Introducing the Reading

Imagine it is some years from now. You have graduated college (congratulations!), married, and how have a young child, a six year old, let’s say. It’s his birthday party and you have made him a beautiful and delicious birthday cake to share with his 9 friends. He is eager to eat his cake and so you give him the opportunity to cut it up and distribute it among his friends. But being a wise parent, you recognize that your son is likely to make his piece of cake the biggest. How do you ensure that everyone gets a fair piece of the cake while also letting your eager (and hungry) son cut the cake? Herein lies Rawls’ basic intuition.

Rawls, like Locke, is something of a social contract theorist in that he attempts to derive a theory of justice on the basis of imagining what human beings might have originally done in a state of nature when faced with the task of defining justice. His basic motivation is to determine what the principles of justice are for the basic structure of society and he uses a kind of a “thought experiment” to do so. He imagines the original position, analogous to Locke’s state of nature, but completely hypothetical. The main characteristic of the original position is that is lies behind the veil of ignorance. Participants to the original position, who will be deciding on the basic structure of society, don’t know their future place in that society, their luck in the distribution of natural assets or abilities, their conception of the good, or the particular circumstances of their own society. They are ignorant of all that. And yet they need to come up with some principles of justice. Rawls argues on the basis of this hypothetical thought experiment, that participants in the original position would come up with two principles of justice. You should identify Rawls’ two principles and consider their implications. Try and determine what the implications of Rawls’ account of justice is for our analysis of the case of Sandra Jensen.
institutions I understand the political constitutions and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of productions, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men’s rights and duties and influence their life-prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion here is that this structure contains various social positions of life determined, in part, by the political system as well as my economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men’s initial chances in life; yet they cannot possibly be justified by an appeal to the notions of merit or desert. It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply. These principles, then, regulate the choice of a political constitution and the main elements of the economic and social system. The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and the social conditions in the various sectors of society.

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3. THE MAIN IDEA OF THE THEORY OF JUSTICE

My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the forms of government that can be established. This way of regarding the principles of justice I shall call justice as fairness.

Thus we are to imagine that those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits. Men are to decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society. Just as each person must decide by rational reflection what constitutes his good, that is, the system of ends which it is rational for him to pursue, so a group of persons must decide once and for all what is to found among them as just and unjust. The choice which rational men would make in this hypothetical situation of equal liberty, assuming for the present that this choice problem has a solution, determines the principles of justice.

In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a
certain conception of justice. Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone’s relations to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and capable of their own ends and capable, I shall assume, of a sense of justice. The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair. This explains the propriety of the name “justice as fairness”: it conveys the idea that the principles of justice are agreed to in an initial situation that is fair. The name does not mean that the concepts of justice and fairness are the same, any more than the phrase “poetry as metaphor” means that the concepts of poetry and metaphor are the same.

In working out the conception of justice as fairness one main task clearly is to determine which principles of justice would be chosen in the original position. To do this we must describe this situation in some detail and formulate with care the problem of choice which it presents. These matters I shall take up in the immediately succeeding chapters. It may be observed however that once the principles of justice are thought of as arising from an original agreement in a situation of equality, it is an open question whether the principle of utility would be acknowledged. Offhand it hardly seems likely that persons who view themselves as equals, entitled to press their claims upon one another, would agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others. Since each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction. In the absence of strong and lasting benevolent impulses, a rational man would not accept a basic structure merely because it maximized the algebraic sum of advantage irrespective of its permanent effects of his own basic rights and interests. It thus seems that the principle of utility is incompatible with the conception of social cooperation among equals for mutual advantage. It appears to be inconsistent with the idea of reciprocity implicit in the notion of a well-ordered society. Or, at any rate, so I shall argue.

I shall maintain instead that the persons in the initial situation would choose two rather different principles: the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society. These principles rule out justifying institutions on the grounds that the hardships of some are
offset by a greater good in the aggregate. It may be expedient but it is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved. The intuitive idea is that since everyone’s well-being depends upon a scheme of cooperation without which no one could have a satisfactory life, the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it. Including those less well situated. Yet this can be expected only if reasonable terms are proposed. The two principles mentioned seem to be a fair agreement on social position, neither of which those better endowed, or more fortunate in their social position, neither of which we can be said to deserve, could expect the willing cooperation of others when some workable scheme is a necessary condition of the welfare of all. Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in quest for political and economic advantage, we are led to these principles. They express the result of leaving aside those aspects of the social world that seem arbitrary from a moral point of view.

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11. TWO PRINCIPLES OF JUSTICE

I shall now state in a provisional form the two principles of justice that I believe would be chosen in the original position. In this section I wish to make only the most general comments, and therefore the first formulation of these principles is tentative. As we go on I shall run through several formulations and approximate step by step the final statement to be given much later. I believe that doing this allows the exposition to proceed in a natural way.

