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REASONING ABOUT DISTRIBUTIVE JUSTICE  
JUSTICE AS FAIRNESS AND  
BASIC SOCIAL INSTITUTIONS

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# Reasoning About Distributive Justice

## Justice as Fairness and Basic Social Institutions

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John Rawls describes a society whose institutions are effectively regulated by the principles of its public conception of justice as a well-ordered society. The institutions of a well-ordered society must, in Rawls's theory, satisfy a demanding set of requirements. These requirements operate jointly and together define the substance of Rawls's conception of social justice ("justice as fairness"). Since these requirements apply collectively and "as a unit," (Rawls 1971, 73, Rawls 2001, 46n10)<sup>1</sup>, no single criterion determines the nature of just social institutions. Rather, just institutions are the product of a complex process of reasoning.

Against a background of social arrangements that guarantee the protection of basic liberties, institutions that satisfy the requirements of justice as fairness must ensure the provision of a basic social minimum, guarantee real equal economic and social opportunity, and require that remaining inequalities in the

<sup>1</sup> The two principles are intended "to apply in tandem and to work as a unit" (Rawls 2001, 46n10).

distribution of social and economic goods are to everyone's advantage. Rawls emphasizes that each of these requirements interacts with and qualifies the character and proper application of the other requirements. A set of institutions that satisfies these requirements is therefore the product of a complex process of reasoning that realizes the collective practical implications of these interacting requirements.

The form of reasoning that is required to govern the process of designing institutions for a well-ordered society under justice as fairness remains incompletely understood. Even after 45 years of careful study, the literature of distributive justice has yet to provide a clear specification of the institutions of a well-ordered society under justice as fairness or of the process of reasoning that could define such a set of institutions. Many descriptions of the institutions of justice as fairness in the general literature of distributive justice provide accounts of Rawls's theory that border on caricature.

Samuel Freeman's *Liberalism and Distributive Justice* addresses and corrects a number of confusions that have characterized accounts of Rawlsian justice and provides the foundations for a clear understanding of the logic underlying justice as fairness. In particular, Freeman emphasizes the preeminent importance of fair equality of opportunity in a well-ordered society, stresses that the social minimum in Rawls is a requirement that is separate from and lexically prior to the difference principle, and corrects a multitude of prominent misunderstandings regarding the justification and application of the difference principle.

Nevertheless, I will argue, Freeman's work in some respects continues to reflect a number of widely-accepted assumptions regarding Rawls's thought that are not consistent with the substance and structure of Rawls's actual argument. In particular, Freeman's account—while stressing that just institutions in a well-

ordered society must secure fair equal opportunity and a social minimum—fails to integrate the requirements of the principles of justice as fairness as Rawls’s arguments require. In addition, I will argue that Freeman’s interpretation of fair equality of opportunity underestimates the scope of the requirements of that principle. Freeman’s account therefore to some extent fails to correct the distortions that have undermined general understanding of the reasoning process required to generate just institutions in Rawls’s theory.

Since misunderstandings regarding the substance and justification of the difference principle are responsible for much of the confusion regarding the character of Rawlsian distributive justice, I will discuss a number of these misunderstandings before discussing the process of reasoning necessary to generate just institutions. Assigning such priority in the discussion to the difference principle risks confirming widespread confusions regarding the status of this principle in Rawls’s thought, but confusions regarding the difference principle are so pervasive that a corrective discussion of justice as fairness must begin here. Second, I will discuss the nature of institutional arrangements that satisfy the joint requirements of Rawls’s principles of distributive justice and the form of reasoning necessary to generate such institutions.

## I

### **Preliminaries:**

#### **The Limited Scope of the Difference Principle**

According to a widely held understanding of Rawls’s theory, just institutions are simply those institutions that maximize the share of social goods held by the least advantaged members of

society. John Roemer supplies a typical statement of this view: Rawls “proposed a theory of justice in which distribution was determined by the difference principle... [which requires] the adoption of that economic mechanism which maximizes the bundle of primary goods that the group that is worst off...receives” (Roemer 1994, 5).

