UNDERSTANDING JUSTICE

Russell Keat and David Miller

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I

In a book[1] which has been described as the most notable contribution to the tradition of English-speaking political philosophy since Sidgwick and Mill, John Rawls puts forward a theory of justice which has the following three aims: first, to establish certain principles of justice as the rational choice of individuals placed in a hypothetical situation in which they are ignorant of their personal qualities and their place in society; second, to show that the principles thus chosen correspond to our considered judgements of justice and injustice; third, to show that these principles can feasibly be adopted as a public conception of justice in a human society. If these aims were realised, Rawls' theory of justice would be more securely grounded than any of its competitors, including the utilitarian theory of Sidgwick and Mill. We do not believe that Rawls succeeds in the tasks which he has set himself, although in the attempt he has made a contribution of permanent value to political philosophy. Unfortunately we must leave aside many of the interesting themes which his book contains, in order to concentrate our attention on its central argument.

Rawls' analysis of justice is given in two parts. There is, first of all, a general conception, and then two principles of justice, which give a more specific content to that conception. The general conception of justice is stated as follows:

> "All social primary goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured" (p.303).

Rawls nearly always prefers to conduct his discussion in terms of the more specific conception of justice expressed in the following two principles:

1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

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[1] John Rawls, A Theory of Justice, Oxford University Press, Oxford, 1972. All page references are to this book, except where otherwise stated.

2) Social and economic inequalities are to be arranged so that they are both

a) to the greatest benefit of the least advantaged; and
b) attached to offices and positions open to all under conditions of fair equality of opportunity.[1]

These principles are to be applied in the following 'lexical order': principle 1 is to be fully satisfied before principle 2 is allowed to operate; and principle 2(b) is to take similar precedence over 2(a). We shall call principle 1 the principle of equal liberty, principle 2(a) the difference principle, and principle 2(b) the principle of fair equality of opportunity. The point of the lexical ordering is to establish a strict priority among the different demands of justice in Rawls' theory. An equal liberty has first priority, followed by the demand for fair equality of opportunity. Only when these are fully satisfied can we turn to arranging social and economic inequalities so that they work to the greatest benefit of the least advantaged member of society.[2]

Both the general conception of justice and the two principles are said to be derived from a 'hypothetical situation'. Rawls aims to show that rational men, called upon to establish a social order de novo without knowing which position in that order they were likely to occupy, would choose to regulate it according to the two principles of justice. His theory therefore falls explicitly within the social contract tradition,

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[1] This is a slightly simplified version of the principles as set out on pp. 302-3.

[2] Rawls assumes that we can discover within society a number of 'relevant social positions', differentiated by the level of power and wealth they enjoy, and claims that we are to apply the two principles of justice to representative men drawn from each social position. Thus, strictly speaking, the difference principle states that inequalities are to be arranged so that they work to the greatest benefit of the representative man from the worst-off social position. We have not followed Rawls here, partly because the theory of representative men introduces an unnecessary complexity into the discussion, partly because it seems to weaken Rawls' general theory rather than to strengthen it. For instance if we defined the worst-off social position as that of an unskilled worker (one of Rawls' suggestions on p.98) it might turn out that in present-day Britain the representative unskilled worker was reasonably well off, whereas a small proportion of unskilled workers were very badly off. It would surely be wrong for a theory of justice to overlook this small minority within the worst-off position. The proper point of reference is simply the least advantaged member of society.

but diverges from the main stream of that tradition by making no claim to explain the origins of social order. The contractual method is used for the specific job of establishing principles of justice. Further, Rawls makes more restrictive assumptions about his hypothetical situation than traditional contract theorists were wont to do. The parties to the contract are rational and mutually disinterested (each man has no wish to advance the interests of anyone other than himself). They have knowledge only of general facts about the working of society and of human psychology; they do not know what their position in society will be, nor what talents and abilities they possess. They know that men formulate 'plans of life' for themselves, but remain ignorant of their own personal plans. They do not suffer from envy. Their agreement to principles of justice is constrained by certain formal conditions, particularly that the principles chosen are to be universal in form, publicly applied, and binding on all future occasions. These assumptions are not intended as a general theory of human nature, but as an axiomatic expression of the conditions under which questions of justice arise. If, for instance, men were assumed not to be mutually disinterested but to be altruistic, there would be no reason for them to establish principles of justice. According to Rawls, questions of justice do not arise in a society of perfect altruists.

Rawls regards his theory of justice as having two main rivals: utilitarianism, and what he calls intuitionism. By 'intuitionism' he means not a theory about the cognitive status of moral judgements but the view that there are a number of distinct moral and political principles, which cannot be reduced to a single first principle but which must be balanced against one another in each particular case. An intuitionist account of justice might present it as a combination of different principles, for example as comprising various principles of deserts and needs. To make specific judgements of justice, it would be necessary to weigh up these different considerations and decide for one policy or another, with no certainty that another man would reach the same decision. The obvious weakness of this position gives the utilitarian one of his most telling arguments. The principle of utility introduces system into our judgements of justice by subordinating the various criteria to the single end of the greatest happiness for the greatest number. Rawls wants to retain <u>this</u> advantage of the utilitarian position, while objecting to the principle on the grounds that "each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others." One of the key failings of utilitarianism is that it may permit the latter state of affairs to occur.

Rawls wants not only to present a unified theory of justice; he wishes also to combat an intuitionist account of the relationship between justice and other values, by insisting that justice is the primary virtue of social institutions, that it must take strict precedence over efficiency, human perfection and other goods at which a society may aim. Although these other values receive much less attention, it is plain that Rawls' ambition is nothing less than a complete social and political philosophy, presented under the guise of a theory of justice.

In our critical assessment of this theory, we have singled out for examination those parts of the work which seem to us to constitute Rawls' most distinctive contribution to an understanding of justice. The following two sections consider the derivation of the difference principle and the principle of equal liberty, respectively, from the hypothetical situation. Sections IV and V examine the actual operation of the two principles of justice, while Section VI takes up the problem of the stability of a society built upon them. In Section VII we offer some general conclusions about Rawls' enterprise considered as a whole.

II

A persistent criticism of Rawls' theory of justice as it has developed over the years concerns the derivation of the difference principle from the hypothetical situation.[1] Rawls' critics maintain that he has failed to show why rational individuals in the situation as he describes it would choose to arrange social and economic inequalities so that they worked

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[1] See especially B. Barry, "On Social Justice", <u>Oxford Review</u>, No. 5, 1967; M. Lessnoff, "John Rawls' Theory of Justice", <u>Political Studies</u>, Vol. XIX, 1971; D. Lyons, "Rawls versus Utilitarianism", <u>Journal of Philosophy</u>, Vol. LXIX, 1972.

to the benefit of the least advantaged member of society. Instead, it is said, they would arrange inequalities according to the principle of utility (combined, possibly, with some principles regulating the extent of inequality). In his book, Rawls goes half way to meet his critics. There are, he now admits, interpretations of the hypothetical situation which will lead to the adoption of the principle of utility. But one interpretation, which he describes as the 'philosophically favoured' one, is claimed to yield the difference principle as a regulator of social and economic inequalities.[1] We shall not dispute Rawls' manner of interpreting the hypothetical situation, but we shall ask whether even the most favourable interpretation produces the difference principle instead of the principle of utility. (Rawls distinguishes two versions of utilitarianism: the average principle of utility, which states that the average level of well-being is to be maximised, and the classical principle, which states that the total amount of well-being is to be maximised. For simplicity's sake we shall conduct our arguments in terms of the average principle, noting that the two principles coincide if the population whose happiness is being considered stays constant in number.)

