

defining basic liberties, apply to everyone equally and that they allow the most extensive liberty compatible with a like liberty for all. The only reason for circumscribing the rights defining liberty and making men's freedom less extensive than it might otherwise be is that these equal rights as institutionally defined would interfere with one another.

Another thing to bear in mind is that when principles mention persons, or require that everyone gain from an inequality, the reference is to representative persons holding the various social positions, or offices, or whatever, established by the basic structure. Thus in applying the second principle I assume that it is possible to assign an expectation of well-being to representative individuals holding these positions. This expectation indicates their life prospects as viewed from their social station. In general, the expectations of representative persons depend upon the distribution of rights and duties throughout the basic structure. When this changes, expectations change. I assume, then, that expectations are connected: by raising the prospects of the representative man in one position we presumably increase or decrease the prospects of representative men in other positions. Since it applies to institutional forms, the second principle (or rather the first part of it) refers to the expectations of representative individuals. As I shall discuss below, neither principle applies to distributions of particular goods to particular individuals who may be identified by their proper names. The situation where someone is considering how to allocate certain commodities to needy persons who are known to him is not within the scope of the principles. They are meant to regulate basic institutional arrangements. We must not assume that there is much similarity from the standpoint of justice between an administrative allotment of goods to specific persons and the appropriate design of society. Our common sense intuitions for the former may be a poor guide to the latter.

Now the second principle insists that each person benefit from permissible inequalities in the basic structure. This means that it must be reasonable for each relevant representative man defined by this structure, when he views it as a going concern, to prefer his prospects with the inequality to his prospects without it. One is not allowed to justify differences in income or organizational powers on the ground that the disadvantages of those in one position are out-

weighed by the greater advantages of those in another. Much less can infringements of liberty be counterbalanced in this way. Applied to the basic structure, the principle of utility would have us maximize the sum of expectations of representative men (weighted by the number of persons they represent, on the classical view); and this would permit us to compensate for the losses of some by the gains of others. Instead, the two principles require that everyone benefit from economic and social inequalities. It is obvious, however, that there are indefinitely many ways in which all may be advantaged when the initial arrangement of equality is taken as a benchmark. How then are we to choose among these possibilities? The principles must be specified so that they yield a determinate conclusion. I now turn to this problem.

12. INTERPRETATIONS OF THE SECOND PRINCIPLE

I have already mentioned that since the phrases "everyone's advantage" and "equally open to all" are ambiguous, both parts of the second principle have two natural senses. Because these senses are independent of one another, the principle has four possible meanings. Assuming that the first principle of equal liberty has the same sense throughout, we then have four interpretations of the two principles. These are indicated in the table below.

"Equally open"	"Everyone's advantage"	
	Principle of efficiency	Difference principle
Equality as careers open to talents	System of Natural Liberty	Natural Aristocracy
Equality as equality of fair opportunity	Liberal Equality	Democratic Equality

I shall sketch in turn these three interpretations: the system of natural liberty, liberal equality, and democratic equality. In some respects this sequence is the more intuitive one, but the sequence via

the interpretation of natural aristocracy is not without interest and I shall comment on it briefly. In working out justice as fairness, we must decide which interpretation is to be preferred. I shall adopt that of democratic equality, explaining in this chapter what this notion means. The argument for its acceptance in the original position does not begin until the next chapter.

The first interpretation (in either sequence) I shall refer to as the system of natural liberty. In this rendering the first part of the second principle is understood as the principle of efficiency adjusted so as to apply to institutions or, in this case, to the basic structure of society; and the second part is understood as an open social system in which, to use the traditional phrase, careers are open to talents. I assume in all interpretations that the first principle of equal liberty is satisfied and that the economy is roughly a free market system, although the means of production may or may not be privately owned. The system of natural liberty asserts, then, that a basic structure satisfying the principle of efficiency and in which positions are open to those able and willing to strive for them will lead to a just distribution. Assigning rights and duties in this way is thought to give a scheme which allocates wealth and income, authority and responsibility, in a fair way whatever this allocation turns out to be. The doctrine includes an important element of pure procedural justice which is carried over to the other interpretations.

At this point it is necessary to make a brief digression to explain the principle of efficiency. This principle is simply that of Pareto optimality (as economists refer to it) formulated so as to apply to the basic structure.⁷ I shall always use the term "efficiency" instead because this is literally correct and the term "optimality" suggests

7. There are expositions of this principle in most any work on price theory or social choice. A perspicuous account is found in T. C. Koopmans, *Three Essays on the State of Economic Science* (New York, McGraw-Hill, 1957), pp. 41–66. See also A. K. Sen, *Collective Choice and Social Welfare* (San Francisco, Holden-Day Inc., 1970), pp. 21f. These works contain everything (and more) that is required for our purposes in this book; and the latter takes up the relevant philosophical questions. The principle of efficiency was introduced by Vilfredo Pareto in his *Manuel d'économie politique* (Paris, 1909), ch. VI, § 53, and the appendix, § 89. A translation of the relevant passages can be found in A. N. Page, *Utility Theory: A Book of Readings* (New York, John Wiley, 1968), pp. 38f. The related concept of indifference curves goes back to F. Y. Edgeworth, *Mathematical Psychics* (London, 1888), pp. 20–29; also in Page, pp. 160–167.

that the concept is much broader than it is in fact.⁸ To be sure, this principle was not originally intended to apply to institutions but to particular configurations of the economic system, for example, to distributions of goods among consumers or to modes of production. The principle holds that a configuration is efficient whenever it is impossible to change it so as to make some persons (at least one) better off without at the same time making other persons (at least one) worse off. Thus a distribution of a stock of commodities among certain individuals is efficient if there exists no redistribution of these goods that improves the circumstances of at least one of these individuals without another being disadvantaged. The organization of production is efficient if there is no way to alter inputs so as to produce more of some commodity without producing less of another. For if we could produce more of one good without having to give up some of another, the larger stock of goods could be used to better the circumstances of some persons without making that of others any worse. These applications of the principle show that it is, indeed, a principle of efficiency. A distribution of goods or a scheme of production is inefficient when there are ways of doing still better for some individuals without doing any worse for others. I shall assume that the parties in the original position accept this principle to judge the efficiency of economic and social arrangements. (See the accompanying discussion of the principle of efficiency.)

THE PRINCIPLE OF EFFICIENCY

Assume that there is a fixed stock of commodities to be distributed between two persons, x_1 and x_2 . Let the line AB represent the points such that given x_1 's gain at the corresponding level, there is no way to distribute the commodities so as to make x_2 better off than the point indicated by the curve. Consider the point $D = (a, b)$. Then holding x_1 at the level a, the best that can be done for x_2 is the level b. In figure 3 the point O, the origin, represents the position before any commodities are distributed. The points on the line AB are the efficient points. Each point on AB can be seen to satisfy Pareto's criterion: there is no redistribution that makes either person better off without making the other worse

8. On this point see Koopmans, *Three Essays on the State of Economic Science*, p. 49. Koopmans remarks that a term like "allocative efficiency" would have been a more accurate name.

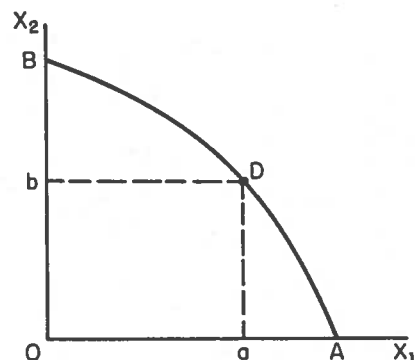


FIGURE 3

off. This is conveyed by the fact that the line AB slopes downward to the right. Since there is but a fixed stock of items, it is supposed that as one person gains the other loses. (Of course, this assumption is dropped in the case of the basic structure which is a system of co-operation producing a sum of positive advantages.) Normally the region OAB is taken to be a convex set. This means that given any pair of points in the set, the points on the straight line joining these two points are also in the set. Circles, ellipses, squares, triangles, and so on are convex sets.

