Phil 115 Political Philosophy
Véronique Munoz-Dardé
Fall Semester  2005

Lecture: Tuesday and Thursday,  9.30am-11am, 20 Barrows

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Course material will be posted on the Berkeley course website and on following website:
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Discussion sections to be arranged in lecture

Who Should Take This Course?
This course will presuppose some prior work in philosophy, but no prior knowledge of either political philosophy or ethics. If you are unsure whether you are sufficiently well-prepared to take this course, then talk to me about it.

Reading
Readings will mainly be drawn from the following works:

- Rousseau, The Social Contract (1762), Books 1 and 2 (Reading will be distributed in class)
- Clayton, Matthew and Williams, Andrew (eds.) The Ideal of Equality. Palgrave Macmillan, 2002

Description
This course is devoted to some of the central questions in contemporary political philosophy: liberty, needs and equality. The course is focused on the contractualist tradition drawn from Jean-Jacques Rousseau, and which has been elaborated in depth in the work of John Rawls and T.M Scanlon.
Course Outline
The course will be organized around three basic themes:

Rousseau and the Social Contract
What does Rousseau take the central problems of political philosophy to be, and how could the framing of a social contract offer a solution to them?

Rawls’s Political Liberalism
Rawls offers a conception of justice and of the contractualist outlook in his *A Theory of Justice* and *Justice as Fairness a Restatement* which can be seen as developing the central themes from Rousseau. We shall examine the basic elements of Rawls’s approach: the role of the Original Position in justifying the account; the importance of reflective equilibrium; the importance of a reasonable overlapping consensus; the significance of the Basic Structure; the application and importance of the Difference Principle.

Egalitarianism in Contrast and Opposition to Liberalism
Rawls presents his political liberalism as a version of egalitarian theory. Various political philosophers have questioned whether political liberalism is genuinely a form of egalitarianism. We will look at the egalitarian critique and examine the question of what form of equality we aspire to and how that links with the claim of needs that others have on us, and we have on them.

Requirements
1) An in-class exam on October 11th
2) A 5-page paper due on November 8th
3) A 5-page paper due on November 29th - extended to 2nd December
4) A final examination

Policies
1) *All* assigned work must be handed in to receive a passing grade in the course.

2) Papers should be handed in on time. If there is an emergency and you need extra time, please contact me or your GSI in advance to request an extension. You may contact me by email (v.munoz@ucl.ac.uk). Papers handed in late without an extension will be graded down in proportion to their lateness, and no such papers will be accepted at all after the last class on December 8.

3) You are strongly encouraged to discuss comments and grades with your GSI or with me. Grades will not be changed and are nonnegotiable, but you can learn why you received the grade you did and what you can do to improve.

4) For additional help concerning how to read and write philosophy papers, see:
   - http://www.princeton.edu/~jimpryor/general/vocab/
   - http://www.princeton.edu/~jimpryor/general/reading.html
   - http://www.princeton.edu/~jimpryor/general/writing.html
Contract and Consent

‘Obedience to a law which we prescribe to ourselves is liberty.’
Rousseau, Social Contract, Book 1

Actual, tacit and hypothetical consent

1. A challenge:

Hume, ‘Of the Original Contract’:

Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given a tacit consent to his authority, and promised obedience; it may be answered, that such an implied consent can only have place, where a man imagines, that the matter depends on his choice. But where he thinks (as all mankind do who are born under established governments) that by his birth he owes allegiance to a certain prince or certain government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims. Can we seriously say, that a poor peasant or artizan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her.
Contrast Kant:

‘On the common saying: “This may be true in Theory, but it does not apply in practice.”’

Section ‘On the relationship of theory to practice in political right’ subtitled Against Hobbes:

[W]e need not assume that this contract (contractus originarius or pactum sociale), based on a coalition of the wills of all private individuals in a nation to form a common, public will for the purposes of rightful legislation, actually exists as a fact, for it cannot possibly be so. Such an assumption would mean that we would first have to prove from history that some nation, whose rights and obligations have been passed down to us, did in fact perform such an act ...

But the effects of hypothetical thought are practical:

It is in fact merely an idea of reason, which nonetheless has undoubted practical reality; for it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of a whole nation, and to regard each subject, in so far as he can claim citizenship, as if he had consented within the general will.

And this is the test to which we can and should submit every law:

This is the test of the rightfulness of every public law. For if the law is such that a whole people could not possibly agree to it ... it is unjust ...

v m-d/1“ Sept. 2005
The Idea of a Social Contract

Last Week
We introduced:
- The idea of a Contract and the Political Community: the specificity of the political community (not a free association), and hence the problematic status of voluntariness.
- Hume’s argument against the normative force of tacit agreement.
- Kant’s conception a political contract as ‘an idea of reason, which nonetheless has undoubted practical reality’.

Challenges to the idea of a social contract (continued)

1. Consider a criticism of hypothetical contract:
A hypothetical contract is not simply a pale form of an actual contract; it is no contract at all.
If, for example, I am playing a game, it may be that I would have agreed to any number of ground rules if I had been asked in advance of play. It does not follow that these rules may be enforced against me if I have not, in fact, agreed to them. 
Ronald Dworkin, ‘The Original Position’:

2. A different challenge: the charge of circularity
What is the normative force of the contract if its terms are rigged; if, that is, chooser and conditions of choice are defined such that they can only yield a certain type of result?

So we have a problem in seeing whether there is any plausible content to the idea that citizens of a just state are party to some contract, and the problem of understanding what utility there could be for a political theory to be formulated in terms of a contract.

The social contract in history

A familiar theme in early modern philosophy is the idea of the social contract. This is developed in Hobbes’s Leviathan, and in a different way in Locke’s Second Treatise of Government. Their central Enlightenment critics are Hume and Rousseau. Interestingly our two problems surface in Rousseau’s discussion, but they do not lead to a rejection of the social contract; for they lead to a recasting. In the context of Rousseau we need to ask: ‘What is the social contract for?’.

Where do we start?
Aim of the Social Contract
I intend to examine whether, in the ordering of society, there can be a reliable and legitimate rule of administration, taking men as they are and laws as they can be. I shall try, throughout my enquiry, to combine what is allowed by right with what is prescribed by self-interest, in order that justice and utility should not be separated. (Social Contract, Book I, Intro)

Man is born free, and everywhere he is in chains … How has this change come about. I do not know. How can it be made legitimate? That is a question which I believe I can resolve. (Social Contract, I,1)
Methodology

Facts and hypothetical reasoning

Let us begin by putting aside all facts, for they have no bearing on the question. The investigations that may be undertaken concerning this subject should not be taken for historical truths, but only for hypothetical and conditional reasoning. (*Discourse on Inequality*, Part 1)

Contrast the wrong methodology:
The philosophers, who have inquired into the foundations of society, have all felt the necessity of going back to a state of nature; but no one of them has got there. [Their] usual method of reasoning is to establish right by fact. (*Social Contract*, Book 1).

Illustration of the general tendency Rousseau denounces:
‘Aristotle … said that men are by no means equal naturally, but that some are born for slavery, and others for dominion.’ Rousseau comments: ‘Aristotle was right; but he took the effect for the cause. Nothing can be more certain than that every man born in slavery is born for slavery.’

(*Social Contract*, Book I, 1)

The problem the social contract is meant to solve?

This is how Rousseau describes the precise problem he wants to find a solution to:

‘The problem is to find a form of association which will defend and protect with the whole common force the person and good of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.’ This is the fundamental problem of which the social contract provides the solution.

But the description of the problem begins with the war of all against all:

1. I SUPPOSE men to have reached the point at which the obstacles in the way of their preservation in the state of nature show their power of resistance to be greater than the resources at the disposal of each individual for his maintenance in that state. That primitive condition can then subsist no longer; and the human race would perish unless it changed its manner of existence.

2. But, as men cannot engender new forces, but only unite and direct existing ones, they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance. These they have to bring into play by means of a single motive power, and cause to act in concert.

3. This sum of forces can arise only where several persons come together: but, as the force and liberty of each man are the chief instruments of his self-preservation, how can he pledge them without harming his own interests, and neglecting the care he owes to himself?

4. ‘The problem is to find a form of association which will defend and protect with the whole common force the person and good of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.’ This is the fundamental problem of which the social contract provides the solution.

(...)

