

Justice as Fairness

A RESTATEMENT

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Edited by Erin Kelly

THE BELKNAP PRESS OF
HARVARD UNIVERSITY PRESS

Cambridge, Massachusetts

London, England

2001

PART II

Principles of Justice

§12. Three Basic Points

12.1. In Part II we discuss the content of the two principles of justice that apply to the basic structure, as well as various grounds in favor of them and replies to a number of objections. A more formal and organized argument for these principles is presented in Part III, where we discuss the reasoning that moves the parties in the original position. In that argument the original position serves to keep track of all our assumptions and to bring out their combined force by uniting them into one framework so that we can more easily see their implications.

I begin with three basic points which review some matters discussed in Part I and introduce others we are about to examine. Recall first that justice as fairness is framed for a democratic society. Its principles are meant to answer the question: once we view a democratic society as a fair system of social cooperation between citizens regarded as free and equal, what principles are most appropriate to it? Alternatively: which principles are most appropriate for a democratic society that not only professes but wants to take seriously the idea that citizens are free and equal, and tries to realize that idea in its main institutions? The question of whether a constitutional regime is to be preferred to majoritarian democracy, we postpone until later (Part IV, §44).

12.2. The second point is that justice as fairness takes the primary subject of political justice to be the basic structure of society, that is, its main

political and social institutions and how they fit together into one unified system of cooperation (§4). We suppose that citizens are born into society and will normally spend their whole lives within its basic institutions. The nature and role of the basic structure importantly influence social and economic inequalities and enter into determining the appropriate principles of justice.

In particular, let us suppose that the fundamental social and economic inequalities are the differences in citizens' life-prospects (their prospects over a complete life) as these are affected by such things as their social class of origin, their native endowments, their opportunities for education, and their good or ill fortune over the course of life (§16). We ask: by what principles are differences of that kind—differences in life-prospects—made legitimate and consistent with the idea of free and equal citizenship in society seen as a fair system of cooperation?

12.3. The third point is that justice as fairness is a form of political liberalism: it tries to articulate a family of highly significant (moral) values that characteristically apply to the political and social institutions of the basic structure. It gives an account of these values in the light of certain special features of the political relationship as distinct from other relationships, associational, familial, and personal.

- (a) It is a relationship of persons within the basic structure of society, a structure we enter only by birth and exit only by death (or so we may assume for the moment). Political society is closed, as it were; and we do not, and indeed cannot, enter or leave it voluntarily.
- (b) Political power is always coercive power applied by the state and its apparatus of enforcement; but in a constitutional regime political power is at the same time the power of free and equal citizens as a collective body. Thus political power is citizens' power, which they impose on themselves and one another as free and equal.

The idea of political liberalism arises as follows. We start from two facts: first, from the fact of reasonable pluralism, the fact that a diversity of reasonable comprehensive doctrines is a permanent feature of a democratic society; and second, from the fact that in a democratic regime political power is regarded as the power of free and equal citizens as a collective body. These two points give rise to a problem of political legitimacy. For if the fact of reasonable pluralism always characterizes democratic societies and if

political power is indeed the power of free and equal citizens, in the light of what reasons and values—of what kind of a conception of justice—can citizens legitimately exercise that coercive power over one another?

Political liberalism answers that the conception of justice must be a political conception, as defined in §9.1. Such a conception when satisfied allows us to say: political power is legitimate only when it is exercised in accordance with a constitution (written or unwritten) the essentials of which all citizens, as reasonable and rational, can endorse in the light of their common human reason. This is the liberal principle of legitimacy. It is a further desideratum that all legislative questions that concern or border on these essentials, or are highly divisive, should also be settled, so far as possible, by guidelines and values that can be similarly endorsed.

In matters of constitutional essentials, as well as on questions of basic justice, we try to appeal only to principles and values each citizen can endorse. A political conception of justice hopes to formulate these values: its shared principles and values make reason public, while freedom of speech and thought in a constitutional regime make it free. In providing a public basis of justification, a political conception of justice provides the framework for the liberal idea of political legitimacy. As noted in §9.4, however, and discussed further in §26, we do not say that a political conception formulates political values that can settle all legislative questions. This is neither possible nor desirable. There are many questions legislatures must consider that can only be settled by voting that is properly influenced by nonpolitical values. Yet at least on constitutional essentials and matters of basic justice we do try for an agreed basis; so long as there is at least rough agreement here, fair social cooperation among citizens can, we hope, be maintained.¹

12.4. Given these three points, our question is: viewing society as a fair system of cooperation between citizens regarded as free and equal, what principles of justice are most appropriate to specify basic rights and liberties, and to regulate social and economic inequalities in citizens' prospects over a complete life? These inequalities are our primary concern.

To find a principle to regulate these inequalities, we look to our firmest considered convictions about equal basic rights and liberties, the fair value

1. It is not always clear whether a question involves a constitutional essential, as will be mentioned in due course. If there is doubt about this and the question is highly divisive, then citizens have a duty of civility to try to articulate their claims on one another by reference to political values, if that is possible.

of the political liberties as well as fair equality of opportunity. We look outside the sphere of distributive justice more narrowly construed to see whether an appropriate distributive principle is singled out by those firmest convictions once their essential elements are represented in the original position as a device of representation (§6). This device is to assist us in working out which principle, or principles, the representatives of free and equal citizens would select to regulate social and economic inequalities in these prospects over a complete life when they assume that the equal basic liberties and fair opportunities are already secured.

The idea here is to use our firmest considered convictions about the nature of a democratic society as a fair system of cooperation between free and equal citizens—as modeled in the original position—to see whether the combined assertion of those convictions so expressed will help us to identify an appropriate distributive principle for the basic structure with its economic and social inequalities in citizens' life-prospects. Our convictions about principles regulating those inequalities are much less firm and assured; so we look to our firmest convictions for guidance where assurance is lacking and guidance is needed (*Theory*, §§4, 20).

§13. Two Principles of Justice

13.1. To try to answer our question, let us turn to a revised statement of the two principles of justice discussed in *Theory*, §§11–14. They should now read:²

- (a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to

2. This section summarizes some points from "The Basic Liberties and Their Priority," *Tanner Lectures on Human Values*, vol. 3, ed. Sterling McMurrin (Salt Lake City: University of Utah Press, 1982), §1, reprinted in *Political Liberalism*. In that essay I try to reply to what I believe are two of the more serious objections to my account of liberty in *Theory* raised by H. L. A. Hart in his splendid critical review essay, "Rawls on Liberty and Its Priority," *University of Chicago Law Review* 40 (Spring 1973): 551–555, reprinted in his *Essays in Jurisprudence and Philosophy* (Oxford: Oxford University Press, 1983). No changes made in justice as fairness in this restatement are more significant than those forced by Hart's review.

be to the greatest benefit of the least-advantaged members of society (the difference principle).³

As I explain below, the first principle is prior to the second; also, in the second principle fair equality of opportunity is prior to the difference principle. This priority means that in applying a principle (or checking it against test cases) we assume that the prior principles are fully satisfied. We seek a principle of distribution (in the narrower sense) that holds within the setting of background institutions that secure the basic equal liberties (including the fair value of the political liberties)⁴ as well as fair equality of opportunity. How far that principle holds outside that setting is a separate question we shall not consider.⁵

13.2. The revisions in the second principle are merely stylistic. But before noting the revisions in the first principle, which are significant, we should attend to the meaning of fair equality of opportunity. This is a difficult and not altogether clear idea; its role is perhaps best gathered from why it is introduced: namely, to correct the defects of formal equality of opportunity—careers open to talents—in the system of natural liberty, so-called (*Theory*, §12: 62ff.; §14). To this end, fair equality of opportunity is said to require not merely that public offices and social positions be open in the formal sense, but that all should have a fair chance to attain them. To

3. Instead of “the difference principle,” many writers prefer the term “the maximin principle,” or simply “maximin justice,” or some such locution. See, for example, Joshua Cohen’s very full and accurate account of the difference principle in “Democratic Equality,” *Ethics* 99 (July 1989): 727–751. But I still use the term “difference principle” to emphasize first, that this principle and the maximin rule for decision under uncertainty (§28.1) are two very distinct things; and second, that in arguing for the difference principle over other distributive principles (say a restricted principle of (average) utility, which includes a social minimum), there is no appeal at all to the maximin rule for decision under uncertainty. The widespread idea that the argument for the difference principle depends on extreme aversion to uncertainty is a mistake, although a mistake unhappily encouraged by the faults of exposition in *Theory*, faults to be corrected in Part III of this restatement.

