Topics in Political Philosophy

Rawls gives priority to the principle of equality of opportunity over the difference principle for income and wealth. This requires that people with equal innate endowments have equal chances to attain positions of power and responsibility, along with the higher income attached to those positions. To realize this principle might require that the state invest very heavily in the education of the economically disadvantaged, so that the talented among them have an equal chance to rise to higher positions. The taxes required to sustain that investment may well reduce the income prospects of the least talented under the difference principle (they will not directly profit from the money spent on educating the more talented to a higher standard).

1. **Do the least talented have a just complaint against the most economically disadvantaged talented people, that the money spent on the latter's education in order to give them an equal chance to rise above the minimum position comes at the expense of those destined to occupy the least-well paid positions?**
2. **How should one reason about this question from the perspective of the original position, and from the perspective of citizens in democratic societies?**

We complain when we deem ourselves disadvantaged, and when we deem this disadvantage wrong. The untalented poor[1] may consider themselves, *as a matter of fact*, to be at a disadvantage under a theory of justice that gives lexicographical priority to fair equality of opportunity (FEO) over the difference principle (DP)[2], and they may think, *as a matter of justification*, that this ought not to be the case. I shall assume that, as a matter of fact, the lexicographical priority does disadvantage the poor untalented[3], and I shall enquire what, if any, justification can be made for this disadvantage. I shall assume then that the lexicographical priority of FEO over the DP causes disadvantage to the untalented poor in one of two ways: either they enjoy less investment in their education[4] than they would have enjoyed in the absence of the lexicographical priority, or they enjoy less income and wealth[5] than they would otherwise have enjoyed.

I take it that if a justification cannot be found for the disadvantage suffered by the untalented poor thanks to the lexicographical priority, then the untalented poor have a just complaint against the talented poor that benefit from that priority. The justice of the lexicographical priority of FEO over the DP might be grounded in one of three hierarchies: first, in a hierarchy of contingencies that are a morally irrelevant basis for the distribution of social primary goods; second, in a hierarchy of social primary goods necessary for the exercise of the two moral powers in the two fundamental cases[6]; or, third, in a hierarchy of paradigms of justice, i.e. of the relational over distributive justice. I shall reject the first two accounts, and show that the third is promising. However, I shall raise separate problems for the third account. Thus, I shall conclude that the untalented poor have a just complaint if the third account is unable to deal with the problems I raise for it.

One might try to justify the lexicographical priority of FEO over the DP by grounding it in a hierarchy of contingencies that are a morally irrelevant basis for the distribution of social primary goods. This assumes that the two principles differ in the effect of which morally irrelevant contingencies each is supposed to regulate. The thesis would be that "eliminating social inequalities (i.e. those arising from family and class privilege) is infinitely more important than counteracting natural inequalities (i.e. those arising from differences in ability and ambition)" (Taylor 2004: 346). Mason (2006: 86) thinks this impossible to defend, but Taylor adduces the premise that "social but not natural inequalities prevent us from being full and equal participants in the basic structure of a well-ordered society or cause special injury to the self-respect of those denied fair opportunities, owing to the fact that social inequalities seem more a product of conscious human action and even human design than natural inequalities". However, Pogge rightly objects that this line of thought holds for natural contingencies *as much as for* social ones: "Would not one's sense of self-worth be gravely damaged if one realized all along that one's limited natural talents give one no chance at being admitted to higher education (because admitting the less talented would reduce the lowest index position)?" (Pogge 2007: 131). The reason for this is that the distinction between natural and social contingencies is a false one. "Natural talents" are just another type of social contingency: they are a function from contingent natural abilities, and contingent social evaluations of those natural abilities. Furthermore, just as natural talents are held back by social contingencies, such as class, they are similarly held back by so-called "natural" contingencies, such as race and gender (cf. Pogge 1989: 164).[7]

