

and their first child, so long as the utility of each additional child outweighs the loss to the existing family members.

I will let readers judge for themselves whether this is a plausible argument for teleological utilitarianism. In so far as people think the woman should delay her pregnancy, I suspect this is partly for prudential rather than moral reasons (i.e. we think she herself will be better off if she delays the pregnancy), and also partly because people wrongly think that it would be the same child born two months later, and hence that that particular child is harmed by being brought into the world 'too early'. Once we filter out the prudential reasons, and clarify that it would be an entirely different child born (i.e. the product of a different egg and sperm), then it is far from clear that there is anything morally wrong in consciously choosing to have a child who will be less happy than some other child one could have conceived.

16. Critics of utilitarianism also conflate the two versions. This is true, for example, of Rawls's claim that utilitarians ignore the separateness of persons. According to Rawls, utilitarians endorse the principle of maximizing utility because they generalize from the one-person case (it is rational for each individual to maximize her happiness), to the many-person case (it is rational for society to maximize its happiness). Rawls objects to this generalization because it treats society as if it were a single person, and so ignores the difference between trade-offs within one person's life and trade-offs across lives (Rawls 1971: 27; cf. Nozick 1974: 32–3; Gordon 1980: 40; Mackie 1984: 86–7). However, neither the egalitarian nor the teleological version of utilitarianism makes this generalization, and Rawls's claim rests on a conflation of the two. On this, see Kymlicka 1988*b*: 182–5; Freeman 1994; Cummins 1990; Quinn 1993.

17. This is only part of what equality requires, for there are obligations to those who are unable to help themselves, and Good Samaritan obligations to those who are in dire need. In these cases, we have obligations that are not tied to respecting people's rightful claims. I return to these issues in Chapter 9.

18. This shows why it is wrong to claim that Dworkin's egalitarian plateau is 'purely formal' or 'empty' since it is compatible with many different kinds of distributions (Hart 1979: 95–6; Goodin 1982: 89–90; Mapel 1989: 54; Larmore 1987: 62; Raz 1986: ch. 9). As Dworkin notes, this objection 'misunderstands the role of abstract concepts in political theory and debate' (Dworkin 1977: 368). The idea of treating people as equals is abstract, but not formal—on the contrary, it is a substantive ideal that excludes some theories (e.g. racist ones), and that sets a standard to which other theories aspire. The fact that an abstract concept needs to be interpreted, and that different theories interpret it in different ways, does not show that the concept is empty, or that one interpretation of that concept is as good as any other.

19. For example, Bailey defends a form of utilitarianism, but suggests that it is only appropriate for 'marginal' rather than 'global' analysis—i.e. we should not attempt to design institutions *de novo* on the basis of utilitarian principles, but should only invoke utilitarianism to make marginal changes to existing institutions if and when they start to fail due to changed circumstances (Bailey 1997: 15).

# 3

## LIBERAL EQUALITY

### 1. RAWLS'S PROJECT

#### (a) Intuitionism and utilitarianism

In the last chapter I argued that we need some or other theory of fair shares prior to the calculation of utility, for there are limits to the way individuals can be legitimately sacrificed for the benefit of others. If we are to treat people as equals, we must protect them in their possession of certain rights and liberties. But which rights and liberties?

Most of the political philosophy written in the last thirty years has been on this question. There are some people, as we have seen, who continue to defend utilitarianism. But there has been a marked shift away from the 'once widely-accepted old faith that some form of utilitarianism, if only we could discover the right form, *must* capture the essence of political morality' (Hart 1979: 77), and most contemporary political philosophers have hoped to find a systematic alternative to utilitarianism. John Rawls was one of the first to present such an alternative in his 1971 book *A Theory of Justice*. Many others had written about the counter-intuitive nature of utilitarianism. But Rawls starts his book by complaining that political theory was caught between two extremes: utilitarianism on the one side, and an incoherent jumble of ideas and principles on the other. Rawls calls this second option 'intuitionism', an approach which is little more than a series of anecdotes based on particular intuitions about particular issues.

Intuitionism is an unsatisfying alternative to utilitarianism, for while we do indeed have anti-utilitarian intuitions on particular issues, we also want an alternative theory which makes sense of those intuitions. We want a theory which shows why these particular examples elicit disapproval in us. But 'intuitionism' never gets beyond, or underneath, these initial intuitions to show how they are related, or to provide principles that underlie and give structure to them.

Rawls describes intuitionist theories as having two features:

first, they consist of a plurality of first principles which may conflict to give contrary directives in particular types of cases; and second, they include no explicit method, no priority rules, for weighing these principles against one another: we are simply to strike a balance by intuition, by what seems to us most nearly right. Or if there are priority rules, these are thought to be more or less trivial and of no substantial assistance in reaching a judgment. (1971: 34)

There are many kinds of intuitionism, which can be distinguished by the level of generality of their principles.

Common sense intuitionism takes the form of groups of rather specific precepts, each group applying to a particular problem of justice. There is a group of precepts which applies to the question of fair wages, another to that of taxation, still another to punishment, and so on. In arriving at the notion of a fair wage, say, we are to balance somehow various competing criteria, for example, the claims of skill, training, effort, responsibility, and the hazards of the job, as well as to make some allowance for need. No one presumably would decide by any one of these precepts alone, and some compromise between them must be struck. (1971: 35)

But the various principles can also be of a much more general nature. Thus it is common for people to talk about intuitively balancing equality and liberty, or equality and efficiency, and these principles would apply to the entire range of a theory of justice (1971: 36–7). These intuitionist approaches, whether at the level of specific precepts or general principles, are not only theoretically unsatisfying, but are also quite unhelpful in practical matters. For they give us no guidance when these specific and irreducible precepts conflict. Yet it is precisely when they conflict that we look to political theory for guidance.

