right. Since there is but a fixed stock of items, it is supposed that as one person gains the other loses. (Of course, this assumption is dropped in the case of the basic structure which is a system of cooperation producing a sum of positive advantages.) Normally the region OAB is taken to be a convex set. This means that given any pair of points in the set, the points on the straight line joining these two points are also in the set. Circles, ellipses, squares, triangles, and so on are convex sets.

It is clear that there are many efficient points, in fact, all the points on the line AB. The principle of efficiency does not by itself select one particular distribution of commodities as the efficient one. To select among the efficient distributions some other principle, a principle of justice, say, is necessary.

Of two points, if one is northeast of the other, this point is superior by

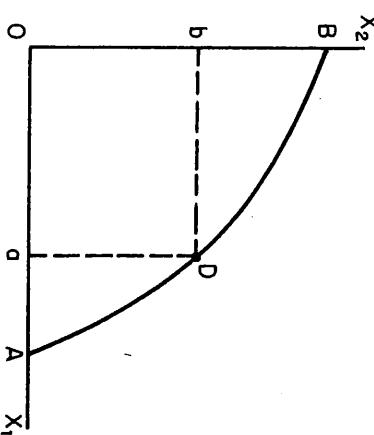


FIGURE 3

the principle of efficiency. Points to the northwest or southeast cannot be compared. The ordering defined by the principle of efficiency is but a partial one. Thus in figure 4 while C is superior to E, and D is superior to F, none of the points on the line AB are either superior or inferior to one another. The class of efficient points cannot be ranked. Even the extreme points A and B at which one of the parties has everything are efficient, just as other points on AB.

Observe that we cannot say that any point on the line AB is superior to all points in the interior of OAB. Each point on AB is superior only to those points in the interior southwest of it. Thus the point D is superior to all points inside the rectangle indicated by the dotted lines joining D to the points a and b. The point D is not superior to the point E. These points cannot be ordered. The point C, however, is superior to E and so are all the points on the line AB belonging to the small shaded triangular region that has the point E as a corner.

On the other hand, if one takes the 45° line as indicating the locus of equal distribution (this assumes an interpersonal cardinal interpretation of the axes, something not supposed in the preceding remarks), and if one counts this as an additional basis of decision, then all things considered, the point D may be preferable to both C and E. It is much closer to this line. One may even decide that an interior point such as F is to be preferred to C which is an efficient point. Actually, in justice as fairness the principles of justice are prior to considerations of efficiency and therefore, roughly speaking, the interior points that represent just distributions will generally be preferred to efficient points which represent unjust distributions. Of course, figure 4 depicts a very simple situation and cannot be applied to the basic structure.

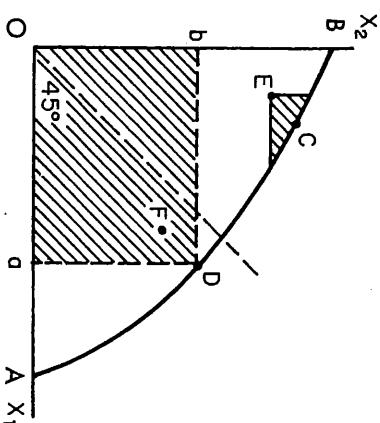


FIGURE 4

Now the principle of efficiency can be applied to the basic structure by reference to the expectations of representative men.⁹ Thus we can say that an arrangement of rights and duties in the basic structure is efficient if and only if it is impossible to change the rules, to redefine the scheme of rights and duties, so as to raise the expectations of any representative man (at least one) without at the same time lowering the expectations of some (at least one) other representative man. Of course, these alterations must be consistent with the other principles. That is, in changing the basic structure we are not permitted to violate the principle of equal liberty or the requirement of open positions. What can be altered is the distribution of income and wealth and the way in which those in positions of authority and responsibility can regulate cooperative activities. Consistent with the constraints of liberty and accessibility, the allocation of these primary goods may be adjusted to modify the expectations of representative individuals. An arrangement of the basic structure is efficient when there is no way to change this distribution so as to raise the prospects of some without lowering the prospects of others.