The first statement of the two principles reads as follows.

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

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.

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

By way of general comment, these principles primarily apply, as I have said, to the basic structure of society. They are to govern the assignment of rights and duties and to regulate the distribution of principles and presuppose that the social structure can be divided into two more or less distinct parts, the first principle applying to the one, the second to the other. They distinguish between those aspects of the social system that define and secure the equal liberties of citizenship and those that specify and establish social and economic inequalities. The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure.

Comment [DW4]: This is part of his objection to utilitarian definitions of justice. Can you state this objection in your own words?

Comment [DW5]: Whenever a philosopher spells out his or her basic principles, we need to pay attention. What are the two principles of justice? Think about their importance and their implications. Do you agree that these principles are likely to be the result of the original position?
as defined by the concept of the rule of law. These liberties are all required to be equal by
the first principle, since citizens of a just society are to have the same basic rights.

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

These principles are to be arranged in a serial order with the first principle prior to the
second. This ordering means that a departure from the institutions of equal liberty
required by the first principle cannot be justified by, or compensated for, by greater social
and economic advantages. The distribution of wealth and income, and the hierarchies of
authority, must be consistent with both the liberties of equal citizenship and equality of
opportunity.

It is clear that these principles are rather specific in their content, and their acceptance
rests on certain assumptions that I must eventually try to explain and justify. A theory of
justice depends upon a theory of society in ways that will become evident as we proceed.
For the present, it should be observed that the two principles (and this holds for all
formulations) are a special case of a more general conception of justice that can be
expressed as follows.

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

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

As a first step, suppose that the basic structure of society distributes certain primary
goods, that is, things that every rational man is presumed to want. These good normally
have a use whatever a person’s rational plan of life. For simplicity, assume that the chief
primary goods at the disposition of society are rights and liberties, powers and
opportunities, income and wealth. These are the social primary goods. Other primary
goods such as health and vigor, intelligence and imagination, are natural goods; although
directly under its control. Imagine, then, a hypothetical initial arrangement in which all
the social primary goods are equally distributed: Everyone has similar rights and duties,
and income and wealth are evenly shared. This state of affairs provides a benchmark for
judging improvements. If certain inequalities of wealth and organizational powers would
make everyone better off that in this hypothetical starting situation, then they accord with
the general conception.

Now it is possible, at least theoretically, that by giving up some of their fundamental
liberties men are sufficiently compensated by the resulting social and economic gains.
The general conception of justice imposes no restrictions on what sort of inequalities are
permissible; it only requires that everyone’s position be improved. We need not suppose
anything so drastic as consenting to a condition of slavery. Imagine instead that men
forego certain political rights when the economic returns are significant and their capacity
to influence the course of policy by the exercise of these rights would be marginal in any case. It is this kind of exchange which the two principles as stated rule out; being arranged in serial order they do not permit exchanges between basic liberties and economic and social gains. The serial ordering of principles expresses an underlying preference among primary social goods. When this preference is rational so likewise is the choice of these principles in this order.

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24. THE VEIL OF IGNORANCE

The idea of the original position is to set up a fair procedure so that any principles agreed to will be just. The aim is to use the notion of pure procedural justice as a basis of theory. Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.

It is assumed, then that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and culture it has been able to achieve. The persons in the original position have no information as to which generation they belong. These broader restrictions on knowledge are appropriate in part because questions of social justice arise between generations as well as within them, for example, the questions of the appropriate rate of capital saving and of the conservation of natural resources and the environment of nature. There is also, theoretically anyway, the question of a reasonable genetic policy. In these cases too, in order to carry through the idea of the original position, the parties must not know the contingencies that set them in opposition. They must choose principles the consequences of which they are prepared to live with whatever generation they turn out to belong to.

As far as possible, then, the only particular facts which the parties know is that their society is subject to the circumstances of justice and whatever this implies. It is taken for granted, however, that they know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of the principles of justice. There are no limitations on general information, that is, on general laws and theories, since conceptions of justice must be adjusted to the characteristics of the systems of social cooperation which they are to regulate, and there is no reason to rule out these facts. It is, for example, a consideration against a conception of justice that, in view of the laws of moral psychology, men would not acquire a desire to act upon it even when the institutions of their society satisfied it. For in this case there would be difficulty in
securing the stability of social cooperation. It is an important feature of a conception of justice that it should generate its own support. That is, its principles should be such that when they are embodied in the basic structure of society men tend to acquire the corresponding sense of justice. Given the principles of moral learning, men develop a desire to act in accordance with its principles. In this case a conception of justice is stable. This kind of general information is admissible in the original position.