

tions of political justice. In general, all that can be said is that the strength of the claims of formal justice, of obedience to system, clearly depend upon the substantive justice of institutions and the possibilities of their reform.

Some have held that in fact substantive and formal justice tend to go together and therefore that at least grossly unjust institutions are never, or at any rate rarely, impartially and consistently administered.⁶ Those who uphold and gain from unjust arrangements, and who deny with contempt the rights and liberties of others, are not likely, it is said, to let scruples concerning the rule of law interfere with their interests in particular cases. The inevitable vagueness of laws in general and the wide scope allowed for their interpretation encourages an arbitrariness in reaching decisions which only an allegiance to justice can allay. Thus it is maintained that where we find formal justice, the rule of law and the honoring of legitimate expectations, we are likely to find substantive justice as well. The desire to follow rules impartially and consistently, to treat similar cases similarly, and to accept the consequences of the application of public norms is intimately connected with the desire, or at least the willingness, to recognize the rights and liberties of others and to share fairly in the benefits and burdens of social cooperation. The one desire tends to be associated with the other. This contention is certainly plausible but I shall not examine it here. For it cannot be properly assessed until we know what are the most reasonable principles of substantive justice and under what conditions men come to affirm and to live by them. Once we understand the content of these principles and their basis in reason and human attitudes, we may be in a position to decide whether substantive and formal justice are tied together.

11. TWO PRINCIPLES OF JUSTICE

I shall now state in a provisional form the two principles of justice that I believe would be agreed to in the original position. The first formulation of these principles is tentative. As we go on I shall consider several formulations and approximate step by step the final statement to be given much later. I believe that doing this allows the exposition to proceed in a natural way.

6. See Lon Fuller, *The Morality of Law* (New Haven, Yale University Press, 1964), ch. IV.

The first statement of the two principles reads as follows.

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

There are two ambiguous phrases in the second principle, namely "everyone's advantage" and "open to all." Determining their sense more exactly will lead to a second formulation of the principle in §13. The final version of the two principles is given in §46; §39 considers the rendering of the first principle.

These principles primarily apply, as I have said, to the basic structure of society and govern the assignment of rights and duties and regulate the distribution of social and economic advantages. Their formulation presupposes that, for the purposes of a theory of justice, the social structure may be viewed as having two more or less distinct parts, the first principle applying to the one, the second principle to the other. Thus we distinguish between the aspects of the social system that define and secure the equal basic liberties and the aspects that specify and establish social and economic inequalities. Now it is essential to observe that the basic liberties are given by a list of such liberties. Important among these are political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are to be equal by the first principle.

The second principle applies, in the first approximation, to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility. While the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time, positions of authority and responsibility must be accessible to all. One applies the second principle by holding positions open, and then, subject to this constraint, arranges social and economic inequalities so that everyone benefits.

These principles are to be arranged in a serial order with the first principle prior to the second. This ordering means that infringements of

the basic equal liberties protected by the first principle cannot be justified, or compensated for, by greater social and economic advantages. These liberties have a central range of application within which they can be limited and compromised only when they conflict with other basic liberties. Since they may be limited when they clash with one another, none of these liberties is absolute; but however they are adjusted to form one system, this system is to be the same for all. It is difficult, and perhaps impossible, to give a complete specification of these liberties independently from the particular circumstances—social, economic, and technological—of a given society. The hypothesis is that the general form of such a list could be devised with sufficient exactness to sustain this conception of justice. Of course, liberties not on the list, for example, the right to own certain kinds of property (e.g., means of production) and freedom of contract as understood by the doctrine of *laissez-faire* are not basic; and so they are not protected by the priority of the first principle. Finally, in regard to the second principle, the distribution of wealth and income, and positions of authority and responsibility, are to be consistent with both the basic liberties and equality of opportunity.

The two principles are rather specific in their content, and their acceptance rests on certain assumptions that I must eventually try to explain and justify. For the present, it should be observed that these principles are a special case of a more general conception of justice that can be expressed as follows.

All social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.

