
CHAPTER II. THE PRINCIPLES OF JUSTICE

The theory of justice may be divided into two main parts: (1) an interpretation of the initial situation and a formulation of the various principles available for choice there, and (2) an argument establishing which of these principles would in fact be adopted. In this chapter two principles of justice for institutions and several principles for individuals are discussed and their meaning explained. Thus I am concerned for the present with only one aspect of the first part of the theory. Not until the next chapter do I take up the interpretation of the initial situation and begin the argument to show that the principles considered here would indeed be acknowledged. A variety of topics are discussed: institutions as subjects of justice and the concept of formal justice; three kinds of procedural justice; the place of the theory of the good; and the sense in which the principles of justice are egalitarian, among others. In each case the aim is to explain the meaning and application of the principles.

10. INSTITUTIONS AND FORMAL JUSTICE

The primary subject of the principles of social justice is the basic structure of society, the arrangement of major social institutions into one scheme of cooperation. We have seen that these principles are to govern the assignment of rights and duties in these institutions and they are to determine the appropriate distribution of the benefits and burdens of social life. The principles of justice for institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances. These two kinds of principles apply to different subjects and must be discussed separately.

Now by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as

permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violations occur. As examples of institutions, or more generally social practices, we may think of games and rituals, trials and parliaments, markets and systems of property. An institution may be thought of in two ways: first as an abstract object, that is, as a possible form of conduct expressed by a system of rules; and second, as the realization in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules. There is an ambiguity, then, as to which is just or unjust, the institution as realized or the institution as an abstract object. It seems best to say that it is the institution as realized and effectively and impartially administered which is just or unjust. The institution as an abstract object is just or unjust in the sense that any realization of it would be just or unjust.

An institution exists at a certain time and place when the actions specified by it are regularly carried out in accordance with a public understanding that the system of rules defining the institution is to be followed. Thus parliamentary institutions are defined by a certain system of rules (or family of such systems to allow for variations). These rules enumerate certain forms of action ranging from holding a session of parliament to taking a vote on a bill to raising a point of order. Various kinds of general norms are organized into a coherent scheme. A parliamentary institution exists at a certain time and place when certain people perform the appropriate actions, engage in these activities in the required way, with a reciprocal recognition of one another's understanding that their conduct accords with the rules they are to comply with.¹

In saying that an institution, and therefore the basic structure of society, is a public system of rules, I mean then that everyone engaged in it knows what he would know if these rules and his participation in the activity they define were the result of an agreement. A person taking part in an institution knows what the rules demand of him and of the others. He also knows that the others know this and that they know that he knows this, and so on. To be sure, this condition is not always fulfilled in the case of actual institutions, but it is a reasonable simplifying assumption. The principles of justice are to apply to social arrangements understood to be public in this sense. Where the rules of a certain subpart of an institution are known only to those belonging to it, we may assume that there is an understanding that those in this part can make rules for themselves as

1. See H. L. A. Hart, *The Concept of Law* (Oxford, The Clarendon Press, 1961), pp. 59f, 106f, 109–114, for a discussion of when rules and legal systems may be said to exist.

long as these rules are designed to achieve ends generally accepted and others are not adversely affected. The publicity of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of actions are permissible. There is a common basis for determining mutual expectations. Moreover, in a well-ordered society, one effectively regulated by a shared conception of justice, there is also a public understanding as to what is just and unjust. Later I assume that the principles of justice are chosen subject to the knowledge that they are to be public (§23). This condition is a natural one in a contractarian theory.

It is necessary to note the distinction between the constitutive rules of an institution, which establish its various rights and duties, and so on, and strategies and maxims for how best to take advantage of the institution for particular purposes.² Rational strategies and maxims are based upon an analysis of which permissible actions individuals and groups will decide upon in view of their interests, beliefs, and conjectures about one another's plans. These strategies and maxims are not themselves part of the institution. Rather they belong to the theory of it, for example, to the theory of parliamentary politics. Normally the theory of an institution, just as that of a game, takes the constitutive rules as given and analyzes the way in which power is distributed and explains how those engaged in it are likely to avail themselves of its opportunities. In designing and reforming social arrangements one must, of course, examine the schemes and tactics it allows and the forms of behavior which it tends to encourage. Ideally the rules should be set up so that men are led by their predominant interests to act in ways which further socially desirable ends. The conduct of individuals guided by their rational plans should be coordinated as far as possible to achieve results which although not intended or perhaps even foreseen by them are nevertheless the best ones from the standpoint of social justice. Bentham thinks of this coordination as the artificial identification of interests, Adam Smith as the work of the invisible hand.³ It is the aim of the ideal legislator in enacting laws and of the moralist in urging their reform. Still, the strategies and tactics fol-

2. On constitutive rules and institutions, see J. R. Searle, *Speech Acts* (Cambridge, The University Press, 1969), pp. 33–42. See also G. E. M. Anscombe, "On Brute Facts," *Analysis*, vol. 18 (1958); and B. J. Diggs, "Rules and Utilitarianism," *American Philosophical Quarterly*, vol. 1 (1964), where various interpretations of rules are discussed.

3. The phrase "the artificial identification of interests" is from Elie Halévy's account of Bentham in *La Formation du radicalisme philosophique*, vol. 1 (Paris, Felix Alcan, 1901), pp. 20–24. On the invisible hand, see *The Wealth of Nations*, ed. Edwin Cannan (New York, The Modern Library, 1937), p. 423.

lowed by individuals, while essential to the assessment of institutions, are not part of the public systems of rules which define them.

We may also distinguish between a single rule (or group of rules), an institution (or a major part thereof), and the basic structure of the social system as a whole. The reason for doing this is that one or several rules of an arrangement may be unjust without the institution itself being so. Similarly, an institution may be unjust although the social system as a whole is not. There is the possibility not only that single rules and institutions are not by themselves sufficiently important but that within the structure of an institution or social system one apparent injustice compensates for another. The whole is less unjust than it would be if it contained but one of the unjust parts. Further, it is conceivable that a social system may be unjust even though none of its institutions are unjust taken separately: the injustice is a consequence of how they are combined together into a single system. One institution may encourage and appear to justify expectations which are denied or ignored by another. These distinctions are obvious enough. They simply reflect the fact that in appraising institutions we may view them in a wider or a narrower context.

There are, it should be remarked, institutions in regard to which the concept of justice does not ordinarily apply. A ritual, say, is not usually regarded as either just or unjust, although cases can no doubt be imagined in which this would not be true, for example, the ritual sacrifice of the first-born or of prisoners of war. A general theory of justice would consider when rituals and other practices not commonly thought of as just or unjust are indeed subject to this form of criticism. Presumably they must involve in some way the allocation among persons of certain rights and values. I shall not, however, pursue this larger inquiry. Our concern is solely with the basic structure of society and its major institutions and therefore with the standard cases of social justice.

Now let us suppose a certain basic structure to exist. Its rules satisfy a certain conception of justice. We may not ourselves accept its principles; we may even find them odious and unjust. But they are principles of justice in the sense that for this system they assume the role of justice: they provide an assignment of fundamental rights and duties and they determine the division of advantages from social cooperation. Let us also imagine that this conception of justice is by and large accepted in the society and that institutions are impartially and consistently administered by judges and other officials. That is, similar cases are treated similarly, the relevant similarities and differences being those identified by the existing norms. The correct rule as defined by institutions is regularly ad-

hered to and properly interpreted by the authorities. This impartial and consistent administration of laws and institutions, whatever their substantive principles, we may call formal justice. If we think of justice as always expressing a kind of equality, then formal justice requires that in their administration laws and institutions should apply equally (that is, in the same way) to those belonging to the classes defined by them. As Sidgwick emphasized, this sort of equality is implied in the very notion of a law or institution, once it is thought of as a scheme of general rules.⁴ Formal justice is adherence to principle, or as some have said, obedience to system.⁵

It is obvious, Sidgwick adds, that law and institutions may be equally executed and yet be unjust. Treating similar cases similarly is not a sufficient guarantee of substantive justice. This depends upon the principles in accordance with which the basic structure is framed. There is no contradiction in supposing that a slave or caste society, or one sanctioning the most arbitrary forms of discrimination, is evenly and consistently administered, although this may be unlikely. Nevertheless, formal justice, or justice as regularity, excludes significant kinds of injustices. For if it is supposed that institutions are reasonably just, then it is of great importance that the authorities should be impartial and not influenced by personal, monetary, or other irrelevant considerations in their handling of particular cases. Formal justice in the case of legal institutions is simply an aspect of the rule of law which supports and secures legitimate expectations. One kind of injustice is the failure of judges and others in authority to adhere to the appropriate rules or interpretations thereof in deciding claims. A person is unjust to the extent that from character and inclination he is disposed to such actions. Moreover, even where laws and institutions are unjust, it is often better that they should be consistently applied. In this way those subject to them at least know what is demanded and they can try to protect themselves accordingly; whereas there is even greater injustice if those already disadvantaged are also arbitrarily treated in particular cases when the rules would give them some security. On the other hand, it might be still better in particular cases to alleviate the plight of those unfairly treated by departures from the existing norms. How far we are justified in doing this, especially at the expense of expectations founded in good faith on current institutions, is one of the tangled ques-

4. *The Methods of Ethics*, 7th ed. (London, Macmillan, 1907), p. 267.

5. See Ch. Perelman, *The Idea of Justice and the Problem of Argument*, trans. J. Petrie (London, Routledge and Kegan Paul, 1963), p. 41. All of the first two chapters, a translation of *De la Justice* (Brussels, 1943), is relevant here, but especially pp. 36–45.

tions of political justice. In general, all that can be said is that the strength of the claims of formal justice, of obedience to system, clearly depend upon the substantive justice of institutions and the possibilities of their reform.

Some have held that in fact substantive and formal justice tend to go together and therefore that at least grossly unjust institutions are never, or at any rate rarely, impartially and consistently administered.⁶ Those who uphold and gain from unjust arrangements, and who deny with contempt the rights and liberties of others, are not likely, it is said, to let scruples concerning the rule of law interfere with their interests in particular cases. The inevitable vagueness of laws in general and the wide scope allowed for their interpretation encourages an arbitrariness in reaching decisions which only an allegiance to justice can allay. Thus it is maintained that where we find formal justice, the rule of law and the honoring of legitimate expectations, we are likely to find substantive justice as well. The desire to follow rules impartially and consistently, to treat similar cases similarly, and to accept the consequences of the application of public norms is intimately connected with the desire, or at least the willingness, to recognize the rights and liberties of others and to share fairly in the benefits and burdens of social cooperation. The one desire tends to be associated with the other. This contention is certainly plausible but I shall not examine it here. For it cannot be properly assessed until we know what are the most reasonable principles of substantive justice and under what conditions men come to affirm and to live by them. Once we understand the content of these principles and their basis in reason and human attitudes, we may be in a position to decide whether substantive and formal justice are tied together.

11. TWO PRINCIPLES OF JUSTICE

I shall now state in a provisional form the two principles of justice that I believe would be agreed to in the original position. The first formulation of these principles is tentative. As we go on I shall consider several formulations and approximate step by step the final statement to be given much later. I believe that doing this allows the exposition to proceed in a natural way.

6. See Lon Fuller, *The Morality of Law* (New Haven, Yale University Press, 1964), ch. IV.

The first statement of the two principles reads as follows.

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.

There are two ambiguous phrases in the second principle, namely "everyone's advantage" and "open to all." Determining their sense more exactly will lead to a second formulation of the principle in §13. The final version of the two principles is given in §46; §39 considers the rendering of the first principle.

These principles primarily apply, as I have said, to the basic structure of society and govern the assignment of rights and duties and regulate the distribution of social and economic advantages. Their formulation presupposes that, for the purposes of a theory of justice, the social structure may be viewed as having two more or less distinct parts, the first principle applying to the one, the second principle to the other. Thus we distinguish between the aspects of the social system that define and secure the equal basic liberties and the aspects that specify and establish social and economic inequalities. Now it is essential to observe that the basic liberties are given by a list of such liberties. Important among these are political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are to be equal by the first principle.

The second principle applies, in the first approximation, to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility. While the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time, positions of authority and responsibility must be accessible to all. One applies the second principle by holding positions open, and then, subject to this constraint, arranges social and economic inequalities so that everyone benefits.

These principles are to be arranged in a serial order with the first principle prior to the second. This ordering means that infringements of

the basic equal liberties protected by the first principle cannot be justified, or compensated for, by greater social and economic advantages. These liberties have a central range of application within which they can be limited and compromised only when they conflict with other basic liberties. Since they may be limited when they clash with one another, none of these liberties is absolute; but however they are adjusted to form one system, this system is to be the same for all. It is difficult, and perhaps impossible, to give a complete specification of these liberties independently from the particular circumstances—social, economic, and technological—of a given society. The hypothesis is that the general form of such a list could be devised with sufficient exactness to sustain this conception of justice. Of course, liberties not on the list, for example, the right to own certain kinds of property (e.g., means of production) and freedom of contract as understood by the doctrine of *laissez-faire* are not basic; and so they are not protected by the priority of the first principle. Finally, in regard to the second principle, the distribution of wealth and income, and positions of authority and responsibility, are to be consistent with both the basic liberties and equality of opportunity.

