The John Dewey Essays in Philosophy

W. V. Quine, *Ontological Relativity and Other Essays* (1969)
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**POLITICAL LIBERALISM**

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§ 1. First Subject of Justice

An essential feature of the contractarian conception of justice is that the basic structure of society is the first subject of justice. The contract view begins by trying to work out a theory of justice for this special but plainly very important case; and the conception of justice that results has a certain regulative primacy with re-

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1. This essay is a considerable revision of a paper with the same title presented at the meetings of the American Philosophical Association (Pacific Division) at Portland, Oregon in March 1977 and reprinted in the American Philosophical Quarterly 14 (April 1977). Sections 2 and 3 are new. I am indebted to Joshua Cohen, Joshua Rabinowitz, T. M. Scanlon, and Quentin Skinner for valuable discussions on the topic of this paper. To Burton Dreben I am grateful for many improvements; and to Thomas Hill and Hugo Bedau for their instructive comments.
spect to the principles and standards appropriate for other cases. The basic structure is understood as the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation. Thus the political constitution, the legally recognized forms of property, and the organization of the economy, and the nature of the family, all belong to the basic structure. The initial objective of the theory is to find a conception, the first principles of which provide reasonable guidelines for the classical and familiar questions of social justice in connection with this complex of institutions. These questions define the data, so to speak, for which the theory seeks an account. There is no attempt to formulate first principles that apply equally to all subjects. Rather, on this view, a theory must develop principles for the relevant subjects step by step in some appropriate sequence.

In this essay I should like to discuss why the basic structure is taken as the first subject of justice. Of course, it is perfectly legitimate to restrict the initial inquiry to the basic structure. We must begin somewhere, and this starting point may turn out to be justified by how well the theory that results hangs together. But there should be a more illuminating answer than this; and moreover one that draws upon the special features of the basic structure in contrast with other social arrangements, and connects these features with the characteristic role and content of the principles of justice themselves. I hope to give an answer that does precisely this.²

Now a social contract is a hypothetical agreement a) between all rather than some members of society, and it is b) between them as members of society (as citizens) and not as individuals who hold some particular position or role within it. In the Kant-

². In *Theory* the basic structure was regarded as the primary subject and discussion focused on this case. See pp. 7 ff. But the reasons for this choice of subject and its consequences were not sufficiently explained. Here I want to make good this lack.

ian form of this doctrine, which I shall call “justice as fairness,” c) the parties are thought of as free and equal moral persons, and d) the content of the agreement is the first principles that are to regulate the basic structure. We take as given a short list of conceptions of justice found in the tradition of moral philosophy and then ask which of these conceptions the parties would agree to when the alternatives are thus restricted. Assuming that we have a clear enough idea of the circumstances necessary to insure that any agreement reached is fair, the content of justice for the basic structure can be ascertained, or at least approximated, by the principles that would be adopted. (Of course, this presupposes the reasonableness of the tradition of moral philosophy; but where else can we start?) Thus pure procedural justice is invoked at the highest level: the fairness of the circumstances transfers to fairness of the principles acknowledged.

I shall suggest the following: first, that once we think of the parties to a social contract as free and equal (and rational) moral persons, then there are strong reasons for taking the basic structure as the primary subject (4–5). Second, that in view of the distinctive features of this structure, the initial agreement, and the conditions under which it is made, must be understood in a special way that distinguishes this agreement from all others (6–7); and third, doing this allows a Kantian view to take account of the profoundly social nature of human relationships. And finally, that while a large element of pure procedural justice transfers to the principles of justice, these principles must nevertheless embody an ideal form for the basic structure in the light of which ongoing institutional processes are to be constrained and the accumulated results of individual transactions continually adjusted (9).

§ 2. Unity by Appropriate Sequence

Before taking up these points, I should like to remark that starting with the basic structure and then developing other prin-
principles sequentially, gives justice as fairness a distinctive character.\(^3\)

To illustrate this, consider first the contrast with utilitarianism: it is usually interpreted as a completely general theory. Certainly this is true of the classical doctrine as definitively formulated by Sidgwick.\(^4\) The principle of utility applies equally to all social forms and to the actions of individuals; in addition, the assessment of character and dispositional traits, as well as the social practice of praising and blaming, are to be guided by it. To be sure, rule-utilitarianism recognizes that certain distinctions between subjects may raise special problems. But the distinction between rules and acts, besides being itself very general, is a categorial or metaphysical distinction, and not one within the class of social forms. It evokes the questions of how the principle of utility is to be applied across category differences; and the general way in which this question is treated by rule-utilitarianism preserves the contrast with the contract view.

Of course, utilitarian theory recognizes the peculiarities of different kinds of cases, but these peculiarities are treated as springing from various kinds of effects and causal relationships that have to be allowed for. Thus it is agreed, let's suppose, that the basic structure is an important complex of institutions, given the deep and pervasive nature of its social and psychological effects. It might be agreed also that it is useful to distinguish this structure from particular associations within it, as well as from the larger surrounding international system. These distinctions may be helpful in a systematic application of the standard of utility. In no case, however, is there a change of first principle, although, of course, a variety of secondary norms and precepts, derivative from utility, may be justified in view of the characteristic features of different problems. Thus, for utilitarianism, neither the number of individuals concerned, nor the institutional forms by which their decisions and activities are organized, affect the universal scope of the principle of utility: number and structure are relevant only indirectly through their effects on how the greatest net balance of satisfaction (summed over all persons affected) is most effectively attained.

The first principles of justice as fairness are plainly not suitable for a general theory.\(^5\) These principles require (as stated later, in the first paragraph of §6) that the basic structure establish certain equal basic liberties for all and make sure that social and economic inequalities work for the greatest benefit of the least advantaged against a background of fair opportunity. In many if not most cases these principles give unreasonable directives. To illustrate: for churches and universities different principles are plainly more suitable. Their members usually affirm certain shared aims and purposes as essential guidelines to the most appropriate form of organization. The most we can say is this: because churches and universities are associations within the basic structure, they must adjust to the requirements that this structure imposes in order to establish background justice. Thus, churches and universities may be restricted in various ways, for example, by what is necessary to maintain the basic equal liberties (including liberty of conscience) and fair equality of opportunity.