5. [W]e shall find that it reduces itself to the following terms:

‘Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole.’(*Social Contract*, Book I, 6)

Compare Hobbes:
The only way to erect such a Common Power as may be able to defend them… is to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will. (...) This is … a reall Unite of them all; in one and the same Person, made by Covenant of every man with every man, in such manner, as if every man should say to every man ‘I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition that thou give up the Right to him, and Authorise all his Actions in like manner.’ This done, the Multitude so united in one Person, is called a Common-Wealth, in latine Civitas. (*Leviathan*, Part II, Chapter 17)

v m-d/6-8 Sept. 2005
Reading for 13th and 15th September:

1. Continue reading of passages from Rousseau’s *Discourse on Inequality* and the first book of the *Social Contract* distributed in class (with a view to 1. finding arguments, and identifying main points made (in the light of this week’s lectures); and 2. preparing questions and criticisms

2. Ideally you should acquaint yourself with the rest of both texts. Both are available in a number of cheap editions, as well as online:
   - *Social contract* (read in particular Book 2):
     http://www.constitution.org/jjr/socon.htm
   - *Discourse on Inequality*:
     http://www.constitution.org/jjr/ineq.htm

3. Finally for those of you who are already familiar with Rousseau, I recommend the following secondary reading (available on jstor):

   What Is the General Will?
   Gopal Sreenivasan
   Stable URL: http://links.jstor.org/sici?sici=0031-8108%28200010%29109%3A4%3C545%3AWITGW%3E2.0.CO%3B2-%23
Social Contract: Hobbes & Rousseau

Last Week
We saw:
- Dworkin’s argument against the hypothetical contract. This form of contract would be otiose if it were to legitimate obedience of the governed to government. Here we returned to the ‘practical reality’ that a hypothetical contract might nevertheless have. (We also mentioned a different challenge: the charge of circularity, to which we return when we discuss Rawls.)
- Rousseau’s own definition of his precise purpose in the Social Contract. In particular, Rousseau envisages rules of government aimed at guaranteeing both stability (reliability) and legitimacy. Rousseau adds that for this purpose we need to take men as they are and laws as they could be, and that utility (what is prescribed by self-interest) and justice should not be separated.
- The famous ‘Man is born free, and everywhere he is in chains.’ Rousseau hopes to find legitimate constraints. That is, constraints compatible with the fact that man is born free.
- Rousseau’s definition of the ‘problem the social contract is meant to solve’. Surprisingly Rousseau seems to agree with Hobbes: it is true that the state of nature ended up in a war of all against all. Yet Rousseau and Hobbes are said to disagree about the very moral anthropology which leads to the war of all against all. How can this be? The precise nature of their disagreement(s) is the object of today’s lecture.

Hobbes and Rousseau: common aspects and disagreements

General structure of the narrative in both Hobbes and Rousseau
- General traits of human nature (distinguished from what is merely the fruit of local conventions)
- Problems of coordination, cooperation, peace and self-preservation; these problems are derived from general aspects of human societies
- A solution to this problem in the form of a social contract to secure self-preservation

Minimum elements of a ‘Hobbesian’ contract
i- Men are equal, at least in their limitations. (None of them is so superior in physical strength or faculties of the mind that they can durably dominate all others.)
ii- If each performs what seems in his or her own best interest, all might end-up worse-off than they would have ended up had they co-operated. (The state of nature ends up in a war ‘of every man against every man’)
iii- therefore from a perspective of self-interest, or rather self-preservation, people must agree with one another to create a sovereign, and each agrees to give up, to alienate, his or her power to direct his or her own life.

Question: at which stage does Rousseau disagree?
Now consider two criticisms of Hobbes

1. Hume:
   Hume thinks that we need a government for reasons which are, in part, not dissimilar to Hobbes’s war ‘of every man against every man’.
   
   If the reason be asked of that obedience, which we are bound to pay to government, I readily answer, because society could not otherwise subsist: and this answer is clear and intelligible to all mankind.

   This is, of course, not to say that governments came into being with that purpose, through a contract:
   
   Almost all governments, which exist at present, or of which there remains any record in story, have been founded originally either on usurpation or conquest, or both, without any pretence of a fair consent or voluntary subjection of the people.

   (Both quotes from ‘Of the Original Contract’; italics in original.)

   But Hume’s fundamental disagreement with Hobbes regards his moral anthropology. In the Enquiry, he criticizes the ‘Selfish system’ of Hobbes (and Locke!) thus:

   [A] Hobbist readily allows, that there is such a thing as friendship in the world, without hypocrisy or disguise; though he may attempt, by a philosophical chemistry, to resolve the elements of this passion … into those of another, and explain every affection to be self-love, twisted and moulded, by a particular turn of imagination, into a variety of appearances. But as the same turn of imagination prevails not in every man, nor gives the same direction to the original passion; this is sufficient, even according to the selfish system, to make the widest difference in human characters, and denominate one man virtuous and humane, another vicious and meanly interested. Enquiry Concerning the Principles of Morals

2. Hampton:
   In her book (Hobbes and the Social Contract Tradition), Hampton claims that Hobbes does not mount a viable argument because he grants that the people will and ought to judge whether the sovereign secures their protection. The right to govern oneself cannot, and should not, be alienated.

Which of these criticisms does Rousseau adopt? A combination of both.

A different political anthropology; Rousseau’s dialogue with Hobbes in the Discourse on Inequality

Above all, let us not conclude, with Hobbes, that because man has no idea of goodness, he must be naturally wicked; that he is vicious because he does not know virtue; that he always refuses to do his fellow-creatures services which he does not think they have a right to demand; or that by virtue of the right he truly claims to everything he needs, he foolishly imagines himself the sole proprietor of the whole universe.

Discourse on Inequality, Part I

Hobbes had seen clearly the defects of all the modern definitions of natural right: but the consequences which he deduces from his own show that he understands it in an equally false sense. In reasoning on the principles he lays down, he ought to have said that the state of nature, [is] that in which the care for our own preservation is the least prejudicial to that of others [...].

Hobbes did not reflect that the same cause, which prevents a savage from making use of his reason, as our jurists hold, prevents him also from abusing his faculties, as Hobbes himself allows: so that it may be justly said that savages are not bad merely because they do not know what it is to be good: for it is neither the development of the understanding nor the restraint of law that hinders them from doing ill; but the peacefulness of their passions, and their ignorance of vice.

Discourse on Inequality, Part 1, emphasis added
Human progress in the state of nature and its ending in a state of war:
The first man who, having enclosed a piece of ground, bethought himself of saying 'This is mine', and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars and murders, from how many crimes horrors and misfortunes might not any one have saved mankind, by pulling up the stakes; or filling up the ditch (...). But there is great probability that things had then already come to such a pitch, that they could no longer continue as they were; for the idea of property depends on many prior ideas, which could only be acquired successively, and cannot have been formed all at once in the human mind. Mankind must have made very considerable progress, and acquired considerable knowledge (...), before they arrived at this last point of the state of nature.

*Discourse on Inequality*, Part 2

Usurpations by the rich, robbery by the poor, and the unbridled passions of both, suppressed the cries of natural compassion and the still feeble voice of justice, and filled men with avarice, ambition, and vice. … The new-born state of society thus gave rise to a horrible state of war [...].

*Discourse on Inequality*, Part 2, emphasis added

Solution of a ‘proto-Hobbes’ to the war of all against all:
'Let us unite. In order to protect the weak from oppression, restrain the ambitious, and assure everyone of possessing what belongs to him. … In short, instead of turning our forces against ourselves, let us gather them into one supreme power that governs us … that protects and defends all members of the association, repulses common enemies, and maintains us in eternal concord.'

Rousseau comments:
They all ran to chain themselves, in the belief that they secured their liberty, for although they had enough sense to realise the advantages of a political establishment, they did not have enough experience to foresee its dangers.

*Discourse on Inequality*, concluding section

v m-d/12 Sept. 2005
Social Contract: The General Will

We are now in a position to return to the problem that the General Will is meant to solve:

1. I suppose men to have reached the point at which the obstacles in the way of their preservation in the state of nature show their power of resistance to be greater than the resources at the disposal of each individual for his maintenance in that state. That primitive condition can then subsist no longer; and the human race would perish unless it changed its manner of existence.

2. But, as men cannot engender new forces, but only unite and direct existing ones, they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance. These they have to bring into play by means of a single motive power, and cause to act in concert.

3. This sum of forces can arise only where several persons come together: but, as the force and liberty of each man are the chief instruments of his self-preservation, how can he pledge them without harming his own interests, and neglecting the care he owes to himself? This difficulty, in its bearing on my present subject, may be stated in the following terms:

4. ‘The problem is to find a form of association which will defend and protect with the whole common force the person and good of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.’ This is the fundamental problem of which the social contract provides the solution.

(Alienating the liberty of each man in order to get self-preservation endangers self-preservation itself. So we need to find a form of constraint, through binding laws, but these laws must leave us as free as before. This is achieved through each associate obeying himself alone.

Questions
- Why is alienation of our liberty a problem for our self-preservation?
- Why is it a requirement that each associate 'obeys himself alone'?
- What does 'as free as before' mean?

Alienation of liberty and self-preservation

Commenting on Pufendorf's contention that liberty is alienable just as any other property, Rousseau writes:

[T]his seems a very weak argument. … For in the first place, the property I alienate becomes quite foreign to me, nor can I suffer from the abuse of it; but it very nearly concerns me that my liberty should not be abused, and I cannot without incurring the guilt of the crimes I may be compelled to commit, expose myself to become an instrument of crime.

By giving up [life], we degrade our being; by giving up [liberty], we do our best to annul it; and, as no temporal good can indemnify us for the loss of either, it would be an offence against both reason and nature to renounce them at any price whatsoever.

Discourse on Inequality, Part 2
In the (important) sixth chapter of the first book of the *Social Contract*, Rousseau reformulates these arguments thus:

For him who renounces everything no indemnity is possible. Such a renunciation is incompatible with man’s nature; to remove all liberty from his will is to remove all morality from his acts. Finally, it is an empty and contradictory convention that sets up, on the one side, absolute authority, and, on the other, unlimited obedience. Is it not clear that we can be under no obligation to a person from whom we have the right to exact everything? Does not this condition alone, in the absence of equivalence or exchange, in itself involve the nullity of the act? For what right can my slave have against me, when all that he has belongs to me, and, his right being mine, this right of mine against myself is a phrase devoid of meaning?