4. See *Theory*, §36: 197–199.

5. Some have found this kind of restriction objectionable; they think a political conception should be framed to cover all logically possible cases, or all conceivable cases, and not restricted to cases that can arise only within a specified institutional context. See for example Brian Barry, *The Liberal Theory of Justice* (Oxford: Oxford University Press, 1973), p. 112. In contrast, we seek a principle to govern social and economic inequalities in democratic regimes as we know them, and so we are concerned with inequalities in citizens’ life-prospects that may actually arise, given our understanding of how certain institutions work.

specify the idea of a fair chance we say: supposing that there is a distribution of native endowments, those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin, the class into which they are born and develop until the age of reason. In all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed.

Fair equality of opportunity here means liberal equality. To accomplish its aims, certain requirements must be imposed on the basic structure beyond those of the system of natural liberty. A free market system must be set within a framework of political and legal institutions that adjust the long-run trend of economic forces so as to prevent excessive concentrations of property and wealth, especially those likely to lead to political domination. Society must also establish, among other things, equal opportunities of education for all regardless of family income (§15).⁶

13.3. Consider now the reasons for revising the first principle.⁷ One is that the equal basic liberties in this principle are specified by a list as follows: freedom of thought and liberty of conscience; political liberties (for example, the right to vote and to participate in politics) and freedom of association, as well as the rights and liberties specified by the liberty and integrity (physical and psychological) of the person; and finally, the rights and liberties covered by the rule of law. That the basic liberties are specified by a list is quite clear from *Theory*, §11: 61 (1st ed.); but the use of the singular term "basic liberty" in the statement of the principle on *Theory*, §11: 60 (1st ed.), obscures this important feature of these liberties.

This revision brings out that no priority is assigned to liberty as such, as if the exercise of something called "liberty" had a preeminent value and were the main, if not the sole, end of political and social justice. While there is a general presumption against imposing legal and other restrictions on conduct without a sufficient reason, this presumption creates no special priority for any particular liberty. Throughout the history of democratic

6. These remarks are the merest sketch of a difficult idea. We come back to it from time to time.

7. This principle may be preceded by a lexically prior principle requiring that basic needs be met, as least insofar as their being met is a necessary condition for citizens to understand and to be able fruitfully to exercise the basic rights and liberties. For a statement of such a principle with further discussion, see R. G. Peffer, *Marxism, Morality, and Social Justice* (Princeton: Princeton University Press, 1990), p. 14.

thought the focus has been on achieving certain specific rights and liberties as well as specific constitutional guarantees, as found, for example, in various bills of rights and declarations of the rights of man. Justice as fairness follows this traditional view.

13.4. A list of basic liberties can be drawn up in two ways. One is historical: we survey various democratic regimes and assemble a list of rights and liberties that seem basic and are securely protected in what seem to be historically the more successful regimes. Of course, the veil of ignorance means that this kind of particular information is not available to the parties in the original position, but it is available to you and me in setting up justice as fairness.⁸ We are perfectly free to use it to specify the principles of justice we make available to the parties.

A second way of drawing up a list of basic rights and liberties is analytical: we consider what liberties provide the political and social conditions essential for the adequate development and full exercise of the two moral powers of free and equal persons (§7.1). Following this we say: first, that the equal political liberties and freedom of thought enable citizens to develop and to exercise these powers in judging the justice of the basic structure of society and its social policies; and second, that liberty of conscience and freedom of association enable citizens to develop and exercise their moral powers in forming and revising and in rationally pursuing (individually or, more often, in association with others) their conceptions of the good.

Those basic rights and liberties protect and secure the scope required for the exercise of the two moral powers in the two fundamental cases just mentioned: that is to say, the first fundamental case is the exercise of those powers in judging the justice of basic institutions and social policies; while the second fundamental case is the exercise of those powers in pursuing our conception of the good. To exercise our powers in these ways is essential to us as free and equal citizens.

8. Here I should mention that there are three points of view in justice as fairness that it is essential to distinguish: the point of view of the parties in the original position, the point of view of citizens in a well-ordered society, and the point of view of you and me who are setting up justice as fairness as a political conception and trying to use it to organize into one coherent view our considered judgments at all levels of generality. Keep in mind that the parties are, as it were, artificial persons who are part of a procedure of construction that we frame for our philosophical purposes. We may know many things that we keep from them. For these three points of view, see *Political Liberalism*, p. 28.

13.5. Observe that the first principle of justice applies not only to the basic structure (both principles do this) but more specifically to what we think of as the constitution, whether written or unwritten. Observe also that some of these liberties, especially the equal political liberties and freedom of thought and association, are to be guaranteed by a constitution (*Theory*, chap. IV). What we may call “constituent power,” as opposed to “ordinary power,”⁹ is to be suitably institutionalized in the form of a regime: in the right to vote and to hold office, and in so-called bills of rights, as well as in the procedures for amending the constitution, for example.

These matters belong to the so-called constitutional essentials, these essentials being those crucial matters about which, given the fact of pluralism, working political agreement is most urgent (§9.4). In view of the fundamental nature of the basic rights and liberties, explained in part by the fundamental interests they protect, and given that the power of the people to constitute the form of government is a superior power (distinct from the ordinary power exercised routinely by officers of a regime), the first principle is assigned priority.

This priority means (as we have said) that the second principle (which includes the difference principle as one part) is always to be applied within a setting of background institutions that satisfy the requirements of the first principle (including the requirement of securing the fair value of the political liberties), as by definition they will in a well-ordered society.¹⁰ The fair value of the political liberties ensures that citizens similarly gifted and motivated have roughly an equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class.¹¹ To explain the priority of the first principle over the second:

9. This distinction is derived from Locke, who speaks of the people’s power to constitute the legislative as the first and fundamental law of all commonwealths. John Locke, *Second Treatise of Government*, §§134, 141, 149.

10. It is sometimes objected to the difference principle as a principle of distributive justice that it contains no restrictions on the overall nature of permissible distributions. It is concerned, the objection runs, solely with the least advantaged. But this objection is incorrect: it overlooks the fact that the parts of the two principles of justice are designed to work in tandem and apply as a unit. The requirements of the prior principles have important distributive effects. Consider the effects of fair equality of opportunity as applied to education, say, or the distributive effects of the fair value of the political liberties. We cannot possibly take the difference principle seriously so long as we think of it by itself, apart from its setting within prior principles.

11. [See *Political Liberalism*, p. 358.]

this priority rules out exchanges (“trade-offs,” as economists say) between the basic rights and liberties covered by the first principle and the social and economic advantages regulated by the difference principle. For example, the equal political liberties cannot be denied to certain groups on the grounds that their having these liberties may enable them to block policies needed for economic growth and efficiency.

Nor can we justify a selective service act that grants educational deferments or exemptions to some on the grounds that doing this is a socially efficient way both to maintain the armed forces and to provide incentives to those otherwise subject to conscription to acquire valuable skills by continuing their education. Since conscription is a drastic interference with the basic liberties of equal citizenship, it cannot be justified by any needs less compelling than those of the defense of these equal liberties themselves (*Theory*, §58: 333f.).