Rawls has two types of argument to show that the difference principle would be chosen in the hypothetical situation:

1) Given their condition of ignorance, rational individuals would choose to make their worst prospect (the chance that they may occupy the lowest position in society) as pleasant as possible, rather than concerning themselves about the average level of well-being enjoyed.

2) Given their knowledge of human psychology, rational individuals would choose a principle which, when implemented, would generate its own support. The idea here is that certain principles might be acceptable under conditions of ignorance, but unacceptable to men who found themselves actually placed in different positions in society. These two arguments have a different logic. The first makes essential reference to the hypothetical situation; to assess its validity, we must discover which choice men placed in such a situation would make. But the second argument makes no such essential reference; it can be assessed quite independently

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1 For the alternative interpretations of the hypothetical situation, see especially Sections 20, 26-8.

of any theory of hypothetical situation and contract. If a principle of justice fails to generate its own support in the sense suggested, this is a good reason for rejecting it whether or not we follow Rawls in seeing principles of justice as the outcome of an agreement made under conditions of ignorance. The different status of the two types of argument justifies us in treating them separately. In this section we consider the first type only.

There is a major obstacle to assessing Rawls' claim that rational individuals would prefer to maximise the prospects of the worst-off than to maximise average well-being. The obstacle is that Rawls expresses his principle in terms of primary goods - wealth, power and opportunities, principally - whereas he expresses the utility principle in terms of well-being. The justification offered for stating the difference principle in this way is that it is chosen in a situation in which men are ignorant of their detailed plans of life. They must therefore formulate their conception of justice in terms of goods which are deemed necessary to the successful execution of any plan of life, whatever that plan is. The choice, as Rawls states it, is between maximising the level of primary goods enjoyed by the worst-off member of society, and maximising the average level of well-being enjoyed by members of society as a whole. Now it may turn out that the way to maximise average well-being is actually to give the worst-off members the highest possible level of primary goods. This will be so if the marginal utility of primary goods like wealth diminishes in such a way that the poor derive much greater satisfaction from a small increase in wealth than do the rich. On this reasonable assumption, the difference principle as applied to primary goods becomes a rule of thumb for applying the utility principle. Furthermore, it seems that much of the difference principle's plausibility derives from this fact. One of the considerations which Rawls thinks will influence an individual in the hypothetical situation is the following:

> "The person choosing has a conception of the good such that he cares very little, if anything, what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule. It is not worthwhile for him to take a chance for the sake of a further advantage, especially when it may turn out that he loses much that is important to him." [1]

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[1] P.154. Rawls regards the difference principle as the maximin rule (when choosing between alternative sets of possibilities, pick the set in which the worst possibility is the least bad) applied to primary goods.

Yet this is the kind of reasoning which a utilitarian might use to justify the maximin rule for primary goods. The person gains little extra benefit from money rewards above a certain minimum, but loses a good deal if his level of reward falls below it. If he wants to maximise his expected well-being (not knowing which position in society he will occupy) he will wish so to distribute primary goods that the highest minimum is achieved.

In order to make a fair comparison between the difference principle and the principle of utility, it is essential to state them both in terms of well-being. The choice to be made is between maximising the well-being of the worst-off member of society, and maximising average well-being. Stating the choice in this way may seem to conflict with the assumption that men in the hypothetical situation do not know what their 'plans of life' are. If they do not know this, how can they estimate the amounts of well-being which different distributions of wealth and power will bring them? But the answer here is that men in the hypothetical situation should not be concerned with concrete benefits such as wealth at all. In their condition of ignorance they are in no position to say what primary goods will be needed to carry out their plans of life,[1] so they should express their principles in terms of broad concepts such as well-being, leaving it to men with full knowledge of an actual society to translate these principles into rules for distributing concrete goods.

We can now ask what reasons Rawls gives us for believing that rational individuals would opt for the difference principle in place of the principle of utility. We may imagine the men in the hypothetical situation having to choose which of a number of societies, each with a different distribution of well-being, they wish to enter. Choosing the society with the highest <u>minimum</u> of well-being means adopting the difference principle, while choosing the society with the highest <u>average</u> of well being means adopting the principle of utility. On the face of it, the difference principle, concentrating as it does on the fate of the worst-off member of society, seems a highly pessimistic choice - the principle, as Rawls admits, that you would choose if you thought that you were going to be assigned your place in society by an enemy. Why should rational individuals disregard the levels of well-being enjoyed by everyone except the worst-off, and focus their attention on

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1 See M. Teitelman, "The Limits of Individualism", <u>Journal of Philosophy</u>, Vol. LXIX, 1972.

a single person? A more reasonable alternative is to calculate the expected utility to be had from joining each society by summing up the amounts of well-being enjoyed by <u>all</u> the members of that society, and dividing by the number of members. The society which offered the highest expected utility would of course be the society with the highest average well-being, and thus the principle of utility would be chosen.

Rawls, however, points out that this calculation of expected utility can only be made if the chooser assumes that he stands an equal chance of turning out to be any member of society. This assumption, he maintains, is not based upon any known facts but depends entirely upon the principle of insufficient reason. According to this principle, if one is confronted with a number of possible outcomes, having no evidence whether any of them is more likely to occur than any other, one should assume initially that each outcome is equally likely. Rawls argues that this reasoning is too uncertain to be used by men in the hypothetical situation, bearing in mind especially that their choice of principles will affect their whole life-prospects. But this argument seems double-edged. The more vital a decision is, the more important it becomes to use every means available to estimate the probable results of different courses of action. In the absence of definite information about likelihoods, it is rational to employ the principle of insufficient reason. How, then, can it cease to be rational when the decision is such an important one?

Even if we follow Rawls in discounting estimates of likelihoods, it still seems irrational to look only at the position of the worst-off man. Compare the following case. A starving man has to choose which of two boxes to open, on the basis of the following information: the first contains two loaves of bread; the second may contain a single loaf, or it may be packed with food - he is told nothing about the relative likelihood of each of these outcomes. He cannot, therefore, form estimates of probability concerning the consequences of opening the second box (other than by using the principle of insufficient reason, which we are now disallowing). Nevertheless, there seems no reason for him to choose the first box simply on the grounds that its minimum pay-off (two loaves) is the higher. We would expect him to examine the whole range of pay-offs, in which case the second box may seem the more attractive prospect. He cannot lose very much by choosing it, and he may gain a great deal. It is hard to make a convincing case that someone who opted for the second box would be acting irrationally, despite the fact that the decision may be a life-and-death one.