Injustice, then, is simply inequalities that are not to the benefit of all. Of course, this conception is extremely vague and requires interpretation.

As a first step, suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life. For simplicity, assume that the chief primary goods at the disposition of society are rights, liberties, and opportunities, and income and wealth. (Later on in Part Three the primary good of self-respect has a central place.) These are the social primary goods. Other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control. Imagine, then, a hypothetical initial arrange-

ment in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and differences in authority would make everyone better off than in this hypothetical starting situation, then they accord with the general conception.

Now it is possible, at least theoretically, that by giving up some of their fundamental liberties men are sufficiently compensated by the resulting social and economic gains. The general conception of justice imposes no restrictions on what sort of inequalities are permissible; it only requires that everyone's position be improved. We need not suppose anything so drastic as consenting to a condition of slavery. Imagine instead that people seem willing to forego certain political rights when the economic returns are significant. It is this kind of exchange which the two principles rule out; being arranged in serial order they do not permit exchanges between basic liberties and economic and social gains except under extenuating circumstances (§§26, 39).

For the most part, I shall leave aside the general conception of justice and examine instead the two principles in serial order. The advantage of this procedure is that from the first the matter of priorities is recognized and an effort made to find principles to deal with it. One is led to attend throughout to the conditions under which the absolute weight of liberty with respect to social and economic advantages, as defined by the lexical order of the two principles, would be reasonable. Offhand, this ranking appears extreme and too special a case to be of much interest; but there is more justification for it than would appear at first sight. Or at any rate, so I shall maintain (§82). Furthermore, the distinction between fundamental rights and liberties and economic and social benefits marks a difference among primary social goods that suggests an important division in the social system. Of course, the distinctions drawn and the ordering proposed are at best only approximations. There are surely circumstances in which they fail. But it is essential to depict clearly the main lines of a reasonable conception of justice; and under many conditions anyway, the two principles in serial order may serve well enough.

The fact that the two principles apply to institutions has certain consequences. First of all, the rights and basic liberties referred to by these principles are those which are defined by the public rules of the basic structure. Whether men are free is determined by the rights and duties established by the major institutions of society. Liberty is a certain pattern

of social forms. The first principle simply requires that certain sorts of rules, those defining basic liberties, apply to everyone equally and that they allow the most extensive liberty compatible with a like liberty for all. The only reason for circumscribing basic liberties and making them less extensive is that otherwise they would interfere with one another.

Further, when principles mention persons, or require that everyone gain from an inequality, the reference is to representative persons holding the various social positions, or offices established by the basic structure. Thus in applying the second principle I assume that it is possible to assign an expectation of well-being to representative individuals holding these positions. This expectation indicates their life prospects as viewed from their social station. In general, the expectations of representative persons depend upon the distribution of rights and duties throughout the basic structure. Expectations are connected: by raising the prospects of the representative man in one position we presumably increase or decrease the prospects of representative men in other positions. Since it applies to institutional forms, the second principle (or rather the first part of it) refers to the expectations of representative individuals. As I shall discuss below (§14), neither principle applies to distributions of particular goods to particular individuals who may be identified by their proper names. The situation where someone is considering how to allocate certain commodities to needy persons who are known to him is not within the scope of the principles. They are meant to regulate basic institutional arrangements. We must not assume that there is much similarity from the standpoint of justice between an administrative allotment of goods to specific persons and the appropriate design of society. Our common sense intuitions for the former may be a poor guide to the latter.

Now the second principle insists that each person benefit from permissible inequalities in the basic structure. This means that it must be reasonable for each relevant representative man defined by this structure, when he views it as a going concern, to prefer his prospects with the inequality to his prospects without it. One is not allowed to justify differences in income or in positions of authority and responsibility on the ground that the disadvantages of those in one position are outweighed by the greater advantages of those in another. Much less can infringements of liberty be counterbalanced in this way. It is obvious, however, that there are indefinitely many ways in which all may be advantaged when the initial arrangement of equality is taken as a benchmark. How then are we to choose among these possibilities? The principles must be specified so that they yield a determinate conclusion. I now turn to this problem.

sonal comparisons long after the conditions for their legitimate use had been ruled out by the circumstances of the original position.