A further point about priority: in asserting the priority of the basic rights and liberties, we suppose reasonably favorable conditions to obtain. That is, we suppose historical, economic and social conditions to be such that, provided the political will exists, effective political institutions can be established to give adequate scope for the exercise of those freedoms. These conditions mean that the barriers to constitutional government (if such there are) spring largely from the political culture and existing effective interests, and not from, for instance, a lack of economic means, or education, or the many skills needed to run a democratic regime.¹²

13.6. It is important to note a distinction between the first and second principles of justice. The first principle, as explained by its interpretation, covers the constitutional essentials. The second principle requires fair equality of opportunity and that social and economic inequalities be governed by the difference principle, which we discuss in §§17–19. While some principle of opportunity is a constitutional essential—for example, a principle requiring an open society, one with careers open to talents (to use the eighteenth-century phrase)—fair equality of opportunity requires more than that, and is not counted a constitutional essential. Similarly, although a

12. The priority (or the primacy) of the basic equal liberties does not, contrary to much opinion, presuppose a high level of wealth and income. See Amartya Sen and Jean Dreze, *Hunger and Public Action* (Oxford: Oxford University Press, 1989), chap. 13; and Partha Dasgupta, *An Inquiry into Well-Being and Destitution* (Oxford: Oxford University Press, 1993), chaps. 1–2, 5 and passim.

social minimum providing for the basic needs of all citizens is also a constitutional essential (§38.3-4; §49.5), the difference principle is more demanding and is not so regarded.

The basis for the distinction between the two principles is not that the first expresses political values while the second does not. Both principles express political values. Rather, we see the basic structure of society as having two coordinate roles, the first principle applying to one, the second principle to the other (*Theory*, §11: 53). In one role the basic structure specifies and secures citizens' equal basic liberties (including the fair value of the political liberties (§45)) and establishes a just constitutional regime. In the other role it provides the background institutions of social and economic justice in the form most appropriate to citizens seen as free and equal. The questions involved in the first role concern the acquisition and the exercise of political power. To fulfill the liberal principle of legitimacy (§12.3), we hope to settle at least these questions by appeal to the political values that constitute the basis of free public reason (§26).

The principles of justice are adopted and applied in a four-stage sequence.¹³ In the first stage, the parties adopt the principles of justice behind a veil of ignorance. Limitations on knowledge available to the parties are progressively relaxed in the next three stages: the stage of the constitutional convention, the legislative stage in which laws are enacted as the constitution allows and as the principles of justice require and permit, and the final stage in which the rules are applied by administrators and followed by citizens generally and the constitution and laws are interpreted by members of the judiciary. At this last stage, everyone has complete access to all the facts. The first principle applies at the stage of the constitutional convention, and whether the constitutional essentials are assured is more or less visible on the face of the constitution and in its political arrangements and the way these work in practice. By contrast the second principle applies at the legislative stage and it bears on all kinds of social and economic legislation, and on the many kinds of issues arising at this point (*Theory*, §31: 172-176). Whether the aims of the second principle are realized is far more difficult to ascertain. To some degree these matters are always open to reasonable differences of opinion; they depend on inference and judgment in assessing complex social and economic information. Also, we can expect more agreement on constitutional essentials than on issues of distributive justice in the narrower sense.

13. [See *Theory*, §31: 172-176, and *Political Liberalism*, pp. 397-398.]

Thus the grounds for distinguishing the constitutional essentials covered by the first principle and the institutions of distributive justice covered by the second¹⁴ are not that the first principle expresses political values and the second does not. Rather, the grounds of the distinction are four:

- (a) The two principles apply to different stages in the application of principles and identify two distinct roles of the basic structure;
- (b) It is more urgent to settle the constitutional essentials;
- (c) It is far easier to tell whether those essentials are realized; and
- (d) It seems possible to gain agreement on what those essentials should be, not in every detail, of course, but in the main outlines.

13.7. One way to see the point of the idea of constitutional essentials is to connect it with the idea of loyal opposition, itself an essential idea of a constitutional regime. The government and its loyal opposition agree on these constitutional essentials. Their so agreeing makes the government legitimate in intention and the opposition loyal in its opposition. Where the loyalty of both is firm and their agreement mutually recognized, a constitutional regime is secure. Differences about the most appropriate principles of distributive justice in the narrower sense, and the ideals that underlie them, can be adjudicated, though not always properly, within the existing political framework.

While the difference principle does not fall under the constitutional essentials, it is nevertheless important to try to identify the idea of equality most appropriate to citizens viewed as free and equal, and as normally and fully cooperating members of society over a complete life. I believe this idea involves reciprocity¹⁴ at the deepest level and thus democratic equality properly understood requires something like the difference principle. (I say "something like," for there may be various nearby possibilities.) The re-

14. [As understood in justice as fairness, reciprocity is a relation between citizens expressed by principles of justice that regulate a social world in which all who are engaged in cooperation and do their part as the rules and procedures require are to benefit in an appropriate way as assessed by a suitable benchmark of comparison. The two principles of justice, including the difference principle with its implicit reference to equal division as a benchmark, formulate an idea of reciprocity between citizens. For a fuller discussion of the idea of reciprocity, see *Political Liberalism*, pp. 16–17, and the introduction to the paperback edition, pp. xlv, xlvi, li. The idea of reciprocity also plays an important part in "The Idea of Public Reason Revisited," *University of Chicago Law Review*, 64 (Summer 1997): 765–807, reprinted in *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999) and *Collected Papers*.]

maintaining sections of this part (§§14–22) try to clarify the content of this principle and to clear up a number of difficulties.

§14. The Problem of Distributive Justice

14.1. The problem of distributive justice in justice as fairness is always this: how are the institutions of the basic structure to be regulated as one unified scheme of institutions so that a fair, efficient, and productive system of social cooperation can be maintained over time, from one generation to the next? Contrast this with the very different problem of how a given bundle of commodities is to be distributed, or allocated, among various individuals whose particular needs, desires, and preferences are known to us, and who have not cooperated in any way to produce those commodities. This second problem is that of allocative justice (*Theory*, §11: 56; §14: 77).

To illustrate: accepting the assumptions implied by interpersonal cardinal comparisons of well-being, we might, for example, allocate the bundle of commodities so as to achieve the greatest satisfaction summed over these individuals from the present into the future. As a political conception of justice, the classical principle of utility (as found in Bentham and Sidgwick) can be seen as adapting the idea of allocative justice so as to be a single principle for the basic structure over time.

14.2. We reject the idea of allocative justice as incompatible with the fundamental idea by which justice as fairness is organized: the idea of society as a fair system of social cooperation over time. Citizens are seen as cooperating to produce the social resources on which their claims are made. In a well-ordered society, in which both the equal basic liberties (with their fair value) and fair equality of opportunity are secured, the distribution of income and wealth illustrates what we may call pure background procedural justice. The basic structure is arranged so that when everyone follows the publicly recognized rules of cooperation, and honors the claims the rules specify, the particular distributions of goods that result are acceptable as just (or at least as not unjust) whatever these distributions turn out to be.

To elaborate: within the framework of background justice set up by the basic structure, individuals and associations may do as they wish insofar as the rules of institutions permit. Observe that particular distributions cannot be judged at all apart from the claims (entitlements) of individuals earned by their efforts within the fair system of cooperation from which those distributions result. In contrast to utilitarianism, the concept of allocative jus-

tice has no application. There is no criterion for a just distribution apart from background institutions and the entitlements that arise from actually working through the procedure.¹⁵ It is background institutions that provide the setting for fair cooperation within which entitlements arise.

14.3. These points can be made clearer as follows. The word “background” in the phrase “background procedural justice” above is intended to indicate that certain rules must be included in the basic structure as a system of social cooperation so that this system remains fair over time, from one generation to the next.¹⁶

Consider an example. The draft rule in a professional sport such as basketball ranks teams in the opposite order from their standing in the league at the end of the season: championship teams go last in the draft of new players. This rule provides for regular and periodic changes in the roster of teams and is designed to ensure that teams in the league are more or less evenly matched from year to year, so that in any given season each team can give any other a decent game. These changes of players are necessary to achieve the aims and attractions of the sport and are not foreign to its purpose.

The required background rules are specified by what is necessary to fulfill the two principles of justice. Later on we survey some of these as found in a property-owning democracy (Part IV).¹⁷ For example, background institutions must work to keep property and wealth evenly enough shared over time to preserve the fair value of the political liberties and fair equality of opportunity over generations. They do this by laws regulating bequest and inheritance of property, and other devices such as taxes, to prevent excessive concentrations of private power (*Theory*, §43: 245ff.).