This statement incorporates a remarkable number of confusions in one sentence. According to this account of Rawls’s theory: (i) justice as fairness is an allocative theory of justice—that is, a theory designed to divide “a given collection of goods among definite individuals” (Rawls 1971, 77); (ii) the difference principle alone determines the just distribution of goods in Rawls’s theory; (iii) the difference principle specifies a unique set of just entitlements to goods; (iv) the difference principle requires maximizing the bundle of primary goods received by the least advantaged; and (v) the difference principle supplies the maximin solution that is justified by Rawls’s maximin argument (this claim is implicit here and stated explicitly elsewhere in the text<sup>2</sup>). All of these claims are false. In this section, I will both discuss the elements of Rawls’s theory that contradict these claims and note Freeman’s more accurate treatment of these issues.

(i) *Rawls’s Rejection of Allocative Approaches to Justice*. Rawls defines an allocative conception of justice as a conception that aims simply to distribute a given collection of goods over a set of persons. One might favor such an approach in order to maximize utility, to reward merit or desert, to realize efficiency, or to realize any number of other values. Allocative theories, Rawls notes, assume that the goods in question are freely available to be distributed and that “there are no prior claims on the things to be distributed”

<sup>2</sup> Rawls offers a theory “maximizing primary goods” (Roemer 1994, 115).

(Rawls 1971, 77). In Robert Nozick’s words, allocative theories treat goods “as if they appeared from nowhere, out of nothing.” (Nozick 1974, 160).<sup>3</sup> In claiming that the distribution of goods in justice as fairness is determined by the difference principle, Roemer thus characterizes Rawls’s theory of justice as an allocative theory – that is, as a theory designed primarily to distribute a stock of benefits over a group of people.

Rawls, however, carefully distinguishes his conception of justice from allocative conceptions. In justice as fairness, unlike allocative conceptions, the distribution of social goods is not determined by dividing “a stock of benefits available” (Rawls 1971, 76) over a group of individuals. Rather, Rawls notes, his conception of justice is characterized by pure procedural justice. In pure procedural justice, the justice of a “distribution cannot be judged in isolation from... what individuals have done in good faith in light of established expectations” (*ibid.*). In Rawls’s theory, then, each person – in realizing her rational life plan – defines the contents of her own just share of goods within a just scheme of cooperation. As Freeman notes, this aspect of Rawls’s theory “make[s] the moral requirements of (distributive) justice compatible with individuals’ being able to live according to their freely chosen rational life plans while conforming to, and even acting for the sake of, justice” (Freeman 2018, 245). While Roemer and many other interpreters of Rawls claim that Rawls aims to impose a predetermined pattern – a pattern in which the share of the least advantaged persons is maximized – on the distribution of goods,<sup>4</sup> Rawls explicitly rejects such a view: “If it is asked in the abstract

<sup>3</sup> Elsewhere, Nozick suggests that proponents of allocative theories write as “[i]f things fell from heaven like manna, and no one had any entitlement to any portion of it.” Nozick 1974, 198.

<sup>4</sup> In Rawls, Roemer argues, “distribution [is] determined by the difference principle.” Roemer 1994, 5.

whether one distribution of a given stock of things... is better than another, then there simply is no answer to that question” (Rawls 1971, 76). In justice as fairness, a just allocation is the allocation that people generate when they employ their abilities within just economic institutions. We cannot know what distribution justice requires until we see what people have actually done in the context of just social institutions. While justice as fairness favors institutions that improve the expectations of the least advantaged, then, it does not require the adoption of a mechanism that determines the share of primary goods that the least advantaged (or any other class of persons) actually receive –only an allocative conception would impose such a requirement.