It is important, therefore, to try to establish some priority amongst these conflicting precepts. This is the task Rawls sets himself—to develop a systematic political theory that structures our different intuitions. He does not assume that there is such a theory, but only that it is worth trying to find one:

Now there is nothing intrinsically irrational about this intuitionist doctrine. Indeed, it may be true. We cannot take for granted that there must be a complete derivation of our judgments of social justice from recognizable ethical principles. The intuitionist believes to the contrary that the complexity of the moral facts defies our efforts to give a full account of our judgments and necessitates a plurality of competing principles. He contends that attempts to go beyond these principles either reduce to triviality, as when it is said that social justice is to give every man his due, or else lead to falsehood and oversimplification, as when one settles everything by the principle of utility. The only way therefore to dispute intuitionism is to set forth the recognizably ethical criteria that account for the weights which, in our considered judgments, we think appropriate to give to the plurality of principles. A refutation of intuitionism consists in presenting the sort of constructive criteria that are said not to exist. (1971: 39)

Rawls, then, has a certain historical importance in breaking the intuitionism–utilitarianism deadlock. But his theory is important for another reason. His theory dominates the field, not in the sense of commanding agreement, for very few people agree with all of it, but in the sense that later theorists have defined themselves in opposition to Rawls. They explain what their theory is by contrasting it with Rawls's theory. We will not be able to make sense of later work on justice if we do not understand Rawls.

### (b) The principles of justice

In presenting Rawls's ideas, I will first give his answer to the question of justice, and then discuss the two arguments he gives for that answer. His 'general conception of justice' consists of one central idea: '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' (1971: 303). In this 'general conception', Rawls ties the idea of justice to an equal share of social goods, but he adds an important twist. We treat people as equals not by removing all inequalities, but only those which disadvantage someone. If certain inequalities benefit everyone, by drawing out socially useful talents and energies, then they will be acceptable to everyone. If giving someone else more money than I have promotes my interests, then equal concern for my interests suggests that we allow, rather than prohibit, that inequality. Inequalities are allowed if they *improve* my initially equal share, but are not allowed if, as in utilitarianism, they *invade* my fair share. We can think of this, Rawls says, as giving the less well off a kind of veto over inequalities, which they would exercise to reject any inequalities which sacrifice, rather than promote, their interests (Rawls 1978: 64). That is the single, simple idea at the heart of Rawls's theory.

However, this general conception is not yet a full theory of justice, for the various goods being distributed according to that principle may conflict. For example, we might be able to increase someone's income by depriving them of one of their basic liberties. This unequal distribution of liberty favours the least well off in one way (income) but not in another (liberty). Or what if an unequal distribution of income benefits everyone in terms of income, but creates an inequality in opportunity which disadvantages those with less income? Do these improvements in income outweigh disadvantages in liberty or opportunity? The general conception leaves these questions unresolved, and so does not solve the problem which made intuitionist theories unhelpful.

We need a system of priority amongst the different elements in the theory. Rawls's solution is to break down the general conception into three parts, which are arranged according to a principle of 'lexical priority'.

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, 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.

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. (1971: 302-3)

These principles form the 'special conception' of justice, and they seek to provide the systematic guidance that intuitionism could not give us. According to these principles, some social goods are more important than others, and so cannot be sacrificed for improvements in those other goods. Equal liberties take precedence over equal opportunity which takes precedence over equal resources. But within each category Rawls's simple idea remains—an inequality is only allowed if it benefits the least well off. So the priority rules do not affect the basic principle of fair shares that remains within each category.

These two principles are Rawls's answer to the question of justice. But we have not yet seen his argument for them. In fact he has two different arguments, which I will examine in turn. I will focus on Rawls's arguments for the second principle—which he calls the 'difference principle'—governing the distribution of economic resources. I will not discuss the liberty principle, or why Rawls gives priority to it, until later chapters. However, it is important to note that Rawls is not endorsing a general principle of liberty, such that anything that can plausibly be called a liberty is to be given overriding priority. Rather, he is giving special protection to what he calls the 'basic liberties', by which he means the standard civil and political rights recognized in liberal democracies—the right to vote, to run for office, due process, free speech, mobility etc. (1971: 61). These rights are very important to liberalism—indeed, one way of differentiating liberalism just is that it gives priority to the basic liberties.

However, the assumption that civil and political rights should have priority is widely shared in our society. As a result, the disputes between Rawls and his critics have tended to be on other issues. The idea that people should have their basic liberties protected is the least contentious part of his theory. But my rejection of utilitarianism was based on the need for a theory of fair shares in economic resources as well, and that is more controversial. Some people reject the idea of a theory of fair shares of economic resources, and those who

accept it have very different views about what form such a theory should take. This question of resource distribution is central to the shift from utilitarianism to the other theories of justice we will be examining. So I will concentrate for now on Rawls's account of the difference principle.

Rawls has two arguments for his principles of justice. One is to contrast his theory with what he takes to be the prevailing ideology concerning distributive justice—namely, the ideal of equality of opportunity. He argues that his theory better fits our considered intuitions concerning justice, and that it gives a better spelling-out of the very ideals of fairness that the prevailing ideology appeals to. The second argument is quite different. Rawls argues that his principles of justice are superior because they are the outcome of a hypothetical social contract. He claims that if people in a certain kind of pre-social state had to decide which principles should govern their society, they would choose his principles. Each person in what Rawls calls the 'original position' has a rational interest in adopting Rawlsian principles for the governing of social cooperation. This second argument has received the most critical attention, and is the one which Rawls is most famous for. But it is not an easy argument to interpret, and we can get a better handle on it if we begin with the first argument.<sup>1</sup>

## 2. THE INTUITIVE EQUALITY OF OPPORTUNITY ARGUMENT

The prevailing justification for economic distribution in our society is based on the idea of 'equality of opportunity'. Inequalities of income and prestige etc. are assumed to be justified if and only if there was fair competition in the awarding of the offices and positions that yield those benefits. It is acceptable to pay someone \$100,000 when the national average is \$20,000 if there was fair equality of opportunity—that is, if no one was disadvantaged by their race, or sex, or social background. Such an unequal income is just regardless of whether or not the less well off benefit from that inequality. (This is what Mackie meant by a 'right to a fair go'—see Ch. 2, p. 40 above).

This conflicts with Rawls's theory, for while Rawls also requires equality of opportunity in allotting positions, he denies that the people who fill the positions are thereby entitled to a greater share of society's resources. A Rawlsian society may pay such people more than average, but only if it benefits all members of society to do so. Under the difference principle, people only have a claim to a greater share of resources if they can show that it benefits those who have lesser shares. Under the prevailing idea of equality of opportunity, by contrast, the less well off have no veto over these inequalities, and no right to expect to benefit from them.

