

SYMPOSIUM

MORAL AND POLITICAL PHILOSOPHY FOR A BROKEN WORLD?



JUSTICE AS FAIRNESS IN A BROKEN WORLD

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Abstract. In *Ethics for a Broken World: Imagining Philosophy after Catastrophe*, Tim Mulgan applies a number of influential moral and political theories to a “broken world”: a world of environmental catastrophe in which resources are insufficient to meet everyone’s basic needs. This paper shows that John Rawls’ conception of justice as fairness has very different implications for a broken world than Mulgan suggests it does. §2 briefly summarizes Rawls’ conception of justice, including how Rawls uses a hypothetical model—the “original position”—to argue for principles of justice. §3 explains how Mulgan uses a variation of Rawls’ original position—a *broken original position*—to argue that justice as fairness requires a “fair survival lottery” in a broken world. §4 shows that the parties to a broken original position have reasons not to agree to such a survival lottery. §5 then shows that Mulgan’s argument hangs upon a false assumption: that there are no viable options to adopt in a broken world besides some kind of survival lottery. Finally, §6 shows that the parties to a broken original position would instead rationally agree to a scheme of equal rights and opportunities to earn or forfeit shares of scarce resources on the basis of each person’s comparative contribution to human survival.

I

In his recent book, *Ethics for a Broken World: Imagining Philosophy after Catastrophe*, Tim Mulgan applies a number of influential moral and political theories to a “broken world: a place where resources are insufficient to meet everyone’s basic needs, where a chaotic climate makes life precarious and where each generation is worse off than the last.”¹ Mulgan’s inquiry is timely and important. Scientific predictions about climate change and its effects strongly suggest that our world may become “broken” in the foreseeable future. It is therefore important to investigate what morality would require of individuals and social-political structures in such a world. One of Mulgan’s most striking theses is that a variety of different moral and political theories—Robert Nozick’s libertarianism, classical utilitarianism, Thomas Hobbes’ contractarianism, John Locke’s natural rights theory, and John Rawls’ theory of “justice as fairness”—all support the implementation of some kind of “survival lottery” in a broken world, “a bureaucratic procedure to determine who lives and who dies.”² Although Mulgan argues that different moral and political theories would require somewhat different survival lotteries, in each case the essentials are similar: people would be issued “lottery tickets” that give each person a chance to obtain enough scarce resources to survive. Those whose tickets are selected survive, and those whose tickets are not selected die.

This paper shows, against Mulgan, that John Rawls’ famous conception of justice—justice as fairness—does not permit a

¹ Tim Mulgan, *Ethics for a Broken World: Imagining Philosophy After Catastrophe* (Montreal & Kingston-Itacha: McGill-Queen’s University Press, 2011).

² Ibid: 10-11. For Mulgan’s discussion of how libertarianism supports a lottery, see pp. 62-66. For his discussion of utilitarianism and survival lotteries, see pp. 142-6. For his discussion of Hobbes and lotteries, see pp. 157-8; for Locke and lotteries, see p. 159; and for Rawls and lotteries see lecture 15.

survival lottery in a broken world. §2 briefly summarizes Rawls' conception of justice as fairness, including how Rawls uses a hypothetical model—the “original position”—to justify principles of justice. §2 then explains how Mulgan uses a variation of Rawls' original position—a *broken original position*—to argue that justice as fairness requires a “fair survival lottery” in a broken world. §4 shows that the parties to a broken original position have reasons not to agree to such a survival lottery. §5 then shows that Mulgan's argument hangs upon a false assumption: that there are no viable options to adopt in a broken world besides some kind of survival lottery. I show, to the contrary, that the following scheme is a viable alternative: affording each person in a broken world equal rights and opportunities to earn or forfeit shares of scarce resources on the basis of their contribution to the survival of others. Finally, §6 shows precisely why the parties to a broken original position would rationally agree to this alternative over a survival lottery. Because free and equal individuals in a “broken original position” would know that they each have one, and only one, life to live, they should all rationally aim to avoid leaving their fate to mere chance, as a survival lottery requires. They should instead all rationally prefer a competitive scheme in which each person has rights and opportunities to earn or forfeit shares of scarce resources, thereby ensuring, at least as far as is possible in a broken world, that whether they live or die is determined by their choices, talents, and hard work, not mere chance.

II

Justice as Fairness: A Brief Overview

Although Rawls' theory of justice as fairness is complex in its details, its root ideas are simple. Rawls contends that a just society

would conform to principles that free and equal individuals would rationally agree to from an “original position” of fairness: a hypothetical position in which no one is able to arbitrarily privilege themselves or anyone else on any contingent grounds, such as their own identity, race, gender, religion, natural talents, social class, etc.³ Rawls argued that because no one in the original position knows anything about their own identity, it is rational for everyone in the original position to seek “social primary goods”—goods that will enable them to effectively pursue their goals no matter who they turn out to be: basic rights and liberties, political and economic opportunities, income and wealth, and social props to self-respect.⁴ Finally, Rawls argued—on grounds that need not concern us at present—that the parties to the original position should agree to the following principles of justice for distributing these goods *in a fully just society*:

- a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.
- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.⁵

³ See John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: The Belknap Press of Harvard University Press, 1999): §3, “The Main Idea of the Theory of Justice.”

⁴ J. Rawls, *A Theory of Justice*, p. 79.