(ii) *The Status of the Difference Principle.* The difference principle does not impose the only – or even the most important – requirement of distributive justice in Rawls’s theory. Rawls’s second principle requires the satisfaction of two conditions: (i) the principle of fair equality of opportunity, and (ii) the difference principle. Moreover, Rawls assigns lexical priority to fair equality of opportunity (Rawls 1971, 77-78, 265-67): if concerns regarding equal opportunity conflict with concerns about distribution under the difference principle, concerns regarding equal opportunity are to be assigned absolute priority. Finally, Rawls’s first principle imposes a requirement on just distributions that is lexically prior to the difference principle. Under the first principle, the provision of a social minimum, sufficient to ensure the worth of liberty, constitutes (i) an essential institutional guarantee in a well-ordered society (*ibid.*, 243), (ii) a constitutional essential (Rawls 1993, 228-29), and (iii) a guarantee that should perhaps be embodied in a principle lexically prior to the liberty principle itself (Rawls 2001, 44n7).

The standard view that the difference principle defines the full requirements of distributive justice in Rawls’s theory thus



fundamentally misrepresents the character of justice as fairness. If Rawls's theory required nothing more than satisfaction of the difference principle (and if the difference principle really required maximizing the share of primary goods received by the least advantaged), then policies required to secure distributive justice would focus primarily on the redistribution of income through tax and transfer programs. Since fair equality of opportunity is the more fundamental requirement of the second principle, however, the policies necessary to secure distributive justice will primarily emphasize education, training, full employment policy, universal healthcare, and childcare allowances. In addition, as Freeman emphasizes, fair equality of opportunity requires significant redistribution to "prevent concentrations of power" (Rawls 1971, 245) likely to undermine both equal opportunity and the basic liberties (Freeman 2018, 142-43).

(iii) *Specification of a Unique Set of Just Entitlements?* Does the difference principle define a specific preferred distribution of goods? The answer is clearly no. As discussed above, justice as fairness is a theory of pure procedural justice (Rawls 1971, 118, see 73-78), and the defining characteristic of such a theory is that a unique just distribution of goods cannot be specified *ex ante*. Rather, the theory merely sets out principles to govern the basic structure of a social system. As Freeman emphasizes, Rawls's principles regulate the design of social institutions, not the distribution of goods. The difference principle "applies only to the institutions of the basic structure" (Freeman 2018, 113). It is not meant to apply directly to the determination of individual shares of goods or to small-scale policy decisions. Once principles to govern the basic structure of society are in place, a just distribution "is arrived at by honoring the claims determined by what people undertake to do in light of [their] legitimate expectations;" and "the outcome is just whatever it happens to be" (Rawls 1971, 74). In fact, the distinctive feature of pure procedural justice is that "the

procedure for determining the just result must actually be carried out” before a just distribution can be identified (*ibid.*, 75).

(iv) *Does the Difference Principle Require Maximizing the Resource Share of the Least Advantaged?* Since justice as fairness is a theory of pure procedural justice, each person is responsible for determining the contents of their own just share of goods. Society must ensure that the expectations (that is, real opportunities) of the least advantaged are significant, but a just society has no obligation to maximize the actual share received by any person or group. As Freeman emphasizes, the difference principle is designed to ensure fairness and reciprocity in social and economic relations, and not to serve “as a principle of redress or assistance to meet...basic or special needs” (Freeman 2018, 124). An interpretation of that principle that strictly required maximizing of the income of the least advantaged, Freeman notes, would actually fail the test of reciprocity, since “this would come at the expense of other equally if not more important social needs and interests, such as meeting the basic needs of all citizens and the special needs of the disabled” (*ibid.*).