14.4. Since the difference principle applies to institutions as public systems of rules, their requirements are foreseeable. They do not involve any more continuous or regular interference with individuals’ plans and actions than do, say, familiar forms of taxation. Since the effects of those rules are foreseen, they are taken into account when citizens draw up their plans in

15. See *Theory*, §14: 74–77, and note the distinction made there between the three kinds of procedural justice.

16. The term “background” is introduced here and is not used in *Theory*.

17. Property-owning democracy is discussed in *Theory*, chap. V, but unfortunately the contrast between it and welfare-state capitalism is not made clear enough. This defect I aim to correct in Part IV.

the first place. Citizens understand that when they take part in social cooperation, their property and wealth, and their share of what they help to produce, are subject to the taxes, say, which background institutions are known to impose. Moreover, the difference principle (as well as the first principle and the first part of the second principle) respects legitimate expectations based on the publicly recognized rules and the entitlements earned by individuals (*Theory*, §§47–48).¹⁸

The rules of background institutions required by the two principles of justice (including the difference principle) are designed to achieve the aims and purposes of fair social cooperation over time. They are essential to preserve background justice, such as the fair value of the political liberties and fair equality of opportunity, as well as to make it likely that economic and social inequalities contribute in an effective way to the general good or, more exactly, to the benefit of the least-advantaged members of society. Like the draft rule in professional sports, the arrangements required by the difference principle are part of, and not foreign to, the conception of fair social cooperation in justice as fairness. Even with these rules of background justice, distributive justice may still be understood as a case of pure procedural justice.

§15. The Basic Structure as Subject: First Kind of Reason

15.1. A characteristic feature of justice as fairness as a political conception is that it takes the basic structure as its primary subject. I note two broad kinds of reasons for this: the first notes how social institutions work and the nature of the principles required to regulate them over time to maintain background justice.

Consider an important criticism of Locke. Suppose we begin, as it seems he does, with the attractive idea that persons' social circumstances and their relations with one another should develop over time in accordance with fair agreements fairly arrived at. Much as with Locke's conception of ideal history, we might use certain principles to specify various rights and duties of persons, as well as their rights to acquire and transfer property. Now suppose we start with a just initial state in which everyone's possessions are justly held. We then say that when everyone respects persons' rights and

18. The remarks in this paragraph reply to the kind of objection Nozick raises to the difference principle in *Anarchy, State, and Utopia*. His description of the Wilt Chamberlin example, chap. 7, pp. 160–164, suggests that to apply that principle to government must involve continual interference with particular individual transactions.

17.4. A final comment: there are at least two ways to proceed in specifying a list of primary goods. One is to look at the various comprehensive doctrines actually found in society and specify an index of such goods as a kind of average of what those who affirm the opposing doctrines would need by way of institutional protections and all-purpose means. Doing this might seem the best way to achieve an overlapping consensus.

But this is not how justice as fairness proceeds. Instead, it works up a political conception from the fundamental idea of society as a fair system of social cooperation. The hope is that this conception with its account of primary goods can win the support of an overlapping consensus. We leave aside the comprehensive doctrines that now exist, or have existed, or might exist. Our thought is not that primary goods are fair to conceptions of the good associated with comprehensive doctrines by striking a fair balance between them. Rather, primary goods are fair to free and equal citizens: these goods enable them to advance their permissible conceptions of the good (those the pursuit of which are compatible with justice).

§18. The Difference Principle: Its Meaning

18.1. We now turn to the difference principle as a principle of distributive justice in the narrow sense. Recall that it is subordinate to both the first principle of justice (guaranteeing the equal basic liberties) and the principle of fair equality of opportunity (§13.1). It works in tandem with these two prior principles and it is always to be applied within background institutions in which those principles are satisfied.²⁹

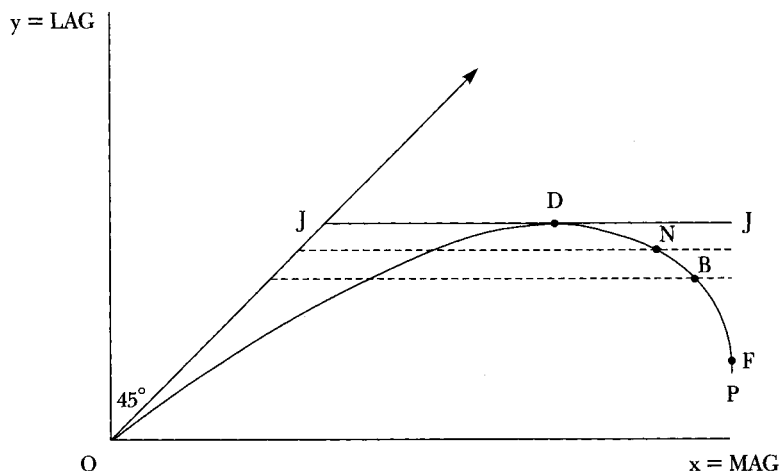
Social cooperation, we assume, is always productive, and without cooperation there would be nothing produced and so nothing to distribute. This assumption is not emphasized sufficiently in *Theory*, §§12–13. Figure 1 implies that there is production: MAG and LAG (x_1 and x_2 in the figure in *Theory*) are now representative individuals of the more and the less advantaged groups respectively, the two groups engaged in productive cooperation.³⁰ The OP curve (P for production) runs northeast from the origin until it bends downward to the southeast.³¹

29. The explanation of the principle of (Pareto) efficiency for institutions is found in *Theory*, §12: 58–62.

30. This figure is similar to figure 6 in *Theory*, §13: 66.

31. For example, the figures in *Theory*, §12: 59f. assume that there is an already given bundle of goods to be shared between the two persons x_1 and x_2 . This is shown in the fact that the efficiency frontier runs northwest and southeast. And no mention is made of these persons as being engaged in cooperation to produce those goods.

Figure 1



In this figure the distances along the two axes are measured in terms of an index of primary goods, with the x-axis the more advantaged group (MAG), the y-axis the less advantaged (LAG). The line JJ parallel to the x-axis is the highest equal-justice line touched by the OP curve at its maximum at D. Note that D is the efficient point nearest to equality, represented by the 45-degree line. N is the Nash point, where the product of utilities is maximized (if we assume utilities to be linear in indexes of primary goods), and B is the Bentham point, where the sum of individual utilities is maximized (again with the same assumption). The set of efficient points goes from D to the feudal point F, at which the OP curve becomes vertical.

We imagine the whole space southeast of the 45-degree line to be filled with parallel equal-justice lines. Thus from each point on the 45-degree line running northeast from the origin, there is an equal-justice line. The line JJ is simply the highest such line that can be reached when we are constrained to move along the OP curve. Society aims, other things equal, to reach the highest equal-justice line measured by the distance from O along the 45-degree line. To do this it moves as far northeast as possible along the OP curve and stops when this curve bends to the southeast.

Observe that the parallel lines are equal-justice lines and not indifference lines of the familiar kind that represent evaluations of individual or social welfare. Equal-justice lines represent how claims to goods cooperatively produced are to be shared among those who produced them, and they reflect an idea of reciprocity. They are equal-justice lines in the sense that any point on a line is equally acceptable provided it is reached by an OP curve of a scheme of cooperation satisfying the principles of justice prior to the difference principle. The fact that they are parallel means that a greater index of primary goods (here understood as a person's prospects of income and wealth over a complete life) for one group (the MAG) is justified only insofar as it adds to the index of the other group (the LAG). When this is no longer true, even though the index increases for the more advantaged group, as it does beyond D, then

the reciprocity implicit in the difference principle no longer obtains. This is shown by the fact that N and B are on lower equal-justice lines than D. A utilitarian equal-justice line through B would be a smooth curve convex to the origin running from northwest to southeast, showing the MAG may gain more even though the LAG receive less. Contrary to reciprocity, trade-offs are permitted.

Finally, note that as indicated in §17, the MAG and the LAG are specified by reference to their shares in the output and not as particular individuals identifiable independently of the scheme of cooperation. When we represent the index of the MAG on the x-axis, the OP curve lies everywhere southeast of the 45-degree line.