In general, one cannot say which policy it is rational to adopt in a situation in which we have no knowledge of the relative likelihood of the various outcomes of each policy. Psychologically, the effect of discounting probability estimates may be that we will pay rather more attention to the worst outcomes than we would if we were making a strict calculation of expected utility, but this does not mean that we will wholly ignore the better outcomes. We will decide between alternative sets of outcomes by balancing the highest minimum against the highest mean, and using our judgement.

Any residual attachment to the difference principle in the face of these arguments is probably the result of thinking in terms of material pay-offs instead of well-being. The difference principle is plausible because we want at all costs to avoid being placed below a certain minimum. What has to be remembered is that such wishes are taken into account by the utility principle, which is concerned with maximising average well-being, not average money rewards. Serious material deprivation will cause a great loss of well-being, and this will be reflected in a lower average for the whole of society. Conversely, to raise the average in these circumstances, it is most effective to give help to the deprived; this will be the utilitarian's first priority.

We come now to a further difficulty for Rawls' theory, which is that the difference principle itself can be interpreted in more than one way. We have assumed so far that the aim of maximising the satisfaction of the worst-off members of society gives a unique solution to the problem of social distribution - i.e. there is only one way of allocating satisfactions among the remaining groups of society so that the highest minimum is achieved. Suppose we relax this assumption, and consider the following highly simplified example. There are just two groups in a society, the workers and the elite. The possible ways of distributing satisfaction between them are shown in the following table:[1]

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[1] This set of possibilities may seem intuitively unlikely, since one wants to know why, starting from the third situation, the sources of satisfaction cannot be redistributed to bring the elite down, say, to 50 while raising the workers above 10. However, we may suppose that the cost of redistributing - taxing the elite, for instance - is such that although the elite's level of satisfaction is lowered, no extra benefit accrues to the workers.

	Workers	Elite
	5	5
Satisfaction	10	50
	10	100

Now one way of interpreting the difference principle, and the way which most of Rawls' formulations suggest, is that inequalities are only justified when they serve to raise the well-being of the worst-off in society. If the inequalities did not exist, or were decreased, the worst-off would suffer as a consequence. They would be less well-off than they were when the inequalities existed. It is this interpretation which lends plausibility to the claim that the difference principle is a genuine principle of justice. The idea that we may gain increased benefits only when in gaining them we benefit the worst-off members of society as well sounds intuitively fair. If we apply this interpretation to the society above, then starting from the position of equality (workers 5, elite 5) the difference principle will sanction a move to the second position (workers 10, elite 50), since the inequality benefits the worst-off, but not a further move to the third position (workers 10, elite 100). The third position is illegitimate, according to the difference principle as we are now interpreting it, because the inequality between workers and elite can be decreased without the worst-off suffering as a consequence.

On the other hand, it is evident that rational individuals faced with these three possibilities in a state of ignorance must choose to arrange their society in the third way rather than in the second. They could only be indifferent between the two latter possibilities if they could be certain that they would not belong to the elite - and in their condition of ignorance they cannot be certain of this. If, therefore, they are going to adopt the difference principle at all, they must give it a different interpretation from that suggested above. The principle they would choose is roughly that inequalities should be made as big as possible consistent with a maximum level of benefit for the worst-off. More strictly:

> "In a basic structure with n relevant representatives, first maximize the welfare of the worst-off representative man; second, for equal welfare of the worst-off representative, maximize the welfare of the second worst-off representative man, and so on until the last case which is, for equal welfare of all the preceding n-1 representatives, maximize the welfare of the best-off representative man" (p.83).

Rawls borrows this formulation from Sen's Collective Choice and Social Welfare (Holden Day, San Francisco, 1970) without realising how far it diverges from his more usual interpretation of the difference principle. The fact that on certain empirical assumptions (which Rawls collectively labels 'close-knitness') the two interpretations yield the same prescriptions should not blind us to the difference in their meaning. After all, on other empirical assumptions, the difference principle and the principle of utility yield identical prescriptions.[1] On the first interpretation, inequalities should be allowed only to the extent to which they serve to benefit the worst-off. On the second interpretation, inequalities should be allowed to grow as big as possible consistent with a maximum level of benefit for the worst-off. The first interpretation has some claim to being regarded as a principle of justice, for it concerns the relation between the levels of benefit enjoyed by different groups in society. The second interpretation is much closer to the principle of utility, for it prescribes that benefit be maximized for each group - only instead of maximizing for society as a whole, we are to take each group in turn, starting with the worst-off. Yet *if* rational individuals in the hypothetical situation were to adopt the difference principle, they *must* adopt the second interpretation of that principle.

What we have argued so far is that Rawls has given us little reason why rational individuals concerned to advance their material interests in a state of ignorance would choose the difference principle in preference to the principle of utility, and that even if they were to choose the difference principle they would interpret it in the way which brings it closest to the utilitarian criterion. This, however, is not meant to be a justification of the principle of utility. Rather, it reflects on the adequacy of the contractual method as a way of arriving at principles of justice. Indeed Rawls has come to place greater stress on the second type of argument for the difference principle, the argument which concerns the capacity of alternative principles of justice to generate their own support among the members of society.[2] This type of argument, we have pointed out, does not depend on

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[1] See D. Lyons, *loc. cit.*

[2] See Section 29, "Some Main Grounds for the Two Principles of Justice"

assumptions about a hypothetical situation. It might not be going too far to say that Rawls has <u>two</u> theories of justice, one of which derives principles of justice from the rational choice of individuals in a state of ignorance, the other of which derives principles of justice from the psychological needs and capacities of real men in existing societies. The second theory will be considered later, when we come to assess the difference principle in its own right, leaving aside the difficulties of the hypothetical situation.

III

One of the main problems of interpretation which Rawls' book poses is how the general conception of justice is to be related to the two principles. This problem is particularly acute in the case of the primary good of liberty. In the general conception, liberty is merely one primary good among several, and it is subject to a difference principle (inequalities are justified if they work to the benefit of the least advantaged). In the two principles, liberty gains a favoured status with respect to the other primary goods (this is achieved by the lexical ordering of the principles, with the principle of liberty having priority), and the liberty demanded is equal liberty. What we must ask is why Rawls' rational choosers would place so much weight on liberty at the expense of the other goods, and why they would insist on equal liberty when, on the face of it, they might all gain by permitting inequalities of liberty as laid down by the difference principle.

Part of Rawls' answer is that rational individuals would not always make these choices, indeed would not always choose the two principles at all. Under 'less than favourable' conditions they would revert to the general conception of justice and lay no particular stress on the good of liberty.[1] It is not made clear what are to count as 'favourable conditions', but Rawls seems generally to have in mind a certain level of economic development.

