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POLITICAL
PHILOSOPHY

Fundamentals of Philosophy
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Part 1 includes:

- 1 The need to have a life-supporting relation to the environment.
- 2 The need for food and water.
- 3 The need to excrete.
- 4 The need for exercise.
- 5 The need for periodic rest, including sleep.
- 6 The need (beyond what is covered under the preceding needs) for whatever is indispensable to preserving the body intact in important respects.

Part 2 continues:

- 7 The need for companionship.
- 8 The need for education.
- 9 The need for social acceptance and recognition.
- 10 The need for sexual activity.
- 11 The need to be free from harassment, including not being continually frightened.
- 12 The need for recreation.

This list, from a philosopher, is heroic. Braybrooke does not pretend that the list should be regarded as complete. To do so, we should have to claim that there is nothing more that we have to learn about what is necessary for human beings to live well. There is enough precision in the list for it to be clear why provision to meet the needs specified will have to be different from society to society. Take the need for education. As has been indicated already, the nature of the skills which need to be inculcated and the level of proficiency required will vary depending upon the demands of the society in which adults are required to take their place.

Relativities of this sort look to be a real problem if the context of justice is international and if the question of resource allocation is posed across frontiers. Is it self-indulgent for Western nations to spend so much money on secondary and higher education whilst the basic health needs of those who live in hovels in Calcutta go unmet? Questions of this sort cannot be avoided.³⁴ It would be a real mistake, though, to conclude that the philosophical and practical difficulties of detailing standards of international justice mean that the concept of needs has no place in addressing them. The opposite, in fact, is true: it is because the

appeal of universal need satisfaction is so strong that these questions exhibit such difficulty and urgency.

One feature of the debate about international justice which gives it the appearance of intractability is the absence of any agency to adjudicate in the case of conflict. Within a democratic state, there will be a forum for expressing and resolving conflicts concerning provision for needs – the political process. We can observe (we don't need to imagine) individuals making claims of need whenever resource allocations concerning health, education and social security payments are publicly discussed. What is controversial in many policy proposals is not the philosophical question of whether the appeal to need is a claim of justice, but the quasi-philosophical question of whether, say, publicly funded nursery education meets a real need or, if one agrees that it does, what is the measure of gravity or urgency involved, what comparative judgements should be reviewed. We observe endemic dispute here and it is evident that the disputes often have their origin in conflicting assessment of needs. None of this should lead us to believe that the concept of need is unfitted to constitute a standard of just provision since the relativities involved disable impartial assessment. We can tinker with the list, we can debate the modalities of assessment as we work out what the service of a specific need warrants by way of provision, and finally, we can leave fine-grain decision-making in respect of policy proposals to the political process.

Does this establish that provision for needs is a requirement of justice? This last question links a Humean conception of justice as the principles which govern the allocation of resources within a society to a normative ethics which determines which principles are appropriate. Needs, on this account, have an intermediate status. At bottom will be competing accounts of the good, what it is for human lives to go well. Any such account will yield a set of necessary conditions which amount to statements of need. The task of working out all of the details is immense, but since it is a matter of working out what justice requires, the task is unavoidable.

To review our progress so far: we must suppose that a well-ordered society has in place a set of rules which settle conflicts amongst competing claimants to goods. The details of these rules

will likely fill shelves of texts in a law library. I think we can fairly suppose in advance of detailed criticism that these rules promote utility, perhaps in the detail of their operation, but most likely through their general function of serving expectations and settling disputes. Hume believed that such an existent system amounted to a system of justice, but we have seen that unless the distribution of resources meets the needs of those subject to it, this verdict is premature. Consideration of needs at this point will require transfers from those whose property exceeds what they need towards those who are needy.

There are many different ways in which such transfers may be effected. Those with goods in excess of their needs may recognize a duty of care or exhibit their benevolent nature by charitable donations. The resulting transfers will be unsystematic and haphazard but it is perfectly possible to imagine needs being met in this fashion in a very small society. And even in very large (and rich) modern societies it is likely that a substantial proportion of personal needs will be met in this way, not least within families. We are all used to reading that some charity has funded equipment in hospitals, that parents and neighbours have supported the local school, that volunteers are providing soup kitchens for the indigent. More important, however, are transfers which are organized by the state. Generally these will involve taxation of earnings or sales, less often wealth; governments exact their imposts in ways that are minimally perspicuous. But confiscation and redistribution of capital assets may be effected to the same purpose, though the history of such efforts in the twentieth century has been conspicuously inglorious. Whereas individual benefactors respond to the needs of fellow citizens by ostentatious public benefactions, modern democratic governments meet needs by stealth, believing, often truly, that there are fewer voting gainers than losers.