It is clear that there are many efficient points, in fact, all the points on the line AB. The principle of efficiency does not by itself select one particular distribution of commodities as the efficient one. To select among the efficient distributions some other principle, a principle of justice, say, is necessary.

Of two points, if one is northeast of the other, this point is superior by the principle of efficiency. Points to the northwest or southeast cannot be compared. The ordering defined by the principle of efficiency is but a partial one. Thus in figure 4 while C is superior to E, and D is superior to F, none of the points on the line AB are either superior or inferior to one another. The class of efficient points cannot be ranked. Even the extreme points A and B at which one of the parties has everything are efficient, just as other points on AB.

Observe that we cannot say that any point on the line AB is superior to all points in the interior of OAB. Each point on AB is superior only

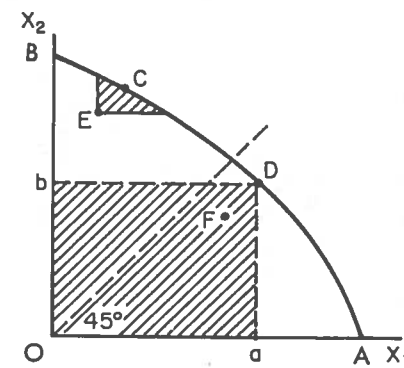


FIGURE 4

to those points in the interior southwest of it. Thus the point D is superior to all points inside the rectangle indicated by the dotted lines joining D to the points a and b. The point D is not superior to the point E. These points cannot be ordered. The point C, however, is superior to E and so are all the points on the line AB belonging to the small shaded triangular region that has the point E as a corner.

On the other hand, if one takes the 45° line as indicating the locus of equal distribution (this assumes an interpersonal cardinal interpretation of the axes, something not supposed in the preceding remarks), and if one counts this as an additional basis of decision, then all things considered, the point D may be preferable to both C and E. It is much closer to this line. One may even decide that an interior point such as F is to be preferred to C which is an efficient point. Actually, in justice as fairness the principles of justice are prior to considerations of efficiency and therefore, roughly speaking, the interior points that represent just distributions will generally be preferred to efficient points which represent unjust distributions. Of course, figure 4 depicts a very simple situation and cannot be applied to the basic structure.

There are, however, many configurations which are efficient. For example, the distributions in which one person receives the entire stock of commodities is efficient, since there is no rearrangement that will make some better off and none worse off. The person who holds the whole stock must lose out. But of course not every dis-

tribution is efficient, as might be suggested by the efficiency of such disparities. As long as a distribution leaves some persons willing to swap goods with others, it cannot be efficient; for the willingness to trade shows that there is a rearrangement which improves the situation of some without hurting that of anyone else. Indeed, an efficient distribution is one in which it is not possible to find further profitable exchanges. In that sense, the allocation of goods in which one man has everything is efficient because the others have nothing to give him in return. The principle of efficiency allows then that there are many efficient configurations. Each efficient arrangement is better than some other arrangements, but none of the efficient arrangements is better than another.

Now the principle of efficiency can be applied to the basic structure by reference to the expectations of representative men.⁹ Thus we can say that an arrangement of rights and duties in the basic structure is efficient if and only if it is impossible to change the rules, to redefine the scheme of rights and duties, so as to raise the expectations of any representative man (at least one) without at the same time lowering the expectations of some (at least one) other representative man. Of course, these alterations must be consistent with the other principles. That is, in changing the basic structure we are not permitted to violate the principle of equal liberty or the requirement of open positions. What can be altered is the distribution of income and wealth and the way in which organizational powers, and various other forms of authority, regulate cooperative activities. Consistent with the constraints of liberty and accessibility, the allocation of these primary goods may be adjusted to modify the expectations of representative individuals. An arrangement of the basic structure is efficient when there is no way to change this distribution so as to raise the prospects of some without lowering the prospects of others.

There are, I shall assume, many efficient arrangements of the basic

9. For the application of the Pareto criterion to systems of public rules, see J. M. Buchanan, "The Relevance of Pareto Optimality," *Journal of Conflict Resolution*, vol. 6 (1962), as well as his book with Gordon Tullock, *The Calculus of Consent* (Ann Arbor, The University of Michigan Press, 1962). In applying this and other principles to institutions I follow one of the points of "Two Concepts of Rules," *Philosophical Review*, vol. 64 (1955). Doing this has the advantage, among other things, of constraining the employment of principles by publicity effects. See §23, note 8.

structure. Each of these specifies a particular division of advantages from social cooperation. The problem is to choose between them, to find a conception of justice that singles out one of these efficient distributions as also just. If we succeed in this, we shall have gone beyond mere efficiency yet in a way compatible with it. Now it is natural to try out the idea that as long as the social system is efficient there is no reason to be concerned with distribution. All efficient arrangements are in this case declared equally just. Of course, this suggestion would be outlandish for the allocation of particular goods to known individuals. No one would suppose that it is a matter of indifference from the standpoint of justice whether any one of a number of men happens to have everything. But the suggestion seems equally unreasonable for the basic structure. Thus it may be that under certain conditions serfdom cannot be significantly reformed without lowering the expectations of some representative man, say that of landowners, in which case serfdom is efficient. Yet it may also happen under the same conditions that a system of free labor cannot be changed without lowering the expectations of some representative man, say that of free laborers, so this arrangement is likewise efficient. More generally, whenever a society is relevantly divided into a number of classes, it is possible, let us suppose, to maximize with respect to each one of its representative men at a time. These maxima give at least this many efficient positions, for none of them can be departed from to raise the expectations of any one representative man without lowering those of another, namely, the representative man with respect to whom the maximum is defined. Thus each of these extremes is efficient but they surely cannot be all just, and equally so. These remarks simply parallel for social systems the situation in distributing particular goods to given individuals where the distributions in which a single person has everything is efficient.

Now these reflections show only what we knew all along, that is, that the principle of efficiency cannot serve alone as a conception of justice.¹⁰ Therefore it must be supplemented in some way. Now in

10. This fact is generally recognized in welfare economics, as when it is said that efficiency is to be balanced against equity. See for example Tibor Scitovsky, *Welfare and Competition* (London, George Allen and Unwin, 1952), pp. 60-69 and I. M. D. Little, *A Critique of Welfare Economics*, 2nd ed. (Oxford, The

the system of natural liberty the principle of efficiency is constrained by certain background institutions; when these constraints are satisfied, any resulting efficient distribution is accepted as just. The system of natural liberty selects an efficient distribution roughly as follows. Let us suppose that we know from economic theory that under the standard assumptions defining a competitive market economy, income and wealth will be distributed in an efficient way, and that the particular efficient distribution which results in any period of time is determined by the initial distribution of assets, that is, by the initial distribution of income and wealth, and of natural talents and abilities. With each initial distribution, a definite efficient outcome is arrived at. Thus it turns out that if we are to accept the outcome as just, and not merely as efficient, we must accept the basis upon which over time the initial distribution of assets is determined.

