

maintaining sections of this part (§§14-22) try to clarify the content of this principle and to clear up a number of difficulties.

#### §14. The Problem of Distributive Justice

14.1. The problem of distributive justice in justice as fairness is always this: how are the institutions of the basic structure to be regulated as one unified scheme of institutions so that a fair, efficient, and productive system of social cooperation can be maintained over time, from one generation to the next? Contrast this with the very different problem of how a given bundle of commodities is to be distributed, or allocated, among various individuals whose particular needs, desires, and preferences are known to us, and who have not cooperated in any way to produce those commodities. This second problem is that of allocative justice (*Theory*, §11: 56; §14: 77).

To illustrate: accepting the assumptions implied by interpersonal cardinal comparisons of well-being, we might, for example, allocate the bundle of commodities so as to achieve the greatest satisfaction summed over these individuals from the present into the future. As a political conception of justice, the classical principle of utility (as found in Bentham and Sidgwick) can be seen as adapting the idea of allocative justice so as to be a single principle for the basic structure over time.

14.2. We reject the idea of allocative justice as incompatible with the fundamental idea by which justice as fairness is organized: the idea of society as a fair system of social cooperation over time. Citizens are seen as cooperating to produce the social resources on which their claims are made. In a well-ordered society, in which both the equal basic liberties (with their fair value) and fair equality of opportunity are secured, the distribution of income and wealth illustrates what we may call pure background procedural justice. The basic structure is arranged so that when everyone follows the publicly recognized rules of cooperation, and honors the claims the rules specify, the particular distributions of goods that result are acceptable as just (or at least as not unjust) whatever these distributions turn out to be.

To elaborate: within the framework of background justice set up by the basic structure, individuals and associations may do as they wish insofar as the rules of institutions permit. Observe that particular distributions cannot be judged at all apart from the claims (entitlements) of individuals earned by their efforts within the fair system of cooperation from which those distributions result. In contrast to utilitarianism, the concept of allocative jus-

ice has no application. There is no criterion for a just distribution apart from background institutions and the entitlements that arise from actually working through the procedure.<sup>15</sup> It is background institutions that provide the setting for fair cooperation within which entitlements arise.

14.3. These points can be made clearer as follows. The word "background" in the phrase "background procedural justice" above is intended to indicate that certain rules must be included in the basic structure as a system of social cooperation so that this system remains fair over time, from one generation to the next.<sup>16</sup>

Consider an example. The draft rule in a professional sport such as basketball ranks teams in the opposite order from their standing in the league at the end of the season: championship teams go last in the draft of new players. This rule provides for regular and periodic changes in the roster of teams and is designed to ensure that teams in the league are more or less evenly matched from year to year, so that in any given season each team can give any other a decent game. These changes of players are necessary to achieve the aims and attractions of the sport and are not foreign to its purpose.

The required background rules are specified by what is necessary to fulfill the two principles of justice. Later on we survey some of these as found in a property-owning democracy (Part IV).<sup>17</sup> For example, background institutions must work to keep property and wealth evenly enough shared over time to preserve the fair value of the political liberties and fair equality of opportunity over generations. They do this by laws regulating bequest and inheritance of property, and other devices such as taxes, to prevent excessive concentrations of private power (*Theory*, §43: 245ff.).

14.4. Since the difference principle applies to institutions as public systems of rules, their requirements are foreseeable. They do not involve any more continuous or regular interference with individuals' plans and actions than do, say, familiar forms of taxation. Since the effects of those rules are foreseen, they are taken into account when citizens draw up their plans in

15. See *Theory*, §4: 74-77, and note the distinction made there between the three kinds of procedural justice.

16. The term "background" is introduced here and is not used in *Theory*.

17. Property-owning democracy is discussed in *Theory*, chap. V, but unfortunately the contrast between it and welfare-state capitalism is not made clear enough. This defect I aim to correct in Part IV.

the first place. Citizens understand that when they take part in social cooperation, their property and wealth, and their share of what they help to produce, are subject to the taxes, say, which background institutions are known to impose. Moreover, the difference principle (as well as the first principle and the first part of the second principle) respects legitimate expectations based on the publicly recognized rules and the entitlements earned by individuals (*Theory*, §§47-48).<sup>18</sup>

The rules of background institutions required by the two principles of justice (including the difference principle) are designed to achieve the aims and purposes of fair social cooperation over time. They are essential to preserve background justice, such as the fair value of the political liberties and fair equality of opportunity, as well as to make it likely that economic and social inequalities contribute in an effective way to the general good or, more exactly, to the benefit of the least-advantaged members of society. Like the draft rule in professional sports, the arrangements required by the difference principle are part of, and not foreign to, the conception of fair social cooperation in justice as fairness. Even with these rules of background justice, distributive justice may still be understood as a case of pure procedural justice.

### §5. The Basic Structure as Subject: First Kind of Reason

15.1. A characteristic feature of justice as fairness as a political conception is that it takes the basic structure as its primary subject. I note two broad kinds of reasons for this: the first notes how social institutions work and the nature of the principles required to regulate them over time to maintain background justice.