Despite their objective condition, people do not like to be identified as needy, as worthy recipients of the charity or the ultimately coercive redistribution of their fellow citizens' assets, unless these are ill-gotten gains. Nozick's claim that taxation is forced labour, the philosophical shadow of a cocktail-bar grudge, may as likely prompt guilt and shame on the part of recipients as resentment amongst the providers. The effective operation of the welfare

state in Britain needs welfare rights officials to prod people into making their legitimate claims. And still, take-up levels are well below the computations of statisticians employed to determine the maximum possible costs of the exercise in redistribution. Talk of ‘the needy’ carries echoes of Lady Bountiful. Those who identify and respond to unmet needs may find that their rhetoric meets the resistance of the poor objects of their attention. Perhaps it is better to speak of rights rather than duties and to ground the rights of the needy in the language of equality. For many the language of equality carries a dignity which is threatened by talk of needs.

Equality of what?

It is a familiar thought that justice in distribution is at least in part, or in some respects, a matter of equality. It may be that one who advances such a claim has some specific egalitarian system in mind as constituting the heart of justice, most simply perhaps the condition that a system of just property distribution requires that everyone get equal shares. If property were a homogenous good, like a cake, then everyone should get an equal slice. But equality may be more vaguely construed. It may amount to the requirement that the principles of justice will not be acceptable unless they grant equal consideration in some sense to all who are subject to them. Otherwise, and one does not need to be a contractarian to see the force of this objection, those who are not granted equal consideration have strong *prima facie* grounds for complaint.

Amartya Sen has argued that:

‘a characteristic of virtually all the approaches to the ethics of social arrangements that have stood the test of time is to want equality of *something* – something that has an important place in the particular theory. Not only do income egalitarians . . . demand equal incomes, and welfare egalitarians ask for equal welfare levels, but also classical utilitarians insist on equal weights on the utilities of all, and pure libertarians demand equality with respect to an entire class of rights and liberties. They are all ‘egalitarians’ in some essential way . . . ³⁵

This is a helpful way of putting matters, not least since it opens up the right questions. Instead of debating the pros and cons of egalitarianism versus anti-egalitarianism, we can consider in sequence the forms of equality that have been deemed constitutive of justice. We can ask, in the words of Sen's famous paper, 'Equality of What?'.³⁶ Once the different accounts have been clarified, we can return to the issue of whether principles of equality meet, or are properly considered as supplementary to, considerations arising from needs.

The most straightforward answer to Sen's question is equality of goods or resources. Rawls's account of justice incorporates a version of this. I quote it now in its most general form: '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.'³⁷

Rawls's Difference Principle, specifying that social and economic inequalities are to be arranged so that they are reasonably expected to be to everyone's advantage, is 'strongly egalitarian in the sense that unless there is a distribution that makes [everyone] better off . . . an equal distribution is to be preferred'.³⁸ The goods to be distributed in accordance with the principle are the social primary goods – things that every rational man is presumed to want, being all-purpose means whatever one's plan of life and susceptible to social distribution. Income and wealth are the primary goods Rawls has in mind at this point. Equality and inequality (and hence justice in distribution) concern the allocation of economic resources.

This is a natural suggestion, since economic goods are just the sort of goods that government *can* distribute through effecting transfers. The modality in which equality is sought – income and wealth – is peculiarly apt for the purposes of governments which recognize the demands of justice. If the difference principle were acceptable, its policy implications would be clear. Progressive taxation, particularly of incomes, together with a negative income tax, is an obvious means of effecting redistribution towards equality. The point at which redistribution would be limited would be that at which transfers from rich to poor reduced the goods available to the poor. This would be the case if, for example, taxation

were a sufficient disincentive to productive activity that entrepreneurs ceased or restricted their production or relocated their economic activity (and their capacity to provide work) to another tax jurisdiction.