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[1] As Lyons has pointed out, this means that Rawls' conception of justice may permit slavery under some circumstances, an admission which seriously weakens the contrast between his theory and utilitarianism. See D. Lyons, <u>loc. cit.</u>

The idea is that it may be rational to limit freedom in economically backward societies, if by so doing an increase in wealth and other primary goods is achieved, but when material standards rise beyond a certain point the rational man must give priority to the greatest equal freedom for all. How can this be shown? Why, first, should liberty be ranked above the other primary goods? One answer runs as follows: rational men wish to advance their interests as far as possible, that is to say wish to maximize their opportunities to get what they want. Beyond a certain point, further increases in material wealth do not significantly increase people's opportunities to satisfy their wants, whereas increases in freedom do. It is therefore rational, under such favourable conditions, to insist on the greatest freedom possible, even if this means foregoing certain material benefits.

Plainly the validity of this argument depends upon what it is that people actually want. If they want the satisfactions which food, drink and consumer goods bring them, then their interests will be best served by providing them with material wealth. If, on the other hand, they want the satisfactions of free intellectual enquiry, or of working out original plans of life, their interests will lie in a greater degree of freedom. Now the choosers in the hypothetical situation are assumed to be ignorant of their plans of life, so it seems that they cannot know which kind of wants people will turn out to have. They should therefore adopt a sceptical view concerning the relative importance of the different primary goods, and formulate their principles of justice in more general terms. Assuming for the moment that they decide to adopt the difference principle, they should express it in terms of the generic concept of interests: advance the interests of the worst-off member of society as far as possible.[1] There is no reason to give a special place to liberty.

Rawls has a further argument, however, which deserves our attention, for it purports to show not only why liberty should be given priority, but why we must insist upon an equal liberty. This argument refers to the value

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[1] For the notion that Rawls' principles should be expressed in terms of interests, without further specification of what those interests are, we are indebted to Michael Lessnoff, loc. cit.

of self-respect, which Rawls considers to be the most important primary good, despite the fact that it does not enter directly into the statement of the two principles. Without self-respect,[1] the argument runs, no plan of life can be found satisfying. The distribution of the other primary goods must therefore be such that everyone's self-respect is guaranteed, in so far as it depends on these other goods. One can lose self-respect by lacking status, by having too low a value set upon oneself by one's fellows. But, Rawls claims, an adequate status is secured for each man by his possession of an equal liberty. In his basic rights, including his rights of citizenship, he is on an equal footing with every other man, and this gives him a secure status and the basis of self-respect. This is so despite inequalities in wealth and power - indeed it is the existence of these inequalities which makes the demand for an equal liberty so pressing.

However, it is doubtful whether any such exclusive connection can be established between liberty (or indeed any one primary good) and self-respect. What gives a man status and self-esteem cannot be set down in universal terms. It may depend upon his class or race membership, his income, the associations to which he belongs, his personal relationships, his opportunities, and so on - any or all of these factors may be vital to the self-respect of a particular individual. There is no justification for picking out a single factor, liberty, and assigning it paramount importance. In particular, it is wrong to suppose that equal liberties will necessarily prevent damage to the self-esteem of those who suffer from inequalities of wealth and power. Wide formal liberties may be regarded with derision by men who have not got the material means to make use of them, and formidable barriers of status can be created by differences of wealth, even in a society which recognises the equal rights of every citizen. If, therefore, self-respect is seen as the most important of the primary goods, it has far-reaching implications for institutions such as education and the property system. We shall argue later that from this standpoint Rawls' theory can be turned in a much more egalitarian direction than he is willing to countenance. But by the same token, the value of self-respect cannot be used to establish the priority of

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[1] "We may define self-respect (or self-esteem) as having two aspects. First of all, as we noted earlier (§29), it includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfil one's intentions" (p.440).

liberty in Rawls' two principles of justice. Nor can it be used to show why liberty must be equal liberty, since there is no reason why, for instance, some men's lesser liberty should not be compensated by greater wealth, if this happened to be sufficient for their self-esteem.

We have so far been concerned to show why rational individuals in the hypothetical situation would not assign any special place to liberty among the primary goods, and why, therefore, the two principles in lexical order cannot be derived from the contractual model. Before we leave the liberty principle, however, there is one further point which we think worth making. It is not difficult to see why rational egoists, if they were to adopt an equal liberty principle, would wish to establish the greatest equal liberty. But it is difficult to see why this should be regarded as a principle of justice. If everyone suffers the same loss of liberty, we would surely not regard this as an injustice, though we might object to it nonetheless.[1] Rawls might claim that here the two principles improve upon our intuitive judgements - but is it an improvement if all cases in which freedom is at stake become issues of justice as well? Surely there are two distinct values here, and nothing is gained by running them together. Justice concerns the distribution of liberty among persons, not the absolute amount which each person enjoys. So although the principle of equal liberty can properly be put forward as a principle of justice, the greater or lesser extent of that liberty is not a matter of justice at all.

IV

It has already been pointed out that Rawls' justification of the principles of justice does not depend solely upon their derivation from his description of the hypothetical situation. Not only does he believe that our ordinary, considered judgements about justice can be shown to follow from his principles, but he also argues that the way in which a society,

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[1] A uniform loss of freedom might be regarded as unjust under two special circumstances: (a) when the loss has been imposed by a small group of people without the consent of the rest; (b) when the loss affects the activities of some people but not of others, because of their different aims and ambitions. In neither case is the loss of freedom as such an injustice.

whose basic structure was publicly guided by the principles, actually operated, would be such that the society's stability would be ensured, and continued support for those principles naturally generated. This, claims Rawls, would not be so for utilitarianism: in particular, those who suffered from the operation of utilitarian principles would find it difficult to maintain their commitment to them.

In order to assess this argument, we must begin by considering what it is that will determine the degree of inequality that is legitimized by the difference principle.[1] Since the greater income and wealth of the better-off can only be justified by this distribution's improving the position of the worst-off, the justification must rest upon the fact that some people will only act in a way that has this result if they are provided with sufficiently high rewards. Amongst the purposes of such rewards would be 'compensation' for education and training; incentives for greater effort and output; and the attraction of the talented to socially beneficial positions. Thus, Rawls states that "the greater expectations of the more favoured presumably cover the costs of training and encourage better performance thereby contributing to the general advantage" (p.158), and that "the function of unequal distributive shares is to cover the costs of training and education, to attract individuals to places and associations where they are most needed from a social point of view, and so on" (p.315).

It follows from this that the extent of the inequalities justified by the difference principle depends upon certain contingent psychological facts about those people whose skills and talents are such that their greater exercise will improve the position of the worst-off. Suppose, for example, that managers of industrial concerns will only increase their output by 5% if their salaries are increased by £10,000 p.a.: then, if such an increased output benefits the worst-off, the resulting inequality between the incomes of managers and others would be just, according to the difference principle. Thus all that seems to be required for the operation of the difference

[1] For this part of the discussion, we consider only the primary goods of income and wealth, and we adopt the first of the two interpretations of the difference principle which we distinguished on p.10: the remarks we shall make concerning the extent of the inequalities legitimized by this principle would apply *a fortiori* to the second interpretation.

principle to generate enormous inequalities is that people with appropriate skills and talents will only increase their beneficial output significantly when presented with extremely high levels of income and wealth.

