

Chapter 2

A Puzzle about Economic Justice in Rawls' Theory

The Rawlsian Thesis

Perhaps the most captivating feature of Rawls' *A Theory of Justice* to the contemporary western liberal is its apparently ingenious reconciliation of two conflicting demands, the demand for equality and the demand for inequality. That we have both of these is quite clear. On the one hand, we are inclined, in conscience, to believe that All Men Are Created Equal, and entitled to equality before the law, equality of opportunity, and so forth; and there is at least a nagging suspicion that this ought really to extend to equality of all socially distributable goods, including "material possessions" such as income and wealth. This demand is splendidly reflected in Rawls' "general conception of justice," which starts out by proclaiming, "All social values—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally."¹ But on the other hand, we have very concrete desires for the sorts of things that money can buy, and a marked disinclination to follow Christ's advice to the rich man: "If you would be perfect, go, sell what you possess and give to the poor . . ."² Indeed, we even must confess, on occasion, to having the desire to get ahead of our neighbor. In any case, we'd like very much to be able to keep what we have, even if it is more than others have and even if it's more than we need. And this is buttressed by a rather different set of "intuitions" about justice, namely, that some deserve, or are entitled to, more than others.³ This part of our nature is appealed to by the remainder of Rawls' general conception quoted above, which goes on, ". . . distributed equally, unless an unequal distribution of any, or all, of these values is to everyone's advantage."⁴ Though "iffy," the clear intent is to allow inequalities to be accounted just, on occasion at least.

Rawls' "general conception" which I have been quoting underlies, of course, the "special conception" as we might call it in which there are two distinct principles, a principle of liberty, to the effect that "Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others,"⁵ and a principle about "social and economic inequalities," to

the effect that they “... are to be arranged so that they are . . . reasonably expected to be to everyone’s advantage . . .,”⁶ which gets further refined into the famous “difference principle,” according to which “Social and economic inequalities are to be arranged so that they are . . . to the greatest benefit of the least advantaged . . .”⁷ (The second principle also invokes a requirement of equal opportunity and open offices; this aspect of the principle does not concern us here.)⁸ Further, there is the famous requirement that the equal liberty principle is “lexically prior” to the second, and the equal opportunity clause in the second lexically prior to the difference principle. This requirement contributes still more to the alleged reconciliation, for it specifies that liberty, which we by heritage hold dearest, is to be absolutely equal before all else, while leaving the difference principle to govern inequalities between them, be it noted, in such a way as to allow the inequalities which we also hold dear, namely inequalities of wealth. I can now state, in brief, the contention for which I will argue here: to wit, that this reconciliation will not work. Either (1) it goes whole hog one way, leaving no socially reinforced tendency toward equality in the distribution of wealth; or (2) it goes all the way the other way, giving us Christ’s injunction as a requirement of justice—out and out communism in one understanding of the word; or (3) it has theoretically indeterminate consequences which in fact leave us either with no theory or with an entirely different theory. I proceed immediately to these arguments, developing each horn of the trilemma in turn.

First Horn

Let us take seriously⁹ the claim that the first principle is to be lexically ordered with respect to the second. This means, in Rawls’ words, that liberty “can be restricted only for the sake of liberty.”¹⁰ And now let us suppose, as might be expected, that this principle is designed, simply, to protect liberty, meaning our doing what we wish without the interference of others.¹¹ If that is what is meant, then the principle must include economic liberty as well. Now, economic agents, of whom there are likely to be quite a few in any given society—especially the society we are all members of—are people who are trying to increase their own amount of wealth. They do so by buying and selling—buying cheap and selling dear, preferably. The transactions by which they do so, insofar as they take place in a *free* society, are voluntary. If Jones gets a low wage and Smith a high one, that’s just the way the ball bounces. Nobody is preventing Jones from moving to a better-paying job, or one that offers other compensations—self-employment for less money, for example—if he wants to and can; and nobody is preventing a competitor from underselling Smith if he wants to and can.

What is important about the liberty principle if applied to economic matters is that it is not, to use Robert Nozick’s useful terminology, a “patterning” principle, but rather a procedural one. It imposes restrictions on the ways in which individuals may acquire, but none on how much they can

acquire. By contrast, Rawls' difference principle is a patterning principle, and apparently a very strong one, calling upon us to reduce as much as possible the disparities between the bottom class and the rest, the extreme limit being, of course, no disparities at all. Nozick is only the most recent in a long series of theorists to point out that if we simply let people do what they want, then that is likely to upset any patterns we might want to realize in the distribution of goods.¹²

The point is, therefore, that if we really mean business with a liberty principle, then the inclusion of economic activities within its scope has the implication that we can simply jettison the second of Rawls' principles altogether. For there is no way to do anything toward socially weighting the distribution of wealth towards the least favored without infringing on economic liberty, for example, by redistributive taxation; but Rawls' strong priority of liberty would preclude using such measures, since it says that liberty may be infringed only for the sake of liberty and not for other economic or social gains. Of course, redistribution can be effected by voluntary means, in case enough people should happen to want to do it. But that we are allowed to give our money away if we like is not in question here. What is in question is whether there is a requirement of justice that redistribution in the direction of equality take place. To say that there is is to say that people may be required to promote equality, and not merely that they are permitted to. And this is to say that redistribution as a requirement of justice is incompatible with unlimited economic liberty; which is to say that if economic liberty is included in the scope of Rawls' apparently very strong first principle, then the difference principle cannot legitimately be institutionalized.

Certain criticisms of this argument should be mentioned here, to dispel misunderstanding. It might, for instance, be argued that the income tax is not an infringement on economic liberty, on the ground that it does not prevent people from engaging in any particular sort of (legitimate) business or line of work, but only takes part of the proceeds from that activity, whatever it may be. Now, we may concede that this method would be much superior to Stalinism, say; nor need we agree with Nozick that taxing is equivalent to forced labor.¹³ Nevertheless, it cannot be maintained that there is no infringement on economic liberty here. If I am engaged in a sequence of activities, aimed at realizing a particular result—such as my having a certain amount of money—and then at the final stage, you descend on me and take a third of what I have been working toward, without my permission, you have certainly interfered with my liberty of action, even if you left me entirely alone up to that point. Human activity is purposive, and interfering with purpose-fulfillment is interference with human activity.