At first sight the contract doctrine may appear hopelessly unsystematic: for how are the principles that apply to different subjects to be tied together? But there are other forms of theoretical unity than that defined by completely general first principles.

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3. I am grateful to Hugo Bedau for pointing out to me the need to emphasize this. In his comments on the earlier version of this paper he noted that the last paragraph of §2 of *Theory* is particularly misleading in this respect.


5. This fact is regarded as an objection to these principles by J. C. Harmsany, "Can the Maximin Principle Serve as a Basis for Morality?" *American Political Science Review* 69 (June 1975):594–606. I cannot reply adequately to Harmsany's forceful objections here, but I note the following: the maximin principle was never proposed as a basis for morality; in the form of the difference principle it is one principle constrained by others that applies to the basic structure; and when this principle is seen in this limited role as a criterion of background justice, its implications in normal cases (see n. 10 below) are not, I believe, implausible. Finally, confining the application of the principles of justice to the basic structure does not imply, contrary to Harmsany's suggestion (see p. 603), that only the number of persons involved determines which principles hold for a given case. On this, see the last paragraph in this section.
pleas. It may be possible to find an appropriate sequence of kinds of subjects and to suppose that the parties to a social contract are to proceed through this sequence with the understanding that the principles of each later agreement are to be subordinate to those of all earlier agreements, or else adjusted to them by certain priority rules. The underlying unity is provided by the idea that free and equal moral persons are to construct reasonable and helpful guidelines for moral reflection in view of their need for such organizing principles and the role in social life that these principles and their corresponding subjects are presumed to have.

It should be noted here, to avoid misunderstanding, that in developing a conception of justice for the basic structure, or indeed for any subject, we do not assume that variation in numbers alone accounts for the appropriateness of different principles. Rather, it is differences in the structure and social role of institutions that is essential, although variations in number are sometimes a necessary condition, and encourage certain institutional forms. Thus a constitutional democracy is larger than a family: greater numbers are required to staff its component parts. But it is the distinct purposes and roles of the parts of the social structure, and how they fit together, that explains there being different principles for distinct kinds of subjects. Indeed, it seems natural to suppose that the distinctive character and autonomy of the various elements of society requires that, within some sphere, they act from their own principles designed to fit their peculiar nature.

§ 3. Libertarianism Has No Special Role for the Basic Structure

A completely general theory like utilitarianism is not the only kind of view that rejects the idea that special first principles are required for the basic structure. Consider for example the libertarian theory, which holds that only a minimal state limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; and that any state with more comprehensive powers violates the rights of individuals. For our purposes here, perhaps the main features of this theory are these:

The aim is to see how the minimal state could have arisen from a perfectly just situation by a series of steps each of which is morally permissible and violates no one's rights. If we can see how this could happen when everyone acts as they ought and why a no more extensive state could arise, then we shall have justified the minimal state, provided of course that the moral theory that identifies the initial situation as just, and defines the permissible departures from it, is correct. To this end, we assume that a state of nature once existed in which there was relative abundance and the actual configuration of people's holdings raised no moral questions. The existing configuration was just and all were adequately provided for. This state of nature is also characterized by the absence of any institution (such as the state) that enforces certain rules and thereby establishes an institutional basis for people's expectations as to how others will act.

Next, a libertarian theory defines certain basic principles of justice that govern the acquisition of holdings (the appropriation of previously unheld things) and the transfer of holdings from one person (or association) to another. Then a just configuration of holdings is defined recursively: a person is entitled to hold whatever is acquired in accordance with the principles of justice in acquisition and transfer, and no one is entitled to something except by repeated application of these principles. If one starts from a state of nature in which the existing array of holdings is just, and if everyone always acts subsequently in accordance with justice in acquisition and transfer, then all later configurations are likewise said to be just. It is maintained that the principles of just acquisition and transfer preserve the justice of holdings throughout the whole sequence of historical transactions, however extended in time. The only way injustice is thought to arise

is from deliberate violations of these principles, or from error and ignorance of what they require and the like.

Finally, and most relevant for our purposes here, a great variety of associations and modes of cooperation may form depending upon what individuals actually do and what agreements are reached. No special theory is needed to cover these transactions and joint activities: the requisite theory is already provided by the principles of justice in acquisition and transfer, suitably interpreted in the light of certain provisos. All forms of legitimate social cooperation are, then, the handiwork of individuals who voluntarily consent to them; there are no powers or rights lawfully exercised by associations, including the state, that are not rights already possessed by each individual acting alone in the initial just state of nature.

One noteworthy feature of this doctrine is that the state is just like any other private association. The state comes about in the same way as other associations and its formation in the perfectly as-if just historical process is governed by the same principles. Of course, the state serves certain characteristic purposes, but this is true of associations generally. Moreover, the relation of individuals to the state (the legitimate minimal state) is just like their relation with any private corporation with which they have made an agreement. Thus political allegiance is interpreted as a private contractual obligation with, so to speak, a large and successful monopolistic firm: namely, the locally dominant protection agency. There is in general no uniform public law that applies equally to all persons, but rather a network of private agreements; this network represents the procedures the domi-

7. I distinguish here and elsewhere below between an as-if historical and an as-if nonhistorical process (or procedure). In both cases the process is hypothetical in the sense that the process has not actually occurred, or may not have occurred. But as-if historical processes can occur: they are not thought to be excluded by fundamental social laws or natural facts. Thus on the libertarian view, if everyone were to follow the principles of justice in acquisition and transfer, and they can follow them, then the as-if historical process leading to the formation of the state would be realized. By contrast, an as-if nonhistorical process, for example, the procedure leading up to the agreement in the original position, cannot take place. See below §6.