A defender of Rawls might respond to this by arguing that there is nothing objectionable about such inequalities. Those who object to them must either be invoking a principle of altruism, and criticizing people who will only work harder for large rewards for displaying too great a degree of self-interest; or else they are merely rationalizing the feeling of envy, and objecting to the better-off's position simply because they are better-off. But, continues the defence, questions about justice do not arise in a society of altruists, so we cannot employ criticisms based on a principle of altruism to show that inequalities are unjust; and not only does the feeling of envy provide no moral basis for criticizing inequalities, but it is explicitly excluded from the psychological characteristics of those who agree on the principles of justice in the hypothetical situation. That this might well be Rawls' own response to the problem is suggested by the following passage:

> "One might think that ideally individuals should want to serve one another. But since the parties are assumed not to take an interest in one another's interests, their acceptance of these inequalities [i.e. those allowed by the difference principle] is only the acceptance of the relations in which men stand in the circumstances of justice. They have no grounds for complaining of one another's motives. A person in the original position would, therefore, concede the justice of these inequalities. Indeed, it would be shortsighted of him not to do so. He would hesitate to agree to these regularities only if he would be dejected by the bare knowledge or perception that others were better situated; and I have assumed that the parties decide as if they are not moved by envy" (p.151).

But this response is inadequate. We will argue that the inequalities generated by such 'psychological facts' can legitimately be criticized in several ways which do not rely either upon altruism or envy. They may be objected to by reference to one of the considerations which Rawls employs in deriving the principles of justice from the hypothetical situation, namely that "social contingencies or natural chance" should not determine distributive shares (see pp. 74-5);[1] and also by reference to the possible

[1] Rawls does not in fact claim that this consideration about 'social contingencies' is one which is accepted by men in the hypothetical situation (see p.75). But it plays a vital part in his argument for the principle of fair equality of opportunity, and he nowhere provides any other justification for the adoption of this principle in that situation.

effects of such inequalities upon the maintenance of (equal) self-respect, to which Rawls attaches considerable significance in his later attempts to justify the principles without direct reference to the hypothetical situation.

However, before attempting to establish these objections, it is necessary to consider a claim made several times by Rawls, namely that in practice the inequalities generated in a society based upon his principles of justice will not be 'excessive'. Thus, he states that

> "although in theory the difference principle permits indefinitely large inequalities in return for small gains to the less favored, the spread of income and wealth should not be excessive in practice, given the requisite background institutions (§26)" (p.536).

And in that §26, he makes a similar claim:

> "While nothing guarantees that inequalities will not be significant, there is a persistent tendency for them to be leveled down by the increasing availability of educated talent and ever-widening opportunities. The conditions established by the other principles insure that the disparities likely to result will be much less than the differences that men have often tolerated in the past.
>
> We should also observe that the difference principle not only assumes the operation of other principles, but it presupposes as well a certain theory of social institutions. In particular, as I shall discuss in some detail in Chapter V, it relies on the idea that in a competitive economy (with or without private ownership) with an open class system excessive inequalities will not be the rule" (p.158).

Why the difference principle should be said to "presuppose" such a theory is something we will comment upon later. For the moment, we need only consider to what extent the operation of Rawls' "background institutions" will limit the inequalities justified by the difference principle. From the discussion of these institutions in §43, it would seem that the only two requirements which might limit the effects of the difference principle are the maintenance of the "fair value of political liberty", and of "fair equality of opportunity". Let us consider each of these in turn.

Concerning the former, Rawls accepts as a general point that inequalities in wealth and income may vitiate the equal liberties guaranteed by his first principle, by permitting some groups to exercise those rights more effectively than others; and in the case of the political liberties, such as the right to vote, Rawls regards such inequalities in their "worth" or "value" as particularly serious. However, although he explicitly states that "disparities in the distribution of property and wealth that far exceed what is compatible with political equality have generally been tolerated by the legal system" (p.226), it is by no means obvious that the effects of such disparities on political equality could only be remedied by a more equal distribution of income and wealth. Rawls himself mentions the desirability of political parties being financed by tax revenues, and thus becoming independent of private economic interests: one could think also of measures such as limitations on candidates' election expenses, subsidies for newspapers representing the views of the poor, and so on. All that Rawls requires is that the "fair value" be maintained: it does not seem likely that this could only be achieved by a considerable equalization of wealth and income.

Turning now to "fair equality of opportunity", the main point to emphasize is this: quite apart from the difficulties that Rawls freely admits concerning its complete implementation, it does not in any case directly affect the extent of the inequalities between different positions. All that is demanded by "fair equality of opportunity" is, as Rawls puts it, "that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them". That is, "in all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed" (p.73). It should be clear that there is no reason why a society which successfully operates this principle with respect to all its positions should *ipso facto* be one in which the differences of income and wealth that accrue to the occupants of those positions are reasonably small.

There is, however, one further argument which Rawls employs to show that the operation of "fair equality of opportunity" will lessen the extent of these inequalities. He claims that the operation of this principle will increase the supply of educated and trained manpower, and this, in a market economy, will lower the rewards earned by the "better endowed" (see p.307). But this argument seems to rest upon the false assumption that an educational system which embodied "fair equality of opportunity" would always produce more people with the appropriate qualifications than there were jobs for them to do. It is quite possible to ensure that "those with similar abilities and skills should have similar life chances" (p.73), without this leading to a persistent 'over-production' of qualified manpower. It might, of course, be true that a society which had previously not adopted this principle would experience some lowering of rewards when it came to do so;

but there seems little evidence in favour of even this claim, nor any good reason to believe that the effect would be a permanent one.

It is also worth examining here some other features of "fair equality of opportunity", since they will be relevant to the discussion later on. The basic rationale behind this principle is that people should not be advantaged or disadvantaged in the distribution of primary goods by either social contingencies or natural chance, factors which are "so arbitrary from a moral point of view" (p.72; see also pp.18 and 74-5). A merely formal principle of "careers open to talents" does not satisfy this objective, argues Rawls: but neither does the principle of "fair equality of opportunity", for, as he is at pains to point out, this principle "only requires equal prospects in all sectors of society for those similarly endowed and motivated" (p.301), and it therefore does not take account of those "social contingencies" that determine the degree and type of motivation that people may have. Rawls is in no doubt that the family is a key determinant here: its "internal life and culture ... influence, perhaps as much as anything else, a child's motivation and his capacity to gain from education, and so in turn his life prospects ..." (p.301), though he displays a remarkable unwillingness to consider the possibility of 'interfering' with the family-institution to secure greater justice (see pp. 511-12).

V

From the preceding section, three important points emerge. First, there seems little reason to agree with Rawls' claim that the operation of "background institutions" will significantly limit the inequalities resulting from the difference principle. Second, there is something prima facie objectionable about inequalities that result from "social contingencies or natural fortune". Third, even the completely successful operation of the "fair equality of opportunity" principle will not ensure that these "morally arbitrary" factors will not affect people's distributive shares.

