

Justice as Fairness

A RESTATEMENT

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Institutions of a Just Basic Structure

§41. Property-Owning Democracy: Introductory Remarks

41.1. We have completed our initial argument for the two principles of justice as given in the two fundamental comparisons (§§27–33, §§34–40). I now want to survey what would seem to be the main features of a well-ordered democratic regime that realizes those principles in its basic institutions. I outline a family of policies aimed at securing background justice over time, although I make no attempt to show that they will actually do so. This would require an investigation of social theory we cannot now undertake. The arguments and suggestions are rough and intuitive.

One reason for discussing these difficult matters is to bring out the distinction between a property-owning democracy,¹ which realizes all the main political values expressed by the two principles of justice, and a capitalist welfare state, which does not.² We think of such a democracy as an alternative

1. The term is from J. E. Meade, *Efficiency, Equality, and the Ownership of Property* (London: G. Allen and Unwin, 1964), chap. 5 title.

2. This distinction is not sufficiently noted in *Theory*. An instructive discussion to which I am indebted is that of Richard Krouse and Michael McPherson, "Capitalism, Property-Owning Democracy, and the Welfare State," in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton: Princeton University Press, 1988).

tive to capitalism.³ Our survey is brief and most of the questions mentioned are highly controversial, for example, those concerning public funding of elections and political campaigns, different kinds of property ownership and taxation. We cannot deal adequately with these intricate questions, and my remarks are illustrative and highly tentative.

Another reason for reviewing these matters is to sketch in more detail the kind of background institutions that seem necessary when we take seriously the idea that society is a fair system of cooperation between free and equal citizens from one generation to the next (§12.2). It is also important to trace out, if only in a rough and ready way, the institutional content of the two principles of justice. We need to do this before we can endorse these principles, even provisionally. This is because the idea of reflective equilibrium involves our accepting the implications of ideals and first principles in particular cases as they arise. We cannot tell solely from the content of a political conception—from its principles and ideals—whether it is reasonable for us. Not only may our feelings and attitudes as we work through its implications in practice disclose considerations that its ideals and principles must be revised to accommodate, but we may find that our sentiments prevent us from carrying it out. On reflection we cannot live with it.

41.2. Let us distinguish five kinds of regime viewed as social systems, complete with their political, economic, and social institutions: (a) *laissez-faire* capitalism; (b) welfare-state capitalism; (c) state socialism with a command economy; (d) property-owning democracy; and finally, (e) liberal (democratic) socialism.

Regarding any regime four questions naturally arise. One is the question of right: that is, whether its institutions are right and just. Another is the question of design: that is, whether a regime's institutions can be effectively designed to realize its declared aims and objectives. This implies a third question: whether citizens, in view of their likely interests and ends as shaped by the regime's basic structure, can be relied on to comply with just institutions and the rules that apply to them in their various offices and positions.⁴ The problem of corruption is an aspect of this. Finally, there is the question of competence: whether the tasks assigned to offices and positions would prove simply too difficult for those likely to hold them.

3. For a discussion of other alternatives, see *Alternatives to Capitalism*, ed. Jon Elster and Karl Ove Moene (Cambridge: Cambridge University Press, 1980).

4. Economists call this problem that of incentive-compatibility.

What we would like, of course, are just and effectively designed basic institutions that effectively encourage aims and interests necessary to sustain them. Beyond this, persons should not confront tasks that are too difficult for them or that exceed their powers. Arrangements should be fully workable, or practicable. Much conservative thought has focused on the last three questions mentioned above, criticizing the ineffectiveness of the so-called welfare state and its tendencies toward waste and corruption. But here we focus largely on the first question of right and justice, leaving the others aside. We ask: what kind of regime and basic structure would be right and just, could it be effectively and workably maintained? This recognizes that the other questions still have to be faced.

41.3. When a regime works in accordance with its ideal institutional description, which of the five regimes satisfy the two principles of justice?

By the ideal institutional description of a regime I mean the description of how it works when it is working well, that is, in accordance with its public aims and principles of design. Here we assume that if a regime does not aim at certain political values, and has no arrangements intended to provide for them, then those values will not be realized. But while a regime may include institutions explicitly designed to realize certain values, it still may fail to do so. Its basic structure may generate social interests that make it work very differently than its ideal description.

For example, we can describe a basic structure professedly designed to realize fair equality of opportunity, but the social interests it generates may make that realization impossible. A regime's ideal description abstracts from its political sociology, that is, from an account of the political, economic, and social elements that determine its effectiveness in achieving its public aims. However, it seems safe to assume that if a regime does not try to realize certain political values, it will not in fact do so.

41.4. This assumption granted, we see from the ideal description of the first three kinds of regimes, (a) to (c) in 41.2, that each of them violates the two principles of justice in at least one way.

(a) *Laissez-faire* capitalism (the system of natural liberty (*Theory*, §12)) secures only formal equality and rejects both the fair value of the equal political liberties and fair equality of opportunity. It aims for economic efficiency and growth constrained only by a rather low social minimum (*Theory*, §17: gif. on meritocracy).

(b) Welfare-state capitalism also rejects the fair value of the political lib-

When a practical decision is to be made between property-owning democracy and a liberal socialist regime, we look to society's historical circumstances, to its traditions of political thought and practice, and much else. Justice as fairness does not decide between these regimes but tries to set out guidelines for how the decision can reasonably be approached.

42.3. The contrast between a property-owning democracy and welfare-state capitalism deserves closer examination, since they both allow private property in productive assets. This may tempt us to think they are much the same. They are not.⁵

One major difference is this: the background institutions of property-owning democracy work to disperse the ownership of wealth and capital, and thus to prevent a small part of society from controlling the economy, and indirectly, political life as well. By contrast, welfare-state capitalism permits a small class to have a near monopoly of the means of production.

Property-owning democracy avoids this, not by the redistribution of income to those with less at the end of each period, so to speak, but rather by ensuring the widespread ownership of productive assets and human capital (that is, education and trained skills) at the beginning of each period, all this against a background of fair equality of opportunity. The intent is not simply to assist those who lose out through accident or misfortune (although that must be done), but rather to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality.

The least advantaged are not, if all goes well, the unfortunate and unlucky—objects of our charity and compassion, much less our pity—but those to whom reciprocity is owed as a matter of political justice among those who are free and equal citizens along with everyone else. Although they control fewer resources, they are doing their full share on terms recognized by all as mutually advantageous and consistent with everyone's self-respect.

42.4. Note here two very different conceptions of the aim of the background adjustments over time. In welfare-state capitalism the aim is that none should fall below a decent minimum standard of life, one in which their basic needs are met, and all should receive certain protections against accident and misfortune, for example, unemployment compensation and

5. As I have said, a serious fault of *Theory* is that it failed to emphasize this contrast.

erties, and while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed. It permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in few hands. And although, as the name "welfare-state capitalism" suggests, welfare provisions may be quite generous and guarantee a decent social minimum covering the basic needs (§38), a principle of reciprocity to regulate economic and social inequalities is not recognized.

(c) State socialism with a command economy supervised by a one-party regime violates the equal basic rights and liberties, not to mention the fair value of these liberties. A command economy is one that is guided by a general economic plan adopted from the center and makes relatively little use of democratic procedures or of markets (except as rationing devices).

This leaves (d) and (e) above, property-owning democracy and liberal socialism: their ideal descriptions include arrangements designed to satisfy the two principles of justice.

§42. Some Basic Contrasts between Regimes

42.1. Both a property-owning democracy and a liberal socialist regime set up a constitutional framework for democratic politics, guarantee the basic liberties with the fair value of the political liberties and fair equality of opportunity, and regulate economic and social inequalities by a principle of mutual aid, if not by the difference principle.

While under socialism the means of production are owned by society, we suppose that, in the same way that political power is shared among a number of democratic parties, economic power is dispersed among firms, as when, for example, a firm's direction and management is elected by, if not directly in the hands of, its own workforce. In contrast with a state socialist command economy, firms under liberal socialism carry on their activities within a system of free and workably competitive markets. Free choice of occupation is also assured.

42.2. To illustrate the content of the two principles of justice, we need not decide between a property-owning democracy and a liberal socialist regime. In each case, when their institutions work as described, the principles of justice can be realized. The first principle of justice includes a right to private personal property, but this is different from the right of private property in productive assets (§32.6).

medical care. The redistribution of income serves this purpose when, at the end of each period, those who need assistance can be identified. Yet given the lack of background justice and inequalities in income and wealth, there may develop a discouraged and depressed underclass many of whose members are chronically dependent on welfare. This underclass feels left out and does not participate in the public political culture.

In property-owning democracy, on the other hand, the aim is to realize in the basic institutions the idea of society as a fair system of cooperation between citizens regarded as free and equal. To do this, those institutions must, from the outset, put in the hands of citizens generally, and not only of a few, sufficient productive means for them to be fully cooperating members of society on a footing of equality. Among these means is human as well as real capital, that is, knowledge and an understanding of institutions, educated abilities, and trained skills. Only in this way can the basic structure realize pure background procedural justice from one generation to the next.

Under these conditions we hope that an underclass will not exist; or, if there is a small such class, that it is the result of social conditions we do not know how to change, or perhaps cannot even identify or understand. When society faces this impasse, it has at least taken seriously the idea of itself as a fair system of cooperation between its citizens as free and equal.

§43. Ideas of the Good in Justice as Fairness

43.1. In what follows we focus on the regime of property-owning democracy and indicate how its basic structure tries to meet the two principles of justice. Before taking up these more institutional questions, however, we should review the various ideas of the good in justice as fairness as a political conception.⁶ Doing this will help us to characterize important aspects of a property-owning democracy.

Now it may seem that the priority of right implies that justice as fairness can use only very thin, if not only purely instrumental, ideas of the good. But to the contrary: the right and the good are complementary; any conception of justice, including a political conception, needs both, and the priority of right does not deny this. That the right and the good are complementary is illustrated by this reflection: just institutions and the political virtues would serve no purpose—would have no point—unless those insti-

tutions and virtues not only permitted but also sustained conceptions of the good (associated with comprehensive doctrines) that citizens can affirm as worthy of their full allegiance. A conception of political justice must contain within itself sufficient space, as it were, for ways of life that can gain devoted support. If it cannot do this, that conception will lack support and be unstable. In a phrase, the just draws the limit, the good shows the point.

In justice as fairness, then, the general meaning of the priority of right is that admissible ideas of the good must fit within its framework as a political conception. Given the fact of pluralism, we must be able to assume: (1) that the ideas used are, or could be, shared by citizens generally regarded as free and equal; and (2) that they do not presuppose any particular fully (or partially) comprehensive doctrine.

Keep in mind that these restrictions are accepted so that justice as fairness can meet the liberal principle of legitimacy: namely, that when constitutional essentials and questions of basic justice are at stake, the exercise of coercive political power, the power of free and equal citizens as a collective body, is to be justifiable to all in terms of their free public reason.

