

Rawlsian Justice

Fabienne Peter, University of Warwick

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Abstract

Rawls' theory of justice builds on the social contract tradition to offer an alternative to utilitarianism. Rawls singles out justice – not maximum welfare or efficiency – as “the first virtue of social institutions”. Economists were quick to realize the relevance of Rawls' theory of justice for economics. Early contributions in welfare economics and social choice theory typically attempted to incorporate Rawls' ideas into a welfarist framework. Current research in normative economics comes closer to Rawls' original proposal of a non-consequentialist theory of justice. In my article, I shall first introduce Rawls' theory of justice and then address some of the debates his theory has triggered in normative economics.

1. Introduction

At the outset of *Political Liberalism*, Rawls (1993: 4) asks:

[H]ow is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?

In other words, how can we think about justice for a society marked by (reasonable) value pluralism – by deep conflicts among individual preferences about how society should be organized?¹ Classical utilitarianism tries to avoid this problem by

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¹I shall discuss the exact meaning of “reasonable” below. For the moment, take reasonable pluralism as deep conflicts between individual preferences that are not due to false beliefs, lack of information, lack of reflection, narrow self-interest, etc.

sacrificing an independent idea of distributive justice. It treats individual utility as the ultimate good and identifies the right social arrangement as the one that maximizes an aggregate of individual utility. Rawls' theory of justice builds on the social contract tradition to offer an alternative to utilitarianism. His "political conception" of justice rests on fundamental values he identifies as implicit in democratic societies. Rawls argues that they offer a basis for constructing principles of justice which can be accepted by the members of such societies. Rawls' interpretation of the social contract allows him to address questions of justice directly, not via social welfare as in utilitarianism, and indeed singles out justice – not maximum welfare or efficiency – as "the first virtue of social institutions".²

Rawls' theory of justice has been enormously influential, in philosophy and beyond. It has, from the start, attracted much interest from economists. An important reason for this interest lies, very simply, in the impressive account that Rawls gives in his articles and books. There are, however, also a number of reasons specific to economic theory. First, in the aftermath of Arrow's impossibility result, welfare economists and social choice theorists struggled with the problem of how to accommodate considerations of justice in their theoretical frameworks. Rawls' theory of justice as fairness offered hope for all those economists not content with the predominance of the criterion of efficiency and not ready to give up on justice. Second, in *A Theory of Justice*, Rawls attempted to justify the principles of justice as fairness by reference to individual rational choice. This attempt attracted a lot of criticism from

²The passage continues: „[L]aws 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” (Rawls 1971: 3).

economists (e.g. Harsanyi 1975), and was eventually abandoned by Rawls in favor of an account that stresses the differences between being rational and being reasonable. Even if this episode has created some confusion, Rawls generally tried to make his theory of justice accessible to economists and many of his ideas have had a lasting effect on economic theorizing. In this chapter I shall focus on Rawls' own presentation of his theory of justice and on how his theory has been received in normative economics.³

2. Justice as Fairness: The Barebones

Let me start with a brief account of Rawls' theory of justice. I shall refer to Rawls' original exhibition of justice as fairness in his 1971 book *A Theory of Justice* as well as to views he put forward in later articles (see Rawls 1999) and books (especially in *Political Liberalism* and in *Justice as Fairness: A Restatement*). Rawls has revised some of his views over time and I shall give an account that is in line with the revised interpretation of justice as fairness.⁴

2.1. Some Fundamental Ideas

³ Outside of normative economics, there is another development in economic theory which picks up on Rawlsian themes. Evolutionary game theory studies norms and mechanisms of coordination and cooperation and, as part of that, also norms of distributive justice. Ken Binmore, in his recent book *Natural Justice*, argues that some of Rawls' ideas are corroborated by the findings of evolutionary game theory. Unfortunately, I lack space to discuss Binmore's proposal here, but see Peter (2006).

⁴For the sake of simplicity, I shall abstain from discussing how his ideas have developed over time, unless it is directly relevant to the issue that I am discussing.

If a society is characterized by irreducible value pluralism, there is no single moral or religious authority to which people can agree to resort to resolve distributional conflicts. Rawls thus takes it as a starting point that a theory of justice cannot be based on a “comprehensive” moral or religious doctrine.⁵ In his attempt to reconcile reasoning about justice and value pluralism, Rawls turns to political values. He grounds the theory of justice as fairness on ideas which he sees as explications of views that are characteristic for the political culture of democratic societies and as having the potential of being widely shared among citizens of democratic societies. The most important ones are the idea of “society as a fair system of cooperation” and the idea of “citizens as free and equal persons”.

Let me start with the latter. It expresses a political, not a psychological or metaphysical, conception of the person (Rawls 1993 I: §5; 2001: §7). Its function is both to capture the fact that people have diverse interests and to explain how they can reach an agreement in matters of justice. According to this conception, persons have two fundamental moral powers. These are the “capacity for a conception of the good”, on the one hand, and the “capacity for a sense of justice”, on the other (Rawls 1971: §77). Rawls (1993: 302) defines them as follows:

[T]he capacity for a sense of justice is the capacity to understand, to apply and normally to be moved by an effective desire to act from (and not merely in accordance with) the principles of justice as the fair terms of social cooperation. The capacity for a conception of the good is the capacity to form, to revise, and

⁵A comprehensive conception “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” (Rawls 1993: 13).

rationally to pursue such a conception, that is, a conception of what we regard for us as a worthwhile human life.

By virtue of the capacity for a conception of the good, persons know what is to their advantage and are able to act rationally. Rawls works with a broader understanding of rationality than economic theory as it is not limited to maximizing a consistent set of preferences. He adopts to Kantian conception of practical reason which includes the capacity to deliberate about ends, to evaluate, prioritize, and – if necessary – to revise them, in addition to the capacity to choose the best means to reach a given end (Rawls 1993: 50). Moreover, persons are seen not only as potentially rational, but also as potentially reasonable. Being reasonable is defined in terms of the capacity for a sense of justice and this capacity refers to the second fundamental idea, that of society as a fair system of cooperation – and I shall discuss the capacity to be reasonable in this context. For the moment, just note that there is a difference between the reasonable and the rational. Conceptions of the good are called reasonable if they are in accord with the requirements of the reasonable.