The weakness of this proposal lies in its insensitivity to claims which arise on the basis of need. We can easily imagine a society where wealth and income is divided equally. We can imagine all members of such a society moving towards a condition of inequality if those who are worst off in the new dispensation are better off than they were under equality. But justice so construed ignores marked differences in the personal characteristics of members of this society. As Sen points out,

these are important for assessing inequality. For example, equal incomes can still leave much inequality in our ability to do what we would value doing. A disabled person cannot function in the way an able-bodied person can, even if both have exactly the same income.³⁹

Of course this criticism would have no purchase if we had no concern for inequalities in 'our ability to do what we would value doing', or if, as in the particular case of the person with special needs, we did not think that justice was at least, in part, a matter of meeting these needs. But we should notice that ideals of equality in the distribution of economic goods would be a real puzzle unless we thought that some underlying principles motivated our concern with such inequality. We accept that individuals are unequal in respect of their height, weight and beauty without identifying an injustice. Why should differences in income or size of house cause us to register concern? We must think that such inequalities violate some principle of equal respect or fail to recognize equal claims on the product of social co-operation. In which case, we shall have to work out whether these underlying principles demand an inequality of resources as the just response to claims of need.

Equality of goods may be thought of as equality of input. The objection concerning special needs may be read as drawing attention to inequalities of output – the goods which are allocated do not serve uniformly to produce equal levels of well-being, given the

very great disparity in the conditions in which individuals find themselves. Perhaps we should concentrate on output, on the well-being of those in the circumstances of justice. This suggests that we pursue equal utility, directing our attention to the happiness or desire-satisfaction of those in receipt of goods. At this point, as we have already noticed, the utilitarian will press a claim.

Utilitarian arguments are no more cogent than the facts permit. Diminishing marginal utility suggests that movements away from equality which have both winners and losers benefit the utility-gainers by a lesser amount than the disutility suffered by the losers. But this supposes that both winners and losers are equally efficient transformers of the good to be distributed. In cases of special needs, physical or mental disability, there may be a threshold of resource provision below which allocations do little good. If Harry's problem is mobility, nothing less than an electric wheelchair will enable him to get to the shops. Travel vouchers or discounted fares will not assist him, supposing that even if he could sell these concessions he would not have enough money to purchase the wheelchair. Sally, by contrast would get enormous pleasure from a sports car. It is all too easy to imagine social circumstances in which total utility is increased by allocating the sports car to Sally at the cost of inefficient allocations to Harry and many others like him. In such circumstances, as Sen points out,

The cripple would then be doubly worse off: both since he gets less utility from the same level of income, and since he will also get *less* income. Utilitarianism must lead to this thanks to its single-minded concern with maximising the utility sum.⁴⁰

This example is important because it reinforces the lesson drawn from considering goods or resources as the metric of equality. Human diversity makes a difference. One might have thought that justice, being a central province of government, must always be a matter of rough justice, that successful policies must abstract from the specificities of differences in the condition and circumstances of individuals. On the contrary, the specific circumstances in which groups of people find themselves may evince the sort of special need which it is precisely the task of government policies directed towards the promotion of justice to redress.

In the example just discussed, the crucial feature is the manner in which the cripple and the speedster (Sen's term is 'pleasure-wizard') are able to transform the input of goods into the output of utility, where utility denotes some positive mental state of the persons affected. Such facts are well-known. Young children are notably efficient transformers of toys into utility. One doesn't (or didn't) need to spend much to make them happy. Diversities in respect of the contribution of goods to individual happiness work in another fashion to undermine varieties of utilitarianism which count happiness or desire-satisfaction as the good to be maximized. Societies as we encounter them are deeply riven by inequalities deriving from group membership. Societies apportion goods in line with ethnic, religious, sex and gender role, caste and class differences which, contingently, have established a social hierarchy. Objectively, the circumstances of the unfortunates at the bottom of a particular pile may be dire, but subjectively, they may be cheerful enough with their lot. Perhaps they believe one well-known story:

The rich man in his castle,
The poor man at his gate,
God made them, high or lowly
And ordered their estate.⁴¹

Many of the lowly have sung along with their superiors, sensibly coming to terms with inequalities they can do little about in a stoic fashion which leaves them as happy as anyone in the castle. They may be poorly housed, ill-fed, suffer from poor health and come to an early death, but in point of utility their lives may go no worse.⁴² Despite their lack of gripes and grumbles, one may fairly describe their condition as unjust if basic needs go unmet.

The lesson of Sen's review of equality as a metric of goods on the one hand and utility on the other is that we should focus on equality of something else. His positive recommendation is that we concentrate on equality with respect to persons' capabilities to achieve functionings, what he calls, in 'Equality of What?', 'basic capability equality'. A human functioning is a state of a person or an activity, something a person may do. So good health is a functioning as is the taking of exercise. Functionings such as these are

arguably necessary for human flourishing, yet we can understand someone who risks or foregoes them in the service of some other ideal. I risk my health in order to make the scientific discovery, I stop taking exercise until I have finished writing the book. Given these possibilities we can see how what is valuable is the capability to maintain my health or take regular exercise should I choose to do so.