The two principles are rather specific in their content, and their acceptance rests on certain assumptions that I must eventually try to explain and justify. For the present, it should be observed that these principles are a special case of a more general conception of justice that can be expressed as follows.

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

Injustice, then, is simply inequalities that are not to the benefit of all. Of course, this conception is extremely vague and requires interpretation.

As a first step, suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life. For simplicity, assume that the chief primary goods at the disposition of society are rights, liberties, and opportunities, and income and wealth. (Later on in Part Three the primary good of self-respect has a central place.) These are the social primary goods. Other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control. Imagine, then, a hypothetical initial arrange-

ment in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and differences in authority would make everyone better off than in this hypothetical starting situation, then they accord with the general conception.

Now it is possible, at least theoretically, that by giving up some of their fundamental liberties men are sufficiently compensated by the resulting social and economic gains. The general conception of justice imposes no restrictions on what sort of inequalities are permissible; it only requires that everyone's position be improved. We need not suppose anything so drastic as consenting to a condition of slavery. Imagine instead that people seem willing to forego certain political rights when the economic returns are significant. It is this kind of exchange which the two principles rule out; being arranged in serial order they do not permit exchanges between basic liberties and economic and social gains except under extenuating circumstances (§§26, 39).

For the most part, I shall leave aside the general conception of justice and examine instead the two principles in serial order. The advantage of this procedure is that from the first the matter of priorities is recognized and an effort made to find principles to deal with it. One is led to attend throughout to the conditions under which the absolute weight of liberty with respect to social and economic advantages, as defined by the lexical order of the two principles, would be reasonable. Offhand, this ranking appears extreme and too special a case to be of much interest; but there is more justification for it than would appear at first sight. Or at any rate, so I shall maintain (§82). Furthermore, the distinction between fundamental rights and liberties and economic and social benefits marks a difference among primary social goods that suggests an important division in the social system. Of course, the distinctions drawn and the ordering proposed are at best only approximations. There are surely circumstances in which they fail. But it is essential to depict clearly the main lines of a reasonable conception of justice; and under many conditions anyway, the two principles in serial order may serve well enough.

The fact that the two principles apply to institutions has certain consequences. First of all, the rights and basic liberties referred to by these principles are those which are defined by the public rules of the basic structure. Whether men are free is determined by the rights and duties established by the major institutions of society. Liberty is a certain pattern

of social forms. The first principle simply requires that certain sorts of rules, those defining basic liberties, apply to everyone equally and that they allow the most extensive liberty compatible with a like liberty for all. The only reason for circumscribing basic liberties and making them less extensive is that otherwise they would interfere with one another.

Further, when principles mention persons, or require that everyone gain from an inequality, the reference is to representative persons holding the various social positions, or offices established by the basic structure. Thus in applying the second principle I assume that it is possible to assign an expectation of well-being to representative individuals holding these positions. This expectation indicates their life prospects as viewed from their social station. In general, the expectations of representative persons depend upon the distribution of rights and duties throughout the basic structure. Expectations are connected: by raising the prospects of the representative man in one position we presumably increase or decrease the prospects of representative men in other positions. Since it applies to institutional forms, the second principle (or rather the first part of it) refers to the expectations of representative individuals. As I shall discuss below (§14), neither principle applies to distributions of particular goods to particular individuals who may be identified by their proper names. 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. They are meant to regulate basic institutional arrangements. We must not assume that there is much similarity from the standpoint of justice between an administrative allotment of goods to specific persons and the appropriate design of society. Our common sense intuitions for the former may be a poor guide to the latter.

Now the second principle insists that each person benefit from permissible inequalities in the basic structure. This means that it must be reasonable for each relevant representative man defined by this structure, when he views it as a going concern, to prefer his prospects with the inequality to his prospects without it. One is not allowed to justify differences in income or in positions of authority and responsibility on the ground that the disadvantages of those in one position are outweighed by the greater advantages of those in another. Much less can infringements of liberty be counterbalanced in this way. It is obvious, however, that there are indefinitely many ways in which all may be advantaged when the initial arrangement of equality is taken as a benchmark. How then are we to choose among these possibilities? The principles must be specified so that they yield a determinate conclusion. I now turn to this problem.

12. INTERPRETATIONS OF THE SECOND PRINCIPLE

I have already mentioned that since the phrases “everyone’s advantage” and “equally open to all” are ambiguous, both parts of the second principle have two natural senses. Because these senses are independent of one another, the principle has four possible meanings. Assuming that the first principle of equal liberty has the same sense throughout, we then have four interpretations of the two principles. These are indicated in the table below.

| “Equally open” | “Everyone’s advantage” | |
|--|---------------------------|----------------------|
| | 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 |

I shall sketch in turn these three interpretations: the system of natural liberty, liberal equality, and democratic equality. In some respects this sequence is the more intuitive one, but the sequence via the interpretation of natural aristocracy is not without interest and I shall comment on it briefly. In working out justice as fairness, we must decide which interpretation is to be preferred. I shall adopt that of democratic equality, explaining in the next section what this notion means. The argument for its acceptance in the original position does not begin until the next chapter.

The first interpretation (in either sequence) I shall refer to as the system of natural liberty. In this rendering the first part of the second principle is understood as the principle of efficiency adjusted so as to apply to institutions or, in this case, to the basic structure of society; and the second part is understood as an open social system in which, to use the traditional phrase, careers are open to talents. I assume in all interpretations that the first principle of equal liberty is satisfied and that the economy is roughly a free market system, although the means of production may or may not be privately owned. The system of natural liberty asserts, then, that a basic structure satisfying the principle of efficiency and in which positions are open to those able and willing to strive for them will lead to a just distribution. Assigning rights and duties in this way is thought to give a scheme which allocates wealth and income, authority and responsibility, in a fair way whatever this allocation turns

out to be. The doctrine includes an important element of pure procedural justice which is carried over to the other interpretations.

At this point it is necessary to make a brief digression to explain the principle of efficiency. This principle is simply that of Pareto optimality (as economists refer to it) formulated so as to apply to the basic structure.⁷ I shall always use the term “efficiency” instead because this is literally correct and the term “optimality” suggests that the concept is much broader than it is in fact.⁸ To be sure, this principle was not originally intended to apply to institutions but to particular configurations of the economic system, for example, to distributions of goods among consumers or to modes of production. The principle holds that a configuration is efficient whenever it is impossible to change it so as to make some persons (at least one) better off without at the same time making other persons (at least one) worse off. Thus a distribution of a stock of commodities among certain individuals is efficient if there exists no redistribution of these goods that improves the circumstances of at least one of these individuals without another being disadvantaged. The organization of production is efficient if there is no way to alter inputs so as to produce more of some commodity without producing less of another. For if we could produce more of one good without having to give up some of another, the larger stock of goods could be used to better the circumstances of some persons without making that of others any worse. These applications of the principle show that it is, indeed, a principle of efficiency. A distribution of goods or a scheme of production is inefficient when there are ways of doing still better for some individuals without doing any worse for others. I shall assume that the parties in the original position accept this principle to judge the efficiency of economic and social arrangements. (See the accompanying discussion of the principle of efficiency.)

7. There are expositions of this principle in most any work on price theory or social choice. A perspicuous account is found in T. C. Koopmans, *Three Essays on the State of Economic Science* (New York, McGraw-Hill, 1957), pp. 41–66. See also A. K. Sen, *Collective Choice and Social Welfare* (San Francisco, Holden-Day Inc., 1970), pp. 21f. These works contain everything (and more) that is required for our purposes in this book; and the latter takes up the relevant philosophical questions. The principle of efficiency was introduced by Vilfredo Pareto in his *Manuel d'économie politique* (Paris, 1909), ch. VI, §53, and the appendix, §89. A translation of the relevant passages can be found in A. N. Page, *Utility Theory: A Book of Readings* (New York, John Wiley, 1968), pp. 38f. The related concept of indifference curves goes back to F. Y. Edgeworth, *Mathematical Psychics* (London, 1888), pp. 20–29; also in Page, pp. 160–167.

8. On this point see Koopmans, *Three Essays on the State of Economic Science*, p. 49. Koopmans remarks that a term like “allocative efficiency” would have been a more accurate name.

THE PRINCIPLE OF EFFICIENCY

Assume that there is a fixed stock of commodities to be distributed between two persons, x_1 and x_2 . Let the line AB represent the points such that given x_1 's gain at the corresponding level, there is no way to distribute the commodities so as to make x_2 better off than the point indicated by the curve. Consider the point $D = (a, b)$. Then holding x_1 , at the level a , the best that can be done for x_2 is the level b . In figure 3 the point O, the origin, represents the position before any commodities are distributed. The points on the line AB are the efficient points. Each point on AB can be seen to satisfy Pareto's criterion: there is no redistribution that makes either person better off without making the other worse off. This is conveyed by the fact that the line AB slopes downward to the right. Since there is but a fixed stock of items, it is supposed that as one person gains the other loses. (Of course, this assumption is dropped in the case of the basic structure which is a system of cooperation producing a sum of positive advantages.) Normally the region OAB is taken to be a convex set. This means that given any pair of points in the set, the points on the straight line joining these two points are also in the set. Circles, ellipses, squares, triangles, and so on are convex sets.

It is clear that there are many efficient points, in fact, all the points on the line AB. The principle of efficiency does not by itself select one particular distribution of commodities as the efficient one. To select among the efficient distributions some other principle, a principle of justice, say, is necessary.

Of two points, if one is northeast of the other, this point is superior by

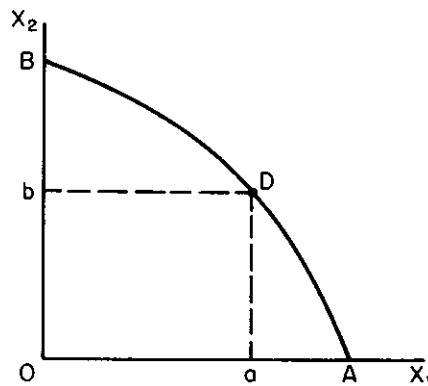


FIGURE 3

the principle of efficiency. Points to the northwest or southeast cannot be compared. The ordering defined by the principle of efficiency is but a partial one. Thus in figure 4 while C is superior to E, and D is superior to F, none of the points on the line AB are either superior or inferior to one another. The class of efficient points cannot be ranked. Even the extreme points A and B at which one of the parties has everything are efficient, just as other points on AB.

Observe that we cannot say that any point on the line AB is superior to all points in the interior of OAB. Each point on AB is superior only to those points in the interior southwest of it. Thus the point D is superior to all points inside the rectangle indicated by the dotted lines joining D to the points a and b. The point D is not superior to the point E. These points cannot be ordered. The point C, however, is superior to E and so are all the points on the line AB belonging to the small shaded triangular region that has the point E as a corner.

On the other hand, if one takes the 45° line as indicating the locus of equal distribution (this assumes an interpersonal cardinal interpretation of the axes, something not supposed in the preceding remarks), and if one counts this as an additional basis of decision, then all things considered, the point D may be preferable to both C and E. It is much closer to this line. One may even decide that an interior point such as F is to be preferred to C which is an efficient point. Actually, in justice as fairness the principles of justice are prior to considerations of efficiency and therefore, roughly speaking, the interior points that represent just distributions will generally be preferred to efficient points which represent unjust distributions. Of course, figure 4 depicts a very simple situation and cannot be applied to the basic structure.

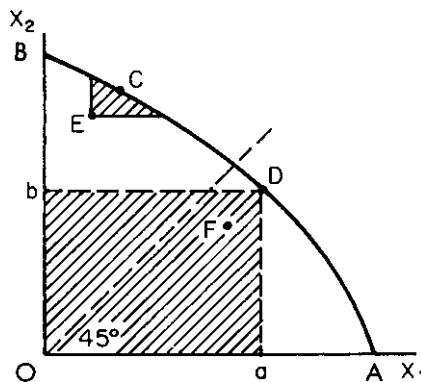


FIGURE 4

Now the principle of efficiency can be applied to the basic structure by reference to the expectations of representative men.⁹ Thus we can say that an arrangement of rights and duties in the basic structure is efficient if and only if it is impossible to change the rules, to redefine the scheme of rights and duties, so as to raise the expectations of any representative man (at least one) without at the same time lowering the expectations of some (at least one) other representative man. Of course, these alterations must be consistent with the other principles. That is, in changing the basic structure we are not permitted to violate the principle of equal liberty or the requirement of open positions. What can be altered is the distribution of income and wealth and the way in which those in positions of authority and responsibility can regulate cooperative activities. Consistent with the constraints of liberty and accessibility, the allocation of these primary goods may be adjusted to modify the expectations of representative individuals. An arrangement of the basic structure is efficient when there is no way to change this distribution so as to raise the prospects of some without lowering the prospects of others.