Justice as fairness views citizens as free and equal with regard to these two capacities. All citizens are assumed to hold these two principal moral powers and it is in this respect that they are equal. They are free insofar as they can develop and pursue their own reasonable conception of the good.

A second fundamental idea of justice as fairness – that of society as a fair system of cooperation – is closely linked to the idea of citizens as free and equal persons. To understand Rawls' idea of cooperation, compare it with utilitarianism first. In the utilitarian view, the conception of the person is not a political, but a psychological one – it uses individual utility both to represent what individuals' value and to explain their (rational) actions. Taking this as the starting-point, the goodness of individual states is

assessed exclusively in terms of the utility individuals derive from it – however utility is defined. Society is seen as a conglomeration of utility-maximizing individuals and cooperative arrangements should aim at maximal aggregate utility.

In contrast to utilitarianism, Rawls' theory of justice relies on a distinction between what is rational for individuals and what is reasonable. Persons are reasonable insofar as they recognize that, though they have good reasons to hold their own conception of the good, there are good reasons for other citizens to hold different views. Reasonable citizens accept that their society will always contain a plurality of conceptions of the good. They also accept what Rawls calls the "burdens of judgment" – a list of considerations for why reasonable disagreement over conceptions of the good is likely to persist (Rawls 1993: II, §2). In addition, by virtue of their sense of justice, persons are assumed to be willing to propose fair terms of cooperation, which guarantee fair prospects for all to pursue their respective rational advantage. The persons recognize, thanks to their capacity for a sense of justice, that the rational pursuit of their own advantage needs to be made compatible with the possibility for others to pursue their conception of the good, provided those conceptions are reasonable too. They are willing to refrain from imposing their own conception of the good upon others and will want principles of justice which are compatible with the fact of reasonable pluralism – an irreducible pluralism of reasonable comprehensive conceptions of the good.

Utilitarianism reduces the reasonable – reasons that refer to the regulation of the individual pursuit of a good life through cooperative arrangements – to the rational – reasons that refer to the individual pursuit of a good life. In the theory of justice as fairness, by contrast, the reasonable is an independent idea. Reasonable persons in Rawls' sense "are not moved by the general good as such but desire for its own sake a

world in which they, as free and equal, can cooperate with others on terms all can accept” (Rawls 1993: 50). His idea of cooperation thus entails an idea of fair cooperation; it is based on reciprocity. Reciprocity refers to generally recognized rules which secure everybody an adequate share of the benefits produced through cooperation. As such, Rawls’ idea of fair cooperation has to be distinguished from an idea of mutual advantage, which demands that everyone gains from cooperation. A conception of justice that specifies fair terms of cooperation respects and ensures equal liberties for the citizens to develop and pursue their reasonable conceptions of the good.

According to Rawls, this idea of cooperation not only distinguishes justice as fairness from utilitarianism and mutual advantage theories. There is also an important difference between justice as fairness and the libertarian approach here.

Libertarianism tends to view cooperative schemes as voluntary associations – and deflects demands for more equality with reference to the voluntariness of such schemes. Justice as fairness, by contrast, treats membership in society as involuntary – given by birth and where exit is, in what concerns justice, not an option. Citizens have, qua membership in this cooperation, a right to the benefits produced.⁶

The two – related – ideas of society as a fair system of cooperation and of citizens as free and equal persons form the starting point for the theory of justice as fairness. A further fundamental idea specifies the domain of justice. Reasonable pluralism makes it likely that the citizens will rarely – if ever – agree on the moral value of alternative social states.⁷ Taking this into account, justice as fairness is conceived of

⁶For an influential statement of the libertarian doctrine, see Nozick (1974). On this contrast between justice as fairness and libertarianism, see Rawls (1993: VII, §3).

⁷I use the term social state in the sense of social choice theory – a full description of all the economic, political and social circumstances (Arrow 1963).

as having a limited domain. The fair terms of cooperation apply to what Rawls calls the “basic structure” of society, and only to that. The basic structure comprises “society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next” (Rawls 1993: 11).⁸ Rawls singles out the basic structure because inequalities that have their origin there have the most profound impact on the prospects of the individuals in society.⁹ Imposing rules of fairness on the basic structure is an attempt to correct these fundamental inequalities as far as possible, and to establish fair conditions of social cooperation. The intuition is that if the basic structure is just, so is the outcome generated by the social and economic processes it specifies and embeds. Thus being confined to a limited domain distinguishes justice as fairness both from utilitarianism and from those contractualist moral theories which are intended to apply to all questions of social evaluation (e.g. Scanlon 1998). Justice as fairness proposes principles for how to assess society’s main institutions, and only them.

These fundamental ideas are in accordance with what Rawls calls a political conception of justice. He defines such a conception in the following way (2001: 26): (i) “it is worked out ... for the basic structure of a democratic society”; (ii) it “does not

⁸Rawls discusses the idea of the basic structure as the first subject of justice extensively in Rawls (1971: §2; 1993: VII; 2001: IV).

⁹“The basic structure is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion is here that this structure contains various social positions and that men are born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities” (Rawls 1971: 7).

presuppose accepting any particular comprehensive doctrine”; and (iii) it “is formulated so far as possible solely in terms of fundamental ideas familiar from, or implicit in, the public political culture of a democratic society”. Because a political conception of justice does not rest on a comprehensive moral or religious doctrine but builds on fundamental political values instead, it circumvents the problem of value pluralism. That such a theory of justice is restricted in scope – that it does not apply not to all moral questions, but only to the problem of the justice of the basic structure of society – is for Rawls a small price to pay.

