# **Default to an aggregate utilitarian calculus – maximizing aggregate utility for the general population allows for policies that align with each actor’s preference for equal material outcomes.**

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We were of course surprised not just by Brexit and Trump but also by the recession of 2008. We have therefore been living in a state of intellectual surprise for almost a decade. Why is it that we have been so blind-sided? The answer lies, I suggest, in the dominant liberal policy-making paradigms. The dominant liberal policy paradigm, emerging from places like Harvard’s Kennedy School of Government and operating in Washington think-tanks and policy making-spaces, fuses two things: utilitarian economic welfarism and Rawlsian welfarism. Let me explain**. On the utilitarian model the goal of policy is to maximize happiness or, better, utility, as the economists label it, for society. In its crudest forms, the effort to maximize aggregate utility relies on cost-benefit analyses, linked to preferences typically cast in terms of material goods.** Much modeling of utility maximization in relation to preferences has abstracted away from the contextual, social, psychological, and cultural particularities of individual economic actors. **The pursuit of utilitarian welfare maximization has typically focused on maximizing aggregate growth—in terms of income and wealth--and on using redistributive policies to spread the benefit of that growth**. John Rawls is a philosopher who in 1971 published an important book called Theory of Justice; and one of his main goals was to overturn utilitarianism. He sought to prioritize the right over the good, establishing as the purpose of political order the protection of a framework of right, not the pursuit of any particular good, even utility or happiness. Yet even as, philosophically, he sought to overturn utilitarianism, in many ways Rawlsianism has reinforced its practical applications. In the Rawlsian framework, the goal of a just society is to do two things. The first goal is to protect a set of basic liberties. Those basic liberties include things like the right of association, the right to free expression, and the right to participate politically. The second goal is to pursue social and economic structures, within the constraint of protecting those rights, that are to the benefit of the least well of in society (“the difference principle”) and that secure fair equal opportunity throughout the society. Rawls’ innovative and influential difference principle has anchored the major part of the reception of his work and led to a dominant focus, in philosophical discussions of justice, on the economic questions of distributive justice. These questions have gotten far more attention than his discussion of basic rights. Indeed, in the policy world, Rawlsianism has turned into a basic focus on redistributive taxation as the starting point for building a policy framework. Without intending to, Rawls reinforced the utilitarian paradigm precisely by hiving off consideration of basic rights from his treatment, via the difference principle, of social and economic spheres. **He provided support for the utilitarian focus on growth, so long as it was tethered to redistribution.** **In both utilitarian welfarism and Rawlsian welfarism, as expressed in the policy world, the core question for justice is one of material distribution**. **This is recognizable. When someone invokes the concept of “social justice,” the first thing that comes to mind tends to be matters of economic distribution and welfarist social rights**. Similarly, when a speaker invokes the concept of inequality, the relevant kind of inequality the speaker has in mind is almost invariably economic inequality. That’s what scholars and the general public know how to talk about, thanks to the intellectual support provided by policy paradigms coming out of utilitarian welfarism, on the one hand, and Rawlsian welfarism, on the other. Two features of this fused utilitarian-Rawlsian policy paradigm merit attention. The first is that both the utilitarian paradigm and the Rawlsian paradigm are universalizing. **That is, they both abstract away from the contextual specifics of any given society to develop their overarching policy guidelines (utility maximization, on the one hand; and the difference principle, on the other).** For instance, in Theory of Justice, Rawls seeks the definition of the right by asking us to imagine stepping behind “a veil of ignorance,” where we no longer know anything about our own social situation; from that perspective in the imagination, we are to try to identify the principles that would constitute a just society, **one that we will consider just regardless of whether we turn out to be one of the just society’s wealthier or poorer, male or female, black or white citizens and so forth**. The principles of justice are to be devised without taking into account any underlying demographic features of a society. Moreover, **they are understood to apply universally, to any social context.