Alternatively, one might try to justify the lexicographical priority of FEO over the DP by grounding it in a hierarchy of social primary goods necessary for the exercise of the two moral powers in the two fundamental cases. This assumes that the two principles differ in the social primary goods whose distribution each regulates. Rawls offers a thought experiment designed to show that the lexicographical priority of FEO over the DP secures a social primary good more important than income and wealth. He argues that, in the absence of FEO, the DP would fail to secure this more important social primary good. The DP would obtain in the absence of FEO in a caste society where the homogeneity of the upper-caste-dominated work-force led to greater productivity, and where redistributive taxation returned this surplus to the lower caste.[8] Rawls claims that those denied FEO in such a society would not only be "excluded from certain external rewards of office" but also (scil. *more importantly*) "debarred from experiencing the realization of the self which comes from a skilful and devoted exercise of social duties. They would be deprived of one of the main forms of human good" (Rawls1999: 73). Thus, the basic thesis of this

second attempt at justifying the lexicographical priority is that FEO regulates the distribution of opportunities for self-realization through the "skilful and devoted exercise of social duties", while the DP regulates the distribution of income and wealth. However, the argument would need to be supported by three auxiliary theses (cf. Clayton 2001: 255): first, that opportunities for self-realization through the skilful performance of social duties is one of the main forms of human good; second, that opportunities for such self-realization are axiologically prior to the goods of income and wealth; and, third, that among opportunities for self-realization, we should privilege those for self-realization through the "skilful and devoted exercise of social duties" that attach to "offices and positions". Until these three auxiliary theses about the good of opportunities for self-realization are secured, the conclusion Rawls draws from his thought experiment seems precocious.

First is the thesis that opportunities for self-realization through the "skilful and devoted exercise of social duties" is one of the main forms of human good. Insofar as self-realization arises from "*skilful*…exercise", it would seem that Rawls means the desire for self-realization is simply the psychological fact he calls the "Aristotelian principle". This is the fact that "other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater the complexity" (Rawls 1999: 374). Moreover, "in the design of social institutions a large place has to be made for [the Aristotelian principle], for otherwise human beings will find their culture and forms of life dull and empty" (Rawls 1999: 377). Similarly, "Without [self-respect] nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them" (Rawls 1999: 386). Thus self-realization[9] would seem to be a basis for having self-respect. However, Arneson and Clayton make the *ad hominem* criticism that this reliance on the Aristotelian principle to ground a principle of justice invokes a comprehensive doctrine that would not command an overlapping consensus within a political conception of justice. For example, it would not command an overlapping consensus from those that "view the good life in terms of material consumption or single-minded devotion to God and, therefore, view the occupation of any particular social position as merely a means to the satisfaction of these external projects" (Clayton 2001: 255-6; cf. Arneson 1999: 98). Shiffrin (2004: 1667-8) objects that this criticism could be made just as well against the principle of equal basic liberties, for it too seems to presuppose a comprehensive doctrine. This should make liberals hesitant to follow Clayton's criticism. So it is at best unclear whether Rawls can establish this first thesis.

Second is the thesis that opportunities for such self-realization are axiologically prior to the goods of income and wealth. The thought would be that we have a higher order interest in opportunities for self-realization.[10] This is highly likely (cf. Taylor 2004: 339) if self-realization is a basis of self-respect, if self-respect is "perhaps the most important primary good" (Rawls 1999: 386), and if the parties in the original position have only a limited interest in income and wealth ("the person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule" (Rawls 1999: 134)). However, it is unlikely that the parties in the original position, by whom the rule of maximin would be chosen, would recognize an interest in opportunities for self-realization as being of a higher order than their interest in income and wealth. "The maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others" (Rawls 1999: 132-3). Recognizing such a higher-order interest would conflict with the goal of maximizing the minimum index in two ways. First, it would prioritize equalizing – even at the margin – opportunities for self-realization between the talented rich and the talented super-rich at the cost of income gains to the LAG under the DP (Arneson 1999: 82). Second, it would postpone concern for the uniquely untalented poor man who is peerless in his lack of talent. FEO, for him, would be vacuously satisfied (his opportunities for self-realization would be equal to those of his peers in talent, of whom there are none), so he would not even receive education under FEO (Arneson 1999: 82-3). Indeed, the parties in the original position would object that 'fairness to talent trumps fairness to the worst off in Rawls's system' (Arneson 1999: 86; cf. Barry 1974: 85; Alexander 1986: 199-200).