18.2. A scheme of cooperation is given in large part by how its public rules organize productive activity, specify the division of labor, assign various roles to those engaged in it, and so on. These schemes include schedules of wages and salaries to be paid out of output. By varying wages and salaries, more may be produced. This is because over time the greater returns to the more advantaged serve, among other things, to cover the costs of training and education, to mark positions of responsibility and encourage persons to fill them, and to act as incentives. A given OP curve is paired with a particular scheme of cooperation: it indicates the returns to the two groups when only wages and salaries are changed. The origin of the OP curve represents the equal division point: both groups receive the same remuneration.

To explain: take any point on the OP curve: if the wages to the more advantaged is the corresponding point on the x-axis, then the wages to the less advantaged is the corresponding point on the y-axis. Thus there are, in general, different OP curves for different schemes of cooperation; and some schemes are more effectively designed than others. One scheme is more effective than another if its OP curve always gives a greater return to the less advantaged for any given return to the more advantaged.³² Other things being equal, the difference principle directs society to aim at the highest point on the OP curve of the most effectively designed scheme of cooperation.

18.3. A further feature of the difference principle is that it does not require continual economic growth over generations to maximize upward indefinitely the expectations of the least advantaged (assessed in terms of

32. When these curves criss-cross, the one tangent to the highest JJ line is best; if they touch the same JJ line, the one whose tangent is to the left of the other is best.

income and wealth). That would not be a reasonable conception of justice. We should not rule out Mill's idea of a society in a just stationary state where (real) capital accumulation may cease.³³ A well-ordered society is specified so as to allow for this possibility. What the difference principle does require is that during an appropriate interval of time the differences in income and wealth earned in producing the social product be such that if the legitimate expectations of the more advantaged were less, those of the less advantaged would also be less. Society would always be on the upward-rising part or at the top of the OP curve.³⁴ Permissible inequalities (thus defined) satisfy that condition and are compatible with a social product of a steady-state equilibrium in which a just basic structure is supported and reproduced over time.

Another aspect of the same point is this: the difference principle requires that however great the inequalities in wealth and income may be, and however willing people are to work to earn their greater shares of output, existing inequalities must contribute effectively to the benefit of the least advantaged. Otherwise the inequalities are not permissible. The general level of wealth in society, including the well-being of the least advantaged, depends on people's decisions as to how to lead their lives. The priority of liberty means that we cannot be forced to engage in work that is highly productive in terms of material goods. What kind of work people do, and how hard they do it, is up to them to decide in light of the various incentives society offers. What the difference principle requires, then, is that however great the general level of wealth—whether high or low—the existing inequalities are to fulfill the condition of benefiting others as well as ourselves. This condition brings out that even if it uses the idea of maximizing the expectations of the least advantaged, the difference principle is essentially a principle of reciprocity.

18.4. We have seen that the two principles of justice apply to citizens as identified by their indexes of primary goods. It is natural to ask: Why are distinctions of race and gender not explicitly included among the three contingencies noted earlier (§16)? How can one ignore such historical facts as slavery (in the antebellum South) and the inequalities between men and women resulting from the absence of provisions to make good women's ex-

33. See his *Principles of Political Economy*, bk. IV, ch. VI.

34. See the distinction at *Theory*, §13: 68 between perfectly just schemes and those just throughout.

tra burden in the bearing, raising, and educating children so as to secure their fair equality of opportunity?

The answer is that we are mainly concerned with ideal theory: the account of the well-ordered society of justice as fairness. Within that account we need to distinguish two questions: first, what contingencies tend to generate troubling inequalities even in a well-ordered society and thus prompt us, along with other considerations, to take the basic structure as the primary subject of justice; and second, how within ideal theory should the least advantaged be specified?

While there is some tendency for individuals most adversely affected by the three contingencies (§16.1) to be among the least advantaged, this group is defined not by reference to those contingencies but by an index of primary goods (§17, n. 26). Taking the simplest form of the difference principle, the least advantaged are those who share with other citizens the basic equal liberties and fair opportunities but have the least income and wealth. We use income and wealth to specify this group; and the particular individuals who belong to it may change from one arrangement of the basic structure to another.

18.5. In ideal theory, as stated in *Theory*, §16, the two principles of justice are to be applied to the basic structure by assessing it from certain standard points of view: namely, those of the representative equal citizen (whose basic equal liberties and fair opportunities are secure) and of the representatives of various levels of income and wealth. Nevertheless, sometimes other positions must be taken into account. Suppose, for example, that certain fixed natural characteristics are used as grounds for assigning unequal basic rights, or allowing some persons only lesser opportunities; then such inequalities will single out relevant positions. Those characteristics cannot be changed, and so the positions they specify are points of view from which the basic structure must be judged.

Distinctions based on gender and race are of this kind. Thus if men, say, have greater basic rights or greater opportunities than women, these inequalities can be justified only if they are to the advantage of women and acceptable from their point of view. Similarly for unequal basic rights and opportunities founded on race (*Theory*, §16: 85). It appears that historically these inequalities have arisen from inequalities in political power and control of economic resources. They are not now, and it would seem never have been, to the advantage of women or less favored races. To be sure, so sweeping a historical judgment may occasionally be uncertain. However, in

a well-ordered society in the present age no such uncertainty obtains, so justice as fairness supposes that the standard relevant positions specified by the primary goods should suffice.

18.6. To conclude: when used in a certain way, distinctions of gender and race give rise to further relevant positions to which a special form of the difference principle applies (*Theory*, §16: 85). We hope that in a well-ordered society under favorable conditions, with the equal basic liberties and fair equality of opportunity secured, gender and race would not specify relevant points of view. *Theory* takes up only two questions of partial compliance (or nonideal) theory, civil disobedience and conscientious refusal to serve in an unjust war. The serious problems arising from existing discrimination and distinctions based on gender and race are not on its agenda, which is to present certain principles of justice and then to check them against only a few of the classical problems of political justice as these would be settled within ideal theory.

This is indeed an omission in *Theory*; but an omission is not as such a fault, either in that work's agenda or in its conception of justice. Whether fault there be depends on how well that conception articulates the political values necessary to deal with these questions. Justice as fairness, and other liberal conceptions like it, would certainly be seriously defective should they lack the resources to articulate the political values essential to justify the legal and social institutions needed to secure the equality of women and minorities. In Part IV, §50, there is a brief discussion of the nature of the family and the equality of women.

§19. Objections via Counterexamples

19.1. Part of the idea of reflective equilibrium is to test the soundness of first principles by seeing whether we can endorse on reflection the judgments to which they lead in cases sometimes framed for this purpose: counterexamples so-called. To be a proper counterexample a case must satisfy all the relevant assumptions made in applying or in arguing for the principles of justice; otherwise it misses the mark. Let us look at three objections via counterexamples to illustrate this.

Consider first two related objections: (a) suppose the most effective OP curve rises very slowly to its maximum; then the share of the more advantaged is much greater than the share to the less advantaged. (In Figure 1 (§18.1), imagine D moved far to the right along the line JJ.) This may seem unjust to the less advantaged. On the other hand: (b) suppose that the most

effective OP curve falls very slowly after its maximum; then the more advantaged do not receive a much greater share even though their receiving this share would only slightly reduce the share of the less advantaged. (In the figure, imagine the arc from D through N and B and beyond stretched far to the right). This may seem unjust to the more advantaged.