Capabilities are distinct from the primary goods that serve them in so far as equality of primary goods will not ensure equality in respect of capability. They are distinct from utilities in that social conditions may produce equality of happiness and yet some of the happy people may be severely restricted in respect of important functionings. Of course there are lots of human functionings that are of little or no theoretical interest. To adapt an example of Sen's, if the Blanco washing powder company goes bust, I cannot use the product any more nor am I free to select it from the range of equally good alternatives.⁴³ Technically, my functioning is impaired, my capability reduced. Other functionings, by contrast, are vital, and these will be the functionings identified less technically as human needs.

If we are concerned primarily with policies which promote equality with respect to persons' capability to function in ways necessary for them to have a decent life in the society they inhabit, we shall have given ourselves a hard task in respect of identifying specific policy objectives. This will require a delicate mixture of philosophy, economics and sociology which cannot, in principle, be reduced to a democratic practice of counting preferences, since needs are in part objective and, as we have seen, preferences can be seriously and systematically distorted. Next we shall need to engage the political task of organizing a society in such a way as to effect the transfers necessary to meet the needs that have been identified. The social democratic societies of Western Europe have all given lip-service to this ideal of equality in respect of meeting needs, but the attainment of it is beginning to have the air of an intractable practical problem. When sociologists (or, more likely social workers) point out the level of unmet needs in a variety of different policy contexts, e.g. health, education, housing, provision for the elderly, and urge a greater measure of redistribution of resources, politicians, increasingly of *all* mainstream parties,

respond that meeting these needs first requires further economic growth, that the strategic political priority must be the effectively painless process of raising more resources, achieving a greater social fund of income and profit which can be taxed without creating disincentive effects.

This may have the appearance of a strategic problem particular to the political representatives who take policy decisions in fear of upsetting the comfortable majority, but there is reason to think the practical difficulties have deeper origins. The claims of justice as I have been developing them require that basic human needs impose duties of service on the part of those who possess the resources to meet them. Whilst there is plenty of evidence that citizens of the comfortable West are severely discomfited by the obtrusive, conspicuous needs of, say, fellow citizens who are reduced to living in cardboard boxes, queuing at soup kitchens or begging in the street, the task of serving these needs is bestowed on politicians who guarantee that social amelioration will not be too costly. This may be a realistic recognition of a severe tension within the practical reason of citizens, a tension between their acceptance of claims of need on the one hand and their belief, on the other hand, that needs can only be met by an economic system that is powered by the strong incentives of self-interest that are integral to capitalism.⁴⁴

The argument has been skimpy, but assume we have established as a minimum requirement of justice, that citizens' basic needs, their capability to achieve a minimum set of vital functionings, be met in equal measure. Suppose, too, that there is agreement on the nature of these needs and the policies that serve them. Suppose further that the needs are generously identified. People not only live, but have the opportunity to live commodiously. Is that enough equality? Should we care, if all have the opportunity to live decently, that some have the capability to live much better lives than others in respect of their having available more resources, more income and wealth?

If one were speaking here of a political ideal which might be recommended as a personal project, the pursuit of equality beyond that of meeting needs would be ludicrously utopian. There is enough work for a lifetime in pursuing the more modest aim, even in the more generous of liberal democracies. But does justice

require a greater equality than this? Should we be concerned about or morally indifferent to inequalities of income and wealth if the worst off cannot be described as needy?

It is clear that inequality can be an instrumental evil. Rousseau insisted that 'the social state is advantageous to men only when all have something and none too much'.⁴⁵ How much is too much? We must suppose it is represented by such a degree of inequality as will enable the better off to suborn the ideal of equal political power, by purchasing the allegiance of others. Nowadays one might identify such harmful inequalities in the workings of a property system which enables power seekers to buy newspapers or television stations which they use unashamedly to advance their own political causes. Deeper, and more insidious, is the way in which inequalities of wealth are transformed into social differences and fossilized by processes of social stratification whenever the laws of property permit inequalities to be transmitted from one generation to another. No human characteristic is more faithfully transmitted from one generation to the next than earning power. The laws of inheritance are more effective than the laws of evolution in transmitting the holding of wealth to successor generations.