There are, I shall assume, many efficient arrangements of the basic structure. Each of these specifies a division of advantages from social cooperation. The problem is to choose between them, to find a conception of justice that singles out one of these efficient distributions as also just. If we succeed in this, we shall have gone beyond mere efficiency yet in a way compatible with it. Now it is natural to try out the idea that as long as the social system is efficient there is no reason to be concerned with distribution. All efficient arrangements are in this case declared equally just. Of course, this suggestion would be outlandish for the allocation of particular goods to known individuals. No one would suppose that it is a matter of indifference from the standpoint of justice whether any one of a number of men happens to have everything. But the suggestion seems equally unreasonable for the basic structure. Thus it may be that under certain conditions serfdom cannot be significantly reformed without lowering the expectations of some other representative man, say that of landowners, in which case serfdom is efficient. Yet it may also happen under the same conditions that a system of free labor cannot be changed without

9. For the application of the Pareto criterion to systems of public rules, see J. M. Buchanan, "The Relevance of Pareto Optimality," *Journal of Conflict Resolution*, vol. 6 (1962), as well as his book with Gordon Tullock, *The Calculus of Consent* (Ann Arbor, The University of Michigan Press, 1962). In applying this and other principles to institutions I follow one of the points of "Two Concepts of Rules," *Philosophical Review*, vol. 64 (1955). Doing this has the advantage, among other things, of constraining the employment of principles by publicity effects. See §23, note 8.

lowering the expectations of some other representative man, say that of free laborers, so this arrangement is likewise efficient. More generally, whenever a society is relevantly divided into a number of classes, it is possible, let us suppose, to maximize with respect to any one of its representative men. These maxima give at least this many efficient positions, for none of them can be departed from to raise the expectations of others without lowering those of the representative man with respect to whom the maximum is defined. Thus each of these extremes is efficient but they surely cannot be all just.

Now these reflections show only what we knew all along, that is, that the principle of efficiency cannot serve alone as a conception of justice.¹⁰ Therefore it must be supplemented in some way. Now in the system of natural liberty the principle of efficiency is constrained by certain background institutions; when these constraints are satisfied, any resulting efficient distribution is accepted as just. The system of natural liberty selects an efficient distribution roughly as follows. Let us suppose that we know from economic theory that under the standard assumptions defining a competitive market economy, income and wealth will be distributed in an efficient way, and that the particular efficient distribution which results in any period of time is determined by the initial distribution of assets, that is, by the initial distribution of income and wealth, and of natural talents and abilities. With each initial distribution, a definite efficient outcome is arrived at. Thus it turns out that if we are to accept the outcome as just, and not merely as efficient, we must accept the basis upon which over time the initial distribution of assets is determined.

In the system of natural liberty the initial distribution is regulated by the arrangements implicit in the conception of careers open to talents (as earlier defined). These arrangements presuppose a background of equal liberty (as specified by the first principle) and a free market economy. They require a formal equality of opportunity in that all have at least the same legal rights of access to all advantaged social positions. But since there is no effort to preserve an equality, or similarity, of social conditions, except insofar as this is necessary to preserve the requisite background institutions, the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies. The existing

distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets—that is, natural talents and abilities—as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and such chance contingencies as accident and good fortune. Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.

The liberal interpretation, as I shall refer to it, tries to correct for this by adding to the requirement of careers open to talents the further condition of the principle of fair equality of opportunity. The thought here is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them. Offhand it is not clear what is meant, but we might say that those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class.¹¹

The liberal interpretation of the two principles seeks, then, to mitigate the influence of social contingencies and natural fortune on distributive shares. To accomplish this end it is necessary to impose further basic structural conditions on the social system. Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity. The elements of this framework are familiar enough, though it may be worthwhile to recall the importance of preventing excessive accumulations of property and wealth and of maintaining equal opportunities of education for all. Chances to acquire cultural knowledge and skills should not depend upon one's class position, and so the school system, whether public or private, should be designed to even out class barriers.

While the liberal conception seems clearly preferable to the system of

10. This fact is generally recognized in welfare economics, as when it is said that efficiency is to be balanced against equity. See for example Tibor Scitovsky, *Welfare and Competition* (London, George Allen and Unwin, 1952), pp. 60–69 and I. M. D. Little, *A Critique of Welfare Economics*, 2nd ed. (Oxford, The Clarendon Press, 1957), ch. VI, esp. pp. 112–116. See Sen's remarks on the limitations of the principle of efficiency, *Collective Choice and Social Welfare*, pp. 22, 24–26, 83–86.

11. This definition follows Sidgwick's suggestion in *The Methods of Ethics*, p. 285n. See also R. H. Tawney, *Equality* (London, George Allen and Unwin, 1931), ch. II, sec. ii; and B. A. O. Williams, "The Idea of Equality," in *Philosophy, Politics, and Society*, ed. Peter Laslett and W. G. Runciman (Oxford, Basil Blackwell, 1962), pp. 125f.

natural liberty, intuitively it still appears defective. For one thing, even if it works to perfection in eliminating the influence of social contingencies, it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents. Within the limits allowed by the background arrangements, distributive shares are decided by the outcome of the natural lottery; and this outcome is arbitrary from a moral perspective. 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. Furthermore, the principle of fair opportunity can be only imperfectly carried out, at least as long as some form of the family exists. The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. 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. It is impossible in practice to secure equal chances of achievement and culture for those similarly endowed, and therefore we may want to adopt a principle which recognizes this fact and also mitigates the arbitrary effects of the natural lottery itself. That the liberal conception fails to do this encourages one to look for another interpretation of the two principles of justice.