2.2. The Original Position and the Idea of a Public Conception of Justice

In *A Theory of Justice* Rawls famously – but in places misleadingly – condensed these fundamental ideas into the thought experiment of the original position. The thought experiment interprets the question justice as fairness tries to answer as: what principles of justice would free and equal persons choose to regulate the main terms of their cooperation? It thus takes into account the fact of reasonable pluralism and demands that what constitutes the fairness of the basic structure be determined by what persons can agree to. But not any agreement will do. It must respect the idea of equal liberty and the restrictions the reasonable imposes on the rational. The following hypothetical situation – the original position – is designed to represent such fair conditions. Rawls asks persons to abstract from their actual preferences about their individual advantage and their present position in society. They should do so by imagining that they deliberate about the principles of justice that should apply to the basic structure of society behind a veil of ignorance. The veil of ignorance separates persons in the original position from knowledge of their particular conception of the good, their specific position in society, or their talents and abilities. Only the most general knowledge about society, such as the

basic political, economic, sociological, and psychological principles, is allowed to seep through.¹⁰ The veil of ignorance ensures that the justification of the principles of justice will not be affected by arguments that are related to defending a particular position in society. It also eliminates bargaining (Rawls 1993: 23).

The argument from the original position is concerned, first of all, with the justification of principles of justice.¹¹ The original position represents the conditions and constraints under which persons should deliberate about adequate principles of justice. As such, it serves the role of a selection device. It is designed to facilitate the selection of principles of justice from a list, not to derive principles of justice directly from it (1971: §21; 2001: 83).

The argument from the original position has sometimes been misinterpreted – one might argue partly because of Rawls’ own misleading original characterization of it. What has created problems has been the question of how the persons in the original position deliberate about and choose the principles of justice. In *A Theory of Justice*, Rawls cast justice as fairness as part of rational choice theory (1971: 16 and 47). This view would render the – Kantian – distinction between the reasonable and the rational unintelligible. In his later writing, Rawls treats this claim about the link between rational choice theory and justice as fairness as a mistake (e.g. Rawls 2001: 82 n2) and insists on the importance of the idea of the reasonable in justifying principles of justice. According to the revised view, we ought to imagine the persons in the original position as follows. They are rational – they have the capacity to formulate, revise, and efficiently pursue a

¹⁰See Rawls (1971: §24).

¹¹There is a second aspect to the argument from the original position, which I will not be able to discuss this aspect here. This concerns the question of stability; see Rawls (1993: lecture IV).

conception of the good. They are also mutually disinterested in the sense that they are not motivated by feelings of envy or a desire to have power over others. In addition to being rational in this sense they are reasonable, i.e. they are willing both to propose fair terms of cooperation and to act from such principles.

The justification of a theory of justice, according to Rawls, ought to satisfy a publicity constraint. This constraint entails the following: that “everyone accepts, and knows that everyone else accepts,” the same principles of justice; secondly, that “society’s basic structure ... is publicly known, or with good reason believed, to satisfy those principles; and thirdly that “citizens have a normally effective sense of justice”, i.e. they can understand and act from the principles of justice (Rawls 2001: 8f). He calls the ideal of a society that is “effectively regulated by a public conception of justice” a “well-ordered society” (2001: 8). In a well-ordered society, “the public conception of justice provides a mutually recognized point of view from which citizens can adjudicate their claims of political right on their political institutions or against one another” (Rawls 2001: 9).

2.3. The Principles of Justice

Which public principles of justice would citizens who think of themselves as free and equal and who think of their society as a fair system of cooperation choose to regulate the basic structure of society? Rawls argues that they could agree on the following two principles of justice:

“(a) Each person has the same inalienable 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)” (Rawls 2001: 42f).

The first principle guarantees the citizens' equality with respect to a list of basic liberties and rights. These basic liberties and rights are the following: political liberties (i.e. the right to vote and to be eligible for public office) and freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person and the right to hold personal property, and the freedom from arbitrary arrest and seizure (Rawls 1971: 61). It is essential that the first principle is interpreted with regard to such a list of liberties and not, as *A Theory of Justice* has suggested, as a principle of “basic liberty”. Justice as fairness does not assign special value to freedom as such, only to a specific list of rights and liberties.

The political liberties are part of that list. Rawls emphasizes that the first principle must include a guarantee that everybody has a fair chance to participate in the political process. This requirement is discussed in *A Theory of Justice* under the heading of the principle of participation (cf. Rawls 1971: §§ 36 and 37). In *Political Liberalism*, Rawls included it in the first principle of justice in the form of a guarantee of the fair value of the political liberties. The fair value of the political liberties requires that "citizens similarly gifted and motivated have roughly an equal chance of influencing the government's policy and of attaining positions of authority irrespective of their economic and social class" (Rawls 1993: 358). The first principle thus ensures that, in a well-ordered society, members of all social groups are able to participate in the political process on an equal basis.

The second principle is divided into two parts. The first part is called the principle of fair equality of opportunity and the second the difference principle. Fair equality of opportunity contrasts with merely formal equality. Formal equality of opportunity is satisfied if there are no discriminating legal barriers that bar some groups in society from access to social institutions. Fair equality of opportunity is more demanding. It requires that no factual social barriers exist which make access dependent upon the social and economic position. According to Rawls (1971: 73):

[T]hose who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class.

Rawls argues that, from the point of view of the original position, it is reasonable to want to impose the principles of equality of basic liberties and rights and of fair equality of opportunity on the basic structure. Prevented from knowledge of one's social position, abilities and talents and preferences, citizens who view themselves as free and equal have no reason to depart in these fundamental matters from the position of equality that characterizes the original position. Looking at it the other way around, the set-up of the original position provides a rationale for selecting egalitarian principles of justice that aim at dissociating the prospects citizens face from their social endowments.