43.2. Altogether, six ideas of the good appear in justice as fairness:

(i) The first is that of goodness as rationality, and in some form it is taken for granted by any political conception of justice. It supposes that citizens have at least an intuitive plan of life in the light of which they schedule their more important endeavors and allocate their various resources so as rationally to pursue their conceptions of the good over a complete life. This idea assumes that human existence and the fulfillment of basic human needs and purposes are good, and that rationality is a basic principle of political and social organization.

(ii) The second idea is that of primary goods (§17). It is designed to go with the aims of justice as fairness as a political conception: it specifies citizens' needs (as opposed to preferences, desires, and final ends) in accordance with the political conception of their status as free and equal persons.

(iii) The third idea of the good is that of permissible (complete) conceptions of the good (each associated with a comprehensive doctrine) (§17.4). The priority of right is sometimes introduced in this connection: in its more specific, as opposed to its general, meaning, that priority means that only those conceptions of the good are permissible the pursuit of which is compatible with the principles of justice—in the case of justice as fairness, with the two principles we have discussed.

6. This section is drawn from "The Priority of Right and Ideas of the Good," *Philosophy and Public Affairs* 17 (Fall 1988): 251–276, reprinted in *Collected Papers*.

(iv) The fourth idea of the good is that of the political virtues (§33.3). These virtues specify the ideal of a good citizen of a democratic regime. This is a political ideal but it presupposes no particular comprehensive doctrine and hence, although it is a (partial) conception of moral worth, it is consistent with the priority of right in both its meanings and can be incorporated into a political conception of justice.

There are two further ideas of the good. One of these is (v) the idea of the political good of a society well ordered by the two principles of justice. The other is (vi) the idea of the good of such a society as a social union of social unions.⁷ The political good of a well-ordered society we consider in Part V. But note here that in showing how the preceding four ideas of the good fit within justice as fairness we relied on the fact that those ideas are built up in sequence. Starting with the idea of goodness as rationality (combined with the political conception of the person, the general facts of human life, and the normal structure of rational plans of life), we get the primary goods. Once we use these goods to specify the parties' aims in the original position, the argument from that position gives the two principles of justice. Permissible (complete) conceptions of the good are those the pursuit of which is compatible with those principles. Next, the political virtues are specified as those qualities of citizens' moral character important in securing a just basic structure over time.

43.3. In light of these ideas of the good, let us look at the two traditional views of civic humanism and classical republicanism. Now although justice as fairness is perfectly consistent with classical republicanism, it rejects civic humanism. To explain: in the strong sense, civic humanism is (by definition) a form of Aristotelianism: it holds that we are social, even political, beings whose essential nature is most fully achieved in a democratic society in which there is widespread and active participation in political life. This participation is encouraged not merely as possibly necessary for the protection of basic liberties but because it is the privileged locus of our (complete) good.⁸ This makes it a comprehensive philosophical doctrine

7. See *Theory*, §79.

8. There doesn't seem to be a settled meaning for "civic humanism" and "classical republicanism." I adopt the meaning of a recognized writer and then stick with it. The definition of civic humanism used in the text is from Charles Taylor, *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985), pp. 334f. Taylor is discussing Kant and attributes the view to Rousseau, and notes that Kant does not accept it.

and as such incompatible with justice as fairness as a political conception of justice.

As noted in §32, the equal basic liberties need not be equally provided for, nor are they all valued for the same reasons. Justice as fairness agrees with the strand of the liberal tradition (represented by Constant and Berlin) that regards the equal political liberties (the liberties of the ancients) as having in general less intrinsic value than, say, freedom of thought and liberty of conscience (the liberties of the moderns). By this is meant, among other things, that in a modern democratic society, taking a continuing and active part in public life generally has, and may indeed reasonably have, a lesser place in the conceptions of the (complete) good of most citizens. In a modern democratic society politics is not the focus of life as it was for native-born male citizens in the Athenian city-state.⁹

The political liberties can still be counted as basic even if they are only essential institutional means to protect and preserve other basic liberties. When politically weaker groups and minorities are denied the franchise and excluded from political office and party politics, they are likely to have their basic rights and liberties restricted if not denied. This suffices to include the political liberties in any fully adequate scheme of basic liberties. We do not assert that, for most persons, the political liberties are merely instrumental: we simply want to allow that not all the basic liberties are valued, or regarded as basic, for the same reasons.

43.4. Do not mistake civic humanism (as defined) for the truism that we must live in society to achieve our good.¹⁰ Rather, civic humanism specifies the chief, if not the sole human good as our engaging in political life, often in the form associated historically with the city-state, taking Athens and Florence as exemplars.¹¹

To reject civic humanism (in the sense defined) is not to deny that one of the great goods of human life is that achieved by citizens through engaging

9. But how far did this depend on the fact that nine-tenths of the population (women, aliens, and slaves) were excluded? Is it fair to say that as the Athenian ecclesia was an all-male club of the native born, of course they enjoyed politics as the exercise of their dominion?

10. See *Theory*, §79: 458, for criticism of this utterly trivial interpretation of human sociality.

11. Recall the tendency of Rousseau's remarks in the *Social Contract*, bk. III, chap. 15, par. 1-4.

in political life. Yet the extent to which we make engaging in political life part of our complete good is up to us as individuals to decide, and reasonably varies from person to person.

Of course, complementing the good of political life, as Mill and Tocqueville emphasized, are the goods achieved in various (nonpolitical) associations which together constitute civil society, in Hegel's sense.¹² Citizens' claims in behalf of the associative goods do not override but must always respect the principles of justice and the freedom and opportunities they guarantee. This means that membership in all associations is voluntary at least in this sense: even when born into them, as in the case of religious traditions, citizens have a right to leave them unmolested by the coercive powers of the government. Furthermore, no association comprises all of society.

43.5. Classical republicanism, on the other hand, is the view that the safety of democratic liberties, including the liberties of nonpolitical life (the liberties of the moderns), requires the active participation of citizens who have the political virtues needed to sustain a constitutional regime (§33).¹³ The idea is that unless there is widespread participation in democratic politics by a vigorous and informed citizen body moved in good part by a concern for political justice and public good, even the best-designed political institutions will eventually fall into the hands of those who hunger for power and military glory, or pursue narrow class and economic interests, to the exclusion of almost everything else. If we are to remain free and equal citizens, we cannot afford a general retreat into private life.

Between classical republicanism, so understood, and the liberalism resented by Constant and Berlin, there is no fundamental opposition, for the question is to what degree citizens' engaging in politics is needed for the safety of basic liberties, and how the requisite participation is best achieved. Here there may be differences in weighing competing political values; but this is importantly a matter of political sociology and institutional design. Since classical republicanism does not involve a comprehensive doctrine, it is also fully compatible with political liberalism, and with justice as fairness as a form thereof.

It remains to add that justice as fairness does not deny (any more than Constant or Berlin denies) that some will find, and indeed, given their gifts

12. See Hegel, *The Elements of the Philosophy of Right*, §§182–256.

13. Machiavelli's *Discourses* is sometimes taken as illustrating classical republicanism as defined in the text. See Quentin Skinner, *Machiavelli* (Oxford: Oxford University Press, 1981). A third term, "civic republicanism," means something else again. See below, §44, n. 16.

and aims, should find their good importantly in political life; thus for them this life is a central part of their complete good. It is to the good of society that this be so, in the same way that it is generally beneficial for people to develop their different and complementary talents and engage in mutually advantageous schemes of cooperation. The idea of division of labor (rightly viewed) applies here as elsewhere.¹⁴

§44. Constitutional versus Procedural Democracy

44.1. A property-owning democracy has been described as a constitutional regime and not as what we may call a procedural democracy. A constitutional regime is one in which laws and statutes must be consistent with certain fundamental rights and liberties, for example, those covered by the first principle of justice. There is in effect a constitution (not necessarily written) with a bill of rights specifying those freedoms and interpreted by the courts as constitutional limits on legislation.

By contrast, a procedural democracy is one in which there are no constitutional limits on legislation and whatever a majority (or other plurality) enacts is law, provided the appropriate procedures, the set of rules that identify law, are followed.¹⁵ While these rules specify the required democratic procedures, these procedures themselves impose no limits on the content of legislation. They do not, for example, forbid the legislature to deny equal political rights to certain groups, or to limit freedom of thought and speech. Or if it is insisted that these political rights are part of the meaning of democracy, there is no bar to legislation denying freedom of nonpolitical thought and speech, or denying liberty of conscience, or the many liberties implicit in the rule of law, such as the writ of habeas corpus.

44.2. Can anything be said in favor of a constitutional regime over a procedural democracy? Or is the question of which is preferable simply a question of political sociology, and thus a matter of which is most likely to

14. See *Theory*, §79: 463f.

15. Here we touch upon a difficult question: the point is that there must be some basic norms in the light of which the actions of this collection of people (the members of parliament, say) are law, and not something else. What identifies these people as members of parliament? What identifies these statements as laws, and not as resolutions, or proposals, or indeed just a rehearsal of a play? And so on. Clearly some basic norms are presupposed in any legal system, what Hart would call "rules of recognition." See his *Concept of Law*, esp. chaps. 5–6.

This public forum of principle¹⁷ is a distinctive feature of a constitutional regime with some form of judicial review. Of course, it has its dangers: courts may fail in their task and make too many unreasonable decisions not easily corrected. Legislators may leave to courts too many matters that legislation should handle. Here the historical conditions of a people become relevant, but this does not affect the point at issue: namely, that the greater educational role of a political conception in a constitutional regime may alter its political sociology so as to favor it over procedural democracy.

44-3. The point may be developed this way. Consider J. S. Mill's philosophy. The unity of Mill's view depends on a few psychological principles, among them the principles of dignity, individuality, and the increasing desire to live in unity with others. Mill connects his conception of utility with the permanent interests of humankind as progressive beings. It is plausible, he thinks, that in the conditions of the modern world, following his principles of justice and liberty is an effective if not the best way to realize those permanent interests.

But what happens should these psychological principles fail to hold, or should they not be sufficiently strong with respect to other psychological influences? From commonsense knowledge and ordinary experience, Mill's principles may seem an excessively optimistic view of our nature. The idea behind the educational role of a political conception of justice suitable for a constitutional regime is that by being embedded in political institutions and procedures, that conception may itself become a significant moral force in a society's public culture. This embedding is done in various ways: by incorporating the basic rights and liberties that limit legislation into a constitution, and by having the judiciary interpret the constitutional force of those freedoms in the first instance. That is, while the courts' decisions are binding on the present case, and while they deserve due respect from other branches of government as precedents, they are not as such binding as general political rules.¹⁸ They may legitimately be questioned in the public forum of principle by citizens and political parties. To spell this out we need

17. The phrase is Ronald Dworkin's in "The Forum of Principle," in *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985).