There are, I shall assume, many efficient arrangements of the basic structure. Each of these specifies a division of advantages from social cooperation. The problem is to choose between them, to find a conception of justice that singles out one of these efficient distributions as also just. If we succeed in this, we shall have gone beyond mere efficiency yet in a way compatible with it. Now it is natural to try out the idea that as long as the social system is efficient there is no reason to be concerned with distribution. All efficient arrangements are in this case declared equally just. Of course, this suggestion would be outlandish for the allocation of particular goods to known individuals. No one would suppose that it is a matter of indifference from the standpoint of justice whether any one of a number of men happens to have everything. But the suggestion seems equally unreasonable for the basic structure. Thus it may be that under certain conditions serfdom cannot be significantly reformed without lowering the expectations of some other representative man, say that of landowners, in which case serfdom is efficient. Yet it may also happen under the same conditions that a system of free labor cannot be changed without

9. For the application of the Pareto criterion to systems of public rules, see J. M. Buchanan, "The Relevance of Pareto Optimality," *Journal of Conflict Resolution*, vol. 6 (1962), as well as his book with Gordon Tullock, *The Calculus of Consent* (Ann Arbor, The University of Michigan Press, 1962). In applying this and other principles to institutions I follow one of the points of "Two Concepts of Rules," *Philosophical Review*, vol. 64 (1955). Doing this has the advantage, among other things, of constraining the employment of principles by publicity effects. See §23, note 8.

lowering the expectations of some other representative man, say that of free laborers, so this arrangement is likewise efficient. More generally, whenever a society is relevantly divided into a number of classes, it is possible, let us suppose, to maximize with respect to any one of its representative men. These maxima give at least this many efficient positions, for none of them can be departed from to raise the expectations of others without lowering those of the representative man with respect to whom the maximum is defined. Thus each of these extremes is efficient but they surely cannot be all just.

Now these reflections show only what we knew all along, that is, that the principle of efficiency cannot serve alone as a conception of justice.¹⁰ Therefore it must be supplemented in some way. Now in the system of natural liberty the principle of efficiency is constrained by certain background institutions; when these constraints are satisfied, any resulting efficient distribution is accepted as just. The system of natural liberty selects an efficient distribution roughly as follows. Let us suppose that we know from economic theory that under the standard assumptions defining a competitive market economy, income and wealth will be distributed in an efficient way, and that the particular efficient distribution which results in any period of time is determined by the initial distribution of assets, that is, by the initial distribution of income and wealth, and of natural talents and abilities. With each initial distribution, a definite efficient outcome is arrived at. Thus it turns out that if we are to accept the outcome as just, and not merely as efficient, we must accept the basis upon which over time the initial distribution of assets is determined.

In the system of natural liberty the initial distribution is regulated by the arrangements implicit in the conception of careers open to talents (as earlier defined). These arrangements presuppose a background of equal liberty (as specified by the first principle) and a free market economy. They require a formal equality of opportunity in that all have at least the same legal rights of access to all advantaged social positions. But since there is no effort to preserve an equality, or similarity, of social conditions, except insofar as this is necessary to preserve the requisite background institutions, the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies. The existing

10. This fact is generally recognized in welfare economics, as when it is said that efficiency is to be balanced against equity. See for example Tibor Scitovsky, *Welfare and Competition* (London, George Allen and Unwin, 1952), pp. 60–69 and I. M. D. Little, *A Critique of Welfare Economics*, 2nd ed. (Oxford, The Clarendon Press, 1957), ch. VI, esp. pp. 112–116. See Sen's remarks on the limitations of the principle of efficiency, *Collective Choice and Social Welfare*, pp. 22, 24–26, 83–86.

distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets—that is, natural talents and abilities—as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and such chance contingencies as accident and good fortune. 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.

The liberal interpretation, as I shall refer to it, tries to correct for this by adding to the requirement of careers open to talents the further condition of the principle of fair equality of opportunity. The thought here is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them. Offhand it is not clear what is meant, but we might say that those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class.¹¹

The liberal interpretation of the two principles seeks, then, to mitigate the influence of social contingencies and natural fortune on distributive shares. To accomplish this end it is necessary to impose further basic structural conditions on the social system. Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity. The elements of this framework are familiar enough, though it may be worthwhile to recall the importance of preventing excessive accumulations of property and wealth and of maintaining equal opportunities of education for all. Chances to acquire cultural knowledge and skills should not depend upon one's class position, and so the school system, whether public or private, should be designed to even out class barriers.

While the liberal conception seems clearly preferable to the system of

11. This definition follows Sidgwick's suggestion in *The Methods of Ethics*, p. 285n. See also R. H. Tawney, *Equality* (London, George Allen and Unwin, 1931), ch. II, sec. ii; and B. A. O. Williams, "The Idea of Equality," in *Philosophy, Politics, and Society*, ed. Peter Laslett and W. G. Runciman (Oxford, Basil Blackwell, 1962), pp. 125f.

natural liberty, intuitively it still appears defective. For one thing, even if it works to perfection in eliminating the influence of social contingencies, it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents. Within the limits allowed by the background arrangements, distributive shares are decided by the outcome of the natural lottery; and this outcome is arbitrary from a moral perspective. 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. Furthermore, the principle of fair opportunity can be only imperfectly carried out, at least as long as some form of the family exists. The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances. It is impossible in practice to secure equal chances of achievement and culture for those similarly endowed, and therefore we may want to adopt a principle which recognizes this fact and also mitigates the arbitrary effects of the natural lottery itself. That the liberal conception fails to do this encourages one to look for another interpretation of the two principles of justice.

Before turning to the conception of democratic equality, we should note that of natural aristocracy. On this view no attempt is made to regulate social contingencies beyond what is required by formal equality of opportunity, but the advantages of persons with greater natural endowments are to be limited to those that further the good of the poorer sectors of society. The aristocratic ideal is applied to a system that is open, at least from a legal point of view, and the better situation of those favored by it is regarded as just only when less would be had by those below, if less were given to those above.¹² In this way the idea of *noblesse oblige* is carried over to the conception of natural aristocracy.

Now both the liberal conception and that of natural aristocracy are unstable. For once we are troubled by the influence of either social contingencies or natural chance on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other.

12. This formulation of the aristocratic ideal is derived from Santayana's account of aristocracy in ch. IV of *Reason and Society* (New York, Charles Scribner, 1905), pp. 109f. He says, for example, "an aristocratic regimen can only be justified by radiating benefit and by proving that were less given to those above, less would be attained by those beneath them." I am indebted to Robert Rodes for pointing out to me that natural aristocracy is a possible interpretation of the two principles of justice and that an ideal feudal system might also try to fulfill the difference principle.

From a moral standpoint the two seem equally arbitrary. So however we move away from the system of natural liberty, we cannot be satisfied short of the democratic conception. This conception I have yet to explain. And, moreover, none of the preceding remarks are an argument for this conception, since in a contract theory all arguments, strictly speaking, are to be made in terms of what it would be rational to agree to in the original position. But I am concerned here to prepare the way for the favored interpretation of the two principles so that these criteria, especially the second one, will not strike the reader as extreme. Once we try to find a rendering of them which treats everyone equally as a moral person, and which does not weight men's share in the benefits and burdens of social cooperation according to their social fortune or their luck in the natural lottery, the democratic interpretation is the best choice among the four alternatives. With these comments as a preface, I now turn to this conception.

13. DEMOCRATIC EQUALITY AND THE DIFFERENCE PRINCIPLE

The democratic interpretation, as the table suggests, is arrived at by combining the principle of fair equality of opportunity with the difference principle. This principle removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged. Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate. (See the discussion of the difference principle that follows.)

THE DIFFERENCE PRINCIPLE

Assume that indifference curves now represent distributions that are judged equally just. Then the difference principle is a strongly egalitarian conception in the sense that unless there is a distribution that makes both

persons better off (limiting ourselves to the two-person case for simplicity), an equal distribution is to be preferred. The indifference curves take the form depicted in figure 5. These curves are actually made up of vertical and horizontal lines that intersect at right angles at the 45° line (again supposing an interpersonal and cardinal interpretation of the axes). No matter how much either person's situation is improved, there is no gain from the standpoint of the difference principle unless the other gains also.

Suppose that x_1 is the most favored representative man in the basic structure. As his expectations are increased so are the prospects of x_2 , the least advantaged man. In figure 6 let the curve OP represent the contribution to x_2 's expectations made by the greater expectations of x_1 . The point O, the origin, represents the hypothetical state in which all social primary goods are distributed equally. Now the OP curve is always below the 45° line, since x_1 is always better off. Thus the only relevant parts of the indifference curves are those below this line, and for this reason the upper left-hand part of figure 6 is not drawn in. Clearly the difference principle is perfectly satisfied only when the OP curve is just tangent to the highest indifference curve that it touches. In figure 6 this is at the point a.

Note that the contribution curve, the curve OP, rises upward to the right because it is assumed that the social cooperation defined by the basic structure is mutually advantageous. It is no longer a matter of shuffling about a fixed stock of goods. Also, nothing is lost if an accurate interpersonal comparison of benefits is impossible. It suffices that the least favored person can be identified and his rational preference determined.

A view less egalitarian than the difference principle, and perhaps more

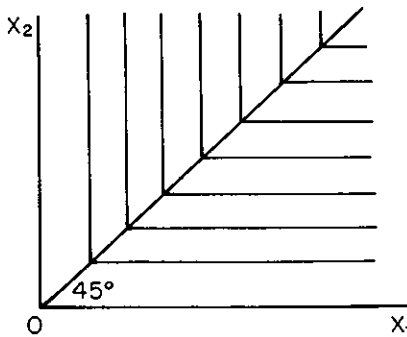


FIGURE 5

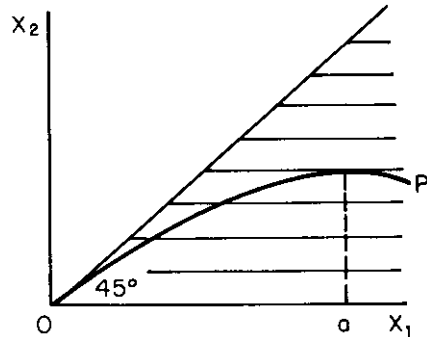


FIGURE 6

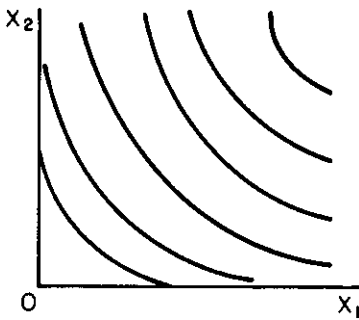


FIGURE 7

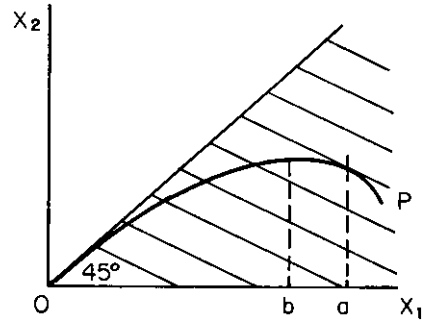


FIGURE 8

plausible at first sight, is one in which the indifference lines for just distributions (or for all things considered) are smooth curves convex to the origin, as in figure 7. The indifference curves for social welfare functions are often depicted in this fashion. This shape of the curves expresses the fact that as either person gains relative to the other, further benefits to him become less valuable from a social point of view.

A classical utilitarian, on the other hand, is indifferent as to how a constant sum of benefits is distributed. He appeals to equality only to break ties. If there are but two persons, then assuming an interpersonal cardinal interpretation of the axes, the utilitarian's indifference lines for distributions are straight lines perpendicular to the 45° line. Since, however, x_1 and x_2 are representative men, the gains to them have to be weighted by the number of persons they each represent. Since presumably x_2 represents rather more persons than x_1 , the indifference lines become more horizontal, as seen in figure 8. The ratio of the number of advantaged to the number of disadvantaged defines the slope of these straight lines. Drawing the same contribution curve OP as before, we see that the best distribution from a utilitarian point of view is reached at the point which is beyond the point b where the OP curve reaches its maximum. Since the difference principle selects the point b and b is always to the left of a , utilitarianism allows, other things equal, larger inequalities.