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nant protection agency (the state) has agreed to use with its clients, as it were, and these procedures may differ from client to client depending on the bargain each was in a position to make with the dominant agency. No one can be compelled to enter into such an agreement and everyone always has the option of becoming an independent: we have the choice of being one of the state's clients, just as we do in the case of other associations. While the libertarian view makes important use of the notion of agreement, it is not a social contract theory at all; for a social contract theory envisages the original compact as establishing a system of common public law which defines and regulates political authority and applies to everyone as citizen. Both political authority and citizenship are to be understood through the conception of the social contract itself. By viewing the state as a private association the libertarian doctrine rejects the fundamental ideas of the contract theory, and so quite naturally it has no place for a special theory of justice for the basic structure.

By way of concluding these preliminary matters, the point of noting these differences with libertarian and utilitarian doctrines is to clarify by illustration and contrast the peculiar features of justice as fairness with its emphasis on the basic structure. Similar contrasts hold in regard to perfectionism and intuitionism and other familiar moral views. The problem here is to show why the basic structure has a special role and why it is reasonable to seek special principles to regulate it.

§ 4. The Importance of Background Justice

I shall begin by noting several considerations that might lead us to regard the basic structure as the first subject of justice, at least when we proceed within the framework of a Kantian social contract theory.

The first consideration is this: suppose we begin with the initially attractive idea that social circumstances and people's relationships to one another should develop over time in accordance with free agreements fairly arrived at and fully honored.
Straightaway we need an account of when agreements are free and the social circumstances under which they are reached are fair. In addition, while these conditions may be fair at an earlier time, the accumulated results of many separate and ostensibly fair agreements, together with social trends and historical contingencies, are likely in the course of time to alter citizens' relationships and opportunities so that the conditions for free and fair agreements no longer hold. The role of the institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place. Unless this structure is appropriately regulated and adjusted, an initially just social process will eventually cease to be just, however free and fair particular transactions may look when viewed by themselves.

We recognize this fact when we say, for example, that the distribution resulting from voluntary market transactions (even if all the ideal conditions for competitive efficiency obtain) is not, in general, fair unless the antecedent distribution of income and wealth, as well as the structure of the system of markets, is fair. The existing wealth must have been properly acquired and all must have had fair opportunities to earn income, to learn wanted skills, and so on. Again, the conditions necessary for background justice can be undermined, even though nobody acts unfairly or is aware of how the overall result of many separate exchanges affects the opportunities of others. There are no feasible rules that it is practicable to require economic agents to follow in their day-to-day transactions that can prevent these undesirable consequences. These consequences are often so far in the future, or so indirect, that the attempt to forestall them by restrictive rules that apply to individuals would be an excessive if not an impossible burden.

There are four points to emphasize in these familiar observations: first, we cannot tell by looking only at the conduct of individuals and associations in the immediate (or local) circumstances whether, from a social point of view, agreements reached are just or fair. For this assessment depends importantly on the features of the basic structure, on whether it succeeds in maintaining background justice. Thus whether wage agreements are fair rests, for example, on the nature of the labor market: excess market power must be prevented and fair bargaining power should obtain between employers and employees. But in addition, fairness depends on underlying social conditions, such as fair opportunity, extending backward in time and well beyond any limited view.

Second, fair background conditions may exist at one time and be gradually undermined even though no one acts unfairly when their conduct is judged by the rules that apply to transactions within the appropriately circumscribed local situation. The fact that everyone with reason believes that they are acting fairly and scrupulously honoring the norms governing agreements is not sufficient to preserve background justice. This is an important though obvious point: when our social world is pervaded by duplicity and deceit we are tempted to think that law and government are necessary only because of the propensity of individuals to act unfairly. But, to the contrary, the tendency is rather for background justice to be eroded even when individuals act fairly: the overall result of separate and independent transactions is away from and not toward background justice. We might say: in this case the invisible hand guides things in the wrong direction and favors an oligopolistic configuration of accumulations that succeeds in maintaining unjustified inequalities and restrictions on fair opportunity. Therefore, we require special institutions to preserve background justice, and a special conception of justice to define how these institutions are to be set up.

The preceding observation assumes, thirdly, that there are no feasible and practicable rules that it is sensible to impose on individuals that can prevent the erosion of background justice. This is because the rules governing agreements and individual transactions cannot be too complex, or require too much information to be correctly applied; nor should they enjoin individuals to engage in bargaining with many widely scattered third parties, since this would impose excessive transaction costs. The
rules applying to agreements are, after all, practical and public directives, and not mathematical functions which may be as complicated as one can imagine. Thus any sensible scheme of rules will not exceed the capacity of individuals to grasp and follow them with sufficient ease, nor will it burden citizens with requirements of knowledge and foresight that they cannot normally meet. Individuals and associations cannot comprehend the ramifications of their particular actions viewed collectively, nor can they be expected to foresee future circumstances that shape and transform present tendencies. All of this is evident enough if we consider the cumulative effects of the purchase and sale of landed property and its transmission by bequest over generations. It is obviously not sensible to impose on parents (as heads of families) the duty to adjust their own bequests to what they estimate the effects of the totality of actual bequests will be on the next generation, much less beyond.

Thus, fourth and finally, we arrive at the idea of a division of labor between two kinds of social rules, and the different institutional forms in which these rules are realized. The basic structure comprises first the institutions that define the social background and includes as well those operations that continually adjust and compensate for the inevitable tendencies away from background fairness, for example, such operations as income and inheritance taxation designed to even out the ownership of property. This structure also enforces through the legal system another set of rules that govern the transactions and agreements between individuals and associations (the law of contract, and so on). The rules relating to fraud and duress, and the like, belong to these rules, and satisfy the requirements of simplicity and practicality. They are framed to leave individuals and associations free to act effectively in pursuit of their ends and without excessive constraints.