Sc, book 1, 6

There are several lines of argument here:

1. {The property I alienate becomes quite foreign to me, nor can I suffer from the abuse of it; but it very nearly concerns me that my liberty should not be abused. DI}
   {Such a renunciation is incompatible with man’s nature. SC}
2. {I cannot without incurring the guilt of the crimes I may be compelled to commit, expose myself to become an instrument of crime. DI}
   {To remove all liberty from his will is to remove all morality from his acts. SC}
3. {It would be an offence against both reason and nature to renounce [life or liberty] at any price whatsoever. DI}
   {It is an empty and contradictory convention. SC}

In other words:

1- Liberty as a power is as much a part of an individual's human nature as are his limbs – if the point of the contract is to preserve safety of body as well as mere life, then it should also preserve liberty.

2- Liberty is not just part of us; it is something that we care about, and deeply – where one is the instrument of another’s will one’s limbs can be brought to act in a way that is immoral. (One would not will to do what is simply wrong.)

3- Possession of liberty is a precondition of entering into a genuine contract so there is not the possibility of contracting away liberty entirely.

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**Reading for Thursday 22nd and following week:**

Last Week
We saw:
- The common structure of the contractual narrative in Hobbes and Rousseau (general facts of human nature, problems for self-preservation; solution to this problem).
- Two criticisms of Hobbes, namely:
  i- Hume’s disagreement with Hobbes (or rather: ‘Hobbism’): a plausible moral anthropology does not explain all human actions and motivations solely from self-love.
  ii- Hampton’s internal criticism of Hobbes. As Hobbes himself grants, self-preservation requires the non-alienability of the right to govern oneself. (Yet Hobbes insists that each individual gives up his or her power to direct his or her own life.)
- Rousseau echoes Hume (and anticipates Hampton). He seeks to retrace a more plausible moral, and thereby political, anthropology than Hobbes’s in the *Discourse on Inequality*. Not unlike Hobbes, he considers that the last point of the state of nature is a state of war of all against all. But, Rousseau points out, self-preservation through a contract is only possible if we do not alienate ‘the chief instruments of our self-preservation’.
- Why Rousseau defines the problem that the General Will is meant to solve in the way he does. The problem is to find a form of political constraint conducive to self-preservation, but which does not entail alienating our liberty. (For liberty is one of ‘the chief instruments of our self-preservation’.)
- Several lines of argument against the alienation of liberty in the *Discourse on Inequality* and the *Social Contract*. Rousseau insists that liberty is part of what human beings have a central concern to retain. It is ‘a constituent part of our being’, and it needs protection just as much as our physical person. Furthermore the frustration of our will is not simply a more or less matter. A contract through which one makes oneself solely the instrument of another’s will would be empty. (Liberty is a precondition of the acts of binding that we make. It is what allows us to contract and makes us agents.)

Now return to:
- the requirement that each associate ‘obeys himself alone’; and
- the idea that each associate remains ‘as free as before’

Each associate ‘obeys himself alone’ and remains ‘as free as before’
- The association is hypothetical.
  It responds to the question: ‘What laws would we lay down, if asked to elaborate the rules of our political association?’ Here remember Kant and his test: ‘[I]f the law is such that a whole people could not possibly agree to it ... it is unjust.’
- The law must be based on what I can myself will.
- I obey the law that I will, and in this sense ‘myself alone’.
- In this context, ‘as free as before’ cannot be a matter of more or less; it relates, rather, to the fact that the law is such that it is compatible with my remaining free, or self-governed. Rousseau is therefore entitled to conclude:
  Obedience to a law which we prescribe to ourselves is liberty. (*Social Contract*, Book I, 8)

And this is the sense in which, for Rousseau, the contract takes men as they are and laws as they could be, making our legal chains legitimate.
A brief summary:

*Desiderata of political legitimacy & General Will*

- Laws must protect us against invasion by others. They must guarantee our self-preservation. (Contrast: advance our self-interest.)
- Laws must be such that they can be willed by each of the people submitted to them. (This is the test to know that laws are just.)
- The will must be general: “The conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others.” ‘Under this system, each necessarily submits to the conditions he imposes on others: and this admirable agreement between interest and justice gives to the common deliberations an equitable character (Book II, 6) (Contrast the ‘will of all’, or a mere status quo.)

**So what is the General Will?**

1. It is a solution to the coordination of wills.
2. The solution ensures our self-preservation.
3. It is a solution of a sort which does not involve alienation of liberty.
4. It allows control over our agency. (Each of us obeys himself or herself alone.)
5. It lets us discriminate between being commanded and being subject to ourselves.
6. Its input and output are the same for each. (This is what makes it general.)
7. It is a legitimate or equitable. (It is not a mere status quo, or the will of all.)
8. It is absolute.

These clauses, properly understood, may be reduced to one — the total alienation of each associate, together with all his rights, to the whole community; for, in the first place, as each gives himself absolutely, the conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others.

Moreover, the alienation being without reserve, the union is as perfect as it can be, and no associate has anything more to demand: for, if the individuals retained certain rights, as there would be no common superior to decide between them and the public, each, being on one point his own judge, would ask to be so on all; the state of nature would thus continue, and the association would necessarily become inoperative or tyrannical.

Finally, each man, in giving himself to all, gives himself to nobody; and as there is no associate over whom he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses, and an increase of force for the preservation of what he has. If then we discard from the social compact what is not of its essence, we shall find that it reduces itself to the following terms:

“Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole.”

Thus:

‘Under this system, each necessarily submits to the conditions he imposes on others: and this admirable agreement between interest and justice gives to the common deliberations an equitable character.

*(Social Contract, Book II, 6)*

v. m-d/20 Sept. 05
Social Contract: The General Will (continued)

Some Questions

1. Are the requirements of the General Will self-defeating? Is a law through which I ‘obey myself alone’ still binding?

Rousseau raises this very objection:

This formula shows us that the act of association comprises a mutual undertaking between the public and the individuals, and that each individual, in making a contract, as we may say, with himself, is bound in a double capacity; as a member of the Sovereign he is bound to the individuals, and as a member of the State to the Sovereign. But the maxim of civil right, that no one is bound by undertakings made to himself, does not apply in this case; for there is a great difference between incurring an obligation to yourself and incurring one to a whole of which you form a part. (Social Contract, Book I, 7.)

2. What are we to make of the famous lines on the idea of being forced to be free?

In order then that the social compact may not be an empty formula, it tacitly includes the undertaking, which alone can give force to the rest, that whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than that he will be forced to be free; for this is the condition which, by giving each citizen to his country, secures him against all personal dependence. (Social Contract, Book I, 7)

Consider the context:

[T]he Sovereign, being formed wholly of the individuals who compose it, neither has nor can have any interest contrary to theirs; […]

This, however, is not the case with the relation of the subjects to the Sovereign, which, despite the common interest, would have no security that they would fulfill their undertakings, unless it found means to assure itself of their fidelity.

In fact, each individual, as a man, may have a particular will contrary or dissimilar to the general will which he has as a citizen. His particular interest may speak to him quite differently from the common interest: his absolute and naturally independent existence may make him look upon what he owes to the common cause as a gratuitous contribution, the loss of which will do less harm to others than the payment of it is burdensome to himself; and, regarding the moral person which constitutes the State as a persona ficta, because not a man, he may wish to enjoy the rights of citizenship without being ready to fulfill the duties of a subject. The continuance of such an injustice could not but prove the undoing of the body politic.

A coerced act is not a free act. But Rousseau does not say: forced to commit a free act. (Nor, a fortiori, does Rousseau say that the General Will enforces a set of practices on individuals.) Rather, he suggests that the conditions which allow for the commission of free acts would be undermined. The idea might be that the generalization of free-riding would undermine the conditions in which I (and others) otherwise freely choose. Individuals pursue, through free-riding, a rational individual strategy, but one which is at the cost of their long-term interest in securing these conditions. In that case, others forcing me not so to act are forcing me to behave in a way which preserves my freedom.

v m-d/22 Sept. 2005
From Rousseau’s *Social Contract* to Contemporary Contractualism

**Last Week**
We saw:
- The sense in which we can talk (counterfactually) of each member of the political community as an ‘associate’ who ‘obeys himself alone’ and remains ‘as free as before’.
- Some fundamental desiderata of the General Will. One of the central desiderata is that laws can be willed by each of the people submitted to it. But this does not mean a simple contract of each with himself or herself.
- Rousseau’s view that whoever refuses to obey the general will should be ‘forced to be free’. The context suggests that the problem under scrutiny is free-riding. We referred to Runciman and Sen’s interpretation in terms of rational choice, and suggested that Rousseau might be thinking in our long term interest to preserve the *conditions* for the exercise of free choice.

**Forcing to be free (continued)**
The analogy of using a third party to curb your addictions comes to mind (e.g. always removing pieces of chocolate gateaux when they come into view). But it is not entirely satisfactory when applied in the political domain.

**Some last interpretative issues:**
*Historical Pessimism, Conceptual Optimism, and the Question of Motivation*

**Historical pessimism:**
In reality, if it is not impossible for a particular will to agree on some point with the general will, it is at least impossible for the agreement to be lasting and constant; for the particular will tends, by its very nature, to *partiality*, while the general will tends to *equality*. It is even more impossible to have any guarantee of this agreement; for even if it should always exist, it would be the effect not of art, but of chance.