To illustrate the difference principle, consider the distribution of income among social classes. Let us suppose that the various income groups correlate with representative individuals by reference to whose expectations we can judge the distribution. Now those starting out as members of the entrepreneurial class in property-owning democracy, say, have a better prospect than those who begin in the class of unskilled laborers. It

seems likely that this will be true even when the social injustices which now exist are removed. What, then, can possibly justify this kind of initial inequality in life prospects? According to the difference principle, it is justifiable only if the difference in expectation is to the advantage of the representative man who is worse off, in this case the representative unskilled worker. The inequality in expectation is permissible only if lowering it would make the working class even more worse off. Supposedly, given the rider in the second principle concerning open positions, and the principle of liberty generally, the greater expectations allowed to entrepreneurs encourages them to do things which raise the prospects of laboring class. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on. I shall not consider how far these things are true. The point is that something of this kind must be argued if these inequalities are to satisfy by the difference principle.

I shall now make a few remarks about this principle. First of all, in applying it, one should distinguish between two cases. The first case is that in which the expectations of the least advantaged are indeed maximized (subject, of course, to the mentioned constraints). No changes in the expectations of those better off can improve the situation of those worst off. The best arrangement obtains, what I shall call a perfectly just scheme. The second case is that in which the expectations of all those better off at least contribute to the welfare of the more unfortunate. That is, if their expectations were decreased, the prospects of the least advantaged would likewise fall. Yet the maximum is not yet achieved. Even higher expectations for the more advantaged would raise the expectations of those in the lowest position. Such a scheme is, I shall say, just throughout, but not the best just arrangement. A scheme is unjust when the higher expectations, one or more of them, are excessive. If these expectations were decreased, the situation of the least favored would be improved. How unjust an arrangement is depends on how excessive the higher expectations are and to what extent they depend upon the violation of the other principles of justice, for example, fair equality of opportunity; but I shall not attempt to measure the degrees of injustice. The point to note here is that while the difference principle is, strictly speaking, a maximizing principle, there is a significant distinction between the cases that fall short of the best arrangement. A society should try to avoid situations where the marginal contributions of those better off are negative, since, other things equal, this seems a greater fault than falling short of the best scheme when these contributions are positive. The even larger difference

between classes violates the principle of mutual advantage as well as democratic equality (§17).

A further point is this. We saw that the system of natural liberty and the liberal conception go beyond the principle of efficiency by setting up certain background institutions and leaving the rest to pure procedural justice. The democratic conception holds that while pure procedural justice may be invoked to some extent at least, the way previous interpretations do this still leaves too much to social and natural contingency. But it should be noted that the difference principle is compatible with the principle of efficiency. For when the former is fully satisfied, it is indeed impossible to make any one representative man better off without making another worse off, namely, the least advantaged representative man whose expectations we are to maximize. Thus justice is defined so that it is consistent with efficiency, at least when the two principles are perfectly fulfilled. Of course, if the basic structure is unjust, these principles will authorize changes that may lower the expectations of some of those better off; and therefore the democratic conception is not consistent with the principle of efficiency if this principle is taken to mean that only changes which improve everyone's prospects are allowed. Justice is prior to efficiency and requires some changes that are not efficient in this sense. Consistency obtains only in the sense that a perfectly just scheme is also efficient.

Next, we may consider a certain complication regarding the meaning of the difference principle. It has been taken for granted that if the principle is satisfied, everyone is benefited. One obvious sense in which this is so is that each man's position is improved with respect to the initial arrangement of equality. But it is clear that nothing depends upon being able to identify this initial arrangement; indeed, how well off men are in this situation plays no essential role in applying the difference principle. We simply maximize the expectations of the least favored position subject to the required constraints. As long as doing this is an improvement for everyone, as so far I have assumed it is, the estimated gains from the situation of hypothetical equality are irrelevant, if not largely impossible to ascertain anyway. There may be, however, a further sense in which everyone is advantaged when the difference principle is satisfied, at least if we make certain assumptions. Let us suppose that inequalities in expectations are chain-connected: that is, if an advantage has the effect of raising the expectations of the lowest position, it raises the expectations of all positions in between. For example, if the greater expectations for entrepreneurs benefit the unskilled worker, they also benefit the semi-

skilled. Notice that chain connection says nothing about the case where the least advantaged do not gain, so that it does not mean that all effects move together. Assume further that expectations are close-knit: that is, it is impossible to raise or lower the expectation of any representative man without raising or lowering the expectation of every other representative man, especially that of the least advantaged. There is no loose-jointedness, so to speak, in the way expectations hang together. Now with these assumptions there is a sense in which everyone benefits when the difference principle is satisfied. For the representative man who is better off in any two-way comparison gains by the advantages offered him, and the man who is worse off gains from the contributions which these inequalities make. Of course, these conditions may not hold. But in this case those who are better off should not have a veto over the benefits available for the least favored. We are still to maximize the expectations of those most disadvantaged. (See the accompanying discussion of chain connection.)

CHAIN CONNECTION

For simplicity assume that there are three representative men. Let x_1 be the most favored and x_3 the least favored with x_2 in between. Let the expectations of x_1 be marked off along the horizontal axis, the expectations of x_2 and x_3 along the vertical axis. The curves showing the contribution of the most favored to the other groups begin at the origin as the hypothetical position of equality. Moreover, there is a maximum gain permitted to the most favored on the assumption that, even if the difference principle would allow it, there would be unjust effects on the political system and the like excluded by the priority of liberty.

The difference principle selects the point where the curve for x_3 reaches its maximum, for example, the point a in figure 9.

Chain connection means that at any point where the x_3 curve is rising to the right, the x_2 curve is also rising, as in the intervals left of the points a and b in figures 9 and 10. Chain connection says nothing about the case where the x_3 curve is falling to the right, as in the interval to the right of the point a in figure 9. The x_2 curve may be either rising or falling (as indicated by the dashed line x'_2). Chain connection does not hold to the right of b in figure 10.

Intervals in which both the x_2 and the x_3 curves are rising define the intervals of positive contributions. Any more to the right increases the

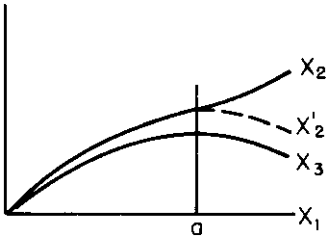


FIGURE 9

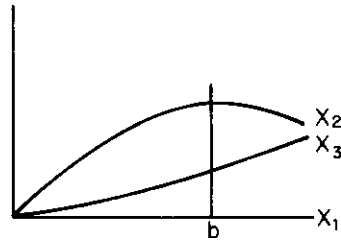


FIGURE 10

average expectation (average utility if utility is measured by expectations) and also satisfies the principle of efficiency as a criterion of change, that is, points to the right improve everyone's situation.

In figure 9 the average expectations may be rising beyond the point a , although the expectations of the least favored are falling. (This depends on the weights of the several groups.) The difference principle excludes this and selects the point a .

Close-knitness means that there are no flat stretches on the curves for x_2 and x_3 . At each point both curves are either rising or falling. All the curves illustrated are close-knit.

I shall not examine how likely it is that chain connection and close-knitness hold. The difference principle is not contingent on these relations being satisfied. However, when the contributions of the more favored positions spread generally throughout society and are not confined to particular sectors, it seems plausible that if the least advantaged benefit so do others in between. Moreover, a wide diffusion of benefits is favored by two features of institutions both exemplified by the basic structure: first, they are set up to advance certain fundamental interests which everyone has in common, and second, offices and positions are open. Thus it seems probable that if the authority and powers of legislators and judges, say, improve the situation of the less favored, they improve that of citizens generally. Chain connection may often be true, provided the other principles of justice are fulfilled. If this is so, then we may observe that within the region of positive contributions (the region where the advantages of all those in favored positions raise the prospects of the least fortunate), any movement toward the perfectly just arrangement improves everyone's expectation. Under these circumstances the difference principle has somewhat similar practical consequences for the principles of efficiency and average utility (if utility is measured by primary goods). Of course, if

chain connection rarely holds, this similarity is unimportant. But it seems likely that within a just social scheme a general diffusion of benefits often takes place.

There is a further complication. Close-knitness is assumed in order to simplify the statement of the difference principle. It is clearly conceivable, however likely or important in practice, that the least advantaged are not affected one way or the other by some changes in expectations of the best off although these changes benefit others. In this sort of case close-knitness fails, and to cover the situation we can express a more general principle as follows: 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. We may think of this as the lexical difference principle.¹³ I think, however, that in actual cases this principle is unlikely to be relevant, for when the greater potential benefits to the more advantaged are significant, there will surely be some way to improve the situation of the less advantaged as well. The general laws governing the institutions of the basic structure insure that cases requiring the lexical principle will not arise. Thus I shall always use the difference principle in the simpler form, and so the outcome of the last several sections is that the second principle reads as follows:

Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

Finally, a comment about terminology. Economics may wish to refer to the difference principle as the maximin criterion, but I have carefully avoided this name for several reasons. The maximin criterion is generally understood as a rule for choice under great uncertainty (§26), whereas the difference principle is a principle of justice. It is undesirable to use the same name for two things that are so distinct. The difference principle is a very special criterion: it applies primarily to the basic structure of society via representative individuals whose expectations are to be estimated by an index of primary goods (§15). In addition, calling the difference principle the maximin criterion might wrongly suggest that the main argument for this principle from the original position derives from an

13. On this point, see Sen, *Collective Choice and Social Welfare*, p. 138n.

assumption of very high risk aversion. There is indeed a relation between the difference principle and such an assumption, but extreme attitudes to risk are not postulated (§28); and in any case, there are many considerations in favor of the difference principle in which the aversion to risk plays no role at all. Thus it is best to use the term “maximin criterion” solely for the rule of choice under uncertainty.

14. FAIR EQUALITY OF OPPORTUNITY AND PURE PROCEDURAL JUSTICE

I should now like to comment upon the second part of the second principle, henceforth to be understood as the liberal principle of fair equality of opportunity. It must not then be confused with the notion of careers open to talents; nor must one forget that since it is tied in with the difference principle its consequences are quite distinct from the liberal interpretation of the two principles taken together. In particular, I shall try to show further on (§17) that this principle is not subject to the objection that it leads to a meritocratic society. Here I wish to consider a few other points, especially its relation to the idea of pure procedural justice.

First, though, I should note that the reasons for requiring open positions are not solely, or even primarily, those of efficiency. I have not maintained that offices must be open if in fact everyone is to benefit from an arrangement. For 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 talent and encourage better performance. But the principle of open positions forbids this. It expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them. They would be justified in their complaint not only because they were excluded from certain external rewards of office but because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties. They would be deprived of one of the main forms of human good.

Now I have said that the basic structure is the primary subject of justice. Of course, any ethical theory recognizes the importance of the basic structure as a subject of justice, but not all theories regard its importance in the same way. In justice as fairness society is interpreted as

a cooperative venture for mutual advantage. The basic structure is a public system of rules defining a scheme of activities that leads men to act together so as to produce a greater sum of benefits and assigns to each certain recognized claims to a share in the proceeds. What a person does depends upon what the public rules say he will be entitled to, and what a person is entitled to depends on what he does. The distribution which results is arrived at by honoring the claims determined by what persons undertake to do in the light of these legitimate expectations.

These considerations suggest the idea of treating the question of distributive shares as a matter of pure procedural justice.¹⁴ The intuitive idea is to design the social system so that the outcome is just whatever it happens to be, at least so long as it is within a certain range. The notion of pure procedural justice is best understood by a comparison with perfect and imperfect procedural justice. To illustrate the former, consider the simplest case of fair division. A number of men are to divide a cake: assuming that the fair division is an equal one, which procedure, if any, will give this outcome? Technicalities aside, the obvious solution is to have one man divide the cake and get the last piece, the others being allowed their pick before him. He will divide the cake equally, since in this way he assures for himself the largest share possible. This example illustrates the two characteristic features of perfect procedural justice. First, there is an independent criterion for what is a fair division, a criterion defined separately from and prior to the procedure which is to be followed. And second, it is possible to devise a procedure that is sure to give the desired outcome. Of course, certain assumptions are made here, such as that the man selected can divide the cake equally, wants as large a piece as he can get, and so on. But we can ignore these details. The essential thing is that there is an independent standard for deciding which outcome is just and a procedure guaranteed to lead to it. Pretty clearly, perfect procedural justice is rare, if not impossible, in cases of much practical interest.

Imperfect procedural justice is exemplified by a criminal trial. The desired outcome is that the defendant should be declared guilty if and only if he has committed the offense with which he is charged. The trial procedure is framed to search for and to establish the truth in this regard.

14. For a general discussion of procedural justice, see Brian Barry, *Political Argument* (London, Routledge and Kegan Paul, 1965), ch. VI. On the problem of fair division, see R. D. Luce and Howard Raiffa, *Games and Decisions* (New York, John Wiley and Sons, Inc., 1957), pp. 363–368; and Hugo Steinhaus, “The Problem of Fair Division,” *Econometrica*, vol. 16 (1948).