29. SOME MAIN GROUNDS FOR THE TWO PRINCIPLES OF JUSTICE

In this section I use the conditions of publicity and finality to give some of the main arguments for the two principles of justice. I shall rely upon the fact that for an agreement to be valid, the parties must be able to honor it under all relevant and foreseeable circumstances. There must be a rational assurance that one can carry through. The arguments I shall adduce fit under the heuristic schema suggested by the reasons for following the maximin rule. That is, they help to show that the two principles are an adequate minimum conception of justice in a situation of great uncertainty. Any further advantages that might be won by the principle of utility are highly problematical, whereas the hardship if things turn out badly are intolerable. It is at this point that the concept of a contract has a definite role: it suggests the condition of publicity and sets limits upon what can be agreed to.

The first confirming ground for the two principles can be explained in terms of what I earlier referred to as the strains of commitment. I said (§25) that the parties have a capacity for justice in the sense that they can be assured that their undertaking is not in vain. Assuming that they have taken everything into account, including the general facts of moral psychology, they can rely on one another to adhere to the principles adopted. Thus they consider the strains of commitment. They cannot enter into agreements that may have consequences they cannot accept. They will avoid those that they can adhere to only with great difficulty. Since the original agreement is final and made in perpetuity, there is no second chance. In view of the serious nature of the possible consequences, the question of the burden of commitment is especially acute. A person is choosing once and for all the standards which are to govern his life prospects. Moreover, when we enter an agreement we must be able to honor it even should the worst possibilities prove to be the case. Otherwise we have not acted in good faith. Thus the parties must weigh with care whether they will be able to stick by their commitment in all circumstances. Of course, in answering this question they have only a general knowledge of human psychology to go on. But this information is enough to tell which conception of justice involves the greater stress.

In this respect the two principles of justice have a definite advantage. Not only do the parties protect their basic rights but they insure themselves against the worst eventualities. They run no chance of having to acquiesce in a loss of freedom over the course of their life for the sake of a greater good enjoyed by others, an undertaking that in actual circumstances they might not be able to keep. Indeed, we might wonder whether such an agreement can be made in good faith at all. Compacts of this sort exceed the capacity of human nature. How can the parties possibly know, or be sufficiently sure, that they can keep such an agreement? Certainly they cannot base their confidence on a general knowledge of moral psychology. To be sure, any principle chosen in the original position may require a large sacrifice for some. The beneficiaries of clearly unjust institutions (those founded on principles which have no claim to acceptance) may find it hard to reconcile themselves to the changes that will have to be made. But in this case they will know that they could not have maintained their position anyway. In any case, the two principles of justice provide an alternative. If the only possible candidates all involved similar risks, the problem of the strains of commitment would have to be waived. This is not the case, and judged in this light the two principles seem distinctly superior.

A second consideration invokes the condition of publicity as well as that of the constraints on agreements. I shall present the argument in terms of the question of psychological stability. Earlier I stated that a strong point in favor of a conception of justice is that it generates its own support. When the basic structure of society is publicly known to satisfy its principles for an extended period of time, those subject to these arrangements tend to develop a desire to act in accordance with these principles and to do their part in institutions which exemplify them. A conception of justice is stable when the public recognition of its realization by the social system tends to bring about the corresponding sense of justice. Now whether this happens depends, of course, on the laws of moral psychology and the availability of human motives. I shall discuss these matters later on (§§75–76). At the moment we may observe that the principle of utility seems to require a greater identification with the interests of others than the two principles of justice. Thus the latter will be a more stable conception to the extent that this identification is difficult to achieve. When the two principles are satisfied, each person's basic liberties are secured and there is a sense defined by the difference principle in which everyone is benefited by social cooperation. Therefore we can explain the acceptance of the social system and the principles it satisfies

by the psychological law that persons tend to love, cherish, and support whatever affirms their own good. Since everyone's good is affirmed, all acquire inclinations to uphold the scheme.