Third is the thesis that, among opportunities for self-realization, we should privilege those for self-realization "through the skilful and devoted exercise of social duties" that attach to "offices and positions" (Rawls 1999: 266) of "authority and responsibility" (Rawls 1999: 53). Such "offices and positions" are but one sort of social duty one might exercise. Why think that we should privilege the opportunities for self-realization of those who desire to realize themselves in "offices and positions" of "authority and responsibility" in the basic structure – e.g. in the exercise of the social duties involved in "governments, private and public corporations, universities, NGOs" (Taylor 2004: 341) – over the opportunities for self-realization of those that desire to realize themselves in the exercise of *other* social duties – e.g. in "friendships, chess clubs, art associations, churches" (Taylor 2004: 341)? Taylor argues that we have to specialize[11], and that we all benefit from the fact that we each specialize.[12] He claims further that "offices and

positions associated with [social unions that are part of the basic structure are distinctive in that they] require a major and usually dominant commitment of time and energy and act as the primary sources of livelihood for those who hold them" (Taylor 2004: 341). He concludes that in order to reap vicarious benefit from the exercise of such "offices and positions", we need to grant a special privilege to opportunities for self-realization through the exercise of the social duties attached to them. However, Taylor has not identified a property unique to "offices and positions" – running a church or running a chess club can be one's all-consuming livelihood – nor has he identified a property common to "offices and positions" – non-executive board memberships consume little time and are invariably not sources of livelihood. More generally, it seems that the project of establishing this third thesis must fail because our interests in opportunities for self-realization are equally strong, regardless of which social duty or within which social union we choose to realize ourselves (cf. Mason 2006: 85; Arneson 1999: 99).[13]

So, this second attempt to justify the lexicographical priority of FEO over the DP is unable to establish three key theses about the opportunity for self-realization – theses that it *requires* for the justification. Can we nevertheless motivate the justification by reflecting upon Rawls's thought experiment? If the absence of FEO accounts for our intuition that the caste society fulfilling the DP is an unjust society[14], perhaps we can retain the intuition that FEO is a requirement of justice, but look elsewhere for a justification of the lexicographical priority of FEO over the DP. However, it seems that we can agree with the intuition, but cite the absence of an anti-discrimination norm as a better account of the intuitive injustice. The caste society fulfilling the DP is unjust because it allows for discrimination "motivated by hatred and loathing for a type of person" (Arneson 1999: 88) or which "expresses unwarranted contempt" (Cavanagh 2001: 166). To cite the absence of FEO, by contrast, is to overshoot the mark by forbidding innocent forms of discrimination, and to give a merely instrumental justification for anti-discrimination norms. For instance, a gay business hiring only gay employees would not be expressing unwarranted contempt in its discrimination against heterosexuals, yet would be declared unjust by FEO. More generally, "the implication of appealing to equality is that discriminating on the basis of race or sex turns out to be no worse than any other way of behaving which leaves different kinds of people with unequal chances…this does not quite seem right: it does not seem to capture what is *distinctly* wrong with discrimination" (Cavanagh 2004: 155; cf. Shiffrin 2004: 1650, 1655-6).[15]

The third alternative for justifying the lexicographical priority of FEO over the DP would be to ground it in a hierarchy of paradigms of justice. The thought would be either that relational

justice is more important than distributive justice, or else that *only* relational justice is important. On the distributive paradigm, egalitarian justice aims at an equal distribution of goods, whereas, on the relational paradigm, egalitarian justice aims at equal social relations. If FEO aims at securing equal social relations, whereas the DP aims at securing an equal distribution of goods, then the lexicographical priority will be justified (and trivially so, if *only* relational justice is in fact of importance). One might argue that FEO aims at securing equal social relations as follows. Since, even in a well-ordered society, some social hierarchies are necessary for complex social cooperation, the elites at the top of such necessary hierarchies require to be *integrated*. An integrated elite will be less of a threat to relational equality, since it will include people with first-person knowledge of these groups in society of which an unintegrated elite would otherwise be ignorant (cf. Anderson 2007: 596). FEO represents a tool for integrating the elite. This third account of the justification of the lexicographical priority appeals to interests of *all* citizens, not just to the interests of the talented poor. So, if indeed the untalented poor enjoy less investment in their education, or less income and wealth than they would have enjoyed in the absence of the lexicographical priority, this will be offset by the benefit concomitant with living in a society run by an integrated elite. A loss today for some is a gain tomorrow for all: the untalented poor do not have a just complaint.

