

interpretation

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RAWLS AND THE HARRIED MOTHER

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Folk Wisdom

There is a piece of folk wisdom that provides a surprisingly useful introduction to much contemporary discussion of the problem of distributive justice. It is the advice about how to ensure a fair division of a pie or other dessert. The answer is simplicity itself: Let the slicer have the last piece. He will then slice the pie as equally as possible, for the piece remaining for him, the piece not chosen by the others, is likely to be the smallest. Mothers have used this technique to settle squabbles between their children from time immemorial. And they will continue to use it, because it works.

But why does this technique work? Wherein lies its wisdom? It works, one suspects, because it is grounded in a shrewd understanding of human nature: We mostly seek or choose alternatives that favor ourselves, or, if that is not possible, alternatives that at least will not favor others over ourselves. The beauty of the technique is that it uses this less than noble trait to find and enshrine justice. It turns out that the mother employs, quiet unself-consciously, the political strategy of a Straussian Modern.¹ Like Hamilton or Madison, she devises a strategy that will bend her children's selfish impulses so that they are rewarded only by doing the right thing, in this case, by dividing the pie as equally as possible.

John Rawls

Now let us turn from the folk wisdom of the harried mother to the most discussed contemporary treatment of distributive justice, that of John Rawls. In *A Theory of Justice*,² Rawls gives a view of the nature of justice that he calls "justice as fairness."³ By "justice as fairness" he means that justice is what rational and equal men concerned to advance their own interests would choose as the basic principles of their association if they were to choose from behind a Veil of Ignorance that would conceal from them their particular place in the society they were about to create. These men need not, Rawls assures us, be assumed to be benevolent. Instead, mutual disinterest in one another's fate

¹For a brief statement of the division between Ancients and Moderns, see Leo Strauss, "What is Political Philosophy?" in his *What is Political Philosophy? And Other Studies* (New York: Free Press, 1959).

²John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard Univ. Press, 1971).

³Rawls states these ideas in their simplest form in *A Theory of Justice*, pp. 11–22.

coupled with the Veil of Ignorance will serve the same purpose.⁴ Each, after all, must take into account the position of every person in the future society because, once the Veil of Ignorance is stripped away, he may find that the worst position is the one occupied by himself. Indeed, Rawls defines the Original Position in which these principles of justice are chosen as a situation in which the Maximin rule applies. As Rawls explains this principle: "The maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others."⁵ Or, more simply, a person operating behind the Veil of Ignorance should choose principles for the design of a society as though his "worst enemy" were going to assign him his place in that society.⁶

The logic of the Rawlsian enterprise is simple enough. Men in the Original Position, gathered together to set up the rules of their future association, will choose rules that will favor themselves as much as possible. However, since they are meeting behind a Veil of Ignorance and cannot know what position, high or low, they will occupy in the society they are about to set up, the rule that will favor them the most, or at least threaten them the least (remember Maximin), is likely to be a general rule of justice or fair division. He defines what they would choose, then, as the principles of justice, and unless Rawls is seriously mistaken, these principles will accord with our deepest intuitions of justice (at least as these deepest intuitions are modified by reflection upon the outcomes of this choice).⁷

Now what have we in the Rawlsian enterprise? We have, according to distinguished philosophers and critics, "a powerful, deep, subtle, wide-ranging, systematic work in political and moral philosophy which has not seen its like since the writings of John Stuart Mill, if then."⁸ We have a work of "magisterial grandeur."⁹ We have "an achievement of the first order." Indeed, "Once again a 'Legislator' has appeared in our midst."¹⁰ But we have something else, too. We have the folk wisdom of how to divide a dessert elevated into the paradigm of justice, for that is what Rawls's strategy is, the strategy of the mother with the squabbling children and the pie to be cut. Who, after all, is the designated pie cutter if he is not the Rawlsian Representative Man behind the Veil of Ignorance? He knows that he will slice the pie (in this case the social pie), but he does not know what particular piece will be assigned to him. He knows that it is prudent to act as though his worst enemy, knowing how he and the others are

⁴Rawls, *A Theory of Justice*, pp. 147-49.

⁵Rawls, *A Theory of Justice*, pp. 152-53.

⁶Rawls, *A Theory of Justice*, p. 152.

⁷See the discussions of Reflective Equilibrium in *A Theory of Justice*, pp. 20ff. and 48-51.