Before turning to the conception of democratic equality, we should note that of natural aristocracy. On this view no attempt is made to regulate social contingencies beyond what is required by formal equality of opportunity, but the advantages of persons with greater natural endowments are to be limited to those that further the good of the poorer sectors of society. The aristocratic ideal is applied to a system that is open, at least from a legal point of view, and the better situation of those favored by it is regarded as just only when less would be had by those below, if less were given to those above.¹² In this way the idea of *noblesse oblige* is carried over to the conception of natural aristocracy.

Now both the liberal conception and that of natural aristocracy are unstable. For once we are troubled by the influence of either social contingencies or natural chance on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other.

From a moral standpoint the two seem equally arbitrary. So however we move away from the system of natural liberty, we cannot be satisfied short of the democratic conception. This conception I have yet to explain. And, moreover, none of the preceding remarks are an argument for this conception, since in a contract theory all arguments, strictly speaking, are to be made in terms of what it would be rational to agree to in the original position. But I am concerned here to prepare the way for the favored interpretation of the two principles so that these criteria, especially the second one, will not strike the reader as extreme. Once we try to find a rendering of them which treats everyone equally as a moral person, and which does not weight men's share in the benefits and burdens of social cooperation according to their social fortune or their luck in the natural lottery, the democratic interpretation is the best choice among the four alternatives. With these comments as a preface, I now turn to this conception.

13. DEMOCRATIC EQUALITY AND THE DIFFERENCE PRINCIPLE

The democratic interpretation, as the table suggests, is arrived at by combining the principle of fair equality of opportunity with the difference principle. This principle removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged. Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate. (See the discussion of the difference principle that follows.)

THE DIFFERENCE PRINCIPLE

12. This formulation of the aristocratic ideal is derived from Santayana's account of aristocracy in ch. IV of *Reason and Society* (New York, Charles Scribner, 1905) pp. 109f. He says, for example, "an aristocratic regimen can only be justified by radiating benefit and by proving that were less given to those above, less would be attained by those beneath them." I am indebted to Robert Rodes for pointing out to me that natural aristocracy is a possible interpretation of the two principles of justice and that an ideal feudal system might also try to fulfill the difference principle.

persons better off (limiting ourselves to the two-person case for simplicity), an equal distribution is to be preferred. The indifference curves take the form depicted in figure 5. These curves are actually made up of vertical and horizontal lines that intersect at right angles at the 45° line (again supposing an interpersonal and cardinal interpretation of the axes). No matter how much either person's situation is improved, there is no gain from the standpoint of the difference principle unless the other gains also.

Suppose that x_1 is the most favored representative man in the basic structure. As his expectations are increased so are the prospects of x_2 , the least advantaged man. In figure 6 let the curve OP represent the contribution to x_2 's expectations made by the greater expectations of x_1 . The point O, the origin, represents the hypothetical state in which all social primary goods are distributed equally. Now the OP curve is always below the 45° line, since x_1 is always better off. Thus the only relevant parts of the indifference curves are those below this line, and for this reason the upper left-hand part of figure 6 is not drawn in. Clearly the difference principle is perfectly satisfied only when the OP curve is just tangent to the highest indifference curve that it touches. In figure 6 this is at the point a.

Note that the contribution curve, the curve OP, rises upward to the right because it is assumed that the social cooperation defined by the basic structure is mutually advantageous. It is no longer a matter of shuffling about a fixed stock of goods. Also, nothing is lost if an accurate interpersonal comparison of benefits is impossible. It suffices that the least favored person can be identified and his rational preference determined.

A view less egalitarian than the difference principle, and perhaps more

plausible at first sight, is one in which the indifference lines for just distributions (or for all things considered) are smooth curves convex to the origin, as in figure 7. The indifference curves for social welfare functions are often depicted in this fashion. This shape of the curves expresses the fact that as either person gains relative to the other, further benefits to him become less valuable from a social point of view.