18. See *Abraham Lincoln: A Documentary Portrait through His Speeches and Writings*, ed. Don E. Fehrenbacher (New York: New American Library, 1964), pp. 88-93, 113-117, 138ff.

result in just legislation given the historical circumstances of a particular people with their traditions of political thought and practice? Some have thought that if a people is truly democratic in spirit, a constitution with a bill of rights is unnecessary; while if a people is not democratic, such a constitution cannot make it so. But this latter view overlooks the possibility that certain features of a political conception importantly affect the political sociology of the basic institutions that realize it. More exactly, we must consider how that sociology may be affected by the educational role of a political conception of justice such as justice as fairness with its fundamental ideas of person and society.

In §35 we noted the three levels of what we called the publicity condition and said that, when all three levels are achieved in a well-ordered society, the political conception has an educational role. Those who grow up in such a society will in good part form their conception of themselves as citizens from the public political culture and from the conceptions of person and society implicit in it. They will see themselves as having certain basic rights and liberties, freedoms they can not only claim for themselves but freedoms they must also respect in others. Doing this belongs to their conception of themselves as sharing the status of equal citizenship.

It would seem, then, that the political sociology of a constitutional regime will differ from that of a procedural democracy. The conceptions of person and society are more fully articulated in the public charter of the constitution and more clearly connected with the basic rights and liberties it guarantees. Citizens acquire an understanding of the public political culture and its traditions of interpreting basic constitutional values. They do so by attending to how these values are interpreted by judges in important constitutional cases and reaffirmed by political parties. If disputed judicial decisions—there are bound to be such—call forth deliberative political discussion in the course of which their merits are reasonably debated in terms of constitutional principles, then even these disputed decisions, by drawing citizens into public debate, may serve a vital educational role.¹⁶ We are led to articulate fundamental political values for ourselves, and so to form a conception of the reasons relevant when the constitutional essentials are at stake.

16. The importance of deliberative political discussion is a theme of what is sometimes called "civic republicanism." For an informative discussion of this kind of republicanism, see Cass Sunstein, "Beyond the Republican Revival," *Yale Law Journal* 97 (July 1988): 1539-1590.

an account of the appropriate scope and limits of judicial review, which we cannot go into here.¹⁹

The point, though, is clear: the political conception supporting a constitutional regime need not be as general as Mill's conception of utility nor rely, as Mill's does, for its more specific content on a quite definite human psychology. Rather, like justice as fairness, it may have far more definite normative content as expressed by its fundamental conceptions of person and society, and by the way these conceptions are developed to yield certain principles of justice. We then conjecture that a basic structure in the public political culture in which these fundamental conceptions and principles are embedded has a different political sociology than that of a procedural democracy: those conceptions may acquire a significant educational role that fashions an effective political influence on the side of the principles of justice. A constitutional regime may be more likely to realize those principles and the ideals of free public reason and deliberative democracy. As we shall see in Part V, a further reason for this is that when these principles and ideals are realized, if only in part, the idea of the good of political society is also realized in part and is experienced by citizens as such.

§45. The Fair Value of the Equal Political Liberties

45.1. Now let us turn to the fair value of the equal political liberties that enable citizens to participate in public life. The idea of their fair value is introduced in an attempt to answer this question: how shall we meet the familiar objection, often made by radical democrats and socialists (and by Marx), that the equal liberties in a modern democratic state are in practice merely formal? While it may appear, the objection continues, that citizens' basic rights and liberties are effectively equal—all have the right to vote, to run for political office and to engage in party politics, and so on—social and economic inequalities in background institutions are ordinarily so large that those with greater wealth and position usually control political life and enact legislation and social policies that advance their interests.²⁰

19. One main part of this account would be a rendering of the basic constitutional freedoms that courts should protect. What these might be is suggested by §§13, 30, 32–33. Note that these freedoms include those going beyond procedural arrangements of democracy, for example, liberty of conscience and fair equality of opportunity, and various elements of the rule of law such as the right of habeas corpus, to mention a few important ones.

20. This and the next section attempt to meet the kind of objection raised by Norman Daniels in "Equal Liberty and Unequal Worth of Liberty," in *Reading Rawls*, ed. Norman Daniels (New York: Basic Books, 1975).

To discuss this question, distinguish between the basic liberties and the worth of these liberties as follows: these liberties are the same for all citizens (are specified in the same way) and the question of how to compensate for a lesser liberty does not arise. But the worth, that is, the usefulness of these liberties, which is estimated by the index of primary goods, is not the same for all (*Theory*, §32: 179). The difference principle, in maximizing the index available to the least advantaged, maximizes the worth of them of the equal liberties enjoyed by all. Yet some have more income and wealth than others, and so more all-purpose material means for realizing their ends.

45.2. This distinction between the equal liberties and their worth is simply a definition. It settles no important question; nor does it answer the objection that in a modern democratic state the political liberties may be in practice merely formal. To meet that objection justice as fairness treats the political liberties in a special way. We include in the first principle of justice a proviso that the equal political liberties, and *only* these liberties, are to be guaranteed their fair value (*Theory*, §36: 197ff.). To explain:

(i) This guarantee means that the worth of the political liberties to all citizens, whatever their economic or social position, must be sufficiently equal in the sense that all have a fair opportunity to hold public office and to affect the outcome of elections, and the like. This idea of fair opportunity parallels that of fair equality of opportunity in the second principle.

(ii) When the principles of justice are adopted in the original position, it is understood that the first principle includes this proviso and that the parties take this into account in their reasoning. The requirement of the fair value of the political liberties, as well as the use of primary goods, is part of the meaning of the two principles of justice.

45.3. I cannot consider here how this fair value is best realized in political institutions. I simply assume that there are practicable institutional ways of doing this compatible with the central range of application of the other basic liberties. Reforms to that end are likely to involve such things as the public funding of elections and restrictions on campaign contributions; the assurance of a more even access to public media; and certain regulations of freedom of speech and of the press (but not restrictions affecting the content of speech). Here there may arise a conflict of equally significant basic liberties and some adjustments may need to be made.

These adjustments cannot be rejected simply because they infringe on the freedoms of speech and of the press; these liberties are no more abso-

lute than the political liberties with their guaranteed fair value.²¹ In adjusting these basic liberties one aim is to enable legislators and political parties to be independent of large concentrations of private economic and social power in a private-property democracy, and of government control and bureaucratic power in a liberal socialist regime. This is to further the conditions of deliberative democracy and to set the stage for the exercise of public reason, an aim which (as we saw in §44) justice as fairness shares with civic republicanism.²² These are all important questions and the flourishing of constitutional democracy depends on finding a workable answer to them.

45.4. Note two features of the guarantee of the fair value of the political liberties:

(a) First, it secures for each citizen a fair and roughly equal access to the use of a public facility designed to serve a definite political purpose, namely, the public facility specified by the constitutional rules and procedures which govern the political process and control the entry into positions of political authority. These rules and procedures are to be a fair process, framed so far as possible to yield just legislation.²³ The valid claims of each citizen are held within certain standard limits by the idea of a fair and equal access to the political process as a public facility.

(b) Second, this public facility has limited space, as it were. Without a guarantee of the fair value of the political liberties, those with greater means can combine together and exclude those who have less. The difference principle is presumably not sufficient to prevent this. The limited space of the public political forum, so to speak, allows the usefulness of the political liberties to be far more subject to citizens' social position and economic means than the usefulness of other basic liberties. Therefore, we add the requirement of fair value for the political liberties.

§46. Denial of the Fair Value for Other Basic Liberties

46.1. The idea of fair value of the political liberties raises another question: namely, why not secure fair value for all the basic liberties? This proposal of a wide guarantee of fair value for all basic liberties carries the idea

of equality further than the two principles. The idea of this wide guarantee is, I think, either irrational, or superfluous, or socially divisive. For consider how it might be understood:

(a) If that guarantee means that income and wealth are to be distributed equally, it is irrational: it does not allow society to meet the requirements of social organization and efficiency. If it means that a certain level of income and wealth is to be assured to everyone in order to express the ideal of the equal worth of the basic liberties, it is superfluous, given the difference principle.

(b) If the wider guarantee means that income and wealth are to be distributed according to the content of certain interests regarded as central to citizens' plans of life, for example, the religious interest, then it is socially divisive. To illustrate: some persons may count among their religious duties going on pilgrimages, or building magnificent cathedrals or temples. To guarantee the equal worth of religious liberty would mean, then, that society is to devote social resources to these citizens rather than to others whose understanding of their religious duties calls for far fewer material requirements. The latter's religious needs, as it were, are less. It seems clear that trying to maintain the equal worth (thus understood) of all basic liberties will surely lead to deep religious controversy, if not civil strife.

46.2. Similar consequences follow, I believe, whenever a political conception makes citizens' basic claims to social resources (the claims to which the difference principle applies) depend on the determinate final ends and loyalties that belong to their complete conception of the good.²⁴ Given the fact of reasonable pluralism, the basis of social unity is best founded on a public conception of justice that judges citizens' claims to social resources in terms of a partial conception of the good rooted in a view of the objective needs of citizens regarded as free and equal. This leads to the idea of primary goods. At least with regard to the constitutional essentials, and the all-purpose means needed for a fair opportunity to take advantage of our basic freedoms, justice as fairness rules out claims based on various wants and aims arising from people's different and incommensurable conceptions of the good.

In doing so, it excludes certain perfectionist values from the family of po-

24. To illustrate this point *Theory* discusses briefly the principle of proportionate satisfaction at §77: 446f. A fuller discussion is in "Fairness to Goodness," pp. 551f, reprinted in *Collected Papers*, 281f.

21. See "The Basic Liberties and Their Priority," where *Buckley v. Valeo* is discussed at pp. 72-79.

22. On the meaning of "civic republicanism" see §44.2, n. 16.

23. *Theory*, §31: 173ff.

litical values in terms of which questions of constitutional essentials and the basic questions of distributive justice are to be settled. It also puts in question whether society can allocate great public resources to pure science—to mathematics and theoretical physics, say—or to philosophy, or to the arts of painting and music, solely on the grounds that their study and practice realizes certain great excellences of thought, imagination, and feeling. No doubt their study does this,²⁵ but it is far better to justify the use of public funds to support them by reference to political values. Some public support of art and culture and science, and funding museums and public performances, is certainly vital to the public political culture: to a society's sense of itself and its history, and an awareness of its political traditions. But a large fraction of the social product for the advancement of mathematics and science requires a basis in advancing the good of citizens generally, say by the expected benefits to public health and preserving the environment, or to the needs of (justified) national defense.

Some will find this subordinate place of perfectionist values a serious objection to political liberalism and its idea of public reason. I shall not, however, discuss the question further here. I think this subordinate place is acceptable once we see that the exclusion applies to questions of the constitutional essentials and to basic questions of justice. The perfectionist idea is that some persons have special claims because their greater gifts enable them to engage in the higher activities that realize perfectionist values. It does not follow that perfectionist values can never be appealed to in any form, say in suitably circumscribed questions legislators must consider, or on certain matters of policy.²⁶ The main point is that there should be a good-faith commitment not to appeal to them to settle the constitutional essentials and basic matters of justice. Fundamental justice must be achieved first. After that a democratic electorate may devote large resources to grand projects in art and science if it so chooses.