Why does the ideology of equal opportunity seem fair to many people in our society? Because it ensures that people's fate is determined by their choices, rather than their circumstances. If I am pursuing some personal ambition in a society that has equality of opportunity, then my success or failure will be determined by my performance, not by my race or class or sex. If I fail, it will not be because I happened to be born into the 'wrong' group. Our fate should not be privileged or disadvantaged by such morally arbitrary factors as the racial or ethnic group we were born into. In a society where no one is disadvantaged by their social circumstances, then people's fate is in their own hands. Success (or failure) will be the result of our own choices and efforts. Hence whatever success we achieve is 'earned', rather than merely endowed on us. In a society that has equality of opportunity, unequal income is fair, because success is 'merited', it goes to those who 'deserve' it.

People disagree about what is needed to ensure fair equality of opportunity. Some people believe that legal non-discrimination in education and employment is sufficient. Others argue that affirmative action programmes are required for economically and culturally disadvantaged groups, if their members are to have a genuinely equal opportunity to acquire the qualifications necessary for economic success. But the central motivating idea in each case is this: it is fair for individuals to have unequal shares of social goods if those inequalities are earned and deserved by the individual, that is, if they are the product of the individual's actions and choices. But it is unfair for individuals to be disadvantaged or privileged by arbitrary and undeserved differences in their social circumstances.

Rawls recognizes the attraction of this view. But there is another source of undeserved inequality which it ignores. It is true that social inequalities are undeserved, and hence it is unfair for one's fate to be made worse by that undeserved inequality. But the same thing can be said about inequalities in natural talents. No one deserves to be born handicapped, or with an IQ of 140, any more than they deserve to be born into a certain class or sex or race. If it is unjust for people's fate to be influenced by the latter factors, then it is unclear why the same injustice is not equally involved when people's fate is determined by the former factors. The injustice in each case is the same—distributive shares should not be influenced by factors which are arbitrary from the moral point of view. Natural talents and social circumstances are both matters of brute luck, and people's moral claims should not depend on brute luck.

Hence the prevailing ideal of equality of opportunity is 'unstable', for 'once we are troubled by the influence of either 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 to be equally arbitrary' (1971: 74–5). In fact, Dworkin says that

the undeserved character of natural assets makes the prevailing view not so much unstable as 'fraudulent' (Dworkin 1985: 207). The prevailing view suggests that removing social inequalities gives each person an equal opportunity to acquire social benefits, and hence suggests that any differences in income between individuals are earned, the product of people's effort or choices. But the naturally handicapped do not have an equal opportunity to acquire social benefits, and their lack of success has nothing to do with their choices or effort. If we are genuinely interested in removing undeserved inequalities, then the prevailing view of equality of opportunity is inadequate.

The attractive idea at the base of the prevailing view is that people's fate should be determined by their *choices*—by the decisions they make about how to lead their lives—not by the *circumstances* which they happen to find themselves in. But the prevailing view only recognizes differences in social circumstances, while ignoring differences in natural talents (or treating them as if they were one of our choices). This is an arbitrary limit on the application of its own central intuition.

How should we treat differences in natural talents? Some people, having considered the parallels between social and natural inequality, assume that no one should benefit from their natural inequalities. But as Rawls says, while

no one deserves his greater natural capacity nor merits a more favourable starting place in society . . . 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. (1971: 102)

While no one should suffer from the influence of undeserved natural inequalities, there may be cases where everyone benefits from allowing such an influence. No one deserves to benefit from their natural talents, but it is not unfair to allow such benefits when they work to the advantage of those who were less fortunate in the 'natural lottery'. And this is precisely what the difference principle says.

This is Rawls's first argument for his theory of fair shares. Under the prevailing view, talented people can naturally expect greater income. But since those who are talented do not deserve their advantages, their higher expectations 'are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society' (1971: 75). So we get to the difference principle from an examination of the prevailing view of equality of opportunity. As Rawls puts it, 'once we try to find a rendering of [the idea of equality of opportunity] 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 [difference principle] is the best choice among the . . . alternatives' (1971: 75).

That is the first argument. I think the basic premiss of the argument is correct. The prevailing view of equality of opportunity is unstable, and we should recognize that our place in the distribution of natural talents is morally arbitrary. But the conclusion is not quite right. From the fact that natural and social inequalities are arbitrary, it might follow that those kinds of inequalities should only influence distribution when it would benefit the least well off. But the difference principle says that *all* inequalities must work to the benefit of the least well off. What if I was not born into a privileged social group, and was not born with any special talents, and yet by my own choices and effort have managed to secure a larger income than others? Nothing in this argument explains why the difference principle applies to all inequalities, rather than just to those inequalities which stem from morally arbitrary factors. I will return to this point after examining the second argument.

### 3. THE SOCIAL CONTRACT ARGUMENT

Rawls considers the first argument for his principles of justice less important than the second. His main argument is a 'social contract' argument, an argument about what sort of political morality people would choose were they setting up society from an 'original position'. As Rawls says of the argument we have just looked at:

none of the preceding remarks [about equality of opportunity] are an argument for this conception [of justice], 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 favoured interpretation of the two principles of justice, so that these criteria, especially the [difference principle], will not strike the reader as too eccentric or bizarre. (1971: 75)

So Rawls conceives his first intuitive argument as simply preparing the ground for the real argument, which is based on the idea of a social contract. This is an unusual strategy, for social contract arguments are usually thought of as being weak, and Rawls seems to be relegating a fairly strong argument into a back-up role behind the weaker social contract argument.

Why are social contract arguments thought to be weak? Because they seem to rely on very implausible assumptions. They ask us to imagine a state of nature before there is any political authority. Each person is on their own, in the sense that there is no higher authority with the power to command their obedience, or with the responsibility of protecting their interests or

possessions. The question is, what kind of contract would such individuals, in the state of nature, agree to concerning the establishing of a political authority which would have these powers and responsibilities? Once we know what the terms of the contract are, we know what the government is obligated to do, and what the citizens are obliged to obey.