A classical utilitarian, on the other hand, is indifferent as to how a constant sum of benefits is distributed. He appeals to equality only to break ties. If there are but two persons, then assuming an interpersonal cardinal interpretation of the axes, the utilitarian's indifference lines for distributions are straight lines perpendicular to the 45° line. Since, however, x_1 and x_2 are representative men, the gains to them have to be weighted by the number of persons they each represent. Since presumably x_2 represents rather more persons than x_1 , the indifference lines of x_2 become more horizontal, as seen in figure 8. The ratio of the number of persons advantaged to the number of disadvantaged defines the slope of these straight lines. Drawing the same contribution curve OP as before, we see that the best distribution from a utilitarian point of view is reached at the point which is beyond the point b where the OP curve reaches its maximum. Since the difference principle selects the point b and b is always to the left of a, utilitarianism allows, other things equal, larger inequalities.

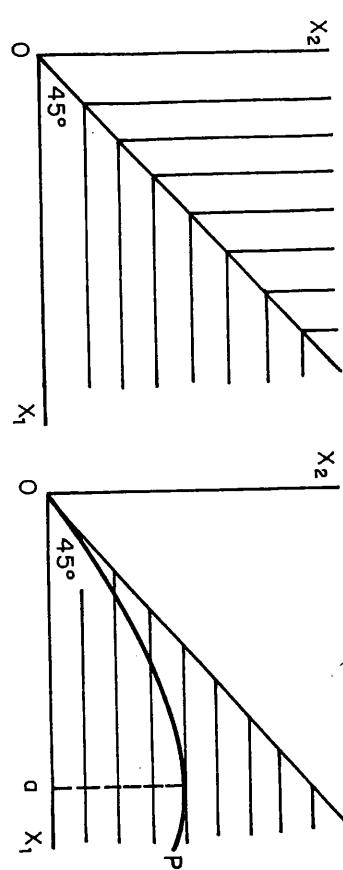


FIGURE 5

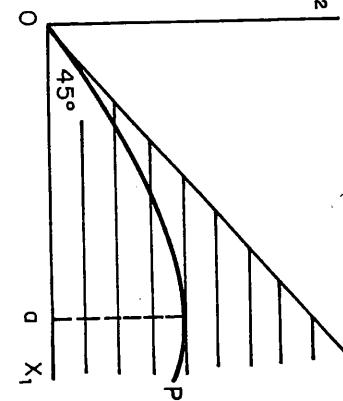


FIGURE 6

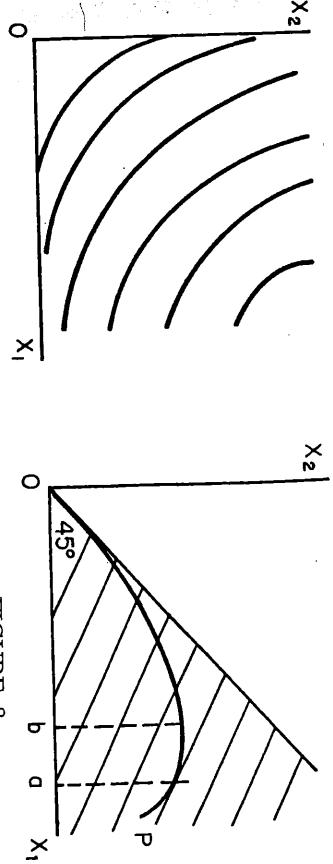


FIGURE 7

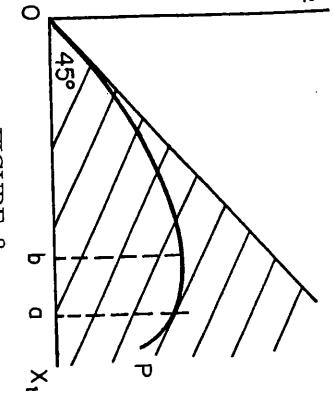


FIGURE 8

To illustrate the difference principle, consider the distribution of income among social classes. Let us suppose that the various income groups correlate with representative individuals by reference to whose expectations we can judge the distribution. Now those starting out as members of the entrepreneurial class in property-owning democracy, say, have a better prospect than those who begin in the class of unskilled laborers. It

seems likely that this will be true even when the social injustices which now exist are removed. What, then, can possibly justify this kind of initial inequality in life prospects? According to the difference principle, it is justifiable only if the difference in expectation is to the advantage of the representative man who is worse off, in this case the representative unskilled worker. The inequality in expectation is permissible only if lowering it would make the working class even more worse off. Supposedly, given the rider in the second principle concerning open positions, and the principle of liberty generally, the greater expectations allowed to entrepreneurs encourages them to do things which raise the prospects of laboring class. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on. I shall not consider how far these things are true. The point is that something of this kind must be argued if these inequalities are to satisfy by the difference principle.