Again, some will doubtless insist that free enterprise does not constitute economic liberty and is, indeed, not even compatible with it. Thus they will claim that a system in which economic roles are centrally and coercively allocated is actually in the interests of liberty. Space, unfortunately, precludes considering this claim at the length it deserves. I shall content myself with two pertinent observations. The first is that this is a thesis which could hardly be made out without redefining the term 'liberty'—which is a popular thing to do,

but does not promote clear discussion *of* these matters. The most popular such redefinition is got by suggesting that if A isn't actually *assisting* B in doing x, then A is *holding B back*.¹⁴ With the assistance of this maneuver, we then justify coercing A into assisting B on the ground that we are merely rectifying an antecedent infringement of B's liberty by the unhelpful A. In the process, of course, the very line which we require to define the notion of liberty as a distinctive value has been erased. If one's aim is to promote verbal chaos, this *is* admirable, but otherwise, it is difficult to see what the point is. After all, *if* one is in favor of coercive redistribution of wealth in order to promote the public welfare or the general good, why not say so? Why insist on stating one's aims in such a way as to foster the illusion that one is agreeing with the very people one is opposing?

The same comment applies to the argument, taken from the Rawlsian insistence¹⁵ that the liberties must be viewed as a system and not taken in isolation, that the other liberties cannot be separated from economic considerations and when we bear this in mind, we will find that economic maldistribution interferes with the other liberties plainly intended to be equalized under the first principle. Thus if you are wealthy and own the local TV station, while I am either poor or have my money in something else, then you are infringing on my freedom of speech if you don't give me some time on your channel.

Certainly we must agree that what exactly constitutes "forcing" or "coercion" in economic matters is not an easy thing to decide. Thus, what of the successful entrepreneur who becomes a monopolist, not by unfair tactics but simply by offering a better product at a lower price, that is, being more efficient than his competitors? His competitors, it is now said, have been "forced" out of the market. But who "forces" them? The consumers in this market had their choice, and chose, overwhelmingly, to buy this entrepreneur's products rather than those of his competitor. If we now enact legislation requiring this firm to forego some of its market, or if we subsidize some less efficient competitor in order to keep the latter in the market—using tax money to do so—then it is clear enough that force is being used. But it is very unclear that the entrepreneur under consideration is using anything that can reasonably be called "force" or "coercion." Obviously, we can sometimes be forced by circumstances, or geography, or the weather, to do things, but these are not instances of social coercion as they stand. One might argue independently that each individual is entitled to some minimal share of the world's natural resources. Such a theory might lead to some kind of minimum wage as an equivalent for that share, for instance.¹⁶ However, this simply isn't Rawls' theory as we have it, and would not get us anywhere near the difference principle.

Finally, we must observe that whatever merit these other notions of liberty may have, they are not held by Rawls. Instead, he says:

A final point. The inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and a lack of means generally, is sometimes counted among the constraints definitive of liberty. I shall not, however, say this, but rather I

shall think of these things as affecting the worth of liberty, the value to individuals of the rights that the first principle defines.¹⁷

This terminology enables us to say clearly what we mean. And now also, a rather striking point about Rawls' system can be noted, namely that liberties in it are not *defended simply as such*. Having distinguished liberty and the worth of liberty, Rawls clearly opts for the latter as the proper goal of the social system, and not the former for its own sake. "Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This defines the end of social justice."¹⁸ To the careful reader of Rawls, this will come as no surprise, actually, for the whole theory is anchored in the idea that individuals rationally concerned to maximize their own long-run satisfactions are constrained, by the concept of justice, to choose social principles with that motive intact,¹⁹ but their individuality masked by the "veil of ignorance." Liberties and possessions will both, of course, be means to the same overall end, and so there can be no question of pursuing one to the exclusion of the other. And indeed, the general conception of justice, of which the two principles are a specification, applies to all primary goods, including both liberty and wealth, so that as far as it is concerned, "No restrictions are placed on exchanges of these goods and therefore a lesser liberty can be compensated for by greater social and economic benefits."²⁰ A special argument is required to separate these two types of goods and make them the object of separate principles, one of which has priority over the other—indeed, an argument which only holds in special circumstances, "favorable conditions."²¹ It is a misunderstanding, then, to suppose that the lexical priority of liberty is ultimate and general.

Since this is so, Rawls can evade the first horn of my trilemma fairly easily. The first principle doesn't quite mean what it at first appears: it doesn't apply to liberty in general and as such, but rather to "basic liberties," the expression used in the fullest statement of the principles.²² And whenever Rawls lists these liberties, we find only the standard civil liberties, the right of conscience, freedom of religion, speech, assembly, and so forth.

The closest we get to a purely economic liberty is "the right to hold (personal) property"²³—note the specific exclusion of productive property. In brief, economic liberty in general simply isn't regarded as "basic." So Rawls evades the first horn of my trilemma by not counting economic liberty as one of the liberties intended to be covered by the first principle. This would be open to the charge of arbitrariness if the first principle were about liberty *as such*. But since it isn't, arguments can be given for including some liberties and not others in its scope, and indeed, the arguments are at length forthcoming. They consist of an assessment, from the point of view of the rational man, of the relative utility (or value, if you prefer) of liberty (meaning the other liberties) as compared with wealth. The rational chooser is said to "care very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule;"²⁴ later, the preference is elaborated.²⁵ We shall not here pursue the further implication, that Rawls' system is, despite his ubiquitous professions to the contrary, utilitarian.²⁶ It is

not my concern here to probe that deeply into the structure of his theory: instead, I aim only to raise some questions about the meaning and implications of the two principles as they stand. Obviously, it must be questioned how satisfactory a foundation Rawls' arguments provide for the stated principles. Most fundamentally, for instance, it may be questioned whether such assessments may legitimately be employed in the design of a social system at all. Less fundamentally, and perhaps more plausibly, we must query whether there can be any uniform assessment along these lines, as well as whether any uniform assessment is really needed.²⁷ All this can be left on one side at present. Having seen that Rawls can evade the first horn of my trilemma, at modest cost, we shall now turn to the second. There, if I am right, the difficulty will not be so easy to avoid.

Second Horn

The difference principle says that economic inequalities are to be permitted only if they are, in the long run, to "the greatest benefit of the least advantaged." The position of the least favored class is to be "maximized." Explicating this further, Rawls says:

... one should distinguish between two cases. The first case is that in which the expectations of the least advantaged are indeed maximized. ... No changes in the expectations of those better off can improve the situation of the worst off. The best arrangement obtains, what I shall call a perfectly just scheme. The second case is that in which the expectations of all those better off at least contribute to the welfare of the more unfortunate. That is, if their expectations were decreased, the prospects of the least advantaged would likewise fall ...²⁸

In brief, justice obtains when those at the bottom are as well off as they can be. If allowing those above them to be still better off would also improve the prospects of those least well-off, then that is to be permitted; if, on the other hand, there is a situation of conflict with the poor, so that the more the rich get, the less the poor get, then the conflict is to be resolved in favor of the poor: the rich are to be taxed, or whatever, and redistribution effected until we reach either equality or a point where the conflict ceases and further diminishing the lot of the rich would no longer improve the lot of the poor.

