

John Rawls  
Justice as Fairness  
Gerechtigkeit als Fairness  
Englisch / Deutsch

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## [6] Justice as Fairness<sup>1</sup>

1. It might seem at first sight that the concepts of justice and fairness are the same, and that there is no reason to distinguish them, or to say that one is more fundamental than the other. I think that this impression is mistaken. In this paper I wish to show that the fundamental idea in the concept of justice is fairness; and I wish to offer an analysis of the concept of justice from this point of view. To bring out the force of this claim, and the analysis based upon it, I shall then argue that it is this aspect of justice for which utilitarianism, in its classical form, is unable to account, but which is expressed, even if misleadingly, by the idea of the social contract.

To start with I shall develop a particular conception of justice by stating and commenting upon two principles which specify it, and by considering the circumstances and conditions under which they may be thought to arise. The principles defining this conception, and the conception itself, are, of course, familiar. It may be possible, however, by using the notion of fairness as a framework, to assemble and to look at them in a new way. Before stating this conception, [8] however, the following preliminary matters should be kept in mind.

Throughout I consider justice only as a virtue of social institutions, or what I shall call practices.<sup>2</sup> The principles of justice are regarded as formulating restrictions as to how

practices may define positions and offices, and assign thereto powers and liabilities, rights and duties. Justice as a virtue of particular actions or of [165] persons I do not take up at all. It is important to distinguish these various subjects of justice, since the meaning of the concept varies according to whether it is applied to practices, particular actions, or persons. These meanings are, indeed, connected, but they are not identical. I shall confine my discussion to the sense of justice as applied to practices, since this sense is the basic one. Once it is understood, the other senses should go quite easily.

[10] Justice is to be understood in its customary sense as representing but *one* of the many virtues of social institutions, for these may be antiquated, inefficient, degrading, or any number of other things, without being unjust. Justice is not to be confused with an all-inclusive vision of a good society; it is only one part of any such conception. It is important, for example, to distinguish that sense of equality which is an aspect of the concept of justice from that sense of equality which belongs to a more comprehensive social ideal. There may well be inequalities which one concedes are just, or at least not unjust, but which, nevertheless, one wishes, on other grounds, to do away with. I shall focus attention, then, on the usual sense of justice in which it is essentially the elimination of arbitrary distinctions and the establishment, within the structure of a practice, of a proper balance between competing claims.

Finally, there is no need to consider the principles discussed below as *the* principles of justice. For the moment it is sufficient that they are typical of a family of principles normally associated with the concept of justice. The way in which the principles of this family resemble one another, as shown by the background against which they may be thought to arise, will be made clear by the whole of the subsequent argument.

2. The conception of justice which I want to develop may be stated in the form of two principles as follows: first, each [12] person participating in a practice, or affected by it, has an equal right to the most extensive liberty compatible with a like liberty for all; and second, inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone's advantage, and provided the positions and offices to which they attach, or from which they may be gained, are open to all. These principles [166] express justice as a complex of three ideas: liberty, equality, and reward for services contributing to the common good.<sup>3</sup>

The term "person" is to be construed variously depending on the circumstances. On some occasions it will mean [14] human individuals, but in others it may refer to nations, provinces, business firms, churches, teams, and so on. The principles of justice apply in all these instances, although there is a certain logical priority to the case of human individuals. As I shall use the term "person," it will be ambiguous in the manner indicated.



The first principle holds, of course, only if other things are equal: that is, while there must always be a justification for departing from the initial position of equal liberty (which is defined by the pattern of rights and duties, powers and liabilities, established by a practice), and the burden of proof is placed on him who would depart from it, nevertheless, there can be, and often there is, a justification for doing so. Now, that similar particular cases, as defined by a practice, should be treated similarly as they arise, is part of the very concept of a practice; it is involved in the notion of an activity in accordance with rules.<sup>4</sup> The first principle expresses an analogous conception, but as applied to the structure of practices themselves. It holds, for example, that there is a presumption against the distinctions and classifications made by legal systems and other practices to the extent that they infringe on the original and equal [16]liberty of [167] the persons participating in them. The second principle defines how this presumption may be rebutted.