** In the context of utilitarianism, the move to abstract away from social particularity is less a matter of the intentional design of the theory and more a necessary consequence of its mathematization. In principle, utility is a concept that can embrace not only a given actors preferences for material outcomes but also his or her values and norms. But the project of “maximizing” utility requires that we convert preferences into something arithmetic, and so financial interests are conventionally used as a proxy for utility, thus flattening the particularities of preference that may in fact give meaning and shape to the life of any particular agent. As in the Rawlsian case, the move to treat material gain, money, as a proxy for utility permits universalization. Financial stakes can be translated into a currency and compared across countries and contexts without reference to the underlying demographic facts or situations on the ground in any given country. In other words, one of the things both of these intellectual paradigms do is turn our attention away from the underlying demographic and institutionalarrangements of a society. Our minds are trained away from questions such as: Who has power and on account of what sorts of institutional structures and according to what sorts of allocations of resources and opportunities? We lose the habit of analyzing the demographic and political specificity of any given society to the degree that we embrace and reinforce the habits of using utilitarian and/or Rawlsian welfarism. To give you a concrete example of the kind of abstraction I am trying to pinpoint, think about how the World Bank historically operated throughout the late 20th century. A set of boilerplate requirements for economic liberalization were applied to developing economies as conditions for receiving loans from the bank. The fact the stability of these welfarist policy paradigms has taught us to overlook underlying social and political phenomena flows, I think, from a small philosophical mistake made in the early 19th century, and characterizing most variants of liberalism ever since. The mistake was to draw a distinction between two halves of that set of basic rights protected by liberalism. I introduced the concept of basic rights in describing Rawls’ Theory of Justice, and provided as examples freedom of association, freedom of expression, and the right to participate in politics. With these three examples, I was limning the full spectrum of basic rights, including both halves as distinguished in the early 19th century. What does this mean exactly? An early 19th century French thinker named Benjamin Constant was the first to divide basic rights, basic human rights, into two categories. He called them the rights of the ancients and the rights of the moderns. The rights of the ancients comprised rights to participate in politics, in shaping the collective life of a society. We now call these positive liberties. The rights of the moderns, in contrast, comprise a right to property and the right to be left alone to take your property, which you have a right to, and to engage in commercial transactions in pursuit of your own wellbeing as you see fit. We call these negative liberties. The rights of the ancients were political rights, a right to be a part of a society that was working together to steer itself through collective decision making**. The rights of the moderns, forConstant, were about private autonomy, having the right to steer your own life, and being more or less left alone by any collective decision- making, to the maximum degree possible.** That distinction has worked its way into the philosophical tradition, and was extended by Isaiah Berlin in the early 20th century (who introduced the terms negative and positive liberties). Rawls, in Theory of Justice, argues that he’s putting the two sets of rights back together again and that we need to protect the whole set of basic rights. In fact, however, the political rights become sacrifice-able in his argument, in various technical ways that I won’t go into here (but do detail in Allen, “Difference without Domination”). Over the whole arc of Theory of Justice, we end up primarily focusing our thinking about politics on the conjunction of our private rights (the right to autonomy, property, association, expression, and so forth) with the economic questions associated with those rights-- the wealth associated with property and the need for redistribution that comes from the unequal flow of the gains of productivity across a population. In other words, when you lose sight of the political rights and focus primarily on the private rights or negative liberties, you can easily come to focus exclusively on economic questions and lose sight of political questions. That is what I see as having happened in the policy paradigms that dominated U.S. policy-making in the late 20th century. Another part of the story about the development of a truncated focus on economic questions— without reference to underlying political questions—relates to the transition over the course of the 20th century from the influence of law on public policy to the influence of economics. Sociologist Elizabeth Popp Berman (2014) has written well about the variety of factors— including new capacities for computation—that drove that change, and much more could be said about this transition. But the transition from law to economics also underscores the point I’m making**.** Legal thinking is fundamentally about the institutions of specific societies and about the consequences of particularities of those institutions for specific societies. Even sub-disciplines like comparative law that compare the legal systems in different places must begin by seeing the specificity of the legal institutions in each place under comparison. When law dominated the policy-making universe, universalizing policy approaches that abstracted from demographic and social specificity, were not broadly available. The abstracting, universalizing features of the fused utilitarian/Rawlsian welfarism that dominated policy making of the late 20th century seem to me to have produced the blindspots to society, politics, and political rights, that left us surprised not only by 2008 but also by Brexit and Trump.