⁵ These are Rawls’ statement of his principles of justice in John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993). For a different, earlier

However, Rawls' argument for these principles is predicated upon, among other things, an assumption of *reasonably favorable conditions*, or conditions of “moderate scarcity.”⁶ This assumption, obviously, is crucial in the present context. A “broken world”—the kind situation are concerned with in this paper—is not a world of moderate scarcity, but rather one of *extreme scarcity*: it is a world in which there are not enough natural resources for everyone enjoy and exercise traditional liberal-democratic liberties. Thus, if Rawls' conception of justice as fairness is to be properly extended to a broken world, the assumption of reasonably favorable conditions must be *replaced* with an assumption of a broken world. Let us now investigate the implications of doing so.

III

Mulgan's “Broken Original Position” Arguments for a Fair Survival Lottery

Mulgan proposes that the parties to a “broken original position” should assume, behind a Rawlsian veil of ignorance, that they are deliberating to principles of justice to govern a world where:

- a. “Breathable air, drinkable water, arable land, and fuel of all kinds are scarce resources that must be conserved and rationed”,

formulation see John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1971), 302-3.

⁶ J. Rawls, *A Theory of Justice*, p. 110. Rawls also predicates his theory on an assumption of “strict-compliance” (see pp. 4-5, 8-9, 216); however, this assumption need not concern us here.

- b. “familiar species have disappeared[...]”
- c. “many regions that once housed vast civilizations have either sunk beneath the waves or become too arid and hot to sustain life; and[...] human beings live only in higher latitudes, far from the tropics.”
- d. “Rainfall levels and sunshine hours are largely unpredictable, while extreme weather events such as floods, hurricanes and tidal waves are much more common[...]”
- e. “To make the most of good times, without knowing whether they will last for months or decades or days. In bad times, food production falls below what is needed to meet the needs of even a minimal population.”⁷

In short, the parties to a “broken original position” are to assume that they are deliberating about a world of (A) scarce and uncertain resources, which (B) make it impossible to predict accurately how many people can be expected to survive from day to day, month to month, and year to year.

Mulgan then simply assumes that some kind of survival lottery is the only viable option for dealing these types of conditions. Mulgan writes:

Rawls used his original position to design ideal liberal-democratic institutions. Similarly, we want *our* original position to help *design* a survival lottery. We don’t ask whether to design a lottery. (Like Rawls’ disciple, we say, “Only a fool would ask that question!”) We seek a theory of justice for a broken-world society organized around a fair social lottery.⁸

Before we examine whether this is really the case—whether a survival lottery is necessary or just in a broken world—let us examine precisely what kind of survival lottery Mulgan argues free

⁷ Tim Mulgan, *Ethics for a Broken World*, pp. 9-10.

⁸ *Ibid*, p. 187.

and equal individuals in a broken original position would rationally agree to.

Mulgan assumes, following Rawls, that the parties to a broken original position would rationally desire *social primary goods*: rights and liberties, opportunities, income and wealth, etc.⁹ Mulgan then assumes that because primary goods are scarce resources in a broken world—because “a fair distribution [of primary goods that] gives everyone a bundle that is adequate for a worthwhile life[...] [is] impossible [in a broken world]”¹⁰—the parties to the broken original position must agree to some kind of survival lottery in which each person is awarded a lottery ticket that affords them some chance of survival (“In my new broken original position, you know that you must accept *some* survival lottery, and you want one in which everyone has some chance of survival”¹¹). Finally, following Rawls, Mulgan suggests that the parties to the broken original position should use the same *maximin* reasoning that Rawls ascribes to the parties in his original position: a strategy of reasoning that maximizes the best outcome for the worst off.¹² This leads Mulgan to defend the following principle of justice for a broken world:

Broken general conception (BGC): Each person is to receive the most valuable ticket (in a lottery over bundles of social primary goods) that can be guaranteed for all, unless an unequal distribution of tickets is to everyone’s advantage.¹³

Although Mulgan never clarifies precisely what a lottery would have to do in order to satisfy this principle, the crucial thing

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid., pp. 187-8.

¹³ Ibid., p. 188.

about it is this: every person's access to primary goods—whichever bundle of basic rights and liberties, opportunities, income and wealth they receive *enabling them to obtain scarce survival goods* (e.g. food, water, arable land, etc.) would be entirely a matter of chance. Whoever loses the lottery is, quite literally, *out of luck*: no matter what they do, they can never get more primary goods (all-purpose means for obtaining survival goods) than they receive (or do not receive) as a result of the lottery.¹⁴ Let us call this proposal Mulgan's "Maximin Lottery."

Mulgan then introduces a second potential application of Rawls' theory to a broken world. Mulgan suggests that because different people have different attitudes towards risk—"Risk-averse ascetics are content with modest bundles of primary goods, while ambitious gamblers accept a lower possibility of surviving at a higher level of wealth"¹⁵—it might be rational for the parties to the broken original position to agree to a survival lottery that allocates *flexible tickets*. This is a rather peculiar proposal on Mulgan's part, given that Rawls explicitly argues that the parties to the original position should deliberate as if they are risk-averse.¹⁶ Indeed, if Rawls' arguments for risk aversion in the original position are right, Mulgan's proposal here is simply a non-starter. Still, let us examine Mulgan's proposal on its own terms. Mulgan asks us to, "Consider a very simple society with two groups: risk-averse ascetics and ambitious gamblers. Your lottery has two types of ticket: Safe (high probability of a small bundle) and Risky (lower probability of a larger bundle). People

¹⁴ Of course, luck and individual talents will affect survival odds, as well. However, the point of Mulgan's proposal, I take it, is that the aim of this survival lottery is to distribute goods *that contribute* to human survival to the maximum advantage (i.e. survivability) of the worst off. I thank an anonymous reviewer for encouraging me to clarify this.