Now it seems that Rawls regards the difference principle as itself 'compensating' for the 'inadequacy' expressed in this third point. Thus he suggests that "following the difference principle and the priority rules it suggests reduces the urgency to achieve perfect equality of opportunity" (p.301; cf. pp. 74 and 512). The argument seems to be something like this:

once the difference principle is operating, those who are worst-off have no grounds for complaint, since they are as well-off as they can be, and those who are better-off are only so because this makes the worst-off better-off than they otherwise would be.

But this is surely wrong, for two reasons. Any actual occupant of the worst position knows that it is partly due to "social contingencies" that it is he who occupies this position, rather than someone else. Unless it is assumed that such contingencies are absolutely inevitable, it is simply not true that <u>he</u> could not be better off than he is, even if the <u>position</u> he occupies is as good as the worst-off position <u>could</u> be.

Secondly, we must remember that the actual <u>degree</u> of inequality that exists between, say, the best- and worst-off positions is itself partly due to certain contingent psychological facts, as has already been noted. These psychological facts are, presumably, at least partly due to "social contingencies": from Rawls' own remarks about the family, we may assume that the level of reward which is regarded by people as sufficient to lead them to increase their efforts, etc., is the result of family and educational/cultural influences. So an occupant of the worst-off position may object, not only that "social contingencies" are partly responsible for <u>him</u> being an occupant of that position, but additionally because the <u>extent</u> to which others are better-off than him is <u>also</u> due to the "social contingencies" which affect other people's motivations.

It should now be clear that this objection is not based upon a principle of altruism. For the difference between two persons, one of whom will only increase his beneficial outputs for £10,000, the other for £2,000, is <u>not</u> a matter of their relative degrees of self-interest or altruism: it is simply a matter of what they have been led to regard as a 'reasonable level of reward' for their efforts. The occupant of the worst-off position is objecting to the amount by which someone else is better off being determined by these "morally arbitrary" factors.

In the light of these arguments, we may begin to feel somewhat doubtful about one of the contrasts that is drawn by Rawls between his own theory and utilitarianism - namely, the differing extents to which they depend, for the results that they generate, upon general facts about human behaviour and society. Rawls regards it as a weakness of utilitarianism that it makes the question of the justifiability of institutions such as slavery depend upon "whether actuarial calculations show that they yield a higher balance of happiness" (p.159). By building the priority of equal liberty into his own theory, he hopes to avoid this over-dependence: but as we have already noted, he is forced to accept that there are some circumstances in which this priority must be abandoned, and even slavery might then be justified. At best, it could be said that it is less likely that such an institution could be justified by his own theory than by utilitarianism; and it is not clear that even this could easily be established.

But having now seen that the extent of the inequalities generated by the difference principle depends upon many contingent facts, it also becomes clear that Rawls' theory could legitimate greater inequalities than those allowed by utilitarianism. Again, the most that could be said is that this is unlikely: but again, it is difficult to see how even this could be shown. Yet Rawls himself seems to imply that the adoption of the difference principle in the hypothetical situation does depend upon its being likely that "excessive" inequalities will not normally result from its operation (see the passage from p.158, quoted on p.18 above). If this were so, then the arguments we have sketched concerning the dependence of inequalities upon 'psychological facts' should lead to the non-adoption of the difference principle, since the "theory of social institutions" which it "presupposes" does not guarantee the required results. But in any case, it is difficult to see why Rawls thinks that the adoption of the difference principle should depend upon these supposed 'facts', if we restrict ourselves to the terms of the hypothetical situation itself. For the people in that situation have no moral principles which would provide them with the grounds for judging certain degrees of inequality to be "excessive", nor do they have any reason for objecting to inequalities as such. It would seem, therefore, that the only sense in which inequalities could appear 'excessive' to the people in that situation would be that they were 'too great for the future stability of the society' - and thus we turn to a consideration of Rawls' arguments in favour of his theory that seek to establish the stability of a society based upon it.

V I

The first point to notice here is that one attitude towards inequalities that may often serve to maintain the stability of an unequal society cannot in any way be relied upon, if we accept Rawls' theory of justice: namely, the attitude that such inequalities are <u>deserved</u>. There is little doubt that desert forms the basis of at least some of our 'considered judgements' about justice, and that people often regard the greater wealth and income of some as justifiable on the grounds that their greater efforts and contribution to society make them deserve a larger share of its resources. Indeed, it may be that if the difference principle strikes us as intuitively <u>just</u>, it does so because we feel that those who contribute to the well-being of the worst-off deserve some reward. But the grounds for such an intuition are systematically denied by Rawls' theory, since in it the concept of desert disappears altogether.

Rawls advances several arguments against the relevance of desert to justice. Some of these depend upon interpreting desert in the sense of moral virtue or worth, a sense which is rarely involved in our ordinary judgements of justice based upon desert (see §48). But Rawls also thinks that, since people's willingness to make an effort (and similar propensities) are socially determined, there is no justification for any desert-claim based upon effort, which is certainly one of the normal criteria for desert in our ordinary judgements.

There is not space here to examine all the complexities of Rawls' argument in Part III, which is intended, amongst other aims, to show the stability of his principles of justice. We will concentrate upon only one element, which seems to us the weakest, and whose failure casts some doubt upon the general framework within which his theory of justice is constructed. That element is his treatment of the problem of envy. Although men in the hypothetical situation were assumed to be free from envy, Rawls accepts that this is a propensity which humans in fact have, and he thus wishes to determine whether or not "the principles of justice, and especially the difference principle with fair equality of opportunity, is likely to engender in practice too much destructive general envy" (pp. 531-2), for, were they to do so, this would be a serious problem for 'stability'. "Envy" is defined as "the propensity to view with hostility the greater good of others even though their being more fortunate than we are does not detract from our advantages" (p.532), but Rawls accepts that there is a category of "excusable envy", which arises when a society permits such large disparities of primary goods that these differences affect the self-respect of the less well-off. He argues, for reasons we will mention soon, that it is unlikely that his "well-ordered society" will in fact arouse excusable envy, but eventually concedes that, were it to do so, the operation of the difference principle should be altered to take this into account. Since what is being harmed is self-respect, and this is 'the main primary good', Rawls suggests that the best way to deal with the problem is for self-respect to be actually included in the index of primary goods, so that, in computing the level of benefit enjoyed by any group, loss of self-respect is set against gains in other primary goods.

Thus it seems that Rawls does allow that there could be legitimate objections to the results of the difference principle, based upon self-respect. But he regards such cases as "an unwelcome complication", and states that "since simplicity is itself desirable in a public conception of justice, the conditions that elicit excusable envy should if possible be avoided" (p.546). This last point echoes a claim that Rawls frequently makes about his theory of justice, namely that it provides principles for the ordering of society that are relatively clear-cut and simple to operate, especially in comparison with utilitarianism. Clearly, if it were often necessary to subject the difference principle to a criterion of self-respect, at least this virtue of his theory would be considerably diminished. Thus a great deal depends upon Rawls' reasons for believing that "excusable envy" will rarely be generated.