(v) *Is the Difference Principle a Maximin Criterion?* Rawls states explicitly that the difference principle is not a maximin principle<sup>5</sup> and that the justification for the difference principle does not involve an appeal to the maximin rule: “the reasoning for the difference principle does not rely on [the maximin] rule” (Rawls 2001, 95). Interpretations of Rawls that view the difference principle as a maximin criterion, in fact, conflate the idea of a satisfactory minimum with the idea of a guaranteed minimum level of primary goods. Such interpretations inaccurately assume that

<sup>5</sup> “Economics may wish to refer to the difference principle as the maximin criterion, but I have carefully avoided this name... [t]he maximin criterion is...a rule for choice under great uncertainty, whereas the difference principle is a principle of justice” (Rawls 1971, 72).

the difference principle secures the satisfactory minimum sought under the maximin rule by guaranteeing a minimum bundle of primary goods to the least advantaged members of society. Rawls, however, explicitly contradicts such a view in his account of the satisfactory minimum sought under the maximin rule.

Rather than a share of primary goods, the satisfactory minimum sought by the parties in the original position is “a satisfactory conception [of justice]” that is “assured by the two principles in lexical order” (Rawls 1971, 135). During deliberations in the original position, the parties focus on the task of ranking conceptions of justice by their acceptability.<sup>6</sup> In order to select the most acceptable conception, the parties assess “a definite list of traditional conceptions” (*ibid.*, 102) and choose from that list the conception that constitutes the most satisfactory “minimum conception” (*ibid.*, 153) of justice. The task of the choosers is therefore to assess the acceptability of conceptions of justice. The most acceptable conception must (i) provide the most adequate protections for citizens’ fundamental interests and (ii) establish the right kind of priority between claims grounded in competing fundamental interests. Thus, the parties in the original position – in securing a satisfactory minimum in accordance with the maximin rule – focus, not on choosing an allocation of primary goods to be assigned to the least advantaged, but rather on assessing the character of different conceptions of justice – the kinds of interests that they protect, the kinds of balance that they establish between fundamental interests, and the kind of political and social world that would result from the adoption of each conception.

A satisfactory minimum conception of justice guarantees the protection of fundamental interests to every member of society,

<sup>6</sup> “Conceptions of justice are to be ranked by their acceptability” (Freeman 2018, 16).

not merely to its least advantaged members. The maximin argument, thus, is completely misunderstood if it is interpreted to require maximizing the share of primary goods received by the least advantaged. It is the conception taken as a whole that constitutes the satisfactory minimum: the requirements of the principles that constitute the chosen conception “are tied together as one conception of justice which applies to the basic structure of society as a whole” (Rawls 1971, 136, see Rawls 2001, 99), and the fact that this conception secures a “satisfactory political and social world” – not merely a bundle of goods, resources, and protections – “is crucial for the argument” (Rawls 2001, 100). Rawls refers to this combination of guarantees, and not to a guaranteed income or bundle of primary goods, when he argues that a chooser in the original position would “care very little, if anything, for what he might gain above the minimum” guaranteeable level (Rawls 1971, 134).

Rawls’s actual account of distributive justice is thus quite different from the commonly held view that his theory can be reduced to a single requirement – maximizing the share of primary goods of the least advantaged. In fact, his theory imposes no such requirement, and instead requires the creation of social conditions in which basic social institutions provide guarantees to all citizens ensuring the worth of liberty, real equal opportunity, and fairness in the distribution of goods.

## II

### **Reasoning About the Justice of Institutions.**

Taking into account the distinctions between the standard understanding of Rawls and the substance of his actual theory, what features does his theory require in just social institutions? The analysis must address the following question: what set of social and

economic institutions will ensure the value of liberty, guarantee real equal opportunity, and secure fairness in the distribution of goods? As noted above, Rawls argues that the social conditions that could satisfy these conditions are to be determined by the joint application of the principle of fair equality of opportunity and the difference principle, operating as a unit. The requirements of fair equality of opportunity are quite significant, requiring an effective guarantee that persons with equal abilities and motivation will enjoy equal prospects of success. In addition, just institutions must ensure the provision of a social minimum that ensures the worth of liberty. Thus, an analysis of the requirements of distributive justice that simply examines the requirements of the difference principle falsifies Rawls's theory.