When the principle of utility is satisfied, however, there is no such assurance that everyone benefits. Allegiance to the social system may demand that some, particularly the less favored, should forgo advantages for the sake of the greater good of the whole. Thus the scheme will not be stable unless those who must make sacrifices strongly identify with interests broader than their own. But this is not easy to bring about. The sacrifices in question are not those asked in times of social emergency when all or some must pitch in for the common good. The principles of justice apply to the basic structure of the social system and to the determination of life prospects. What the principle of utility asks is precisely a sacrifice of these prospects. Even when we are less fortunate, we are to accept the greater advantages of others as a sufficient reason for lower expectations over the whole course of our life. This is surely an extreme demand. In fact, when society is conceived as a system of cooperation designed to advance the good of its members, it seems quite incredible that some citizens should be expected, on the basis of political principles, to accept still lower prospects of life for the sake of others. It is evident then why utilitarians should stress the role of sympathy in moral learning and the central place of benevolence among the moral virtues. Their conception of justice is threatened with instability unless sympathy and benevolence can be widely and intensely cultivated. Looking at the question from the standpoint of the original position, the parties would reject the principle of utility and adopt the more realistic idea of designing the social order on a principle of reciprocal advantage. We need not suppose, of course, that in everyday life persons never make substantial sacrifices for one another, since moved by affection and ties of sentiment they often do. But such actions are not demanded as a matter of justice by the basic structure of society.

Furthermore, the public recognition of the two principles gives greater support to men's self-respect and this in turn increases the effectiveness of social cooperation. Both effects are reasons for agreeing to these principles. It is clearly rational for men to secure their self-respect. A sense of their own worth is necessary if they are to pursue their conception of the good with satisfaction and to take pleasure in its fulfillment. Self-respect is not so much a part of any rational plan of life as the sense that one's plan is worth carrying out. Now our self-respect normally depends upon the respect of others. Unless we feel that our endeavors are respected by

them, it is difficult if not impossible for us to maintain the conviction that our ends are worth advancing (§67). Hence for this reason the parties would accept the natural duty of mutual respect which asks them to treat one another civilly and to be willing to explain the grounds of their actions, especially when the claims of others are overruled (§51). Moreover, one may assume that those who respect themselves are more likely to respect each other and conversely. Self-contempt leads to contempt of others and threatens their good as much as envy does. Self-respect is reciprocally self-supporting.

Thus a desirable feature of a conception of justice is that it should publicly express men's respect for one another. In this way they insure a sense of their own value. Now the two principles achieve this end. For when society follows these principles, everyone's good is included in a scheme of mutual benefit and this public affirmation in institutions of each man's endeavors supports men's self-esteem. The establishment of equal liberty and the operation of the difference principle are bound to have this effect. The two principles are equivalent, as I have remarked, to an undertaking to regard the distribution of natural abilities in some respects as a collective asset so that the more fortunate are to benefit only in ways that help those who have lost out (§17). I do not say that the parties are moved by the ethical propriety of this idea. But there are reasons for them to accept this principle. For by arranging inequalities for reciprocal advantage and by abstaining from the exploitation of the contingencies of nature and social circumstance within a framework of equal liberties, persons express their respect for one another in the very constitution of their society. In this way they insure their self-respect as it is rational for them to do.

Another way of putting this is to say that the principles of justice manifest in the basic structure of society men's desire to treat one another not as means only but as ends in themselves. I cannot examine Kant's view here.³¹ Instead I shall freely interpret it in the light of the contract doctrine. The notion of treating men as ends in themselves and never as only a means obviously needs an explanation. How can we always treat everyone as an end and never as a means only? Certainly we cannot say that it comes to treating everyone by the same general principles, since this interpretation makes the concept equivalent to formal justice. On the contract interpretation treating men as ends in themselves implies at the

31. See *The Foundations of the Metaphysics of Morals*, pp. 427–430 of vol. IV of *Kants Gesammelten Schriften*, Preussische Akademie der Wissenschaften (Berlin, 1913), where the second formulation of the categorical imperative is introduced.

very least treating them in accordance with the principles to which they would consent in an original position of equality. For in this situation men have equal representation as moral persons who regard themselves as ends and the principles they accept will be rationally designed to protect the claims of their person. The contract view as such defines a sense in which men are to be treated as ends and not as means only.