Rawls claims that there are three conditions that encourage "hostile outbreaks of envy": the lack of confidence that people may have in their own value and ability to do anything worthwhile; the 'visibility' of the inequalities to those who are worse-off; and their feeling that their social position allows no constructive alternative to opposing the favoured circumstances of the more advantaged (see p.535). He argues that none of these three conditions is likely to occur in a "well-ordered"society. It is his argument for the non-occurrence of the second condition that seems to us particularly significant. It depends partly on the view that large inequalities are unlikely to arise, a claim which we have already questioned. But it also depends on the following claim:

"Moreover the plurality of associations in a well-ordered society, with their own secure internal life, tends to reduce the visibility, or at least the painful visibility, of variations in men's prospects. For we tend to compare our circumstances with others in the same or in a similar group as ourselves, or in positions that we regard as relevant to our aspirations. The various associations in society tend to divide it into so many noncomparing groups, the discrepancies between these divisions not attracting the kind of attention which unsettles the lives of those less well placed" (pp. 536-7).

This argument seems to us quite unacceptable, for several reasons. First, Rawls has nowhere shown that the social groupings and "associations" that men will join in a just society will be largely determined by their position on the scale of primary goods. Second, if he had done so, then the fact that his well-ordered society will display not only considerable inequalities but also a large degree of social stratification, would provide an additional reason for objecting to his principles of justice. Third, the fact that the society's stability depends partly on its inequalities remaining invisible seems to be at variance with another general theme of his theory of justice: namely, that a theory is not acceptable if the stability of a society based upon it depends upon the members of that society not knowing its principles and the way in which it is organized. Thus, Rawls states that

"certain ways of dealing with envy and other aberrant propensities are closed to a well-ordered society. For example, it cannot keep them in check by promulgating false or unfounded beliefs. For our problem is how society should be arranged if it is to conform to principles that rational persons with true general beliefs would acknowledge in the original position" (p.547).

It might be claimed that the 'invisibility' argument is not strictly inconsistent with the above passage, on the grounds that the worse-off do not have 'false beliefs' about the inequalities: it's just that they won't think about them very often. But even if this is so - and it seems to rely upon a very weak interpretation of the 'true-beliefs' principle - we find it abhorrent that any theory of justice should rely upon the worse-off members of society continuing not to compare their position with that of the better-off. This narrowing of reference groups, and the concomitant lowering of expectations, is something which should be a main object of criticism for any theory of justice which claims, as Rawls' theory does, to be 'democratic' and 'egalitarian'.[1]

Thus, either Rawls has not shown that 'excusable envy' will not be generated, or he has done so only by invoking 'facts' which could only hold in a society which, in consequence, displays features which should not be congruent with a theory of justice. Let us assume the former alternative. Then it would seem that what Rawls regards as an 'unwelcome complication' - the regulation of the difference principle by the principle of self-respect - may well have to be regarded as the norm, and not something which can usually be avoided. And this has two major consequences. First, the advantages of 'simplicity' in the application of the principles of justice are considerably diminished. Second, it seems that the preservation of self-respect must be regarded as a principle at the heart of any theory of justice, and one which is directly relevant to all questions concerning the just distribution of primary goods: in particular, it is a principle that must constantly modify the operation of the difference principle. This conclusion has both welcome and unwelcome consequences for Rawls' approach. It can be welcomed in that it accords well with Rawls' own considerable emphasis upon the importance of self-respect. But it is unwelcome, in that it is by no means obvious why Rawls' mutually disinterested rational men should base their principles of justice upon it. And what is again suggested by this somewhat paradoxical situation is that Rawls has two theories of justice, whose consequences are not always mutually compatible (cf. p.12 above). Indeed, had Rawls begun his theory of justice from an examination of notions such as self-respect, he might well have arrived at a strongly egalitarian ideal, which would, at the least, have to be weighed against other ideals, such as that expressed by the difference principle.[2] But, of course, once we begin to talk of 'weighing one ideal against another', we are abandoning a central element of Rawls' theory, its

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1 Compare W. G. Runciman, Relative Deprivation and Social Justice (Routledge and Kegan Paul, London, 1966), Part IV, where it is argued that a theory of justice is needed to distinguish between legitimate relative deprivation (deprivation which should be felt, whether it is in fact or not) and mere envy. This approach allows Runciman to point out that "few of the reference groups which people actually take for comparison are those which would be dictated by social justice" and that "the poorest appear to be entitled to a greater magnitude of relative deprivation than the evidence shows them to feel" (p.273).

2 Some of the implications of the idea of respect are drawn out by W. G. Runciman in "'Social' Equality", Philosophy, Vol.XVII, 1967.

non-intuitionism - a point which we shall return to in the concluding comments that follow.

VII

One of the premises which underlies Rawls' whole approach to justice is that there exists a basic agreement on what justice is, an agreement which crosses social and historical barriers. If we find people disagreeing about matters of justice, we should look to see whether their disagreement cannot be explained by non-moral influences such as their interests and emotions, which may distort their moral perceptions. Thus the assumption is that everyone's considered judgements of justice, made in a cool hour when distorting influences are absent, will converge on a single point. The task of a theory of justice is to encapsulate this point of agreement in a few simple principles.[1]

Such a premise is open to serious doubt. It overlooks for one thing the quite severe differences of opinion which exist in modern industrial societies about such matters as the just distribution of wealth between different social classes, differences which cannot be understood by reference to personal interests and emotions. Egalitarian principles, for instance, are probably as widely held by those who stand to lose by their implementation as by those who stand to gain. The problem becomes greater still if we take into account historical changes in men's ideas of justice. Again to take only one example, the principles of desert and need which play such a large part in modern conceptions of social justice were given a much less prominent place in medieval thought. Such historical developments are ignored by a theory which is premised upon a convergence in moral beliefs. Indeed Rawls can frequently be accused of having erected the contingencies of modern societies into cultural universals. Consider again one of the arguments advanced for the priority of liberty over other goods;

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[1] We do not wish to suggest that Rawls himself is dogmatically committed to such a view, rather that it is an assumption which is necessary to a theory of justice which reaches its principles by deduction from a single hypothetical situation, and yet claims that those principles can be tested against ordinary considered judgements of justice. For Rawls' own position here see section 9, 'Some Remarks About Moral Theory'.

the view that man's chief interest is a maximum of liberty only looks plausible at all if we are thinking of men in liberal societies, with the aims and desires which such societies engender. Or consider the types of reasoning which men in the hypothetical situation are allowed to employ in arriving at their principles of justice. They are not allowed to follow Aquinas in justifying the death penalty for heretics on the ground that their sin, corrupting the faith which is the life of the soul, is far graver than secular offences for which the death penalty already exists (forgery is Aquinas' example). For, Rawls says, "the premises on which Aquinas relies cannot be established by modes of reasoning commonly recognized" (p.215). Yet in the society to which Aquinas belonged, the premises he uses could be established by commonly acknowledged methods of argument, namely by theological arguments. If men in the hypothetical situation are prohibited from using theological arguments, this is only because they are already conceived to be members of a liberal society in which such arguments are not generally thought to be rational, at least when questions of law and punishment are being considered.