We can imagine a society in which there is no inherited wealth. Members are permitted to acquire as much as they can by way of effort and the use of their talents. But on death, all assets are pooled into a social fund and redistributed equally to all members of society. My guess is that such a measure of involuntary potlach would dissolve the rigid class formations which disfigure even the most settled social democracies. This is not meant as a practical proposal, nor even as a recommendation concerning the principles of justice. Rather, if this exercise in utopian guesswork is plausible, it should cause us measure the degree to which inequalities in wealth holdings freeze into other inequalities. They inhibit widespread social mobility by limiting expectations. Systems of education serve to reproduce rather than reduce class divisions. Arrogance and social blindness, deference or strategic impertinence occupy the moral space which should be inhabited by respect and mutual recognition. Our experience of societies which exhibit inequalities of wealth and income teaches us that inequality does great psychological damage. This is the lesson successively, of

Rousseau, Hegel and Marx: social stratifications, of rich and poor, masters and slaves, capitalists and workers, universally distort the self-perceptions of all those located within them.

If differences of income and wealth were merely a matter of individuals having access to a lesser or wider basket of commodities – so that you buy a poster, I buy a print and John Paul Getty buys a Botticelli – I suspect little harm is done. Clichés may express truisms: no one seriously believes that money buys happiness. Although all of us would welcome being better off, those with seats in the front stalls of the opera are unlikely to be enjoying themselves much more than the scruffs in the third circle. Given an adequate social baseline, inequalities in primary goods take on an obvious ethical significance only at the point where they are transformed into inequalities of something else, of political power, social prestige or opportunities for advancement. Unfortunately, societies have managed to organize themselves in such a way that inequalities in primary goods are transformed and magnified into more damaging inequalities. This is the great lesson of Rousseau's *Discourse on the Origins of Inequality*.

I can't think of an argument to establish this conclusion beyond an appeal to the facts of history and sociology and I can't present my idiosyncratic versions of these here. We are left with one clear philosophical question: Assume no one is needy and that there are no social mechanisms in place which might transform inequalities in the holdings of primary goods into other more entrenched or iniquitous inequalities, is equality of primary goods in any sense a requirement of justice? I have suggested that inequality might do little harm, but the absence of harm does not preclude injustice. We might laugh at the gross flaunting of wealth in popular magazines devoted to the adulation of celebrity and even be grateful that the photographers are not queuing up outside our doors. Still, the gross disparities of wealth which are paraded before us daily may still attest a measure of injustice. To investigate this question, I shall focus on the work of John Rawls.

John Rawls's theory of justice

First, a diversion on Rawls's work and its place in this study. It is nearly thirty years since Rawls published *A Theory of Justice*. It has been the subject of intense investigation, stimulating full-length critical studies and papers galore. I remember the sense of momentous academic achievement which accompanied its publication and the excitement of buying the heavy, black-covered, hardback edition in 1972. And I remember the pleasure of reading it from cover to cover. It advances a distinctive thesis, but, like all great works of philosophy, it is a treasure-house. And the treasures have been augmented by a succession of later papers and the publication of *Political Liberalism* in 1993.⁴⁶ I doubt there is any topic to be broached in this introduction which could not have been tackled by way of a discussion of Rawls. Against this background of Rawls's eminence, it may seem odd that, so far, he has been a minor character in this book. I shall try to make amends, but it is as well to note in advance that I shall be able to discuss only a small portion of his work. Even this task is complicated because Rawls's thinking is distinctively systematic. One can't fillet out arguments whilst paying no heed to the overall structure of the theory. The reader is commended to study all of it.

Justice as fairness

The scope of Rawls's theory of justice is almost Platonic. For Rawls, justice is not distributive justice, the narrow matter of who is entitled to what in the way of property. It is the virtue of a well-ordered state and comprises all aspects of its ethical well-being.⁴⁷ States are natural associations. For the most part, individuals just find themselves in one as members, and find that the mode of governance of the state has a major influence on their prospects for a decent life. The basic structure of a society (Rawls's term for the major social institutions) assigns rights and duties to citizens, as well as specifying how the advantages that accrue from social co-operation should be allocated.

A theory of justice is required for familiar Humean reasons. Persons are supposed to inhabit a world of moderate scarcity, such

a degree of scarcity as ensures conflicting claims on the pool of resources. If there were abundance, justice would be unnecessary; if there were a desperate shortage, schemes of social co-operation would break down. The theory of justice will consist of principles which regulate the competing claims. What is distinctive about Rawls's theory of justice is the form of argument employed to derive it. This is a hypothetical contract argument.

