This excerpt is from Michael J. Sandel,
Justice: What's the Right Thing to Do?,
pp. 151-157, by permission of the
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Two Principles of Justice

Suppose Rawls is right: The way to think about justice is to ask what principles we would choose in an original position of equality, behind a veil of ignorance. What principles would emerge?

According to Rawls, we wouldn't choose utilitarianism. Behind the veil of ignorance, we don't know where we will wind up in society, but we do know that we will want to pursue our ends and be treated with respect. In case we turn out to be a member of an ethnic or religious minority, we don't want to be oppressed, even if this gives pleasure to the majority. Once the veil of ignorance rises and real life begins, we don't want to find ourselves as victims of religious persecution or racial discrimination. In order to protect against these dangers, we would reject utilitarianism and agree to a principle of equal basic liberties for all citizens, including the right to liberty of conscience and freedom of thought. And we would insist that this principle take priority over attempts to maximize the general welfare. We would not sacrifice our fundamental rights and liberties for social and economic benefits.

What principle would we choose to govern social and economic inequalities? To guard against the risk of finding ourselves in crushing poverty, we might at first thought favor an equal distribution of income and wealth. But then it would occur to us that we could do better, even for those on the bottom. Suppose that by permitting certain inequalities, such as higher pay for doctors than for bus drivers, we could improve the situation of those who have the least—by increasing access to health care for the poor. Allowing for this possibility, we would adopt what Rawls calls "the difference principle": only those social and

economic inequalities are permitted that work to the benefit of the least advantaged members of society.

Exactly how egalitarian is the difference principle? It's hard to say, because the effect of pay differences depends on social and economic circumstances. Suppose higher pay for doctors led to more and better medical care in impoverished rural areas. In that case, the wage difference could be consistent with Rawls's principle. But suppose paying doctors more had no impact on health services in Appalachia, and simply produced more cosmetic surgeons in Beverly Hills. In that case, the wage difference would be hard to justify from Rawls's point of view.

What about the big earnings of Michael Jordan or the vast fortune of Bill Gates? Could these inequalities be consistent with the difference principle? Of course, Rawls's theory is not meant to assess the fairness of this or that person's salary; it is concerned with the basic structure of society, and the way it allocates rights and duties, income and wealth, power and opportunities. For Rawls, the question to ask is whether Gates's wealth arose as part of a system that, taken as a whole, works to the benefit of the least well off. For example, was it subject to a progressive tax system that taxed the rich to provide for the health, education, and welfare of the poor? If so, and if this system made the poor better off than they would have been under a more strictly equal arrangement, then such inequalities could be consistent with the difference principle.

Some people question whether the parties to the original position would choose the difference principle. How does Rawls know that, behind the veil of ignorance, people wouldn't be gamblers, willing to take their chances on a highly unequal society in hopes of landing on top? Maybe some would even opt for a feudal society, willing to risk being a landless serf in the hopes of being a king.

Rawls doesn't believe that people choosing principles to govern their fundamental life prospects would take such chances. Unless they knew themselves to be lovers of risk (a quality blocked from view by the veil of ignorance), people would not make risky bets at high stakes.

But Rawls's case for the difference principle doesn't rest entirely on the assumption that people in the original position would be risk averse. Underlying the device of the veil of ignorance is a moral argument that can be presented independent of the thought experiment. Its main idea is that the distribution of income and opportunity should not be based on factors that are arbitrary from a moral point of view.

The Argument from Moral Arbitrariness

Rawls presents this argument by comparing several rival theories of justice, beginning with feudal aristocracy. These days, no one defends the justice of feudal aristocracies or caste systems. These systems are unfair, Rawls observes, because they distribute income, wealth, opportunity, and power according to the accident of birth. If you are born into nobility, you have rights and powers denied those born into serfdom. But the circumstances of your birth are no doing of yours. So it's unjust to make your life prospects depend on this arbitrary fact.

Market societies remedy this arbitrariness, at least to some degree. They open careers to those with the requisite talents and provide equality before the law. Citizens are assured equal basic liberties, and the distribution of income and wealth is determined by the free market. This system—a free market with formal equality of opportunity—corresponds to the libertarian theory of justice. It represents an improvement over feudal and caste societies, since it rejects fixed hierarchies of birth. Legally, it allows everyone to strive and to compete. In practice, however, opportunities may be far from equal.

Those who have supportive families and a good education have obvious advantages over those who do not. Allowing everyone to enter the race is a good thing. But if the runners start from different starting points, the race is hardly fair. That is why, Rawls argues, the distribution of income and wealth that results from a free market with formal equality of opportunity cannot be considered just. The most obvious injustice of the libertarian system "is that it permits distributive shares

to be improperly influenced by these factors so arbitrary from a moral point of view."[11]

One way of remedying this unfairness is to correct for social and economic disadvantage. A fair meritocracy attempts to do so by going beyond merely formal equality of opportunity. It removes obstacles to achievement by providing equal educational opportunities, so that those from poor families can compete on an equal basis with those from more privileged backgrounds. It institutes Head Start programs, childhood nutrition and health care programs, education and job training programs—whatever is needed to bring everyone, regardless of class or family background, to the same starting point. According to the meritocratic conception, the distribution of income and wealth that results from a free market is just, but only if everyone has the same opportunity to develop his or her talents. Only if everyone begins at the same starting line can it be said that the winners of the race deserve their rewards.