To conclude: we start with the basic structure and try to see how this structure itself should make the adjustments necessary to preserve background justice. What we look for, in effect, is an institutional division of labor between the basic structure and the

§ 5. How the Basic Structure Affects Individuals

Further reflections also point to the special role of the basic structure. So far we have seen that certain background conditions are necessary if transactions between individuals are to be fair: these conditions characterize the objective situation of individuals vis-à-vis one another. But what about the character and interests of individuals themselves? These are not fixed or given. A theory of justice must take into account how the aims and aspirations of people are formed; and doing this belong to the wider framework of thought in the light of which a conception of justice is to be explained.

Now everyone recognizes that the institutional form of society affects its members and determines in large part the kind of persons they want to be as well as the kind of persons they are. The social structure also limits people's ambitions and hopes in different ways; for they will with reason view themselves in part according to their position in it and take account of the means and opportunities they can realistically expect. So an economic regime, say, is not only an institutional scheme for satisfying existing desires and aspirations but a way of fashioning desires and aspirations in the future. More generally, the basic structure shapes the way the social system produces and reproduces over time a certain form of culture shared by persons with certain conceptions of their good.

Again, we cannot view the talents and abilities of individuals as fixed natural gifts. To be sure, even as realized there is presumably a significant genetic component. However, these abili-
ties and talents cannot come to fruition apart from social conditions, and as realized they always take but one of many possible forms. Developed natural capacities are always a selection, a small selection at that, from the possibilities that might have been attained. In addition, an ability is not, for example, a computer in the head with a definite measurable capacity unaffected by social circumstances. Among the elements affecting the realization of natural capacities are social attitudes of encouragement and support and the institutions concerned with their training and use. Thus even a potential ability at any given time is not something unaffected by existing social forms and particular contingencies over the course of life up to that moment. So not only our final ends and hopes for ourselves but also our realized abilities and talents reflect, to a large degree, our personal history, opportunities, and social position. There is no way of knowing what we might have been had these things been different.

Finally, the preceding considerations must be viewed together with the fact that the basic structure most likely permits significant social and economic inequalities in the life prospects of citizens depending on their social origins, their realized natural endowments, and the chance opportunities and accidents that have shaped their personal history. Such inequalities, we may assume, are inevitable, or else necessary or highly advantageous in maintaining effective social cooperation. Presumably there are various reasons for this, among which the need for incentives is but one.

The nature of inequalities in life prospects can be clarified by contrasting them with other inequalities. Thus imagine a university in which there are three ranks of faculty and everyone stays in each rank the same length of time and receives the same salary. Then while there are inequalities of rank and salary at any given time, there is no inequality in life prospects between faculty members. The same may be true when members of an association adopt a rotation scheme for filling certain more highly privileged or rewarded positions, perhaps because they involve

taking greater responsibility. If the scheme is designed so that, barring accidents, death, and the like, all serve the same time in these positions, there are again no inequalities in life prospects.

What the theory of justice must regulate is the inequalities in life prospects between citizens that arise from social starting positions, natural advantages, and historical contingencies. Even if these inequalities are not in some cases very great, their effect may be great enough so that over time they have significant cumulative consequences. The Kantian form of the contract doctrine focuses on these inequalities in the basic structure in the conviction that these inequalities are the most fundamental ones: once suitable principles are found to govern them and the requisite institutions are established, the problem of how to regulate other inequalities can be much more easily resolved.

§ 6. Initial Agreement as Hypothetical and Nonhistorical

In justice as fairness the institutions of the basic structure are just provided they satisfy the principles that free and equal moral persons, in a situation that is fair between them, would adopt for the purpose of regulating that structure. The main two principles read as follows: a) Each person has an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for all. b) Social and economic inequalities are permissible provided that they are i) to the greatest expected benefit of the least advantaged; and ii) attached to positions and offices open to all under conditions of fair equality of opportunity.\textsuperscript{8}

Let us consider how the special role of the basic structure affects the conditions of the initial agreement and necessitates that this agreement be understood as hypothetical and nonhistorical. Now by assumption the basic structure is the all-inclusive

\textsuperscript{8. These principles are discussed in Theory, §§11–13, and elsewhere. A summary statement, including the principle of just savings and priority rules, is given on pp. 302f.}
social system that determines background justice. (Observe that I leave aside here the problem of justice between nations.) Thus, first of all, any fair situation between individuals conceived as free and equal moral persons must be one that suitably evens out the contingencies within this system. Actual agreements reached when people know their present place in an ongoing society are influenced by disparate social and natural contingencies. The principles adopted depend on the actual course of events that takes place within its institutional structure. We cannot by actual agreements get beyond happenstance or specify a suitably independent standard.

It is also clear why, when we interpret the parties as free and equal moral persons, they are to reason as if they know very little about themselves (referring here to the restrictions of the veil of ignorance). For to proceed otherwise is still to allow the diverse and deep contingent effects to influence the principles that are to regulate their social relations as such persons. Thus we suppose that the parties do not know their place in society, their class position or social status, their good or ill fortune in the distribution of natural talents and abilities, all within the normal range. Nor do the parties know their final aims and interests, or their particular psychological makeup.

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Finally, in order to establish fairness between generations (for example, in the agreement on a principle of just savings), the parties, who are assumed to be contemporaries, do not know the present state of society. They have no information about the stock of natural resources or productive assets, or the level of technology beyond what can be inferred from the assumption that the circumstances of justice obtain. The relative good or ill fortune of their generation is unknown. For when contemporaries are influenced by a general description of the present state of society while agreeing how to treat each other, and the generations that come after them, they have not yet left out of account the results of historical accident and social contingency found within the basic structure. And so we arrive at a thicker rather than a thinner veil of ignorance: the parties are to be understood so far as possible solely as moral persons and in abstraction from contingencies. To be fair, the initial situation treats the parties symmetrically, for as moral persons they are equal: the same relevant properties qualify everyone. Beginning with a state of no information, we allow in just enough information to make the agreement rational, though still suitably independent from historical, natural, and social happenstance. Considerably more information would be compatible with impartiality but a Kantian view seeks more than this.