However, it may be that this account of the justification does not fully appreciate the "losses today" that FEO requires. FEO will cause disadvantage to the untalented poor not merely in requiring less investment in their education, or less income and wealth for them. It is a plausible hypothesis that the loss of children that are a good influence on their peers from non-selective schools will reduce the absolute value of the education received by the child that remains in the non-selective school (*vide* footnote 4). The empirical conjecture here is that there is a critical mass of good eggs that, with its infectious work-ethic, can single-handedly make a group successful. This loss of *cultural* investment in the education of the untalented poor might be more devastating than the loss of *financial* investment in their education, or the loss of cash in their hands.

On the other hand, it may also be that this account of the justification of the lexicographical priority over-estimates the "gains tomorrow" that FEO can bring. Suppose that the benefit to the democratic community of an integrated elite, when it is achieved, will offset the earlier disadvantage, noted above, for the untalented poor. A significant amount of time will pass while we educate a member of the talented poor from the moment she is identified as talented by a

selective (secondary) school to the moment she obtains her university degree, and while from that moment she develops her career until the even more remote moment when her career in an "office" or "position" of "authority and responsibility" may be described as *established*. For this reason, the compensatory gains of living under an integrated elite will not be enjoyed until a significant time-lag has passed. It is quite plausible that, while waiting expectantly for their elite of Messiahs, the untalented poor will experience irreversible changes in their lives – changes that preclude their enjoyment of the compensatory gains. For example, in the absence of their more motivated peers, they might develop a fixed disposition that is not conducive to human flourishing, or, to take another example, they might die. It seems that the untalented poor have a just complaint if they themselves are unlikely to see the Promised Land.

Yet, suppose instead that the expectations of the talented poor and those of the untalented poor are *not close-knit*.[16] This would be the case where attempts to create an integrated elite by heavy investment in the education of the talented poor does not in fact lead to an integrated elite. Why might this occur? On the one hand, the talented poor that benefit from FEO might not be *admitted* to the elite. For instance, they might gain university degrees, but face discrimination on the job market. On the other hand, they might *excuse themselves* from the elite. For instance, they might gain university degrees, but decide not to exercise a social duty attached to one of the "offices and positions" of "authority and responsibility" that are part of the basic structure. They might, for instance, forgo joining the ranks of the "managers, consultants, professionals, politicians, [and] policy makers" in society (Anderson 2007: 596), and decide instead to paint watercolors in the South of France or, God forbid, become a philosopher. It would seem that, according to the third justification of the lexicographical priority, the untalented poor have a just complaint against the talented poor who do not "give back", as it were. Yet to concede such a complaint would be to deny the talented poor a liberty of occupation that is enjoyed with impunity by the talented rich. Why is it just that fewer social demands may be made upon the rich talented with respect to their liberty of occupation than upon the equally talented poor beneficiaries of FEO with respect to theirs? This consideration urges the conclusion that, with its novel rationale for FEO, the third justification treats not FEO but rather the talented poor themselves as tools for the achievement of relational justice.

Of the three possible justifications for the lexicographical priority of FEO over the DP that have been entertained in the foregoing: the first was found to rely upon a false distinction between natural and social contingencies; the second was found able to establish neither that opportunities

for self-realization are axiologically prior to the goods of income and wealth, nor that, among opportunities for self-realization, we should privilege those for self-realization through the exercise "offices and positions"; the third was found to over-estimate whether and how soon FEO can bring about the compensatory benefit concomitant with an integrated elite. In reasoning about such a justification, we should try to come to a reflective equilibrium between our considered intuitions and the contractualist conclusions we can deduce from the definitions of the original position and of the well-ordered society. In the present case, our considered intuition seems to be that it is unjust if one is excluded from a position of authority on the grounds of one's social class. However, we remarked in discussion of the second attempt at justification "a tension between our considered judgments and the thought experiment of the original position: We regard fair equality of opportunity as an important component of socioeconomic justice even while the parties [in the original position] would rationally agree that this demand [for fair equality of opportunity] should *not* detract from the demands of the difference principle" (Pogge 2007: 131). In the absence of an independent argument justifying our considered intuition, we cannot conclude "so much the worse for what would be chosen in the original position". However, we can conclude "so much the worse for the considered intuition". For "This shared sense of justice is surely shared in a large part by the more intelligent and better educated citizens, who sympathize more readily with intelligent persons who are excluded from higher education by their poverty, gender, or skin color than they do with individuals who, despite high motivation, are excluded by their lack of native intelligence and other natural talents" (Pogge 2007: 132).[17] However, we could both have our cake and eat it. We could, that is, salvage the considered intuition, by accepting of Pogge's explanation of it and giving it a novel rationale drawn from the third account of the justification. We could then aim to bring this "re-considered" intuition into equilibrium with the contractualist conclusion of the well-ordered society, which would prefer the elites atop of any unavoidable social hierarchies to be integrated. So the third justification is the most promising way to justify the lexicographical priority of FEO over the DP, and so lop off any talk of just complaints on the part of the untalented poor. However, whether the justification achieves this only for another potentially just complaint – this time from the *talented* poor – to rise from the Hydra's decapitated neck, is yet to be determined.