Rawls might have been well advised to present his theory of justice as an explicit account of ideas of justice prevalent in modern liberal societies. This would still, of course, leave him open to the criticism that these ideas are conflicting rather than convergent, but waiving this point for the moment we can ask how closely the two principles of justice correspond to the well-established elements in ordinary thinking on the subject. And here it is striking that two elements which are fairly central to the current notion of justice, namely the concepts of desert and need, are entirely absent from Rawls' theory, and little attempt is made to show that the result of applying the two principles would be a distribution of goods whose outlines corresponded to either desert or need. We have looked already at Rawls' reasons for rejecting desert, but whatever the philosophical strength of those reasons, ordinary thought remains firmly committed to the view that desert should play a major role in determining how goods such as wealth are distributed.[1] As for need, "the situation where someone is considering how to allocate certain commodities to needy persons who are known to him is not within the scope of the principles" (p.64).

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[1] For some useful empirical evidence on this point, see B. Barry, loc. cit., p.41.

Rawls draws a contrast between pure procedural justice, which designates certain institutions as just whatever the precise distribution of goods to persons which results from the operation of those institutions, and allocative justice, which is directly concerned with the quantity of goods that each person is allotted. The principle of need forms part of allocative justice. He argues that the pure procedural conception is appropriate when we are looking at the justice of society as a whole, whereas we use the allocative conception when distributing goods among specific persons. However, this appears to introduce a bifurcation into our thinking about justice which simply was not there before. One of the features of concepts like desert and need is that we use them both to judge general social institutions (such as property or taxation systems) and to make a fair allocation of goods among specific persons (for instance in sharing out a family's income). This is a further respect in which Rawls' theory of justice diverges rather sharply from ordinary notions.

Taking these two points together, that is to say the culturally bounded nature of Rawls' argument and his failure to produce principles of justice which correspond to our considered judgements, we may become sceptical of the contractual method as a way of constructing a theory of justice. A third point which deserves our attention is the hard struggle which Rawls has to prevent his theory from collapsing into utilitarianism, through the principle of utility being chosen in the hypothetical situation. It is paradoxical that a theory which purports to be a radical alternative to the utilitarian tradition is saved only by the introduction of special assumptions into its theoretical basis, and that the question of whether or not the principle of utility will emerge as part of the theory turns on such remote issues as the rationality of adopting the principle of insufficient reason under certain conditions of ignorance. All three points fall into place when we see what is wrong with basing a theory of justice upon the choice of rational, mutually disinterested individuals who stand in no social relationships to one another. For such a condition, far from expressing 'typical circumstances of justice', is a state in which ideas of justice cannot possibly exist. The prerequisites of justice are an established society in which men press and acknowledge claims, evaluate and compare one another, feel resentment for injury, gratitude for benefit and compassion for the suffering of others. These activities and emotions are the necessary underpinning for principles of justice such as desert and need. Rawls' isolated men, concerned only to advance their own interests, have no possible reason to estimate one another's deserts, and so no reason to adopt a desert-based conception of justice; and the same is true of the criterion of need. This explains why Rawls' principles necessarily diverge from ordinary ideas of justice, and why he is drawn inexorably towards utilitarianism. For utilitarianism, which has no direct concern with the relative levels of well-being enjoyed by different individuals, is par excellence the moral theory of an impartial spectator placed outside of society (having no claims or emotional responses of his own) - and Rawls, by the use of the veil of ignorance and his other assumptions, effectively puts his hypothetical choosers into the position of impartial spectators.

It is in the attempt to prevent his theory from becoming openly utilitarian that Rawls falls into culture-boundedness. To argue, for instance, for the priority of liberty or for the choice of the difference principle in preference to the principle of utility, he feeds into the hypothetical situation information about real societies which the choosers are supposed to use in arriving at their decision. The choosers can in this way use arguments which they could not use in their capacity as rational men concerned to further their own interests; for instance, they are not envious, but they are informed that men sometimes suffer from envy, so they decide to arrange society in such a way that envy is discouraged. But unfortunately the information supplied is not sufficiently general, reflecting rather the behaviour and psychology of men in modern liberal societies. It is therefore not surprising that the principles chosen should reflect the same cultural bias.

Rawls in any case only half escapes from utilitarianism. His two principles of justice seem to come little closer to the ordinary concept of justice than does the principle of utility itself. Whereas the ordinary concept is concerned with the relative levels of well-being enjoyed by different individuals, Rawls' principles, like the principle of utility, are concerned with maximising well-being - in Rawls' case with maximising the well-being of the worst-off. Whereas the ordinary concept contains a powerful backward-looking element (desert), Rawls' principles, like the principle of utility, are wholly forward-looking. And whereas the ordinary concept is concerned with the extent of social inequality, Rawls' principles, like the principle of utility, may permit considerable inequalities to develop if the right empirical conditions obtain. Thus although Rawls has avoided the indeterminacy of an intuitionist account of justice which tries to capture the complexity of the ordinary concept, he seems to have done so at an unacceptable cost. Someone who finds a utilitarian position too much at variance with firmly-held opinions about justice is unlikely to be satisfied with the two principles as an alternative.

We detect a connection between the inadequacy of Rawls' analysis of justice and his attack on an intuitionist account of the relationship between justice and other values. The intuitionist typically regards justice as one value among several, sometimes taking precedence and at other times being sacrificed to goods such as liberty and the public interest. Rawls wants to argue for the strict priority of justice over these other goods, and to make this plausible he has to incorporate into justice elements which do not properly belong there. We have noted already the unwarranted inclusion of a principle of maximum liberty in the two principles, and it is also worth observing that a definition of efficiency is adopted which implies that just institutions are always efficient as well (see sections 12 and 13).

Thus Rawls can either be read as putting forward a theory of justice, in which case the two principles, which really represent an amalgam of different values, conflict too often with our intuitive judgements of what is just; or he can be read as putting forward a general political theory, sharing with utilitarianism its non-intuitionistic character. But then Rawls' theory, like utilitarianism, can be faulted for giving insufficient weight to considerations of justice, and more especially for its lack of a strong principle of equality. We have suggested that in his notion of self-respect, Rawls has the germ of an egalitarian principle, but (as he recognizes) if this were allowed to develop it would transform his monolithic theory into an intuitionist one. Whether Rawls' failings reflect a <u>general</u> weakness of non-intuitionist theories must remain a matter of conjecture, but at the present time it seems that, however much we may desire the certainty which a unified political philosophy brings, an intuitionist position is the only one which can give us an understanding of justice.

Russell Keat
David Miller

Pol.73/Q-DM
JMC-12.1.73