25. Perfectionism in one form holds that these values are so great as to justify society's allocating to them whatever is necessary to sustain them, barring certain severe adverse consequences.

26. For example, a bill may come before the legislature that allots public funds to preserve the beauty of nature in certain places (national parks and wilderness areas). While some arguments in favor may rest on political values, say the benefits of these areas as places of general recreation, political liberalism with its idea of public reason does not rule out as a reason the beauty of nature as such or the good of wildlife achieved by protecting its habitat. With the constitutional essentials all firmly in place, these matters may appropriately be put to a vote.

§47. Political and Comprehensive Liberalism: A Contrast

47.1. It is a long-standing objection to liberalism that it is hostile to certain ways of life and biased in favor of others; or that it favors the values of autonomy and individuality and opposes those of community and of associational allegiance. In reply, observe first that the principles of any reasonable political conception must impose restrictions on permissible comprehensive views, and the basic institutions those principles require inevitably encourage some ways of life and discourage others, or even exclude them altogether.

The substantive question, then, concerns how the basic structure (required by a political conception) encourages and discourages certain comprehensive doctrines and their associated values, and whether the way this happens is just. Considering this question will explain the sense in which the state, at least as concerns constitutional essentials, is not to do anything intended to favor any particular comprehensive view.²⁷ At this point the contrast between political and comprehensive liberalism is clear and fundamental.²⁸

27. [The aims of the basic institutions and public policy of justice as fairness can be said to be neutral with respect to comprehensive doctrines and their associated conceptions of the good. Neutrality of aim means that those institutions and policies are neutral in the sense that they can be endorsed by citizens generally as within the scope of a public political conception. Neutrality of aim contrasts with procedural neutrality, understood by reference to a procedure that can be legitimated, or justified, without appealing to moral values at all, but at most to neutral values such as impartiality, consistency, and the like. Justice as fairness is not procedurally neutral. Clearly, its principles of justice are substantive and express far more than procedural values, as do its political conceptions of society and person, which are represented in the original position. See *Political Liberalism*, lect. V, §5, esp. 191–192.]

28. The next several paragraphs are adapted from my reply in "Fairness to Goodness," §VI, to an objection raised by Thomas Nagel in his review of *Theory* entitled "Rawls on Justice," *Philosophical Review* 83 (April 1979): 226–229. In an instructive discussion that I can only briefly summarize here, Nagel argues that the setup of the original position in *Theory*, although it is ostensibly neutral between different conceptions of the good, is not actually so. He thinks this is because the suppression of knowledge (by the veil of ignorance) required to bring about unanimity is not equally fair to all parties. The reason is that primary goods, on which the parties base their selection of principles of justice, are not equally valuable in pursuit of all conceptions of the good. Moreover, he says that the well-ordered society of justice as fairness has a strong individualistic bias, and one that is arbitrary because objectivity between conceptions of the good is not established. The reply in the text above supplements that in "Fairness to Goodness" in two ways. It makes clear first, that the conception of the person used in arriving at a workable list of primary goods is a political

47.2. There are at least two ways in which comprehensive doctrines may be discouraged: those doctrines and their associated ways of life may be in direct conflict with the principles of justice; or else they may be admissible but fail to gain adherents under the political and social conditions of a just constitutional regime. The first case is illustrated by a conception of the good requiring the repression or degradation of certain persons on, say, racial, or ethnic, or perfectionist grounds, for example, slavery in ancient Athens or in the antebellum South. Examples of the second case may be certain forms of religion. Suppose that a particular religion, and the conception of the good belonging to it, can survive only if it controls the machinery of state and is able to practice effective intolerance. This religion will cease to exist in the well-ordered society of political liberalism. No doubt there are such cases; and such doctrines may endure, but always among relatively small segments of society.

The question is this: if, in a just constitutional regime, some conceptions will die out and others only barely survive, does this by itself imply that its political conception of justice fails to be neutral between them? Given the connotations of "neutral," perhaps it does fail, and this is a difficulty with that term. But the important question surely is whether the political conception is arbitrarily biased against these views, or better, whether it is just or unjust to the persons whose conceptions they are, or might be. Without further explanation, it would not appear to be unjust to them, for social influences favoring some doctrines over others cannot be avoided on any view of political justice. No society can include within itself all ways of life. We may indeed lament the limited space, as it were, of social worlds, and of ours in particular; and we may regret some of the inevitable effects of our culture and social structure. As Isaiah Berlin long maintained (it was one of his fundamental themes), there is no social world without loss: that is, no social world that does not exclude some ways of life that realize in special ways certain fundamental values. The nature of its culture and institutions proves too uncongenial.²⁹ But these inevitable exclusions are not to be mistaken for arbitrary bias or for injustice.

conception; and second, that justice as fairness itself is a political conception of justice. Once we understand justice as fairness and the conceptions that belong to it in this way, we can make a more forceful reply to Nagel's objection, provided of course it is accepted that neutrality of influence is impracticable.

29. See Berlin's essay "The Pursuit of the Ideal," in *The Crooked Timber of Humanity*, esp. pp. 11–19. See also his "Two Concepts of Liberty" (1958), reprinted in *Four Essays on Liberty* (New York: Oxford University Press, 1969), pp. 167ff. A similar view is often attrib-

47.3. The objection must go further and hold that the well-ordered society of political liberalism fails to establish, in ways that existing circumstances allow—circumstances that include the fact of reasonable pluralism—a just basic structure within which permissible ways of life have a fair opportunity to maintain themselves and to gain adherents over generations. But if a comprehensive conception of the good is unable to endure in a society securing the familiar equal basic liberties and mutual toleration, there is no way to preserve it consistent with democratic values as articulated by the idea of society as a fair system of cooperation among citizens viewed as free and equal. This raises, but does not of course settle, the question of whether the corresponding way of life is viable under other historical conditions, and whether its passing is to be regretted.³⁰

Historical experience shows that many ways of life pass the test of enduring and gaining adherents over time in a democratic society; and if numbers are not the measure of success (and why should they be?), many pass that test with equal success: different groups with distinctive traditions and ways of life find different comprehensive views fully worthy of their alle-

giance to Max Weber; see for example the essays "Politics as a Vocation" (1918) in *From Max Weber: Essays in Sociology*, ed. H. H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946); and "The Meaning of 'Ethical Neutrality' in Sociology and Economics," in *Max Weber on the Methodology of the Social Sciences*, trans. and ed. Edward A. Shils and Henry A. Finch (New York: Free Press, 1949). However, the differences between Berlin's and Weber's views are marked. I can't go into this here except to say I believe that Weber's view rests on a form of value skepticism and voluntarism; political tragedy arises from the conflict of subjective commitments and resolute wills. Whereas for Berlin the realm of values is objective: the point is rather that the full range of values is too extensive to fit into any one social world. Not only are they incompatible with one another, imposing conflicting requirements on institutions despite their being objective; but there exists no family of workable institutions that can allow sufficient space for them all. That there is no social world without loss is rooted in the nature of values and the world. Much human tragedy reflects that. A just liberal society may have far more space than other social worlds but it can never be without loss.

30. Thus we may often want to say that the passing of certain ways of life is to be lamented. It is too optimistic to say that only unworthy ways of life lose out in a just constitutional regime. It will be objected by those who affirm the conceptions that cannot flourish that political liberalism does not allow sufficient space for them. But there is no criterion for what counts as sufficient space except that of a reasonable and defensible political conception of justice itself. The idea of sufficient space is metaphorical and has no meaning beyond that shown in the range of comprehensive doctrines that the principles of such a conception permit and that citizens can affirm as worthy of their full allegiance. The objection may still be raised that the political conception fails to identify the right space, but this is simply the question of which is the most reasonable political conception.

prehenive liberalism as I have specified them. The unavoidable consequences of reasonable requirements for children's education may have to be accepted, often with regret. I would hope, however, that the account of political liberalism provides a sufficient reply to the objection.

In meeting the objection that political liberalism is wrongly hostile to certain ways of life and biased in favor of others, it is fundamental that, beyond the requirements already described, justice as fairness does not seek to cultivate the distinctive virtues and values of the liberalisms of autonomy and individuality, or indeed of any other comprehensive doctrine. For in that case it ceases to be a form of political liberalism. Justice as fairness honors, as far as it can, the claims of those who wish to withdraw from the modern world in accordance with the injunctions of their religion, provided only that they acknowledge the principles of the political conception of justice and appreciate its political ideals of person and society. Observe here that we try to answer the question of children's education entirely within the political conception. The state's concern with their education lies in their role as future citizens, and so in such essential things as their acquiring the capacity to understand the public culture and to participate in its institutions, in their being economically independent and self-supporting members of society over a complete life, and in their developing the political virtues, all this from within a political point of view.

§48. A Note on Head Taxes and the Priority of Liberty

48.1. A brief note on head taxes will help to clarify the priority of liberty as well as the sense in which the difference principle expresses an agreement to regard the distribution of native endowments as a common asset (§21).³²

Recall the precept cited by Marx, which he thinks will be satisfied in the final stage of communist society: "From each according to his abilities, to each according to his needs."³³ If we take this as a precept of justice, it may seem that the difference principle could satisfy it once society imposed a head tax (lump sum tax) on native endowments and required the better endowed to pay a higher tax. In this way, inequalities in income and wealth in people's life-prospects would be greatly reduced if not eliminated.

There are two decisive objections to this proposal. The first might seem merely practical but it cuts deeper. It is this: there may be no measure of na-

32. I draw on my "Reply to Alexander and Musgrave," §VII.

33. Karl Marx, *Critique of the Gotha Program* (1873), §1.

giance. Thus whether political liberalism is arbitrarily biased against certain conceptions and in favor of others turns on whether, given the fact of reasonable pluralism and the other historical conditions of the modern world, realizing its principles in institutions specifies fair background conditions wherein different conceptions of the good can be affirmed and pursued. Political liberalism is unjustly biased against certain comprehensive conceptions only if, say, individualistic conceptions alone can endure in a liberal society, or they so predominate that associations affirming values of religion or community cannot flourish, and further, if the conditions leading to this outcome are themselves unjust.

47.4. An example may clarify this point: various religious sects oppose the culture of the modern world and wish to lead their common life apart from its foreign influences. A problem now arises about their children's education and the requirements the state can impose. The liberalisms of Kant and Mill may lead to requirements designed to foster the values of autonomy and individuality as ideals to govern much if not all of life. But political liberalism has a different aim and requires far less. It will ask that children's education include such things as knowledge of their constitutional and civic rights, so that, for example, they know that liberty of conscience exists in their society and that apostasy is not a legal crime, all this to ensure that their continued religious membership when they come of age is not based simply on ignorance of their basic rights or fear of punishment for offenses that are only considered offenses within their religious sect. Their education should also prepare them to be fully cooperating members of society and enable them to be self-supporting; it should also encourage the political virtues so that they want to honor the fair terms of social cooperation in their relations with the rest of society.