What is the argument for this strongly equalitarian formula? As before, of course, the principle is to represent the choice of social principles by a rational chooser who is entirely ignorant of his own identity, and who, though self-interested, must therefore choose on the assumption that he might turn out to be just anybody. Under these circumstances, he will reason, according to Rawls, as follows:

Since it is not reasonable for him to expect more than an equal

share of social goods, and since it is not rational for him to agree to less, the sensible thing for him to do is to acknowledge as the first principle of justice one requiring an equal distribution. . . . But there is no reason why this acknowledgement should be final. If there are inequalities in the basic structure that work to make everyone better off in comparison with the benchmark of equality, why not permit them?"

It is interesting how readily Rawls' Principle has been accepted in the philosophical world, and one can only account for this acceptance on the assumption that people have supposed that the purported justification of inequality really does apply a lot of the time. Now, *given* the condition that inequalities might be necessary to make everyone better off than an equal distribution would make them, the justification may be agreed to follow readily enough. But would it ever be necessary? That they would have to be *necessary*, given the reasoning stated, is clear enough. For if an inequality were not necessary, and one could find an alternative way to improve the lot of everyone, then equality must clearly be preferred on the reasoning cited. Rawls' statement of the matter suggests that he sees no great difficulty in the condition required being realized. That, however, is what I shall now question.

We must begin by getting clear about the meaning of the term 'benchmark' here. Rawls' use of it might suggest to some that one could satisfy the principle by selecting some point in, say, the past of the society one winds up in, at which equality obtained and then permitting all developments which left no one any worse off than he was at the equal-distribution point. But this cannot be so. In the first place, it is notoriously impossible to select any such point in a nonarbitrary manner. Nor could some level of material development be nonarbitrarily selected such that equal distribution of the GNP at that time could be enacted for "benchmark" purposes in the way described. In the second place, and more fundamentally, there simply is no reason why a chooser behind the veil of ignorance should opt for any such scheme. Plainly what his reasoning, as depicted by Rawls, leads to is that things ought to be distributed equally—all things, at all times, unless the unequal distribution will benefit everyone more than an equal distribution of those things would have. What has to be understood by the suggestion that equality is the "benchmark" is that equal distribution is *prima facie* just, and inequalities require special justification of the kind stated. The question is how we are to understand the justification-condition proposed.

There is also an important ambiguity in the notion of "making everyone better off."³⁰ The two readings are as follows:

D1. 'Everyone is better off' = 'No one is worse off' (persons outside the transaction may be unaffected, compatibly with the requirement.)

D2. 'Everyone is better off' = 'Each person's situation is improved by comparison with what it was before the transaction' (persons outside the transaction must be favorably affected, to meet the

requirement.)

Interpreting the difference principle along the lines of D1 would yield the result that any transaction between two parties which was to mutual benefit and had no detrimental effects on third parties would be permitted. In that case, of course, the difference principle would have ceased to be a patterning principle at all, and we would have the same result as in the first horn discussed above: no rectification of inequalities would be forthcoming so long as those inequalities were arrived at by voluntary transactions among individuals and not by force. Clearly, this cannot be meant. So D2 must be what is intended, and this immediately raises the question how much other parties must be benefited. Again, it would be possible to trivialize the principle by making the acceptable benefit level infinitesimal, or, for instance, by proposing that the sheer existence of society is a benefit or that any increase in wealth on anybody's part increases the amount of goods potentially obtainable by others and is therefore a benefit to everyone. Obviously, neither of these readings will do, either. Our rational chooser behind the veil of ignorance is in for a rude shock if he winds up a pauper in some society with nothing more than that as an explanation.

Now, the upper limit of benefits to those worst off is equality. And if all social goods ought, *prima facie*, to be distributed equally in the interests of justice, what sort of circumstances could justify us in claiming that we really must have an unequal distribution in order for those who thus come out with less to have more than they would under an equal distribution? The official answers are two: the need for savings, capital accumulation; and the need for incentives. Capital accumulation is necessary in any society which wishes to advance materially, and this requires that good investment decisions be made. But Jones might be better at making investment decisions than Smith, and so an inequality, putting Jones in a superior position for making such decisions, will be necessary. And incentives may be necessary in order to keep Jones contributing to the economy at a rate which will improve the lot of everyone, including Smith, who comes out with less. I shall now argue that neither of these answers will do.

The reason why the appeal to capital accumulation functions won't do is quite simple: it involves a confusion between capital "goods," which aren't really goods at all in Rawls' sense, with consumer goods, which are. Let us grant that the unequal distribution of talents will require, for efficiency's sake, that some persons have more managerial power than others, more say as to what should be produced and how. But none of this implies that the said managers must also have more to eat, bigger houses, nicer cars, and so forth. (It doesn't imply, either, that they must own the productive resources which they manage. All of this could be socialized.) In principle, then, the whole realm of capital can be separated from the realm of consumption goods, and different principles applied to each. There is no logical necessity that those who produce more must also get more of what is produced. And it is only consumption goods that are essentially in question here. Power, as Rawls has recently clarified, is not a primary good.³¹ The correct distribution of power in a society, economically speaking, is whatever distribution will maximize production, subject, of course,

to the constraints of respect for civil liberties. Production is for the sake of consumer goods. But what principle should govern distribution of the latter? That is what the difference principle is about, and so far, the indicated answer is that they should be distributed equally.

We turn, then, to the matter of incentives. The official view is as follows:

If, for example, these inequalities set up various incentives which succeed in eliciting more productive efforts, a person in the original position may look upon them as necessary to cover the costs of training and to encourage performance.³²

We have already seen that covering the costs of training is beside the point, since those are capital costs. The question is whether medical students must be paid less than advanced specialists with years of practice behind them, and Rawls must explain why a “yes” to that question is in order. What counts, then, is incentive per se: the encouragement of performance by means of unequal reward.