*(Social Contract, II, 1)*

**Compassion, a capacity ‘antecedent to any reflection’:**
Mandeville well knew that, in spite of all their morality, men would have never been better than monsters, had not nature bestowed on them a sense of compassion, to aid their reason. […] It is this compassion … which, instead of inculcating that sublime maxim of rational justice, Do to others as you would have them do unto you, inspires all men with that other maxim of natural goodness, much less perfect indeed, but perhaps more useful; Do good to yourself with as little evil as possible to others. In a word, it is rather in this natural feeling than in any subtle arguments that we must look for the cause of that repugnance, which every man would experience in doing evil […]..

*(Discourse on Inequality, part 2.)*

We will return to the respective role of self-interest and of the sense of justice, as well as the broader perspective on moral psychology when looking at Rawls’s *Theory of Justice.*
Rousseau’s legacy. Aspects of modern contractualism

Contractualism and Political Principles

Rawls’s Original Position

The Wider Realm of What We Owe To Each Other

T. M. Scanlon: ‘The idea of a shared willingness to modify our private demands in order to find a basis of justification that others also have reason to accept is a central element in the social contract tradition going back to Rousseau.’ (What We Owe to Each Other, p. 5)

Hence Scanlon’s contractualist principle:

An act is wrong if and only if any principle that permitted it would be one that could reasonably be rejected by people moved to find principles for the general regulation of behaviour that others, similarly motivated, could not reasonably reject.

v m-d/27 Sept. 2005
John Rawls’s Egalitarian Liberalism

Introduction

Role of Political Philosophy

*The virtue of justice and its priority*

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For that reason justice denies that the loss of freedom for some is made right by a greater good shared by others. (TJ, 1-2)

Thus the role of justice:

> [P]rinciples of social justice … provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation. (TJ, 2)

*Two central concerns*

1. [The fundamental question of political philosophy is:] What is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next? (JFR, 7-8)

2. One task of political philosophy—it’s practical role, let’s say—is to focus on deeply disputed questions and to see whether, despite appearances, some underlying basis of philosophical and moral agreement can be uncovered. (JFR, 2)

Contractualism and Utilitarianism

Rawls’s ambition is to provide a ‘reasonable systematic alternative’ (TJ, xi, emphasis added) to utilitarianism.

Thus his contractualism:

What I have attempted to do is to generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau and Kant. [T]his theory seems to offer an alternative systematic account of justice that is superior, or so I argue, to the dominant utilitarianism of the tradition. [I]t is this conception, I believe, which best approximates our considered judgments of justice and constitutes the most appropriate moral basis for a democratic society.
Two questions:

1. What type of contract?

   Remember Dworkin’s challenge: ‘A hypothetical contract is not simply a pale form of an actual contract; it is no contract at all.’ (Dworkin, ‘The Original Position’, in Daniels, ed. Reading Rawls, p. 18)

   But see emphasis on justification:

   [E]ach cooperates, politically and socially, with the rest on terms all can endorse as just. This is the meaning of public justification. So understood, justification is addressed to others who disagree with us.’ (JFR, 27)

   The original position is ‘a thought-experiment for the purpose of public- and self-clarification’. (JFR, 17)

2. What are the main points of departure from utilitarianism?

   This is a question we will return to later. Some preliminary remarks:

   - Rawls is appreciative of utilitarianism, of its ambition, and wants to rival it with another systematic theory addressing moral, social and economic facts.

     One reason [for the predominance of utilitarianism] is that it has been espoused by a long line of brilliant writers who have built up a body of thought truly impressive in its scope and refinement. We sometimes forget that the great utilitarians, Hume and Adam Smith, Bentham and Mill, were social theorists and economists of the first rank; and the moral doctrine they worked out was framed to meet the needs of their wider interests and to fit into a comprehensive scheme.

   - We can distinguish between two different lines of criticism against utilitarianism (defined as ‘[the idea] that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it’, TJ 20):

     1. The striking feature of the utilitarian view of justice is that it does not matter, except indirectly, how this sum of satisfactions is distributed among individuals any more than it matters, except indirectly, how one man distributes his satisfaction over time. (TJ, 23)

     2. Utilitarianism ‘mistakes impersonality for impartiality’ (TJ, 166)

     The first criticism concerns utilitarianism as a theory of distributive justice; the second constitutes a more general (and deeper) challenge to how it presents impartial concern for others.

Reading for the next two weeks:

Rawls, John, Justice as Fairness a Restatement, Parts 1 and 3

(Reminder: in-class exam on October 11th.)

v m-d/29 Sept. 2005
The Primary Subject of Justice: the Basic Structure

The Basic Structure is:

the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time. The political constitution …, the legally recognized forms of property, and the structure of the economy …, as well as the family in some form, all belong to the basic structure. (JFR, 10)

1. [I]ts effects are profound and present from the start. (TJ, 7); and
2. It preserves background justice (JFR, 57)

Question: Does this mean that principles apply only to the basic structure, and not to choices made by individuals within that structure? (Cf. e.g. G. A. Cohen – we will return to this objection when considering the Difference Principle.)

Rawls asks us to consider the following example:

The draft rule in a professional sport such as basketball ranks teams in the opposite order from their standing in the league at the end of the season: championship teams go last in the draft of new players. This rule provides for regular and periodic changes in the roster of teams and is designed to ensure that teams in the league are more or less evenly matched from year to year, so that in any given season each team can give any other a decent game. These changes of players are necessary to achieve the aims and attractions of the sport and are not foreign to its purpose. (JFR, 51)

v m-d/4 Oct. 2005
Political Philosophy 115  
Berkeley, Fall 2005  

Rawls’s *Theory of Justice*  
The Original Position

**The Idea of the Original Position and the Veil of Ignorance**

[T]he question arises as to how the fair terms of cooperation are specified. … Justice as fairness hopes to extend the idea of a fair agreement to the basic structure itself. Here we face a serious difficulty […]. The difficulty is this: we must specify a point of view from which a fair agreement between free and equal persons can be reached; but this point of view must be removed and not distorted by the particular features and circumstances of the existing basic structure. The original position, with the feature I have called the “veil of ignorance”, specifies this point of view. (JFR, 15)

What are the parties supposed to reach an agreement on?

[The original position makes] the object of agreement the first principles of justice for the basic structure, rather than any form of government, as in Locke. The original position is also more abstract: the agreement must be regarded as both hypothetical and non-historical. (JFR, 16-17)

**Some Essential Characteristics:**

1. Parties are situated symmetrically; they are in *fair* initial conditions of equality. (A more abstract state of nature.) Thus the idea of *justice as fairness*:

   [T]he name “justice as fairness” … conveys the idea that the principles of justice are agreed to in an initial situation that is fair. The name does not mean that the concepts of justice and fairness are the same, any more than the phrase “poetry as metaphor” means that the concepts of poetry and metaphor are the same. (TJ, 11)

2. Parties are neither people in our society, nor people in a just society; they are merely the artificial creatures created for purposes of deliberation.

3. Parties are rational: they can rank their ends consistently. But the *reasonable* conditions imposed on them (see 1. above) constrain them in reaching a rational agreement on principles of justice. Justice as fairness is not a *part* of the theory of rational choice.

   [To say that it is part of the theory of rational choice] would imply that justice as fairness is at bottom Hobbesian (as Hobbes is often interpreted) rather than Kantian.’ (JFR, 82)

In other words: there is no contract for *mutual advantage*, but rather hypothetical agreement (constrained by reasonable conditions) on what is just.

Rawls emphasized this aspect in his revisions of *A Theory of Justice*: that the accent should be put on a reasonable conception of what we owe to others through political institutions, rather than on rational decision under uncertainty

**Reminder:**

In-class exam on October 11th

No new reading for next week.
Answer two questions from the list below. Do not rely heavily on the same material for answer to the two questions.

1. EITHER:
   Is there any plausible understanding of the idea of a social contract? (You may answer with reference to one or all of the possible forms of social contracts, actual and hypothetical.)
   OR:
   Explain the following passage from Hume:
   Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given a tacit consent to his authority, and promised obedience; it may be answered, that such an implied consent can only have place, where a man imagines, that the matter depends on his choice. But where he thinks (as all mankind do who are born under established governments) that by his birth he owes allegiance to a certain prince or certain government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims.
   Can we seriously say, that a poor peasant or artizan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her.

2. Rousseau holds that it is a requirement of a political association that each member 'obeys himself alone' and remains 'as free as before'. Explain and assess this requirement.

3. Why does Rousseau claim that we must sometimes be 'forced to be free'. Does this expression show that his is an authoritarian conception of the state?

4. EITHER
   Why does Rousseau think that we cannot alienate our liberty? (In contrast to our property which we can alienate [that is, sell] to whoever we choose.)
   OR
   Explain similarities and differences between a Hobbesian contract and Rousseau's social contract.

5. What is the General Will? Explain its main defining characteristics.

6. EITHER
   In what sense does the social contract take 'men as they are' and 'laws as they could be'? (You may answer with reference to Rousseau or to both Rousseau and Rawls.)
   OR
   What are the similarities and differences between the role of the Original Position in Rawls’s *Theory of Justice* and the state of nature in classical contract theory?
What Do the Parties Ignore? What Do They Know?