I shall now make a few remarks about this principle. First of all, in applying it, one should distinguish between two cases. The first case is that in which the expectations of the least advantaged are indeed maximized (subject, of course, to the mentioned constraints). No changes in the expectations of those better off can improve the situation of those worst off. The best arrangement obtains, what I shall call a perfectly just scheme. The second case is that in which the expectations of all those better off at least contribute to the welfare of the more unfortunate. That is, if their expectations were decreased, the prospects of the least advantaged would likewise fall. Yet the maximum is not yet achieved. Even higher expectations for the more advantaged would raise the expectations of those in the lowest position. Such a scheme is, I shall say, just throughout, but not the best just arrangement. A scheme is unjust when the higher expectations, one or more of them, are excessive. If these expectations were decreased, the situation of the least favored would be improved. How unjust an arrangement is depends on how excessive the higher expectations are and to what extent they depend upon the violation of the other principles of justice, for example, fair equality of opportunity; but I shall not attempt to measure the degrees of injustice. The point to note here is that while the difference principle is, strictly speaking, a maximizing principle, there is a significant distinction between the cases that fall short of the best arrangement. A society should try to avoid situations where the marginal contributions of those better off are negative, since, other things equal, this seems a greater fault than falling short of the best scheme when these contributions are positive. The even larger difference

between classes violates the principle of mutual advantage as well as democratic equality (§17).

A further point is this. We saw that the system of natural liberty and the liberal conception go beyond the principle of efficiency by setting up certain background institutions and leaving the rest to pure procedural justice. The democratic conception holds that while pure procedural justice may be invoked to some extent at least, the way previous interpretations do this still leaves too much to social and natural contingency. But it should be noted that the difference principle is compatible with the principle of efficiency. For when the former is fully satisfied, it is indeed impossible to make any one representative man better off without making another worse off, namely, the least advantaged representative man whose expectations we are to maximize. Thus justice is defined so that it is consistent with efficiency, at least when the two principles are perfectly fulfilled. Of course, if the basic structure is unjust, these principles will authorize changes that may lower the expectations of some of those better off; and therefore the democratic conception is not consistent with the principle of efficiency if this principle is taken to mean that only changes which improve everyone's prospects are allowed. Justice is prior to efficiency and requires some changes that are not efficient in this sense. Consistency obtains only in the sense that a perfectly just scheme is also efficient.

Next, we may consider a certain complication regarding the meaning of the difference principle. It has been taken for granted that if the principle is satisfied, everyone is benefited. One obvious sense in which this is so is that each man's position is improved with respect to the initial arrangement of equality. But it is clear that nothing depends upon being able to identify this initial arrangement; indeed, how well off men are in this situation plays no essential role in applying the difference principle. We simply maximize the expectations of the least favored position subject to the required constraints. As long as doing this is an improvement for everyone, as so far I have assumed it is, the estimated gains from the situation of hypothetical equality are irrelevant, if not largely impossible to ascertain anyway. There may be, however, a further sense in which everyone is advantaged when the difference principle is satisfied, at least if we make certain assumptions. Let us suppose that inequalities in expectations are chain-connected: that is, if an advantage has the effect of raising the expectations of the lowest position, it raises the expectations of all positions in between. For example, if the greater expectations for entrepreneurs benefit the unskilled worker, they also benefit the semi-

skilled. Notice that chain connection says nothing about the case where the least advantaged do not gain, so that it does not mean that all effects move together. Assume further that expectations are close-knit: that is, it is impossible to raise or lower the expectation of every other representative man without raising or lowering the expectation of the least advantaged. There is no loose-jointedness, so to speak, in the way expectations hang together. Now with these assumptions there is a sense in which everyone benefits when the difference principle is satisfied. For the representative man who is better off in any two-way comparison gains by the advantages offered him, and the man who is worse off gains from the contributions which these inequalities make. Of course, these conditions may not hold. But in this case those who are better off should not have a veto over the benefits available for the least favored. We are still to maximize the expectations of those most disadvantaged. (See the accompanying discussion of chain connection.)

CHAIN CONNECTION

For simplicity assume that there are three representative men. Let x_1 be the most favored and x_3 the least favored with x_2 in between. Let the expectations of x_1 be marked off along the horizontal axis, the expectations of x_2 and x_3 along the vertical axis. The curves showing the contribution of the most favored to the other groups begin at the origin as the hypothetical position of equality. Moreover, there is a maximum gain permitted to the most favored on the assumption that, even if the difference principle would allow it, there would be unjust effects on the political system and the like excluded by the priority of liberty.

The difference principle selects the point where the curve for x_3 reaches its maximum, for example, the point a in figure 9.

Chain connection means that at any point where the x_3 curve is rising to the right, the x_2 curve is also rising, as in the intervals left of the points a and b in figures 9 and 10. Chain connection says nothing about the case where the x_3 curve is falling to the right, as in the interval to the right of the point a in figure 9. The x_2 curve may be either rising or falling (as indicated by the dashed line x'_2). Chain connection does not hold to the right of b in figure 10.