Thus, it is evident why the social contract must be regarded as hypothetical and nonhistorical. The explanation is that the agreement in the original position represents the outcome of a rational process of deliberation under ideal and nonhistorical conditions that express certain reasonable constraints. There exists no practicable way actually to carry out this deliberative process and to be sure that it conforms to the conditions imposed. Therefore, the outcome cannot be ascertained by pure procedural justice as realized by deliberations of the parties on some actual occasion. Instead the outcome must be determined by reasoning analyti-

9. The reason for doing this is that, as a first approximation, the problem of social justice concerns the basic structure as a closed background system. To start with the society of nations would seem merely to push one step further back the task of finding a theory of background justice. At some level there must exist a closed background system, and it is this subject for which we want a theory. We are better prepared to take up this problem for a society (illustrated by nations) conceived as a more or less self-sufficient scheme of social cooperation and as possessing a more or less complete culture. If we are successful in the case of a society, we can try to extend and to adjust our initial theory as further inquiry requires.

10. The normal range is specified as follows: since the fundamental problem of justice concerns the relations among those who are full and active participants in society, and directly or indirectly associated together over the course of a whole life, it is reasonable to assume that everyone has physical needs and psychological capacities within some normal range. Thus the problem of special health care and how to treat the mentally defective are aside. If we can work out a viable theory for the normal range, we can attempt to handle these other cases later.

11. For this way of putting the distinction between a thicker and a thinner veil of ignorance I am indebted to Joshua Rabinowicz.
cally: that is, the original position is to be characterized with sufficient exactness so that it is possible to work out from the nature of the parties and the situation they confront which conception of justice is favored by the balance of reasons. The content of justice must be discovered by reason: that is, by solving the agreement problem posed by the original position.

To preserve the present-time of entry interpretation, all questions of justice are dealt with by constraints that apply to contemporaries. Consider the case of just savings: since society is a system of cooperation between generations over time, a principle for savings is required. Rather than imagine a (hypothetical and nonhistorical) direct agreement between all generations, the parties can be required to agree to a savings principle subject to the further condition that they must want all previous generations to have followed it. Thus the correct principle is that which the members of any generation (and so all generations) would adopt as the one their generation is to follow and as the principle they would want preceding generations to have followed (and later generations to follow), no matter how far back (or forward) in time.¹²

That the initial situation is hypothetical and nonhistorical poses no difficulty once its theoretical purpose is correctly understood. On the present-time of entry interpretation, we can, as it were, enter that situation at any moment simply by conducting our moral reasoning about first principles in accordance with the stipulated procedural constraints. We have considered judg-

¹². This formulation of the conditions for the agreement on a just savings principle differs from that in Theory, pp. 128ff. and 291ff. There it is not required that the parties must want the previous generations to have followed the principle they adopt as contemporaries. Therefore, assuming that generations are mutually disinterested, nothing constrains them from refusing to make any savings at all. To cope with this difficulty it was stipulated that the parties care for their descendents. While this is a reasonable stipulation, the requirement above has the virtue that it removes the difficulty without changing the motivation assumption. It also preserves the present time of entry interpretation of the original position and coheres with the strict compliance condition and ideal theory generally. I am indebted to Thomas Nagel and Derek Parfit for this revision; it is also proposed by Jane English, who notes the connection with ideal theory. See her "Justice Between Generations," p. 98.

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ments at many levels of generality, from the more particular to the most abstract. So if we affirm the judgments expressed by these constraints, and therefore the values embodied in the idea of fairness between equal moral persons when first principles for the basic structure are to be adopted, then we must accept the limitations on conceptions of justice that result. The initial situation is an attempt to represent and to unify the formal and general elements of our moral thought in a manageable and vivid construction in order to use these elements to determine which first principles of justice are the most reasonable.

I conclude by remarking that once we note the distinctive role of the basic structure and abstract from the various contingencies within it in order to find an appropriate conception of justice to regulate it, something like the notion of the original position seems inevitable. It is a natural extension of the idea of the social contract when the basic structure is taken as the primary subject of justice.

§ 7. Special Features of the Initial Agreement

At this point I consider why the initial agreement has features that distinguish it from any other agreement. Once again, the explanation lies in the distinctive role of the basic structure: we must distinguish between particular agreements made and associations formed within this structure, and the initial agreement and membership in society as a citizen. Consider first particular agreements: typically these are based on the parties' known (or probable) assets and abilities, opportunities, and interests, as these have been realized within background institutions. We may assume that each party, whether an individual or an association, has various alternatives open to them, that they can compare the likely advantages and disadvantages of these alternatives, and act accordingly. Under certain conditions someone's contribution to a joint venture, or to an ongoing association, can be estimated: one simply notes how the venture or association would fare without that person's joining, and the difference measures their
worth to the venture or association. The attractiveness of joining to the individuals is ascertained by a comparison with their opportunities. Thus particular agreements are reached in the context of existing and foreseeable configurations of relationships within the basic structure; and it is these configurations that provide a basis for contractual calculations.