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[1] I use "poor" as shorthand for "the least economically advantaged group" or "LAG" (and, similarly, "rich" for "the most economically advantaged group", or "MAG"). I use "untalented" as shorthand for "the least talented group". The cardinal locution is less unwieldy than the ordinal locution. I do not believe that it affects my argument.

[2] These two principles hold that "social and economic inequalities are to be arranged so that they are both (a) to greatest benefit of the least advantaged [= the DP]…, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity" (Rawls 1999: 266). "Conditions of fair equality of opportunity" obtain where "those who are at the same level of talent and ability, and have the same willingness to use them, …have the same prospects of success regardless of their initial place in the social system" (Rawls 1999: 63, cf. 243 & 265).

The priority of FEO over the DP is "lexicographical" insofar as the DP "does not come into play until [FEO, which is] previous to it[, is] either fully met or [does] not apply" (Rawls 1999: 38). FEO may not be violated to optimize the income and wealth of the worst off (Rawls 1999: 73 & 265). However, inequalities of opportunity are *justifiable*: in order to justify inequalities of opportunity, "an inequality of opportunity must enhance the opportunity of those with less opportunity" (Rawls 1999: 266), or one must be able to "claim that the attempt to eliminate these inequalities would so interfere with the social system and the operations of the economy that in the long run anyway the opportunities of the disadvantaged would be even more limited." (Rawls 1999: 265).

[3] Rawls and his sympathetic critics deny that, as a matter of fact, the untalented poor will suffer disadvantage because of the lexicographical priority. There is only rarely, if ever, a complaint, they say, let alone a just one (Mason 2006: 84 n34). On the one hand, they urge that FEO has lexicographical priority only "...once the required social conditions and level of satisfaction of needs and material wants is attained, as they are in a well-ordered society under favourable circumstances" (Rawls 1999: 476, cf. 54-5 & 132). On the other hand, they urge that, once FEO *does* have lexicographical priority, this effect is to the *advantage* of the LAG in three ways.

First, under the DP constrained by FEO, there is less inequality that favours the MAG. "By opening up job opportunities FEO promotes less inequality than formal inequality of opportunity would, for more candidates are in a position to compete for desirable positions, thereby driving down the level of income the more advantaged receive" (Freeman 2007: 93; cf. Rawls 2001: 67). However, this argument makes several, perhaps unwarranted, economic assumptions (cf. conversation with Warren Herold).

Second, under the DP constrained by FEO, any inequality that favours the MAG is to the advantage of the LAG. "While it may be true that greater inequalities may result from FEO under the system of liberal equality where distribution of income and wealth is decided by market distributions, this is no longer the

case when FEO is combined with the difference principle, which allows only those inequalities of wealth that benefit the worst-off…What FEO means in the context of Liberal Equality is different from what it requires in Democratic Equality" (Freeman 2007: 93-4). Freeman's seems to envisage the DP as acting as a constraint on FEO (cf. "The difference principle transforms the aims of society in fundamental respects." (Rawls 1999: 94)). However, given that FEO is introduced *because* the DP cannot be taken seriously on its own (Rawls 2001: 46 n10), is supported by a weaker argument (Rawls 1999: xii), and requires to be constrained (Rawls 1999: 76), Rawls would seem on this view to want both to have his cake and to eat it. Either FEO constrains the DP or the DP constrains FEO, but not both.