Consider an important criticism of Locke. Suppose we begin, as it seems he does, with the attractive idea that persons' social circumstances and their relations with one another should develop over time in accordance with fair agreements fairly arrived at. Much as with Locke's conception of ideal history, we might use certain principles to specify various rights and duties of persons, as well as their rights to acquire and transfer property. Now suppose we start with a just initial state in which everyone's possessions are justly held. We then say that when everyone respects persons' rights and

18. The remarks in this paragraph reply to the kind of objection Nozick raises to the difference principle in *Anarchy, State, and Utopia*. His description of the Wilk Chamberlin example, chap. 7, pp. 160-164, suggests that to apply that principle to government must involve continual interference with particular individual transactions.

### 15. Basic Structure as Subject: First

duties, as well as the principles for acquiring and transferring property; the succeeding states are also just, no matter how distant in time. Call this an ideal historical process view.<sup>19</sup>

To work out this idea we need an account not only of the just initial state and of fair agreements, but also of just social conditions under which fair agreements are to be reached. Even though the initial state may have been just, and subsequent social conditions may also have been just for some time, the accumulated results of many separate and seemingly fair agreements entered into by individuals and associations are likely over an extended period to undermine the background conditions required for free and fair agreements. Very considerable wealth and property may accumulate in a few hands, and these concentrations are likely to undermine fair equality of opportunity, the fair value of the political liberties, and so on. The kind of limits and provisos that in Locke's view apply directly to the separate transactions of individuals and associations in the state of nature are not stringent enough to ensure that fair background conditions are maintained.<sup>20</sup>

15.2. To preserve these conditions is the task of the rules of pure procedural background justice. Unless the basic structure is regulated over time, earlier just distributions of assets of all kinds do not ensure the justice of later distributions, however free and fair particular transactions between individuals and associations may look when viewed locally and apart from background institutions. For the outcome of these transactions taken together is affected by all kinds of contingencies and unforeseeable consequences. It is necessary to regulate, by laws governing inheritance and bequest, how people acquire property so as to make its distribution more equal, to provide fair equality of opportunity in education, and much else. That such rules of background justice are in force over time does not detract from but rather makes possible the important values expressed by free and fair agreements reached by individuals and associations within the basic structure. This is because principles applying to these agreements directly (for example, the law of contract) do not alone suffice to preserve background justice.

What is needed, then, is a division of labor between two kinds of princi-

19. Nozick's *Anarchy, State, and Utopia* is an example of this kind of view.

20. For example, in Locke's case they fail to guarantee the equal political liberties, as we can tell from *Second Treatise*, §158. See Joshua Cohen, "Structure, Choice, and Legitimacy: Locke's Theory of the State," *Philosophy and Public Affairs* 15 (Fall 1986): 301-324.

ples, each kind suitably specified: first, those that regulate the basic structure over time and are designed to preserve background justice from one generation to the next; and second, those that apply directly to the separate and free transactions between individuals and associations. Defects in either kind of principle can result in a serious failure of the conception of justice as a whole.

15.3. Once the many transactions and agreements of individuals and associations are framed within a just basic structure, we have an ideal social process view, of which justice as fairness is an example. The contrast with Locke's ideal historical process view is in part this: while both views use the concept of pure procedural justice, they specify this concept in different ways. The historical process view focuses on the transactions of individuals and associations as these are constrained by the principles and provisos applying directly to the parties in particular transactions.

By contrast, as a social process view, justice as fairness focuses first on the basic structure and on the regulations required to maintain background justice over time for all persons equally, whatever their generation or social position. Since a public conception of justice needs clear, simple, and intelligible rules, we rely on an institutional division of labor between principles required to preserve background justice and principles that apply directly to particular transactions between individuals and associations. Once this division of labor is set up, individuals and associations are then left free to advance their (permissible) ends within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the regulations necessary to preserve background justice are in force.

Taking the basic structure as the primary subject enables us to regard distributive justice as a case of pure background procedural justice: when everyone follows the publicly recognized rules of cooperation, the particular distribution that results is acceptable as just whatever that distribution turns out to be (§14.2). This allows us to abstract from the enormous complexities of the innumerable transactions of daily life and frees us from having to keep track of the changing relative positions of particular individuals (*Theory*, §14: 76f). Society is an ongoing scheme of fair cooperation over time without any specified beginning or end relevant for political justice. The principles of justice specify the form of background justice apart from all particular historical conditions. What counts is the workings of social institutions now, and a benchmark of the state of nature—the level of well-be-

ing (however specified) of individuals in that state—plays no role. It is a historical surd, unknowable, but even if it could be known, of no significance.<sup>21</sup>

### §16. The Basic Structure as Subject: Second Kind of Reason

16.1. The second kind of reason for taking the basic structure as the primary subject derives from its profound and pervasive influence on the persons who live under its institutions. Recall that in explaining the emphasis put on the basic structure as subject, we said that we view citizens as born into society: it is there that they will lead a complete life. They enter that social world only by birth, leave it only by death. And since any modern society, even a well-ordered one, must rely on some inequalities to be well designed and effectively organized, we ask what kinds of inequalities a well-ordered society would allow or be particularly concerned to avoid.