The context of a social contract is strikingly different, and must allow for three facts, among others: namely, that membership in our society is given, that we cannot know what we would have been like had we not belonged to it (perhaps the thought itself lacks sense), and that society as a whole has no ends or ordering of ends in the way that associations and individuals do. The bearing of these facts is clear once we try to regard the social contract as an ordinary agreement and ask how deliberations leading up to it would proceed. Since membership in their society is given, there is no question of the parties comparing the attractions of other societies. Moreover, there is no way to identify someone’s potential contribution to society who is not yet a member of it; for this potentiality cannot be known and is, in any case, irrelevant to their present situation. Not only this, but from the standpoint of society as a whole vis-à-vis any one member, there is no set of agreed ends by reference to which the potential social contributions of an individual could be assessed. Associations and individuals have such ends, but not a well-ordered society; although it has the aim of giving justice to all its citizens, this is not an aim that ranks their expected contributions and on that basis determines their social role or their worth from a social standpoint. The notion of an individual’s contribution to society viewed as an association (so that society is entitled to offer terms for joining derived from the aims of those already members of the association) has no place in a Kantian view. It is necessary, therefore, to construe the social contract in a special way that distinguishes it from other agreements.

In justice as fairness this is done by constructing the notion of the original position. This construction must reflect the fundamental contrasts just noted and it must supply the missing ele-
interests and preferences are given by their desire for primary goods. Their particular final ends and aims indeed are already formed, although not known to them; and it is these already formed interests, as well as the conditions necessary to preserve moral personality, that they seek to protect by ranking conceptions on the basis of their preference (in the original position) for primary goods. Finally, the availability of general social theory gives a sufficient basis for estimating the feasibility and consequences of alternative conceptions of justice. In view of these aspects of the original position, the idea of the social contract as a rational undertaking can be maintained despite the unusual nature of this agreement.

§ 8. The Social Nature of Human Relationships

Consider now three ways in which the social aspect of human relationships is reflected in the content of the principles of justice themselves. First, the difference principle (which governs economic and social inequalities) does not distinguish between what is acquired by individuals as members of society and what would have been acquired by them had they not been members. Indeed, no sense can be made of the notion of that part of an individual’s social benefits that exceed what would have been their situation in another society or in a state of nature. We can, if we like, in setting up the argument from the original position, introduce the state of nature in relation to the so-called nonagreement point. This point can be defined as general egoism and its consequences, and this can serve as the state of nature. But these conditions do not identify a definite state. All that is known in the original position is that each of the conceptions of justice available to the parties have consequences superior to general egoism. There is no question of determining anyone’s contribution to society, or how much better off each is than they would have been had they not belonged to it, and then adjusting the social benefits of citizens by reference to these estimates. Although we may draw this kind of distinction in the case of associations within society, the parallel calculations when adopting principles for the basic structure have no foundation. Neither our situation in other societies, nor in a state of nature, have any role in assessing conceptions of justice. And clearly these notions are not relevant in applying the two principles of justice.

Second, and related to the preceding, the two principles of justice regulate how entitlements are acquired in return for contributions to associations, or to other forms of cooperation, within the basic structure. As we have seen, these contributions are evaluated on the basis of the particular aims of individuals and associations; and what people have contributed is influenced partly by their efforts and achievements, and partly by social circumstances and happenstance. Contributions can only be defined as contributions to this or that association in this or that situation. Such contributions reflect an individual’s marginal usefulness to some particular group. These contributions are not to be mistaken for contributions to society itself, or for the worth to society of its members as citizens. The sum of an individual’s entitlements, or even of their uncompensated contributions to associations within society, is not to be regarded as a contribution to society. Within a Kantian view there is no place for the idea of an individual’s contribution to society that parallels that of an individual’s contribution to associations within society. Insofar as

13. These goods are defined as things that, from the standpoint of the original position, it is rational for the parties to want whatever their final ends (which are unknown to them). They serve as generalized means, so to speak, for realizing all, or most all, rational systems of aims. See Theory, pp. 92–95, 396ff., 433ff.

14. One aim of §7–8 is to indicate a reply to David Gauthier’s illuminating critique of the difference principle, “Justice and Natural Endowment,” Social Theory and Practice 3 (1974):3–26. I refer to his discussion here because his argument depends on being able to distinguish between what is acquired by individuals as members of society and what would have been acquired by them in a state of nature. If this distinction has no useful meaning, then I believe that the way is cleared to meeting Gauthier’s objection. Of course, much more needs to be said. In any case, I fully agree with his remarks on pp. 25ff. and much of my discussion is designed to show how a Kantian contract view can be stated to accord with them.

15. See Theory, pp. 136, 147; cf. 80.
we compare the worth of citizens at all, their worth in a just and well-ordered society is always equal, and this equality is reflected in the system of basic liberties and fair opportunities, and in the operations of the difference principle.

Third, and last, recall that in a Kantian view the parties are regarded as free and equal moral persons. To say that they are moral persons is to say that they have a conception of the good (a system of final ends) and a capacity to understand a conception of justice and to follow it in their life (a sense of justice). Now the freedom of moral persons can be interpreted under two headings: first, as free persons, they regard themselves as having a highest-order interest in regulating all their other interests, even their fundamental ones, by reason, that is, by rational and reasonable principles that are expressive of their autonomy. Moreover, free persons do not think of themselves as indissolubly tied to any particular final end, or family of such ends, but regard themselves as always capable of appraising and revising their aims in the light of reasonable considerations. Second, we assume that free persons are responsible for their interests and ends: they are able to control and revise their wants and desires, and as circumstance requires, they accept the responsibility for doing so.

Now freedom as applied to social institutions means a certain pattern of rights and liberties; and equal freedom means that certain basic liberties and opportunities are equal and that social and economic inequalities are regulated by principles suitably adjusted to preserve the fair value of these liberties. From the preceding definitions of freedom as applied to moral persons and to social forms, it is plain that free and equal persons are not defined as those whose social relations answer to the very principles that would be agreed to in the original position. For to say this would undermine the argument for these principles that is grounded on their being the principles that would be adopted. But once the parties are described in terms that have an institutional expression, then, given the role of the basic structure, it is no accident that the first principles of justice apply directly to the basic structure. The freedom and equality of moral persons require some public form, and the content of the two principles fulfills this expectation. And this stands in contrast, for example, to classical utilitarianism, which takes as basic the capacity for pleasure and pain, to or for certain intrinsically valuable experiences, defined in such a way that no particular institutional expression is required, although of course certain social forms are superior to others as more effective means to achieve a greater net balance of happiness, or a greater sum of value.