The parties are not allowed to know:

- the social positions of the people they represent
- their race and ethnic group
- their sex
- their various native endowments.
- their conception of the good or their particular comprehensive doctrines

Finally they also ignore

- their probability of being in each position.

Rawls adds they are not to attribute an equal probability to each position.

Questions:

1. Why do parties ignore their comprehensive doctrine? (Moral doctrines are not mere preferences or personal tastes.)

   Suggestion: what we have is a situation of choice under conditions of reasonable pluralism. (Not fairness to different conceptions of the good.)

2. Why do parties ignore their probabilities of being in each position? Why doesn’t the principle of insufficient reason then apply? (Why wouldn’t the parties just attribute an equal probability to each position?) Here is Rawls’s explanation:

   Now I shall assume that the parties discount likelihoods arrived at solely on the basis of [the principle of insufficient reason]. This supposition is plausible in view of the fundamental importance of the original agreement and the desire to have one’s decision appear responsible to one’s descendants who will be affected by it. We are more reluctant to take great risks for them than for ourselves: and we are willing to do so only when there is no way to avoid these uncertainties, or when the probable gains, as estimated by objective information, are so large that it would appear to them irresponsible to have refused the chance offered even though accepting it should actually turn out badly. (TJ, 146-147)

   Suggestion: Rawls seems to be running together two different thoughts, namely:

   - that it would be irrational for the parties behind the veil of ignorance to adopt a principle of insufficient reason.
   - that there are problems (such as arrangements of the political institutions and how they distribute essential goods to individuals) for which it would be wrong to factor in probabilities.
But notice: the parties are comparing utilitarian principles and Rawls’s two principles. Yet they are deprived of knowledge of probabilities which seem to lead naturally to average utilitarianism. We will return to this question when discussing the Difference Principle.

Behind the Veil of Ignorance: What the Parties do know:

The parties behind the veil of ignorance need some knowledge for their deliberation. They know presently accepted facts of social theory (economics, psychology, sociology, ...). They also know that the society for which they are to find principles is in the Humean circumstances of justice (circumstances under which justice is both necessary and possible). Finally, in order to know who the least advantaged are they operate with a list of primary goods.

We turn first to the idea of circumstances under which justice is both possible, and a necessary virtue.

a—Circumstances of justice

Rawls retakes from Hume the idea of circumstances in which justice is both a possible and a necessary virtue. (That is: that the conditions for its existence are met and that justice is a requirement for human flourishing.) These circumstances are:
- Objective circumstances (limited scarcity)
- Subjective circumstances (limited altruism and fact of reasonable pluralism about morality)

Questions:

1. Does this knowledge mean that the contract is, in effect, for mutual advantage?

Suggestion: Understanding the idea of circumstances of justice broadly in terms of prisoner’s dilemmas is not the best way of understanding Rawls’s reading of Hume here. Rawls is focusing on the specificity and difficulty of the question of justice in the political domain. (See 2. below.)

2. Why should we assume limited altruism? (Why assume deficient moral motivation when we are concerned with defining what justice is?)

Suggestion: It would be a mistake to think of the parties as self-interested or selfish as these words are normally used for criticism of individuals. Nor are these inclinations assumed in citizens of a good society. But parties have (i) partial concerns and (ii) different moral and religious convictions (so they disagree about what altruism entails). Rawls comments (TJ, 111-112) ‘It should be noted that ... while [rational long-term plans] determine the aims and interests of a self, the aims and interests are not presumed to be egoistic or selfish’; and he adds:

The spiritual ideals of saints and heroes can be as irreconcilably opposed as any other interests. Conflicts in pursuit of these ideals are the most tragic of all. […] In an association of saints agreeing on a common ideal, if such a community could exist, disputes about justice would not occur. […] But a human society is characterized by the circumstances of justice.
Behind the Veil of Ignorance: What the Parties do know (continued):

b—Primary goods

Parties need at least a thin theory of the good.

Primary goods are social conditions and all purpose means which allow people

[a] to develop their moral powers (1. sense of justice and 2. conception of the good), and
[b] to form, pursue and revise their determinate conception of the good.

The account of primary goods rests on psychological, social and historical facts:

What counts as primary goods depends, of course, on various general facts about human needs and abilities, their normal phases and requirement of nurture, relations of social interdependence, and much else. We need at least a rough idea of rational plans of life showing why these plans usually have a certain structure and normally depend on certain primary goods for their formation, revision, and successful execution.

But they are also normative:

While the list of primary goods rests in part on the general facts and requirements of social life, it does so only together with a political conception of the person as free and equal, endowed with the moral powers, and capable of being a fully cooperating member of society. This normative conception is necessary to identify the appropriate list of primary goods. (JRF, 58)

Primary goods include:

- Basic rights and liberties
- Opportunities (for the pursuit of different ends)
- powers and prerogatives, positions of authority and responsibility
- Income and wealth (all purpose means to a wide range of ends)
- Social bases of self respect

Notes:

1. Primary goods are used to define who the least advantaged are.

2. The account of primary goods defines a ‘division of labour’, or ‘division of responsibility’. We distinguish between:

   - citizens’ responsibility through the institutions of the basic structure to maintain equal liberties, and fair equality of opportunities, and for providing a fair share of the primary goods for all;
   - within this, individual responsibility to revise ends, etc.

3. The last of the primary goods is not self-respect as an attitude towards oneself, but rather those aspects of basic institutions which support this attitude, i.e.: a sense of our own worth and the self-confidence to advance our own ends.
Question:
Why this particular list of goods? Is this list fair to all conceptions of the good?

Suggestions:
1. The idea is not that all conceptions of the good get realized to the same extent.
2. Fairness is to people with different conceptions of the good (not to these conceptions themselves).

(We will come back to both of these suggestions when we discuss the move from Comprehensive to Political Liberalism in Rawls’s second book.)

Reading for next week:
Justice as Fairness a Restatement, Part II, § 12-14 (pp. 39-52) and § 17-18 (pp. 57-66).
Rawls’s Theory of Justice
Reflective Equilibrium and Two Comparisons

The Method of Reflective Equilibrium

We start from our ‘considered judgments’, or ‘considered convictions’ about justice. Some will be pretty fixed, such as the fact that slavery is wrong. (Rawls quotes Lincoln: ‘If slavery is not wrong, nothing is wrong.’) At this stage we envisage not only our own considered judgments, but those of others.

We then formulate principles which account for these considered judgments about political justice.

Finally we proceed to a respective adjustment of considered judgments about justice and principles of justice. (We ‘work from both ends’.) This adjustment is reached in wide equilibrium, after we have had an opportunity to consider other plausible conceptions (JFR 31). Reflective equilibrium ‘continues indefinitely’ (PL, 97).

We will return to, and illustrate, the idea of Reflective Equilibrium via counter-examples to the second principle below.

How do the parties proceed?

Two Fundamental Comparisons

The parties behind the veil of ignorance are presented with a menu, or list, of principles: basically Rawls’s own principles and two different versions of utilitarianism.

Notes:

1—Rawls’s two principles:
   (a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
   (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society.

   (We will return to these principles, their order and formulation.)

2—Rawls defines utilitarianism thus: ‘The main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it.’ (TJ, 20)

   However the relevant comparison is with the principle of average utility, namely the principle which ‘says that the institutions of the basic structure are to be arranged so as to maximize the average welfare of the members of society, beginning now and extending into the foreseeable future’ (JFR, 96)

First comparison:
The two principles of justice Rawls favours, and a principle of average utility.

Second comparison:
The two principles of justice Rawls favours, and the same principles, but the principle of average utility, combined with a suitable social minimum, substitutes the difference principle.

In this second comparison the principle of average utility is applied subject to the constraints of the prior principles: equal liberties and fair equality of opportunity.
The Two Principles Explained

Start with the general conception of justice

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. (TJ, 54)

Rawls adds:

Injustice, then, is simply inequalities that are not to the benefit of all. (TJ, 54)

As mentioned, the more specific principles which Rawls considers most appropriate to specify (1) basic rights and liberties and (2) regulate social and economic inequalities in citizens’ prospect over a complete life are the following:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

(b) Social and economic inequalities are to satisfy two conditions:

first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and

second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). (JFR, 42-43)

Note

- The first principle is prior to the second, and fair equality of opportunity is prior to the difference principle. In addition, Rawls notes that these two principles are preceded by a lexically prior principle requiring that basic needs be met. (JFR, 44)

- The list of liberties is as follows: 1. freedom of thought and liberty of conscience; 2. political liberties (for example, the right to vote and to participate in politics) and freedom of association; 3. the rights and liberties specified by the liberty and integrity (physical and psychological) of the person; 4. the rights and liberties covered by the rule of law. (JFR, 44)

- The list of liberties is not drawn historically, but analytically. These are liberties which provide political and social conditions for the exercise of the two moral powers (i.e.: judging the justice of basic institutions and pursuing one’s own conception of the good).

- Among the basic rights, Rawls adds ‘the right to hold and to have exclusive use of personal property’—but this does not include property of means of production or right of bequest (JFR, 114). ‘Throughout the choice between a private-property economy and socialism is left open[,]’ (TJ, 228)

- Fair equality of opportunity is to be distinguished from mere meritocracy, or formal equality of opportunity.

- Rawls prefers to use ‘difference principle’ over ‘maximin principle’, in order to emphasize the difference with maximin rule for decision under uncertainty.