Third, under the DP constrained by FEO, most inequality is in fact in favour of the LAG. "FEO requires that those with *less* (not more) natural talent be given greater educational benefits than normal, so that they are able to develop their capacities in order to effectively take advantage of the full range of opportunities available in society" (Freeman 2007: 94). The textual support for this seems to be that "resources for education are not to be allotted solely or necessarily according to their return as estimated in productive trained abilities, but also according to their worth in enriching the personal and social life of citizens, including here the less favoured. As society progresses, the latter consideration becomes increasingly important." (Rawls 1999: 92)." Freeman goes a step further and finds a "broader reading" of FEO in Rawls's work: "that the main purpose of fair equal opportunity is to provide citizens generally, not simply the more naturally talented, with the means to develop and train their natural abilities so that they (a) can take full advantage of the range of opportunities open to people with similar abilities, and (b) attain self respect in their status as equal citizens. It is not the role of fair equal opportunity to promote economic efficiency or establish a meritocracy by bringing to fruition the natural talents of those who are naturally gifted but socially disadvantaged in relation to others with equal natural talents" (Freeman 2007: 96). Freeman's evidence for this "broader reading of FEO" 2007: 95, is that "Rawls adds that rights to provision of health care are among the requirements of FEO" (Freeman 2007: 95). He cites Rawls 1993: 184n, "where Rawls endorses Norman Daniels's reading of FEO as requiring rights to health care" (Freeman 2007: 491 n11). For, "without the guarantee of health care, a person is not in a position to take advantage of the opportunities generally available to a person with his or her talents and abilities." (Rawls 2007: 95). However, this surely tells us nothing distinctive about FEO, for, as even Freeman notes, "In the *Restatement* Rawls indicates that provision of health care has multiple sources, including not only FEO, but the equal liberties and difference principle too." (2007: 491, citing Rawls 2001: 174).

[4] "To realize this principle might require that the state *invest very heavily in the education of the economically disadvantaged*, so that the talented among them have an equal chance to rise to higher positions." (cf. Alexander 1986: 205). The question admits of two readings.

On the *first reading*, this refers to state investment in the poor *generally*; an example of such a policy would be one of universal mandatory primary education. On the one hand, such a policy could have as its aim the *creation of talent* among the poor. Talent on this view is endogenous to schooling: it is teachable, created by schools, acquirable by all – not innate and to-be-discovered. (It is an interesting question whether talent is in fact wholly teachable/acquirable. The American political rhetoric of meritocracy relies on its being so.). On this view the untalented poor have no complaint, since they are advantaged by such investment – they can thereby become talented. On the other hand, such a policy could have as its aim *the discovery of the talented*. Yet again, even if the investment is not aimed at *them*, the untalented poor nevertheless are advantaged by the education that is provided by the general investment, and so they do not have a complaint (unless being educated not for one's own sake but as a by-product of the education of another constitutes a dignitary harm – but I put this aside).

Alternatively, on the *second reading*, this refers to state investment in the *talented* poor (once they have been discovered); an example of such a policy would be one of selective (secondary?) schooling. The two alternatives are frequently confused in the literature (e.g. Pogge 2007: 129). It is the second reading that I take in the text.

[5] "The taxes required to sustain that investment may well *reduce the income prospects of the least talented under the difference principle* (they will not directly profit from the money spent on educating the more

talented to a higher standard)" (cf. Alexander 1986: 202). Reductions in the LAG's expectation of income and wealth may come about in one of two ways.

On the one hand, a reduction may be due to incentives. Heavy investment in the education of the talented poor requires high redistributive taxation, which, in turn, reduces the incentives of the talented in society to engage in work that is more productive of income and wealth. This, in turn, reduces the product of social co-operation available for distribution according to the DP, which, in turn, reduces what the LAG can expect in terms of income and wealth. Why would this story about incentives be any more the case if redistributive taxation were expended on the education of the *talented* poor as opposed to on the poor *generally*? Perhaps because the rich especially resent having to pay taxes to educate their future competitors, but, by contrast, feel less resentment at having to throw an educational sop to those who will never be able to compete with them for offices and positions. If this is correct, the untalented poor will have a complaint against the talented poor.

On the other hand, a reduction may be due to simply to the *lexicographical priority* of FEO over the DP. Where faced with a choice whether to increase the expectation of income and wealth of the poor *generally*, or to invest in educating the poor *talented*, the lexicographical priority will enjoin the latter. I address only the second account of reduction in the text.