Different theorists have used this technique—Hobbes, Locke, Kant, Rousseau—and come up with different answers. But they have all been subject to the same criticism—namely, there never was such a state of nature, or such a contract. Hence neither citizens nor government are bound by it. Contracts only create obligations if they are actually agreed to. We can say that a certain agreement is the contract that people would have signed in some state of nature, and so is a hypothetical contract. But as Dworkin says, 'a hypothetical agreement is not simply a pale form of an actual contract; it is no contract at all' (Dworkin 1977: 151). The idea that we are bound by the contract we would have accepted in a state of nature implies

that because a man would have consented to certain principles if asked in advance, it is fair to apply those principles to him later, under different circumstances, when he does not consent. But that is a bad argument. Suppose I did not know the value of my painting on Monday; if you had offered me \$100 for it then I would have accepted. On Tuesday I discovered it was valuable. You cannot argue that it would be fair for the courts to make me sell it to you for \$100 on Wednesday. It may be my good fortune that you did not ask me on Monday, but that does not justify coercion against me later. (Dworkin 1977: 152)

Thus the idea of a social contract seems either historically absurd (if it is based on actual agreement) or morally insignificant (if it is based on hypothetical agreement).

But, as Dworkin notes, there is another way to interpret social contract arguments. We should think of the contract not primarily as an agreement, actual or hypothetical, but as a device for teasing out the implications of certain moral premisses concerning people's moral equality. We invoke the idea of a state of nature not to work out the historical origins of society, or the historical obligations of governments and individuals, but to model the idea of the moral equality of individuals.

Part of the idea of being moral equals is the claim that none of us is inherently subordinate to the will of others, none of us comes into the world as the property of another, or as their subject. We are all born free and equal. Throughout most of history, many groups have been denied this equality—in feudal societies, for example, peasants were viewed as naturally subordinate to aristocrats. It was the historical mission of classical liberals like Locke to deny this feudal premiss. And the way that they made clear their denial that some people were naturally subordinate to others was to imagine a state of nature in

which people were equal in status. As Rousseau said, 'man is born free, and yet everywhere is in chains'. The idea of a state of nature does not, therefore, represent an anthropological claim about the pre-social existence of human beings, but a moral claim about the absence of natural subordination amongst human beings.

Classical liberals were not anarchists, however, who believe that governments are never acceptable. Anarchists believe that people can never come to have legitimate authority over others, and that people can never be legitimately compelled to obey such authority. Since these liberals were not anarchists, the pressing question was to explain how people born free and equal can come to be governed. Their answer was roughly this: due to the uncertainties and scarcities of social life, individuals, without giving up their moral equality, would endorse ceding certain powers to the state, but only if the state used these powers *in trust* to protect individuals from those uncertainties and scarcities. If the government betrayed that trust and abused its powers, then the citizens were no longer under an obligation to obey, and indeed had the right to rebel. Having some people with the power to govern others is compatible with respecting moral equality because the rulers only hold this power in trust, to protect and promote the interests of the governed.

This is the kind of theory that Rawls is adapting. As he puts it, 'my aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau and Kant' (1971: 11). The point of the contract is to determine principles of justice from a position of equality: in Rawls's theory

the original position of equality corresponds to the state of nature in the traditional theory of the social contract. The original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice. (1971: 12)

While Rawls's original position 'corresponds' to the idea of state of nature, it also differs from it, for Rawls believes that the usual state of nature is not really an 'initial position of equality' (1971: 11). This is where the contract argument joins up with his intuitive argument. The usual account of the state of nature is unfair because some people have more bargaining power than others—more natural talents, initial resources, or sheer physical strength—and they are able to hold out longer for a better deal, while those who are less strong or talented have to make concessions. The uncertainties of nature affect everyone, but some people can deal better with them, and they will not agree to a social contract unless it entrenches their natural advantages. This, we know, is unfair in Rawls's eyes. Since these natural advantages are undeserved, they

should not privilege or disadvantage people in determining principles of justice.<sup>2</sup>

So a new device is needed to tease out the implications of moral equality, a device that prevents people from exploiting their arbitrary advantages in the selection of principles of justice. This is why Rawls develops the otherwise peculiar construction known as the 'original position'. In this revised original position, people are behind a 'veil of ignorance' so that

no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. (1971: 12)

Many critics have viewed this demand that people distance themselves from knowledge of their social background and individual desires as evidence of a bizarre theory of personal identity. What is left of one's self when all that knowledge is excluded? It is difficult to imagine oneself behind such a veil of ignorance, much more difficult than imagining oneself in the traditional state of nature, where the fictional people were at least relatively whole in mind and body.

But the veil of ignorance is not an expression of a theory of personal identity. It is an intuitive test of fairness, in the same way that we try to ensure a fair division of cake by making sure that the person who cuts it does not know which piece she will get.<sup>3</sup> The veil of ignorance similarly ensures that those who might be able to influence the selection process in their favour, due to their better position, are unable to do so. As Rawls says

One should not be misled, then, by the somewhat unusual conditions which characterize the original position. The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves. Thus it seems reasonable and generally accepted that no one should be advantaged or disadvantaged by natural fortune or social circumstance in the choice of principles. It also seems widely agreed that it should be impossible to tailor principles to the circumstances of one's own case . . . In this manner the veil of ignorance is arrived at in a natural way. (1971: 18–19)

The original position is intended 'to represent equality between human beings as moral persons', and the resulting principles of justice are those which people 'would consent to as equals when none are known to be advantaged by

social and natural contingencies'. We should look at the original position as 'an expository device' which 'sums up the meaning' of our notions of fairness and 'helps us to extract their consequences' (1971: 19, 21, 586).

Rawls's argument is not, then, that a certain conception of equality is derived from the idea of a hypothetical contract. That would be subject to all the criticisms that Dworkin mentions. Rather, the hypothetical contract is a way of embodying a certain conception of equality, and a way of extracting the consequences of that conception for the just regulation of social institutions. By removing sources of bias and requiring unanimity, Rawls hopes to find a solution that is acceptable to everyone from a position of equality—i.e. that respects each person's claim to be treated as a free and equal being.

Since the premiss of the argument is equality, not contract, to criticize it we need to show that it fails to embody an adequate account of equality. It is not enough—indeed, it is irrelevant—to say that the contract is historically inaccurate, or that the veil of ignorance is psychologically impossible, or that the original position is in some other way unrealistic. The question is not whether the original position could ever really exist, but whether the principles which would be chosen in it are likely to be fair, given the nature of the selection process.