¹⁵ *Ibid.*, p. 189.

¹⁶ J. Rawls, *A Theory of Justice*, §§26 and 29.

choose the ticket they want.”¹⁷ Mulgan then suggests that as long as everyone is able to pick a lottery ticket that conforms to their most desired level of risk-versus-reward, every person in the broken original position would be comfortable (or “relaxed”) with the survival lottery once the veil of ignorance is removed.¹⁸ Next, because Mulgan assumes that because a rational contract is one that everyone in the broken original position is comfortable with (or “relaxed” about), Mulgan concludes that it is rational for the parties to agree to such a lottery.¹⁹ Next, Mulgan imagines what such a society might be like:

One possibility is a class-based society with two groups: workers and aristocrats. Aristocrats have a better life, but they are disproportionately sacrificed whenever the population must be reduced. Unlike the class-based societies of the distant past, this society would lack resentment and envy. With their different values and attitudes to risk, everyone is equally content with her lot. Workers don’t want to trade places with aristocrats, or vice versa. The society is thus both just and stable.²⁰

Finally, admitting that real societies are more complicated than this, Mulgan suggests that a just broken-society should involve a *fair procedure* for developing such risk-based survival lotteries, and that a procedure for developing such a lottery would be fair and just “*if* you are relaxed about living in a society governed by that procedure.”²¹ Let us call this second proposal Mulgan’s “Choose-your-own-risk Lottery.”

Mulgan never explains which of these two proposals—(1) the Maximin Lottery or (2) “Choose-your-own-risk Lottery”—he

¹⁷ Tim Mulgan, *Ethics for a Broken World*, p. 191.

¹⁸ *Ibid.*, pp. 191-2.

¹⁹ *Ibid.*, p. 192.

²⁰ *Ibid.*

²¹ *Ibid.*

believes to be more defensible. Fortunately, this is immaterial for our purposes. We will now see that neither proposal is defensible.

IV

Problems with Mulgan's Arguments

Let us first examine whether it is rational for individuals in a broken original position to agree to either of the survival lotteries Mulgan proposes. First, consider Mulgan's:

Broken general conception (BGC): Each person is to receive the most valuable ticket (in a lottery over bundles of social primary goods) that can be guaranteed for all, unless an unequal distribution of tickets is to everyone's advantage.

Could the parties to a broken original position rationally accept this principle, given Rawls' point that a rational contract is one that individuals behind the veil of ignorance would be disposed to *keep* once the veil is raised?²² In order for it to be rational for the parties to accept BCG, each individual in the broken original position would have to be *willing to accept its implications* should they turn out to be on the "losing end" of the lottery. Losing the lottery, however, involves receiving fewer primary goods than other people—fewer basic rights, liberties, opportunities, and income and wealth *for obtaining scarce survival goods* (food, drinkable water, arable land, etc.). Losing the lottery may, in other words, essentially consign a person to death (if, for instance, there are not enough scarce goods, and they are not awarded rights to those goods). But of course consignment to

²² J. Rawls, *A Theory of Justice*, pp. 153-4.

death is hardly something that anyone in the broken original position—behind its veil of ignorance—would be willing to accept and want to uphold should it turn out to their fate (almost everyone, presumably, will want to live once the veil is raised). Thus, it is irrational for the parties to agree to Mulgan’s BGC principle on *precisely* the grounds Rawls gives for rejecting utilitarianism: a survival lottery leaves each person’s life or death to mere chance—something that many people in the real world desperately do not want, and which individuals in a broken original position should therefore want to avoid.²³

There is a more technical way to drive Rawls’ (and my) point against randomizing home. Rawls argues that anyone behind the veil of ignorance should treat themselves as having three higher-order interests that should guide their deliberations.²⁴ First, because every person behind the veil of ignorance knows that they are some real person, with real goals, “on the other side” of the veil of ignorance—that is, they know they will turn out to be someone with particular life-goals of their own—the parties should treat themselves as having a higher-order interest in enabling every person they could turn out to be to pursue their actual life goals—whatever they are—effectively. Secondly, however, the parties should know behind the veil of ignorance that every person they can turn out to be is a human being capable of rethinking, revising, and pursuing new life goals. People rethink and revise their life goals all the time, after all. They change career paths, change their minds about whether to have (more) children, decide to end their marriages, etc. Accordingly, Rawls argues that the parties behind the veil of ignorance should want to enable every person they can turn out to be (once the veil is raised) to be able to rethink, revise, and

²³ Ibid., §§3-6 and 44.

²⁴ J. Rawls, *Political Liberalism*, pp. 74-5, 106.

pursue new life goals. Finally, because the parties are assumed to be seeking an agreement on principles of justice, and have an interest in upholding whatever principles they agree to, Rawls argues that the parties should treat themselves as having a higher-order interest in understanding and upholding fair principles of justice (i.e. whatever principles they agree upon).

These three higher-order interests reveal precisely why it is irrational for the parties to the original position—to any form of it, including a broken original position—to agree to any kind of principle that involves randomness, including any form of survival lottery. Any person who agrees to a randomizing principle might rethink, revise, and want to pursue new life goals that are inconsistent with the randomizing principle's results. We saw this clearly above. It is irrational for the parties to a broken original position to agree to a survival lottery—any survival lottery—for the simple reason that they might not want to accept its results if they turn out to be on the losing end. Given their higher-order interests, it is rational for the parties to seek a better, *non-randomizing* option, an option that enables people to pursue, rethink, and revise, whatever goals they might have, including any anti-survival-lottery goals they might have.