In the system of natural liberty the initial distribution is regulated by the arrangements implicit in the conception of careers open to talents (as earlier defined). These arrangements presuppose a background of equal liberty (as specified by the first principle) and a free market economy. They require a formal equality of opportunity in that all have at least the same legal rights of access to all advantaged social positions. But since there is no effort to preserve an equality, or similarity, of social conditions, except insofar as this is necessary to preserve the requisite background institutions, the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies. The existing distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets—that is, natural talents and abilities—as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and such chance contingencies as accident and good fortune. Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.

Clarendon Press, 1957), ch. VI, esp. pp. 112–116. See Sen's remarks on the limitations of the principle of efficiency, *Collective Choice and Social Welfare*, pp. 22, 24–26, 83–86.

The liberal interpretation, as I shall refer to it, tries to correct for this by adding to the requirement of careers open to talents the further condition of the principle of fair equality of opportunity. The thought here is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them. Offhand it is not clear what is meant, but we might say that those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class.¹¹

The liberal interpretation of the two principles seeks, then, to mitigate the influence of social contingencies and natural fortune on distributive shares. To accomplish this end it is necessary to impose further basic structural conditions on the social system. Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity. The elements of this framework are familiar enough, though it may be worthwhile to recall the importance of preventing excessive accumulations of property and wealth and of maintaining equal opportunities of education for all. Chances to acquire cultural knowledge and skills should not depend upon one's class position, and so the school system, whether public or private, should be designed to even out class barriers.

While the liberal conception seems clearly preferable to the system of natural liberty, intuitively it still appears defective. For one thing, even if it works to perfection in eliminating the influence of social contingencies, it still permits the distribution of wealth and income

11. This definition follows Sidgwick's suggestion in *The Methods of Ethics*, p. 285n. See also R. H. Tawney, *Equality* (London, George Allen and Unwin, 1931), ch. II, sec. ii; and B. A. O. Williams, "The Idea of Equality," in *Philosophy, Politics, and Society*, ed. Peter Laslett and W. G. Runciman (Oxford, Basil Blackwell, 1962), pp. 125f.

to be determined by the natural distribution of abilities and talents. Within the limits allowed by the background arrangements, distributive shares are decided by the outcome of the natural lottery; and this outcome is arbitrary from a moral perspective. There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune. Furthermore, the principle of fair opportunity can be only imperfectly carried out, at least as long as the institution of the family exists. The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances. It is impossible in practice to secure equal chances of achievement and culture for those similarly endowed, and therefore we may want to adopt a principle which recognizes this fact and also mitigates the arbitrary effects of the natural lottery itself. That the liberal conception fails to do this encourages one to look for another interpretation of the two principles of justice.

Before turning to the conception of democratic equality, we should note that of natural aristocracy. On this view no attempt is made to regulate social contingencies beyond what is required by formal equality of opportunity, but the advantages of persons with greater natural endowments are to be limited to those that further the good of the poorer sectors of society. The aristocratic ideal is applied to a system that is open, at least from a legal point of view, and the better situation of those favored by it is regarded as just only when less would be had by those below, if less were given to those above.¹² In this way the idea of *noblesse oblige* is carried over to the conception of natural aristocracy.

Now both the liberal conception and that of natural aristocracy are unstable. For once we are troubled by the influence of either

12. This formulation of the aristocratic ideal is derived from Santayana's account of aristocracy in ch. IV of *Reason and Society* (New York, Charles Scribner, 1905), pp. 109f. He says, for example, "an aristocratic regimen can only be justified by radiating benefit and by proving that were less given to those above, less would be attained by those beneath them." I am indebted to Robert Rodes for pointing out to me that natural aristocracy is a possible interpretation of the two principles of justice and that an ideal feudal system might also try to fulfill the difference principle.

social contingencies or natural chance on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other. From a moral standpoint the two seem equally arbitrary. So however we move away from the system of natural liberty, we cannot be satisfied short of the democratic conception. This conception I have yet to explain. And, moreover, none of the preceding remarks are an argument for this conception, since in a contract theory all arguments, strictly speaking, are to be made in terms of what it would be rational to choose in the original position. But I am concerned here to prepare the way for the favored interpretation of the two principles so that these criteria, especially the second one, will not strike the reader as too eccentric or bizarre. I have tried to show that once we try to find a rendering of them which treats everyone equally as a moral person, and which does not weight men's share in the benefits and burdens of social cooperation according to their social fortune or their luck in the natural lottery, it is clear that the democratic interpretation is the best choice among the four alternatives. With these comments as a preface, I now turn to this conception.

13. DEMOCRATIC EQUALITY AND THE DIFFERENCE PRINCIPLE

The democratic interpretation, as the table suggests, is arrived at by combining the principle of fair equality of opportunity with the difference principle. This principle removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged. Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate. (See the discussion of the difference principle that follows.)

accept the consequences. This does not mean, of course, that the rigors of free trade should be allowed to go unchecked. But the arrangements for softening them are to be considered from an appropriately general perspective.

The relevant social positions specify, then, the general point of view from which the two principles of justice are to be applied to the basic structure. In this way everyone's interests are taken into account, for each person is an equal citizen and all have a place in the distribution of income and wealth or in the range of fixed natural characteristics upon which distinctions are based. Some selection of relevant positions is necessary for a coherent theory of social justice and the ones chosen should accord with its first principles. By selecting the so-called starting places one follows out the idea of mitigating the effects of natural accident and social circumstance. No one is to benefit from these contingencies except in ways that redound to the well-being of others.

17. THE TENDENCY TO EQUALITY

I wish to conclude this discussion of the two principles by explaining the sense in which they express an egalitarian conception of justice. Also I should like to forestall the objection to the principle of fair opportunity that it leads to a callous meritocratic society. In order to prepare the way for doing this, I note several aspects of the conception of justice that I have set out.

First we may observe that the difference principle gives some weight to the considerations singled out by the principle of redress. This is the principle that undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for.¹⁸ Thus the principle holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social positions. The idea is to redress the bias

18. See Herbert Spiegelberg, "A Defense of Human Equality," *Philosophical Review*, vol. 53 (1944), pp. 101, 113-123; and D. D. Raphael, "Justice and Liberty," *Proceedings of the Aristotelian Society*, vol. 51 (1950-1951), pp. 187f.

of contingencies in the direction of equality. In pursuit of this principle greater resources might be spent on the education of the less rather than the more intelligent, at least over a certain time of life, say the earlier years of school.

Now the principle of redress has not to my knowledge been proposed as the sole criterion of justice, as the single aim of the social order. It is plausible as most such principles are only as a *prima facie* principle, one that is to be weighed in the balance with others. For example, we are to weigh it against the principle to improve the average standard of life, or to advance the common good.¹⁹ But whatever other principles we hold, the claims of redress are to be taken into account. It is thought to represent one of the elements in our conception of justice. Now the difference principle is not of course the principle of redress. It does not require society to try to even out handicaps as if all were expected to compete on a fair basis in the same race. But the difference principle would allocate resources in education, say, so as to improve the long-term expectation of the least favored. If this end is attained by giving more attention to the better endowed, it is permissible; otherwise not. And in making this decision, the value of education should not be assessed solely in terms of economic efficiency and social welfare. Equally if not more important is the role of education in enabling a person to enjoy the culture of his society and to take part in its affairs, and in this way to provide for each individual a secure sense of his own worth.

Thus although the difference principle is not the same as that of redress, it does achieve some of the intent of the latter principle. It transforms the aims of the basic structure so that the total scheme of institutions no longer emphasizes social efficiency and technocratic values. We see then that the difference principle represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be. Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely because they are more gifted, but only to

19. See, for example, Spiegelberg, pp. 120f.

cover the costs of training and education and for using their endowments in ways that help the less fortunate as well. No one deserves his greater natural capacity nor merits a more favorable starting place in society. But it does not follow that one should eliminate these distinctions. There is another way to deal with them. The basic structure can be arranged so that these contingencies work for the good of the least fortunate. Thus we are led to the difference principle if we wish to set up the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or receiving compensating advantages in return.