Even if we accept Rawls's idea of the social contract as a device for embodying a conception of equality, it is far from clear what principles would actually be chosen in the original position. Rawls, of course, thinks that the difference principle would be chosen. But his argument here is supposed to be independent of the first intuitive argument concerning equality of opportunity. As we have seen, he does not consider that kind of argument to be relevant, 'strictly speaking', within a contract theory. So the difference principle is just one of many possible choices which parties in the original position could make.

How do the principles of justice get chosen? The basic idea is this: while we do not know what position we will occupy in society, or what goals we will have, there are certain things we will want or need to enable us to lead a good life. Whatever the differences between individuals' plans of life, they all share one thing—they all involve *leading a life*. As Waldron puts it, 'there is something like *pursuing a conception of the good life* that all people, even those with the most diverse commitments, can be said to be engaged in . . . although people do not share one another's ideals, they can at least abstract from their experience a sense of *what it is like to be committed to an ideal of the good life*' (Waldron 1987: 145; cf. Rawls 1971: 92–5, 407–16). We are all committed to an ideal of the good life, and certain things are needed in order to pursue these commitments, whatever their more particular content. In Rawls's theory, these things are called 'primary goods'. There are two kinds of primary goods:

1. social primary goods: goods that are directly distributed by social institutions, like income and wealth, opportunities and powers, rights and liberties.
2. natural primary goods: goods like health, intelligence, vigour, imagination, and natural talents, which are affected by social institutions, but are not directly distributed by them.

In choosing principles of justice, people behind the veil of ignorance seek to ensure that they will have the best possible access to those primary goods distributed by social institutions (i.e. the social primary goods). This does not mean that egoism underlies our sense of justice. Since no one knows what position they will occupy, asking people to decide what is best for themselves has the same consequence as asking them to decide what is best for everyone considered impartially. In order to decide from behind a veil of ignorance which principles will promote my good, I must put myself in the shoes of every person in society and see what promotes their good, since I may end up being any one of those people. When combined with the veil of ignorance, therefore, the assumption of rational self-interest 'achieves the same purpose as benevolence' (1971: 148), for I must sympathetically identify with every person in society and take their good into account as if my own. In this way, agreements made in the original position give equal consideration to each person.

So the parties in the original position are trying to ensure the best possible access to the primary goods that enable them to lead a worthwhile life, without knowing where they will end up in society. There are still many different principles they could choose. They might choose an equal distribution of social primary goods for all social positions. But Rawls says that this is irrational when certain kinds of inequalities—e.g. those sponsored by the difference principle—improve everyone's access to primary goods. They might choose a utilitarian principle that instructs social institutions to distribute primary goods in such a way as to maximize utility in society. This would maximize the average utility that parties in the original position could expect to have in the real world, and, on some accounts of rationality, that makes it a rational choice. But it also involves the risk that you will be one of those who is endlessly sacrificed for the greater good of others. It leaves your liberties, possessions, and even your life vulnerable to the selfish and illegitimate preferences of others. Indeed, it leaves you unprotected precisely in those situations where you are most likely to need protection—e.g. when your beliefs, skin-colour, sex, or natural abilities make you unpopular, or simply dispensable, to the majority. This makes utilitarianism an irrational choice, on some accounts of rationality, for it is rational to ensure your basic rights and resources are protected, even if you thereby lessen your chance of



receiving benefits above and beyond the basic goods that you seek to protect.

So there are conflicting accounts of what it is rational to do in such a situation—the rationality of gambling versus the rationality of playing it safe. If we knew what the odds were of having our basic rights violated in a utilitarian society, then we would have a better idea of how rational it is to take the gamble. But the veil of ignorance excludes that information. The rationality of gambling also depends on whether one is personally risk averse or not—some people do not mind taking risks, others prefer security. But the veil of ignorance excludes knowledge of personal tastes as well. What then is the rational choice? Rawls says that it is rational to adopt a ‘maximin’ strategy—that is, you *maximize* what you would get if you wound up in the *minimum*, or worst-off, position. As Rawls says, this is like proceeding on the assumption that your worst enemy will decide what place in society you will occupy (1971: 152–3). As a result, you select a scheme that maximizes the minimum share allocated under the scheme.

For example, imagine that the following are the possible distributive schemes in a three-person world:

- (a) 10:8:1
- (b) 7:6:2
- (c) 5:4:4

Rawls’s strategy tells you to pick (c). If you do not know how likely it is that you will be in the best or worst position, the rational choice according to Rawls is the third scheme. For even if you end up in the worst position, it gives you more than you would get if you were in the bottom of the other schemes.

Notice that you should pick the third scheme even though the first two schemes have a higher average utility. The problem with the first two schemes is that there is some chance, unknown in size, that your life will be completely unsatisfactory. And since each of us has only one life to lead, it is irrational to accept the chance that your only life will be so unsatisfactory. So, Rawls concludes, people in the original position would select the difference principle. And this result happily matches what the first intuitive argument told us. People using a fair decision-procedure for selecting principles of justice come up with the same principles that our intuitions tell us is fair.

Many people have criticized Rawls’s claim that ‘maximin’ is the rational strategy. Some claim that it is equally rational, if not more rational, to gamble on utilitarianism (Hare 1975: 88–107; Bailey 1997: 44–6; Barry 1989a: 333–40). Others argue that the rational strategy is some form of ‘prioritarianism’, which would attach greater weight to the interests of the less well off, but would still allow major gains to the affluent to outweigh minor losses to the poor (e.g. Parfit 1998; McKerlie 1994; 1996; Arneson 2000a). Yet others claim

that it is impossible to assess the rationality of gambling without knowing something about the odds, or about one’s risk-aversion. These critics allege that Rawls only comes up with the difference principle because he rigs the description of the veil of ignorance so as to yield it, or because he makes gratuitous psychological assumptions which he is not entitled to make (e.g. Barry 1973: ch. 9).<sup>4</sup>

### (a) The convergence of the two arguments

There is some truth in these criticisms, but it is a misguided line of criticism. For Rawls admits that he rigs the description of the original position to yield the difference principle. He recognizes that ‘for each traditional conception of justice there exists an interpretation of the initial situation in which its principles are the preferred solution’, and that some interpretations will lead to utilitarianism (1971: 121). There are many descriptions of the original position that are compatible with the goal of creating a fair decision-procedure, and the difference principle would not be chosen in all of them. So before we can determine which principles would be chosen in the original position, we need to know which description of the original position to accept. And, Rawls says, one of the grounds on which we choose a description of the original position is that it yields the principles we find intuitively acceptable.