The classical social contract arguments, as used by Hobbes, Locke, Rousseau and Kant were used for several different purposes: to justify the claims to authority of the state, to determine the limits of the state's claims to authority and to vindicate rebellion where those limits are overstepped, to determine the principles which must be respected by the institutions of the state if its constitution is to be legitimate and the content of legislation valid. These are questions we shall be examining in the next chapter. The social contract argument had two forms: first, actual contracts, covenants or universal consent were described or conjectured as the basis for real obligations. Obviously, such arguments are only as good as their premisses. If no actual contracts can be reported or if modern citizens could not be supposed to be party to them, no obligations follow.

The hypothetical contract argument is an animal of a different stripe. As Dworkin famously observes, 'a hypothetical contract is not simply a pale form of an actual contract; it is not a contract at all'.⁴⁸ Whereas an actual contract argument cites a specific occasion or a particular activity as the basis of an obligation: 'You signed on the dotted line, so you are obliged to pay me the money', in a hypothetical contract argument, there is no contract to which one may appeal. An argument is employed which sets matters up *as if* those who are required to accept its conclusion were party to a contract or agreement. It is a matter of great controversy whether or not the classical authors I mentioned above are using actual or hypothetical contract arguments or both, mixing them together in a promiscuous and confusing fashion.

In its classical form a hypothetical contract argument works as follows: Everyone wants certain goods, notably self-preservation, (and/or pursues certain values e.g. liberty). In a state of nature, i.e. in circumstances where there is no government, these goods are threatened (and/or these values thwarted). The state, and only the

state, will protect these goods (and/or promote these values). Therefore, those who seek these goods and pursue these values (generally, everyone) have good reason to accept the authority of the state. We can portray this conclusion as a contract, an agreement. It is *as though* everyone has agreed to accept a sovereign authority. They haven't, of course, as a matter of fact. Contract theory is thus a deliver-the-goods theory. It asks people to deduce the properties of just such an institution as is necessary to promote the good, by asking them to consider what life would be like without it – in a state of nature – and how this condition could be remedied.

Why invoke the non-existent contract? Why represent people as behaving in a way in which they have not, in fact, behaved? Plainly this is an argumentative device, a strategem of practical reason, but what use does this device serve, what point does it signify? In the classical theorists, the argument form serves to remind us that we are modelling the deliberations of everyone in pursuit of a conclusion that we can represent everyone as accepting. We model 'agreement' in the minimal sense of congruence of reasoning – everyone has the same (however specified) goals and everyone can see the means necessary to achieve them. We *portray* this congruence as 'agreement' in the sense of concert, everyone acting together, assuming the same obligations. There is a second sense in which the contract model is apt. The problems that we identify in the state of nature are problems that we create for each other. In seeking to protect our lives, we threaten or pre-emptively strike at everyone else, each regarding the others as competitors or foes. In order to gain the security which the behaviour of all of us tends to undermine, we have to give up something, generally the right to govern ourselves or the right to punish those who violate our rights. We give in order to get; we trade off our independence for our security. This may be represented as a contract with each other or as a contract with a government. The contract device calls attention to this familiar strategy for procuring mutual advantage. The terms of our contract state that you are to get the money as soon as I get the coal. Of course it would be better for you to get the money without delivering the coal, as it would be better for me to get the coal without paying the money, but since these alternatives are not available, we contract with each other, giving in order to get.

Rawls's social contract theory differs from that of his celebrated predecessors in that his prime concern is not to spell out the conditions under which a government should be judged to be legitimate, although he does have something to say about these questions.⁴⁹ His major interest is to spell out the rights and duties of citizens and the just allocation of the benefits and burdens of citizenship. But the same question that we put to the classical theorists can be put to Rawls. No doubt if we *had* contracted with each other or with the government to assume a given set of rights and duties and to apportion goods and services in accordance with specific principles we *would be* obliged to respect the terms of our agreement. But we haven't; so if we are so obliged, it isn't because we have accepted the terms of the agreement as parties to a contract. So what is the point of casting the argument in the form of a hypothetical contract?

In the most simple terms the answer is that Rawls conceives of justice as fairness. The principles of justice should be recognized as fair impositions on all those subject to them. But what does fairness demand? It looks as if we have substituted one difficult and contentious term – fairness – for another – justice. Philosophically anyway, we were in the dark about the demands of justice. We shall not feel illuminated by the announcement that justice is fairness. We need to see how fairness is construed in detail. That's the next task. But already we should have some intimation of why a social contract argument is an apt instrument for displaying the reasoning of citizens who ponder questions of justice. A model contract is fair to all parties. Each treats the other as an independent equal who may accept or reject the proposed terms depending upon whether his interests and values are served.