But it seems impossible to design the legal rules so that they always lead to the correct result. The theory of trials examines which procedures and rules of evidence, and the like, are best calculated to advance this purpose consistent with the other ends of the law. Different arrangements for hearing cases may reasonably be expected in different circumstances to yield the right results, not always but at least most of the time. A trial, then, is an instance of imperfect procedural justice. Even though the law is carefully followed, and the proceedings fairly and properly conducted, it may reach the wrong outcome. An innocent man may be found guilty, a guilty man may be set free. In such cases we speak of a miscarriage of justice: the injustice springs from no human fault but from a fortuitous combination of circumstances which defeats the purpose of the legal rules. The characteristic mark of imperfect procedural justice is that while there is an independent criterion for the correct outcome, there is no feasible procedure which is sure to lead to it.

By contrast, pure procedural justice obtains when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed. This situation is illustrated by gambling. If a number of persons engage in a series of fair bets, the distribution of cash after the last bet is fair, or at least not unfair, whatever this distribution is. I assume here that fair bets are those having a zero expectation of gain, that the bets are made voluntarily, that no one cheats, and so on. The betting procedure is fair and freely entered into under conditions that are fair. Thus the background circumstances define a fair procedure. Now any distribution of cash summing to the initial stock held by all individuals could result from a series of fair bets. In this sense all of these particular distributions are equally fair. A distinctive feature of pure procedural justice is that the procedure for determining the just result must actually be carried out; for in these cases there is no independent criterion by reference to which a definite outcome can be known to be just. Clearly we cannot say that a particular state of affairs is just because it could have been reached by following a fair procedure. This would permit far too much. It would allow one to say that almost any distribution of goods is just, or fair, since it could have come about as a result of fair gambles. What makes the final outcome of betting fair, or not unfair, is that it is the one which has arisen after a series of fair gambles. A fair procedure translates its fairness to the outcome only when it is actually carried out.

In order, therefore, to apply the notion of pure procedural justice to distributive shares it is necessary to set up and to administer impartially a just system of institutions. Only against the background of a just basic structure, including a just political constitution and a just arrangement of economic and social institutions, can one say that the requisite just procedure exists. In Part Two I shall describe a basic structure that has the necessary features (§43). Its various institutions are explained and connected with the two principles of justice.

The role of the principle of fair opportunity is to insure that the system of cooperation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range. Now the practical advantage of pure procedural justice is that it is no longer necessary to keep track of the endless variety of circumstances and the changing relative positions of particular persons. One avoids the problem of defining principles to cope with the enormous complexities which would arise if such details were relevant. It is a mistake to focus attention on the varying relative positions of individuals and to require that every change, considered as a single transaction viewed in isolation, be in itself just. It is the arrangement of the basic structure which is to be judged, and judged from a general point of view. Unless we are prepared to criticize it from the standpoint of a relevant representative man in some particular position, we have no complaint against it. Thus the acceptance of the two principles constitutes an understanding to discard as irrelevant as a matter of social justice much of the information and many of the complications of everyday life.

In pure procedural justice, then, distributions of advantages are not appraised in the first instance by confronting a stock of benefits available with given desires and needs of known individuals. The allotment of the items produced takes place in accordance with the public system of rules, and this system determines what is produced, how much is produced, and by what means. It also determines legitimate claims the honoring of which yields the resulting distribution. Thus in this kind of procedural justice the correctness of the distribution is founded on the justice of the scheme of cooperation from which it arises and on answering the claims of individuals engaged in it. A distribution cannot be judged in isolation from the system of which it is the outcome or from what individuals have done in good faith in the light of established expectations. If it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires and preferences is better than another, then there is simply no answer to this question. The conception of the two

principles does not interpret the primary problem of distributive justice as one of allocative justice.

By contrast allocative justice applies when a given collection of goods is to be divided among definite individuals with known desires and needs. The collection to be allotted is not the product of these individuals, nor do they stand in any existing cooperative relations. Since there are no prior claims on the things to be distributed, it is natural to share them out according to desires and needs, or even to maximize the net balance of satisfaction. Justice becomes a kind of efficiency, unless equality is preferred. Suitably generalized, the allocative conception leads to the classical utilitarian view. For as we have seen, this doctrine assimilates justice to the benevolence of the impartial spectator and the latter in turn to the most efficient design of institutions to promote the greatest balance of satisfaction. The point to note here is that utilitarianism does not interpret the basic structure as a scheme of pure procedural justice. For the utilitarian has, in principle anyway, an independent standard for judging all distributions, namely, whether they produce the greatest net balance of satisfaction. In his theory, institutions are more or less imperfect arrangements for bringing about this end. Thus given existing desires and preferences, and the developments into the future which they allow, the statesman's aim is to set up those social schemes that will best approximate an already specified goal. Since these arrangements are subject to the unavoidable constraints and hindrances of everyday life, the basic structure is a case of imperfect procedural justice.

For the time being I shall suppose that the two parts of the second principle are lexically ordered. Thus we have one lexical ordering within another. The advantage of the special conception is that it has a definite shape and suggests certain questions for investigation, for example, under what assumptions if any would the lexical ordering be chosen? Our inquiry is given a particular direction and is no longer confined to generalities. Of course, this conception of distributive shares is obviously a great simplification. It is designed to characterize in a clear way a basic structure that makes use of the idea of pure procedural justice. But all the same we should attempt to find simple concepts that can be assembled to give a reasonable conception of justice. The notions of the basic structure, of the veil of ignorance, of a lexical order, of the least favored position, as well as of pure procedural justice are all examples of this. By themselves none of these could be expected to work, but properly put together they may serve well enough. It is too much to suppose that there exists for all or even most moral problems a reasonable solution. Perhaps only a few can

be satisfactorily answered. In any case social wisdom consists in framing institutions so that intractable difficulties do not often arise and in accepting the need for clear and simple principles.

15. PRIMARY SOCIAL GOODS AS THE BASIS OF EXPECTATIONS

So much, then, for a brief statement and explanation of the two principles of justice and of the procedural conception which they express. In later chapters I shall present further details by describing an arrangement of institutions that realizes this conception. At the moment, however, there are several preliminary matters that must be faced. I begin with a discussion of expectations and how they are to be estimated.

The significance of this question can be brought out by a comparison with utilitarianism. When applied to the basic structure this view requires us to maximize the algebraic sum of expected utilities taken over all relevant positions. (The classical principle weights these expectations by the number of persons in these positions, the average principle by the fraction of persons.) Leaving aside for the next section the question as to what defines a relevant position, it is clear that utilitarianism assumes some fairly accurate measure of utility. Not only is it necessary to have a cardinal measure for each representative individual but some method of correlating the scales of different persons is presupposed if we are to say that the gains of some are to outweigh the losses of others. It is unreasonable to demand great precision, yet these estimates cannot be left to our unguided intuition. Moreover, they may be based on ethical and other notions, not to mention bias and self-interest, which puts their validity in question. Simply because we do in fact make what we call interpersonal comparisons of well-being does not mean that we understand the basis of these comparisons or that we should accept them as sound. To settle these matters we need to give an account of these judgments, to set out the criteria that underlie them (§49). For questions of social justice we should try to find some objective grounds for these comparisons, ones that men can recognize and agree to. I believe that the real objection to utilitarianism lies elsewhere. Even if interpersonal comparisons can be made, these comparisons must reflect values which it makes sense to pursue. The controversy about interpersonal comparisons tends to obscure the real question, namely, whether the total (or average) happiness is to be maximized in the first place.

The difference principle tries to establish objective grounds for interpersonal comparisons in two ways. First of all, as long as we can identify the least advantaged representative man, only ordinal judgments of well-being are required from then on. We know from what position the social system is to be judged. It does not matter how much worse off this representative individual is than the others. The further difficulties of cardinal measurement do not arise since no other interpersonal comparisons are necessary. The difference principle, then, asks less of our judgments of welfare. We never have to calculate a sum of advantages involving a cardinal measure. While qualitative interpersonal comparisons are made in finding the bottom position, for the rest the ordinal judgments of one representative man suffice.

Second, the difference principle introduces a simplification for the basis of interpersonal comparisons. These comparisons are made in terms of expectations of primary social goods. In fact, I define these expectations simply as the index of these goods which a representative individual can look forward to. One man's expectations are greater than another's if this index for some one in his position is greater. Now primary goods, as I have already remarked, are things which it is supposed a rational man wants whatever else he wants. Regardless of what an individual's rational plans are in detail, it is assumed that there are various things which he would prefer more of rather than less. With more of these goods men can generally be assured of greater success in carrying out their intentions and in advancing their ends, whatever these ends may be. The primary social goods, to give them in broad categories, are rights, liberties, and opportunities, and income and wealth. (A very important primary good is a sense of one's own worth; but for simplicity I leave this aside until much later, §67.) It seems evident that in general these things fit the description of primary goods. They are social goods in view of their connection with the basic structure; liberties and opportunities are defined by the rules of major institutions and the distribution of income and wealth is regulated by them.

The theory of the good adopted to account for primary goods will be presented more fully in Chapter VII. It is a familiar one going back to Aristotle, and something like it is accepted by philosophers so different in other respects as Kant and Sidgwick. It is not in dispute between the contract doctrine and utilitarianism. The main idea is that a person's good is determined by what is for him the most rational long-term plan of life given reasonably favorable circumstances. A man is happy when he is more or less successfully in the way of carrying out this plan. To put it

briefly, the good is the satisfaction of rational desire. We are to suppose, then, that each individual has a rational plan of life drawn up subject to the conditions that confront him. This plan is designed to permit the harmonious satisfaction of his interests. It schedules activities so that various desires can be fulfilled without interference. It is arrived at by rejecting other plans that are either less likely to succeed or do not provide for such an inclusive attainment of aims. Given the alternatives available, a rational plan is one which cannot be improved upon; there is no other plan which, taking everything into account, would be preferable.

Let us consider several difficulties. One problem clearly is the construction of the index of primary social goods. Assuming that the two principles of justice are serially ordered, this problem is greatly simplified. The basic liberties are always equal, and there is fair equality of opportunity; one does not need to balance these liberties and rights against other values. The primary social goods that vary in their distribution are the rights and prerogatives of authority, and income and wealth. But the difficulties are not so great as they might seem at first because of the nature of the difference principle. The only index problem that concerns us is that for the least advantaged group. The primary goods enjoyed by other representative individuals are adjusted to raise this index, subject of course to the usual constraints. It is unnecessary to define weights for the more favored positions in any detail, as long as we are sure that they are more favored. But often this is easy since they frequently have more of each primary good that is distributed unequally. If we know how the distribution of goods to the more favored affects the expectations of the most disfavored, this is sufficient. The index problem largely reduces, then, to that of weighting primary goods for the least advantaged. We try to do this by taking up the standpoint of the representative individual from this group and asking which combination of primary social goods it would be rational for him to prefer. In doing this we admittedly rely upon intuitive estimates. But this cannot be avoided entirely.

Another difficulty is this. It may be objected that expectations should not be defined as an index of primary goods anyway but rather as the satisfactions to be expected when plans are executed using these goods. After all, it is in the fulfillment of these plans that men gain happiness, and therefore the estimate of expectations should not be founded on the available means. Justice as fairness, however, takes a different view. For it does not look behind the use which persons make of the rights and opportunities available to them in order to measure, much less to maximize, the satisfactions they achieve. Nor does it try to evaluate the relative

merits of different conceptions of the good. Instead, it is assumed that the members of society are rational persons able to adjust their conceptions of the good to their situation. There is no necessity to compare the worth of the conceptions of different persons once it is supposed they are compatible with the principles of justice. Everyone is assured an equal liberty to pursue whatever plan of life he pleases as long as it does not violate what justice demands. Men share in primary goods on the principle that some can have more if they are acquired in ways which improve the situation of those who have less. Once the whole arrangement is set up and going no questions are asked about the totals of satisfaction or perfection.

It is worth noting that this interpretation of expectations represents, in effect, an agreement to compare men's situations solely by reference to things which it is assumed they all normally need to carry out their plans. This seems the most feasible way to establish a publicly recognized objective and common measure that reasonable persons can accept. Whereas there cannot be a similar agreement on how to estimate happiness as defined, say, by men's success in executing their rational plans, much less on the intrinsic value of these plans. Now founding expectations on primary goods is another simplifying device. I should like to comment in passing that this and other simplifications are accompanied by some sort of philosophical explanation, though this is not strictly necessary. Theoretical assumptions must, of course, do more than simplify; they must identify essential elements that explain the facts we want to understand. Similarly, the parts of a theory of justice must represent basic moral features of the social structure, and if it appears that some of these are being left aside, it is desirable to assure ourselves that such is not the case. I shall try to follow this rule. But even so, the soundness of the theory of justice is shown as much in its consequences as in the *prima facie* acceptability of its premises. Indeed, these cannot be usefully separated and therefore the discussion of institutional questions, particularly in Part Two, which may seem at first unphilosophical, is in fact unavoidable.