The very same problem afflicts Mulgan's second proposal: the "Choose-your-own-risk Lottery" that distributes different tickets to people depending on their most favored level of risk-aversion. First, as Rawls argues, a rational agreement, again, is one that a person would be willing to uphold once "the results of the agreement are in." But now consider, on the one hand, someone—a gambler—who elects a Risky lottery ticket. Such a lottery ticket requires the person to die if there is a sudden downturn in the availability of scarce resources (as Mulgan writes, "[...] they are disproportionately sacrificed whenever the

population must be reduced”²⁵). Such a person would absolutely *not* be willing to uphold this result. They would not “go quietly”, submitting willingly to their death (even though it is what their lottery ticket requires). They would rather live in a situation in which they did not have to select a Safe or Risky lottery ticket at all. Similarly, consider a person who selects a Safe ticket, one that only gives them enough scarce resources to survive for a shorter amount of time. Suppose, as it turns out, that even though they live in a broken world, there is a significant period of abundant resources, and the “Aristocrats” in their society (i.e. people who picked the Risky ticket) all get enough resources to live 10 or 20 years longer than those who picked the Safe ticket. Would such a person really be “relaxed” about (or accept and be willing to uphold) the results of such a lottery? Mulgan contends that a society that conformed to such a lottery “would lack resentment and envy. With their different attitudes to risk, everyone is equally content with her lot. Workers don’t want to trade places with aristocrats, or vice versa. The society is thus both just and stable.”²⁶ But this intuitively seems false in a broken world. During periods of relative abundance, Workers would be likely to envy and resent the Aristocrats. The Workers would say, “Why should I only live to be 30 when, due to our current period of abundance, the Aristocrats get enough resources to live to age 50?” Conversely, during periods of severe scarcity, the Aristocrats would be likely to say, “Why should I keep up my end of the bargain? I know I selected a Risky ticket, but I do not want to die.” The idea that the parties to a broken original position would accept and willingly uphold such implications once the veil of ignorance is raised is simply implausible. But, insofar as this is the case—insofar as they cannot be comfortable with agreeing to the

²⁵ Tim Mulgan, *Ethics for a Broken World*, p. 192.

²⁶ Ibid.

Choose-your-own-risk Lottery—they should rationally reject that lottery, at least if some better alternative is available.

Finally, Mulgan’s case for the Choose-your-own-risk Lottery makes one additional fatal error. Mulgan assumes that everyone is willing to endure *some* level of risk in a “survival lottery.” However, this cannot be assumed. Some people they “could turn out to be” once the veil of ignorance is raised may be unwilling to endure *any* level of risk in a lottery. Such people may be willing to endure significant risks to their life in some domains—for example, hunting or gathering—but not be willing to endure any risk at all in a lottery. It is crucial to understand why this is the case. The parties to the original position, if you recall, are not permitted—thanks to the veil of ignorance—to know anything contingent about themselves. This means not only that they cannot know their own race, gender, religion, talents, etc., but also, whether they are willing to endure any level of risk at all in one domain or another. If I may, allow me to use myself as an example (I am a perfectly relevant case, after all; I am person like any other, and therefore should be considered in an original position, even a hypothetical one for a broken world). The idea of selecting a ticket, the implications of which are that whether I live or die is merely a matter of luck, is absolutely abhorrent to me. I think I would prefer to (A) fight or compete for scarce resources and lose—i.e. not have enough to survive—over (B) leaving my survival to luck alone. But now, if there is anyone like me in the world at all, the parties to the broken original position must take seriously, behind the veil of ignorance, that they could turn out to be me. They must, in other words, take seriously the possibility that they could turn out to be someone who is fundamentally opposed to risking their survival in any survival lottery whatsoever. Mulgan appears not to have countenanced this obvious possibility: that there are some people who, due to contingent facts about themselves—their religion, their

personality, etc.—might be fundamentally against accepting any sort of survival lottery. Mulgan is not entitled to assert that such people do not exist, or even that their preferences for not accepting a lottery are somehow “unfair” to others. For the original position itself—the broken original position, in this case—is supposed to be a model of social and political fairness: its output—the agreement its parties reach—is supposed to specify what is and is not fair in a broken world. Building in a tacit assertion that a survival lottery (and only a survival lottery) is fair is simply question-begging. In order to know whether justice as fairness permits, prohibits, or requires a survival lottery in a broken world, we must ask which principles of justice individuals behind its veil of ignorance would rationally agree to given the assumption that they could turn out to be anyone at all, including people who might be disposed to reject a survival lottery.