Freeman generally recognizes that the character of just institutions in a well-ordered society is not determined simply by the application of the difference principle: "Rawls says the difference principle cannot be taken seriously apart from the first principle and fair equality of opportunity" (*ibid.*, 110). Nevertheless, Freeman in some instances treats the requirements of a social minimum and fair equality of opportunity as mere preconditions to the application of the difference principle to questions of justice. To the extent that he isolates his analysis of the institutional requirements of the difference principle from his discussion of the other two requirements of distributive justice, Freeman slights the integrated character of Rawls's approach to reasoning about justice. In addition, I will argue, Freeman underestimates the scope of the requirements of fair equality of opportunity.

In this section, I will first provide a sketch of (i) the form of reasoning about just institutions required by the joint application of the principle of fair equality of opportunity and the difference principle and (ii) the scope of the requirements of fair equality of

opportunity. After sketching these requirements, I will examine the degree to which Freeman's account (i) retains some of the standard account's nonintegrated approach to the justice of institutions and (ii) slights the scope of the requirements of fair equality of opportunity. In subsection one, I will discuss Rawls's claim that the principles apply as a unit. In subsection two, I will discuss the scope of the requirements of fair equality of opportunity. In subsection three, I will discuss Freeman's approach and its fit with Rawls's integrated approach to reasoning about distributive justice.

(i) *The Principles Apply as a Unit.* The integration of the two elements of Rawls's second principle relates to both their meaning and their implementation. Rawls argues that fair equality of opportunity and the difference principle, taken together, express an understanding of genuine distributive justice in which the difference principle, while lexically subordinate to the principle of fair opportunity, nevertheless transforms both the operation of the fair opportunity principle and the proper understanding of its aims.

While the principle of fair equality of opportunity, alone, would secure a form of pure procedural justice, the form of procedural justice secured by that principle would fail to address adequately concerns about arbitrary influences on life chances unless the distribution of goods were also regulated by the difference principle. For example, while the fair opportunity principle, considered in isolation, would seem to require equal attention to inequalities of opportunity at every level of income and wealth, consideration of the factors that justify the difference principle requires the conclusion that "to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social positions" (Rawls 1971, 86). The difference principle therefore qualifies the application of the fair opportunity principle to require that in providing education and other services to ensure equal

opportunity, society should devote more immediate attention to the needs of the least advantaged. Similarly, while the difference principle directs the attention of policymakers to the needs and interests of the least advantaged, consideration of the factors that justify the fair equality of opportunity principle requires that the aid provided to the least advantaged should focus, in significant part, upon improving opportunity rather than on supplementing income directly.

Finally, in addition to transforming important features of the operation of the fair opportunity principle, the difference principle “transforms the aims of society” (*ibid.*, 91) in a manner that fundamentally changes public understanding of the goals and meaning of equal opportunity. In particular, equal opportunity no longer means equal opportunity “to leave the less fortunate behind” (*ibid.*). Rather, the difference principle “transforms the aims of the basic structure so that the total scheme of institutions no longer emphasizes social efficiency and technocratic values” (*ibid.*, 87) to the exclusion of reciprocity and fraternity. In particular, the difference principle’s requirement of priority for the claims of the least advantaged to receive education and other services under the fair opportunity principle “expresses a conception of reciprocity” (*ibid.*, 88) implicit in the difference principle’s transformation of the notion of opportunity.

(ii) *The Scope of Fair Equality of Opportunity.* The principle of fair equality of opportunity requires that persons “with similar abilities and skills should have similar life chances” (*ibid.*, 63). The principle requires not merely the enforcement of legal protections of formal equal opportunity, but “that all should have a fair chance” to attain success. Persons “similarly motivated and endowed” should have “equal prospects of culture and achievement” regardless of their initial social position (*ibid.*).