16. RELEVANT SOCIAL POSITIONS

In applying the two principles of justice to the basic structure of society one takes the position of certain representative individuals and considers how the social system looks to them. The perspective of those in these

situations defines a suitably general point of view. But certainly not all social positions are relevant. For not only are there farmers, say, but dairy farmers, wheat farmers, farmers working on large tracts of land, and so on for other occupations and groups indefinitely. We cannot have a coherent and manageable theory if we must take such a multiplicity of positions into account. The assessment of so many competing claims is impossible. Therefore we need to identify certain positions as more basic than the others and as providing an appropriate standpoint for judging the social system. Thus the choice of these positions becomes part of the theory of justice. On what principle, though, are they to be identified?

To answer this question we must keep in mind the fundamental problem of justice and the manner in which the two principles cope with it. The primary subject of justice, as I have emphasized, is the basic structure of society. The reason for this is that its effects are so profound and pervasive, and present from birth. This structure favors some starting places over others in the division of the benefits of social cooperation. It is these inequalities which the two principles are to regulate. Once these principles are satisfied, other inequalities are allowed to arise from men's voluntary actions in accordance with the principle of free association. Thus the relevant social positions are, so to speak, the starting places properly generalized and aggregated. By choosing these positions to specify the general point of view one follows the idea that the two principles attempt to mitigate the arbitrariness of natural contingency and social fortune.

I suppose, then, that for the most part each person holds two relevant positions: that of equal citizenship and that defined by his place in the distribution of income and wealth. The relevant representative men, therefore, are the representative citizen and the representatives of those with different expectations for the unequally distributed primary goods. Since I assume that in general other positions are entered into voluntarily, we need not consider the point of view of men in these positions in judging the basic structure. Instead, we are to adjust the whole scheme to suit the preferences of those in the so-called starting places.

Now as far as possible the basic structure should be appraised from the position of equal citizenship. This position is defined by the rights and liberties required by the principle of equal liberty and the principle of fair equality of opportunity. When the two principles are satisfied, all are equal citizens, and so everyone holds this position. In this sense, equal citizenship defines a general point of view. The problems of adjudicating among the basic liberties are settled by reference to it. These matters I

shall discuss in Chapter IV. But it should be noted here that many questions of social policy can also be considered from this position. For there are matters which concern the interests of everyone and in regard to which distributive effects are immaterial or irrelevant. In these cases the principle of the common interest can be applied. According to this principle institutions are ranked by how effectively they guarantee the conditions necessary for all equally to further their aims, or by how efficiently they advance shared ends that will similarly benefit everyone. Thus reasonable regulations to maintain public order and security, or efficient measures for public health and safety, promote the common interest in this sense. So do collective efforts for national defense in a just war. It may be suggested that maintaining public health and safety or achieving victory in a just war have distributive effects: those with higher expectations benefit more since they have more to lose. But if social and economic inequalities are just, these effects may be left aside and the principle of the common interest applied. The standpoint of equal citizenship is the appropriate one.

The definition of representative men for judging social and economic inequalities is less satisfactory. For one thing, taking these individuals as specified by the levels of income and wealth, I assume that these primary social goods are sufficiently correlated with differences in authority and responsibility. That is, I suppose that those with greater political authority, say, or those with more responsibility in various associations, are in general better off in other respects. On the whole, this assumption seems safe enough for our purposes. There is also a question about how many such representative men to single out, but this is not crucial because the difference principle selects one representative for a special role. The serious difficulty is how to define the least fortunate group.

To fix ideas, let us single out the least advantaged as those who are least favored by each of the three main kinds of contingencies. Thus this group includes persons whose family and class origins are more disadvantaged than others, whose natural endowments (as realized) permit them to fare less well, and whose fortune and luck in the course of life turn out to be less happy, all within the normal range (as noted below) and with the relevant measures based on social primary goods. Various refinements will certainly be necessary in practice, but this rough definition of the least advantaged suitably expresses the connection with the problem of contingency and should suffice for our purposes here. I shall assume that everyone has physical needs and psychological capacities within the normal range, so that the questions of health care and

mental capacity do not arise. Besides prematurely introducing matters that may take us beyond the theory of justice, the consideration of these hard cases can distract our moral perception by leading us to think of persons distant from us whose fate arouses pity and anxiety. The first problem of justice concerns the relations among those who in the everyday course of things are full and active participants in society and directly or indirectly associated together over the whole span of their life. Thus the difference principle is to apply to citizens engaged in social cooperation; if the principle fails for this case, it would seem to fail in general.

Now it seems impossible to avoid a certain arbitrariness in actually identifying the least favored group. One possibility is to choose a particular social position, say that of the unskilled worker, and then to count as the least favored all those with approximately the income and wealth of those in this position, or less. Another criterion is one in terms of relative income and wealth with no reference to social positions. For example, all persons with less than half of the median may be regarded as the least advantaged segment. This criterion depends only on the lower half of the distribution and has the merit of focusing attention on the social distance between those who have the least and the average citizen.¹⁵ Either of these criteria would appear to cover those most disfavored by the various contingencies and provide a basis for determining at what level a reasonable social minimum might be set and from which, in conjunction with other measures, society could proceed to fulfill the difference principle. Any procedure is bound to be somewhat ad hoc. Yet we are entitled at some point to plead practical considerations, for sooner or later the capacity of philosophical or other arguments to make finer discriminations must run out. I assume that the persons in the original position understand these matters, and that they assess the difference principle in comparison with the other alternatives accordingly.¹⁶

As far as possible, then, justice as fairness appraises the social system from the position of equal citizenship and the various levels of income and wealth. Sometimes, however, other positions may need to be taken into account. If, for example, there are unequal basic rights founded on fixed natural characteristics, these inequalities will single out relevant positions. Since these characteristics cannot be changed, the positions

15. For this definition, see M. J. Bowman's discussion of the so-called Fuchs criterion in "Poverty in an Affluent Society," an essay in *Contemporary Economic Issues*, ed. N. W. Chamberlain (Homewood, Ill., R. D. Irwin, 1969), pp. 53–56.

16. I am indebted to Scott Boorman for clarification on this point.

they define count as starting places in the basic structure. Distinctions based on sex are of this type, and so are those depending upon race and culture. Thus if, say, men are favored in the assignment of basic rights, this inequality is justified by the difference principle (in the general interpretation) only if it is to the advantage of women and acceptable from their standpoint. And the analogous condition applies to the justification of caste systems, or racial and ethnic inequalities (§39). Such inequalities multiply relevant positions and complicate the application of the two principles. On the other hand, these inequalities are seldom, if ever, to the advantage of the less favored, and therefore in a just society the smaller number of relevant positions should ordinarily suffice.

Now it is essential that the judgments made from the perspective of the relevant positions override the claims that we are prone to make in more particular situations. Not everyone always benefits by what the two principles require if we think of ourselves in terms of our more specific positions. And unless the viewpoint of the relevant positions has priority, one still has a chaos of competing claims. Thus the two principles express, in effect, an understanding to order our interests by giving certain of them a special weight. For example, persons engaged in a particular industry often find that free trade is contrary to their interests. Perhaps the industry cannot remain prosperous without tariffs or other restrictions. But if free trade is desirable from the point of view of equal citizens or of the least advantaged, it is justified even though more specific interests temporarily suffer. For we are to agree in advance to the principles of justice and their consistent application from the standpoint of certain positions. There is no way to guarantee the protection of every interest over each period of time once the situation of representative men is defined more narrowly. Having acknowledged certain principles and a certain way of applying them, we are bound to accept the consequences. This does not mean, of course, that the rigors of free trade should be allowed to go unchecked. But the arrangements for softening them are to be considered from an appropriately general perspective.

The relevant social positions specify, then, the general point of view from which the two principles of justice are to be applied to the basic structure. In this way everyone's interests are taken into account, for each person is an equal citizen and all have a place in the distribution of income and wealth or in the range of fixed natural characteristics upon which distinctions are based. Some selection of relevant positions is necessary for a coherent theory of social justice and the ones chosen should accord with its first principles. By selecting the so-called starting

places one follows out the idea of mitigating the effects of natural accident and social circumstance. No one is to benefit from these contingencies except in ways that redound to the well-being of others.

17. THE TENDENCY TO EQUALITY

I wish to conclude this discussion of the two principles by explaining the sense in which they express an egalitarian conception of justice. Also I should like to forestall the objection to the principle of fair opportunity that it leads to a meritocratic society. In order to prepare the way for doing this, I note several aspects of the conception of justice that I have set out.

First we may observe that the difference principle gives some weight to the considerations singled out by the principle of redress. This is the principle that undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for.¹⁷ Thus the principle holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social positions. The idea is to redress the bias of contingencies in the direction of equality. In pursuit of this principle greater resources might be spent on the education of the less rather than the more intelligent, at least over a certain time of life, say the earlier years of school.

Now the principle of redress has not to my knowledge been proposed as the sole criterion of justice, as the single aim of the social order. It is plausible as most such principles are only as a *prima facie* principle, one that is to be weighed in the balance with others. For example, we are to weigh it against the principle to improve the average standard of life, or to advance the common good.¹⁸ But whatever other principles we hold, the claims of redress are to be taken into account. It is thought to represent one of the elements in our conception of justice. Now the difference principle is not of course the principle of redress. It does not require society to try to even out handicaps as if all were expected to compete on a fair basis in the same race. But the difference principle would allocate

17. See Herbert Spiegelberg, "A Defense of Human Equality," *Philosophical Review*, vol. 53 (1944), pp. 101, 113–123; and D. D. Raphael, "Justice and Liberty," *Proceedings of the Aristotelian Society*, vol. 51 (1950–1951), pp. 187f.

18. See, for example, Spiegelberg, pp. 120f.

resources in education, say, so as to improve the long-term expectation of the least favored. If this end is attained by giving more attention to the better endowed, it is permissible; otherwise not. And in making this decision, the value of education should not be assessed solely in terms of economic efficiency and social welfare. Equally if not more important is the role of education in enabling a person to enjoy the culture of his society and to take part in its affairs, and in this way to provide for each individual a secure sense of his own worth.

Thus although the difference principle is not the same as that of redress, it does achieve some of the intent of the latter principle. It transforms the aims of the basic structure so that the total scheme of institutions no longer emphasizes social efficiency and technocratic values. The difference principle 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 by the complementarities of this distribution. Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in ways that help the less fortunate as well. No one deserves his greater natural capacity nor merits a more favorable starting place in society. But, of course, this is no reason to ignore, much less to eliminate these distinctions. Instead, the basic structure can be arranged so that these contingencies work for the good of the least fortunate. Thus we are led to the difference principle if we wish to set up the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or receiving compensating advantages in return.

In view of these remarks we may reject the contention that the ordering of institutions is always defective because the distribution of natural talents and the contingencies of social circumstance are unjust, and this injustice must inevitably carry over to human arrangements. Occasionally this reflection is offered as an excuse for ignoring injustice, as if the refusal to acquiesce in injustice is on a par with being unable to accept death. The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts. Aristocratic and caste societies are unjust because they make these contingencies the ascriptive basis for belonging to more

or less enclosed and privileged social classes. The basic structure of these societies incorporates the arbitrariness found in nature. But there is no necessity for men to resign themselves to these contingencies. The social system is not an unchangeable order beyond human control but a pattern of human action. In justice as fairness men agree to avail themselves of the accidents of nature and social circumstance only when doing so is for the common benefit. The two principles are a fair way of meeting the arbitrariness of fortune; and while no doubt imperfect in other ways, the institutions which satisfy these principles are just.

A further point is that the difference principle expresses a conception of reciprocity. It is a principle of mutual benefit. At first sight, however, it may appear unfairly biased towards the least favored. To consider this question in an intuitive way, suppose for simplicity that there are only two groups in society, one noticeably more fortunate than the other. Subject to the usual constraints (defined by the priority of the first principle and fair equality of opportunity), society could maximize the expectations of either group but not both, since we can maximize with respect to only one aim at a time. It seems clear that society should not do the best it can for those initially more advantaged; so if we reject the difference principle, we must prefer maximizing some weighted mean of the two expectations. But if we give any weight to the more fortunate, we are valuing for their own sake the gains to those already more favored by natural and social contingencies. No one had an antecedent claim to be benefited in this way, and so to maximize a weighted mean is, so to speak, to favor the more fortunate twice over. Thus the more advantaged, when they view the matter from a general perspective, recognize that the well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life; they recognize also that they can expect the willing cooperation of all only if the terms of the scheme are reasonable. So they regard themselves as already compensated, as it were, by the advantages to which no one (including themselves) had a prior claim. They forego the idea of maximizing a weighted mean and regard the difference principle as a fair basis for regulating the basic structure.