[6] "…the first fundamental case is the application of principles of justice to the basic structure of society by the exercise of citizens' sense of justice. The second fundamental case is the application of citizens' powers of practical reason and thought in forming revising and rationally pursuing the their conception of the good" (Rawls 1999: xii).

[7] Pogge relies on this same false distinction between natural and social contingencies which he criticizes in Rawls when he tries to go one step further and object that the line of thought holds for natural contingencies *more than* it does for social contingencies: "In fact, is not one's self-respect damaged more when one is excluded from higher education on account of one's lack of intelligence than when one is excluded on account of one's race or gender or the poverty of one's family?" (Pogge 2007: 131-2, cf. 1989: 173-4).

[8] "…it may be possible to improve everyone's situation by assigning certain powers and benefits to positions despite the fact that certain groups are excluded from them. Although access is restricted, perhaps these offices can still attract superior [scil. *inferior*] talent and [scil. *nevertheless*] encourage better performance" (Rawls 1999: 73). Here, I follow Barry's charitable reading of Rawls (1973: 84; cf. Shiffrin 2004: 1660).

[9] It follows that *self-realization* is a basis of self-respect, but it is not immediately obvious that it follows that *opportunities for self-realization* are also a basis of self-respect (which is what is needed to establish the thesis at issue).

[10] Similarly, in defending the priority of liberty, "Rawls's argumentative strategy is to justify a hierarchy of goods (basic liberties *over* other primary goods, as required by the priority of liberty) with a hierarchy of interests (a highest order interest in shaping other interests *over* all other interests, including the fundamental ones)" (Taylor 2004: 337; cf. Rawls 1999: 476). Indeed, Rawls speaks of the "priority of fair opportunity" in the same breath as "the parallel case of the priority of liberty" (Rawls 1999: 265).

[11] "…one basic characteristic of human beings is that no one person can do everything that he might do; nor a fortiori can he do everything that any other person can do…. Thus everyone must select which of his abilities and possible interests he wishes to encourage" (Rawls 1999: 458-9).

[12] "…it is through social union founded upon the needs and potentialities of its members that each person can participate in the total sum of the realized natural assets of the others" (Rawls: 1999: 459).

[13] Barry is tempted to err in the other direction: "if "the office makes the man"...it should perhaps have a chance to build up otherwise insignificant people. Those with talent will probably do alright anyway" (Barry 1974: 86). However, for the same reason, he would be wrong to do so.

[14] "…the line of thought supporting this [intuition] would be that an adequate ideal of social justice must regulate the process by which membership in the worst of class in society is determined as well as the life prospects that the basic institutions of society cause to be associated with the worst off position" (Arneson 1999: 87). Interestingly, Rawls himself might not be entitled to share this intuition. For the maximinizers in the original position would see no difference between relegating the untalented disproportionately into the LAG if the talented by their greater productivity could produce more social product for distribution by the DP, and relegating a lower social caste disproportionately into the LAG if the upper caste by its greater productivity could produce more social product to be distributed by the DP (cf. Arneson 1999: 94).

[15] Of course, the implication of this is that Justice-as-fairness does not need FEO (let alone its lexicographical priority over the DP). Indeed, "The force of justice as fairness would appear to arise from two things: the requirement that all inequalities be justified to the least advantaged and the priority of liberty," i.e. *not* from FEO (Rawls 1999: 220). The force of the moral intuition that motivates FEO could be accounted for by the principle of equal basic liberties or by the DP. Mason (2006: 85-6) would include "freedom of occupation" among the basic liberties, while Shiffrin (2004: 1665) would opt for "freedom from discrimination". Pogge (2007: 132-3), by contrast, would incorporate concern for the distribution of opportunities into the DP.

[16] "…inequalities of expectations are chain-connected [where]…if an advantage has the effect of raising the expectations of the lowest position, it raises the expectations of all the positions between" (Rawls 1999: 69). "…expectations are close-knit [if]…it is impossible to raise or lower the expectation of any representative man without raising or lowering the expectation of every other representative man" (Rawls 1999: 70). Close-knitness is an – empirically observable – special case of chain-connection.

[17] Shriffrin gives a similar account of why Rawls's commentators have avoided discussion of the absence of an otherwise morally intuitive norm of anti-discrimination in Rawls's theory: "I suspect the avoidance also has to do with the racial composition of the philosophical community" (Shiffrin 2004: 1661).