In spite of this egalitarian commitment, Rawls also emphasizes that some economic and social inequalities are justifiable. The question is which and the difference principle, the second part of the second principle of justice, answers this question. This well-

known principle demands that the basic structure of society should be organized so as to admit social and economic inequalities to the extent that they are beneficial to the least advantaged group. It allows deviations from the situation of equal liberty that characterizes the original position insofar as these deviations allow for a more productive scheme of cooperation that leaves the least advantaged group better off than it would be were the basic structure set up so as to preserve absolute equality. Given a range of possibilities for how to design the institutions of the basic structure, the difference principle says that the institutional arrangement which maximizes the prospects of the least advantaged group. What the difference principle rules out is a basic structure which grants greater benefits for more advantaged groups while worsening the prospects of the least advantaged group

The principles are ordered lexicographically. The first principle of justice has priority over the second and the principle of fair equality of opportunity has priority over the difference principle.¹² This implies that the equality of basic liberties and rights, including the fair value of the political liberties, is not to be overridden by other considerations. Furthermore, the difference principle has to be interpreted as applying to an environment where the lexicographically prior principles are already in place. The social and economic inequalities that the difference principle might justify are those that do not undermine the equality of basic rights and liberties and principle of fair equality of opportunities. Finally, the lexicographic structure also implies that in social evaluation, the principles of justice taken together have priority over other considerations – for example over considerations of maximum welfare or efficiency.

2.4. Primary Goods

¹²See Rawls (1971: 42f and 302f).

The two principles of justice require some kind of interpersonal comparisons to check whether the fair value of the political liberties and fair equality of opportunity hold and in order to apply the difference principle. Justice as fairness hence demands an informational framework which allows for interpersonal comparisons. But given value pluralism, what basis could there be for interpersonal comparisons?

In economic theory, there is a tendency to deny the possibility of interpersonal comparisons because of the diversity of people's values. Arrow (1984: 160), for example, writes:

In a way that I cannot articulate well and am none too sure about defending, the autonomy of the individuals, an element of mutual incommensurability among people, seems denied by the possibility of interpersonal comparisons. No doubt it is some such feeling as this that has made me so reluctant to shift from pure ordinalism, despite my desire to seek a basis for a theory of justice.

Arrow recognizes that his skepticism about interpersonal comparisons makes it difficult to overcome the implications of his famous impossibility theorem and to formulate a theory of justice. What Rawls has to show, in reply, is that justice as fairness offers a theoretical approach to interpersonal comparisons that respects this "mutual incommensurability" between different conceptions of the good.

Rawls proposes the framework of primary goods, which does not have its basis in individual conceptions of the good. Primary goods are an account of general institutional features of the basic structure of society which affect the prospects of individuals, whatever their ideas of the good life are. Rawls counts the following as primary goods (Rawls 1993: 181):

- basic liberties and rights, given by a list

- freedom of movement and free choice of occupation against a background of diverse opportunities
- powers and prerogatives of offices and positions of responsibility in the political and economics institutions of the basic structure
- income and wealth
- the social bases of self-respect

Unlike the preference framework economists use, the primary goods framework is objective. The value of these goods is derived from fundamental political values of democratic societies, and not from individual ideas of the good. That is to say, they are an account of what the relevant goods are on the basis of which it can be assessed whether the basic structure establishes fair cooperation and respects people as free and equals. Primary goods are not intended to be a surrogate of individual well-being, but a measure of people's access to basic institutions – of the institutional conditions for the realization of the two fundamental moral powers that persons have. Because primary goods are thus not determined by a comprehensive conception of the good, but rest on shared political values, the framework overcomes the problem of 'mutual incommensurability' that Arrow mentions.

An individual's endowment with primary goods is measured by an index.¹³

Although the construction of such an index is not easy, I want to leave aside for the moment the practical difficulties and assume that it is at least approximately possible.¹⁴

¹³See Rawls (1971: §15 and 1982).

¹⁴I shall come back to this problem below. On problems that may arise in the construction of an index, see Gibbard (1979), Hohm (1983), Blair (1988). But see also Sen (1991) who argues that the technical details of constructing an index are less important than determining what kind of information should be included.

Furthermore, the construction of an index is facilitated by the way the principles of justice shape the distribution of the different primary goods. By the first principle and the principle of fair equality of opportunity, the first two goods on the list must be distributed equally. Fair equality of opportunity also demands that access to powers and prerogatives of offices and to positions of responsibility in important political and economic institutions, the third primary good, be distributed equally. Holdings of such positions, in contrast, may be distributed unequally. Their distribution and the distribution of income and wealth are regulated by the difference principle.

The case of the last primary good on the list, of the social bases of self-respect, is more complicated.¹⁵ Note, first, that the emphasis lies on the social bases of self-respect and not on self-respect directly. It thus refers to the basic structure of society as well, and not, say, to an individual state of mind. Take a feudal society as an example for a society in which some groups are not granted the social bases for self-respect. This primary good is of a different kind than the others on the list. While the first four primary goods describe general means to develop and pursue a conception of the good, the social bases of self-respect ensure that the citizens have the possibility of experiencing it as worthwhile to do so. In this regard they are important for the development of a sense of justice, the second moral power attributed to citizens. It is for these reasons that Rawls regards the social bases of self-respect as the most important primary good on the list. The distribution of this primary good is affected by the regulation of the basic structure of society. Since the social bases of self-respect are in part dependent on the social and economic status of the individuals, they will not be equalized under justice as fairness. Here the difference principle applies, requiring that social and economic inequalities do not undermine a minimal social basis of self-respect.

¹⁵On the social bases of self-respect, see especially Rawls (1971: §§ 67 and 82).

This raises the more general question of how the relationship between primary goods and the equality and freedom of the citizens is to be understood in Rawls' theory of justice. We saw that fairness requires that the basic structure must grant more than formal freedom to pursue individual ends. Justice as fairness includes some demand that the individuals can actually make use of their freedom. But to what extent? Rawls' distinction between liberty and the worth of liberty helps to clarify this issue.¹⁶ The worth of liberty is measured by the index of primary goods a citizen holds. Whereas the basic liberties are equalized by virtue of the first principle, the worth of these liberties is not always equal, since primary goods are not equalized in justice as fairness. For the political liberties, however, and only for them, Rawls includes a guarantee of the fair value. The idea is, in analogy to what fair equality of opportunity demands, that "citizens similarly gifted and motivated have roughly an equal chance of influencing the government's policy and of attaining positions of authority irrespective of their economic and social class."¹⁷ The worth of the other basic liberties is allowed to be affected by social and economic inequalities. By not guaranteeing an equal value of all liberties, justice as fairness is not, however, indifferent towards the worth of liberty since social and economic inequalities are limited by the difference principle. The point of reference is an equal distribution of primary goods in the original position. Inequalities are then introduced in order to achieve a more elaborate organization of society. But the inequalities in the holdings of primary goods - and thus in the worth of liberties - are restricted by the requirement that they must be to the benefit of the least advantaged

¹⁶See Rawls (1971: 204f and 1993: VIII. 7).