One may object that those better situated deserve the greater advantages they could acquire for themselves under other schemes of cooperation whether or not these advantages are gained in ways that benefit others. Now it is true that given a just system of cooperation as a framework of public rules, and the expectations set up by it, those who, with the prospect of improving their condition, have done what the system announces it will reward are entitled to have their expectations met. In

this sense the more fortunate have title to their better situation; their claims are legitimate expectations established by social institutions and the community is obligated to fulfill them. But this sense of desert is that of entitlement. It presupposes the existence of an ongoing cooperative scheme and is irrelevant to the question whether this scheme itself is to be designed in accordance with the difference principle or some other criterion (§48).

Thus 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. The notion of desert does not apply here. To be sure, the more advantaged have a right to their natural assets, as does everyone else; this right is covered by the first principle under the basic liberty protecting the integrity of the person. And so the more advantaged are entitled to whatever they can acquire in accordance with the rules of a fair system of social cooperation. Our problem is how this scheme, the basic structure of society, is to be designed. From a suitably general standpoint, the difference principle appears acceptable to both the more advantaged and the less advantaged individual. Of course, none of this is strictly speaking an argument for the principle, since in a contract theory arguments are made from the point of view of the original position. But these intuitive considerations help to clarify the principle and the sense in which it is egalitarian.

I noted earlier (§13) that a society should try to avoid the region where the marginal contributions of those better off to the well-being of the less favored are negative. It should operate only on the upward rising part of the contribution curve (including of course the maximum). On this segment of the curve the criterion of mutual benefit is always fulfilled. Moreover, there is a natural sense in which the harmony of social interests is achieved; representative men do not gain at one another's expense since only reciprocal advantages are allowed. To be sure, the shape and slope of the contribution curve is determined in part at least by the natural lottery in native assets, and as such it is neither just nor unjust. But suppose we think of the forty-five degree line as representing the ideal of

a perfect harmony of interests; it is the contribution curve (a straight line in this case) along which everyone gains equally. Then it seems that the consistent realization of the two principles of justice tends to raise the curve closer to the ideal of a perfect harmony of interests. Once a society goes beyond the maximum it operates along the downward sloping part of the curve and a harmony of interests no longer exists. As the more favored gain the less advantaged lose, and vice versa. Thus it is to realize the ideal of the harmony of interests on terms that nature has given us, and to meet the criterion of mutual benefit, that we should stay in the region of positive contributions.

A further merit of the difference principle is that it provides an interpretation of the principle of fraternity. In comparison with liberty and equality, the idea of fraternity has had a lesser place in democratic theory. It is thought to be less specifically a political concept, not in itself defining any of the democratic rights but conveying instead certain attitudes of mind and forms of conduct without which we would lose sight of the values expressed by these rights.¹⁹ Or closely related to this, fraternity is held to represent a certain equality of social esteem manifest in various public conventions and in the absence of manners of deference and servility.²⁰ No doubt fraternity does imply these things, as well as a sense of civic friendship and social solidarity, but so understood it expresses no definite requirement. We have yet to find a principle of justice that matches the underlying idea. The difference principle, however, does seem to correspond to a natural meaning of fraternity: namely, to the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off. The family, in its ideal conception and often in practice, is one place where the principle of maximizing the sum of advantages is rejected. Members of a family commonly do not wish to gain unless they can do so in ways that further the interests of the rest. Now wanting to act on the difference principle has precisely this consequence. Those better circumstanced are willing to have their greater advantages only under a scheme in which this works out for the benefit of the less fortunate.

The ideal of fraternity is sometimes thought to involve ties of sentiment and feeling which it is unrealistic to expect between members of the wider society. And this is surely a further reason for its relative neglect in

19. See J. R. Pennock, *Liberal Democracy: Its Merits and Prospects* (New York, Rinehart, 1950), pp. 94f.

20. See R. B. Perry, *Puritanism and Democracy* (New York, The Vanguard Press, 1944), ch. XIX, sec. 8.

democratic theory. Many have felt that it has no proper place in political affairs. But if it is interpreted as incorporating the requirements of the difference principle, it is not an impracticable conception. It does seem that the institutions and policies which we most confidently think to be just satisfy its demands, at least in the sense that the inequalities permitted by them contribute to the well-being of the less favored. Or at any rate, so I shall try to make plausible in Chapter V. On this interpretation, then, the principle of fraternity is a perfectly feasible standard. Once we accept it we can associate the traditional ideas of liberty, equality, and fraternity with the democratic interpretation of the two principles of justice as follows: liberty corresponds to the first principle, equality to the idea of equality in the first principle together with equality of fair opportunity, and fraternity to the difference principle. In this way we have found a place for the conception of fraternity in the democratic interpretation of the two principles, and we see that it imposes a definite requirement on the basic structure of society. The other aspects of fraternity should not be forgotten, but the difference principle expresses its fundamental meaning from the standpoint of social justice.

Now it seems evident in the light of these observations that the democratic interpretation of the two principles will not lead to a meritocratic society.²¹ This form of social order follows the principle of careers open to talents and uses equality of opportunity as a way of releasing men's energies in the pursuit of economic prosperity and political dominion. There exists a marked disparity between the upper and lower classes in both means of life and the rights and privileges of organizational authority. The culture of the poorer strata is impoverished while that of the governing and technocratic elite is securely based on the service of the national ends of power and wealth. Equality of opportunity means an equal chance to leave the less fortunate behind in the personal quest for influence and social position.²² Thus a meritocratic society is a danger for the other interpretations of the principles of justice but not for the democratic conception. For, as we have just seen, the difference principle transforms the aims of society in fundamental respects. This consequence is even more obvious once we note that we must when necessary take into account the essential primary good of self-respect and the fact that a

21. The problem of a meritocratic society is the subject of Michael Young's fantasy, *The Rise of Meritocracy* (London, Thames and Hudson, 1958).

22. For elaborations of this point to which I am indebted, see John Schaar, "Equality of Opportunity and Beyond," *Nomos IX: Equality*, ed. by J. R. Pennock and J. W. Chapman (New York, Atherton Press, 1967); and B. A. O. Williams, "The Idea of Equality," pp. 125-129.

well-ordered society is a social union of social unions (§79). It follows that the confident sense of their own worth should be sought for the least favored and this limits the forms of hierarchy and the degrees of inequality that justice permits. Thus, for example, resources for education are not to be allotted solely or necessarily mainly 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 favored. As a society progresses the latter consideration becomes increasingly more important.

These remarks must suffice to sketch the conception of social justice expressed by the two principles for institutions. Before taking up the principles for individuals I should mention one further question. I have assumed so far that the distribution of natural assets is a fact of nature and that no attempt is made to change it, or even to take it into account. But to some extent this distribution is bound to be affected by the social system. A caste system, for example, tends to divide society into separate biological populations, while an open society encourages the widest genetic diversity.²³ In addition, it is possible to adopt eugenic policies, more or less explicit. I shall not consider questions of eugenics, confining myself throughout to the traditional concerns of social justice. We should note, though, that it is not in general to the advantage of the less fortunate to propose policies which reduce the talents of others. Instead, by accepting the difference principle, they view the greater abilities as a social asset to be used for the common advantage. But it is also in the interest of each to have greater natural assets. This enables him to pursue a preferred plan of life. In the original position, then, the parties want to insure for their descendants the best genetic endowment (assuming their own to be fixed). The pursuit of reasonable policies in this regard is something that earlier generations owe to later ones, this being a question that arises between generations. Thus over time a society is to take steps at least to preserve the general level of natural abilities and to prevent the diffusion of serious defects. These measures are to be guided by principles that the parties would be willing to consent to for the sake of their successors. I mention this speculative and difficult matter to indicate once again the manner in which the difference principle is likely to transform problems of social justice. We might conjecture that in the long run, if there is an upper bound on ability, we would eventually reach a society with the

23. See Theodosius Dobzhansky, *Mankind Evolving* (New Haven, Yale University Press, 1962), pp. 242–252, for a discussion of this question.

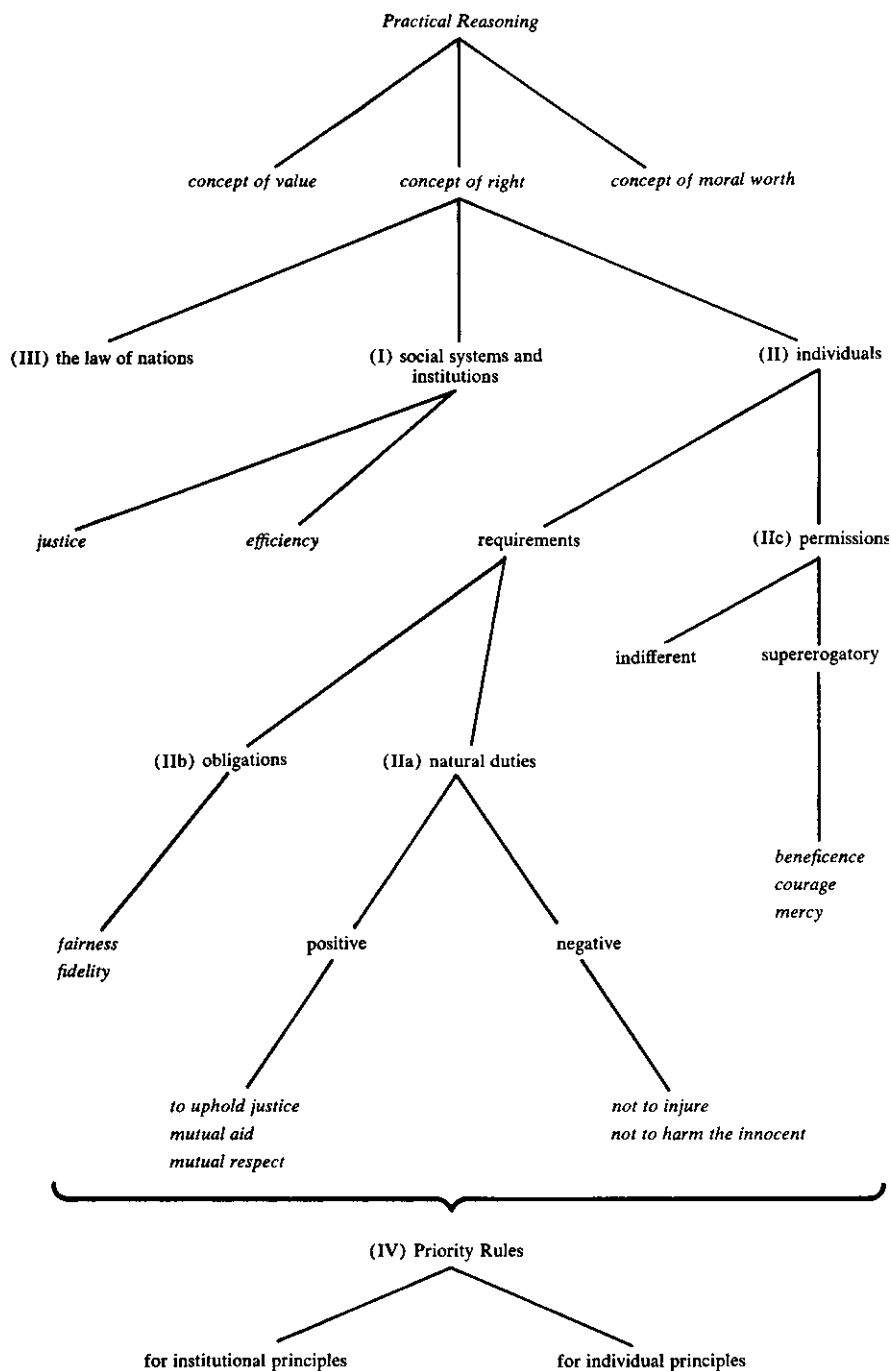
greatest equal liberty the members of which enjoy the greatest equal talent. But I shall not pursue this thought further.

18. PRINCIPLES FOR INDIVIDUALS: THE PRINCIPLE OF FAIRNESS

In the discussion so far I have considered the principles which apply to institutions or, more exactly, to the basic structure of society. It is clear, however, that principles of another kind must also be chosen, since a complete theory of right includes principles for individuals as well. In fact, as the accompanying diagram indicates, one needs in addition principles for the law of nations and of course priority rules for assigning weights when principles conflict. I shall not take up the principles for the law of nations, except in passing (§58); nor shall I attempt any systematic discussion of the principles for individuals. But certain principles of this type are an essential part of any theory of justice. In this and the next section the meaning of several of these principles is explained, although the examination of the reasons for choosing them is postponed until later (§§51–52).

The accompanying diagram is purely schematic. It is not suggested that the principles associated with the concepts lower down in the tree are deduced from the higher ones. The diagram simply indicates the kinds of principles that must be chosen before a full conception of right is on hand. The Roman numerals express the order in which the various sorts of principles are to be acknowledged in the original position. Thus the principles for the basic structure of society are to be agreed to first, principles for individuals next, followed by those for the law of nations. Last of all the priority rules are adopted, although we may tentatively choose these earlier contingent on subsequent revision.