Rawls provides only a sketchy account of the principle and its requirements, he notes, because he assumes that “the elements of this framework are familiar enough” (*ibid.*). The principle, he assumes, embodies liberal notions of egalitarian justice discussed in the work of nineteenth and early twentieth century liberal philosophers and theorists such as Henry Sidgwick and R. H. Tawney. For a more thorough account of the nature and necessary conditions of equal opportunity, he refers the reader to specific passages in Sidgwick, Tawney, and Bernard Williams (*ibid.*, 63, n11).

The passage that Rawls cites from Williams’s paper “The Idea of Equality” provides the clearest account of the full scope of the requirements of the principle of fair equality of opportunity. Equal opportunity, Williams argues, is best understood as requiring that “people from all sections of society [must] have an equal chance of satisfying” the necessary conditions for the acquisition of any particular social good (Williams 1962, 125). If education at an expensive elite school is a necessary condition of entry into certain careers (e.g. medicine, law, investment banking), Williams argues, a society that allows elite schools to allocate positions in their classes on the basis of ability to pay fails the test of fair equality of opportunity.

More generally, Williams argues that if social arrangements are such that children from privileged homes have greater opportunity to succeed than children from less advantaged homes because of qualities specifically associated with privileged homes, then the society fails to satisfy the requirements of equal opportunity. In incorporating Williams’s account of equal opportunity by reference as an account of the concept of equal opportunity that is “familiar enough,” Rawls thus indicates that fair equality of opportunity, if fully implemented, would require “imaginative social reform” (Williams 1962, 127) to address any deficits of education or training



and any inequalities of access to health care or advantageous environmental factors that might result in unequal ability to compete for advantageous positions. A society therefore fails to achieve fair equality of opportunity if any person or group suffers from a deficit in skills, education, or other capacity required to compete effectively for a desirable position, and that deficit (i) is the product of environmental factors and (ii) could be removed by social policy.

(iii) *Freeman on Just Institutions*. Freeman provides an account of the full scope of fair equality of opportunity and the integration between fair opportunity and the difference principle that is more accurate than the accounts provided in most interpretations of Rawls's theory. First, Freeman assigns full weight to Rawls's requirement that a just society must ensure the provision of a social minimum that ensures the worth of liberty. He notes, for example, that "Rawls says that the difference principle cannot be taken seriously apart from the first principle and fair equality of opportunity" (Freeman 2018, 110). The social minimum required by the first principle, Freeman notes, must be secured through adequate expenditure to ensure "the fair value of the rights" of citizens in a property-owning democracy (*ibid.*, 142).

Freeman also takes significant account of the requirements of fair equality of opportunity. He notes that just institutions must, to ensure fair equal opportunity, "provide for extensive universal education benefits and job training, childcare allowances for working parents, as well as universal healthcare" (*ibid.*). These interventions, he notes, are necessary not merely to improve the economic prospects of the less talented, but to ensure that equal opportunity is not understood as an authorization to leave the least fortunate behind. Justice as fairness thus "does not lead to a meritocratic society [because equal opportunity] is combined with the difference principle" (*ibid.*, 111). Interventions to ensure the

availability of “ongoing educational, career, and cultural opportunities from early on and throughout their lifetimes” must be available in order to ensure “to the less talented and less favored,” (*ibid.*) not merely economic prospects, but also the social bases of self-respect. The required interventions, Freeman notes, will necessarily involve ambitious social policies, including “publicly funded day care for all children... designed to stimulate their capacities and develop their mental abilities and social skills,” as well as family allowances to make it possible for “families [to] afford to expose children to social and cultural experiences otherwise reserved for parents who can afford such advantages” (*ibid.*, 112). In addition, Freeman notes that fair equal opportunity would require that the share of childrearing responsibilities should not fall disproportionately on women.

Finally, Freeman notes that ensuring fair equality of opportunity would require significant redistribution of income, wealth, and control over social assets: “economic inequalities are to be restricted when they reach a point that subverts the fair distribution of (formally) equal opportunities to compete for open educational and career positions and take advantage of the benefits of culture” (*ibid.*, 110). Inequalities in wealth cannot, in particular, “be so great that they seriously dilute the ‘full and equally effective voice’ and political influence of the less advantaged or distort the political process and its agenda to favor the interests of the more advantaged” (*ibid.*). Just social institutions must therefore employ tax and transfer policy aggressively to ensure an acceptable distribution of income, wealth, and control of the means of production.