In view of these remarks we may reject the contention that the ordering of institutions is always defective because the distribution of natural talents and the contingencies of social circumstance are unjust, and this injustice must inevitably carry over to human arrangements. Occasionally this reflection is offered as an excuse for ignoring injustice, as if the refusal to acquiesce in injustice is on a par with being unable to accept death. The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts. Aristocratic and caste societies are unjust because they make these contingencies the ascriptive basis for belonging to more or less enclosed and privileged social classes. The basic structure of these societies incorporates the arbitrariness found in nature. But there is no necessity for men to resign themselves to these contingencies. The social system is not an unchangeable order beyond human control but a pattern of human action. In justice as fairness men agree to share one another's fate. In designing institutions they undertake to avail themselves of the accidents of nature and social circumstance only when doing so is for the common benefit. The two principles are a fair way of meeting the arbitrariness of fortune; and while no doubt imperfect in other ways, the institutions which satisfy these principles are just.

A further point is that the difference principle expresses a conception of reciprocity. It is a principle of mutual benefit. We have seen that, at least when chain connection holds, each representative man can accept the basic structure as designed to advance his in-

terests. The social order can be justified to everyone, and in particular to those who are least favored; and in this sense it is egalitarian. But it seems necessary to consider in an intuitive way how the condition of mutual benefit is satisfied. Consider any two representative men A and B, and let B be the one who is less favored. Actually, since we are most interested in the comparison with the least favored man, let us assume that B is this individual. Now B can accept A's being better off since A's advantages have been gained in ways that improve B's prospects. If A were not allowed his better position, B would be even worse off than he is. The difficulty is to show that A has no grounds for complaint. Perhaps he is required to have less than he might since his having more would result in some loss to B. Now what can be said to the more favored man? To begin with, it is clear that the well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life. Secondly, we can ask for the willing cooperation of everyone only if the terms of the scheme are reasonable. The difference principle, then, seems to be a fair basis on which those better endowed, or more fortunate in their social circumstances, could expect others to collaborate with them when some workable arrangement is a necessary condition of the good of all.

There is a natural inclination to object that those better situated deserve their greater advantages whether or not they are to the benefit of others. At this point it is necessary to be clear about the notion of desert. It is perfectly true that given a just system of cooperation as a scheme of public rules and the expectations set up by it, those who, with the prospect of improving their condition, have done what the system announces that it will reward are entitled to their advantages. In this sense the more fortunate have a claim to their better situation; their claims are legitimate expectations established by social institutions, and the community is obligated to meet them. But this sense of desert presupposes the existence of the cooperative scheme; it is irrelevant to the question whether in the first place the scheme is to be designed in accordance with the difference principle or some other criterion.

Perhaps some will think that the person with greater natural endowments deserves those assets and the superior character that made their development possible. Because he is more worthy in

this sense, he deserves the greater advantages that he could achieve with them. This view, however, is surely incorrect. It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases. Thus the more advantaged representative man cannot say that he deserves and therefore has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others. There is no basis for his making this claim. From the standpoint of common sense, then, the difference principle appears to be acceptable both to the more advantaged and to the less advantaged individual. Of course, none of this is strictly speaking an argument for the principle, since in a contract theory arguments are made from the point of view of the original position. But these intuitive considerations help to clarify the nature of the principle and the sense in which it is egalitarian.

I noted earlier (§13) that a society should try to avoid the region where the marginal contributions of those better off to the well-being of the less favored are negative. It should operate only on the upward rising part of the contribution curve (including of course the maximum). One reason for this, we can now see, is that on this segment of the curve the criterion of mutual benefit is always fulfilled. Moreover, there is a natural sense in which the harmony of social interests is achieved; representative men do not gain at one another's expense since only reciprocal advantages are allowed. To be sure, the shape and slope of the contribution curve is determined in part at least by the natural lottery in native assets, and as such it is neither just nor unjust. But suppose we think of the forty-five degree line as representing the ideal of a perfect harmony of interests; it is the contribution curve (a straight line in this case) along which everyone gains equally. Then it seems that the consistent realization of the two principles of justice tends to raise the curve closer to the ideal of a perfect harmony of in-

terests. Once a society goes beyond the maximum it operates along the downward sloping part of the curve and a harmony of interests no longer exists. As the more favored gain the less advantaged lose, and vice versa. The situation is analogous to being on an efficiency frontier. This is far from desirable when the justice of the basic structure is involved. Thus it is to realize the ideal of the harmony of interests on terms that nature has given us, and to meet the criterion of mutual benefit, that we should stay in the region of positive contributions.

A further merit of the difference principle is that it provides an interpretation of the principle of fraternity. In comparison with liberty and equality, the idea of fraternity has had a lesser place in democratic theory. It is thought to be less specifically a political concept, not in itself defining any of the democratic rights but conveying instead certain attitudes of mind and forms of conduct without which we would lose sight of the values expressed by these rights.²⁰ Or closely related to this, fraternity is held to represent a certain equality of social esteem manifest in various public conventions and in the absence of manners of deference and servility.²¹ No doubt fraternity does imply these things, as well as a sense of civic friendship and social solidarity, but so understood it expresses no definite requirement. We have yet to find a principle of justice that matches the underlying idea. The difference principle, however, does seem to correspond to a natural meaning of fraternity: namely, to the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off. The family, in its ideal conception and often in practice, is one place where the principle of maximizing the sum of advantages is rejected. Members of a family commonly do not wish to gain unless they can do so in ways that further the interests of the rest. Now wanting to act on the difference principle has precisely this consequence. Those better circumstanced are willing to have their greater advantages only under a scheme in which this works out for the benefit of the less fortunate.

20. See J. R. Pennock, *Liberal Democracy: Its Merits and Prospects* (New York, Rinehart, 1950), pp. 94f.

21. See R. B. Perry, *Puritanism and Democracy* (New York, The Vanguard Press, 1944), ch. XIX, sec. 8.

The ideal of fraternity is sometimes thought to involve ties of sentiment and feeling which it is unrealistic to expect between members of the wider society. And this is surely a further reason for its relative neglect in democratic theory. Many have felt that it has no proper place in political affairs. But if it is interpreted as incorporating the requirements of the difference principle, it is not an impracticable conception. It does seem that the institutions and policies which we most confidently think to be just satisfy its demands, at least in the sense that the inequalities permitted by them contribute to the well-being of the less favored. Or at any rate, so I shall try to make plausible in Chapter V. On this interpretation, then, the principle of fraternity is a perfectly feasible standard. Once we accept it we can associate the traditional ideas of liberty, equality, and fraternity with the democratic interpretation of the two principles of justice as follows: liberty corresponds to the first principle, equality to the idea of equality in the first principle together with equality of fair opportunity, and fraternity to the difference principle. In this way we have found a place for the conception of fraternity in the democratic interpretation of the two principles, and we see that it imposes a definite requirement on the basic structure of society. The other aspects of fraternity should not be forgotten, but the difference principle expresses its fundamental meaning from the standpoint of social justice.