Here it may be objected that requiring children to understand the political conception in these ways is in effect, though not in intention, to educate them to a comprehensive liberal conception. Doing the one may lead to the other, if only because once we know the one we may of our own accord go on to the other. It must be granted that this may indeed happen in the case of some. And certainly there is some resemblance between the values of political liberalism and the values of the comprehensive liberalisms of Kant and Mill.³¹ But the only way this objection can be answered is to set out the great differences in both scope and generality between political and com-

31. And see Joseph Raz in *The Morality of Freedom* (Oxford: Oxford University Press, 1986), esp. chaps. 14 and 15, to mention a contemporary example.

tive endowments (as opposed to realized endowments) sufficiently accurate for us to have confidence that we can justify such a coercive tax. Moreover, once established, the tax is public knowledge and people will have a strong incentive to conceal their endowments, as well as a strong incentive not to realize them until after the age at which the tax is imposed. And when would that be?

Again, as we have seen (in §16.2), native endowments such as intelligence and various natural abilities (to sing and to dance) are not fixed assets with constant capacity. They are, as such, merely potential, and their actual realization depends on social conditions, among which are the social attitudes directly concerned with their training, encouragement, and recognition. A usable measure of native endowments seems out of the question, even in theory.

48.2. For our purposes, however, the relevant difficulty is that a head tax would violate the priority of liberty. It would force the more able into those occupations in which earnings were high enough for them to pay off the tax in the required period of time; it would interfere with their liberty to conduct their life within the scope of the principles of justice. They might have great difficulty practicing their religion, for example; and they might not be able to afford to enter low-paying, though worthy, vocations and occupations.

The point is clear and brings out a further aspect in which our native endowments are ours and not society's: namely, that we cannot be subject to a head tax to equalize the advantages our endowments might confer. That would violate our basic liberties. The difference principle does not penalize the more able for being fortunately endowed. Rather, it says that to benefit still further from that good fortune we must train and educate our endowments and put them to work in socially useful ways that contribute to the advantages of those who have less.³⁴

§49. Economic Institutions of a Property-Owning Democracy

49.1. In §§15-16 we noted various reasons for focusing on the basic structure as the primary subject of justice. We need not review them here;

34. Here we see how the meaning of the difference principle is determined in part by its ranking as subordinate to the first principle of justice. That meaning is not given by taking it in isolation.

but let us recall one main reason: namely, that if the basic structure can be effectively regulated by relatively simple and clear public principles of justice so as to maintain background justice over time, then perhaps most things can be left to citizens and associations themselves, provided they are put in a position to take charge of their own affairs and are able to make fair agreements with one another under social conditions ensuring a suitable degree of equality. The basic structure is to secure citizens' freedom and independence, and continually to moderate tendencies that lead, over time, to greater inequalities in social status and wealth, and in the ability to exert political influence and to take advantage of available opportunities. This raises a question about how far the present generation is bound to respect the claims of its successors.³⁵ The principle of just savings addresses this question.

49.2. The relation between the difference principle and the principle of just saving (*Theory*, §44) is this. The principle of just saving holds between generations, while the difference principle holds within generations. Real saving is required only for reasons of justice: that is, to make possible the conditions needed to establish and to preserve a just basic structure over time. Once these conditions are reached and just institutions established, net real saving may fall to zero. If society wants to save for reasons other than justice, it may of course do so; but that is another matter.

A feature of the difference principle is that it does not require continual economic growth over generations to maximize upward indefinitely the expectations of the least advantaged measured in terms of income and wealth. As we have said (§18.3), that would not be a reasonable conception of justice. We certainly do not want to rule out Mill's idea of a society in a just stationary state where (real) capital accumulation may cease.³⁶ A property-owning democracy should allow for this possibility. We saw that what the difference principle does require is that during an appropriate interval of time the differences in income and wealth earned in producing the social product be such that if the legitimate expectations of the more advantaged were less, those of the less advantaged would also be less. Society is on the upward-rising part or at the top of the OP curve.³⁷ Permissible inequalities (thus defined) satisfy that condition and are compatible with a social prod-

35. *Theory*, §44: 251.

36. See Mill, *Principles of Political Economy*, bk. IV, chap. VI.

37. See the distinction at *Theory*, §13: 68, between perfectly just schemes and those just throughout.

uct of a steady-state equilibrium in which a just basic structure is supported and reproduced over time.

49.3. As for the adoption of a just savings principle, we proceed as follows. To preserve the present-time-of-entry interpretation of the original position (§25.2), the question of savings must be dealt with by constraints that hold between citizens as contemporaries. Since society is to be a fair system of cooperation between generations over time, a principle governing savings is required. We must not imagine a (hypothetical and nonhistorical) direct agreement between all generations, so we say the parties are to agree to a savings principle subject to the condition that they must want all previous generations to have followed it. They are to ask themselves how much (what fraction of the social product) they are prepared to save at each level of wealth as society advances, should all previous generations have followed the same schedule.³⁸

The correct principle, then, is one the members of any generation (and so all generations) would adopt as the principle they would want preceding generations to have followed, no matter how far back in time. Since no generation knows its place among the generations, this implies that all later generations, including the present one, are to follow it. In this way we arrive at a savings principle that grounds our duties to other generations: it supports legitimate complaints against our predecessors and legitimate expectations about our successors.³⁹

49.4. With a savings principle adopted, the following remarks indicate some of the kinds of taxation by which economic and social background justice might be preserved over time (*Theory*, §43: 245–249).

First, consider bequest and inheritance: we borrow from Mill (and oth-

38. A schedule is a rule stating a fraction of social product to be saved at any given level of wealth.

39. This account of how the just savings principle is derived differs from *Theory*, §44. There it is not required that the parties must want previous generations to have followed the savings rule they adopt as contemporaries. So taking the parties to be mutually disinterested, nothing constrains them to make any savings at all. To meet this difficulty, *Theory* assumes they care for their descendants. While this is not an unreasonable stipulation, it has certain difficulties. It also changes the motivation assumption (of mutual disinterest) in order to get a savings principle. The account in the text, which follows a suggestion made to me by Thomas Nagel and Derek Parfit in 1972, avoids this, and seems simpler. It was stated independently later by Jane English in her "Justice between Generations," *Philosophical Studies* 31 (1977): 98.

ers) the idea of regulating bequest and restricting inheritance. To do this an estate itself need not be subject to tax, nor need the total given by bequest be limited. Rather the principle of progressive taxation is applied at the receiver's end. Those inheriting and receiving gifts and endowments pay a tax according to the value received and the nature of the receiver. Individuals and corporate bodies of certain kinds (educational institutions and museums, say) may be taxed at different rates. The aim is to encourage a wide and far more equal dispersion of real property and productive assets.

Second, the progressive principle of taxation might not be applied to wealth and income for the purposes of raising funds (releasing resources to government), but solely to prevent accumulations of wealth that are judged to be inimical to background justice, for example, to the fair value of the political liberties and to fair equality of opportunity. It is possible that there need be no progressive income taxation at all.

Third, income taxation might be avoided altogether and a proportional expenditure tax adopted instead, that is, a tax on consumption at a constant marginal rate. People would be taxed according to how much they use of the goods and services produced and not according to how much they contribute (an idea that goes back to Hobbes). Such a proportional tax can allow for all the usual exemptions. By taxing only total expenditures above a certain income, the tax can be adjusted to allow for an appropriate social minimum.

The difference principle might, then, roughly be satisfied by raising and lowering this minimum and adjusting the constant marginal rate of taxation. The principle cannot be satisfied exactly, but society may publicly aim at its approximate, or its good-faith, satisfaction. No fine-tuning is possible anyway. The above policies involve only various kinds of taxation and so do not require direct interference by government with individual and associational decisions or particular transactions.

49.5. I comment on two worries sometimes raised about the difference principle. The first is whether it requires us, on every policy matter, to consider how it affects the prospects of the least advantaged. The principle has seemed objectionable to many if it does require this. Clearly this difficulty may be pressed against any principle applicable to the basic structure. A useful reply is this: we are to proceed by selecting a few instruments, as we may call them, that can be adjusted so as to meet the difference principle, once the whole family of policies is given. As indicated above, given the equal basic liberties (with the fair value of the political liberties), fair equal-

ity of opportunity, and the like, perhaps the difference principle can be roughly satisfied by adjusting upward or downward the level of income exempt from the proportional income tax. Here that level serves as the instrument. Doing this frees us from having to consider the difference principle on every question of policy.

A second worry is whether the fulfillment of the difference principle should be affirmed in a society's constitution. It seems that it should not, for this risks making it a constitutional essential which the courts are to interpret and enforce, and this task is not one they can perform well. Whether that principle is met requires a full understanding of how the economy works and is extremely difficult to settle with any exactness, although it may often be clear that it is not satisfied. Still, if there is sufficient agreement on the principle, it might be accepted as one of society's political aspirations in a preamble that lacks legal force (as with the U.S. Constitution).

What should be a constitutional essential is an assurance of a social minimum covering at least the basic human needs, as specified in §38.3-4. For it is reasonably obvious that the difference principle is rather blatantly violated when that minimum is not guaranteed. This meets the desideratum that the fulfillment, or lack of it, of a constitutional essential should be fairly obvious, or at any rate, a matter open to public view that courts should be reasonably competent to assess.⁴⁰

§50. The Family as a Basic Institution

50.1. The aims of the following comments about the family are modest: they merely indicate why the principles of justice apply to the family, but they do not indicate in any detail what those principles require. Before doing this, I comment that the family is part of the basic structure, the reason being that one of its essential roles is to establish the orderly production and reproduction of society and of its culture from one generation to the next. Recall that a political society is always regarded as a scheme of cooperation over time indefinitely; the idea of a future time when its affairs are to be wound up and society disbanded is foreign to our conception of society. Reproductive labor is socially necessary labor. Accepting this, essential to

40. This endorses Frank Michelman's view in his discussion "The Supreme Court, 1968 Term—Foreword: On Protecting the Poor through the Fourteenth Amendment," *Harvard Law Review* 83 (1969): 7-59. See also his "Welfare Rights in a Constitutional Democracy," *Washington University Law Quarterly* (1979): 659-693.

the role of the family is the arrangement in a reasonable and effective way of the raising and caring for children, ensuring their moral development and education into the wider culture.⁴¹ Citizens must have a sense of justice and the political virtues that support just political and social institutions. Moreover, the family must fulfill this role in appropriate numbers to maintain an enduring society. Still, no particular form of the family (monogamous, heterosexual, or otherwise) is so far required by a political conception of justice so long as it is arranged to fulfill these tasks effectively and does not run afoul of other political values.⁴²

These necessities limit all arrangements of the basic structure, including efforts to achieve fair equality of opportunity. The family imposes constraints on ways in which this can be done, and the two principles are stated to try to take those constraints into account. Here the difference principle is relevant, for when it is met, those with lesser opportunity can accept more easily the constraints the family and other social conditions impose.⁴³ I cannot pursue these complexities here, but assume that as children we grow up in a small intimate group in which elders (normally our parents) have a certain moral and social authority.⁴⁴

50.2. It may be thought that the principles of justice do not apply to the family and that therefore they cannot secure equal justice for women and their children.⁴⁵ This is a misconception. It may arise as follows: the primary subject of justice is the basic structure of society understood as the arrangement of society's main institutions into a unified system of social cooperation over time. The principles of political justice are to apply directly to this structure, but they are not to apply directly to the internal life of the many associations within it, the family among them. Thus, it may be asked

41. *Theory*, §§70-76.