§ 9. Ideal Form for the Basic Structure

We now come to the fourth and last point (see the end of §1): namely, that although society may reasonably rely on a large element of pure procedural justice in determining distributive shares, a conception of justice must incorporate an ideal form for the basic structure in the light of which the accumulated results of ongoing social processes are to be limited and adjusted.

Now in view of the special role of the basic structure, it is natural to ask the following question: by what principle can free and equal moral persons accept the fact that social and economic inequalities are deeply influenced by social fortune, and natural and historical happenstance? Since the parties regard themselves as such persons, the obvious starting point is for them to suppose that all social primary goods, including income and wealth, should be equal: everyone should have an equal share. But they must

16. The worth of citizens in a well-ordered society is always equal because in such a society everyone is assumed to comply with just institutions and to fulfill their duties and obligations moved, when appropriate, by a sufficiently strong sense of justice. Inequalities do not arise from unequal moral worth; their explanation lies elsewhere.

17. See below, the second paragraph of §9.


take organizational requirements and economic efficiency into account. Thus it is unreasonable to stop at equal division. The basic structure should allow organizational and economic inequalities so long as these improve everyone's situation, including that of the least advantaged, provided these inequalities are consistent with equal liberty and fair equality of opportunity. Because they start from equal shares, those who benefit least (taking equal division as the benchmark) have, so to speak, a veto. And thus the parties arrive at the difference principle. Here equal division is accepted as the benchmark because it reflects how people are situated when they are represented as free and equal moral persons. Among such persons, those who have gained more than others are to do so on terms that improve the situation of those who have gained less. These intuitive considerations indicate why the difference principle is the appropriate criterion to govern social and economic inequalities.

To understand the difference principle several matters have to be kept in mind. First, the two principles of justice as they work in tandem incorporate an important element of pure procedural justice in the actual determination of distributive shares. They apply to the basic structure and its system for acquiring entitlements; within appropriate limits, whatever distributive shares result are just. A fair distribution can be arrived at only by the actual working of a fair social process over time in the course of which, in accordance with publicly announced rules, entitlements are earned and honored. These features define pure procedural justice. Therefore, if it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires and preferences is more just than another, then there is simply no answer to the question.20

Thus the principles of justice, in particular the difference principle, apply to the main public principles and policies that regulate social and economic inequalities. They are used to adjust the system of entitlements and earnings and to balance the familiar everyday standards and precepts which this system employs. The difference principle holds, for example, for income and property taxation, for fiscal and economic policy. It applies to the announced system of public law and statutes and not to particular transactions or distributions, nor to the decisions of individuals and associations, but rather to the institutional background against which these transactions and decisions take place. There are no unannounced and unpredictable interferences with citizens' expectations and acquisitions. Entitlements are earned and honored as the public system of rules declares. Taxes and restrictions are all in principle foreseeable, and holdings are acquired on the known condition that certain transfers and redistributions will be made. The objection that the difference principle enjoins continuous corrections of particular distributions and capricious interference with private transactions is based on a misunderstanding.

Again, the two principles of justice do not insist that the actual distribution conform at any given time (or over time) to any observable pattern, say equality, or that the degree of inequality computed from the distribution fall within a certain range, say of values of the Gini coefficient.21 What is enjoined is that (permissible) inequalities should make a certain functional contribution to the expectations of the least favored, where this functional contribution results from the working of the system of entitlements set up in public institutions. The aim, however, is not to eliminate contingencies from social life, for some contingencies are inevitable. Thus even if an equal distribution of natural assets seemed more in keeping with the equality of free persons, the question of redistributing these assets (were this conceivable) does not arise, since it is incompatible with the integrity of the person. Nor need we make any specific assumptions about how great natural variations are; we only suppose that, as realized in later life, they are influenced by many kinds of happenstance.

20. Ibid., p. 88.

21. For this and other measures of inequality, see A. K. Sen, On Economic Inequality (New York: W. W. Norton, 1973), chap. 2.
Institutions must organize social cooperation so that they encourage constructive efforts. We have a right to our natural abilities and a right to whatever we become entitled to by taking part in a fair social process. The problem, of course, is how to characterize such a process. The two principles express the idea that no one should have less than they would receive in an equal division of primary goods, and that when the fruitfulness of social cooperation allows for a general improvement, then the existing inequalities are to work to the benefit of those whose position has improved the least, taking equal division as the benchmark.

The two principles also specify an ideal form for the basic structure in the light of which ongoing institutional and procedural processes are constrained and adjusted. Among these constraints are the limits on the accumulation of property (especially if private property in productive assets exists) that derive from the requirements of the fair value of political liberty and fair equality of opportunity, and the limits based on considerations of stability and excusable envy, both of which are connected to the essential primary good of self-respect. We need such an ideal to guide the adjustments necessary to preserve background justice. As we have seen (in §4), even if everyone acts fairly as defined by the rules that it is both reasonable and practicable to impose on individuals, the upshot of many separate transactions will eventually undermine background justice. This is obvious once we view society, as we must, as involving cooperation over generations. Thus even in a well-ordered society, adjustments in the basic structure are always necessary. And so an institutional division of labor must be established between the basic structure and the rules applying directly to particular transactions. Individuals and associations are left free to advance their ends within the framework of background institutions which carry out the operations required to maintain a just basic structure.