Freeman’s acknowledgment of the priority and significant requirements of fair equality of opportunity is a welcome corrective to standard interpretations of Rawls that reduce social justice to maximizing the share of primary goods of the least

advantaged. Nevertheless, Freeman’s discussion of justice as fairness in some ways continues to reflect the influence of those standard interpretations. While Freeman discusses significant requirements of fair equal opportunity relating to education, training, health care, and income distribution, he appears to treat equal opportunity as merely an ancillary concern to be addressed before turning to the real subject of distributive justice – implementation of the difference principle. In chapter three of *Liberalism and Distributive Justice* – the first of the two chapters that focus on just institutions – Freeman devotes three prefatory pages, out of a total of 26 pages, to fair equality of opportunity. Chapter four devotes significantly more space to the discussion of equal opportunity, but still treats this concern as secondary to the effects of the difference principle. Fair equality of opportunity, Freeman argues in this chapter, imposes requirements that address a “gap” in Rawls’s argument relating to the proper scope of economic agency in a well-ordered society. According to Freeman, fair equality of opportunity requires the guarantee of “ongoing opportunities...to exercise economic powers” that ensure to each citizen “the freedom and control in their work” (*ibid.*, 160) necessary to secure the social bases of self-respect to a degree that significantly distinguishes property-owning democracy from welfare-state capitalism. Freeman’s central focus, however, remains the manner in which the difference principle (supplemented by the other principles) secures justice in social institutions.

Missing in Freeman’s account is a sense of the scope of the requirements of equal opportunity or of the interaction that Rawls contemplates between fair equality of opportunity and the difference principle. Far from merely supplementing the difference principle, fair equality of opportunity requires sweeping “imaginative social reform” to address any deficits of education or training and any inequalities of access to health care or

advantageous environmental factors that might result in unequal ability to compete for advantageous positions. This principle does not set out requirements of justice supplementary to the difference principle. Rather the equal opportunity principle sets out the primary requirements of distributive justice in institutions. Moreover, the opportunity principle both qualifies the meaning and application of the difference principle and is, in turn, qualified in its meaning and application by the difference principle. Finally, in focusing primarily on the implementation of the difference principle, the provision of compensatory services to the less talented, and the use of tax and transfer policy to secure an acceptable distribution of income, wealth, and resources, Freeman provides an interpretation of Rawls that makes justice as fairness look unacceptably allocative in character – that is, too focused on transfers of income and services from the more fortunate to the less advantaged. Such an account fails to convey Rawls's conception of a well-ordered society constituted by institutions that protect the full range of essential interests of every member of society.

### **Conclusion**

Rawls's conception of justice aims, most fundamentally, to ensure the economic and social autonomy of each member of society. At the base level, justice as fairness guarantees an absolute right to a social minimum necessary to ensure the worth of liberty. Above this level, social cooperation for mutual benefit operates within institutions that are designed to ensure that all persons, regardless of their original social position, enjoy real equal opportunity to develop their talents and employ them productively. Finally, the difference principle ensures that institutions assign priority to realizing opportunity for the least advantaged persons, that opportunity is understood in terms of the

chance to realize equal citizenship, not the opportunity to leave others behind, and that the inequalities permitted to the more fortunate under circumstances that satisfy the preceding conditions are to everyone's advantage.

Freeman's interpretation goes a long way towards correcting the distortions in standard understandings of Rawls's work. A fully balanced account of justice as fairness, however, must provide an account of the process of reasoning through which the two constitutive elements of Rawls's second principle – fair equality of opportunity and the difference principle – are jointly brought to bear on the problem of designing institutions for a well-ordered society.

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