Thus, after saying that the original position should model the idea that people are moral equals, Rawls goes on to say that ‘there is, however, another side to justifying a particular description of the original position. This is to see if the principles which would be chosen match our considered convictions of justice or extend them in an acceptable way’ (1971: 19). Hence, in deciding on the preferred description of the original position we ‘work from both ends’. If the principles chosen in one version do not match our convictions of justice, then

we have a choice. We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. (1971: 20)

So the intuitive argument and the contract argument are not independent after all. Rawls admits to modifying the original position in order to make sure that it yields principles which match our intuitions (at least those intuitions that we continue to hold after having engaged in this two-way process of harmonizing theory and intuitions). This may sound like cheating. But it only appears so if we take Rawls to be claiming that the two arguments provide



entirely independent support for one another. And while he sometimes makes that claim, in other places he admits that the two arguments are interdependent, both drawing on the same set of considered intuitions.

But then why bother with the contract device? Why not just use the first intuitive argument? This is a good question. While the contract argument is not as bad as critics suggest, it is also not as good as Rawls suggests. If each theory of justice has its own account of the contracting situation, then we have to decide beforehand which theory of justice we accept, in order to know which description of the original position is suitable. Rawls's opposition to gambling away one life for the benefit of others, or to penalizing those with undeserved natural handicaps, leads him to describe the original position in one way; those who disagree with him on these issues will describe it another way. This dispute cannot be resolved by appeal to contractual agreement. It would beg the question for either side to invoke its account of the contracting situation in defence of its theory of justice, since the contracting situation presupposes the theory. All the major issues of justice, therefore, have to be decided beforehand, in order to decide which description of the original position to accept. But then the contract is redundant.

This is not to say that the contract device is entirely useless. First, the original position provides a way to render vivid our intuitions, in the same way that earlier theorists invoked the state of nature to render vivid the idea of natural equality. Secondly, while the intuitions appealed to in the equal opportunity argument show that fair equality of opportunity is not enough, they do not tell us what more is required, and the contract device may help us render our intuitions more precise. This is what Rawls means by saying the device can help 'extract the consequences' of our intuitions. Thirdly, it provides a perspective from which we can test opposing intuitions. Someone who is naturally talented might sincerely object to the idea that talents are arbitrary. We would then have a clash of intuitions. But if that same person would no longer object were she ignorant of where she was going to end up in the natural lottery, then we can say with some confidence that our intuition was the right one, and that her opposing intuition was the result of opposing personal interests. Certain intuitions might seem less compelling when they are viewed from a perspective detached from one's own position in society. The contract argument supports our intuitions by showing that they would be chosen from an unbiased perspective. The contract thus renders vivid certain general intuitions, and provides an impartial perspective from which we can consider more specific intuitions (1971: 21–2, 586).

So there are benefits in employing the contract device. On the other hand, the contract device is not required for these purposes. As we saw last chapter, some theorists (e.g. Hare) invoke 'ideal sympathizers', rather than impartial contractors, to express the idea of equal consideration (Ch. 2, p. 39 above).

Both theories instruct the moral agent to adopt the impartial point of view, but whereas impartial contractors view each person in society as one of the possible future locations of their own good, ideal sympathizers view each person in society as one of the components of their own good, since they sympathize with and so share each person's fate. The two theories use different devices, but the difference is relatively superficial, for the key move in each theory is to force agents to adopt a perspective which denies them knowledge of, or any ability to promote, their own particular good. Indeed, it is often difficult to distinguish impartial contractors from ideal sympathizers (Gauthier 1986: 237–8; Diggs 1981: 277; Barry 1989a: 77, 196).<sup>5</sup>

Equal consideration can also be generated without any special devices at all, just by asking agents to give equal consideration to others notwithstanding their knowledge of, and ability to promote, their own good (e.g. Scanlon 1982; Barry 1989a: 340–8). Indeed, there is a curious sort of perversity in using either the contractarian or ideal sympathizer device to express the idea of moral equality. The concept of a veil of ignorance attempts to render vivid the idea that other people matter in and of themselves, not simply as a component of our own good. But it does so by imposing a perspective from which the good of others is simply a component of our own (actual or possible) good. The idea that people are ends in themselves gets obscured when we invoke 'the idea of a choice which advances the interests of a single rational individual for whom the various individual lives in a society are just so many different possibilities' (Scanlon 1982: 127; cf. Barry 1989a: 214–15, 336, 370). Rawls tries to downplay the extent to which people in the original position view the various individual lives in society as just so many possible outcomes of a self-interested choice, but the contract device encourages that view, and so obscures the true meaning of equal concern.

So the contract device adds little to Rawls's theory. The intuitive argument is the primary argument, whatever Rawls says to the contrary, and the contract argument (at best) just helps express it. But it is not clear that Rawls needs an independent contract argument. Rawls had initially complained about the way people were forced to choose between utilitarianism, a systematic but counter-intuitive theory, and intuitionism, a collection of miscellaneous intuitions with no theoretical structure. If he has found a systematic alternative to utilitarianism which is in harmony with our intuitions, then his theory is a powerful one, in no way weakened by the interdependence of the intuitive and contract arguments. As Rawls says, 'a conception of justice cannot be deduced from self-evident premises or conditions on principles; instead, its justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view' (1971: 21). He calls this 'reflective equilibrium', and that is his aim.<sup>6</sup> His principles of justice are mutually supported by reflecting on the intuitions we appeal to in our everyday practices,

and by reflecting on the nature of justice from an impartial perspective that is detached from our everyday positions. Because Rawls is seeking such a reflective equilibrium, criticisms like those of Hare and Barry are overstated. For even if they are right that the difference principle would not be chosen in the original position as Rawls describes it, he could redefine the original position so as to yield the difference principle. That sounds like cheating, but it is useful and legitimate if in fact it leads us to a reflective equilibrium—if it means that ‘we have done what we can to render coherent and to justify our convictions of social justice’ (1971: 21).