Why should this be thought problematic for Rawls’ theory? The answer is that incentives are psychological matters, which concern one’s principles of action. If I hold out for, or accept, a greater payment for my services than someone else is getting for his, I am voluntarily consenting to an inequality. I cannot argue that this higher payment is “necessary,” that I am *forced* to have more than you. Obviously, I could, if I wanted to, accept the same wage as everyone else. Alternatively, I can accept more, but then turn around and give the excess to those who have less. The question we are discussing is whether, in justice, I *ought* to do this. And to say that incentives are “necessary” for this purpose is to engage in confusion, or possibly even in self-deception.

Sometimes, conceivably, there will be laws of nature which make inequalities inevitable. Perhaps it will be impossible to give equal wealth to persons in distant deserts or tundras. But this is not the sort of justification we are considering. What we want to know is whether higher pay for some is literally necessary to extract more production from them. And on the face of it, the answer is surely that it is not. I *can* “sell all that I have, and give to the poor.”

Will anyone seriously deny this? Perhaps those of Marxist persuasion will say, at this point, that it is a matter of “historical necessity” that people will not be willing to part with whatever their economic system happens to have given them. Or they might want to bring up the subject of historical determination of moral beliefs. Both would be red herrings, however. The first is irrelevant because our question is not what men will do, but what they conceivably could, if they chose. They often do not choose to give up their wealth, true. But it is quite another matter to insist that they don’t even have that option. Anyway, can anyone seriously maintain that Karl Marx, who obviously could have been a successful lawyer or merchant, was somehow determined by his economic surroundings to become a social theorist instead? *Economically* determined? And the second is irrelevant because our question is not what men do think, nor what makes them think it; it is, merely, what follows from Rawlsian premises

about what they ought to think.

We return, therefore, to the central question. If it is the case that socially distributable goods ought to be distributed equally unless an unequal distribution is required to improve the prospects of the worse off, and if we all have the option, if we so choose, of sharing equally with others, then does it not follow that if we don't take this option, we are being *unjust*? For in effect, my claim that I "need" more as an "incentive" is just a misleading way of saying that I *want* more and that I'm not willing to do as much if I don't get it. Or, to put it bluntly, it seems that in so acting, I am being voluntarily selfish. And it is hard to see how this would justify an inequality, if inequalities really need justifying along the lines Rawls proposes. It might excuse it, in some sense. Perhaps selfishness could be made out to be a sort of disease, which would excuse persons for insisting on higher salaries much as kleptomania might excuse a thief, or a bout with the flu a missed appointment. Even so, this would be an excuse and not a justification. But justification is what is in question. And it is not forthcoming.

The conclusion seems to be that if the difference principle is really the right principle for distributing economic goods, then any society manifesting any inequality other than what is naturally inescapable is to that extent unjust. Is this conclusion escapable in Rawls' system? Let us now consider a general line of objection to the above account which might be thought to get Rawls out of this problem, if a problem it is—some, of course, will cheerfully accept this result; but not, I think, Rawls. This general line of objection stems from Rawls' continued insistence that the primary subject of justice is the general structure of society—institutions and their workings, not individuals and theirs. So much is suggested in the very first sentence of the book: "Justice is the first virtue of social institutions, as truth is of systems of thought."³³ And the claim is frequently reiterated that these principles are not to be thought of as applying in detailed, individual cases. In general, such cases are supposed to be left to procedural justice to take care of. Thus he says:

Now, as we have seen, the idea of justice as fairness is to use the notion of pure procedural justice to handle the contingencies of particular situations. The social system is to be designed so that the resulting distribution is just however things turn out. To achieve this end it is necessary to set the social and economic process within the surroundings of suitable political and legal institutions. Without the proper arrangement of these background institutions the outcome of the distributive process will not be just.³⁴

Further, the proposal is that we look at the social system not from the point of view of individuals as such, but rather of "representative men." "In judging the social system we are to disregard our more specific interests and associations and look at our situation from the standpoint of these representative men."³⁵ Thus we have two contrasts related to each other: (1) that between procedural principles, which do not determine the shape of results but only the

way in which they are attained, and patterning principles, which call for a particular shape of results, and (2) the “macro-micro” contrast, the difference between the “background institutions” and the individual case, the basic structure and the details. Why restrict ourselves thus? It would appear that what is supposed to justify invoking both contrasts in the theory is simplicity. “We cannot have a coherent and manageable theory if we must take such a multiplicity of positions into account. The assessment of so many competing claims is impossible.”³⁶

Finally, there is a general tendency to refer us back to the “circumstances of justice,” the conditions which give rise to the whole subject. These are the circumstances depicted by Hume and others, and described by Rawls as follows:

The circumstances of justice may be described as the normal conditions under which human cooperation is both possible and necessary. Thus . . . although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to try to live solely by his own efforts. There is a conflict of interests since men are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share.³⁷

Having thus described the background conditions, Rawls feels justified in saying such things as this:

One might think that ideally individuals should want to serve each other. But since the parties are assumed not to take an interest in one another’s interests, their acceptance of these inequalities is only the acceptance of the relations in which men stand under circumstances of justice. They have no ground for complaining of one another’s motives. A person in the original position would, therefore, concede the justice of these inequalities.³⁸

The emphasis on these themes certainly complicates the picture and the interpretation of Rawls’ theory. But are they really of any avail in solving the problem which I have been describing?

Let us begin with the last point. Is it true that recognition of the circumstances of justice, including in particular the self-interested character of human motivation, leads to acceptance of inequalities of wealth? Will they really, for the reasons stated, have “no grounds for complaining of one another’s motives?” No. In the original position, nobody knows who he is. All he knows is that whoever he turns out to be, he will want as much as he can get—it is, remember, precisely this knowledge that makes him reason in the peculiarly conservative manner described previously, leading to the difference principle. So we must ask what will and what will not be “accepted.” Differences in ability,

we will suppose, are simply natural and therefore must be accepted. But differences in material well-being are social. *Prima facie*, they will not be accepted. Will the existence of self-interested motivation be “accepted” in the sense that it is allowed as a reason for justifying differentials in social reward? Why would it? Surely not just because it is a motive. We condemn many motives, after all. Indeed, we condemn various forms of this one, under the names of ‘greed,’ ‘selfishness,’ ‘avarice,’ and so on. Now, either self-interest is a contractible motive, or it is not. If it is, then surely the reasoning in the original position calls upon us to counteract it, by condemning it insofar as it leads to a lower level of well-being for ourselves, whoever we may turn out to be—that is, for the worst-off people, in case we turn out to be them. If it is contractible, then, it will not be accepted, and men will have grounds for complaining of one another’s motives in this respect.