¹⁷Rawls (1993: 358). The original statement of the two principles of justice in Rawls (1971) did not mention the particular role of the political liberties. But Rawls discusses this issue in §§ 36 and 37 of *A Theory of Justice*.

group. From the point of view of the original position, a social state with these inequalities is preferred to a state with equal distribution. In Rawls' words, what justice as fairness requires is that "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" (Rawls 1971: 205). Inequalities in the worth of liberty for the citizens are justified because the combined impact of the principles of justice on the regulation of the basic structure of society is to ensure a sufficient worth of liberty for the least advantaged group.

3. Rawlsian Justice in Normative Economics

Economists were quick to realize the significance of Rawls' *A Theory of Justice* and there are many reviews of that book written by economists (e.g. Arrow 1973; Musgrave 1973; Alexander 1974; Harsanyi 1975). At first, the tendency was to discuss – and criticize – Rawls' ideas from the welfarist angle that dominated economic theory. Arrow, for example, writes that "Rawls..., starting from the same premises [as Harsanyi and Vickrey], derives the statement that society should maximize $\min u_i$ [instead of the sum of utilities]" (1984: 102). This short statement is illustrative for how Rawls' theory of justice as fairness was interpreted early on by economists, for multiple reasons. Firstly, it focuses on the difference principle and neglects its relation to the other elements of Rawls' principles of justice. Secondly, by linking Rawls directly to ideas independently put forward by Vickrey and Harsanyi, it reduces the original position to a hypothetical choice situation behind a veil of ignorance and ignores the way in which the Rawls' thought experiment of the original position is an attempt to represent fundamental political values. And finally, it takes no notice of primary goods and interprets the difference principle in terms of the

utility framework. Let me discuss this interpretation of Rawlsian justice and its problems in some detail.

3.1. Maximin and Welfarist Justice

The version of the difference principle most economists will be familiar with is best called the maximin, or the Rawlsian, social welfare function – to differentiate it from Rawls' own principle. Maximin is the social welfare function that identifies the social optimum as the social state of affairs where the worst-off person enjoys the highest utility. It ranks alternative social states on the basis of how well-off the worst-off person is.¹⁸

Maximin contrasts with the utilitarian social welfare function, for example, according to which the social optimum is the social state that maximizes the sum of individual utilities. Both, however, demand interpersonal comparisons of welfare; the maximin social welfare function relies on interpersonal comparability at the ordinal level. Given the negative stance many economists take on the interpersonal comparability of utility, the question has to be answered as to how such comparisons could be made. One answer for comparisons at the ordinal level invokes extended sympathy, where individuals are assumed to have preferences not just about their own position in different social states, but about the position of other individuals as well. Individual preferences are then over ordered pairs of the form (x, i) , which stands for the

¹⁸ More technically speaking, maximin says that a social state x is judged at least as good as another y if there is an individual k in y such that no position in state x is perceived to be worse than k 's. This formulation is from Sen (1970a: 156ff). Another popular formulation is in terms of a veto of the worst-off (e.g. Strasnick 1976). Tungodden (1999) has recently pointed out that the veto-interpretation is misleading.

position of individual i in social state x . Interpersonal comparisons take the form: individual i is better off in state x than individual j in state y .¹⁹ Compared to the utilitarian social welfare function, which requires interpersonal comparisons at the cardinal level, maximin is perceived to be more informationally parsimonious and therefore less problematic by many economists (cf. Arrow 1984).

Both maximin and the utilitarian social welfare function are variants of the same – welfarist – view of justice. In the words of Charles Blackorby, Walter Bossert, and David Donaldson, this view “asserts that a just society is a good society: good for the individual people that comprise it. To implement such an approach to justice, the social good is identified and used to rank social alternatives. Of the alternatives that are feasible, given the constraints of human nature and history, the best is identified with justice” (Blackorby, Bossert, and Donaldson 2002: 545). The “social good”, in this welfarist view, is an aggregate of individual utility. In other words, the only thing that matters about social states is how much utility individuals enjoy. Different theories of justice, different social welfare functions, specify different ways for aggregating individual utility. One difference between Rawls’ and the welfarist theory of justice is thus that the latter is while the former is not specified in terms of individual utility. To my knowledge, it was Sen who first pointed out the parallel between Rawls’ difference principle and the problem of social choice in his book *Collective Choice and Social Welfare* (Sen 1970a). But already there he noted that Rawls pursues a different aim: “[Rawls’] main interest is not so much in the ordering of social states, which is our concern, but with finding just institutions as opposed to unjust ones, which is a

¹⁹On extended sympathy, see Strasnick (1976) and Arrow (1984). In fact, extended sympathy is a form of *intrapersonal* comparisons.

somewhat different problem” (Sen 1970a: 140). And in a later article he pointed out the differences between the informational frameworks used.²⁰

I shall come back to this difference between primary goods and utility below. I first want to comment on further differences between maximin and Rawls’ difference principle. Recall that the latter, being embedded in the conception of justice as fairness as a whole, is limited by two types of constraints. The first is the lexicographic ordering of the two principles of justice. The difference principle is meant to apply only to those social states which satisfy the first principle of justice as fairness and the principle of fair equality of opportunity. As a result, Rawls did not, as some have suggested (e.g. Harsanyi 1975), require giving absolute priority to the worst-off. The interests of others are protected by the principle of equal liberty and the principle of fair equality of opportunity. In addition, the difference principle only applies to the set-up of society’s basic structure. Rawls did not defend this principle as a general principle for settling isolated problems of distributive justice. He did not, for example, suggest that a just educational system is one where all the resources are spent on the improvement of the situation of the worst-off. The maximin principle also neglects how the difference principle is meant to apply to the dynamic aspects of the basic structure. Justice as fairness is grounded on a procedural interpretation of justice: it does not compare alternative distributions as such, but alternative ways of how the basic structure generates distributions.²¹ Rawls (1971: 88) writes:

²⁰“Rawls’ (1971) ‘difference principle’ in his theory of justice, in which a person's disadvantage is judged in terms of his access to ‘primary social goods’, and not in terms of utility as such (as in the apocryphal version popular among economists), will clash violently with welfarism” (Sen 1979: 548).