In both cases, the troubling feature is the rather flat slope of the OP curve, in one case before, in the other after, the maximum. This means that large potential gains (or losses) to one group are paired with small potential losses (or gains) for the other group. In such cases we are tempted to think some adjustments should be made to achieve a greater overall gain. The reply is that, given the required background institutions securing both the equal basic liberties and fair equality of opportunity, and the many possibilities of social organization, the most effective OP curve is very unlikely to have the flat slopes described above. Thus:

(i) In reply to (a): if citizens have fair and equal opportunities to develop their native endowments and to acquire socially productive skills, and if the scheme of cooperation is effectively designed, then the OP curve should rise quickly enough to its maximum so that the ratio of shares in favor of the more advantaged is not likely to strike us as unjust. The idea is that given the equal basic liberties and fair equality of opportunity, the open competition between the greater numbers of the well-trained and better educated reduces the ratio of shares until it lies within an acceptable range. Notice here how, in meeting the objection, we rely on the way the difference principle works in tandem with the prior principles. With background institutions of fair equality of opportunity and workable competition required by the prior principles of justice, the more advantaged cannot unite as a group and then exploit their market power to force increases in their income.³⁵ This has been mentioned before; here we see it illustrated.

(ii) In reply to (b): given the same assumptions as in (i), there surely ex-

35. For example, background institutions prevent doctors from forming an association to push up the cost of medical care and thus to raise the income of doctors, say by restricting entry into the medical profession, or by agreeing to charge higher fees. High earnings, however, are not sufficient proof of collusion. The income of opera singers seems largely determined by free demand and supply; the demand is high, the supply is low, and in the short run nearly fixed, but not forever fixed as is the supply of the paintings by old masters. The number of opera singers is small enough so that their earnings are not a serious worry in any case; besides they work hard and spread joy. Whereas doctors are a large group, and should competitive background institutions with fair opportunity not work properly in their case, or in similar cases, we would have to examine the causes for the failure of competitive arrangements and try to fix them if that can be done consistent with the prior principles. We might also have to reconsider the soundness of the difference principle.

ists some institutional device to transfer at least part of the large return of the more advantaged to the less advantaged, by taxation, say, to reduce their return beyond the maximum of the OP curve.

19.2. In each reply the idea is that the shapes of OP curves assumed in objections (a) and (b) do not in fact occur when the basic structure satisfies the prior principles. Our aim is achieved should the difference principle yield satisfactory conclusions in social worlds that fulfill the principles prior to it. The difference principle specifies no definite limits within which the ratio of the shares of the more and less advantaged is to fall. Indeed, we hope to avoid having to specify such limits, since we want to leave this ratio to fall where it may, as the outcome of pure background procedural justice. This is perfectly acceptable unless, on due reflection, the actual ratio strikes us as unjust.³⁶

The ratio of shares is, of course, an observable feature of the distribution of goods, and one that can be ascertained apart from the scheme of cooperation itself. We simply tabulate who gets what. Now it seems impossible to specify plausible limits on this ratio that can gain wide assent. One reason is that it is not observable shares alone, or their ratio, that count, but whether those receiving these shares have made an appropriate contribution to the good of others by training and educating their native endowments and putting them to work within a fair system of social cooperation. We cannot tell simply by listing who gets what whether the distribution arises from the most (or an) effectively designed system of cooperation satisfying the difference principle. It is best to leave the limits unspecified and try to ignore the observable features of distributions, or their overall shape. In a society well ordered by the two principles of justice, we hope that the observable features of the distributions that result fall in a range where they do not seem unjust.

The simplest limit, or shape, to impose on distributions is strict equality in all social goods. Plainly the difference principle is not egalitarian in that sense, since it recognizes the need for inequalities in social and economic organization, of which their role as incentives is but one. It is, however, egalitarian in a sense to be discussed later in Part III: it selects the efficient point on the OP curve closest to equality (this is obvious from Figure 1, in

36. Of course, within justice as fairness, we do not have any further criterion to judge whether the ratio is unjust, for all our principles are met. It is simply that the actual ratio may disturb us and make us wonder. It is as if a state of reflective equilibrium is a bit upset. We hope the disparities that do occur fall within a range where we are not thus troubled. I am indebted to Ronald Dworkin for pointing out the need to make this point explicit.

which the 45-degree line represents equality and the segment D to B and beyond is the set of efficient points).

19.3. Finally, I consider a third counterexample meant to show that the difference principle needs revision. Discussing it in some detail will bring out several points to remember in testing that principle.³⁷

	<i>Indians</i>	<i>British</i>
(1)	100	100
(2)	120	110
(3)	115	140

In this example there are only three alternative constitutions for India in 1800, with the distributions of primary goods as shown. Looking at the three alternatives, the difference principle selects (3) because it is the scheme in which the least-advantaged group (not always the Indians) does best.

The example is meant to show that it is not correct, as *Theory* is alleged to say, that the representative Briton's advantages under constitution (3) are gained in ways that promote the representative Indian's prospects: it is not correct because the particular individuals least advantaged under (3), the Indians, would have been even better off under (2). Only one place is cited (*Theory*, §17: 103, 1st ed.) as grounds for this interpretation: "B (the least-favored representative man) can accept A's (the more favored representative man) being better off since A's advantages have been gained in ways that improve B's prospects."

The mistake in the alleged counterexample is clear: the cited passage occurs early in *Theory*, §17, right after §16, in which, as we have seen, the relevant groups for applying the difference principle are specified by their prospects in terms of primary goods; or in the simplest form of the principle, by income and wealth. In ideal theory, rigid designators such as Indians and British are excluded.³⁸ The idea of a representative man ("individual" would have been better) is a familiar and handy way of speaking about

37. This example is from Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), pp. 490–493. I am grateful to Brian Barry for sending me his comments on the example which he presented at the annual meeting of the American Political Science Association in 1985. I have drawn heavily on Barry's comments and any merits of my remarks are due to him. I should add that the example is of no importance in Parfit's book, occurring among several appendixes, this one written with John Broome. What I say is not in any way a criticism of that remarkable work.

38. See §17, n. 26.

a group already specified in some way. The passage cited (and others similar to it) should be read as referring to groups specified by income and wealth. What the numerical example does bring out is that the difference principle must not say (we already know it does not say (§18)) that the particular individuals, who are worst off under the basic structure it selects, would not be better off under any other practicable structure.

19.4. We might be tempted simply to dismiss the example as violating the restrictions on relevant groups. This would be too hasty, since the passage cited from *Theory* mentions (and so do many other passages) a kind of reciprocity between groups appropriately named. What lies behind this way of talking? Ignoring the matter of names for the moment, consider what can be said to the Indians in favor of (3). Accepting the conditions of the example, we cannot say the Indians would do no better under any alternative arrangement. Rather, we say that, in the neighborhood of (3), there is no alternative arrangement that by making the British worse off could make the Indians better off. The inequality in (3) is justified because in that neighborhood the advantages to the British do contribute to the advantages of the Indians. The condition of the Indians' being as well off as they are (in that neighborhood) is that the British are better off.

This reply depends, as does the difference principle itself, on there being a rough continuum of basic structures, each very close (practically speaking) to some others in the aspects along which these structures are varied as available systems of social cooperation. (Those close to one another are said to be in the same neighborhood.) The main question is not (3) against (2) but (3) against (1). If the Indians ask why there are inequalities at all, the reply focuses on (3) in relation to reasonably close and available alternatives in the neighborhood. It is in this neighborhood that reciprocity is thought to hold. If the Indians ask why we select the neighborhood of (3) rather than that of (2), the answer is that in the latter the worst off would be even worse off.

19.5. Note further that the example has the odd feature that there is a crossing over of the positions of the two groups: the Indians are best off in (2), the British in (3). Plainly if we use income and wealth classes, as the difference principle requires, the supposed difficulty cannot arise. As before, we don't have a counterexample. Moreover, the example is artificial, not only because it overlooks the assumption of a rough continuum of basic structures but because it is hard to see how, consistent with the principles

of justice prior to the difference principle, together with the facts of commonsense political sociology, the crossover cases could be actual alternatives. In one the Indians predominate in the more advantaged group, in the other the British. Thus both groups can take part effectively in political and economic life.

If this is so, why wouldn't there be an intermediate constitution in which the difference principle is satisfied and there is at least an approximate equality between Indians and British? That is, the inequality within both groups is the same, and each has the same average income and wealth. Since members of both groups can be effective participants in society, as crossing-over shows, there is no justification for any inequality between them as groups. Of course, what would in fact happen is that when the prior principles of the equal liberties and of fair equality of opportunity are both satisfied, some of the Indians would be among the better off and some among the worse off, and similarly for the British. The example is unrealistic and so the difference principle need not cover it.