What if it is not contractible? It has been widely noted³⁹ that Rawls has a real problem with the subject of human nature in his theory. He postulates that men are disinterested in others, indeed rationally so, saying, for example, that “One feature of justice as fairness is to think of the parties in the initial situation as rational and mutually disinterested. This does not mean that they are egoists, that is, individuals with only certain kinds of interests, say in wealth, prestige, and domination. But they are conceived as not taking an interest in one another’s interests.”⁴⁰ Yet he has a theory which seems strongly non-self-interested in crucial respects. The upshot is that the assumptions of the theory make it hard to see how the results of the theory could ever be effective: why would men do what justice requires in those (many) cases where it requires foregoing a gain, if they are rational and rationality is essentially self-interested? If these critics are right, as I suspect they are, then either men behind the veil of ignorance will simply forget about the veil, foreseeing that nothing of interest can come of the venture; or they will carry on with it, knowing that what they come up with will call upon them to condemn a large percentage of the human race a large part of the time as unjust. This last option is certainly not unfamiliar, and my point is that it seems to be the one Rawls’ theory will take him to. What recognition of these facts (if such they are) about human nature will not do is to enable us to interpret the difference principle as stated in such a way as to allow a degree of inequality somewhere between the free market and sheer equality. (Again, perhaps it will leave us with excused inequalities, on the ground that some things “exceed the capacities of human nature,” to use a phrase which Rawls employs in another connection. But recognition of such an “excuse” is going to be mighty rubbery—failure to give away half of my income isn’t like alcoholism or kleptomania, after all! And of course, again this would concede my point: that inequalities are not justified along these lines, but at best excused. They *need* excuse, because they *aren’t* justified, if equality is the benchmark of justice.)

Nor can any headway be made by appealing, as Rawls frequently does, to the idea that justice must be indifferent as between particular differing conceptions of the good life, as typified in the following passage:

Justice as fairness, however, . . . does not look behind the use

which persons make of the rights and opportunities available to them in order to measure, much less to maximize, the satisfactions they achieve. Nor does it try to evaluate the relative merits of different conceptions of the good... Everyone is assured an equal liberty to pursue whatever plan of life he pleases as long as it does not violate what justice demands. Men share in primary goods on the principle that some can have more if they are acquired in ways which improve the situation of those who have less.⁴¹

This evades the problem, or begs the question before us. To start with, of course, it should be pointed out that anything whatever is just “so long as it does not violate what justice demands!” The question is, though, what *does* it demand? Nor is it in point to say that men are free to pursue whatever plan of life they may have, compatible with the constraints of justice. The trouble is that the constraint of the difference principle seems to limit the amount of wealth which anyone may have—limit it, *prima facie*, to the same amount as is had by others. It is no reply to this to say that they may spend what they do get in whatever way they please, provided it doesn’t contravene the liberty principle. Again, we must remember that the difference principle is a patterning principle, *not* a procedural one.

Finally, and most fundamentally, let us turn to the macro–micro contrast. This is certainly a vague and slippery distinction to invoke in these contexts, as has been well argued by Nozick.⁴² But I think we can go to the heart of the matter more satisfactorily simply by pointing out that the contrast, as used by Rawls, will not have the effect required to salvage justified inequalities of wealth. The reason for this is not merely that it is hard to see why people in the original position would accept as a constraint on choosable social principles that they stop short of applying to individual men and instead govern only institutions, if that is indeed a constraint; although, certainly, it is hard to see this. If one is allowed to assume only that one might be a member of the worst-off social class and chooses principles accordingly, only to wind up as one of the very badly-off members of a generally well-cared-for worst-off social class, it isn’t going to be much comfort to be told that “In any case we are to aggregate to some degree over the expectations of the worst-off,”⁴³ or, worse yet, that one does so in the interests of theoretical simplicity! And of course, Rawls does not postulate that one is so concerned about the prospects of one’s social class generally that one would be quite willing to sacrifice one’s own prospects for their sake. And why should he?⁴⁴ But we need not harp on that subject, for the facts about institutions are enough to make appeal to it in this context ineffective. The facts are two: first, that institutions *can* concern themselves with individuals in every sense relevant to this issue; and second, that institutions are *man-made*—as they must be in order for any principles to reach them anyway. Let us consider each, in the light of a suitable example.

Let us suppose, then, that one is a representative member of, say, the economically most favored class in some society. And let us suppose that some political party offers, as its platform, the proposal to establish as an entrenched constitutional right a guaranteed annual wage, to be set at the current national

average and financed by an income tax which would confiscate all income in excess of this average and hand it by transfer payments to those below. (This might be a transitional mechanism, but that doesn't matter for present purposes. It also doesn't matter if there is no such party: for my argument will raise equally the question why any citizen should not proceed to do what he can to form one.)

Now we ask: given Rawlsian reasoning, ought our man to vote for this party? What does justice require of him when faced with such an option? Of course, if he ought to, then everyone ought to, since the principles here are the same for everyone. Of course also, the question of other means might arise. We are assuming that if everyone does vote for it, it will be done. But if others are disinclined to, obviously the question must arise whether violent means, by some small minority, shouldn't be used. But we ignore such problems here.

Two questions must be asked: (1) Would it be just, if it would work? And (2) Would it work? Now, I submit that on Rawls' reasoning, the answer to the first question must be a resounding affirmative. If it is possible to equalize income without, say, seriously diminishing the GNP in the process, then this must be the just thing to do, if justice requires the major institutions of society to maximize the position of the worst-off. And since the proposed measure would be a social institution, no macro-micro objection is reasonably invoked here. The issue therefore turns entirely on the second question—whether it would be likely to work.

Now, almost every reader will immediately answer that of course this scheme will not work. But if it wouldn't, why wouldn't it? And we all know the answer to this, too. David Hume and Nikita Khrushchev, not to mention many between, will join together in agreeing that

. . . however specious these ideas of perfect equality may seem, they are really, at bottom, impractical. . . . Render possessions ever so equal, men's different degrees of art, care, and industry will immediately break that equality. Or if you check these virtues, you must reduce society to the most extreme indigence; and instead of preventing want and beggary in a few, render it unavoidable to the whole community.⁴⁵

Men simply are not motivated by a concern for the welfare of their fellows to an extent which will keep them working as hard as before if required to share all proceeds equally with everyone. But suppose this is true, the question remains how we are to characterize this lack of concern, given a theory of the type we are considering? And the answer, I submit, remains that we must, on these principles, characterize this lack of concern as injustice. In being unwilling to lend their support to institutions which would certainly achieve the aim of economic justice, as defined on this theory, they are being *prima facie* unjust. And if the only reason why those institutions would not achieve that aim is that men won't willingly support them, then it cannot be said with a straight face that "well, we are in favor of this in principle, but the trouble is, this just wouldn't work!"