An important revision: Basic Liberties rather than Basic Liberty

Compare the first formulation of principles in the 1971 version of A Theory of Justice (p. 60-61)

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty 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.

Revisions to the second principle are merely stylistic. However the first principle is significantly changed. Cf. Hart (‘Rawls on Liberty and its Priority’). Hart notes that the general conception doesn’t refer to maximization of liberty or its extent, and he argues in favour of a list of liberties. Rawls agrees (and adds that no other change is as significant as this revision):

'The revision brings out that no priority is assigned to liberty as such, as if the exercise of something called 'liberty' had a pre-eminent value and were the main, if not the sole, end of political and social justice.' (JFR, 44)

**First Fundamental Comparison: The Two Principles and Average Utility**

1. We start from two contrasting ideas:

   (1) the idea of society as a fair system of cooperation between citizens regarded as free and equal; (2) the idea of society as a social system organized so as to produce most good over all its members.

   ‘The tradition of the social contract elaborates the first idea, the utilitarian tradition is a special case of the second.’ (JFR, 96)

The contrast:

(1) is ‘quite naturally specified so as to include the ideas of equality (the equality of basic rights, liberties, and fair opportunities) and of reciprocity (of which the difference principle is an example)’.

(2) ‘expresses a maximizing and aggregative principle of political justice’. In (2) the ideas of equality and reciprocity ‘are accounted for only indirectly, as what is thought to be normally necessary to maximize the sum of social welfare’. (JFR, 96)

The first comparison brings out the advantages of the two principles with respect to equality. (The second will bring out the advantages with respect to solidarity or mutuality.)

The first comparison (but not the second) uses guidelines of maximin rule for decision under uncertainty.

*Maximin rule:* this rule tells us to identify the worst outcome of each available alternative, and then to adopt the alternative the worst outcome of which is better than the worst outcome of all the other alternatives.

2. Given these considerations, parties behind the veil of ignorance reason as follows:

- Parties assume that citizens have, among other interests, an interest in the fulfillment of their religious, philosophical and moral conceptions.

- The two principles protect the basic rights and liberties and provide an adequate complement of the primary goods to exercise and enjoy those freedoms.

- *Therefore:* to agree to the principle of average utility would jeopardize those rights and liberties without sufficient reason. The parties cannot take risks by permitting a lesser liberty of conscience, say, for minority conceptions of the good.

- Furthermore, the basic liberties protect fundamental interests that have a special significance; thus the priority of the first principle over the second.

Reading for next week:

*Justice as Fairness a Restatement,* Part II, § 19-22 (pp. 66-79).
5-page Paper due 8\textsuperscript{th} November 2005

Answer one question from the list below.

1. What does Rawls mean by saying that the primary subject of justice is ‘the basic structure of society’? What are his reasons for taking the basic structure of society as the primary subject of justice?

2. What information does Rawls allow parties to have in the Original Position? What do they ignore? Why does Rawls permit just this level of knowledge and ignorance? Is he justified in so doing?

3. ‘Unless [the circumstances of justice] existed there would be no occasion for the virtue of justice, just as in the absence of threats of injury to life and limb there would be no occasion for physical courage.’ Explain what Rawls means. Is he right?

4. Explain and assess the following criticism of the list of primary goods:
   The original position] may not be fair. […] The suppression of knowledge required to achieve unanimity is not equally fair to all the parties, because the primary goods are not equally valuable in pursuit of all conceptions of the good. […] The model contains a strong individualistic bias … [G]iven that many conceptions of the good do not fit into the individualistic pattern, how can this be described as a fair choice situation for principles of justice? (Nagel ‘Rawls on Justice’)


**Fair Equality of Opportunity (FEO)**

This is a difficult and not altogether clear idea; its role is perhaps best gathered from why it is introduced: namely, to correct the defect of formal equality of opportunity—careers open to talent—[.]. To this end, fair equality of opportunity is said to require not merely that public offices and social positions be open in the formal sense, *but that all should have a fair chance to attain them.* (JFR, 43, emphasis added.)

1. **Difference** between two ideas of equality of opportunity, and reason for *priority* of FEO:

   [T]he reasons for requiring open positions are not solely, or even primarily, those of efficiency. […]. 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. […] But the principle of open position […] 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. (TJ, 73)

**Comment:**

Importance and priority of *social bases of self-respect.*

Scanlon, ‘The diversity of objections to inequality’, in *The Difficulty of Tolerance,* restates the second principle thus: ‘economic inequalities are unjust if they give rise to unacceptable stigmatization of some as inferior’.

2. Unlike liberties of the first principle, FEO is not a constitutional essential (JFR, 47). A principle of opportunity *is* a constitutional essential, but FEO requires more than that. (See above.)

3. FEO is required in terms of *background procedural justice.*

   Meaning of the word *background* in this expression? The idea is that of rules so that the system remains fair over time. (Remember the example of draft rule in professional sport.)

   For example, background institutions must work to keep property and wealth evenly shared over time to preserve the fair value of the political liberties and fair equality of opportunity over generations. […] The kind of limits and provisos that in Locke’s view apply to separate transactions of individuals and associations in the state of nature are not stringent enough to ensure that fair background conditions are maintained. (JFR, 51-53)

4. Family and equality of opportunities:

   - [T]he principle of fair opportunity can be only imperfectly carried out, at least as long as some form of the family exists. … 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. (TJ, 64) Even in a well ordered society that satisfies the two principles of justice, the family may be a barrier to equal chances between individuals. (TJ, 265)
   - Is the family to be abolished then? Taken by itself and given a certain primacy, the idea of equal opportunity inclines in this direction. But within the context of the theory of justice as a whole, there is much less urgency to take this course. (TJ, 448 – see also JFR, 163 – footnote 44.).
**Difference Principle**

*The principle*: Social and economic inequalities are to be to the greatest benefit of the least-advantaged members of society.

1. **Reminder**: The least-advantaged are such in terms of primary goods.

2. The Difference Principle is not a constitutional essential either. ‘[A]lthough a social minimum providing for the basic needs of all citizens is also a constitutional essential, the difference principle is more demanding and is not so regarded.’ (JFR, 47-48).

3. **Worth of liberty**
   
   ‘The difference principle, in maximizing the index available to the least advantaged, maximizes the worth to them of the equal liberties enjoyed by all.’ (JFR, 149)

4. **Social cooperation as an essential assumption**
   
   ‘Social cooperation, we assume, is always productive, and without cooperation there would be nothing produced and so nothing to distribute.’ (JFR, 61; see also T), section 79, especially note 4).

**Second Fundamental Comparison: Two Principles vs Constrained Utility**

*Question*: are Rawls’s two principles preferable to the principle of average utility subject to the constraints of the prior principles: equal liberties and fair equality of opportunity? In particular:

Isn’t a social minimum understood as the idea of meeting basic human needs essential for a decent life, combined with the constrained principle of average utility a genuine alternative?

Reminder: In this second comparison the maximin rule doesn’t apply.

*Answer*

1. It is possible that the two principles are not very far apart in practice, *and*

2. ‘The least advantaged will not experience their condition as so miserable, or their needs so unmet, that they reject society’s conception of justice and are ready to resort to violence to improve their condition’ *But*

3. This might not be sufficient to ensure that ‘the least advantaged feel that they are a part of political society’. (JFR, 127)

Two forms of exclusion (JFR, 128):

i) ‘[W]e become sullen and resentful, and we are ready as the occasion arises to take violent action in protest against our condition’

ii) ‘[W]e grow distant from political society and retreat into our social world. We feel left out; and withdrawn and cynical, we cannot affirm the principles of justice […]. Though we are not hostile or rebellious, those principles are not ours and fail to engage our moral sensibility.’

Hence Rawls’s opposition to a capitalist welfare state (which can be argued for on the basis of prudence alone, for it eliminates causes of unrest).


v m-d/3rd November 2005
The Difference Principle in Reflective Equilibrium

Clarifications, Objections, Counterexamples

Reminder: the principle: Social and economic inequalities are to be to the greatest benefit of the least-advantaged members of society.

Questions

1. Do inequalities ever benefit the least well-off? What kind of inequalities do?
   Consider: incentives, cost of training, non-equalizable goods, levelling-down.
   ‘The simplest limit, or shape, to impose on distributions is strict equality in all social goods. Plainly the difference principle is not egalitarian in that sense, since it recognizes the need in social and economic organization, of which their role as incentives is but one.’ (JFR, 680)

2. How strict is the principle? Consider two cases:
   (a) The least well off benefit very little after a point, the most advantaged group benefits very much;
   (b) The least well off lose very little after a point, the more advantaged group gains very much.
   In response to (a): ‘With background institutions of fair equality of opportunity and workable competition required by the principles of justice, the more advantaged cannot unite as a group and then exploit their market power to force increases in their income.’ (JFR, 67)
   In response to (b): ‘[T]here surely exists some institutional device to transfer at least part of the large return of the more advantaged to the least well-of.’ (JFR, 67-8)

3. Do numbers not count?
   Consider the case of a trade off between:
   (a) severe hardship for a few who are very poor and deprived and
   (b) preventing less severe but still substantial hardship for a large number who are better off but still struggling for subsistence. (cf. Nagel, ‘Equality’).