Rawls believes that the meritocratic conception corrects for certain morally arbitrary advantages, but still falls short of justice. For, even if you manage to bring everyone up to the same starting point, it is more or less predictable who will win the race—the fastest runners. But being a fast runner is not wholly my own doing. It is morally contingent in the same way that coming from an affluent family is contingent. "Even if it works to perfection in eliminating the influence of social contingencies," Rawls writes, the meritocratic system "still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents."[12]

If Rawls is right, even a free market operating in a society with equal educational opportunities does not produce a just distribution of income and wealth. The reason: "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."[13]

Rawls concludes that the meritocratic conception of justice is flawed for the same reason (though to a lesser degree) as the libertarian conception; both base distributive shares on factors that are morally arbitrary. "Once we are troubled by the influence of either social contingencies or natural chance on the determination of the 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."[14]

Once we notice the moral arbitrariness that taints both libertarian and the meritocratic theories of justice, Rawls argues, we can't be satisfied short of a more egalitarian conception. But what could this conception be? It is one thing to remedy unequal educational opportunities, but quite another to remedy unequal native endowments. If we are bothered by the fact that some runners are faster than others, don't we have to make the gifted runners wear lead shoes? Some critics of egalitarianism believe that the only alternative to a meritocratic market society is a leveling equality that imposes handicaps on the talented.

An Egalitarian Nightmare

"Harrison Bergeron," a short story by Kurt Vonnegut, Jr., plays out this worry as dystopian science fiction. "The year was 2081," the story begins, "and everybody was finally equal . . . Nobody was smarter than anybody else. Nobody was better looking than anybody else. Nobody was stronger or quicker than anybody else." This thoroughgoing equality was enforced by agents of the United States Handicapper General. Citizens of above average intelligence were required to wear mental handicap radios in their ears. Every twenty seconds or so, a government transmitter would send out a sharp noise to prevent them "from taking unfair advantage of their brains."[15]

Harrison Bergeron, age fourteen, is unusually smart, handsome, and gifted, and so has to be fitted with heavier handicaps than most. Instead of the little ear radio, "he wore a tremendous pair of earphones, and spectacles with thick wavy lenses." To disguise his good looks,

Harrison is required to wear "a red rubber ball for a nose, keep his eyebrows shaved off, and cover his even white teeth with black caps at snaggle-tooth random." And to offset his physical strength, he has to walk around wearing heavy scrap metal. "In the race of life, Harrison carried three hundred pounds."[16]

One day, Harrison sheds his handicaps in an act of heroic defiance against the egalitarian tyranny. I won't spoil the story by revealing the conclusion. It should already be clear how Vonnegut's story makes vivid a familiar complaint against egalitarian theories of justice.

Rawls's theory of justice, however, is not open to that objection. He shows that a leveling equality is not the only alternative to a merito-cratic market society. Rawls's alternative, which he calls the difference principle, corrects for the unequal distribution of talents and endow-ments without handicapping the talented. How? Encourage the gifted to develop and exercise their talents, but with the understanding that the rewards these talents reap in the market belong to the community as a whole. Don't handicap the best runners; let them run and do their best. Simply acknowledge in advance that the winnings don't belong to them alone, but should be shared with those who lack similar gifts.

Although the difference principle does not require an equal distri-bution of income and wealth, its underlying idea expresses a powerful, even inspiring vision of equality:

> The difference principle represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be. Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely be-cause 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. No one deserves his greater natural capacity nor merits a more favorable starting place in society. But it does not follow

that one should eliminate these distinctions. There is another way to deal with them. The basic structure of society can be arranged so that these contingencies work for the good of the least fortunate.[17]

Consider, then, four rival theories of distribution justice:

1. Feudal or caste system: fixed hierarchy based on birth.
2. Libertarian: free market with formal equality of opportunity.
3. Meritocratic: free market with fair equality of opportunity.
4. Egalitarian: Rawls's difference principle.

Rawls argues that each of the first three theories bases distributive shares on factors that are arbitrary from a moral point of view—whether accident of birth, or social and economic advantage, or natural talents and abilities. Only the difference principle avoids basing the distribution of income and wealth on these contingencies.

Although the argument from moral arbitrariness does not rely on the argument from the original position, it is similar in this respect: Both maintain that, in thinking about justice, we should abstract from, or set aside, contingent facts about persons and their social positions.