Intervals in which both the x_2 and the x_3 curves are rising define the intervals of positive contributions. Any more to the right increases the

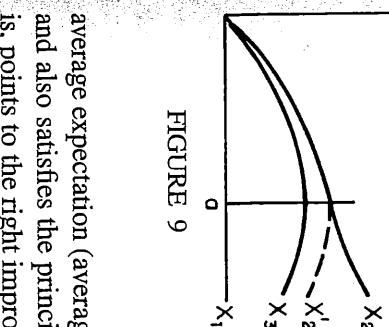


FIGURE 9

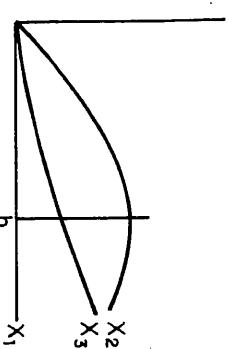


FIGURE 10

average expectation (average utility if utility is measured by expectations) and also satisfies the principle of efficiency as a criterion of change, that is, points to the right improve everyone's situation.

In figure 9 the average expectations may be rising beyond the point a , although the expectations of the least favored are falling. (This depends on the weights of the several groups.) The difference principle excludes this and selects the point a .

Close-knitness means that there are no flat stretches on the curves for x_2 and x_3 . At each point both curves are either rising or falling. All the curves illustrated are close-knit.

I shall not examine how likely it is that chain connection and close-knitness hold. The difference principle is not contingent on these relations being satisfied. However, when the contributions of the more favored positions spread generally throughout society and are not confined to particular sectors, it seems plausible that if the least advantaged benefit so do others in between. Moreover, a wide diffusion of benefits is favored by two features of institutions both exemplified by the basic structure: first, they are set up to advance certain fundamental interests which everyone has in common, and second, offices and positions are open. Thus it seems probable that if the authority and powers of legislators and judges, say, improve the situation of the less favored, they improve that of citizens generally. Chain connection may often be true, provided the other principles of justice are fulfilled. If this is so, then we may observe that within the region of positive contributions (the region where the advantages of all those in favored positions raise the prospects of the least fortunate), any movement toward the perfectly just arrangement improves everyone's expectation. Under these circumstances the difference principle has somewhat similar practical consequences for the principles of efficiency and average utility (if utility is measured by primary goods). Of course, if

chain connection rarely holds, this similarity is unimportant. But it seems likely that within a just social scheme a general diffusion of benefits often takes place.

There is a further complication. Close-knitness is assumed in order to simplify the statement of the difference principle. It is clearly conceivable, however likely or important in practice, that the least advantaged are not affected one way or the other by some changes in expectations of the best off although these changes benefit others. In this sort of case close-knitness fails, and to cover the situation we can express a more general principle as follows: in a basic structure with n relevant representatives,

first maximize the welfare of the worst off representative man; second, for equal welfare of the worst-off representative, maximize the welfare of the second worst-off representative man, and so on until the last case which is, for equal welfare of all the preceding $n-1$ representatives, maximize the welfare of the best-off representative man. We may think of this as the lexical difference principle.¹³ I think, however, that in actual cases this principle is unlikely to be relevant, for when the greater potential benefits to the more advantaged are significant, there will surely be some way to improve the situation of the less advantaged as well. The general laws governing the institutions of the basic structure insure that cases requiring the lexical principle will not arise. Thus I shall always use the difference principle in the simpler form, and so the outcome of the last several sections is that the second principle reads as follows:

Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

Finally, a comment about terminology. Economics may wish to refer to the difference principle as the maximin criterion, but I have carefully avoided this name for several reasons. The maximin criterion is generally understood as a rule for choice under great uncertainty (§26), whereas the difference principle is a principle of justice. It is undesirable to use the same name for two things that are so distinct. The difference principle is a very special criterion: it applies primarily to the basic structure of society via representative individuals whose expectations are to be estimated by an index of primary goods (§15). In addition, calling the difference principle the maximin criterion might wrongly suggest that the main argument for this principle from the original position derives from an

assumption of very high risk aversion. There is indeed a relation between the difference principle and such an assumption, but extreme attitudes to risk are not postulated (§28); and in any case, there are many considerations in favor of the difference principle in which the aversion to risk plays no role at all. Thus it is best to use the term "maximin criterion" solely for the rule of choice under uncertainty.