42. Note that this observation sets the way in which justice as fairness deals with the question of gay and lesbian rights and duties, and how they affect the family. If these rights and duties are consistent with orderly family life and the education of children, they are, *ce-teris paribus*, fully admissible.

43. See *Theory*, §77: 448.

44. Some think that the lexical priority of fair equality of opportunity over the difference principle is too strong, and that either a weaker priority or a weaker form of the opportunity principle would be better, and indeed more in accord with fundamental ideas of justice as fairness itself. At present I do not know what is best here and simply register my uncertainty. How to specify and weight the opportunity principle is a matter of great difficulty and some such alternative may well be better.

45. See Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), chap. 5, e.g., pp. 90-93.

how, if those principles do not apply directly to the internal life of families, they can ensure equal justice for wives along with their husbands.

We mentioned this question earlier (§4.2), but it needs further discussion. Note that much the same question arises in regard to all associations, whether they be churches and universities, professional and scientific associations, business firms and labor unions. The family is not peculiar in this respect. To illustrate: it is clear that the two principles of justice (as with other liberal principles) do not require ecclesiastical governance to be democratic. Bishops and cardinals need not be elected; nor are the benefits attached to a church's hierarchy of offices to satisfy the difference principle. This illustrates how the principles of political justice do not apply directly to the internal life of a church, nor is it desirable, or consistent with liberty of conscience or freedom of association, that they should.

On the other hand, the principles of political justice do impose certain essential constraints that bear on ecclesiastical governance. As we saw (§4.2), churches cannot practice effective intolerance since, as the principles of justice require, public law does not recognize heresy and apostasy as crimes, and its members are always at liberty to leave their faith. Thus, although the principles of justice do not apply directly to the internal life of churches, they do protect the rights and liberties of their members by the constraints to which all churches and associations are subject.

This is not to deny that there are appropriate conceptions of justice that apply directly to most if not all associations and groups, as well as to the various kinds of relationships among individuals. Yet these conceptions of justice are not political conceptions. In each case, what is the appropriate conception is a separate and additional question, to be considered anew in any particular instance, given the nature and role of the association, group, or relation at hand.

50.3. Now consider again the family. Here the formula is the same: political principles do not apply directly to its internal life but they do impose essential constraints on the family as an institution and guarantee the basic rights and liberties and fair opportunities of all its members. This they do, as I have said, by specifying the basic claims of equal citizens who are members of families. The family as part of the basic structure cannot violate these freedoms. Since wives are equally citizens with their husbands, they have all the same basic rights and liberties and fair opportunities as their husbands; and this, together with the correct application of the other principles of justice, should suffice to secure their equality and independence.

To put the point another way, we distinguish between the point of view of people as citizens and their point of view as members of families and of other associations.⁴⁶ As citizens we have reasons to impose the constraints specified by the political principles of justice on associations; while as members of associations we have reasons for limiting those constraints so that they leave room for a free and flourishing internal life appropriate to the association in question. Here again we see the need for the division of labor between different kinds of principles. We wouldn't want political principles of justice to apply directly to the internal life of the family. It is hardly sensible that as parents we be required to treat our children in accordance with political principles. Here those principles are out of place. Certainly parents should follow some conception of justice (or fairness) and due respect in regard to each of their children, but, within certain limits,⁴⁷ this is not for political principles to prescribe. Of course, the prohibition of abuses and the neglect of children, and much else, will, as constraints, be a vital part of family law. But at some point society has to trust to the natural affection and goodwill of parents.⁴⁸

Beyond the above considerations founded on the equality of women, the principles of justice also impose constraints on the family on behalf of children who are society's future citizens and have claims as such. As we have

46. I borrow this thought from Joshua Cohen. See his review, "Okin on Justice, Gender, and Family," in the *Canadian Journal of Philosophy* 22 (June 1993): 263–286.

47. The point here is that the treatment of children must be such as to support the family's role in upholding a constitutional regime. Suppose, for example, that primogeniture, or singling out the first son or daughter as always especially favored, were to undercut the family's role in that respect. Then it should be reconsidered.

48. Michael Sandel, in his *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), on p. 33, considers the situation in which the harmonious family comes to be wrought with dissension. The affections and openness of previous times give way to the demands of fairness and rights. He imagines that past good feelings are replaced by an unexceptionable integrity and judiciousness, so that no injustice prevails. "Parents and children reflectively equilibrate, dutifully if sullenly, abide by the two principles of justice, and even manage to achieve the conditions of stability and congruence, so that the good of justice is realized within their household." One mistake here is that he supposes the two principles to hold generally for all associations, whereas they hold only for the basic structure. Another mistake is that he seems to take justice as fairness as saying that the establishment of full justice would restore the moral character of the family. This last, justice as fairness does not say. Some conception of justice is indeed viewed as appropriate for the family, as for other associations and cases of local justice. Yet such a conception—usually a different one for each kind of association—is necessary, but by no means sufficient, to restore the moral character of the family. The fundamental role of basic justice must not be taken for more than it is.

noted, a long and historic injustice to women is that they have borne, and continue to bear, a disproportionate share of the task of raising, nurturing, and caring for their children. When they are even further disadvantaged by the law of divorce, this burden makes them highly vulnerable.⁴⁹ These injustices bear harshly not only on women but also on their children and they tend to undermine children's capacity to acquire the political virtues required of future citizens in a viable democratic regime.⁵⁰ Mill held that the family in his day was a school for male despotism: it inculcated habits of thought and ways of feeling and conduct incompatible with democracy.⁵¹ If so, the principles of justice enjoining democracy can plainly be invoked to reform it.

50.4. Thus, when political liberalism distinguishes between political justice that applies to the basic structure and other conceptions of justice that apply to the various associations within that structure, it does not regard the political and the nonpolitical domains as two separate, disconnected spaces, as it were, each governed solely by its own distinct principles. Even if the basic structure alone is the primary subject of justice, principles of justice still put essential restrictions on the family and all other associations. The adult members of families and other associations are equal citizens first: that is their basic position. No institution or association in which they are involved can violate their rights as citizens.

A domain so-called, or a sphere of life, is not, then, something already given apart from principles of justice. A domain is not a kind of space, or place, but rather is simply the result, or upshot, of how the principles of political justice are applied, directly to the basic structure and indirectly to the associations within it. The principles defining the equal basic liberties and fair opportunities of citizens always hold in and through all so-called domains. The equal rights of women and the claims of their children as future citizens are inalienable and protect them wherever they are. And as we have seen, gender distinctions limiting those rights and liberties are excluded (§18.4-6). So the spheres of the political and the public, and of the not-public and the private, take their shape from the content and application of the conception of justice and its principles. If the so-called private sphere is a space alleged to be exempt from justice, then there is no such thing.

49. See Okin's discussion, *Justice, Gender, and the Family*, chap. 7.

50. On these virtues, see Part V, §§57, 59.

51. J. S. Mill, *The Subjection of Women* (1868), in *Collected Works*, vol. XXI, chap. 2.

50.5. More generally, since property-owning democracy aims for full equality of women, it must include arrangements to achieve that. If a basic, if not the main, cause of women's inequality is their greater share in the bearing, nurturing, and caring for children in the traditional division of labor within the family, steps need to be taken either to equalize their share or to compensate them for it. How best to do this in particular historical conditions is not for political philosophy to decide. But a now common proposal is that as a norm or guideline, the law should count a wife's work in raising children (when she bears that burden as is still common) as entitling her to an equal share in the income her husband earns during their marriage. Should there be a divorce, she should have an equal share in the increased value of the family's assets during that time.⁵²

Any departure from this norm would require a special and clear justification. It seems intolerable that a husband may depart the family, taking his earning power with him and leaving his wife and children far less advantaged than before. Forced to fend for themselves, their economic position is often precarious. A society that permits this does not care about women, much less about their equality, or even about their children who are its future. Indeed, is it a political society at all?⁵³

50.6. Okin in her critical though not unsympathetic discussion of *Theory* has said that there is implicit in it a potential critique of the family and gender-structured social institutions. This critique can be developed, she thinks, first, from the fact that the parties in the original position do not know the sex of those they represent; and second, from the fact that the family and the gender system, as part of the basic structure, are to be subject to the scrutiny of its principles.⁵⁴

I should like to think that Okin is right. The crucial question may be: what precisely is covered by gender-structured institutions? How are their lines drawn? If we say the gender system includes whatever social arrangements adversely affect the equal basic liberties and opportunities of women, as well as of those of their children as future citizens, then surely that sys-

52. For an instructive discussion of this proposal and other related questions concerning the equality of women, see Okin, *Justice, Gender, and the Family*, chaps. 7-8.

53. I have in mind here the fact that a political society is a system of cooperation from one generation to the next. Note that in the text I have assumed that the traditional division of labor in the family is common and have addressed only that situation in order to indicate what the principles of justice seem to require.

54. Okin, *Justice, Gender, and the Family*, pp. 101, 105.

Is 'fair' a
descriptive?

selves, moving from place to place unassisted, holding a position or pursuing an occupation, and taking part in politics and the public life of our community. By abstracting from the relation of goods to basic capabilities and focusing on primary goods, Sen thinks an index of primary goods focuses on the wrong thing.

51.2. In reply, it should be stressed that the account of primary goods does take into account, and does not abstract from, basic capabilities: namely, the capabilities of citizens as free and equal persons in virtue of their two moral powers. It is these powers that enable them to be normal and fully cooperating members of society over a complete life and to maintain their status as free and equal citizens. We rely on a conception of citizens' capabilities and basic needs, and the equal rights and liberties are specified with these moral powers in mind. As we have seen (§32), those rights and liberties are essential conditions for the adequate development and full exercise of those powers in certain fundamental cases of great significance. We say:

(i) The equal political liberties, and freedom of speech and freedom of assembly and the like, are necessary for the development and exercise of citizens' sense of justice and are required if citizens are to make rational judgments in the adoption of just political aims and in the pursuit of effective social policies.