In thinking about justice, as arguably in thinking about morality generally, we give ourselves the task of establishing principles which command universal assent and we do this by taking into account the reasons anyone might have for accepting or rejecting the principles. This requirement has been thought by many to be a logical implication of the fact that a judgement is a moral principle. Others have supposed that universalizability is a strategy for establishing the plausibility of moral principles. If we wish others to accept the principles we propose, we had better first step into their shoes and investigate if they are likely to accept them in the

light of interests we can presume them to have. Rawls insists on the universality of the principles of justice.⁵⁰ One way of presenting this condition is to represent the principles as the outcome of a contract, an agreement amongst *all* parties.

This last is a very weak motivation for adopting a contractarian argument, but, as we shall see, it is important in understanding one strand of Rawls's presentation. A more important conception of the role of fairness in the argument rests on a distinctive view of how we should think about the problem of justice. We are to think of the principles of justice as determining the allocation of benefits and burdens which accrue from the system through which individuals co-operate. The system must be structured by principles which everyone can recognize as procuring their advantage; everyone will identify the fruits of their co-operation and make a claim on them. The strategic way of deriving principles which give effect to universal advantage is to adopt a deliberative stance which is impartial between the claims of all who contribute to the co-operative scheme. From the point of view of any individual who is seeking rules to govern a co-operative scheme to remedy the circumstances of justice, egoistic reasoning might suggest that such a person goes for whatever scheme promotes his best advantage, but a little thought would convince him that the promotion of his best advantage is hardly likely to commend the scheme to those others whose co-operation is required. People will demand a system which is fair in the further sense of being the product of unbiased or impartial reasoning; 'it should be impossible to tailor principles to the circumstances of one's own case'.⁵¹ We need a process of reasoning which embodies this impartiality. Furthermore, we should recognize that impartiality between the claims of all those who are party to the necessary co-operative scheme entails that each should be thought of as advancing claims of equal weight on the product of social co-operation. As Rawls insists, 'the purpose of these conditions [of impartiality] is to represent equality between human beings as moral persons, as creatures having a conception of their good and a sense of justice'.⁵² If the principles of justice commend a scheme of strict equality in the distribution of benefits and burdens, no one can complain that their claims have been ignored or devalued.

So far we have no details of the procedures of the social contract

account, but already we can see why Rawls's methodology is captured by his term 'reflective equilibrium'. We recognize the necessity for having some principles of justice, but prior to the elaboration of these principles we recognize that they must conform to deep-seated intuitions. In this case the crucial intuitions cluster around the idea of fairness. We derive principles that are binding on all parties because the interest of each party has been given equal weight in a process of deliberation that is strictly impartial between their conflicting claims. Rawls's distinctive contribution is to elaborate a hypothetical social contract argument that does justice to these intuitions. He believes that only a social contract argument could succeed. Intuitionism, whereby independent principles are endorsed as separately compelling, cannot serve the purpose because we are unable to judge which principle should take priority in the case of conflict. And further, such a collection of principles, in the absence of a theory that binds them together, would have no resources for deciding cases that strike us as novel, as inappropriate for the application of the principles with which we are already familiar. Utilitarian reasoning fails because it is judged to compromise the equality of moral persons as separately the locus of moral claims. It may so fail where the optimal system of co-operation in point of utility requires that the well-being of some be sacrificed to achieve maximum utility for all, considered as an aggregation of sources of recorded or expected utility. Uniquely, the social contract method can yield an ordered and projectible set of principles which is fair in respect of its recognition of the claims of all parties subject to them.

But this abstract characterization of Rawls's enterprise needs to be fleshed out before we can judge its cogency. We need to describe the impartialist stance – then we shall see more clearly why the hypothetical social contract is an apt device for practical reasoning about the subject of justice.

The Original Position

There are two distinctive features of Rawls's hypothetical social contract. In deliberating about justice, we place ourselves in what Rawls calls the Original Position. The first feature of this

hypothetical stance is that we suppose ourselves to be located behind a veil of ignorance characterized by a specific combination of knowledge and ignorance. We are supposed to know:

- (1) The thin theory of the good. This is a list of what Rawls describes as primary social goods, all-purpose means for achieving a rational long-term plan of life. The thought is that *whatever* one's plan of life turns out to be, rights and liberties, opportunities and powers, income and wealth, and the social bases of self-respect, will be needed to accomplish it. Goods are included on this list only if their distribution can be regulated by the basic structure of society, the main social institutions. The basic structure will define the liberties and powers of subjects and determine the allocation of income and wealth. Other lists of all-purpose goods may seem more compendious – Hobbes's list of natural and instrumental powers is a good example.⁵³ In the case of items which one may be tempted to add to Rawls's list we may find that they are specifications of goods which already appear there. Knowledge, one may think, is such an asset, but Rawls believes that the skills and capacities which are the product of education are included as opportunities or powers. Important personal assets such as beauty and charm ('Forme' and 'Affability' on Hobbes's list) are not in the gift of government or its agencies. So these natural primary goods will not feature on the list. Health is a moot example; the onset of disease may be thought of as a brute contingency, but the odds against suffering disease can be increased by public health policies and resources can be shifted around to provide health-care.⁵⁴ The list of social primary goods, or further specification of it, is open-ended. But however it is specified, we can suppose that people want more rather than less of these goods.
- (2) The laws of the social sciences. We must suppose, further, that subjects in the Original Position have a sufficient knowledge of the facts of social life to work out the policy implications of the principles they select. 'They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology.'⁵⁵ But this knowledge, as we shall see, is quite general. It is as though

they had available the resources of a good social science library with all proper names erased.

By contrast, we must suppose that, behind the veil of ignorance, we are ignorant of:

- (3) Our place in society, our position in respect of class or social status, our actual or prospective income and wealth, the natural assets at our disposal – our strength, intelligence or particular psychology – as well as the generation we belong to. One could add (and others have found these supplementations of Rawls to be a valuable resource in pursuit of social justice) ignorance of one's sex and sexual orientation, race or ethnic grouping.
- (4) Further, we are not to know specific details of the society we inhabit, 'its economic or political situation, or the level of civilization and culture it has been able to achieve'.⁵⁶
- (5) Finally, and most controversially, we do not know our *thick* conception of the good. Rawls believes, and as we have seen in Chapter 3, this is almost definitive of the liberal position, that individual persons will differ radically in respect of their conception of the good life, of the details of the plan of life we can presume them to have adopted. Some persons will pursue the life of the aesthete, others a life of cheerful vulgarity, hunting, shooting and fishing. Some will be hedonists, counting the score of their pleasures, others, ascetics, valuing simplicity or their triumphs over temptation. Some will be devoted to their families and friends, others, not quite misanthropes, will seek a life of limited interpersonal relationships. Some will be atheists or agnostics, seeking to live their life in accordance with whatever meaning they find or construct from their natural conditions of existence. Others may pursue a life of religious devotion, and the varieties of religious expression encourage a particularly noxious tendency towards fissiparity and conflict. As I mentioned before, we can suppose that there are at least as many widely held conceptions of the good life as there are monthly magazines on the shelves of the average newspaper shop – multiplied by the possibilities of permutation by conjunction. We come across (in literature, if not too often in life)

parsons who love to hunt and swill the claret as well as ascetic atheists with a fastidious taste in modern jazz.

All of these conceptions of the good life are swept behind the veil of ignorance. We know enough about our fellows behind the veil of ignorance to understand the magnificent variety of thick conceptions of the good that will be revealed when the veil is parted, but we are to presume ourselves ignorant of the contours of our own plan of life for the purposes of deliberating about justice.

The motivation behind this hypothetical combination of knowledge and ignorance is the elimination of partiality and bias. How can I be accused of serving my own distinctive conception of the good life if I don't know what it will turn out to be? How can I be accused of devaluing the way of life you judge to be best if I don't know the plan of life you have selected? The device of hypothetical ignorance has evident resonances with the way we think about justice. One way of judging the impact of some proposal or the justice of some policy is to place oneself in the shoes of some other party who is affected by it and then ask would the subsequent distribution of benefits and burdens be acceptable if you didn't know which position was the one you occupy. Suppose the dispute concerned the allocation of housework. Harry doesn't want to do any of the work in the kitchen. Sally points out that they both work outside the home from 9.00a.m. to 5.00p.m. She already does the washing and the cleaning. If Harry's proposal, that he do nothing other than earn his wages, were accepted, there would be two parties, one doing all the housework, the other doing none. Asking Harry to hypothesize that he doesn't know which bundle of chores he might be assigned is a nice way of bringing home to him the unacceptability of either party's being asked to shoulder all the burdens. If his most advantageous option is crystal clear, so is that of the other party. If he would hate to have all the chores to do, he can understand Sally's complaint and should review the distribution of tasks.

Some have claimed that Rawls's theory of the veil of ignorance in the original position expresses a strong view of the role of the state as neutral between competing conceptions of the good life, that this is a clear implication of the doctrine of the priority of the