²¹On procedural justice see Rawls (1971: 84ff). Rawls discriminates between different types of

A distribution cannot be judged in isolation from the system of which it is the outcome or from what individuals have done in good faith in the light of established expectations. If it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires and preferences is better than another, then there is simply no answer to this question.

Procedural justice focuses on the constraints which set the framework for acceptable outcomes and not on the outcomes themselves. It focuses on the background against which these transactions take place. The claim is that if the basic structure of society is just (as assessed against the principles of justice primarily chosen), the outcomes it generates are just too. The two principles of justice together serve as a selection device for alternative institutional structures. The difference principle is thus not meant to evaluate alternative distributions within a particular basic structure, but to help making a selection from alternative sets of institutions to regulate the basic structure. If the maximin social welfare function is isolated from the context of justice as fairness and applied to rank alternative distributions, this is likely to lead to very different recommendations than Rawls' own, and Rawls should not be blamed if many of these recommendations are highly implausible.

procedural justice. One distinction is between “perfect” and “imperfect” procedural justice. Perfect procedural justice applies if the desired outcome is known and if a procedure exists that can bring about this outcome. Imperfect procedural justice is used when the desired outcome is known, but no procedure exists that can bring it about with absolute certainty. The procedure has then to be set up so that it promotes this goal with maximum likelihood. *Pure* procedural justice, in contrast, applies if the desired outcome is not known. This is the type of procedural justice that justice as fairness uses.

3.2. Decision-making Behind a Veil of Ignorance

Arrow and many others draw an analogy between Rawls' and John Harsanyi's (1955, 1975) use of the idea of the veil of ignorance. Harsanyi, even before Rawls published his first article on justice as fairness, invoked a hypothetical situation of uncertainty to justify average utilitarianism – a social welfare function that maximizes average utility. Harsanyi's argument distinguishes between personal preferences and moral preferences, and defines the latter in line with the utilitarian tradition. Unlike personal preferences, which are self-regarding, the set of moral preferences is “based on a serious attempt to give the same weight to the interests of every member of society, in accordance with the principle of average utility” (Harsanyi 1975: 598). The link between his notion of moral preferences and utilitarianism is an equiprobability assumption: people evaluate alternative institutional arrangements as if they each had equal chances to end up in any given social position. The veil of ignorance is a metaphor for this equiprobability assumption. Harsanyi then shows that if people are rational, they will choose that institutional arrangement which on average gives them the highest expected utility. In his view, maximin would be a highly irrational choice as it neglects how much good can be produced in society and only looks at the interests of the worst-off.

At the heart of this controversy is the question of the role of probabilities in people's reasoning and of attitudes towards risk in the argument from the original position. Rawls objects to “the very use of probabilities in the original position” (Harsanyi 1975: 598), as well as to the use of Von Neumann Morgenstern (VNM) utility functions on the grounds that people's attitudes towards risk – which are part of how these utility functions are construed – are not automatically relevant when it comes to justifying an institutional arrangement. Harsanyi admits that disregarding

subjective probabilities makes maximin type rules more plausible, but thinks that doing so would be irrational. He also defends using VNM utility functions in the argument from the original position on the grounds that they are, first of all, an account of people's preferences. Many economists, Arrow included, have tended to accept Harsanyi's arguments.²²

Some of Rawls' early replies to his critics may have provided economists with additional arguments for why their criticism is valid. In the article "Some Reasons for the Maximin Criterion", published in the *AER*, Rawls (1974) uses the language of utility and tries to argue for the difference principle via a defence of the assumption that persons in the original position are risk averse. The easy reply for economists is to ask just how much risk aversion is plausibly assumed and to argue that the assumption of extreme risk aversion that is needed to justify maximin is not plausible. Harsanyi (1975) has a critique of maximin along those lines.

But Rawls' view can be supported on different grounds, and in later writings, Rawls clarified his views (e.g. Rawls 2001: §31). As I have argued above, Rawls' idea of the original position is intended to condense the fundamental ideas on which his theory of justice is based. While Rawls accepts Harsanyi's equiprobability assumption, the idea of the original position has additional normative constraints built in. What is particularly important is that the people behind the Rawlsian veil of ignorance are not just rational, but also reasonable. The persons in the original position enjoy equal liberty, and, by virtue of their two moral powers, cannot only reason about how to use their liberty to best advance a conception of the good, but also about how to respect the equal liberty of everyone. The Rawlsian thought

²² For a recent discussion of these issues, see Kolm (1998).

experiment thus place people not just in a situation of equiprobability, but also of reciprocity.

The kind of reasoning Rawls imagines persons behind the veil of ignorance to be engaged in supports his argument from “the strains of commitment”. This argument defends the difference principle against the principle of maximizing average utility (1999: 229; 2001: 103). As Rawls puts it, those behind the veil of ignorance “must ask themselves whether those they represent can reasonably be expected to honour the principles agreed to in the manner required by the idea of an agreement” (Rawls 2001: 103). Because of “the strains of commitment”, Rawls argues, it will be difficult for those who end up in the lower positions in society to sustain utilitarianism.