A really successful criticism of Rawls is going to have to either challenge his fundamental intuitions, or show why the difference principle is not the best spelling out of these intuitions (and hence why a different description of the original position should be part of our reflective equilibrium). I will look at theories which challenge the basic intuitions in later chapters. But first I want to look at this second option. Can we find any problems internal to Rawls’s theory, criticisms not of his intuitions, but of the way he develops them?

#### (b) Internal problems

One of Rawls’s central intuitions, as we have seen, concerns the distinction between choices and circumstances. His argument against the prevailing view of equality of opportunity depends heavily on the claim that it gives too much room for the influence of our undeserved natural endowments. I agreed with Rawls here. But Rawls himself leaves too much room for the influence of natural inequalities, and at the same time leaves too little room for the influence of our choices.

##### (i) *Compensating for natural inequalities*

I will look at the question of natural talents first. Rawls says that people’s claim to social goods should not be dependent on their natural endowments. The talented do not deserve any greater income, and they should only receive more income if it benefits the less well off. So, according to Rawls, the difference principle is the best principle for ensuring that natural assets do not have an unfair influence.

But Rawls’s suggestion also allows too much room for people’s fate to be influenced by arbitrary factors. This is because Rawls defines the worst-off position entirely in terms of people’s possession of *social* primary goods—i.e. rights, opportunities, wealth, etc. He does not look at people’s possession of *natural* primary goods in determining who is worst off. Two people are equally well off for Rawls (in this context) if they have the same bundle of social primary goods, even though one person may be untalented, physically handicapped, or mentally disabled. Likewise, if someone has even a small advantage in social goods over others, then she is better off on Rawls’s scale,

even if the extra income is not enough to pay for extra costs she faces due to some natural disadvantage—e.g. the costs of medication for an illness, or of special equipment for some handicap.

But why should the benchmark for assessing the justice of social institutions be the prospects of the least well off in terms of social goods? This stipulation conflicts with both the intuitive and contract arguments. In the contract argument, the stipulation is unmotivated in terms of the rationality of the parties in the original position. If, as Rawls says, health is as important as money in being able to lead a successful life, and if the parties seek to find a social arrangement that guarantees them the greatest amount of primary goods in the worst possible outcome (the maximin reasoning), then why wouldn’t they treat lack of health and lack of money as equally cases of being less well off for the purposes of social distribution? Every person recognizes that she would be less well off if she suddenly became disabled, even if her bundle of social goods remained the same. Why wouldn’t she want society also to recognize her disadvantage?

The intuitive argument points in the same direction. Not only are natural primary goods equally necessary for leading a good life, people do not deserve their place in the distribution of natural assets, and so it is wrong for people to be privileged or disadvantaged because of that place. As we have seen, Rawls thinks this intuition leads to the difference principle, under which people only receive extra rewards for their talents if doing so is to the benefit of the less well off: ‘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’ (1971: 102). But that is wrong, or at least misleading. We are only led to the difference principle if by ‘gains or loses’ we mean gains or loses in terms of *social* goods. The difference principle ensures that the well endowed do not get more social goods just because of their arbitrary place in the distribution of natural assets, and that the handicapped are not deprived of social goods just because of their place. But this does not entirely ‘mitigate the effects of natural accident and social circumstance’ (1971: 100). For the well endowed still get the natural good of their endowment, which the handicapped undeservedly lack. The difference principle may ensure that I have the same bundle of social goods as a handicapped person. But the handicapped person faces extra medical and transportation costs. She faces an undeserved burden in her ability to lead a satisfactory life, a burden caused by her circumstances, not her choices. The difference principle does not remove that burden.<sup>7</sup>

Rawls seems not to have realized the full implications of his own argument against the prevailing view of equality of opportunity. The position he was criticizing is this:

1. Social inequalities are undeserved, and should be rectified or compensated, but natural inequalities can influence distribution in accordance with equality of opportunity.

Rawls claims that natural and social inequalities are equally undeserved, so (1) is 'unstable'. Instead, he endorses:

2. Social inequalities should be compensated, and natural inequalities should not influence distribution.

But if natural and social inequalities really are equally undeserved, then (2) is also unstable. We should instead endorse:

3. Natural and social inequalities should be compensated.

According to Rawls, people born into a disadvantaged class or race not only should not be denied social benefits, but also have a claim to compensation because of that disadvantage. Why treat people born with natural handicaps any differently? Why should not they also have a claim to compensation for their disadvantage (e.g. subsidized medicine, transportation, job training, etc.), in addition to their claim to non-discrimination?

So there are both intuitive and contract reasons for recognizing natural handicaps as grounds for compensation, and for including natural primary goods in the index which determines who is in the least well off position. There are difficulties in trying to compensate for natural inequalities, as we will see in section 5. It may be impossible to do what our intuitions tell us is most fair. But Rawls does not even recognize the desirability of trying to compensate such inequalities.

#### (ii) *Subsidizing people's choices*

The second problem concerns the flip side of that intuition. People do not deserve to bear the burden of unchosen costs, but how should we respond to people who choose to do costly things? We normally feel that unchosen costs have a greater claim on us than voluntarily chosen costs. We feel differently about someone who spends \$100 a week on expensive medicine to control an unchosen illness, compared with someone who spends \$100 a week on expensive wine because they enjoy its taste. Rawls appeals to this intuition when criticizing the prevailing view for being insensitive to the unchosen nature of natural inequalities. But how should we be sensitive to people's choices?

Imagine that we have succeeded in equalizing people's social and natural circumstances. To take the simplest case, imagine two people of equal natural talent who share the same social background. One wants to play tennis all day, and so only works long enough at a nearby farm to earn enough money to buy a tennis court, and to sustain his desired lifestyle (i.e. food, clothing, equipment). The other person wants a similar amount of land to plant a garden, in

order to produce and sell vegetables for herself and others. Furthermore, let's imagine, with Rawls, that we have started with an equal distribution of resources, which is enough for each person to get their desired land, and start their tennis and gardening. The gardener will quickly come to have more resources than the tennis-player, if we allow the market to work freely. While they began with equal shares of resources, he will rapidly use up his initial share, and his occasional farm work only brings in enough to sustain his tennis-playing. The gardener, however, uses her initial share in such a way as to generate a larger income through longer hours of work. The difference principle would only allow this inequality if it benefits the least well off—i.e. if it benefits the tennis-player who now lacks much of an income. If the tennis-player does not benefit from the inequality, then the government should transfer some of her income to him in order to equalize income.