Of course, the Indians might still say that they want to be as well off as they can be; it doesn't matter to them that the British are even worse off in (2) than they (the Indians) are in (3). To this the reply is that the difference principle does not appeal to the self-interest of those particular persons or groups identifiable by their proper names who are in fact the least advantaged under existing arrangements, rather, it is a principle of justice.³⁹ In ideal theory, the only defense of inequalities in the basic structure is that they make the worst off (whoever they may be, Indians, British, or any other group, however ethnically composed, mixed or otherwise) better off than the worst off (whoever they may be) under any alternative (practicable) scheme consistent with all the requirements of the two principles of justice. In this way, the difference principle expresses, as any principle of political justice must, a concern for all members of society. The question is: how to express the concern that is most appropriate to the freedom and equality of democratic citizenship?

I have discussed this example to illustrate the care that must be taken in framing counterexamples to the difference principle. The example reminds us: (a) that the principle is meant to hold only when the prior principles of justice are satisfied; (b) that it presupposes a rough continuum of practicable basic structures; (c) that arbitrary numerical examples can easily be misleading unless we attend carefully to the commonsense institutional back-

39. This point is emphasized by Barry in his remarks referred to in note 37.

ground; (d) that the difference principle is a principle of justice and not an appeal to the self-interest of any particular group; and of course, finally, (e) that relevant social positions must be specified correctly (and not, for example, by rigid designators). If we apply the principle as a single principle by itself, ignoring these points, we get nonsense.

§20. Legitimate Expectations, Entitlement, and Desert

20.1. Recall from §14 that in justice as fairness distribution takes place in accordance with legitimate claims and earned entitlements. These expectations and entitlements are specified by the public rules of the scheme of social cooperation. Suppose, for example, that these rules include provisions for agreements about wages and salaries, or for workers' compensation based on an index of the firm's market performance, as in a share economy.⁴⁰ Then those who make and honor these agreements have, by definition, a legitimate expectation of receiving the agreed amounts at the agreed times. They are entitled to these amounts. What individuals do depends on what the rules and agreements say they would be entitled to; what individuals are entitled to depends on what they do (*Theory*, §14: 74, 76).

Once more I stress that there is no criterion of a legitimate expectation, or of an entitlement, apart from the public rules that specify the scheme of cooperation. Legitimate expectations and entitlements are always (in justice as fairness) based on these rules. Here we assume, of course, that these rules are compatible with the two principles of justice. Given that these principles are satisfied by the basic structure, and given that all legitimate expectations and entitlements are honored, the resulting distribution is just, whatever it is. Apart from existing institutions, there is no prior and independent idea of what we may legitimately expect, or of what we are entitled to, that the basic structure is designed to fulfill. All these claims arise within the background system of fair social cooperation; they are based on its public rules and on what individuals and associations do in the light of those rules.

20.2. Now this statement is easily misunderstood. Within our comprehensive view we have a concept of moral desert specified independently of the rules of existing institutions. To say justice as fairness rejects such a

40. See Martin Weitzman, *The Share Economy* (Cambridge, Mass.: Harvard University Press, 1984).

concept is incorrect. It recognizes at least three ideas that in ordinary life are viewed as ideas of moral desert.

First, the idea of moral desert in the strict sense, that is, the moral worth of a person's character as a whole (and of a person's several virtues) as given by a comprehensive moral doctrine; as well as the moral worth of particular actions;

Second, the idea of legitimate expectations (and its companion idea of entitlements), which is the other side of the principle of fairness (*Theory*, §48); and

Third, the idea of deservingness as specified by a scheme of public rules designed to achieve certain purposes.

The concept of moral desert is not questioned. Rather, the thought is that a conception of moral desert as moral worth of character and actions cannot be incorporated into a political conception of justice in view of the fact of reasonable pluralism. Having conflicting conceptions of the good, citizens cannot agree on a comprehensive doctrine to specify an idea of moral desert for political purposes. In any case, moral worth would be utterly impracticable as a criterion when applied to questions of distributive justice. We might say: Only God could make those judgments. In public life we need to avoid the idea of moral desert and to find a replacement that belongs to a reasonable political conception.

20.3. The idea of a legitimate expectation is suggested as precisely such a replacement: it belongs to a political conception of justice and is framed to apply to that domain. While the political conception as a whole does apply to the family as an institution belonging to the basic structure (§50), its several principles are not intended to apply directly to the relations between members of the family, or to personal relationships between individuals, nor again to relations between members of small groups, or associations.⁴¹ For example, the political conception of justice does not require parents to treat their children according to the difference principle, any more than friends are required so to treat one another. Each of these cases presumably requires its own distinctive criteria. How far the idea of legitimate expectations holds must be considered separately in each case.

Finally, the idea of deservingness as specified by a scheme of public rules is illustrated at *Theory*, §48: 276, by games, as when we say that the losing

41. This is not to deny that in general the principles of justice restrict the form these arrangements can take (cf. §4.2 and §50).

team deserved to win. Here it is not denied that to the winners go the victory and the honors; what is meant is that the losers exhibited to a higher degree the qualities and skills the game is designed to encourage, the display of which makes the game enjoyable both to play and to watch. Yet chance and luck, or other mishaps, denied the losers what they deserved. This usage also fits the case where, after a particularly well played game, we say that both teams deserved to win; and while better a victory than a tie, it is too bad either had to lose.

20.4. Justice as fairness uses only the second and third ideas of desert. The second we have already covered in discussing legitimate expectations and entitlements. The third is mentioned only at *Theory*, §48: 276, but it is generally implied, as it holds for public rules effectively designed to achieve social purposes. Schemes of cooperation satisfying the difference principle are such rules; they serve to encourage individuals to educate their endowments and to use them for the general good.

Thus when individuals, moved by the public rules of social arrangements, try conscientiously to act accordingly, they may become deserving. But, as in games, there are competitors, and even when the competition is fair, one's success is not assured. Although well-designed arrangements may help to avoid large discrepancies between deservingness and success, this is not always possible. The relevant point here is that there are many ways to specify deservingness depending on the public rules in question together with the ends and purposes they are meant to serve. Yet none of those ways specifies an idea of moral desert, properly understood.

§21. On Viewing Native Endowments as a Common Asset

21.1. In *Theory*, §17, it is said that we do not deserve (in the sense of moral desert) our place in the distribution of native endowments. This statement is meant as a moral truism.⁴² Who would deny it? Do people really think that they (morally) deserved to be born more gifted than others?

42. This remark is not made from within justice as fairness, since this conception contains no idea of moral desert in the sense meant. On the other hand, the remark is not made from within any particular comprehensive philosophical or moral doctrine. Rather, I assume that all reasonable such doctrines would endorse this remark and hold that moral desert always involves some conscientious effort of will, or something intentionally or willingly done, none of which can apply to our place in the distribution of native endowments, or to our social class of origin.

Do they think that they (morally) deserved to be born a man rather than a woman, or vice versa? Do they think that they deserved to be born into a wealthier rather than into a poorer family? No.

The second and third ideas of desert do not depend on whether we morally deserve our place in the distribution of native endowments. A basic structure satisfying the difference principle rewards people, not for their place in that distribution, but for training and educating their endowments, and for putting them to work so as to contribute to others' good as well as their own. When people act in this way they are deserving, as the idea of legitimate expectations requires. The idea of entitlement presupposes, as do ideas of (moral) desert, a deliberate effort of will, or acts intentionally done. As such they provide the basis of legitimate expectations.

21.2. In *Theory* it is said (§17: 101, 1st ed.) that the difference principle represents an agreement to regard the distribution of native endowments as a common asset and to share in the benefits of this distribution whatever it turns out to be. It is not said that this distribution is a common asset: to say that would presuppose a (normative) principle of ownership that is not available in the fundamental ideas from which we begin the exposition. Certainly the difference principle is not to be derived from such a principle as an independent premise.