Now it seems evident in the light of these observations that the democratic interpretation of the two principles will not lead to a meritocratic society.²² This form of social order follows the principle of careers open to talents and uses equality of opportunity as a way of releasing men's energies in the pursuit of economic prosperity and political dominion. There exists a marked disparity between the upper and lower classes in both means of life and the rights and privileges of organizational authority. The culture of the poorer strata is impoverished while that of the governing and technocratic elite is securely based on the service of the national ends of power and wealth. Equality of opportunity means an equal chance to leave the less fortunate behind in the personal quest for

22. The problem of a meritocratic society is the subject of Michael Young's fantasy, *The Rise of Meritocracy* (London, Thames and Hudson, 1958).

influence and social position.²³ Thus a meritocratic society is a danger for the other interpretations of the principles of justice but not for the democratic conception. For, as we have just seen, the difference principle transforms the aims of society in fundamental respects. This consequence is even more obvious once we note that we must when necessary take into account the essential primary good of self-respect and the fact that a well-ordered society is a social union of social unions (§79). It follows that the confident sense of their own worth should be sought for the least favored and this limits the forms of hierarchy and the degrees of inequality that justice permits. Thus, for example, resources for education are not to be allotted solely or necessarily mainly according to their return as estimated in productive trained abilities, but also according to their worth in enriching the personal and social life of citizens, including here the less favored. As a society progresses the latter consideration becomes increasingly more important.

These remarks must suffice to sketch the conception of social justice expressed by the two principles for institutions. Before taking up the principles for individuals I should mention one further question. I have assumed so far that the distribution of natural assets is a fact of nature and that no attempt is made to change it, or even to take it into account. But to some extent this distribution is bound to be affected by the social system. A caste system, for example, tends to divide society into separate biological populations, while an open society encourages the widest genetic diversity.²⁴ In addition, it is possible to adopt eugenic policies, more or less explicit. I shall not consider questions of eugenics, confining myself throughout to the traditional concerns of social justice. We should note, though, that it is not in general to the advantage of the less fortunate to propose policies which reduce the talents of others. Instead, by accepting the difference principle, they view the greater abilities as a social asset to be used for the common advantage. But

23. For elaborations of this point to which I am indebted, see John Schaar, "Equality of Opportunity and Beyond," *Nomos IX: Equality*, ed. by J. R. Pennock and J. W. Chapman (New York, Atherton Press, 1967); and B. A. O. Williams, "The Idea of Equality," pp. 125-129.

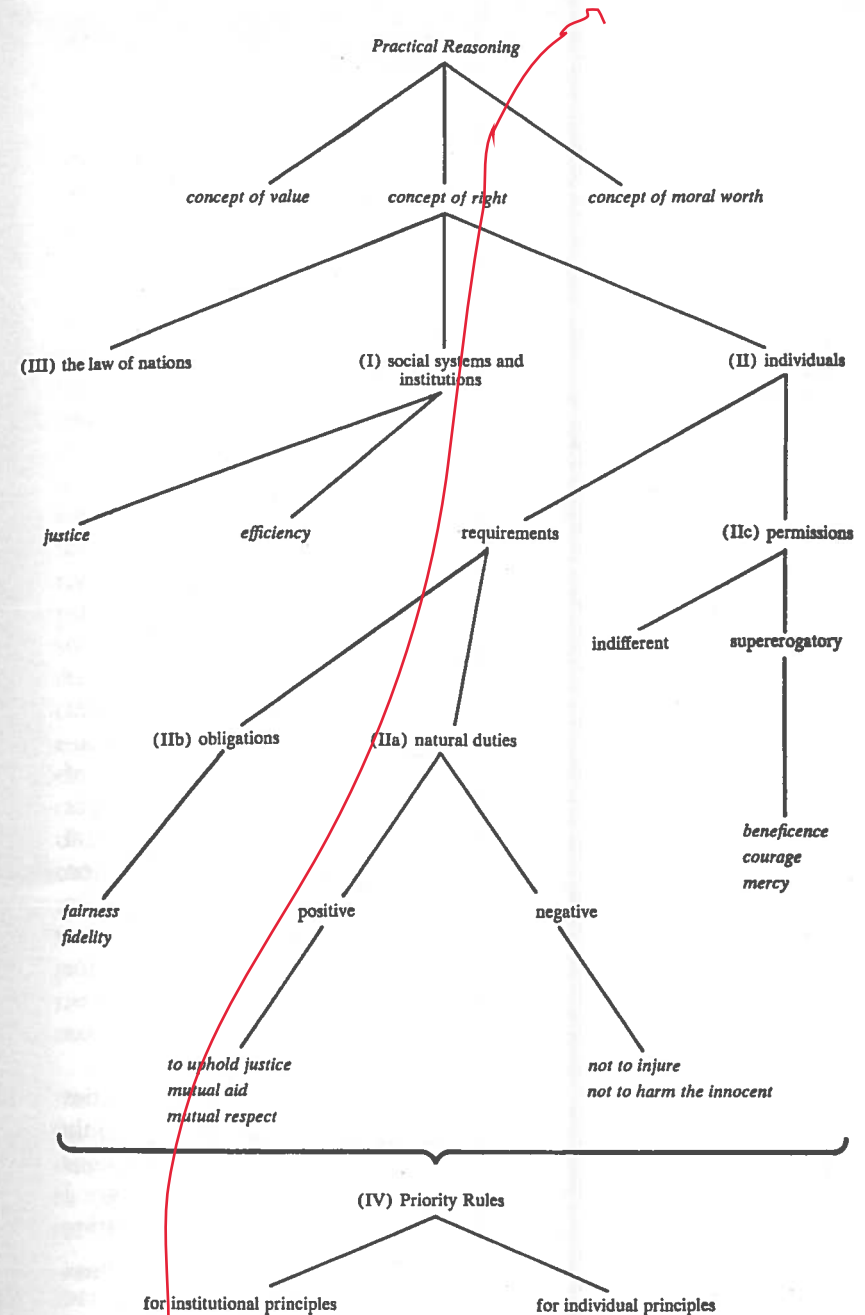
24. See Theodosius Dobzhansky, *Mankind Evolving* (New Haven, Yale University Press, 1962), pp. 242-252, for a discussion of this question.

it is also in the interest of each to have greater natural assets. This enables him to pursue a preferred plan of life. In the original position, then, the parties want to insure for their descendants the best genetic endowment (assuming their own to be fixed). The pursuit of reasonable policies in this regard is something that earlier generations owe to later ones, this being a question that arises between generations. Thus over time a society is to take steps at least to preserve the general level of natural abilities and to prevent the diffusion of serious defects. These measures are to be guided by principles that the parties would be willing to consent to for the sake of their successors. I mention this speculative and difficult matter to indicate once again the manner in which the difference principle is likely to transform problems of social justice. We might conjecture that in the long run, if there is an upper bound on ability, we would eventually reach a society with the greatest equal liberty the members of which enjoy the greatest equal talent. But I shall not pursue this thought further.

18. PRINCIPLES FOR INDIVIDUALS: THE PRINCIPLE OF FAIRNESS

In the discussion so far I have considered the principles which apply to institutions or, more exactly, to the basic structure of society. It is clear, however, that principles of another kind must also be chosen, since a complete theory of right includes principles for individuals as well. In fact, as the accompanying diagram indicates, one needs in addition principles for the law of nations and of course priority rules for assigning weights when principles conflict. I shall not take up the principles for the law of nations, except in passing (§ 58); nor shall I attempt any systematic discussion of the principles for individuals. But certain principles of this type are an essential part of any theory of justice. In this and the next section the meaning of several of these principles is explained, although the examination of the reasons for choosing them is postponed until later (§§ 51–52).