(ii) The equal civil liberties, liberty of conscience and freedom of association, and free choice of occupation and the like, are necessary for the development and exercise of citizens' capacity for a conception of the good: that is, the capacity to form, to revise and rationally to pursue what one views as worthwhile in human life, as understood in the light of a (fully or partially) comprehensive religious, philosophical, or moral doctrine.

(iii) Income and wealth are general all-purpose means required to achieve a wide range of (permissible) ends, whatever they may be, and in particular, the end of realizing the two moral powers and advancing the ends of the (complete) conceptions of the good that citizens affirm or adopt.

These remarks locate the role of primary goods within the framework of justice as fairness as a whole. Attending to this framework, we see that it does recognize the fundamental relation between primary goods and persons' basic capabilities. In fact, the index of those goods is drawn up by asking what things, given the basic capabilities included in the (normative) conception of citizens as free and equal, are required by citizens to maintain

tem is subject to critique by the principles of justice. The question then becomes whether the fulfillment of these principles suffices to remedy the system's faults. This depends in part on social theory and human psychology, and much else. It cannot be settled by a conception of justice alone and I shall not try to reflect further on the matter here.

I conclude by remarking that I have appealed to only a few values of public reason covered by the political conception of justice. Among these values are the equality of women, the equality of children as future citizens, and finally, the value of the family in securing the orderly production and reproduction of society and of its culture from one generation to the next, and so in a just democratic society, its value in cultivating and encouraging the attitudes and virtues supporting such institutions. In other cases, further political values can be appealed to.

§51. The Flexibility of an Index of Primary Goods

51.1. In order to illustrate the practical use of an index of primary goods and the flexibility such an index provides, I discuss in some detail an objection Sen has raised to such an index: namely, that it is bound to be too inflexible to be fair.⁵⁵ Discussing this will clarify the idea of primary goods by noting their connection with Sen's important idea that interpersonal comparisons must be based, in part at least, on a measure of what he calls a person's "basic capabilities."

Sen's objection rests on two points. The first is that to use an index of these goods is, in effect, to work in the wrong space, and so involves a misleading metric: that is, primary goods themselves should not be viewed as the embodiment of advantage, since in fact advantage depends on a relation between persons and goods. An acceptable basis of interpersonal comparisons, the objection continues, must rest, at least in good part, on a measure of a person's basic capabilities.

To explain: Sen holds that utilitarianism is mistaken in viewing goods solely as satisfying individuals' desires and preferences. He thinks that the relation of goods to basic capabilities is also essential: goods make it possible for us to do certain basic things, for example, dressing and feeding our-

55. Sen's objection was first stated in "Equality of What?" *Tanner Lectures on Human Values*, vol. 1 (Salt Lake City: University of Utah Press, 1979), reprinted in *Choice, Welfare, and Measurement* (Cambridge, Mass.: MIT Press, 1982), pp. 365-366. This objection is further elaborated in his *Inequality Reexamined* (Cambridge, Mass.: Harvard University Press, 1992); see especially chap. 5.

their status as free and equal and to be normal, fully cooperating members of society. Since the parties know that an index of primary goods is part of the principles of justice, included in their meaning, they will not accept those principles unless that index secures what they think is required to protect the essential interests of the persons they represent.

51.3. So far, we have made an important background assumption: namely, that with respect to the kinds of needs and requirements that political justice should take into account, citizens' needs and requirements are sufficiently similar for an index of primary goods to serve as a suitable and fair basis for interpersonal comparisons in matters of political justice.

If this background assumption does indeed hold, Sen might accept the use of primary goods, at least in many instances.⁵⁶ His objection rests on the further point that the relevant needs and requirements of normal and fully cooperating members of society are in fact sufficiently different so that the two principles of justice with an index of primary goods are bound to be too inflexible to yield a fair way of adjusting to these differences. In reply, I shall try to show that in drawing up an index of primary goods we have considerable flexibility.

To begin, I put aside the more extreme cases of persons with such grave disabilities that they can never be normal contributing members of social cooperation. I consider instead only two kinds of cases, both within what I shall call the normal range, that is, the range of differences in citizens' needs and requirements compatible with everyone's being a normal and cooperating member of society. They will illustrate the flexibility of the two principles in dealing with those differences.

51.4. The first kind of case concerns the differences in the development and exercise of the two moral powers and in realized native endowments, differences above the minimum essentials required to be a fully cooperating member of society. For example, the judicial virtues are excellences of the moral power of a sense of justice and there is, let's suppose, considerable variation in the capacity for those virtues. These powers involve intellect and imagination, the capacity to be impartial and to take a wider and more inclusive view, as well as a certain sensitivity to the concerns and circumstances of others.

The two principles of justice incorporate the concept of pure back-

ground procedural justice and not that of allocative justice (§14). The differences in citizens' moral powers do not, as such, lead to corresponding differences in the allocation of primary goods, including the basic rights and liberties. Rather, the basic structure is arranged to include the requisite institutions of background justice so that citizens have available to them the general all-purpose means to train and educate their basic capabilities, and a fair opportunity to make good use of them, provided their capabilities lie within the normal range. It is left to citizens as free and equal persons, secure in their basic rights and liberties and able to take charge of their own life, to avail themselves of the opportunities guaranteed to all on a fair basis.

Consider the differences in the capacity for the judicial virtues mentioned above: within the normal range, these differences do not affect the way the two principles apply to citizens as free and equal. All still have the same basic rights and liberties and fair opportunities, and all are covered by the guarantees of the difference principle. Of course, those with a greater capacity for the judicial virtues have, other things equal, a greater chance of holding positions of authority with the responsibilities that call for the exercise of those virtues. Over the course of a life, they may have higher expectations of primary goods, and their greater capacities, properly trained and exercised, may be differently rewarded depending on the plans they make and on what they do. (These last remarks assume a more or less well-ordered society; as always we work within ideal theory, unless otherwise noted.)

But the particular distribution that results does not come about by following principles of justice (either allocative or procedural) that use a measure of basic capabilities. A scientific (as opposed to a normative) measure of the full range of these capabilities is impossible as a matter of practice, if not theoretically as well. In justice as fairness, adjusting to these differences in capabilities proceeds by way of an ongoing social process of pure background procedural justice in which qualifications suitable for particular offices and positions play a distributive role. But, as always, no differences in basic capabilities (within the normal range) affect persons' equal basic rights and liberties. The claim of justice as fairness is that in a well-ordered society such an ongoing social process would not lead to political injustice.

51.5. I now turn to the second kind of case, namely, the differences in citizens' needs for medical care. These cases are characterized as ones in which citizens fall temporarily—for a period of time—below the minimum essential capacities for being normal and fully cooperating members of so-

56. See Sen, "Equality of What?" in *Choice, Welfare, and Measurement*, p. 368.

attached to the relevant social positions within the basic structure. This enables the two principles to allow for differences in need arising from illness and accident over the normal course of a complete life. Individuals' expectations of primary goods (their index) can be the same *ex ante*, while the goods they actually receive are different *ex post*, depending on the various contingencies—in this case, on the illnesses and accidents that befall them.

51.6. Given this background, I indicate—here I cannot do more than that—how the two principles apply to the medical and health needs of citizens as normal cooperating members of society whose capacities for a time fall below the minimum.

This matter is to be decided at the legislative stage (*Theory*, §31) and not in the original position or constitutional convention, since the practicable application of the two principles to this case depends in part on information about the prevalence of various illnesses and their severity, the frequency of accidents and their causes, and much else. At the legislative stage this information is available, and hence the policies to protect public health and to provide medical care can be taken up there.

Since the index of primary goods is specified in terms of expectations, considerable flexibility in adjusting to citizens' various needs is a feature of the two principles of justice. For simplicity, let us focus on the least-advanced group and assume that information is available concerning its members' likely medical needs in the aggregate and the cost of covering them at various levels of treatment and care. Within the guidelines of the difference principle, provisions can be made for covering these needs up to the point where further provision would lower the expectations of the least advantaged. This reasoning parallels that in fixing a social minimum (*Theory*, §44: 251f.). The only difference is that now the expectation of an assured provision of health care at a certain level (calculated by estimated cost) is included as part of that minimum. Once again, the same expectations *ex ante* are compatible with widely divergent benefits received depending on differences in need *ex post*.

Observe that what sets an upper bound to the fraction of the social product spent on medical and health needs are the other essential expenditures society must make, whether these are paid for by private or public funds. For example, an active and productive workforce must be sustained, children must be raised and properly educated, part of the annual product must be invested in real capital and another part counted as depreciation, and provision must be made for those who are retired, not to mention the

society. As a first step in working out a conception of political justice we may abstract entirely (as we have done) from illness and accident, and view the fundamental question of political justice as simply that of specifying the fair terms of cooperation between citizens as free and equal. But I hope that justice as fairness can not only help with that question but also be extended to cover differences in need to which illness and accident give rise. To attempt this extension we interpret the assumption that citizens are normally cooperating members of society over a complete life to allow that they may be seriously ill or suffer from severe accidents from time to time.

In making this extension we rely on three features of the index of primary goods that give the two principles of justice a certain flexibility in adjusting to the differences among citizens in their need for medical care.

First, these goods are not specified in full detail by considerations available in the original position. This is obvious with respect to both the basic rights and liberties, and the other primary goods. It suffices, for example, that in the original position the general form and content of the basic rights and liberties can be outlined and the grounds of their priority understood. The further specification of those rights and liberties is left to the constitutional, legislative, and judicial stages as more information is made available, and particular social conditions can be taken into account. In outlining the general form and content of basic rights and liberties, we must make their special role and central range of application sufficiently clear so that at each later stage the process of specification is guided in a suitable way.

Second, the primary goods of income and wealth are not to be identified only with personal income and private wealth. For we have control, or partial control, over income and wealth not only as individuals but also as members of associations and groups. Members of a religious sect have some control over church property; members of a faculty have some control over a university's wealth viewed as a means for carrying out their aims of scholarship and research. As citizens we are also the beneficiaries of the government's providing various personal goods and services to which we are entitled, as in the case of health care, or of its providing public goods (in the economist's sense), as in the case of measures ensuring public health (clean air and unpolluted water, and the like). All of these items can (if necessary) be included in the index of primary goods.⁵⁷

Third, the index of primary goods is an index of expectations of these goods over the course of a complete life. These expectations are viewed as

57. These points are made in my "Fairness to Goodness," §III.

other claims on the social product covered by the two principles of justice. I shall not, however, pursue further these difficult and complicated matters.⁵⁸

51.7. To conclude: In reply to the objection that an index of primary goods is too inflexible to be fair, I have made two main points:

First, that the idea of primary goods is closely connected with the conception of citizens as having certain basic capabilities, among the most important being the two moral powers. What those goods are depends on the fundamental intuitive idea of citizens as persons with those powers, and with a higher-order interest in their development and exercise. This accords with Sen's view that basic capabilities must be taken into account not only in making interpersonal comparisons but in laying out a reasonable political conception of justice.