V

An Alternative Proposal: A Fair Competition to Earn Scarce Goods by Contributing to Human Survival

A broken world, again, is one in which resources needed for survival are *scarce and unpredictably available*. Such a world contains “times of plenty”—times when there are more than enough resources for larger numbers of people to survive—which alternate unpredictably with times in which there are not enough resources for even a “minimal” population to survive. A broken world, in other words, is a world that is so unpredictable that, although small and larger populations may thrive at times, there

will be other times, in every population, that *some people must die so that others can live.*²⁷

Throughout his book, Mulgan assumes that a survival lottery is the only viable way to respond to a broken world. However, there are surely other ways to deal with such a world. Consider, for instance, a competitive environment, in which every person is given an equal right and opportunity to *compete* for scarce resources (e.g. food, water, etc.), where the “winners” of the competition (those who get enough resources to survive) are those who demonstrate themselves *the most capable of contributing to the survival of others*, both long-term (by, say, developing new technologies for growing crops) and short-term (by, say, being particularly capable hunters of scarcely available animal prey, for food). There is no lottery here. On this proposal—call it the *Fair-Competition-to-Contribute-to-Human-Survival* proposal—each person has *equal rights and opportunities* to earn or forfeit scarce resources in a competition to contribute most to the survival of *all*, including the least well-off. Notice, first, that this proposal would actually seem to fit better with Rawls’ “general conception” of justice: the conception which holds that justice requires equality, except when inequalities are to the advantage of all, including the worse off. In contrast to Mulgan’s survival lotteries—both of which leave the life-prospects of everyone up to chance—this new proposal gives *everyone* the right and opportunity to compete for scarce survival goods. Why doesn’t Mulgan consider this alternative?

Some readers might object that, in essence, this scheme is just a different kind of survival lottery. After all, as Rawls pointed out himself, how “capable” a given person is—how hard they are willing to work, how talented they are, etc.—is *itself* a matter of chance: namely, the “natural lottery.” As Rawls writes,

²⁷ *Ibid.*, pp. 9-10.

[I]t is incorrect that individuals with greater natural endowments and the superior character that has made their development possible have a right to a cooperative scheme that enables them to obtain even further benefits in ways that do not contribute to the advantages of others. We do not deserve our place in the distribution of native endowments, any more than we deserve our initial starting place in society. That we deserve the superior character that enables us to make the effort to cultivate our abilities is also problematic; for such character depends in good part upon fortunate family and social circumstances in early life for which we can claim no credit.²⁸

These have, however, always been some of Rawls' more controversial claims.

First, although our talents and character are both plausibly partly determined by chance features out of our control—for instance, by genetics, by how well we are raised, etc.—many have argued that effort (i.e. how hard one works to make the most of one's talents) is more of a matter of free choice than luck.²⁹ Thus, even if there is some real element of chance involved in the alternative I proposed—the proposal that each person in a broken world should enjoy equal rights and opportunities to earn or forfeit scarce goods—the proposal is not *simply* a “survival lottery” in which people are awarded tickets determining who survives and who dies. Instead, it gives people real personal control over whether they survive, depending on how hard they work to develop their skills to enhance the survivability of others. Now, of course, there may be some people who may be unable to compete effectively for scarce goods under the proposal I defend. A paraplegic, for instance, may not be able to hunt, or otherwise contribute to human survival—in which case, on my proposal,

²⁸ J. Rawls, *A Theory of Justice*, p. 89.

²⁹ See Kasper Lippert-Rasmussen, “Justice and Bad Luck”, *The Stanford Encyclopedia of Philosophy* (Fall 2009 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2009/entries/justice-bad-luck/>>: §9.

they would not earn scarce goods necessary survival. But, as we will see in more detail shortly, insofar as my proposal distributes scarce resources preferentially to those who contribute most to *human survival*, my proposal indirectly maximizes *every* individual's odds of survival, including the paraplegic.

Second, as Susan Hurley argues in an influential article and subsequent book³⁰, there are two types of luck: *thin luck* and *thick luck*. Thin luck is a kind of luck that precludes responsibility. If I fall out of an airplane without a parachute, there is simply nothing I can do to avoid hitting the ground. It would be wrong to hold a person responsible for this kind of luck. Thick luck, on the other hand, does not preclude moral responsibility, and it is the kind of luck we have in receiving our natural talents. It is nobody's fault how smart they are, or how nice they are, etc. However, Hurley points out, even though these things are matters of luck, we are still morally responsible for how we respond to them. So, for example, consider a petty criminal who, due to having low natural intelligence and poor upbringing, commits a theft. Although their criminal actions were partly the result of luck (their upbringing, etc.), we do not think they are merely a matter of luck, or that the criminal is not morally responsible for their crimes. Finally, because of this—because people are morally responsible for their choices even when those choices are partly due to the “natural lottery”—Hurley contends that that the natural lottery is irrelevant from the standpoint of justice: it is fair and just to hold people responsible for their choices, even though their choices emanated in part from luck. Hurley's broader point, in other words, is this: insofar as social-political philosophy should treat

³⁰ See Susan Hurley, “Luck, Responsibility, and the Natural Lottery,” *Journal of Political Philosophy* 10 (2002), pp. 79–94, and Susan Hurley, *Justice, Luck and Knowledge* (Oxford: Oxford University Press). Also see Lippert-Rasmussen, “Justice and Bad Luck,” §§3-4.

people as morally responsible agents, and thick luck (e.g. “the natural lottery”) is compatible with moral responsibility, social and political philosophy should not treat the natural lottery as “mere luck” to be mitigated by social-political institutions. Social and political philosophy should instead be concerned with giving people equal rights and opportunities to exert control over their lives despite whatever luck results from “the natural lottery.”

Now, of course, some readers may take issue with Hurley’s move here, and indeed, argue that it misses Rawls’ more basic point, which is that justice should not arbitrarily advantage or disadvantage people on the basis of contingencies out of their control (which “the natural lottery” is).³¹ My point, however, is not that Hurley is correct. The extent to which people are considered responsible for their choices in a (broadly Rawlsian) theory of justice—even if those choices are affected by the natural lottery—is a long-debated issue that cannot be settled here. My point is simply that Rawls’ claims about the natural lottery—that how hard a person works is in large part determined by their upbringing, etc.—is one of the *more contentious* aspects of his theory of justice, and for roughly the kinds of reasons Hurley gives. Yes, the natural lottery is out of our control—but, many people want to say, how hard we work, how much we develop our talents, etc., are still the result of *free and responsible choices* we make; choices that a good theory of justice should hold us responsible for, not abstract away from as “simply another contingency” out of our control.