4. Is the (arbitrary) natural lottery unjust? Are inequalities unjust when, and because, they are arbitrary?
   Some people have thought that an unequal distribution of talents is itself a bad thing and so suppose that a just state would have to make reparations. Rawls does not endorse this point of view.

5. Is the Difference Principle premised on a conception of native endowments as common assets? Does it violate the ‘separateness of persons’?
   ‘[T]he difference principle represents an agreement to regard the distribution of native endowments as a common asset and to share in the benefits of this distribution whatever it turns out to be. It is not said that this distribution is a common asset: to say that would presuppose a (normative) principle of ownership that is not available in the fundamental ideas from which we begin the exposition. … What is to be regarded as a common asset… is the distribution of native endowments, that is, the difference among persons. These differences consist not only in the variation of talents of the same kind (variation of strength and imagination, and so on) but in the variety of talents of different kinds.’ (JFR, 75-76)
6. Is the Difference Principle premised on the parties being irrationally risk averse?
The parties do not assume 'special psychologies' (Risk aversion, envy, will to dominate)

7. Are social and economic inequalities allowed if and only if they benefit the least well-off?
Consider two cases:
(a) everyone at the same level;
(b) some at this level – others better off.

8. An example by Parfit (Reasons and Persons):

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9. Why doesn’t the Difference Principle factor in individual handicaps? (Daniels)
Rawls’s answer is that illnesses and handicaps are dealt with at the legislative stage (at which the index of primary goods gets further specified). He adds: ‘Important here is the use of the conception of the citizen as a cooperating member over a complete life, which enables us to ignore differences in capabilities and endowments above the minimum. That conception directs us to restore, or in an appropriate way to make good, our capabilities when by illness and accident we fall below the minimum and are unable to play our part in society.’ (JFR 175)

10. Does the Difference Principle disregard individual responsibility? (Nozick, Cohen, Dworkin)
Remember that principles apply to the Basic Structure. Justice of the BS is prior to individual choices made within them. Institutions are responsible for the distribution of certain goods; in this context of justice of institutions, individuals are responsible for how well their lives go. If these fair circumstances are in place, then individuals are responsible for their success in pursuing their ends, as well as their resulting well-being or happiness.
In addition, it might help to distinguish in the political domain between two forms of responsibility, following Scanlon:
(a) responsibility as attributability. To ask whether someone is responsible for an action in this sense is to ask whether it can be attributed to an agent.
(b) substantive responsibility. To say that someone is substantively responsible serves to express substantive claims about what people are required (or not required) to do for each other.

11. Would society be more egalitarian if principles were to apply beyond the Basic Structure? Do individuals have too much of a prerogative to depart from equality? (Cohen)
There is an important question here, namely whether individuals do have to endorse the difference principle. Cohen’s concern is that Rawls will admit as perfectly just a society in which a minority of entrepreneurs extract benefits from the many as long as the society as a whole still satisfies Rawls’s constraints on how the institutions of the basic structure should maintain equality. But even Cohen accepts that there are individual prerogatives.
We will address this question further by returning to the different conceptions of equality in Rawls and intrinsic egalitarianism.

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A very old complaint. Consider Hobbes (Leviathan, chap 30):
And whereas many men, by accident inevitable, become unable to maintain themselves by their labour; they ought not to be left to the Charity of private persons; but to be provided for, (as far forth as the necessities of Nature require,) by the Lawes of the Common-wealth. For as it is Uncharitablenesse in any man, to neglect the impotent; so it is in the Soveraign of a Common-wealth, to expose them to the hazard of such uncertain Charity.
But for such as have strong bodies, the case is otherwise: they are to be forced to work; and to avoid the excuse of not finding employment, there ought to be such Lawes, as may encourage all manner of Arts; as Navigation, Agriculture, Fishing, and all manner of Manufacture that requires labour.
Reading for next week

Recommended:
Part IV of *Justice as Fairness a Restatement* ('Institutions of a Just Basic Structure’, pp. 135ff)

Necessary:
Conclusion
Justice as Fairness: a Political Doctrine

Justice as Fairness Restated

We saw Rawls's defence of the main aspects of TJ, and in particular the type of justification offered, the original position, and the principles (equal basic liberties, fair equality of opportunity, difference principle).

The main modifications introduced by Rawls after the publication of TJ fall into two categories:

1. Aspects of the formulation and content of the principles of justice. In particular:
   (a) First principle: what is guaranteed is a fully adequate scheme of equal basic liberties; there is no maximization of liberty as such.
   (b) Second principle: the stress is now put on the fact that the argument for the difference principle does not use guidelines of maximin rule for decision under uncertainty.

   Both modifications address, and rule out, interpretations which made principles seem implausible.

2. How the arguments for the principles is organized is now under the form of two comparisons, both of which are with utilitarianism (unconstrained and constrained utilitarianism).

More generally we saw that emphasis is put on a reasonable conception of what we owe to others through political institutions, rather than on rational decision under uncertainty.

The centrality of reasonableness leads us to the final and third type of modification: the move from comprehensive to political liberalism.

Move from Comprehensive to Political Liberalism

1. Consider a criticism of knowledge parties have behind the veil of ignorance:
   − The original position may not be fair. [...] The suppression of knowledge required to achieve unanimity is not equally fair to all the parties, because the primary goods are not equally valuable in pursuit of all conceptions of the good. [...] The model contains a strong individualistic bias ... [G]iven that many conceptions of the doo... (Nagel 'Rawls on Justice')

2. Two possible concerns:
   (a) Unfairness to people holding different comprehensive doctrines.
      [A doctrine is ‘comprehensive’ when it includes ‘conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole.’ (Political Liberalism, p. 13)]
   (b) Congruence between a person’s conception of her good and her sense of justice.
      (And the related problem of stability in a well-ordered society.) Here the question is whether people who have radically different conceptions of the good can without coercion or conversion endorse the same (liberal) doctrine: justice as fairness.

   More generally the worry is that liberalism might be ‘just another sectarian doctrine’ (and thus have effects inconsistent with its core commitment).
3. Return to the Original Position. Some facts known by the parties (fact of oppression):
   - Fact of pluralism (simple plurality of interests)
   - Fact of reasonable pluralism (plurality of reasonable comprehensive doctrines)
     
   [T]he plurality of incompatible, yet reasonable comprehensive doctrine is ‘not seen as a
disaster but rather as the natural outcome of the activities of human reason under
enduring free institutions.’ (Political Liberalism, p. xxvi)
   - Fact of oppression. For a society to be enduringly united under any comprehensive
document (even comprehensive liberalism) would necessitate oppression. (JFR, 34)

   So our two concerns more precisely:

   (a) It is a long-standing objection to liberalism that it is hostile to certain ways of
life and biased in favour of others; or that it favors the values of autonomy and
individuality[.] The substantive question concerns how the basic structure […]
encourages and discourages certain comprehensive doctrines and their associated
values, and whether the way this happens is just. (JFR, 153)

   (b) The problem of stability is not that of bringing others who reject a conception
to share it, or to act in accordance with it […]. Rather, as a liberal political
conception, justice as fairness is not reasonable in the first place unless it
generates its own support in a suitable way by addressing each citizen’s reason
[….] (JFR, 187)

4. Three different possibilities:

   1. The political conception is derived from the comprehensive doctrine;
   2. it is not derived, but it is compatible;
   3. the political conception is incompatible with it.

   The acceptance of political liberalism is not said to be derived from, and to depend solely
on, comprehensive liberalism. Rather the focus is on a reasonable overlapping consensus
between reasonable comprehensive doctrines.

   Should an incompatibility be recognized between the political conception and a wider
comprehensive doctrine, there may be (slowly and over time) revision of the
comprehensive doctrine.

5. Several moves:

   1. Specificity of the political (neither a community of faith nor a free association)
   2. Possibility of a reasonable overlapping consensus (between different comprehensive
conceptions)
   3. Difference between fairness to conceptions of the good and fairness to people holding
different conceptions of the good.
   4. From 1, 2 and 3: distinction between political liberalism (PL) and comprehensive
liberalism (CL)

6. Conclusion: an egalitarian move?

   Return to second comparison, and in it to justification for the difference principle.

   Rawls’s justice as fairness directs our attention to those who do worse in society, and it is
committed to finding principles that allow each person to be a member of society, rather
than to be simply ‘caught in it’. This commitment is reinforced by the move from CL to
PL.
Reading for next week

Recommended:


(A shorter version is available in The Ideal of Equality.)

Necessary:

Parfit, Derek: ‘Equality or Priority?’, in The Ideal of Equality, pp. 81ff.

5-page Paper due 29th November 2005

Answer one question from the list below.

4. Explain and assess the reasoning which leads the parties behind the veil of ignorance to adopt the first principle, and to assign it its priority.

5. ‘Even in a well ordered society that satisfies the two principles of justice, the family may be a barrier to equal chances between individuals.’ Does this comment by Rawls show the implausibility of a principle of fair equality of opportunity?

6. Why does Rawls think that the parties behind the veil of ignorance would accept the difference principle? Is he right?

7. Is the provision of inequality-producing financial incentives to talented people the only motivation for the difference principle?

8. Does the difference principle ignore claims that people deserve certain economic benefits in light of their actions?

9. Is it right to give priority to improving the situation of the worst off, even if they are very few?

10. ‘As a liberal political conception, justice as fairness is not reasonable in the first place unless it generates its own support in a suitable way by addressing each citizen’s reason.’ Explain what Rawls means with reference to the distinction between comprehensive and political liberalism.
Equality
An Intrinsic or Instrumental Value?