14. FAIR EQUALITY OF OPPORTUNITY AND PURE PROCEDURAL JUSTICE

I should now like to comment upon the second part of the second principle, henceforth to be understood as the liberal principle of fair equality of opportunity. It must not then be confused with the notion of careers open to talents; nor must one forget that since it is tied in with the difference principle its consequences are quite distinct from the liberal interpretation of the two principles taken together. In particular, I shall try to show further on (§17) that this principle is not subject to the objection that it leads to a meritocratic society. Here I wish to consider a few other points, especially its relation to the idea of pure procedural justice.

First, though, I should note that the reasons for requiring open positions are not solely, or even primarily, those of efficiency. I have not maintained that offices must be open if in fact everyone is to benefit from an arrangement. For it may be possible to improve everyone's situation by assigning certain powers and benefits to positions despite the fact that certain groups are excluded from them. Although access is restricted, perhaps these offices can still attract superior talent and encourage better performance. But the principle of open positions forbids this. It expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them. They would be justified in their complaint not only because they were excluded from certain external rewards of office but because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties. They would be deprived of one of the main forms of human good.

Now I have said that the basic structure is the primary subject of justice. Of course, any ethical theory recognizes the importance of the basic structure as a subject of justice, but not all theories regard its importance in the same way. In justice as fairness society is interpreted as

13. On this point, see Sen, *Collective Choice and Social Welfare*, p. 138n.

a cooperative venture for mutual advantage. The basic structure is a public system of rules defining a scheme of activities that leads men to act together so as to produce a greater sum of benefits and assigns to each certain recognized claims to a share in the proceeds. What a person does depends upon what the public rules say he will be entitled to, and what a person is entitled to depends on what he does. The distribution which results is arrived at by honoring the claims determined by what persons undertake to do in the light of these legitimate expectations.

These considerations suggest the idea of treating the question of distributive shares as a matter of pure procedural justice.¹⁴ The intuitive idea is to design the social system so that the outcome is just whatever it happens to be, at least so long as it is within a certain range. The notion of pure procedural justice is best understood by a comparison with perfect and imperfect procedural justice. To illustrate the former, consider the simplest case of fair division. A number of men are to divide a cake: assuming that the fair division is an equal one, which procedure, if any, will give this outcome? Technicalities aside, the obvious solution is to have one man divide the cake and get the last piece, the others being allowed their pick before him. He will divide the cake equally, since in this way he assures for himself the largest share possible. This example illustrates the two characteristic features of perfect procedural justice. First, there is an independent criterion for what is a fair division, a criterion defined separately from and prior to the procedure which is to be followed. And second, it is possible to devise a procedure that is sure to give the desired outcome. Of course, certain assumptions are made here, such as that the man selected can divide the cake equally, wants as large a piece as he can get, and so on. But we can ignore these details. The essential thing is that there is an independent standard for deciding which outcome is just and a procedure guaranteed to lead to it. Pretty clearly, perfect procedural justice is rare, if not impossible, in cases of much practical interest.

Imperfect procedural justice is exemplified by a criminal trial. The desired outcome is that the defendant should be declared guilty if and only if he has committed the offense with which he is charged. The trial procedure is framed to search for and to establish the truth in this regard.

But it seems impossible to design the legal rules so that they always lead to the correct result. The theory of trials examines which procedures and rules of evidence, and the like, are best calculated to advance this purpose consistent with the other ends of the law. Different arrangements for hearing cases may reasonably be expected in different circumstances to yield the right results, not always but at least most of the time. A trial, then, is an instance of imperfect procedural justice. Even though the law is carefully followed, and the proceedings fairly and properly conducted, it may reach the wrong outcome. An innocent man may be found guilty, a guilty man may be set free. In such cases we speak of a miscarriage of justice: the injustice springs from no human fault but from a fortuitous combination of circumstances which defeats the purpose of the legal rules. The characteristic mark of imperfect procedural justice is that while there is an independent criterion for the correct outcome, there is no feasible procedure which is sure to lead to it.

By contrast, pure procedural justice obtains when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed. This situation is illustrated by gambling. If a number of persons engage in a series of fair bets, the distribution of cash after the last bet is fair, or at least not unfair, whatever this distribution is. I assume here that fair bets are those having a zero expectation of gain, that the bets are made voluntarily, that no one cheats, and so on. The betting procedure is fair and freely entered into under conditions that are fair. Thus the background circumstances define a fair procedure. Now any distribution of cash summing to the initial stock held by all individuals could result from a series of fair bets. In this sense all of these particular distributions are equally fair. A distinctive feature of pure procedural justice is that the procedure for determining the just result must actually be carried out; for in these cases there is no independent criterion by reference to which a definite outcome can be known to be just. Clearly we cannot say that a particular state of affairs is just because it could have been reached by following a fair procedure. This would permit far too much. It would allow one to say that almost any distribution of goods is just, or fair, since it could have come about as a result of fair gambles. What makes the final outcome of betting fair, or not unfair, is that it is the one which has arisen after a series of fair gambles. A fair procedure translates its fairness to the outcome only when it is actually carried out.