But the question arises whether there are substantive principles which convey this idea. If the parties wish to express this notion visibly in the basic structure of their society in order to secure each man's rational interest in his self-respect, which principles should they choose? Now it seems that the two principles of justice achieve this aim: for all have equal basic liberties and the difference principle interprets the distinction between treating men as a means only and treating them also as ends in themselves. To regard persons as ends in themselves in the basic design of society is to agree to forgo those gains which do not contribute to everyone's expectations. By contrast, to regard persons as means is to be prepared to impose on those already less favored still lower prospects of life for the sake of the higher expectations of others. Thus we see that the difference principle, which at first appears rather extreme, has a reasonable interpretation. If we further suppose that social cooperation among those who respect each other and themselves as manifest in their institutions is likely to be more effective and harmonious, the general level of expectations, assuming we could estimate it, may be higher when the two principles of justice are satisfied than one might otherwise have thought. The advantage of the principle of utility in this respect is no longer so clear.

The principle of utility presumably requires some who are less fortunate to accept even lower life prospects for the sake of others. To be sure, it is not necessary that those having to make such sacrifices rationalize this demand by having a lesser appreciation of their own worth. It does not follow from the utilitarian doctrine that it is because their aims are trivial or unimportant that some individuals' expectations are less. But the parties must consider the general facts of moral psychology. Surely it is natural to experience a loss of self-respect, a weakening of our sense of the value of accomplishing our aims, when we are already less favored. This is particularly likely to be so when social cooperation is arranged for the good of individuals. That is, those with greater advantages do not claim that they are necessary to preserve certain religious or cultural values which everyone has a duty to maintain. We are not here considering a doctrine of traditional order nor the principle of perfectionism, but

rather the principle of utility. In this instance, then, men's self-respect hinges on how they regard one another. If the parties accept the utility criterion, they will lack the support to their self-respect provided by the public commitment of others to arrange inequalities to everyone's advantage and to guarantee the basic liberties for all. In a public utilitarian society men, particularly the least advantaged, will find it more difficult to be confident of their own worth.

The utilitarian may answer that in maximizing the average utility these matters are already taken into account. If, for example, the equal liberties are necessary for men's self-respect and the average utility is higher when they are affirmed, then of course they should be established. So far so good. But the point is that we must not lose sight of the publicity condition. This requires that in maximizing the average utility we do so subject to the constraint that the utilitarian principle is publicly accepted and followed as the fundamental charter of society. What we cannot do is to raise the average utility by encouraging men to adopt and apply non-utilitarian principles of justice. If, for whatever reasons, the public recognition of utilitarianism entails some loss of self-esteem, there is no way around this drawback. It is an unavoidable cost of the utilitarian scheme given our stipulations. Thus suppose that the average utility is actually greater should the two principles of justice be publicly affirmed and realized in the basic structure. For the reasons mentioned, this may conceivably be the case. These principles would then represent the most attractive prospect, and on both lines of reasoning just examined, the two principles would be accepted. The utilitarian cannot reply that one is now really maximizing the average utility. In fact, the parties would have chosen the two principles of justice.

We should note, then, that utilitarianism, as I have defined it, is the view that the principle of utility is the correct principle for society's public conception of justice. And to show this one must argue that this criterion would be chosen in the original position. If we like, we can define a different variation of the initial situation in which the motivation assumption is that the parties want to adopt those principles that maximize average utility. The preceding remarks indicate that the two principles of justice may still be chosen. But if so, it is a mistake to call these principles—and the theory in which they appear—utilitarian. The motivation assumption by itself does not determine the character of the whole theory. In fact, the case for the principles of justice is strengthened if they would be chosen under different motivation assumptions. This indicates that the theory of justice is firmly grounded and not sensitive to slight changes in

this condition. What we want to know is which conception of justice characterizes our considered judgments in reflective equilibrium and best serves as the public moral basis of society. Unless one maintains that this conception is given by the principle of utility, one is not a utilitarian.³²