The need for a structural ideal to specify constraints and to guide adjustments does not depend upon injustice. Even with strict compliance with all reasonable and practical rules, such adjustments are continually required. The fact that actual political and social life is often pervaded by much injustice merely underlines this necessity. A purely procedural theory that contained no structural principles for a just social order would be of no use in our world, where the political goal is to eliminate injustice and to guide change toward a fair basic structure. A conception of justice must specify the requisite structural principles and point to the overall direction of political action. In the absence of such an ideal form for background institutions, there is no rational basis for continually adjusting the social process so as to preserve background justice, nor for eliminating existing injustice. Thus ideal theory, which defines a perfectly just basic structure, is a necessary complement to nonideal theory without which the desire for change lacks an aim.

§ 10. Reply to Hegel's Criticism

This completes my discussion of the four points stated at the end of §1. One result of what has been said is a reply to idealism. The problem is this: in order to work out a Kantian conception of justice it seems desirable to detach the structure of Kant's doctrine from its background in transcendental idealism and to give it a procedural interpretation by means of the construction of the original position. (This detachment is important if for no other reason than that it should enable us to see how far a procedural interpretation of Kant's view within a reasonable empiricist framework is possible.) But to achieve this aim we have to show that the original position construction, which uses the idea of the social contract, is not open to the cogent objections that idealists raised to the contract tradition of their day.

Thus Hegel thought that this doctrine confused society and the state with an association of private persons; that it permitted the general form and content of public law to be determined too much by the contingent and specific private interests and personal concerns of individuals; and that it could make no sense of

the fact that it is not up to us whether we are born into and belong to our society. For Hegel the doctrine of social contract was an illegitimate and uncritical extension of ideas at home in and limited to (what he called) "civil society." A further objection was that the doctrine failed to recognize the social nature of human beings and depended on attributing to them certain fixed natural abilities and specific desires independent from, and for theoretical purposes prior to, society.\footnote{See The Philosophy of Right, translated by T. M. Knox (Oxford: Clarendon Press, 1942), pp. 58f., 70f., 156f., 186.}

I have attempted to reply to these criticisms first by maintaining that the primary subject of justice is the basic structure of society, which has the fundamental task of establishing background justice (§§4–5). And while this contention may offhand appear to be a concession, it nevertheless is not: the original position can still be characterized so that it establishes a fair agreement situation between free and equal moral persons and one in which they can reach a rational agreement. This characterization depends upon conceiving of free and equal moral persons in a certain way and interpreting their wants and needs (for purposes of the argument in the original position) in terms of an account of primary goods. To be sure, we must distinguish the agreement on a conception of justice from all other agreements, but this requirement is not surprising: we should expect the agreement that settles principles for the basic structure to have features that mark it off from all agreements made within that structure (§§6–7). Finally, I have indicated how justice as fairness can accommodate the social nature of human beings (§8).

At the same time, since it proceeds from a suitably individualistic basis (the original position is conceived as fair between free and equal moral persons), it is a moral conception that provides an appropriate place for social values without sacrificing the freedom and integrity of the person.

It may be that other contract views cannot answer the idealist critique. Historical process doctrines such as those of Hobbes and Locke, or the libertarian view, although importantly very different from one another, all seem open to objection. First, since the social contract is made by people in a state of nature (in the case of Hobbes and Locke), or individuals agree to become a client of the dominant protection agency (on the libertarian scheme), it appears inevitable that the terms of these agreements, or the circumstances that they ratify, are bound to be substantially affected by contingencies and accidents of the as-if just historical process which has no tendency to preserve or to move toward background justice. This difficulty is strikingly illustrated by Locke's doctrine. He assumes that not all members of society following the social compact have equal political rights: citizens have the right to vote in virtue of owning property so that the propertyless have no vote and no right to exercise political authority.\footnote{See Second Treatise of Government, reading together §§140 and 158.} Presumably the diverse accumulations of the as-if just historical process over generations has left many without property through no fault of their own; and although the social contract and the subsequent entrusteeship of political authority is perfectly rational from their standpoint, and does not contradict their duty to God, it does not secure for them these basic political rights. From a Kantian viewpoint, Locke's doctrine improperly subjects the social relationships of moral persons to historical and social contingencies that are external to, and eventually undermine, their freedom and equality. The constraints that Locke imposes on the as-if historical process are not strong enough to characterize a conception of background justice acceptable to free and equal moral persons. This can be brought out by supposing that the social compact is to be made immediately following the creation of human beings as free and equal persons in the state of nature. Assuming that their situation with respect to one another suitably represents their freedom and equality, and also that (as Locke holds) God has not conferred on anyone the right to exercise political authority, they will presumably acknowledge principles that assure equal basic (including political) rights for
all throughout the later historical process. This reading of Locke's view makes it an as-if nonhistorical doctrine when we suppose that during the relevant period of time people were too widely scattered for any agreement to be reached. That Locke seems not to have considered this alternative possibility brings out the historical aspect of his theory.25

I have also suggested that any contract theory must recognize that a division of labor is necessary between the operations of the basic structure in maintaining background justice and the definition and enforcement by the legal system of the rules that apply directly to individuals and associations, and govern their particular transactions. Finally, there is no use in a Kantian contract theory for the contrast between the situation of individuals in the state of nature and their situation in society. This kind of comparison belongs solely to agreements struck within the framework of background institutions and has no role in determining basic rights of the members of society. Moreover, any benchmark of comparison between the relative advantages of citizens must be founded on their present relationships and the way in which social institutions work now, and not on how the actual (or some as-if just) historical sequence of transactions extending backward over generations has improved (or would improve) everyone's circumstances in comparison with the initial (or some hypothetical) state of nature.

My aim here is not to criticize other contract theories. To do that would require a separate discussion. Rather, I have tried to explain why justice as fairness takes the basic structure as the first subject of justice and attempts to develop a special theory for this case. Given the unique features and role of this structure, the idea of an agreement must be appropriately transformed if the intent of the Kantian form of the contract doctrine is to be realized. I have sought to show how the necessary transformations can be made.

25. For this way of seeing the historical aspect of Locke's theory I am indebted to Quentin Skinner.