14. For a general discussion of procedural justice, see Brian Barry, *Political Argument* (London, Routledge and Kegan Paul, 1965), ch. VI. On the problem of fair division, see R. D. Luce and Howard Raiffa, *Games and Decisions* (New York, John Wiley and Sons, Inc., 1957), pp. 363-368; and Hugo Steinhaus, "The Problem of Fair Division," *Econometrica*, vol. 16 (1948).

In order, therefore, to apply the notion of pure procedural justice to distributive shares it is necessary to set up and to administer impartially a just system of institutions. Only against the background of a just basic structure, including a just political constitution and a just arrangement of economic and social institutions, can one say that the requisite just procedure exists. In Part Two I shall describe a basic structure that has the necessary features (§43). Its various institutions are explained and connected with the two principles of justice.

The role of the principle of fair opportunity is to insure that the system of cooperation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range. Now the practical advantage of pure procedural justice is that it is no longer necessary to keep track of the endless variety of circumstances and the changing relative positions of particular persons. One avoids the problem of defining principles to cope with the enormous complexities which would arise if such details were relevant. It is a mistake to focus attention on the varying relative positions of individuals and to require that every change, considered as a single transaction viewed in isolation, be in itself just. It is the arrangement of the basic structure which is to be judged, and judged from a general point of view. Unless we are prepared to criticize it from the standpoint of a relevant representative man in some particular position, we have no complaint against it. Thus the acceptance of the two principles constitutes an understanding to discard as irrelevant as a matter of social justice much of the information and many of the complications of everyday life.

In pure procedural justice, then, distributions of advantages are not appraised in the first instance by confronting a stock of benefits available with given desires and needs of known individuals. The allotment of the items produced takes place in accordance with the public system of rules, and this system determines what is produced, how much is produced, and by what means. It also determines legitimate claims the honoring of which yields the resulting distribution. Thus in this kind of procedural justice the correctness of the distribution is founded on the justice of the scheme of cooperation from which it arises and on answering the claims of individuals engaged in it. A distribution cannot be judged in isolation from the system of which it is the outcome or from what individuals have done in good faith in the light of established expectations. If it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires and preferences is better than another, then there is simply no answer to this question. The conception of the two

principles does not interpret the primary problem of distributive justice as one of allocative justice.

By contrast allocative justice applies when a given collection of goods is to be divided among definite individuals with known desires and needs. The collection to be allotted is not the product of these individuals, nor do they stand in any existing cooperative relations. Since there are no prior claims on the things to be distributed, it is natural to share them out according to desires and needs, or even to maximize the net balance of satisfaction. Justice becomes a kind of efficiency, unless equality is preferred. Suitably generalized, the allocative conception leads to the classical utilitarian view. For as we have seen, this doctrine assimilates justice to the benevolence of the impartial spectator and the latter in turn to the most efficient design of institutions to promote the greatest balance of satisfaction. The point to note here is that utilitarianism does not interpret the basic structure as a scheme of pure procedural justice. For the utilitarian has, in principle anyway, an independent standard for judging all distributions, namely, whether they produce the greatest net balance of satisfaction. In his theory, institutions are more or less imperfect arrangements for bringing about this end. Thus given existing desires and preferences, and the developments into the future which they allow, the statesman's aim is to set up those social schemes that will best approximate an already specified goal. Since these arrangements are subject to the unavoidable constraints and hindrances of everyday life, the basic structure is a case of imperfect procedural justice.

For the time being I shall suppose that the two parts of the second principle are lexically ordered. Thus we have one lexical ordering within another. The advantage of the special conception is that it has a definite shape and suggests certain questions for investigation, for example, under what assumptions if any would the lexical ordering be chosen? Our inquiry is given a particular direction and is no longer confined to generalities. Of course, this conception of distributive shares is obviously a great simplification. It is designed to characterize in a clear way a basic structure that makes use of the idea of pure procedural justice. But all the same we should attempt to find simple concepts that can be assembled to give a reasonable conception of justice. The notions of the basic structure, of the veil of ignorance, of a lexical order, of the least favored position, as well as of pure procedural justice are all examples of this. By themselves none of these could be expected to work, but properly put together they may serve well enough. It is too much to suppose that there exists for all or even most moral problems a reasonable solution. Perhaps only a few can

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be satisfactorily answered. In any case social wisdom consists in framing institutions so that intractable difficulties do not often arise and in accepting the need for clear and simple principles.