The strains of commitment and the publicity condition, both of which we have discussed in this section, are also important. The first arises from the fact that, in general, the class of things that can be agreed to is included within, but smaller than, the class of things that can be rationally chosen. We can decide to take a chance and the same time fully intend that, should things turn out badly, we shall do what we can to retrieve our situation. But if we make an agreement, we have to accept the result; and so to give an undertaking in good faith, we must not only intend to honor it but with reason believe that we can do so. Thus the contract condition excludes a certain kind of randomizing. One cannot agree to a principle if there is a real possibility that it has any outcome that one will not be able to accept. I shall not comment further on the publicity condition except to note that it ties in with the desirability of embedding ideals in first principles (end of §26), with simplicity (§49), and with stability. The latter is examined further in what I have called the second part of the argument (§§79–82).

The form of the argument for the two principles is that the balance of reasons favors them over the principle of average utility, and assuming transitivity, over the classical doctrine as well. Thus the agreement of the parties depends on weighing various considerations. The reasoning is informal and not a proof, and there is an appeal to intuition as the basis of the theory of justice. Yet, as I have remarked (§21), when everything is tallied up, it may be clear where the balance of reasons lies. If so, then to the extent that the original position embodies reasonable conditions used in the justification of principles in everyday life, the claim that one would agree to the principles of justice is perfectly credible. Thus they can serve as a conception of justice in the public acceptance of which persons can recognize one another's good faith.

It may be helpful at this point to list some of the main grounds in favor of the two principles of justice over the principle of average utility. That

32. Thus while Brandt holds that a society's moral code is to be publicly recognized, and that the best code from a philosophical standpoint is the one that maximizes average utility, he does not maintain that the principle of utility must belong to the code itself. In fact, he denies that within the public morality the final court of appeal need be to utility. Thus by the definition in the text, his view is not utilitarian. See "Some Merits of One Form of Rule Utilitarianism," *University of Colorado Studies* (Boulder, Colo., 1967), pp. 58f.

the conditions of generality of principle, universality of application, and limited information are not sufficient by themselves to require these principles is clear from the reasoning for the utility principle (§27). Further assumptions must, therefore, be incorporated into the original position. Thus, I have assumed that the parties regard themselves as having certain fundamental interests that they must protect if they can; and that, as free persons, they have a highest-order interest in maintaining their liberty to revise and alter these ends (§26). The parties are, so to speak, persons with determinate interests rather than bare potentialities for all possible interests, even though the specific character of these interests is unknown to them. They must try to secure favorable conditions for advancing these definite ends, whatever they are (§28). The hierarchy of interests and its relation to the priority of liberty is taken up later (§§39, 82), but the general nature of the argument for the basic liberties is illustrated by the case of liberty of conscience and freedom of thought (§§33–35).

In addition, the veil of ignorance (§24) is interpreted to mean not only that the parties have no knowledge of their particular aims and ends (except what is contained in the thin theory of the good), but also that the historical record is closed to them. They do not know, and cannot enumerate, the social circumstances in which they may find themselves, or the array of techniques their society may have at its disposal. They have, therefore, no objective grounds for relying on one probability distribution rather than another, and the principle of insufficient reason cannot be invoked as a way around this limitation. These considerations, together with those derived from regarding the parties as having determinate fundamental interests, imply that the expectation constructed by the argument for the utility principle is unsound and lacks the necessary unity (§28).

30. CLASSICAL UTILITARIANISM, IMPARTIALITY, AND BENEVOLENCE

I now want to compare classical utilitarianism with the two principles of justice. As we have seen, the parties in the original position would reject the classical principle in favor of that of maximizing average utility. Since they are concerned to advance their own interests, they have no desire to maximize the total (or the net balance) of satisfactions. For similar reasons they would prefer the two principles of justice. From a contractarian point of view, then, the classical principle ranks below both of these alter-