The accompanying diagram is purely schematic. It is not suggested that the principles associated with the concepts lower down



right form when they exemplify the general conception of justice as it is to be interpreted in the light of the difference principle and the lexical ordering to which it tends. Infringements of fair equality of opportunity are not justified by a greater sum of advantages enjoyed by others or by society as a whole. The claim (whether correct or not) must be that the opportunities of the least favored sectors of the community would be still more limited if these inequalities were removed. One is to hold that they are not unjust, since the conditions for achieving the full realization of the principles of justice do not exist.

Having noted these cases of priority, I now wish to give the final statement of the two principles of justice for institutions. For the sake of completeness, I shall give a full statement including earlier formulations.

First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle

Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

First Priority Rule (The Priority of Liberty)

The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases:

- (a) a less extensive liberty must strengthen the total system of liberty shared by all;
- (b) a less than equal liberty must be acceptable to those with the lesser liberty.

Second Priority Rule (The Priority of Justice over Efficiency and Welfare)

The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and

fair opportunity is prior to the difference principle. There are two cases:

- (a) an inequality of opportunity must enhance the opportunities of those with the lesser opportunity;
- (b) an excessive rate of saving must on balance mitigate the burden of those bearing this hardship.

General Conception

All social primary goods—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 goods is to the advantage of the least favored.

By way of comment, these principles and priority rules are no doubt incomplete. Other modifications will surely have to be made, but I shall not further complicate the statement of the principles. It suffices to observe that when we come to nonideal theory, we do not fall back straightway upon the general conception of justice. The lexical ordering of the two principles, and the valuations that this ordering implies, suggest priority rules which seem to be reasonable enough in many cases. By various examples I have tried to illustrate how these rules can be used and to indicate their plausibility. Thus the ranking of the principles of justice in ideal theory reflects back and guides the application of these principles to nonideal situations. It identifies which limitations need to be dealt with first. The drawback of the general conception of justice is that it lacks the definite structure of the two principles in serial order. In more extreme and tangled instances of nonideal theory there may be no alternative to it. At some point the priority of rules for nonideal cases will fail; and indeed, we may be able to find no satisfactory answer at all. But we must try to postpone the day of reckoning as long as possible, and try to arrange society so that it never comes.

47. THE PRECEPTS OF JUSTICE

The sketch of the system of institutions that satisfies the two principles of justice is now complete. Once the just rate of savings is

ascertained or the appropriate range of rates specified, we have a criterion for adjusting the level of the social minimum. The sum of transfers and benefits from essential public goods should be arranged so as to enhance the expectations of the least favored consistent with the required savings and the maintenance of equal liberties. When the basic structure takes this form the distribution that results will be just (or at least not unjust) whatever it is. Each receives that total income (earnings plus transfers) to which he is entitled under the public system of rules upon which his legitimate expectations are founded.

Now, as we saw earlier (§ 14), a central feature of this conception of distributive justice is that it contains a large element of pure procedural justice. No attempt is made to define the just distribution of goods and services on the basis of information about the preferences and claims of particular individuals. This sort of knowledge is regarded as irrelevant from a suitably general point of view; and in any case, it introduces complexities that cannot be handled by principles of tolerable simplicity to which men might reasonably be expected to agree. But if the notion of pure procedural justice is to succeed, it is necessary, as I have said, to set up and to administer impartially a just system of surrounding institutions. The reliance on pure procedural justice presupposes that the basic structure satisfies the two principles.

This account of distributive shares is simply an elaboration of the familiar idea that income and wages will be just once a (workably) competitive price system is properly organized and embedded in a just basic structure. These conditions are sufficient. The distribution that results is a case of background justice on the analogy with the outcome of a fair game. But we need to consider whether this conception fits our intuitive ideas of what is just and unjust. In particular we must ask how well it accords with common sense precepts of justice. It seems as if we have ignored these notions altogether. I now wish to show that they can be accounted for and their subordinate place explained.

The problem may be stated in the following way. Mill argued correctly that so long as one remains at the level of common sense precepts, no reconciliation of these maxims of justice is possible. For example, in the case of wages, the precepts to each according

to his effort and to each according to his contribution are contrary injunctions taken by themselves. Moreover, if we wish to assign them certain weights, they provide no way to determine how their relative merits are to be ascertained. Thus common sense precepts do not express a determinate theory of just or fair wages.³² It does not follow, though, as Mill seems to suppose, that one can find a satisfactory conception only by adopting the utilitarian principle. Some higher principle is indeed necessary; but there are other alternatives than that of utility. It is even possible to elevate one of these precepts, or some combination of them, to the level of a first principle, as when it is said: from each according to his ability, to each according to his needs.³³ From the standpoint of the theory of justice, the two principles of justice define the correct higher criterion. Therefore the problem is to consider whether the common sense precepts of justice would arise in a well-ordered society and how they would receive their appropriate weights.

Consider the case of wages in a perfectly competitive economy surrounded by a just basic structure. Assume that each firm (whether publicly or privately owned) must adjust its rates of pay to the long-run forces of supply and demand. The rates firms pay cannot be so high that they cannot afford paying those rates or so low that a sufficient number will not offer their skills in view of the other opportunities available. In equilibrium the relative attractiveness of different jobs will be equal, all things considered. It is easy, then, to see how the various precepts of justice arise. They simply identify features of jobs that are significant on either the demand or the supply side of the market, or both. A firm's demand for workers is determined by the marginal productivity of labor, that is, by the net value of the contribution of a unit of labor measured by the sale price of the commodities that it produces. The worth of this contribution to the firm rests eventually on market conditions, on what households are willing to pay for various goods. Experience and training, natural ability and special

32. *Utilitarianism*, ch. V, par. 30.

33. This precept is cited by Marx in his *Critique of the Gotha Program*, in *Karl Marx and Frederick Engels, Selected Works* (Moscow, Foreign Languages Publishing House, 1955), vol. II, p. 24.

know-how, tend to earn a premium. Firms are willing to pay more to those with these characteristics because their productivity is greater. This fact explains and gives weight to the precept to each according to his contribution, and as special cases, we have the norms to each according to his training, or his experience, and the like. But also, viewed from the supply side, a premium must be paid if those who may later offer their services are to be persuaded to undertake the costs of training and postponement. Similarly jobs which involve uncertain or unstable employment, or which are performed under hazardous and unpleasantly strenuous conditions, tend to receive more pay. Otherwise men cannot be found to fill them. From this circumstance arise such precepts as to each according to his effort, or the risks he bears, and so on. Even when individuals are assumed to be of the same natural ability, these norms will still arise from the requirements of economic activity. Given the aims of productive units and of those seeking work, certain characteristics are singled out as relevant. At any time the wage practices of firms tend to recognize these precepts and, allowing time for adjustment, assign them the weights called for by market conditions.

All of this seems reasonably clear. More important are several further points. For one thing, different conceptions of justice are likely to generate much the same common sense precepts. Thus in a society regulated by the principle of utility all of the above norms would most likely be recognized. So long as the aims of economic agents are sufficiently similar, these precepts are bound to be appealed to, and wage practices will explicitly take them into account. On the other hand, the weights that are assigned to these precepts will not in general be the same. It is here that conceptions of justice diverge. Not only will there be a tendency to operate wage practices in other ways, but the long-term trend of economic events will almost certainly take another course. When the family of background institutions is governed by distinct conceptions, the market forces to which firms and workers have to adjust will not be the same. A different balance of supply and demand will see to it that the various precepts are balanced differently. Thus the contrast between conceptions of justice does not show up at the level of common sense norms but rather in the

relative and changing emphasis that these norms receive over time. In no case can the customary or conventional notion of a fair or just balancing be taken as fundamental, since it will depend upon the principles regulating the background system and the adjustments which they require to current conditions.