The text of *Theory* mentioned above is commenting on what is involved in the parties' agreeing to the difference principle: namely, by agreeing to that principle, it is as if they agree to regard the distribution of endowments as a common asset. What this regarding consists in is expressed by the difference principle itself. The remark about the distribution of endowments as a common asset elucidates its meaning.

21.3. Note that what is regarded as a common asset is the distribution of native endowments and not our native endowments per se. It is not as if society owned individuals' endowments taken separately, looking at individuals one by one. To the contrary, the question of the ownership of our endowments does not arise; and should it arise, it is persons themselves who own their endowments: the psychological and physical integrity of persons is already guaranteed by the basic rights and liberties that fall under the first principle of justice (§13.1).

What is to be regarded as a common asset, then, is the distribution of native endowments, that is, the differences among persons. These differences consist not only in the variation of talents of the same kind (variation in

strength and imagination, and so on) but in the variety of talents of different kinds. This variety can be regarded as a common asset because it makes possible numerous complementarities between talents when organized in appropriate ways to take advantage of these differences. Consider how these talents are organized and coordinated in games and in performances of musical compositions. For example, consider a group of musicians every one of whom could have trained himself to play equally well as the others any instrument in the orchestra, but who each have by a kind of tacit agreement set out to perfect their skills on the one they have chosen so as to realize the powers of all in their joint performances (*Theory*, §79: 459n4). Variations of talent of the same kind (as in degrees of strength and endurance) also allow for mutually beneficial complementarities, as economists have long known and formulated in the principle of comparative advantage.

21.4. We use the phrase “common asset” to express a certain attitude, or point of view, toward the natural fact of the distribution of endowments. Consider the question: Is it possible for persons as free and equal not to view it a misfortune (though not an injustice) that some are by nature better endowed than others? Is there any political principle mutually acceptable to citizens as free and equal to guide society in its use of the distribution of native endowments? Is it possible for the more and the less advantaged to be reconciled to a common principle? Should there be no such principle, the structure of social worlds and the general facts of nature would be to this extent hostile to the very idea of democratic equality.

To resolve the question, we try to show in Part III that the original position is a point of view from which the representatives of citizens as free and equal would agree to the difference principle, and so to the use of the distribution of endowments as, so to speak, a common asset. If we can show this, then that principle offers a way of seeing nature and the social world as no longer hostile to democratic equality; and in formulating such a principle justice as fairness does the work of political philosophy as reconciliation.

Here it is crucial that the difference principle includes an idea of reciprocity: the better endowed (who have a more fortunate place in the distribution of native endowments they do not morally deserve) are encouraged to acquire still further benefits—they are already benefited by their fortunate place in that distribution—on condition that they train their native endowments and use them in ways that contribute to the good of the less endowed (whose less fortunate place in the distribution they also do not

morally deserve). Reciprocity is a moral idea situated between impartiality, which is altruistic, on the one side and mutual advantage on the other.⁴³

§22. Summary Comments on Distributive Justice and Desert

22.1. Looking back on our discussion, I add a few summary comments. Justice as fairness does not reject the concept of moral desert as given by a fully or partially comprehensive religious, philosophical, or moral doctrine. Rather, in view of the fact of reasonable pluralism, it holds that no such doctrine can serve as a political conception of distributive justice. Moreover, it would not be workable, or practicable, for the purposes of political life.

The problem, then, is to find a replacement—a conception that does the kind of work needed for a political view that we might naturally, though incorrectly, suppose could only be done by a concept of moral desert belonging to a comprehensive view. To this end justice as fairness introduces a conception of legitimate expectations and its companion conception of entitlements.

22.2. For this replacement to be satisfactory, it must not only be workable, and answer the needs of a political conception of justice, but also:

(a) It should authorize the social and economic inequalities necessary, or else highly effective, in running an industrial economy in a modern state. Such inequalities (as already noted) cover the costs of training and education, act as incentives, and the like.

(b) It should express a principle of reciprocity, since society is viewed as a fair system of cooperation from one generation to the next between free and equal citizens, and since the political conception is to apply to the basic structure which regulates background justice.

(c) It should appropriately handle the most serious inequalities from the point of view of political justice: inequalities in citizens' prospects as given by their reasonable expectations over a complete life. These inequalities are those likely to arise between different income levels in society as these are affected by the social position into which individuals are born and spend the early years of life up to the age of reason, as well as by their place in the distribution of native endowments. We are concerned with the long-lasting

43. See *Political Liberalism*, pp. 16–17.

effects of these contingencies, together with the consequences of accident and luck throughout life.

In addition to these desiderata, there are two others that deserve notice:

(d) Principles specifying fair distribution must, so far as possible, be stated in terms that allow us publicly to verify whether they are satisfied.⁴⁴

(e) We should look for principles that are reasonably simple and whose basis can be explained in ways citizens may be assumed to understand in the light of ideas available in the public political culture.

22.3. The question, then, is whether the difference principle (working in tandem with the prior principles of the basic liberties and fair opportunity, and understood in the light of the ideas of entitlement and legitimate expectation) meets these desiderata as well as if not better than other available political principles. Justice as fairness holds that it may do so, and that it is worth considering, once we recognize that the role of commonsense precepts of justice, and of inequalities in distributive shares in modern societies, is not to reward moral desert as distinguished from deservingness. Their role is rather to attract people to positions where they are most needed from a social point of view, to cover the costs of acquiring skills and educating abilities, to encourage them to accept the burdens of particular responsibilities, and to do all this in ways consistent with free choice of occupation and fair equality of opportunity (*Theory*, §47). Of course, we are only beginning to explore this question (we will say more later) and can never provide a conclusive answer.

In considering the merits of the difference principle, keep in mind what we have already said: when justice as fairness says we do not morally deserve either our initial place in society or our place in the distribution of native endowments, it views this as a truism. It does not say that we never deserve in an appropriate way the social position or the offices we may hold in later life, or the realized skills and educated abilities we may have after we have reached the age of reason. In a well-ordered society we usually do deserve these things, when desert is understood as entitlement earned under fair conditions. Justice as fairness holds that the idea of desert as entitlement is fully adequate for a political conception of justice; and this is a moral idea (though not the idea of moral desert defined by a comprehensive doctrine) because the political conception to which it belongs is itself a moral conception.

44. This feature has been emphasized in connection with primary goods in §17.

The substantive question, then, is whether we need, or should want, more than this in a political conception. Doesn't it suffice to cooperate on fair terms that all of us as free and equal can publicly endorse before one another? Wouldn't this be reasonably close to the practicable, political best? Certainly some will insist that they do morally deserve certain things in ways a political conception does not account for. This people may do from within their comprehensive doctrines, and indeed, if the doctrine is sound, they may be correct in doing so. Justice as fairness does not deny this. Why should it? It only says that since these conflicting doctrines say that we morally deserve different things in different ways for different reasons, they cannot all be correct; and in any case, none of them is politically feasible. To find a public basis of justification, we must look for a workable political conception of justice.

22.4. Recall that we started in §12.1 by asking: what are the principles most appropriate to specify the fair terms of social cooperation between citizens regarded as free and equal? We are concerned with principles that take seriously the idea of citizens as free and equal, and so with principles suited to shape political and social institutions so that they may effectively realize this idea. But, of course, this raises the question of whether there may not be a number of principles that take the idea seriously. What could these alternatives be? How can we select among them? The answer that justice as fairness proposes is that the most appropriate principles taking this idea seriously are those that would be selected by citizens themselves when fairly represented as free and equal. To carry out this suggestion leads to the original position as a device of representation (§6). The argument from that position is presented in Part III.

The background worry present in asking these questions is that we may not know of any principles that take seriously the idea of citizens as free and equal; or that if we do, we know of several conflicting ones. They impose very different requirements and there is endless dispute about them influenced by which favors us most. Or it may be that we know of at least one family of principles that takes the idea seriously but we are not willing to act from it, for whatever variety of reasons. Should any of these things be the case, the question arises whether our speaking of citizens as free and equal is seriously meant. Is it simply talk? Does it serve other than an ideological purpose, understanding this term in Marx's sense? Plainly the integrity of constitutional democratic thought depends on the answers to these questions.