Now the order in which principles are chosen raises a number of questions which I shall skip over. The important thing is that the various principles are to be adopted in a definite sequence and the reasons for this ordering are connected with the more difficult parts of the theory of justice. To illustrate: while it would be possible to choose many of the natural duties before those for the basic structure without changing the principles in any substantial way, the sequence in either case reflects the fact that obligations presuppose principles for social forms. And some natural duties also presuppose such principles, for example, the duty to support just institutions. For this reason it seems simpler to adopt all principles



for individuals after those for the basic structure. That principles for institutions are chosen first shows the social nature of the virtue of justice, its intimate connection with social practices so often noted by idealists. When Bradley says that the individual is a bare abstraction, he can be interpreted to say, without too much distortion, that a person's obligations and duties presuppose a moral conception of institutions and therefore that the content of just institutions must be defined before the requirements for individuals can be set out.²⁴ And this is to say that, in most cases, the principles for obligations and duties should be settled upon after those for the basic structure.

Therefore, to establish a complete conception of right, the parties in the original position are to choose in a definite order not only a conception of justice but also principles to go with each major concept falling under the concept of right. These concepts are I assume relatively few in number and have a determinate relation to each other. Thus, in addition to principles for institutions there must be an agreement on principles for such notions as fairness and fidelity, mutual respect and beneficence as these apply to individuals, as well as on principles for the conduct of states. The intuitive idea is this: the concept of something's being right is the same as, or better, may be replaced by, the concept of its being in accordance with the principles that in the original position would be acknowledged to apply to things of its kind. I do not interpret this concept of right as providing an analysis of the meaning of the term "right" as normally used in moral contexts. It is not meant as an analysis of the concept of right in the traditional sense. Rather, the broader notion of rightness as fairness is to be understood as a replacement for existing conceptions. There is no necessity to say that sameness of meaning holds between the word "right" (and its relatives) in its ordinary use and the more elaborate locutions needed to express this ideal contractarian concept of right. For our purposes here I accept the view that a sound analysis is best understood as providing a satisfactory substitute, one that meets certain desiderata while avoiding certain obscurities and confusions. In other words, explication is elimination: we start with a concept the expression for which is somehow troublesome; but it serves certain ends that cannot be given up. An explication achieves these ends in other ways that are relatively free of difficulty.²⁵ Thus if the theory of justice as fairness, or more generally of rightness as fairness, fits our considered

24. See F. H. Bradley, *Ethical Studies*, 2nd ed. (Oxford, The Clarendon Press, 1927), pp. 163–189.

25. See W. V. Quine, *Word and Object* (Cambridge, Mass., M.I.T. Press, 1960), pp. 257–262, whom I follow here.

judgments in reflective equilibrium, and if it enables us to say all that on due examination we want to say, then it provides a way of eliminating customary phrases in favor of other expressions. So understood one may think of justice as fairness and rightness as fairness as providing a definition or explication of the concepts of justice and right.

I now turn to one of the principles that applies to individuals, the principle of fairness. I shall try to use this principle to account for all requirements that are obligations as distinct from natural duties. This principle holds that a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests. The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission.²⁶ We are not to gain from the cooperative labors of others without doing our fair share. The two principles of justice define what is a fair share in the case of institutions belonging to the basic structure. So if these arrangements are just, each person receives a fair share when all (himself included) do their part.

Now by definition the requirements specified by the principle of fairness are the obligations. All obligations arise in this way. It is important, however, to note that the principle of fairness has two parts, the first which states that the institutions or practices in question must be just, the second which characterizes the requisite voluntary acts. The first part formulates the conditions necessary if these voluntary acts are to give rise to obligations. By the principle of fairness it is not possible to be bound to unjust institutions, or at least to institutions which exceed the limits of tolerable injustice (so far undefined). In particular, it is not possible to have an obligation to autocratic and arbitrary forms of government. The necessary background does not exist for obligations to arise from consensual or other acts, however expressed. Obligatory ties presuppose just institutions, or ones reasonably just in view of the circumstances. It is, therefore, a mistake to argue against justice as fairness and contract

26. I am indebted here to H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review*, vol. 64 (1955), pp. 185f.

theories generally that they have the consequence that citizens are under an obligation to unjust regimes which coerce their consent or win their tacit acquiescence in more refined ways. Locke especially has been the object of this mistaken criticism which overlooks the necessity for certain background conditions.²⁷

There are several characteristic features of obligations which distinguish them from other moral requirements. For one thing, they arise as a result of our voluntary acts; these acts may be the giving of express or tacit undertakings, such as promises and agreements, but they need not be, as in the case of accepting benefits. Further, the content of obligations is always defined by an institution or practice the rules of which specify what it is that one is required to do. And finally, obligations are normally owed to definite individuals, namely, those who are cooperating together to maintain the arrangement in question.²⁸ As an example illustrating these features, consider the political act of running for and (if successful) holding public office in a constitutional regime. This act gives rise to the obligation to fulfill the duties of office, and these duties determine the content of the obligation. Here I think of duties not as moral duties but as tasks and responsibilities assigned to certain institutional positions. It is nevertheless the case that one may have a moral reason (one based on a moral principle) for discharging these duties, as when one is bound to do so by the principle of fairness. Also, one who assumes public office is obligated to his fellow citizens whose trust and confidence he has sought and with whom he is cooperating in running a democratic society. Similarly, we assume obligations when we marry as well as when we accept positions of judicial, administrative, or other authority. We acquire obligations by promising and by tacit understandings, and even when we join a game, namely, the obligation to play by the rules and to be a good sport.

All of these obligations are, I believe, covered by the principle of fairness. There are two important cases though that are somewhat problematical, namely, political obligation as it applies to the average citizen, rather than, say, to those who hold office, and the obligation to keep

27. Locke holds that conquest gives no right, nor does violence and injury however much "colored with the name, pretences, or forms of law." *Second Treatise of Government*, pars. 176, 20. See Hanna Pitkin's discussion of Locke in "Obligation and Consent I," *American Political Science Review*, vol. 59 (1965), esp. pp. 994–997, the essentials of which I accept.

28. In distinguishing between obligations and natural duties I have drawn upon H. L. A. Hart, "Legal and Moral Obligation," in *Essays in Moral Philosophy*, ed. by A. I. Melden (Seattle, University of Washington Press, 1958), pp. 100–105; C. H. Whiteley, "On Duties," *Proceedings of the Aristotelian Society*, vol. 53 (1952–53); and R. B. Brandt, "The Concepts of Obligation and Duty," *Mind*, vol. 73 (1964).

promises. In the first case it is not clear what is the requisite binding action or who has performed it. There is, I believe, no political obligation, strictly speaking, for citizens generally. In the second case an explanation is needed as to how fiduciary obligations arise from taking advantage of a just practice. We need to look into the nature of the relevant practice in this instance. These matters I shall discuss at another place (§§51–52).

19. PRINCIPLES FOR INDIVIDUALS: THE NATURAL DUTIES

Whereas all obligations are accounted for by the principle of fairness, there are many natural duties, positive and negative. I shall make no attempt to bring them under one principle. Admittedly this lack of unity runs the risk of putting too much strain on priority rules, but I shall have to leave this difficulty aside. The following are examples of natural duties: the duty of helping another when he is in need or jeopardy, provided that one can do so without excessive risk or loss to oneself; the duty not to harm or injure another; and the duty not to cause unnecessary suffering. The first of these duties, the duty of mutual aid, is a positive duty in that it is a duty to do something good for another; whereas the last two duties are negative in that they require us not to do something that is bad. The distinction between positive and negative duties is intuitively clear in many cases, but often gives way. I shall not put any stress upon it. The distinction is important only in connection with the priority problem, since it seems plausible to hold that, when the distinction is clear, negative duties have more weight than positive ones. But I shall not pursue this question here.

Now in contrast with obligations, it is characteristic of natural duties that they apply to us without regard to our voluntary acts. Moreover, they have no necessary connection with institutions or social practices; their content is not, in general, defined by the rules of these arrangements. Thus we have a natural duty not to be cruel, and a duty to help another, whether or not we have committed ourselves to these actions. It is no defense or excuse to say that we have made no promise not to be cruel or vindictive, or to come to another's aid. Indeed, a promise not to kill, for example, is normally ludicrously redundant, and the suggestion that it establishes a moral requirement where none already existed is mistaken. Such a promise is in order, if it ever is so, only when for special reasons one has the right to kill, perhaps in a situation arising in a just war. A

further feature of natural duties is that they hold between persons irrespective of their institutional relationships; they obtain between all as equal moral persons. In this sense the natural duties are owed not only to definite individuals, say to those cooperating together in a particular social arrangement, but to persons generally. This feature in particular suggests the propriety of the adjective “natural.” One aim of the law of nations is to assure the recognition of these duties in the conduct of states. This is especially important in constraining the means used in war, assuming that, in certain circumstances anyway, wars of self-defense are justified (§58).

From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves. Thus if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing scheme. Each is bound to these institutions independent of his voluntary acts, performative or otherwise. Thus even though the principles of natural duty are derived from a contractarian point of view, they do not presuppose an act of consent, express or tacit, or indeed any voluntary act, in order to apply. The principles that hold for individuals, just as the principles for institutions, are those that would be acknowledged in the original position. These principles are understood as the outcome of a hypothetical agreement. If their formulation shows that no binding action, consensual or otherwise, is a presupposition of their application, then they apply unconditionally. The reason why obligations depend upon voluntary acts is given by the second part of the principle of fairness which states this condition. It has nothing to do with the contractual nature of justice as fairness.²⁹ In fact, once the full set of principles, a complete conception of right, is on hand, we can simply forget about the conception of original position and apply these principles as we would any others.

29. For clarification on these points I am indebted to Robert Amdur. Views seeking to derive political ties solely from consensual acts are found in Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, Mass., Harvard University Press, 1970), esp. pp. ix-xvi, 7-10, 18-21, and ch. 5; and Joseph Tussman, *Obligation and the Body Politic* (New York, Oxford University Press, 1960). On the latter, see Hanna Pitkin, “Obligation and Consent I,” pp. 997f. For further discussions of the problems of consent theory in addition to Pitkin, see Alan Gewirth, “Political Justice,” in *Social Justice*, ed. R. B. Brandt (Englewood Cliffs, N.J., Prentice-Hall, Inc., 1962), pp. 128-141; and J. P. Plamenatz, *Consent, Freedom, and Political Obligation*, 2nd ed. (London, Oxford University Press, 1968).

There is nothing inconsistent, or even surprising, in the fact that justice as fairness allows unconditional principles. It suffices to show that the parties in the original position would agree to principles defining the natural duties which as formulated hold unconditionally. We should note that, since the principle of fairness may establish a bond to existing just arrangements, the obligations covered by it can support a tie already present that derives from the natural duty of justice. Thus a person may have both a natural duty and an obligation to comply with an institution and to do his part. The thing to observe here is that there are several ways in which one may be bound to political institutions. For the most part the natural duty of justice is the more fundamental, since it binds citizens generally and requires no voluntary acts in order to apply. The principle of fairness, on the other hand, binds only those who assume public office, say, or those who, being better situated, have advanced their aims within the system. There is, then, another sense of *noblesse oblige*: namely, that those who are more privileged are likely to acquire obligations tying them even more strongly to a just scheme.

I shall say very little about the other kind of principles for individuals. For while permissions are not an unimportant class of actions, I must limit the discussion to the theory of social justice. It may be observed, though, that once all the principles defining requirements are chosen, no further acknowledgments are necessary to define permissions. This is so because permissions are those acts which we are at liberty both to do and not to do. They are acts which violate no obligation or natural duty. In studying permissions one wishes to single out those that are significant from a moral point of view and to explain their relation to duties and obligations. Many such actions are morally indifferent or trivial. But among permissions is the interesting class of supererogatory actions. These are acts of benevolence and mercy, of heroism and self-sacrifice. It is good to do these actions but it is not one's duty or obligation. Supererogatory acts are not required, though normally they would be were it not for the loss or risk involved for the agent himself. A person who does a supererogatory act does not invoke the exemption which the natural duties allow. For while we have a natural duty to bring about a great good, say, if we can do so relatively easily, we are released from this duty when the cost to ourselves is considerable. Supererogatory acts raise questions of first importance for ethical theory. For example, it seems offhand that the classical utilitarian view cannot account for them. It would appear that we are bound to perform actions which bring about a greater good for others whatever the cost to ourselves provided that the sum of advantages

altogether exceeds that of other acts open to us. There is nothing corresponding to the exemptions included in the formulation of the natural duties. Thus some of the actions which justice as fairness counts as supererogatory may be required by the utility principle. I shall not, however, pursue this matter further. Supererogatory acts are mentioned here for the sake of completeness. We must now turn to the interpretation of the initial situation.