An example may clarify this point. Suppose that the basic structure of one society provides for fair equality of opportunity while that of a second society does not. Then in the first society the precept to each according to his contribution in the particular form of each according to his training and education will probably receive much less weight. This is likely to be true even if we suppose, as the facts suggest, that persons have different natural abilities. The reason for this is that with many more persons receiving the benefits of training and education, the supply of qualified individuals in the first society is much greater. When there are no restrictions on entry or imperfections in the capital market for loans (or subsidies) for education, the premium earned by those better endowed is far less. The relative difference in earnings between the more favored and the lowest income class tends to close; and this tendency is even stronger when the difference principle is followed. Thus the precept to each according to his training and education is weighted less in the first than in the second society and the precept to each according to his effort is weighted more. Of course, a conception of justice requires that when social conditions change the appropriate balance of precepts normally changes as well. Over time the consistent application of its principles gradually reshapes the social structure so that market forces also shift, thereby resetting the weight of precepts. There is nothing sacrosanct about the existing balance even if it is correct.

Moreover, it is essential to keep in mind the subordinate place of common sense norms. Doing this is sometimes difficult because they are familiar from everyday life and therefore they are likely to have a prominence in our thinking that their derivative status does not justify. None of these precepts can be plausibly raised to a first principle. Each has presumably arisen in answer to a relevant feature connected with certain particular institutions, this feature being but one among many and these institutions of a

special kind. Adopting one of them as a first principle is sure to lead to the neglect of other things that should be taken into account. And if all or many precepts are treated as first principles, there is no gain in systematic clarity. Common sense precepts are at the wrong level of generality. In order to find suitable first principles one must step behind them. Admittedly some precepts appear quite general at first. For example, the precept to each according to his contribution covers many cases of distribution in a perfectly competitive economy. Accepting the marginal productivity theory of distribution, each factor of production receives an income according to how much it adds to output (assuming private property in the means of production). In this sense, a worker is paid the full value of the results of his labor, no more and no less. Offhand this strikes us as fair. It appeals to a traditional idea of the natural right of property in the fruits of our labor. Therefore to some writers the precept of contribution has seemed satisfactory as a principle of justice.³⁴

It is easy to see, however, that this is not the case. The marginal product of labor depends upon supply and demand. What an individual contributes by his work varies with the demand of firms for his skills, and this in turn varies with the demand for the products of firms. An individual's contribution is also affected by how many offer similar talents. There is no presumption, then, that following the precept of contribution leads to a just outcome unless the underlying market forces, and the availability of opportunities which they reflect, are appropriately regulated. And this implies, as we have seen, that the basic structure as a whole is just. There is no way, then, to give a proper weight to the precepts of justice except by instituting the surrounding arrangements required by the principles of justice. Some institutions may indeed give a special prominence to certain precepts, in the way for example that a competitive economy emphasizes the precept of contribution. But no inference about the justice of the final distribution can be drawn from viewing the use of any precept in isolation. The overall weighting of the many precepts is done by the whole

34. J. B. Clark is often cited as an example. But see the discussion by J. M. Clark in *The Development of Economic Thought*, ed. H. W. Spiegel (New York, John Wiley and Sons, 1952), pp. 598-612.

system. Thus the precept of need is left to the transfer branch; it does not serve as a precept of wages at all. To assess the justice of distributive shares, we must note the total working of the background arrangements, the proportion of income and wealth deriving from each branch.³⁵

It may be objected to the preceding account of the common sense precepts and to the idea of pure procedural justice that a perfectly competitive economy can never be realized. Factors of production never in fact receive their marginal products, and under modern conditions anyway industries soon come to be dominated by a few large firms. Competition is at best imperfect and persons receive less than the value of their contribution, and in this sense they are exploited.³⁶ The reply to this is first that in any case the conception of a suitably regulated competitive economy with the appropriate background institutions is an ideal scheme which shows how the two principles of justice might be realized. It serves to illustrate the content of these principles, and brings out one way in which either a private-property economy or a socialist regime can satisfy this conception of justice. Granting that existing conditions always fall short of the ideal assumptions, we have some notion of what is just. Moreover we are in a better position to assess how serious the existing imperfections are and to decide upon the best way to approximate the ideal.

A second point is this. The sense in which persons are exploited by market imperfections is a highly special one: namely, the precept of contribution is violated, and this happens because the price system is no longer efficient. But as we have just seen, this precept is but one among many secondary norms, and what really counts is the workings of the whole system and whether these defects are compensated for elsewhere. Furthermore, since it is essentially the principle of efficiency that is not fulfilled, one might as well say that the whole community is exploited. But in

35. Thus J. B. Clark's mistake in his reply to Marx is his failure to consider sufficiently the question of background justice. See J. M. Clark, *ibid.*, pp. 610f. Marxian exploitation is compatible with perfect competition, since it is the outcome of a certain structure of property relations.

36. For this definition of exploitation, see A. C. Pigou, *The Economics of Welfare*, 4th ed. (London, Macmillan, 1932), pp. 549-551.

fact the notion of exploitation is out of place here. It implies a deep injustice in the background system and has little to do with the inefficiencies of markets.³⁷

Finally, in view of the subordinate place of the principle of efficiency in justice as fairness, the inevitable deviations from market perfection are not especially worrisome. It is more important that a competitive scheme gives scope for the principle of free association and individual choice of occupation against a background of fair equality of opportunity, and that it allows the decisions of households to regulate the items to be produced for private purposes. A basic prerequisite is the compatibility of economic arrangements with the institutions of liberty and free association. Thus if markets are reasonably competitive and open, the notion of pure procedural justice is a feasible one to follow. It seems more practicable than other traditional ideals, being explicitly framed to coordinate the multitude of possible criteria into one coherent and workable conception.

48. LEGITIMATE EXPECTATIONS AND MORAL DESERT

There is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert. Justice is happiness according to virtue. While it is recognized that this ideal can never be fully carried out, it is the appropriate conception of distributive justice, at least as a *prime facie* principle, and society should try to realize it as circumstances permit.³⁸ Now justice as fairness rejects this conception. Such a principle would not be chosen in the original position. There seems to be no way of defining the requisite criterion

37. See Mark Blaug, *Economic Theory in Retrospect*, pp. 434f.

38. See, for example, W. D. Ross, *The Right and the Good* (Oxford, The Clarendon Press, 1930), pp. 21, 26–28, 35, 57f. Similarly, Leibniz in "On the Ultimate Origin of Things" (1697) speaks of the law of justice which "declares that each one [each individual] participate in the perfection of the universe and in a happiness of his own in proportion to his own virtue and to the good will he entertains toward the common good." *Leibniz*, ed. P. P. Wiener (New York, Charles Scribner's Sons, 1951), p. 353.

in that situation. Moreover, the notion of distribution according to virtue fails to distinguish between moral desert and legitimate expectations. Thus it is true that as persons and groups take part in just arrangements, they acquire claims on one another defined by the publicly recognized rules. Having done various things encouraged by the existing arrangements, they now have certain rights, and just distributive shares honor these claims. A just scheme, then, answers to what men are entitled to; it satisfies their legitimate expectations as founded upon social institutions. But what they are entitled to is not proportional to nor dependent upon their intrinsic worth. The principles of justice that regulate the basic structure and specify the duties and obligations of individuals do not mention moral desert, and there is no tendency for distributive shares to correspond to it.