With these points in mind, consider an essential difference between Mulgan’s idea of a survival lottery and my alternative: a social scheme in which everyone has an equal right and opportunity to compete for scarce goods, by proving their “value to humanity.” Mulgan’s survival lotteries *only* involve luck. Once a

³¹ I thank an anonymous reviewer for encouraging me to clarify this.

person has a lottery ticket, there is nothing they can do to exert control over their fate: either they will receive primary goods (basic rights, liberties, opportunities, etc.) necessary for obtaining scarce survival goods such as food, water, etc., to survive, or they will not. Thus, whether a person under one of Mulgan’s survival lotteries lives or dies is *merely* a matter of whether that person’s ticket is selected through a random process. The scheme I am proposing is very different. On my scheme, even if individuals’ natural talents are determined in part by a random process (e.g. the “natural lottery”), each person is still to be given—as far as possible³²—*equal rights and opportunities* to compete with others for scarce survival goods on the basis of their contribution to human survival. As we will now see, although this scheme does not completely eliminate luck—individuals with lesser talents will not be able to compete *as effectively* as people with greater natural talents—it both (A) minimizes the effects of luck on individuals’ life prospects, and (B) maximizes the survivability odds of those who cannot compete equally or effectively.

VI

Justice as Fairness in a Broken World

Consider now the following alternative principle of justice for

³² Obviously, some people – those with physical or mental disabilities, for instance – may be unable, or less able, to exercise the rights and opportunities my proposal involves (*viz.* competing for scarce survival goods through contributing to human survival). However, as I will explain in more detail later, my proposal, even if not all can exercise the relevant rights and opportunities effectively, still *maximally benefits everyone* in broken conditions, including those who are hindered in these regards (for, as we will see, my proposal maximizes everyone’s survival odds). I thank an anonymous reviewer for encouraging me to clarify this.

a broken world—the scheme that I proposed earlier:

Broken-World-Justice as Broken-World-Fairness: each person in a broken world is to be afforded an equal right and opportunity to *earn* access to scarce survival resources (e.g. food, water, medical care) in *direct proportion to their contribution to a social-political scheme that maximizes human survival.*

I call this principle “Broken-World-Justice as Broken-World-Fairness” to emphasize that this principle would be inappropriate and unjust for a world like ours: a world in which there are, in principle, enough resources for all to survive (note: although famine and lack of medical care do exist in our world today, this is not because there are not enough resources, but rather due to a lack of social and political will. As Thomas Pogge and others have argued, there are in principle more than enough resources in our world for all to survive³³). The principle embodies a kind of “broken justice”—the maximum amount of fairness possible in a brutal, unfair, broken world where not everyone can survive.

Allow me to explain how I want to understand the principle. I assume that there are practical ways to measure how much any given person in a broken society contributes to human survival, both in present and future generations. A person who designs new farming technology that, say, enables society to grow more abundant crops under inhospitable conditions might contribute in some measurable way to an increase in average-lifespan (ALP), an increase of “healthy productive life years” (HPY) in which people in the society are able to work effectively for the common good, and overall survival rate (OSR), or how many people are capable of surviving any given time. In turn, individuals who are capable

³³ Thomas Pogge, *Politics as Usual: What Lies Behind the Pro-Poor Rhetoric* (Malden, MA: Polity Press, 2010).

of using that technology (e.g. “operators”) might also contribute some smaller amount to each of those measurables. To make a long story short, people living in a “broken society” might devise some kind of formula for quantifying each person’s overall contribution to survival. The Principle of Broken-World Justice as Broken-World Fairness then simply requires giving everyone in society an equal right and opportunity to earn shares of scarce resources. Whoever in society contributes the most to overall human survival earns the greatest shares of scarce resources, enabling them to live longer and therefore contribute more in an ongoing basis, up to the point at which (due, perhaps, to declining abilities in old age) they are no longer able to contribute as effectively. Conversely, those who contribute the least to ongoing human survival are awarded the smallest shares of scarce goods—shares which, depending on prevailing conditions, may or may not be sufficient for such people to survive (i.e. leading to their death).

The question for us is whether it is more rational for the parties to a broken original position to agree to the principle of Broken-World-Justice as Broken-World-Fairness than any other principle, including any kind of survival lottery. I will now argue that the rationality of agreeing to the principle is plain. The parties to a broken original position will know, behind the veil of ignorance, that the principle would maximally satisfy *anyone* they could turn out to be once the veil is raised. Allow me to explain.

