

Phil 115, May 30, 2007
The principles of justice as fairness

The two principles:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

Comments:

First, the basic liberties are simply given by a list. The list includes:

- (i) Political liberty (the right to vote and hold public office)
- (ii) Freedom of speech and assembly
- (iii) Liberty of conscience and freedom of thought.
- (iv) Freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment.
- (v) Right to hold personal property
- (vi) Freedom from arbitrary arrest and seizure, as defined by the concept of the rule of law.

Second, "social and economic inequalities" refer not only to the distribution of income and wealth, but also to the design of organizations that make use of differences in *authority* and *responsibility*.

Third, the principles are "lexically ordered."

- The first principle is "prior" to the second principle, and (confusingly!) the second part of the second principle—i.e., (b)—is prior to the first part of the second principle—i.e., (a).
- If principle X is "prior" to principle Y, then we must first be sure that we have satisfied X before attempting to satisfy Y.
- This means that infringements of basic equal liberties cannot be justified on the grounds (say) that this will produce greater income and wealth, and inequality of opportunity cannot be justified on the grounds that this will produce greater income and wealth.
- Example: graduate school deferments during Vietnam.
- This provides a solution to the "priority problem" that afflicted intuitionism.

Fourth, the principles apply only to the basic structure.

Fifth, when the principles refer to persons, they refer to representative persons and their life-prospects, not particular persons and their actual situation.

Finally, Rawls notes that the two principles are actually a special case of a more general conception of justice, which says that:

All social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless and unequal distribution of any, or all, of these values is to everyone's advantage.

- The general conception differs from the special conception in that liberty does not take priority. Trade offs between liberties and other good are countenanced.
- We turn to the general conception only when social conditions prevent the basic liberties from being fully enjoyed and only for the purpose of realizing conditions in which the basic liberties can be fully enjoyed.

From the system of natural liberty to the liberal equality:

In §12, Rawls says that two important phrases in the second principle are ambiguous and must be clarified:

- “everyone’s advantage” and...
- ...“equally open to all.”

Each phrase can be taken in two ways, resulting in four interpretations of the second principle.

	“Everyone’s advantage”	
“Equally open”	Principle of efficiency	Difference principle
Equality as careers open to talents	System of Natural Liberty	Natural Aristocracy
Equality as equality of fair opportunity	Liberal Equality	Democratic Equality

The system of natural liberty accepts the “principle of efficiency”:

fulfilled when it is impossible to alter the basic structure to improve the expectations of some representative person without worsening the expectations of some other representative person.

- But many different distributions are efficient...
- ...and some of these are plainly unjust.
- So the principle of efficiency must be supplemented by some other principles.

In the system of natural liberty, the principle of efficiency works against a background of equal liberty and “careers open to talents.” This means formal equality of opportunity: everyone has the same legal rights of access to positions.

The system of natural liberty is more or less *laissez-faire* capitalism.

The efficient distributions that result from the system of natural liberty, will be strongly influenced by two kinds of contingency:

- (i) native talent; and
- (ii) social starting point.

“Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view” (63).

From liberal equality to democratic equality:

Liberal Equality takes a stricter interpretation of “open to all.” It requires not only that positions are formally open to all, but also that everyone has an equal chance to hold them. Specifically: everyone with the same native talent and motivation should have the same chance of holding the

position. The social class of one's birth into should not affect one's life-prospects. This equality of opportunity is achieved by preventing excessive accumulations of wealth and by ensuring equal access to education, among other measures.

Now while Liberal Equality does not allow social starting points to affect life prospects, it does allow native talents to affect life prospects. This makes Liberal Equality an unstable position. For "there is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune" (64). That is, if we accept the reasoning for rejecting the system of natural liberty, we ought to be dissatisfied, for analogous reasons, with liberal equality. Native talents are no less arbitrary from a moral point of view than social class.

The difference principle:

Democratic Equality combines equality of fair opportunity with the "difference principle":

inequalities in social and economic expectations are just if and only if they improve the expectations of the worst-off representative person.

The only defense the better off can offer for enjoying their advantages is that if the worst-off would be even worse off if they (the better off) did not enjoy those advantages.

A *perfectly* just scheme is one in which not only the DP is observed, but also the expectations of the worst off are *maximized*.

Fair equality of opportunity:

In §14, Rawls says that fair equality of opportunity takes priority over the difference principle. (Why?)

Pure procedural justice:

Perfect procedural justice (e.g. dividing a cake):

- (i) an independent criterion of a just outcome; and
- (ii) a procedure guaranteed to realize that outcome.

Imperfect procedural justice (e.g. a criminal trial):

- (i) an independent criterion of a just outcome; but
- (ii) no procedure guaranteed to realize it.

Pure procedural justice (e.g. a fair lottery)

No independent criterion of a just outcome. Whatever outcome results from the specified procedure is just.

In justice as fairness distributive shares are a matter of pure procedural justice.

For example, if fair equality of opportunity is secured, then whatever results from the election or labor market is just. Whoever wins what office, whoever gets what job, is just. There is no basis for independent criticism of it.

Primary goods:

In §15, Rawls asks how we are to estimate expectations (=Katherine's question from our first lecture).

With "primary goods"="things that every rational man is presumed to want"; goods that "normally have a use whatever a person's rational plan of life" (54).

- Some primary goods are *natural* goods: health, intelligence. These are not up for distribution.
- Other primary goods are *social*: rights, liberties, opportunities, income, and wealth. These are up for distribution.

Utilitarianism requires *cardinal* comparisons (measurements) of *utility*.

The difference principle requires only *ordinal* comparisons (rankings) of *primary social goods*.

Rawls on natural endowment:

In §17, Rawls considers to what extent his two principles are egalitarian.

Rawls observes that the DP fulfills, to some extent, the "principle of redress":

that "undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for."

"The DP represents, in effect, an agreement to regard the distribution of natural talents as in some respects a common asset and to share in the greater social and economic benefits made possible for complementarities of this distribution."

Rawls notes that "one may object that those better situated deserve the greater advantages they could acquire for themselves under other schemes of cooperation."

To this he replies, "It is incorrect that individuals with greater natural endowments and the superior character that has made their development possible have a right to a cooperative scheme that enables them to obtain even further benefits in ways that do not contribute to the advantages of others. We do not deserve our place in the distribution of native endowments, any more than we deserve our initial starting place in society. That we deserve the superior character that enables us to make the effort to cultivate our abilities is also problematic; for such character depends in good part upon fortunate family and social circumstances in early life for which we can claim no credit."