But there is something peculiar about saying that such a tax is needed to enforce equality, where that is understood to mean treating both people as equals. Remember that the tennis-player has the same talents as the gardener, the same social background, and started with the same equal allotment of resources. As a result, he could have chosen income-producing gardening if he wished, just as she could have chosen non-income-producing tennis. They both faced a range of options which offered varying amounts and kinds of work, leisure, and income. Both chose that option which they preferred. The reason he did not choose gardening, therefore, is that he preferred playing tennis to earning money by gardening. People have different preferences about when it is worth giving up potential leisure to earn more income, and he preferred leisure while she preferred income.

Given that these differences in lifestyle are freely chosen, how is he treated unequally by allowing her to have the income and lifestyle that he did not want? Rawls defends the difference principle by saying that it counteracts the inequalities of natural and social contingencies. But these are not relevant here. Rather than removing a disadvantage, the difference principle simply makes her subsidize his expensive desire for leisure. She has to pay for the costs of her choices—i.e. she forgoes leisure in order to get more income. But he does not have to pay for the costs of his choice—i.e. he does not forgo income in order to get more leisure. He expects and Rawls's theory requires that she pay for the costs of her own choices, and also subsidize his choice. That does not promote equality, it undermines it. He gets his preferred lifestyle (leisureful tennis), plus some income from her taxes, while she gets her preferred lifestyle (income-producing gardening) minus some income that is taxed from her. She has to give up part of what makes her life valuable in order that he can have more of what he finds valuable. They are treated unequally in this sense, for no legitimate reason.

When inequalities in income are the result of choices, not circumstances,

the difference principle creates, rather than removes, unfairness. Treating people with equal concern requires that people pay for the costs of their own choices. Paying for choices is the flip side of our intuition about not paying for unequal circumstances. It is unjust if people are disadvantaged by inequalities in their circumstances, but it is equally unjust for me to demand that someone else pay for the costs of my choices. In more technical language, a distributive scheme should be 'endowment-insensitive' and 'ambition-sensitive' (Dworkin 1981: 311). People's fate should depend on their ambitions (in the broad sense of goals and projects about life), but should not depend on their natural and social endowment (the circumstances in which they pursue their ambitions).

Rawls himself emphasizes that we are responsible for the costs of our choices. This in fact is why his account of justice is based on the distribution of primary goods, not welfare. Those who have expensive desires will get less welfare from an equal bundle of primary goods than those with more modest tastes. But, Rawls says, it does not follow that those with modest tastes should subsidize the extravagant, for we have 'a capacity to assume responsibility for our ends'. Hence 'those with less expensive tastes have presumably adjusted their likes and dislikes over the course of their lives to the income and wealth they could reasonably expect; and it is regarded as unfair that they now should have less in order to spare others from the consequences' of their extravagance (Rawls 1982*b*: 168–9; cf. 1975: 553; 1980: 545; 1974: 643; 1978: 63; 1985: 243–4). So Rawls does not wish to make the gardener subsidize the tennis-player. Indeed he often says that his conception of justice is concerned with regulating inequalities that affect people's life-chances, not the inequalities that arise from people's life-choices, which are the individual's own responsibility (1971: 7, 96; 1978: 56; 1979: 14–15; 1982*b*: 170). Unfortunately, the difference principle does not make any such distinction between chosen and unchosen inequalities. Hence one possible result of the difference principle is to make some people pay for other's choices, should it be the case that those with the least income are, like the tennis-player, in that position by choice. Rawls wants the difference principle to mitigate the unjust effects of natural and social disadvantage, but it also mitigates the legitimate effects of personal choice and effort.

So while Rawls appeals to this choices–circumstances distinction, his difference principle violates it in two important ways. It is supposed to mitigate the effect of one's place in the distribution of natural assets. But because Rawls excludes natural primary goods from the index which determines who is least well off, there is in fact no compensation for those who suffer undeserved natural disadvantages. Conversely, people are supposed to be responsible for the costs of their choices. But the difference principle requires that some people subsidize the costs of other people's choices. Can we do a better job

being 'ambition-sensitive' and 'endowment-insensitive'? This is the goal of Dworkin's theory.

#### 4. DWORKIN ON EQUALITY OF RESOURCES

Dworkin accepts the 'ambition-sensitive' and 'endowment-insensitive' goal that motivated Rawls's difference principle. But he thinks that a different distributive scheme can do a better job living up to that ideal. His theory is a complicated one—involving the use of auctions, insurance schemes, free markets, and taxation—and it is impossible to lay out the whole theory. But I will present some of its central intuitive ideas.

##### (a) Paying for one's choices: the ambition-sensitive auction

I will start with Dworkin's account of an ambition-sensitive distributive scheme. For simplicity's sake, I will assume again that everyone has the same natural talents (I examine Dworkin's answer to the problem of unequal natural endowments later). Dworkin asks us to imagine that all of society's resources are up for sale in an auction, to which everyone is a participant. Everyone starts with an equal amount of purchasing power—100 clamshells, in his example—and people use their clamshells to bid for those resources that best suit their plan of life.

If the auction works out—and it can always be rerun if it does not—everyone will be happy with the result, in the sense that they do not prefer anyone else's bundle of goods to their own. If they did prefer a different bundle, they could have bid for it, rather than the goods they did bid for. This generalizes the case of the tennis-player and gardener who, starting with the same amount of money, acquire the land they need for their desired activities. If the auction works, this will be true of everyone—i.e. each person will prefer their own bundle of goods to anyone else's. Dworkin calls this the 'envy test', and if it is met, then people are treated with equal consideration, for differences between them simply reflect their different ambitions, their different beliefs about what gives value to life. A successful auction meets the envy test, and makes each person pay for the costs of their own choices (Dworkin 1981: 285).<sup>8</sup>

This idea of the envy test expresses the liberal egalitarian view of justice in its most defensible form. If it could be perfectly enforced, the three main aims of Rawls's theory would be fulfilled, i.e. respecting the moral equality of persons, mitigating the arbitrariness of natural and social contingencies, and accepting responsibility for our choices. Such a distributive scheme would be just, even though it allows some inequality in income. The gardener and tennis-player have unequal income, but there is no inequality in respect and