This contention is borne out by the preceding account of common sense precepts and their role in pure procedural justice (§47). For example, in determining wages a competitive economy gives weight to the precept of contribution. But as we have seen, the extent of one's contribution (estimated by one's marginal productivity) depends upon supply and demand. Surely a person's moral worth does not vary according to how many offer similar skills, or happen to want what he can produce. No one supposes that when someone's abilities are less in demand or have deteriorated (as in the case of singers) his moral deservingness undergoes a similar shift. All of this is perfectly obvious and has long been agreed to.³⁹ It simply reflects the fact noted before (§17) that it is one of the fixed points of our moral judgments that no one deserves his place in the distribution of natural assets any more than he deserves his initial starting place in society.

Moreover, none of the precepts of justice aims at rewarding virtue. The premiums earned by scarce natural talents, for example, are to cover the costs of training and to encourage the efforts of learning, as well as to direct ability to where it best furthers the common interest. The distributive shares that result do not correlate with moral worth, since the initial endowment of natural assets and the contingencies of their growth and nurture

39. See F. H. Knight, *The Ethics of Competition* (New York, Harper and Brothers, 1935), pp. 54–57.

in early life are arbitrary from a moral point of view. The precept which seems intuitively to come closest to rewarding moral desert is that of distribution according to effort, or perhaps better, conscientious effort.⁴⁰ Once again, however, it seems clear that the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously, and there seems to be no way to discount for their greater good fortune. The idea of rewarding desert is impracticable. And certainly to the extent that the precept of need is emphasized, moral worth is ignored. Nor does the basic structure tend to balance the precepts of justice so as to achieve the requisite correspondence behind the scenes. It is regulated by the two principles of justice which define other aims entirely.

The same conclusion may be reached in another way. In the preceding remarks the notion of moral worth as distinct from a person's claims based upon his legitimate expectations has not been explained. Suppose, then, that we define this notion and show that it has no correlation with distributive shares. We have only to consider a well-ordered society, that is, a society in which institutions are just and this fact is publicly recognized. Its members also have a strong sense of justice, an effective desire to comply with the existing rules and to give one another that to which they are entitled. In this case we may assume that everyone is of equal moral worth. We have now defined this notion in terms of the sense of justice, the desire to act in accordance with the principles that would be chosen in the original position (§72). But it is evident that understood in this way, the equal moral worth of persons does not entail that distributive shares are equal. Each is to receive what the principles of justice say he is entitled to, and these do not require equality.

The essential point is that the concept of moral worth does not provide a first principle of distributive justice. This is because it cannot be introduced until after the principles of justice and of natural duty and obligation have been acknowledged. Once these principles are on hand, moral worth can be defined as having a

40. See Knight, *ibid.*, p. 56n.

sense of justice; and as I shall discuss later (§66), the virtues can be characterized as desires or tendencies to act upon the corresponding principles. Thus the concept of moral worth is secondary to those of right and justice, and it plays no role in the substantive definition of distributive shares. The case is analogous to the relation between the substantive rules of property and the law of robbery and theft. These offenses and the demerits they entail presuppose the institution of property which is established for prior and independent social ends. For a society to organize itself with the aim of rewarding moral desert as a first principle would be like having the institution of property in order to punish thieves. The criterion to each according to his virtue would not, then, be chosen in the original position. Since the parties desire to advance their conceptions of the good, they have no reason for arranging their institutions so that distributive shares are determined by moral desert, even if they could find an antecedent standard for its definition.

In a well-ordered society individuals acquire claims to a share of the social product by doing certain things encouraged by the existing arrangements. The legitimate expectations that arise are the other side, so to speak, of the principle of fairness and the natural duty of justice. For in the way that one has a duty to uphold just arrangements, and an obligation to do one's part when one has accepted a position in them, so a person who has complied with the scheme and done his share has a right to be treated accordingly by others. They are bound to meet his legitimate expectations. Thus when just economic arrangements exist, the claims of individuals are properly settled by reference to the rules and precepts (with their respective weights) which these practices take as relevant. As we have seen, it is incorrect to say that just distributive shares reward individuals according to their moral worth. But what we can say is that, in the traditional phrase, a just scheme gives each person his due: that is, it allots to each what he is entitled to as defined by the scheme itself. The principles of justice for institutions and individuals establish that doing this is fair.

Now it should be noted that even though a person's claims are regulated by the existing rules, we can still make a distinction be-

tween being entitled to something and deserving it in a familiar although nonmoral sense.⁴¹ To illustrate, after a game one often says that the losing side deserved to win. Here one does not mean that the victors are not entitled to claim the championship, or whatever spoils go to the winner. One means instead that the losing team displayed to a higher degree the skills and qualities that the game calls forth, and the exercise of which gives the sport its appeal. Therefore the losers truly deserved to win but lost out as a result of bad luck, or from other contingencies that caused the contest to miscarry. Similarly even the best economic arrangements will not always lead to the more preferred outcomes. The claims that individuals actually acquire inevitably deviate more or less widely from those that the scheme is designed to allow for. Some persons in favored positions, for example, may not have to a higher degree than others the desired qualities and abilities. All this is evident enough. Its bearing here is that although we can indeed distinguish between the claims that existing arrangements require us to honor, given what individuals have done and how things have turned out, and the claims that would have resulted under more ideal circumstances, none of this implies that distributive shares should be in accordance with moral worth. Even when things happen in the best way, there is still no tendency for distribution and virtue to coincide.

No doubt some may still contend that distributive shares should match moral worth at least to the extent that this is feasible. They may believe that unless those who are better off have superior moral character, their having greater advantages is an affront to our sense of justice. Now this opinion may arise from thinking of distributive justice as somehow the opposite of retributive justice. It is true that in a reasonably well-ordered society those who are punished for violating just laws have normally done something wrong. This is because the purpose of the criminal law is to uphold basic natural duties, those which forbid us to injure other persons in their life and limb, or to deprive them of their liberty and property, and punishments are to serve this end. They are not simply a scheme of taxes and burdens designed to put a price on

41. Here I borrow from Joel Feinberg, *Doing and Deserving* (Princeton, Princeton University Press, 1970), pp. 64f.

certain forms of conduct and in this way to guide men's conduct for mutual advantage. It would be far better if the acts proscribed by penal statutes were never done.⁴² Thus a propensity to commit such acts is a mark of bad character, and in a just society legal punishments will only fall upon those who display these faults.

It is clear that the distribution of economic and social advantages is entirely different. These arrangements are not the converse, so to speak, of the criminal law, so that just as the one punishes certain offenses, the other rewards moral worth.⁴³ The function of unequal distributive shares is to cover the costs of training and education, to attract individuals to places and associations where they are most needed from a social point of view, and so on. Assuming that everyone accepts the propriety of self- or group-interested motivation duly regulated by a sense of justice, each decides to do those things that best accord with his aims. Variations in wages and income and the perquisites of position are simply to influence these choices so that the end result accords with efficiency and justice. In a well-ordered society there would be no need for the penal law except insofar as the assurance problem made it necessary. The question of criminal justice belongs for the most part to partial compliance theory, whereas the account of distributive shares belongs to strict compliance theory and so to the consideration of the ideal scheme. To think of distributive and retributive justice as converses of one another is completely misleading and suggests a different justification for distributive shares than the one they in fact have.

49. COMPARISON WITH MIXED CONCEPTIONS

While I have often compared the principles of justice with utilitarianism, I have not yet said anything about the mixed conceptions. It will be recalled that these are defined by substituting the standard of utility and other criteria for the second principle of

42. See H. L. A. Hart, *The Concept of Law* (Oxford, The Clarendon Press, 1961), p. 39; and Feinberg, *Doing and Deserving*, ch. V.

43. On this point, see Feinberg, *ibid.*, pp. 62, 69n.