Let us begin with the three higher-order interests that Rawls (rightly) ascribes to the parties to the original position. The parties to the broken original position want to enable every person they could turn out to be able to (A) effectively pursue their actual life-goals, (B) rethink, revise, and pursue new life goals, and (C) understand and uphold principles of justice. Let us begin, then, with (A). Does the principle of Broken-World-Justice as Broken-

World-Fairness enable everyone to pursue their actual life-goals as far as possible in a broken world? At first glance, it might not appear to. For what about people who do not want to compete to earn access to scarce goods? What about people who might prefer to run the risk of engaging in a survival lottery instead? The answer, quite simply, is that the principle of Broken-World-Justice as Broken-World-Fairness permits such people to engage in such a lottery on purely voluntary grounds. For the principle only asserts that every person has an equal right and opportunity to compete to earn scarce goods by virtue of their contribution to humanity's survival. Such a right and opportunity is entirely consistent with people deciding, of their own free will, to exercise that right by engaging in a voluntary survival lottery (provided the lottery they freely engage in contributes effectively to human survival). All the principle of Broken-World-Justice as Broken-World-Fairness says is that no one can be forced to engage in a survival lottery. Those who want to compete to earn scarce resources—through innovation, through hard manual labor, etc.—are simply given an equal right and opportunity to compete. Thus, Broken-World-Justice as Broken-World-Fairness maximally enables everyone to pursue their first higher-order interest, at so far as that interest is consistent with their third higher-order (their interest in understanding and upholding fair principles of justice). Whatever a given person's life goals are—whether they want to engage in a voluntary survival lottery, etc.—the principle of Broken-World-Justice as Broken-World-Fairness gives everyone an equal right and opportunity to pursue their goals, at least in proportion to their overall contribution to human survival (more on this momentarily). Finally, Broken-World-Justice as Broken-World-Fairness maximally enables everyone to rethink, revise, and pursue new life goals, at least in proportion to their overall contribution to human survival. Anyone who wants to engage in a new occupation, receive new education, marry, divorce, have

children, engage in a voluntary survival lottery, etc., is given an equal right and opportunity to choose such goals, at least in proportion to their overall contribution to human survival.

Attentive readers might find something puzzling about the arguments just given for Broken-World-Justice as Broken-World-Fairness. Following Rawls, I have assumed that the parties to the broken original position have three higher-order interests. I then argued that the principle of Broken-World-Justice as Broken-World-Fairness maximally satisfies each interest, *at least in proportion to each person's overall contribution to overall survival*. However, I did not justify this italicized caveat—a caveat which places severe constraints on the extent to which any given individual is able to satisfy their higher-order interests. Indeed, Broken-World Justice as Broken-World Fairness only permits people to pursue their three higher-order interests to the extent that each person's right and opportunity to do so contributes to overall human survival. How can this limitation on their three higher-order interests be justified to individuals in the broken original position, behind its veil of ignorance?

The answer is simple. First, the parties to the broken original position can rationally assume that death is the worst possible socially-politically determined result for any given person. Although it is not always true, of course, that death itself is the worst possible outcome for every person (some people voluntarily commit suicide out of a sincere belief that their life is not worth living), death is surely the worst possible socially-politically determined result for any person. For, when we understand death in a social-political context—a context of social and political rules, and laws—the result is being forced to die by society, whether one likes it or not. If anything seems rational for the parties to a broken original position to assume, this does. As a general matter, being told by one's society that “you must die so

that others can live” is the worst outcome any individual can face. Second, because our project in this paper is to extend Rawls’ theory of justice as fairness to a broken world, let us assume—as Mulgan’s Student A does—that Rawls is right about the rule of social choice that the parties to an original position rationally ought to use: *maximin*, the rule which requires producing the best-possible outcomes for the worst off. Here is the point: when these two points—(1) death being the worst socially-politically determined result for any person, and (2) the rationality of *maximin*—are combined with the parties’ three higher-order interests, the result is Broken-World-Justice as Broken-World-Fairness. Broken-World-Justice as Broken-World-Fairness can be justified to *everyone* in the broken original position, including the *worst off*, because it gives everyone an equal right and opportunity to survive in proportion to the extent that they better enable others to survive. The principle, in other words, can be rationally accepted both by its “winners”, those who utilize their right and opportunity to help others survive (because they enjoy more scarce goods as a result of their contribution), but also by its “losers”: those who do not contribute the most to humanity’s survival. Why? *Because Broken-World-Justice as Broken-World-Fairness enables more “losers” to survive than any alternative principle.* “Winners” are given more scarce goods, and so longer, better lives, only insofar as they maximize everyone else’s survival odds.

Finally, it is well-worth noting that there are other reasons—reasons that Rawls gives for his principles of ideal justice—for the parties to a broken original position to agree upon Broken-World-Justice as Broken-World-Fairness. Rawls emphasizes that a just society should, for obvious reasons, also be a stable one.³⁴ The parties to an original position—any original position, including a broken one—should not wish to agree to principles

³⁴ See J. Rawls, *A Theory of Justice*, pp. 154-9 and §76.

that people in the real world (once the veil is raised) will want to overthrow and replace with new principle. Social strife and instability are in no one's interest. Notice, further, that this seems particularly true in a broken world. First, every minute people in such a world might spend arguing over politics, justice, fairness, etc., is a minute that people are not contributing to human survival. Second, social strife—for instance, violent clashes, riots, etc.—may not only produce harmful social divisions, leading people in society to cooperate poorly for the social good and human survival; such things can also result in the incapacitation or even death of people who contribute effectively to human survival. Social stability and cooperation thus should be of great importance to every individual in the broken original position.