Whence the Value of Equality?

We tend to think that equality is an important political value – yet what do we value through a political ideal of equality? Does equality matter? If so, how?

To our question we may envisage two possible answers:

First answer:
Equality is of **intrinsic** value – we value it in itself, and not just for the benefits it is instrumental to (alternatively we value **fairness**)

Second answer:
Equality is a political ideal, not an ethical value in itself. We explain its appeal through the claim that other values make on us in certain political circumstances

Or we may distinguish, with Larry Temkin, between:

*non-instrumental egalitarianism*:
the view that equality is valuable in itself, over and above the extent to which it promotes other ideals

and

*instrumental egalitarianism*:
on this view equality is valuable when it promotes some other valuable ideal.

Equality or Priority to those who are Badly Off?

Is our concern for the worst off because:

1 – they fare worse than others do?

or because

2 – they are **badly off** in absolute terms?

We will return to this question next week with Frankfurt’s conception of the **doctrine of sufficiency**, and Parfit’ definition of the **Priority View**.

Intrinsic Equality and the Levelling Down Objection

Levelling-down objection:
One situation cannot be worse (or better) than another if there is no one for whom it is worse (or better).

First move: the unfairness of undeserved inequality

Non-instrumental egalitarians care about equality. More specifically, on my view, they care about undeserved, nonvoluntary, inequalities, which they regard as bad, or objectionable, because unfair. Thus, the non-instrumental egalitarian thinks it is bad, or objectionable, to some extent—because unfair—for some to be worse off than others through no fault or choice of their own. (Temkin, ‘Equality, Priority and the Levelling down Objection’, stress in the original.)

Consider for example: saints and sinners; ants and grasshoppers. Are we moved if saints get less than sinners; or hard-working ants less than lazy grasshoppers?
Questions

1. Why should equality, or fairness matter as property of a resulting state of affairs, if it makes no one better off? (Contrast the role of fairness in the Original Position in Rawls’s Justice as Fairness.)

2. Are we considering the fairness of a distribution for which an agent is responsible (in which case it is a procedural virtue), or the fairness of, say, the natural distribution of talents?

Second move by the Intrinsic Egalitarian: reformulation of the Levelling-down objection, and pluralism of values

1. Levelling-down reformulated:
   One situation cannot be worse (or better) in any respect than another if there is no one for whom it is worse (or better).

2. Plurality of values:
   Equality matters, but it’s not all that matters.

Thus the resulting Intrinsic Egalitarian position:

The non-instrumental egalitarian claims equality is valuable in itself, even if there is no one for whom it is good. … But, the anti-egalitarian will incredulously ask, do I really think there is some respect in which a world where only some are blind is worse than one where all are? Yes. Does this mean I think it would be better if we blinded everyone? No. Equality is not all that matters. But it matters some. (‘Equality, Priority and the Levelling down Objection’)

A similar position? G. A. Cohen’s egalitarianism.

I take for granted that there is something which justice requires people to have equal amounts of, not no matter what, but to whatever extent is allowed by values which compete with distributive equality; and I study what a number of authors who share that egalitarian view have said about the dimension(s) or respect(s) in which people should be made more equal, when the price in other values of moving toward greater equality is not intolerable. … An equalisandum claim specifies that which ought to be equalized, what, that is, people should be rendered equal in. A qualified or weak equalisandum claim says that they should be as equal as possible in some dimension but subject to whatever limitations need to be imposed in deference to other values … [M]ine will be a weak proposal… (Cohen, ‘On the Currency of Egalitarian Justice’)

Cohen’s further suggestion: distinguish between choices we are responsible for and bad brute luck

A person is exploited when unfair advantage is taken of him, and he suffers from (bad) brute luck when his bad luck is not the result of a gamble or risk which he could have avoided. I believe that the primary egalitarian impulse is to extinguish the influence on distribution of both exploitation and brute luck. (‘On the Currency of Egalitarian Justice’)

A suggestion to be developed next week:

There are many reasons to advocate an egalitarian policy of distribution in the actual world without relying on the moral value of equality.

Reading for next week

I will return to Scanlon’s ‘The Diversity of Objections to Inequality’ and to Parfit’s ‘Equality or Priority?’

New reading for Thursday 2nd December:

Equality, Sufficiency &
Priority to the Badly Off

Equality or Sufficiency?

In a famous article on the idea of equality, Harry Frankfurt opposes two ideals, namely equality and 'the doctrine of sufficiency'. His view is this:

[W]hat is important from the point of view of morality is not that everyone should have the same but that each should have enough. If everyone had enough, it would be of no moral consequence whether some had more than others.

However Frankfurt is not thereby arguing against distributing equally – for he adds:

Even if equality is not as such morally important, a commitment to an egalitarian social policy may be indispensable to promoting the enjoyment of significant goods besides equality, or to avoiding their impairment. Moreover, it might turn out that the most feasible approach to the achievement of sufficiency would be the pursuit of equality.

To illustrate Frankfurt's view, consider the following example. (Note that the example uses inequalities which are the result of luck.)

A small, fantastically prosperous, community is such that each of its members have more than enough to live extremely well, to meet not only their needs but to take advantage of opportunities open to them and to exercise talents they decide to develop. Still wealth varies within the community from those who have more than enough to those who have several times more than enough. This unequal distribution is the result of luck rather than individual choice or effort.

(Here we do not seem to be moved to equalize. Compare Frankfurt: 'We seem quite unmoved, after all, by inequalities between the well-to-do and the rich.')

Objections

1. We want more than mere sufficiency.
   But consider:
   1. By enough one may not mean 'merely enough to get by' but, rather, 'enough for a good life'. (Frankfurt).
   2. The doctrine of sufficiency can require that we distribute equally, when this is the best way to give enough to each person.
      The 'sufficientist' and the intrinsic egalitarian might well be arguing for the same policy, an equal distribution, but they do it for different reasons.

2. In some circumstances, an inegalitarian distribution will be consistent with principles of sufficiency.
   This is also true of the Intrinsic Egalitarian. (Remember Temkin: 'Equality is not all that matters."

3. Sometimes inequality matters, though sufficiency is met. Consider someone who is the victim of inegalitarian treatment though he is quite satisfied that he has as much as he can possibly use Frankfurt or Raz might agree with this suggestion. But they would suggest that it is grounded in more fundamental moral notions of impartiality or respect.

4. Surely when some have less than enough equality is the best policy.
   Consider the following example: the size of the population is 10, each person needs 5 units (of a given resource) to survive, and there are only 40 units in total.

Equality & Priority

Nagel's example (in ‘Equality’):

A family with two children: one healthy and happy and the second with a painful handicap. The parents could either move to an expensive city where the child with a handicap can receive medical treatment, but where the family standard of living will be lower, or move to a pleasant suburb where the healthy child would flourish.

Nagel adds:

If one chose to move to the city, it would be an egalitarian decision. It is more urgent to benefit the second child [...]. This urgency is not necessarily decisive. It may be outweighed by other considerations, for equality is not the only value.

Parfit (Equality or Priority?) comments:

This suggest that, to the question ‘Why is it more urgent to benefit this child?’, Nagel would answer, ‘Because this would reduce the inequality between these two children.’ But I doubt that this is really Nagel’s view. Would it be just as urgent to benefit the handicapped child, even if he had no sibling who was better off? I suspect that, on Nagel’s view, it would.

Parfit suggests that Nagel’s view that we must benefit the child who is worst off leads to a different view, which he calls the Priority View, defined thus:

The Priority View: Benefitting people matters more the worse off these people are.

Questions

1. Rawls gives priority to the worst off. Is he an Egalitarian or a Prioritarian?

Parfit suggests (a) that Rawls’s view must be a version of the Priority View, since on the Difference Principle we must make the worst-off group as well off as possible, and it is irrelevant whether in so doing we reduce or increase inequality and (b) that, nonetheless Rawls objects to natural inequalities.

We saw reasons to support (a) but doubt (b): Rawls’s argument for the difference principle relies on the fact that a diversity of native endowments is not a cause for regret. ‘These differences consist not only in the variation of talents of the same kind … but in the variety of talents of different kinds. This variety … makes possible numerous complementarities between talents when organized in appropriate ways to take advantage of these differences.’ (JFR, 75-76)

2. What is the relation between equality and priority?

It depends whether we give priority to the worst off in order to reduce inequality, or because they are badly off.

Objections

1. On the Priority View, we often aim for equality.

Parfit’s reply:

[T]hat is not enough to make us Egalitarians. In the same way, Utilitarians often aim for equality, because inequality has bad effects. But Utilitarians are not Egalitarians, since they regard equality as a mere means.

2. What about a concern with domination, or differences in status? Consider Scanlon (‘The diversity of objections to inequality’):

Relief of suffering, avoidance of stigmatizing differences in status, prevention of domination of some by others, and the preservation of conditions of procedural fairness are basic and important moral values. [T]hey provide for the elimination of various inequalities. Taken together these values account for at least a large part of the importance that equality has in our political thinking. They may account for all of its importance, or there may be an important role to be played by a further moral idea of substantive equality. But it remains unclear exactly what that idea would be.

Final suggestion: distinguish between a political egalitarian ideal and a moral value of equality (between egalitarian policies of distribution in the world, and the value of equality).