Justice as fairness focuses on inequalities in citizens' life-prospects—their prospects over a complete life (as specified by an appropriate index of primary goods)—as these prospects are affected by three kinds of contingencies:

- (a) their social class of origin: the class into which they are born and develop before the age of reason;
- (b) their native endowments (as opposed to their realized endowments); and their opportunities to develop these endowments as affected by their social class of origin;
- (c) their good or ill fortune, or good or bad luck, over the course of life (how they are affected by illness and accident; and, say, by periods of involuntary unemployment and regional economic decline).

Even in a well-ordered society, then, our prospects over life are deeply affected by social, natural, and fortuitous contingencies, and by the way the basic structure, by setting up inequalities, uses those contingencies to meet certain social purposes.

Pointing out these three kinds of contingencies is not enough, of course, to show conclusively that the basic structure is the appropriate subject of political justice. No such decisive arguments are available, as everything de-

21. See *Theory*, §12: 69, though the point is not stated sufficiently sharply.

pends on how the conception of justice as fairness hangs together as a whole. Yet if we ignore the inequalities in people's prospects in life arising from these contingencies and let those inequalities work themselves out while failing to institute the regulations necessary to preserve background justice, we would not be taking seriously the idea of society as a fair system of cooperation between citizens as free and equal. This reminds us that what we are asking is precisely: what principles of background justice are presupposed in taking seriously that idea of society (§12.1)?

16.2. If citizens of a well-ordered society are to recognize one another as free and equal, basic institutions must educate them to this conception of themselves, as well as publicly exhibit and encourage this ideal of political justice. This task of education belongs to what we may call the wide role of a political conception.<sup>22</sup> In this role such a conception is part of the public political culture: its first principles are embodied in the institutions of the basic structure and appealed to in their interpretation. Acquaintance with and participation in that public culture is one way citizens learn to conceive of themselves as free and equal, a conception which, if left to their own reflections, they would most likely never form, much less accept and desire to realize.

Consider further how the three contingencies (noted above) affect the content of people's final ends and purposes, as well as the vigor and confidence with which they pursue them. We assess our prospects in life according to our place in society and we form our ends and purposes in the light of the means and opportunities we can realistically expect. So whether we are hopeful and optimistic about our future, or resigned and apathetic, depends both on the inequalities associated with our social position and on the public principles of justice that society not merely professes but more or less effectively uses to regulate the institutions of background justice. Hence the basic structure as a social and economic regime is not only an arrangement that satisfies given desires and aspirations but also an arrangement that arouses further desires and aspirations in the future. This it does by the expectations and ambitions it encourages in the present, and indeed over a complete life.

Moreover, native endowments of various kinds (say, native intelligence

22. By contrast, the narrow role might be something like that of specifying the basic principles and most essential rules that must be followed for political society to be enduring and stable. H. L. A. Hart's idea of the minimum content of natural law, which draws on Hume, is an example. See *The Concept of Law* (Oxford: Oxford University Press, 1961), pp. 186-195.

and natural ability) are not fixed natural assets with a constant capacity. They are merely potential and cannot come to fruition apart from social conditions; and when realized they can take but one or a few of many possible forms. Educated and trained abilities are always a selection, and a small selection at that, from a wide range of possibilities that might have been fulfilled. Among what affects their realization are social attitudes of encouragement and support, and institutions concerned with their early discipline and use. Not only our conception of ourselves, and our aims and ambitions, but also our realized abilities and talents, reflect our personal history, opportunities and social position, and the influence of good and ill fortune.

16.3. To sum up: for the two kinds of reasons noted in this and the preceding section, we take the basic structure as the primary subject. This structure comprises social institutions within which human beings may develop their moral powers and become fully cooperating members of a society of free and equal citizens. And as a framework that preserves background justice over time from one generation to the next it realizes the idea (central to justice as fairness) of pure background procedural justice as an ideal social process (as explained under the first kind of reason). It also answers to the public role of educating citizens to a conception of themselves as free and equal; and, when properly regulated, it encourages in them attitudes of optimism and confidence in their future, and a sense of being treated fairly in view of the public principles which are seen as effectively regulating economic and social inequalities (as explained under the second kind of reason).

So far, then, starting with the basic structure seems to accord with the other ideas of justice as fairness, something we could not have foreseen at the outset. A sharp definition of that structure might have gotten in the way of fitting it into these other ideas, just as a sharp definition of them would have gotten in the way of fitting them to it. (Recall the remarks in §4.3.)

### §17. Who Are the Least Advantaged?

17.1. We have referred to the least advantaged, but who are they and how are they singled out? To answer these questions we introduce the idea of primary goods. These are various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good. Here we look to the social requirements and the nor-