Let us compare, then, Broken-World-Justice as Broken-World-Fairness with Mulgan's two proposed survival lotteries on these dimensions. One of the things about survival lotteries that Mulgan repeatedly tries to downplay throughout his book is that the "losers" of any such lottery—people who society effectively condemns to death—are unlikely to *accept* the results of such a lottery. Mulgan briefly discusses this kind of "instability" worry earlier in his book, within his discussion of Thomas Hobbes. There, Mulgan writes:

Hobbes insisted that anyone could resist if the sovereign threatened his life. Won't this sanction all lottery losers to rebel? This result seems inevitable, *if* we follow Hobbes and regard the universal fear of violent death as the overriding human motivation. But[...] this disposition is not universal, and must be cultivated by the sovereign. In a broken world, a Hobbesian sovereign might encourage other motivations: perhaps a sense of honour or a concern for future generations. If lottery losers feel honour bound to submit to their fate, our sovereign will sleep more soundly!³⁵

³⁵ Tim Mulgan, *Ethics for a Broken World*, p. 158.

Mulgan’s argument here, however, is simultaneously overstated and overly optimistic. First, it is over-stated in the sense that we do not have to ascribe a universal overriding fear of death to generate social instability. All that has to be the case for social instability to occur is that a significant amount of lottery losers to fear death enough to rebel against the lottery’s results. Second, there is every reason to think that there would be a significant amount of such people, and that however much a sovereign, or society more generally, might attempt to cultivate a sense of honor and sacrifice in people, significant numbers of people will still be likely, at least over time, to rebel against the results of any survival lottery. One main reason to think this is that similar forms of discontent and rebellion despite social-indoctrination are a common theme in dystopian fiction. Consider, for example, the famous novel (and feature film) *The Hunger Games*. In *The Hunger Games*, in the aftermath of a great war, society has instituted a lottery in which, every year, a dozen children selected at random are forced to fight one another to the death in an arena. The expressed purposes of the lottery—which the government convinces large numbers of people to accept—is simple: it is intended to both remind people of the great costs of violence (of how many men, women, and children died in the great war), and as an expression of penance for the civilian insurrection that led to the great war (citizens are told that a dozen children must be sacrificed each year in order to atone for their predecessors’ sins). Now, of course, this is a very different type of lottery than any of Mulgan’s survival lotteries, but still, they intuitively share a common problem. In *The Hunger Games*, citizens inevitably revolt. As a result of one child’s inspiring behavior in the arena, the common citizens become so incensed with the annual lottery that they violently overthrow the government. And of course the reason they do so is obvious enough: human beings tend not to like seeing their children

selected and killed at random. But how is a survival lottery of the sort that Mulgan defends any different? People in a broken world would surely *not* enjoy seeing themselves or their family members randomly selected for death in a survival lottery, any more than people in a “Hunger Games world” could be expected to just sit by, for generations, and watch their children die. For these reasons, no matter how effective of a propaganda machine a broken society might devise for convincing people to go along with a survival lottery, we can expect—and the parties to the broken original position can expect—for such a system to be unstable.

My principle of Broken-World-Justice as Broken-World-Fairness is very different. First, Broken-World Justice as Broken-World Fairness gives “losers”—people who do not compete effectively for scarce goods—compelling reasons not to protest or rebel. Anyone living in a society that conforms to the principle would *know* that their society’s system of rewards—giving more scarce goods to those who contribute most to human survival—is the *optimal* scheme to ensure that the most people survive. Those who “lose” under such a system, in other words, could not seriously think that some other social system could have made them better off, or more likely to survive. Broken-World-Justice as Broken-World-Fairness embodies a rewards-system that enables the *most people to survive*. Thus, even “losers” under the system should be able to recognize that they have no good reason to rebel or overthrow it. No workable alternative social-political system could make it more likely that *they* survive than Broken-World-Justice as Broken-World-Fairness.

Second, although it does effectively consign some people to death—it is, again, impossible to ensure in a broken world that everyone survives—Broken-World-Justice as Broken-World-Fairness gives *everyone an equal right and opportunity* to compete to

earn scarce goods by proving their ability to contribute to the survival of others. The psychological ramifications of everyone having such a right and opportunity should not be underestimated. It is, intuitively, far easier to accept having to die if one can say to oneself, “At least I was given a right and opportunity to compete for scarce goods”, than it is to accept having to die as a result of a random lottery. And while, of course, this may come as little consolation to the person who must die, any person who dies in a world governed by Broken-World-Justice as Broken-World-Fairness will know, again, that that principle them the very *best chance* of survival (since, again, it distributes scarce goods preferentially to those who maximize human survivability). Since it gives each person a better probability of living than any Mulgan-esque survival lottery, Broken-World-Justice as Broken-World-Fairness will give every person, including losers, the *correct impression* that they both live under a scheme that (A) maximizes their survival odds, but also (B) puts their fate *as much as possible into their own hands*, rather than the hands of fate—both of which can be expected to maximally satisfy every person under broken conditions *as far as is possible* under such harsh conditions.

VII

Conclusion

Tim Mulgan’s book *Ethics for a Broken World* raises a timely and important issue: how social and political structures should be organized in a broken world in which there are not enough resources for everyone to survive. Mulgan suggests that existing moral and political theories generally entail that a broken world should be governed by “survival lotteries”: randomized bureaucratic

procedures that determine who lives and who dies. I have argued in this paper that there is a better option, and that John Rawls' conception of justice as fairness requires it. Instituting a survival lottery is not a fair and just way to respond to a broken world. Justice as fairness requires affording each individual in a broken world equal rights and opportunities to earn and forfeit shares of scarce resources in proportion to how well they contribute to helping others survive. Justice as fairness, in other words, requires a *fair competition* for scarce goods in a broken world, where the aim of the competition is to maximize human survivability. This answer is not only, I believe, justified by Rawls' theoretical framework. It is also intuitively compelling.

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