In brief, there is nothing about the notion of an institution which prevents it from interfering in the market to the extent required to bring about economic equality, at the individual level. We have plenty of institutions which deal with individuals. Rawls' constraints on principles cannot prevent this, nor would it be coherent to do so. Imagine saying, "We agree that the unemployed, as a class, are entitled to relief, but of course that doesn't require us to help out any individual unemployed person!" They of course prevent institutions from being defined in terms of the way they treat Edwin T. Smith, but nothing of that sort is in question here. And there is nothing about the notion of an institution which blocks inferences to the duties of individuals. Again, it would be incoherent to maintain that there is, in any way general enough to defeat the present argument. People of course do say, "That's not my responsibility—let the Red Cross or the Health Insurance Commission or the Department of Indian Affairs do it." But can the person who doesn't give anything to the Red Cross, or who opposes public health insurance, or who doesn't think there should be any Department of Indian Affairs say such things? Obviously not. Either he doesn't accept the goals of these institutions, or he's being hypocritical or inconsistent. Similarly, a wealthy person who accepts Rawls' principles ought, so far as I can see, to favor establishment of a rigorous program of economic equalization. Most people, wealthy or not, do not favor such a program. But I suggest that most people, contrary to Rawls' claims about the intuitive support of his system, do not accept his principles; or if they claim to, it is because they have not clearly seen what follows from them about their commitments.⁴⁶

I conclude that strict adherence to the difference principle will also require commitment to a perfectly equal division of wealth in nearly any society, including all societies of anything like our degree of material advancement. Then, and only then, could we honestly say that we have fulfilled the requirement of maximizing the welfare of the worst-off. Whether this is a welcome conclusion is, of course, another matter, about which I shall say a little in the closing section of this paper. Meanwhile, let us move to the third horn of my trilemma.

Third Horn

So far, my argument has been that, depending on how you read Rawls' first principle, his second principle is either dispensable and gives no weight to economic equality, or it gives so much weight to it that only out-and-out equality will satisfy it. The thought naturally arises that perhaps what we need to do is find some kind of recipe for mixing the relevant claims in the right proportions, thus reestablishing the kind of reconciliation needed. For example, it might be proposed that the settlement point between equality and free market inequality is properly a matter of politics and should be left to the democratic process to work out. And indeed, this is probably what most people, other than extremists, do think about the matter. As a proposal within the Rawlsian framework, however, I shall argue that it won't do at all.

Let us begin by pointing out that the democratic principle sits rather uncomfortably with Rawls' first principle. As everyone well knows, if democracy is interpreted purely as majority rule, then it would have to be severely constrained to give us anything resembling our intuitions about human rights: obviously, a majority could decide to inflict any manner of evils on a hapless minority. Now, Rawls' liberty principle may readily enough be appealed to to supply many of those constraints. But what about the aim of economic equalization according to the difference principle? The situation remains unchanged. Either economic liberty is among the protected liberties, in which case majority rule is constrained by it as well as by the ordinary civil liberties; or it is not, so that the question arises whether the difference principle is also a constraint on majority rule. Either it is or it isn't, again. If it is, we have the same conclusion as before. If it is not, however, then we would seem to have the same conclusion as in part one above: for we will have whatever economic distribution the majority permits, and we may as well therefore dispense with the difference principle yet again.

Obviously, we cannot reasonably suggest that the constraints of the difference principle are *defined* by political procedures such as majority rule: as though the meaning of the phrase 'as well off as they can be' could be equated with 'as well off as the majority is willing to make them.' One reason why no such suggestion will do is that the principles of justice are supposed to provide *guidance* in this matter. People disagree about what ought to be done, in this case about what is just. Principles of justice are supposed to settle such disagreements, or at any rate provide the proper machinery for settling them. Now, the difference principle looks like such a principle. It is, as I have pointed out at various places above, a patterning principle. So if instead it is suggested that disagreements about the proper bases of distribution are to be left to the will of the majority, then that is to switch to a *different* principle, namely a procedural one. It is not to interpret the one we already have.

Or suppose it is said that the proper distribution is the one determined by weighing the motive of justice, which ideally calls for equality, against people's other motives in some politically acceptable mix. But now we have not only a different theory but, it would seem, an incoherent one. For this new suggestion apparently has it that the just thing to do is to effect the distribution which we get by mixing the motive of justice with other motives in some proportion. It seems absurd to call that a theory of justice; and in any case, it surely isn't Rawls' theory. Nor, of course, does it yield a determinate distribution—it could yield any distribution, including either of the two extremes we have been considering.

I conclude, then, that so long as we stay within Rawls' premises and the reasoning he offers us from those premises, there is no third option. It remains that either we have out-and-out free market distribution or, more likely, we have out-and-out equality as our model for distributive economic justice.

Concluding Note

I have characterized this as a "trilemma" for Rawls' theory, the implication

being that all horns of it are unsatisfactory. And they are unsatisfactory for Rawls, at least, for if I am right, his theory cannot give him what he evidently wants, namely, an egalitarian-tending theory which nevertheless genuinely justifies a moderate amount of economic inequality. It is clear, however, that among the options provided, the main drift of Rawls' theory is toward the Charybdis of equality and away from the Scylla of the unbridled free market. The reason for this, as I pointed out, is that liberty as well as wealth get defended in his theory as utilities, at bottom, and Rawls' views about the utility of wealth are what make him opt for equality. Namely, Rawls assigns a strongly diminishing marginal utility to increased wealth. The rational chooser "cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule."⁴⁷

One obvious way to fix things up, then, would be to adopt a less conservative view about the marginal utility of increments of wealth, be more forthrightly utilitarian than Rawls has been willing to allow, and replace the difference principle with a much weaker provision for the sort of minimum economic assistance which we are currently inclined to concede as what is due to those who have not done well by the market. But to work out the details of such an overhaul of Rawls' principles is not the task of this paper.⁴⁸

Meanwhile, what about the intuitiveness of the difference principle as it stands? I submit that as between the Scylla and the Charybdis in question, if we had to take our choice, surely Scylla would be much preferable as an account of these intuitions. If what we are concerned about is justice, rather than other moral qualities such as kindness, mercy, or sympathy for our fellows, then it is surely outrageous to propose that every time one person makes more than another from a mutually advantageous voluntary bargain, the former is being unjust to the latter—in any degree. Equality as a criterion of justice in the distribution of wealth, as such, is surely not just impractical, but wrong. Of course there are inequalities of treatment which are properly accounted injustices, and many of which will have economic ramifications, as when someone is prevented from seizing a certain economic opportunity on account of his or her race or religion. But the equality which Rawls is calling for is not limited to such contexts. From the lofty point of view of the original position, all differences—of natural ability, geography, parentage, and so on—get steamrolled as "morally arbitrary" and hence to be "compensated for." And this, as Nozick rightly objects,⁴⁹ is an outrageous inference. If Sally and Peter are accountants in a private firm which pays them for their services, and Sally gets far more done because she just happens by nature to be six times as adept at arithmetic as Peter, then she *deserves* a greater reward than he, and the fact that her ability is simply a gift of nature has no tendency whatever to upset this conclusion.