It might be argued at this point that justice requires only an equal liberty. If, however, a greater liberty were possible for all without loss or conflict, then it would be irrational to settle on a lesser liberty. There is no reason for circumscribing rights unless their exercise would be incompatible, or would render the practice defining them less effective. Therefore no serious distortion of the concept of justice is likely to follow from including within it the concept of the greatest equal liberty.

The second principle defines what sorts of inequalities are permissible; it specifies how the presumption laid down by the first principle may be put aside. Now by inequalities it is best to understand not *any* differences between offices and positions, but differences in the benefits and burdens attached to them either directly or indirectly, such as prestige and wealth, or liability to taxation and compulsory services. Players in a game do not protest against there being different positions, such as batter, pitcher, catcher, and the like, nor to there being various privileges and powers as specified by the rules; nor do the citizens of a country object to there being the different offices of government such as president, senator, governor, judge, and so on, each with their special rights and duties. It is not differences of this kind that are normally thought of as inequalities, but differences in the resulting distribution established by a [18] practice, or made possible by it, of the things men strive to attain or avoid. Thus they may complain about the pattern of honors and rewards set up by a practice (e.g., the privileges and salaries of government officials) or they may object to the distribution of power and wealth which results from the various ways in which men avail themselves of the opportunities allowed by it (e.g., the concentration of wealth which may develop in a free price system allowing large entrepreneurial or speculative gains).

It should be noted that the second principle holds that an inequality is allowed only if there is reason to believe that

the practice with the inequality, or resulting in it, will work for the advantage of *every* party engaging in it. Here it is important to stress that *every* party must gain from the inequality. Since the [168] principle applies to practices, it implies that the representative man in every office or position defined by a practice, when he views it as a going concern, must find it reasonable to prefer his condition and prospects with the inequality to what they would be under the practice without it. The principle excludes, therefore, the justification of inequalities on the grounds that the disadvantages of those in one position are outweighed by the greater advantages of those in another position. This rather simple restriction is the main modification I wish to make [20] in the utilitarian principle as usually understood. When coupled with the notion of a practice, it is a restriction of consequence<sup>5</sup>, and one which some utilitarians, e.g., Hume [22] and Mill, have used in their discussions of justice without realizing apparently its significance, or at least without calling attention to it.<sup>6</sup> Why it is a significant [169] modification of principle, changing one's conception of justice entirely, the whole of my argument will show.

Further, it is also necessary that the various offices to which special benefits or burdens attach are open to all. It may be, for example, to the common advantage, as just defined, to attach special benefits to certain offices. Perhaps by doing so the requisite talent can be attracted to them and [24] encouraged to give its best efforts. But any

offices having special benefits must be won in a fair competition in which contestants are judged on their merits. If some offices were not open, those excluded would normally be justified in feeling unjustly treated, even if they benefited from the greater efforts of those who were allowed to compete for them. Now if one can assume that offices are open, it is necessary only to consider the design of practices themselves and how they jointly, as a system, work together. It will be a mistake to focus attention on the varying relative positions of particular persons, who may be known to us by their proper names, and to require that each such change, as a once for all transaction viewed in isolation, must be in itself just. It is the system of practices which is to be judged, and judged from a general point of view: unless one is prepared to criticize it from the standpoint of a representative man holding some particular office, one has no complaint against it.

3. Given these principles one might try to derive them from a priori principles of reason, or claim that they were known by intuition. These are familiar enough steps and, at least in the case of the first principle, might be made with some success. Usually, however, such arguments, made at this point, are unconvincing. They are not likely to lead to an [26] understanding of the basis of the principles of justice, not at least as principles of justice. I wish, therefore, to look at the principles in a different way.

Imagine a society of persons amongst whom a certain system [170] of practices is *already* well established. Now suppose that by and large they are mutually self-interested; their allegiance to their established practices is normally founded on the prospect of self-advantage. One need not assume that, in all senses of the term "person," the persons in this society are mutually self-interested. If the characterization as mutually self-interested applies when the line of division is the family, it may still be true that members of families are bound by ties of sentiment and affection and willingly acknowledge duties in contradiction to self-interest. Mutual self-interestedness in the relations between families, nations, churches, and the like, is commonly associated with intense loyalty and devotion on the part of individual members. Therefore, one can form a more realistic conception of this society if one thinks of it as consisting of mutually self-interested families, or some other association. Further, it is not necessary to suppose that these persons are mutually self-interested under all circumstances, but only in the usual situations in which they participate in their common practices.