Utilitarianism “asks them to view the greater advantages of others who have more as a sufficient reason for having still lower prospects of life than otherwise they could be allowed” (1999: 230). The difference principle, “by contrast, ... assures the less favoured that inequalities work to their advantage” (Rawls 1999: 230). The difference principle thus takes into account the strains of commitment placed on the worse off. A defender of utilitarianism will probably object that this argument can be turned around, and used to attack the difference principle from the perspective of the better-off. Rawls argues that this is not the case. Although the better-off in a society that satisfies the two principles of justice as fairness would have received more if the utilitarian principle was implemented, they give up less than the worse-off do in a utilitarian society compared to the just society because the respect for equal liberty is respected in one case but not in the other. The strains of commitment operate asymmetrically.

3.3. Interpersonal Comparisons of What?

Maximin, as I have defined it, is explicitly based on individual utility. As such, it contrasts with Rawls' difference principle, which refers to primary goods. This raises a question about what the appropriate informational framework is for evaluating justice. Is it utility, primary goods, or some alternative informational framework? Ever since Sen's Tanner Lecture with the title "Equality of What?" (Sen 1980), this question has been intensely debated in economics, philosophy and political theory.²³

The debate in economics is influenced by the problem of interpersonal comparisons. The transition from the old to the new welfare economics and to social choice theory was brought about, among other things, by the rejection of the assumption that utility functions are interpersonally comparable (Robbins 1938). After Arrow published his impossibility result, this assumption was revisited. It can be shown that if the axioms that social welfare functions have to satisfy are modified in order to allow for interpersonal comparisons, a variety of social welfare functions become possible. Note that cardinal measurability of utility functions alone is not sufficient to invalidate the impossibility result – comparability is necessary (Sen 1970a: Theorem 8*2).²⁴

Against this background, two broad positions can be identified in normative economics. One strand defends welfarism and is inclined to accept the implications of the impossibility of interpersonal comparisons of utility.²⁵ We saw above that this is, for example, Arrow's position. The other strand rejects welfarism and pursues the

²³ Recent contributions are from Pogge (2002) and Vallentyne (2005); see also the "equality exchange" webpage (<http://mora.rente.nhh.no/projects/EqualityExchange/>).

²⁴ On this issue, see also Hammond (1976).

²⁵ In a recent paper, Fleurbaey (2003) has argued that this does not follow.

possibilities alternative informational framework offer. Sen's work exemplifies this position.

Welfarism, particularly if combined with the Pareto principle, is usually regarded as a very weak value judgment and thus as an attractive framework for social evaluation. There are, however, two major lines of criticism of welfarism. One objects to the identification of individual well-being with the satisfaction of individual preferences. The other is directed against the assumption of preferences being given. Pursuing these criticisms will reveal that the value judgments implicit in this framework are not so weak after all.

The identification of individual well-being with the satisfaction of individual preferences is especially problematic if welfare judgments are based on actual preferences. Actual preferences may be revealed, according to the theory of revealed preferences, through the choices individuals make. But what an individual chooses is not necessarily linked to his or her well-being. For preferences may be based on false information or beliefs. Equally, an individual may decide according to values other than maximizing his or her well-being, such as responsibility, moral commitments, standards of politeness, etc. and make choices that reduce his or her well-being.²⁶ Another problem is that welfarism may exclude important information from becoming relevant in social evaluation. Sen (1979: 547f) discusses the following example. Take two individuals in two situations (two social states). Assume that there is the same pattern of individual utilities in the two states. From the point of view of welfarism, they should be regarded as equally good. But if we know that in one state one individual is tortured by the other, we would certainly not want to treat the two states in the same way.

²⁶On this see Sen (1977).

A further problem arises if preferences are not independent of social states. This is the case, for example, with adaptive preferences, when individuals unintentionally tend to adjust their preferences to their possibilities.²⁷ Adaptive preferences pose a serious obstacle for social evaluation based on individual preferences. For one, if preferences are formed adaptively, the satisfaction of these preferences would yield a distorted picture of individual well-being. More generally, if these preferences vary with the social states, how should the social choice between the alternative states be made? If there is a different preference profile for every alternative in the choice set, a decision regarding the relevant profile in terms of which the social choice is to be made is needed first.²⁸

The so-called “expensive tastes” argument also poses a challenge for welfarism.²⁹ Whereas the problem of adaptive preferences points to the inappropriateness of using given preferences as the basis of moral assessment due to their dependence on the individual situation to be evaluated, the expensive tastes argument focuses on the opposite issue. That is, it is concerned with the individual capacity to reflect upon preferences and to exert a certain control over them. To the extent to which individuals have this capacity, they can also be held responsible for them. And, so the argument goes, if some individual has voluntarily cultivated expensive tastes, these preferences cannot be taken as the given basis for claims on society's resources. It is necessary to discriminate among preferences with respect to their origins if they are still to be the informational framework for social evaluation. Thus, while the problem of expensive taste is just an example, the more fundamental issue is that preferences over which the

²⁷The term “adaptive preferences” is from Elster (1983).

²⁸ Voorhoeve (2006) revisits this problem.

²⁹See for example Rawls (1982a: 168). See also Arneson (1990a), G. Cohen (1989) and Daniels (1990).

individuals have control and for which they can be held responsible may not form an adequate informational framework in matters of distributive justice. “Luck egalitarians” (Anderson 1999) in particular have argued that considerations of responsibility matter in assessments of justice.³⁰

One answer to these problems with welfarism is to argue for some kind of correction of actual preferences.³¹ But this solution is affected by the further difficulty of needs to answer the question of who should “launder” actual preferences – the individuals themselves or someone else on their behalf?

Many, including Rawls, have argued that a further reason to leave the utility framework behind is the difficulty it poses for making interpersonal comparisons and have suggested alternative informational frameworks. Besides primary goods and other resourcist frameworks, Sen’s capability approach is unquestionably the most important proposal. Sen’s proposal was inspired by his rejection of both utility and Rawls’ primary goods. His main objection against welfarism is that it does not contain enough information about social states. Sen’s criticism of Rawls’ primary goods, in short, is that focusing on the means individuals have to pursue their ends is too rigid an informational framework. In particular, it does not react to individual differences in the ability to make effective use of primary goods in the pursuit of their respective ends. Sen’s capabilities approach is designed to overcome this shortcoming (see also the chapter by Schockheart). He suggests evaluating alternative social states on the basis of the possibilities individuals have to achieve valuable “functionings”. Functionings are a description of the various things an individual can do or be in a particular state, such as being well-nourished, being able to read, etc. Capabilities are then defined over the space

³⁰ See Dworkin (1981), Arneson (1989), Cohen (1989), Roemer (1996), Vallentyne (2005).