The point I am making here should not be misunderstood. De facto economic inequalities could, certainly, be a function of other features of the society which are genuinely unjust, and some economic equalization might well be justified under the aegis of rectificatory justice. And there could be other reasons for supporting the justice of a measure of economic equality, or measures which have that effect. It is one thing to say that economic equality

simply is not as such one of the basic requirements of justice, and quite another to say that measures which tend to promote it, even by publicly coercive measures such as taxation, are on that account necessarily unjust. I am saying only the former, not the latter. It may very reasonably be argued, for instance, that people have a right to protect themselves from the uncertainties of the market by establishing programs of social insurance, unemployment compensation, a minimum wage, or whatever.⁵⁰ Or it might simply be argued that society is better off with a substantial degree of equality even if it is got at the expense of a fair amount of coercion, and that public interest in this outweighs the claims of freedom as they apply to the market. But for this, one does not need a theory which says that equality as such is an aim required by justice—that any society which does not recognize equality as a major aim is ipso facto unjust. That is what I am suggesting is outrageous, but it is apparently said by Rawls' principles. If so, something has gone seriously wrong.

Notes

This essay was published originally in *Social Theory and Practice*, 4, no. 1 (1976); reproduced here by permission of the editors. A paper to similar effect was presented at a meeting of the Society for Exact Philosophy at Wayne University, May 1976, and then (by mutual understanding with editors) published, together with other papers from that conference, under the title, "Rawls on Equal Distribution of Wealth", *Philosophia* 7, no. 2 (June 1978). However, the present version, which had been accepted for publication prior to that meeting, explores the issues more fully.

1. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 62.

2. *New Testament: Gospel According to St. Matthew* 19:21.

3. The substantial divergence between the concepts of entitlement and desert is no small matter for social theory. If I inherit my father's house and fortune though of wholly mediocre character and abilities, I am nevertheless entitled to them even though I may in no way deserve them. An injustice, in our usual way of thinking at any rate, is just as surely done me if you take them away under these circumstances as would be done if I had worked diligently and shrewdly and acquired these things on my own. See especially the essay, "Justice and Personal Desert" by Joel Feinberg in his *Doing and Deserving* (Princeton: Princeton University Press, 1970). Grounds for respecting both concepts is supplied, or at least strongly argued for, in Robert Nozick's *Anarchy, State and Utopia* (New York: Basic Books, 1974). Nozick's book has had some influence on the main drift of this paper, though not on its particular argument.

4. Rawls, *A Theory of Justice*, 62.

5. Rawls, *A Theory of Justice*, 60.

6. Rawls, *A Theory of Justice*, 60.

7. Rawls, *A Theory of Justice*, 83.

8. It should be emphasized, as Rawls recognizes, that the requirement that

persons be given equality of opportunity and that desirable offices be open to all on a basis of fair competition is not part of a program of economic equality. On the contrary: it will bring greater rewards to the more talented, if people have native differences in such talents. There has been question whether this is the case, of course. But there is, in the present state of the subject, no reason to deny differences in native ability, of many kinds (there is, on the other hand, every reason to expect them). At very least, the onus is on him who would cry injustice when another of obviously superior ability is preferred to him to prove that somebody or other has failed to equalize opportunity at some prior stage.

The concept of equal opportunity has been most usefully analyzed by Alistair MacLeod, in "Equality of Opportunity," in J. Narveson, ed., *Moral Issues* (Toronto and New York: Oxford University Press, 1983), 370-78. MacLeod points out that there are three importantly different levels of application of equal opportunity principles: to talents however come by, to talents natively endowed, and to talents in principle equalizable by genetic engineering or whatever. Only the third—which is a Brave New World category at present—would entail equality of wealth as a by-product.

9. There are very good reasons for not taking it very seriously. In the first place, Rawls agrees that lexical priority is not to be adhered to strictly until "circumstances favorable to justice" have been achieved; and prime among these is a certain level of economic advancement (151-52, 244-45, 542, among other places). There has been a good deal of discussion on this aspect of Rawls' theory. See, for instance, Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1973), ch. 7, and David Braybrooke's critical notice in *Canadian Journal of Philosophy* 3 (December 1973). Indeed, it could plausibly be argued that the priorities are the other way around. For a minimum degree of wealth is explicitly admitted to be the first goal, since liberty is admitted to be sacrificable to it until achieved; and once it is achieved, then it can reasonably be argued that you don't have to sacrifice wealth to achieve the liberty requirements anyway, so that priority of the difference principle will have no effect. (See Barry, 72.)

10. Rawls, *A Theory of Justice*, 302.

11. Rawls, *A Theory of Justice*, 202: "liberty can always be explained by a reference to three items: the agents who are free, the restrictions or limitations which they are free from, and what it is that they are free to do or not to do.... constraints may range from duties and prohibitions defined by law to the coercive influences arising from public opinion and social pressure." Rawls does not count as a restriction on liberty the presence of neuroses in the individual, or native lack of ability, for example. His conception is "negative," in the classic liberal tradition.

12. See Nozick, *Anarchy, State and Utopia*, especially 155.

13. Nozick, *Anarchy, State and Utopia*, 169. A possible argument against this is found in my critical notice of Nozick's book, *Dialogue*, XVI, No. 2 (1977), 298-328 but it won't get us to Rawls' position either.

14. For a major case in point, consider C. B. McPherson who, in *Democratic Theory* (Oxford: Clarendon Press, 1973) seems to assimilate these

throughout, especially in essays v and vii. Thus on 146 he argues that the sheer existence of a class with only its own labor to sell and another that has capital besides implies that the latter are *coercing* the former—never mind how those who own the capital came by it!