Now suppose also that these persons are rational: they know their own interests more or less accurately; they are [28]capable of tracing out the likely consequences of adopting one practice rather than another; they are capable of adhering to a course of action once they have decided upon it; they can resist present temptations and the enticements of immediate gain; and the bare

knowledge or perception of the difference between their condition and that of others is not, within certain limits and in itself, a source of great dissatisfaction. Only the last point adds anything to the usual definition of rationality. This definition should allow, I think, for the idea that a rational man would not be greatly downcast from knowing, or seeing, that others are in a better position than himself, unless he thought their being so was the result of injustice, or the consequence of letting chance work itself out for no useful common purpose, and so on. So if these persons strike us as unpleasantly egoistic, they are at least free in some degree from the fault of envy.<sup>7</sup> [171]

[30] Finally, assume that these persons have roughly similar needs and interests, or needs and interests in various ways complementary, so that fruitful cooperation amongst them is possible; and suppose that they are sufficiently equal in power and ability to guarantee that in normal circumstances none is able to dominate the others. This condition (as well as the others) may seem excessively vague; but in view of the conception of justice to which the argument leads, there seems no reason for making it more exact here.

Since these persons are conceived as engaging in their common practices, which are already established, there is no question of our supposing them to come together to deliberate as to how they will set these practices up for the first time. Yet we can imagine that from time to time they discuss with one another whether any of them has a

legitimate complaint against their established institutions. Such discussions are perfectly natural in any normal society. Now suppose that they have settled on doing this in the following way. They first try to arrive at the principles by which complaints, and so practices themselves, are to be judged. Their procedure for this is to let each person propose the principles upon which he wishes his complaints to be tried with the understanding that, if acknowledged, the complaints of others will be similarly tried, and that no [32] complaints will be heard at all until everyone is roughly of one mind as to how complaints are to be judged. They each understand further that the principles proposed and acknowledged on this occasion are binding on future occasions. Thus each will be wary of proposing a principle which would give him a peculiar advantage, in his present circumstances, supposing it to be accepted. Each person knows that he will be bound by it in future circumstances the peculiarities of which cannot be known, and which might well be such that the principle is then to his disadvantage. The idea is that everyone should be required to make *in advance* a firm commitment, which others also may reasonably be expected to make, and [172] that no one be given the opportunity to tailor the canons of a legitimate complaint to fit his own special condition, and then to discard them when they no longer suit his purpose. Hence each person will propose principles of a general kind which will, to a large degree, gain their sense from the various applications to be made of them, the particular

circumstances of which being as yet unknown. These principles will express the conditions in accordance with which each is the least unwilling to have his interests limited in the design of practices, given the competing interests of the others, on the supposition that the interests of others will be limited likewise. The [34] restrictions which would so arise might be thought of as those a person would keep in mind if he were designing a practice in which his enemy were to assign him his place.

The two main parts of this conjectural account have a definite significance. The character and respective situations of the parties reflect the typical circumstances in which questions of justice arise. The procedure whereby principles are proposed and acknowledged represents constraints, analogous to those of having a morality, whereby rational and mutually self-interested persons are brought to act reasonably. Thus the first part reflects the fact that questions of justice arise when conflicting claims are made upon the design of a practice and where it is taken for granted that each person will insist, as far as possible, on what he considers his rights. It is typical of cases of justice to involve persons who are pressing on one another their claims, between which a fair balance or equilibrium must be found. On the other hand, as expressed by the second part, having a morality must at least imply the acknowledgment of principles as impartially applying to one's own conduct as well as to another's, and moreover principles which may constitute a constraint, or



limitation, upon the pursuit of one's own interests. There are, of course, other aspects of having a morality: the acknowledgment of moral principles must show itself in accepting a reference to them as reasons for limiting one's claims, in acknowledging the burden of providing a special explanation, or excuse, when one acts contrary to them, or else in showing shame and remorse and a desire to make amends, and so on. It is sufficient to remark here that having [173] a morality is analogous to having made a firm commitment in advance; for one must acknowledge [36] the principles of morality even when to one's disadvantage.<sup>8</sup> A man whose moral judgments always coincided with his interests could be suspected of having no morality at all.