³¹ See for example Griffin (1986).

of functionings. They reflect “the alternative combinations of functionings the person can achieve, and from which he or she can choose one collection” (Sen 1993: 31).

The capability approach is objective in that it focuses on a set of valuable functions which will shape social evaluation independently of a particular individual's goals and interests. The basic idea is that the individuals need to have access to these functionings in order to pursue their different values and interests. Furthermore, the capabilities approach is deliberately open with respect to the set of functionings that will be identified as the relevant one for different purposes of social evaluation. The capability approach, as interpreted by Sen, is restricted to providing a general framework for social evaluation, without specifying a substantive list of functionings which would invariably determine the goodness of individual states.³²

By focusing on opportunities people have, the capability approach leaves the purely outcome-oriented terrain of the utility framework. Other examples for consequentialist opportunities-based frameworks are Richard Arneson's opportunities for welfare and Gerald Cohen's midfare.³³ What these approaches share with welfarism, however, is the consequentialist structure. Common to consequentialist frameworks is the premise that social evaluation has to be made on the basis of an informational framework which captures what is intrinsically valuable to the individuals. Consequentialist theories differ in their definition of the good life. In utilitarianism, the good is identified with individual utility. It is, therefore, a form of “welfarist consequentialism” (Sen and Williams, 1982), i.e. of consequentialist theories which require the assessment of consequences in terms of individual utility. Although utilitarianism is only a particular form of consequentialism, it has been the most

³²This in contrast to Nussbaum (1988 and 1993).

³³ Arneson (1989, 1990a, 1990b); Cohen (1989, 1993). See also Roemer (1996).

influential one, not least in economic theory. An alternative to utilitarianism is perfectionism. Perfectionist theories start from some ideal of the good life which is general in the sense that it applies to all individuals alike. It forms the basis on which the moral goodness and rightness of social states is to be assessed (e.g. Griffin: 1986: 56).

Rawls' theory of justice rejects both welfarism and consequentialism. Approaches in welfare economics and social choice theory which remain wedded to welfarism and/or consequentialism thus miss an important aspect of his theory. One aspect of Rawls' non-consequentialism is the emphasis on procedural justice. The idea of procedural justice is not one that is easily incorporated into the framework of social choice theory. Because there are many reasons for why procedural justice is an important value (Anand 2001), social choice theorists have started to explore this idea. The emphasis tends to be on the "process aspect" of freedom (Sen 2002) – be it with regard to individual choice (e.g. Pattanaik and Xu 1990, 2000) or social choice (Suzumura and Xu 2004).

Another aspect of Rawls' non-consequentialism is the primary goods framework. As explained above, primary goods are not to be understood as a surrogate for individual well-being, nor do they need to be seen by people as intrinsically valuable. But what is it that is evaluated, if not individual well-being or the goodness of lives? To answer this, the primary goods framework must be seen as embedded in the political conception of justice in the same way as the informational framework of individual utility is embedded in utilitarian moral philosophy. It is dependent both upon the conception of the person and the conception of society that characterize the two theories. Primary goods are an answer to the question of what goods would the citizens in the original position want to have in order to ensure fair prospects for developing, pursuing

and, if necessary, revising reasonable conceptions of the good, whatever they may be.³⁴

With the primary goods framework, Rawls hopes to circumvent both the problems of welfarism and perfectionism.

Even if these advantages of the primary goods framework are granted, there are further questions that need to be addressed. Many economists are of the view that an important problem affects the construction of an index of primary goods. The problem has its origin in the following dilemma.³⁵ If the index of primary goods ignores people's own evaluations of these goods, recommendations based on such an index will tend to violate the Pareto principle – people will often be willing to trade and exchange the bundle that has been assigned to them for one that they will prefer. If the index takes people's own evaluation into account, however, does that not mean that the approach collapses into welfarism? The question is whether this dilemma is as damning for non-welfarist approaches to justice as it may appear. Many have argued – rightly, in my view – that this is not the case. First, as Sen has argued, taking into account people's own evaluations does not commit one to welfarism. Such evaluations may consist of an appreciation of the requirements of justice (Sen 1991). Indeed, one might add, that is the whole point of the Rawlsian contractarian approach. This thus addresses the second horn of the dilemma, the alleged collapse into welfarism. Brun and Tungodden (2004) have recently argued that while Sen is right, this solution does not eliminate the first horn of the dilemma, the possibility that evaluations based on such an index violate the Pareto principle. That is correct, of course. But is it a problem? Recall that in the Rawlsian view primary goods apply to

³⁴See Rawls (1993: 180).

³⁵ See Plott (1978), Gibbard (1979), Blair (1988), Arneson (1990a), Sen (1991), Roemer (1996), Brun and Tungodden (2004), Fleurbaey (2005).

the evaluation of alternative arrangements of the basic structure, not to the evaluation of resulting distributions directly. If a resulting just distribution is such that there are, say, two individuals who would still be willing to trade, this need not imply that they would consider the basic structure unjust. The distinction between what is rational and what is reasonable is helpful to grasp the difference. The individuals may perceive further trading as in their rational advantage, while judging the prevailing arrangement of the basic structure as justified on grounds of what they consider reasonable. A further consideration is that the Pareto criterion, as it has been extensively discussed in the literature, may select social states which are highly unappealing otherwise. Such social states may, for example, undermine the protection of individual rights (e.g. Sen 1970b, 1979). This raises the question of how to prioritize between the different evaluative criteria. In the Rawlsian perspective, efficiency is not taken to be the “first virtue” of social institutions; justice is. Violations of the Pareto criterion do not automatically constitute a transgression.

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