15. Rawls, *A Theory of Justice*, 203, for example.

16. Again, suggested in my discussion of the “Lockean proviso,” in the notice cited in note 13 above. [And see chapter 8 of this book. (note added, 2001)]

17. Rawls, *A Theory of Justice*, 204.

18. Rawls, *A Theory of Justice*, 205.

19. For Rawls’ theory of rationality, see *A Theory of Justice*, sections 61, 63, and 64 especially. That it is used behind the veil of ignorance is evident from the outset (see 13-14, for example): it is the imposition of the veil which does what a requirement of impartiality or benevolence would do in another theory. Some have supposed that the invoking of the “Aristotelian principle” alters matters, Rawls perhaps being one of them. Yet that principle, as explicitly stated in Rawls’ text (426), says only that people enjoy the realization of their more complex capacities. It does not say that we are to engage in such realizations even if we don’t enjoy it. It is a frankly psychological principle, one which may or may not be true but which other utility-maximizing theorists are free to accept. It does not alter the central conception of rationality.

20. Rawls, *A Theory of Justice*, 150.

21. Rawls, *A Theory of Justice*, 245.

22. Rawls, *A Theory of Justice*, 302.

23. Rawls, *A Theory of Justice*, 61.

24. Rawls, *A Theory of Justice*, 154.

25. Rawls, *A Theory of Justice*, 542.

26. My argument for this is fully elaborated in a paper, “Rawls and Utilitarianism” in H. Miller and W. Williams, *The Limits of Utilitarianism* (Minneapolis: University of Minnesota Press, 1982), 128-143. [Note: That paper was not yet published at the time of writing of the present essay.]

27. Curiously, Rawls criticizes utilitarianism along these lines, saying for instance that “it seems impossible to justify the assumption that the social utility of a shift from one level to another is the same for all individuals.” Yet the selection of the two principles depends upon the generalization that the desires of persons for material goods beyond a certain point “are not so compelling as to make it rational for the persons in the original position to agree to satisfy them by accepting a less than equal freedom.” (543) Obviously, this requires the assumption that the relative utility of these goods for different rational persons is identical. It seems pretty obvious that they are not so in fact: and how is one to prove that the utility of something will be such-and-such for the rational person, if many apparently rational persons do not accord them that utility?

28. Rawls, 78.

29. Rawls, 150-51.

30. This ambiguity is important for assessing the argument against Rawls

in the second paragraph of the Nozick's footnote about envy, *Anarchy, State and Utopia*, 229. We are catering to envy if we insist that a distribution in which A has 10 and B 5 is worse than one in which A has 8 and B 5. A's move from 8 to 10 is permitted if moves which harm no one else are permitted; they are not if A must also positively benefit B before he is permitted to move.

31. See "Fairness to Goodness," *Philosophical Review* 84 (October 1975), where he says, "...that political and economic power is a primary good I never meant to say; if at certain points the text will bear this interpretation, it needs to be corrected (note 8, 542-43). This should really have been evident all along. The reason for excluding power over others is the same as for excluding envy: for my having this good, if it were one, entails your not having it, insofar as the power I have is power over you. A maximizing theory applied to interpersonal situations can get nowhere with that kind of "good." Is this a good reason for excluding it from the list of primary goods? Not if the idea is to put all things on that list which really are useful to persons generally. But it is a splendid reason for excluding it from the list of things which will be socially divided, since it would tend to wreck the project.

32. Rawls, *A Theory of Justice*, 151.

33. Rawls, *A Theory of Justice*, 3.

34. Rawls, *A Theory of Justice*, 274-75.

35. Rawls, *A Theory of Justice*, 96-97.

36. Rawls, *A Theory of Justice*, 96.

37. Rawls, *A Theory of Justice*, 126.

38. Rawls, *A Theory of Justice*, 151.

39. Most especially, see David Gauthier, "Justice and Natural Endowment: Toward a Critique of Rawls' Ideological Framework," *Social Theory and Practice* 3 (Spring 1974); and John Marshall, "The Failure of Contract as Justification," *Social Theory and Practice* 4 (Fall 1975).

40. Rawls, *A Theory of Justice*, 12-13.

41. Rawls, *A Theory of Justice*, 94.

42. Nozick, *Anarchy, State and Utopia*, especially 204 and following.

43. Rawls, *A Theory of Justice*, 98.

44. It is clear enough that in Rawls' theory, social classes are not objects of special concern to rational individuals, as such. But it is curious that this is regarded as an objectionable point by some Marxist-oriented critics. Milton Fiske, for example, in "History and Reason in Rawls' Moral Theory" in N. Daniels, *Reading Rawls* (New York: Basic Books, 1974), argues, incredibly, that "If I were a member of a disadvantaged class, I would be able to recognize that such an arrangement is a direct attack on the tendency of my class to throw off oppression (p. 72)." What makes this incredible is that the difference principle requires members of this allegedly "oppressed" class to be as well off *as they can be*. Fiske's position, if seriously meant, would require him to hold that he, as a member of that class, would be rationally justified in overthrowing the upper classes even if his class was worse off as a result!

45. David Hume, *An Inquiry Concerning the Principles of Morals* (Indianapolis, Ind.: Bobbs-Merrill, Library of Liberal Arts, 1957), 25.

46. I am grateful to David Gauthier and Kenneth Arrow for pressing the

objection to my argument along the lines I have been discussing here, having to do with the object of the theory's being institutions and not individuals, in discussions at an earlier presentation of it (Wayne State University, May 1976). I do not, however, know whether they would regard these rejoinders as adequate.

47. *A Theory of Justice*, Rawls, 154.

48. In particular, rectification of the havoc raised by the assumption noted in Note 27 above would be the first order of business. Plainly, the person behind the veil of ignorance would opt for distribution in proportion to need, or utility, and not for equal distribution as such. The utilitarian's willingness to go into the details of particular cases is a strength here, not a weakness.

49. Nozick, *Anarchy, State and Utopia*, especially 189-97.

50. On Nozick's view, they lack such a right; and on Rawls' view, others have the duty to provide for them even if they don't press for it. A theory on which this would be perfectly O.K. for people to do is provided by the more Hobbesian assumptions which require neither the veil of ignorance nor any constraints of Lockean natural rights. For the working out of this theory, see Gauthier's "Reason and Maximization," *Canadian Journal of Philosophy* 5 (March 1975); also the earlier part of my notice of Nozick mentioned in Note 6. [Note added in 2001: Since then, of course, one would refer readers to Gauthier's *Morals by Agreement* (Oxford: Oxford University Press, 1986).]