Thus the two parts of the foregoing account are intended to mirror the kinds of circumstances in which questions of justice arise and the constraints which having a morality would impose upon persons so situated. In this way one can see how the acceptance of the principles of justice might come about, for given all these conditions as described, it would be natural if the two principles of justice were to be acknowledged. Since there is no way for anyone to win special advantages for himself, each might consider [38] it reasonable to acknowledge equality as an initial principle. There is, however, no reason why they should regard this position as final; for if there are inequalities which satisfy the second principle, the immediate gain which equality would allow can be considered as intelligently invested in view of its future return. If, as is quite likely, these

inequalities work as incentives to draw out better efforts, the members of this society may look upon them as concessions to human nature: they, like us, may think that people ideally should want to serve one another. But as they are mutually self-interested, their acceptance of these inequalities is merely the acceptance of the relations in which they actually stand, and a recognition of the motives which lead them to engage in their common practices. *They* have no title to complain of one another. And so provided that the conditions of the principle are met, there is no reason why they should not allow such inequalities. Indeed, it would be short-sighted of them to do so, and could result, in most cases, only from their being dejected by the bare knowledge, or perception, that others [174] are better situated. Each person will, however, insist on an advantage to himself, and so on a common advantage, for none is willing to sacrifice anything for the others.

[40] These remarks are not offered as a proof that persons so conceived and circumstanced would settle on the two principles, but only to show that these principles could have such a background, and so can be viewed as those principles which mutually self-interested and rational persons, when similarly situated and required to make in advance a firm commitment, could acknowledge as restrictions governing the assignment of rights and duties in their common practices, and thereby accept as limiting their rights against one another. The principles of justice may, then, be regarded as those principles which arise

when the constraints of having a morality are imposed upon parties in the typical circumstances of justice.

4. These ideas are, of course, connected with a familiar way of thinking about justice which goes back at least to the Greek Sophists, and which regards the acceptance of the principles of justice as a compromise between persons of roughly equal power who would enforce their will on each other if they could, but who, in view of the equality of forces amongst them and for the sake of their own peace and security, acknowledge certain forms of conduct insofar as prudence seems to require. Justice is thought of as a pact between rational egoists the stability of which is [42] dependent on a balance of power and a similarity of circumstances.<sup>9</sup> While the previous account is connected with this [175] tradition, and with its most recent variant, the theory of games,<sup>10</sup> it differs from it in several important [44] respects which, to forestall misinterpretations, I will set out here.

First, I wish to use the previous conjectural account of the background of justice as a way of analyzing the concept. I do not want, therefore, to be interpreted as assuming a general theory of human motivation: when I suppose that the parties are mutually self-interested, and are not willing to have their (substantial) interests sacrificed to others, I am referring to their conduct and motives as they are taken for granted in cases where questions of justice ordinarily arise. Justice is the virtue of

practices where there are assumed to be competing interests and conflicting claims, and where it is supposed that persons will press their rights on each other. That persons are mutually self-interested in certain situations and for certain purposes is what gives rise to the question of justice in practices covering those circumstances. Amongst an association of saints, if such a community could really exist, the disputes about justice could hardly occur; for they would all work selflessly together for one end, the glory of God as defined by their common religion, and reference to this end would settle every question of right. The justice of practices does not come up until there are several different parties (whether we think of these as individuals, associations, or nations [46] and so on, is irrelevant) who do press their claims on one another, and who do regard themselves as representatives of interests which deserve to be considered. Thus the previous account involves no general theory of human motivation. Its intent is simply to incorporate into the conception of justice [176] the relations of men to one another which set the stage for questions of justice. It makes no difference how wide or general these relations are, as this matter does not bear on the analysis of the concept.

Again, in contrast to the various conceptions of the social contract, the several parties do not establish any particular society or practice; they do not covenant to obey a particular sovereign body or to accept a given constitution.<sup>11</sup> Nor do they, as in the theory of games (in