Second, that in order to show the flexibility allowed by the use of primary goods, we must distinguish between two kinds of cases. The first case concerns differences among citizens' capabilities within the normal range but above the minimum essentials required to be a fully cooperating member of society. These differences are accommodated by an ongoing social process of pure background procedural justice. In this kind of case, no measure of citizens' differences in capabilities is necessary; nor does a workable measure seem possible.

The second kind of case involves those in which because of illness and accident citizens fall for a time below the minimum essentials. Here we rely on the fact that the index of primary goods is to be more definitely specified at the legislative stage and, as always, in terms of expectations. These features allow it to be flexible enough to meet differences in medical needs arising from illness and accident. Important here is the use of the conception of the citizen as a cooperating member of society over a complete life, which enables us to ignore differences in capabilities and endowments above the minimum. That conception directs us to restore, or in an appropriate way to make good, our capabilities when by illness and accident we fall below the minimum and are unable to play our part in society.

This rather simple distinction between the two cases—of differences above and below the minimum essentials—is an example of the kind of

58. For an instructive discussion, see Norman Daniels, "Health-Care Needs and Distributive Justice," *Philosophy and Public Affairs* 10 (Spring 1981): 146–179. This is worked out further in Daniels's *Just Health Care* (Cambridge: Cambridge University Press, 1985). See chaps. 1–3.

requirements of national defense and a (just) foreign policy in a world of nation-states. The representatives of citizens who view these claims from the point of view of the legislative stage must strike a balance between them in allocating society's resources.

Here we see the great significance of regarding citizens as having a public (political) identity over a complete life, and viewing them as normal and fully cooperating members of society over that life. Their representatives at the legislative stage must consider how the two principles are to be further specified given the general information now available. Of course, regarding citizens in this way does not single out a precise answer. As always we have at best only guidelines for deliberation. But the representatives of citizens must view all the various claims mentioned above—including those we make in all phases of life from childhood to old age—from the point of view of one person who is to live through all phases of life. The idea is that the claims of those in each phase derive from how we would reasonably balance those claims once we viewed ourselves as living through all phases of life.

The preceding comments view the question of medical care under the guidelines of the difference principle. This may give the mistaken impression that provision of medical care is merely to supplement the income of the least advantaged when they cannot cover the costs of the medical care they may prefer. To the contrary: as already emphasized, provision for medical care, as with primary goods generally, is to meet the needs and requirements of citizens as free and equal. Such care falls under the general means necessary to underwrite fair equality of opportunity and our capacity to take advantage of our basic rights and liberties, and thus to be normal and fully cooperating members of society over a complete life.

This conception of citizens enables us to do two things: first, to estimate the urgency of different kinds of medical care, and second, to specify the relative priority of claims of medical care and public health generally with respect to other social needs and requirements. Thus, regarding the first, treatment that restores persons to good health, enabling them to resume their normal lives as cooperating members of society, has great urgency—more exactly, the urgency specified by the principle of fair equality of opportunity; whereas cosmetic medicine, say, is not offhand a need at all. By regarding the strength of claims to medical care as tied to maintaining our capacity to be a normal member of society and restoring that capacity once it falls below the minimum required, a guideline is provided (as the preceding discussion outlines) for balancing the costs of such care against the

practicable distinction that is, I believe, vital to any political conception that has some chance of being the focus of an overlapping consensus in a democratic regime. Our aim is to avoid difficulties, to simplify when simplification is possible, and to keep in touch with common sense.⁵⁹

51.8. This concludes our survey of the main institutions of a property-owning democracy. Included among them are other important arrangements:

(a) Provisions for securing the fair value of the political liberties, although what these are in detail was not examined (§45).

(b) So far as practicable, provisions for realizing fair equality of opportunity in education and training of various kinds.

(c) A basic level of health-care provided for all (§51).

Note also that Mill's idea of worker-managed cooperative firms is fully compatible with property-owning democracy, since such firms are not owned or controlled by the state. We come to this now in our brief comparison with Marx.

§52. Addressing Marx's Critique of Liberalism

52.1. We look at Marx's views mainly from one perspective: his critique of liberalism. We try to meet those of his criticisms that most clearly require an answer. For example:

(a) To the objection that some of the basic rights and liberties, those he

59. The more extreme cases I have not considered, but this is not to deny their importance. I take it as obvious, and accepted by common sense, that we have a duty towards all human beings, however severely handicapped. The question concerns the weight of these duties when they conflict with other basic claims. At some point, then, we must see whether justice as fairness can be extended to provide guidelines for these cases; and if not, whether it must be rejected rather than supplemented by some other conception. It is premature to consider these matters here. Justice as fairness is presented mainly as an attempt to get a clear and uncluttered view of what in the tradition of democratic political thought has been the fundamental question of political philosophy, namely, what principles of justice are most appropriate to specify the fair terms of cooperation when society is viewed as a system of cooperation between citizens regarded as free and equal persons, and as normal and fully cooperating members of society over a complete life (§2.3). A method enabling us to discuss this question in a manageable way is surely worth looking for. I don't know how far justice as fairness can be successfully extended to cover the more extreme kinds of cases. If Sen can work out a plausible view for these, it would be an important question whether, with certain adjustments, it could be included in justice as fairness when suitably extended, or else adapted to it as an essential complementary part.

connects with the rights of man (and which we have labeled the liberties of the moderns), express and protect the mutual egoisms of citizens in the civil society of a capitalist world, we reply that in a well designed property-owning democracy those rights and liberties, properly specified, suitably express and protect the higher-order interests of citizens as free and equal. And while a right to property in productive assets is permitted, that right is not a basic right but subject to the requirement that, in existing conditions, it is the most effective way to meet the principles of justice.

(b) To the objection that the political rights and liberties of a constitutional regime⁶⁰ are merely formal, we reply that, by the fair value of the political liberties (working with the other principles of justice) all citizens, whatever their social position, may be assured a fair opportunity to exert political influence.

(c) To the objection that a constitutional regime with private property secures only the so-called negative liberties, we reply that the background institutions of a property-owning democracy, together with fair equality of opportunity and the difference principle, give adequate protection to the so-called positive liberties.⁶¹

(d) To the objection against the division of labor under capitalism, we reply that the narrowing and demeaning features of the division should be largely overcome once the institutions of a property-owning democracy are realized (*Theory*, §79: 463f.).

While the idea of property-owning democracy tries to meet legitimate objections of the socialist tradition, the idea of the well-ordered society of justice as fairness is quite distinct from Marx's idea of a full communist society. A full communist society seems to be one beyond justice in the sense that the circumstances that give rise to the problem of distributive justice are surpassed and citizens need not be, and are not, concerned with it in everyday life. Justice as fairness, by contrast, assumes that given the general facts of the political sociology of democratic regimes (such as the fact of reasonable pluralism), the principles and political virtues falling under justice will always play a role in public political life. The evanescence of justice, even of distributive justice, is not possible, nor, I think, is it desirable (but I shall not discuss this).

60. In *On the Jewish Question* (1843), Marx distinguishes between the rights of man and the political liberties. The latter he greatly values and he thinks that in some form they will be honored under communism; but a role for the former would seem to disappear.

61. On the distinction between negative and positive liberties, see Isaiah Berlin, "Two Concepts of Liberty."

52.2. Of course, Marx would say that, even accepting the ideal of property-owning democracy, such a regime generates political and economic forces that make it depart all too widely from its ideal institutional description. He would say that no regime with private property in the means of production can satisfy the two principles of justice, or even do much to realize the ideals of citizen and society expressed by justice as fairness.

This is a major difficulty and must be faced. But even if it is in good part true, the question is not yet settled. We must ask whether a liberal socialist regime does significantly better in realizing the two principles. Should it do so, then the case for liberal socialism is made from the standpoint of justice as fairness. But we must be careful here not to compare the ideal of one conception with the actuality of the other, but rather to compare actuality with actuality, and in our particular historical circumstances.

52.3. Marx would raise another objection, namely, that our account of the institutions of property-owning democracy has not considered the importance of democracy in the workplace and in shaping the general course of the economy. This is also a major difficulty. I shall not try to meet it except to recall that Mill's idea of worker-managed firms⁶² is fully compatible with property-owning democracy. Mill believed that people would much prefer to work in such firms; this would enable the firms to pay lower wages while being highly efficient. In due course these firms would increasingly win out over capitalist firms. A capitalist economy would gradually disappear and be peacefully replaced by worker-managed firms within a competitive economy.

Since this has not happened, nor does it show many signs of doing so, the question arises whether Mill was wrong about what people prefer, or whether worker-managed firms have not had a fair chance to establish themselves. If the latter is the case, should such firms be granted subsidies, at least for a time, so that they can get going? Would there be advantages from doing this that could be justified in terms of the political values expressed by justice as fairness, or by some other political conception of justice for a democratic regime? For example, would worker-managed firms be more likely to encourage the democratic political virtues needed for a constitutional regime to endure? If so, could greater democracy within capitalist firms achieve much the same result? I shall not pursue these questions. I have no idea of the answers, but certainly these questions call for careful ex-

62. See Mill, *Principles of Political Economy*, bk. IV, chap. 7.

amination. The long-run prospects of a just constitutional regime may depend on them.

§53. Brief Comments on Leisure Time

53.1. In elaborating justice as fairness we assume that all citizens are normal and fully cooperating members of society over a complete life. We do this because for us the question of the fair terms of cooperation between citizens so regarded is fundamental and to be examined first. Now this assumption implies that all are willing to work and to do their part in sharing the burdens of social life, provided of course the terms of cooperation are seen as fair.

But how is this assumption expressed in the difference principle? The index of primary goods, as discussed so far, makes no mention of work, and the least advantaged are those with the lowest index. Are the least advantaged, then, those who live on welfare and surf all day off Malibu?

53.2. This question can be handled in two ways: one is to assume that everyone works a standard working day; the other is to include in the index of primary goods a certain amount of leisure time, say sixteen hours per day if the standard working day is eight hours. Those who do no work have eight extra hours of leisure and we count those eight extra hours as equivalent to the index of the least advantaged who do work a standard day. Surfers must somehow support themselves.⁶³

Of course, if leisure time is included in the index, society must make sure that opportunities for fruitful work are generally available. We cannot discuss the complicated issues involved here. The point is that we can include leisure time in the index should this be workable and the best way to express the idea that all citizens are to do their part in society's cooperative work.

If necessary we can also include in the index realized native endowments and even states of consciousness like physical pain. However, for the sake of having an objective measure and relying on information that is readily available and easy to comprehend, it is much better not to include such goods in the index. But leisure time has a reasonably objective measure and is open to view. It also meets the essential condition that primary goods must not presuppose any particular comprehensive doctrine.

63. See, "The Priority of the Right and Ideas of the Good," p. 257, n. 7.