⁸Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 182.

⁹Benjamin Barber, "Justifying Justice: Problems of Psychology, Measurement, and Politics in Rawls," *American Political Science Review*, 69 (June 1975), 663.

¹⁰John Chapman, "Rawls's Theory of Justice," *American Political Science Review*, 69 (June 1975), 591, 593.

motivated, has ensured that he will get the last remaining, hence almost certainly the smallest, piece. How should he slice the pie to most favor his own interest? He should follow a strategy of Maximin, a strategy of maximizing the size of the smallest share or slice, the slice that will go to the person in the least advantaged position, in this case, his own. And what strategy will do that? It is the strategy of dividing the pie as equally as possible. That way, even if he gets the smallest share, it will be only slightly (if any) smaller than the others. And that is precisely the answer first given by the Rawlsian Representative Man choosing from behind the Veil of Ignorance. As Rawls puts it:

Since it is not reasonable for him to expect more than an equal share in the division of social goods [Why would the others agree to give him more?], and since it is not rational for him to agree to less, the sensible thing for him to do is to acknowledge as the first principle of justice one requiring an equal distribution. Indeed, this principle is so obvious that we would expect it to occur to anyone immediately.¹¹

Rawls is right. That is the division that will be chosen by a rational, self-interested, pie slicer who knows he will get the last slice. Even children recognize the logic of that solution.

What Rawls has attempted in his extraordinarily complex exposition is to discover the principles of justice by applying the technique involved in the folk wisdom of how to ensure a fair slicing of the pie. And so, like that calculating and selfish but outmaneuvered pie cutter, the man behind the Veil is to be put in the position, presumably against his will, of doing the right thing (finding justice), if for the wrong reasons (to maximize his own advantage). He will find for us a genuinely just distribution, not because he prefers it, but because it is, under the circumstances, the best he can do for himself.¹²

Rawls's strategy would appear to be firmly grounded in the folk wisdom of the ages and the political strategy of the more realistic Moderns. Would it not, then, deliver a sound theory or view of justice? It would not. Let us show why. Note first, however, that Rawls tells us that his final view of justice is a result of reflective equilibrium.¹³ It is a balancing of his deepest intuitions of justice against the view of justice given by his social contract theory, with each being adjusted in light of the other until he reaches the most satisfactory equilibrium. Our deepest intuitions are not to be ignored in the matter of justice. That being so, let us measure his conclusions against our own deepest and clearest intuitions of justice and see if they can be reconciled.

Two examples should suffice to show severe problems with the Rawlsian method of locating the just distribution of goods. In the first, two men are shipwrecked on an island. One works hard. He plows the ground, plants seed,

¹¹Rawls, *A Theory of Justice*, pp. 150–51.

¹²While Rawls has the men in the Original Position act according to self-interest, he does not assume that men are by nature egoistic. See Rawls, *A Theory of Justice*, pp. 147–48.

¹³Rawls, *A Theory of Justice*, pp. 20–21.

weeds his field, chases the birds away, waters the crop through the heat and dryness of summer, builds a shed to store the grain through the blizzards of winter, builds himself a cabin to survive the cold, and then harvests the crop. The other man, by happenstance formerly a hit man, acts differently. Through the hot summer he sits in the shade of the tree, swims in the pleasant lagoon, and lives idly off the fat of the land for the living is easy, and besides, when winter comes, he plans to knock the other man on the head while he sleeps and take his grain, his shed, and his shelter. This man neither makes a crop, thereby earning his keep, nor has he the good in his heart.

Now to whom, in this hypothetical situation, does that store of grain rightly belong? Our intuitive sense is clear. It belongs to the one who by his planning, effort, and sacrifice produced it, not to the one who sat by in deliberate and malicious idleness in anticipation of gaining the grain without effort except for one foul deed. In this case, all the grain clearly belongs to the one, and none to the other. But, apply the Rawlsian technique for locating the just distribution: Take the two men from the island, strip them of any knowledge of how or by whom the grain was produced (put them, that is, behind the Veil of Ignorance), and let them then, on the basis of rational calculation of self-interest, divide the grain, and how will they divide it? They will divide it equally for, as Rawls asks us, why should either accept less than half and why should either give up more than half?

But let us, for the sake of further illumination, lift the Veil just a little. Suppose now our two islanders are told that one produced the grain and one did not. How then would they divide the grain? Still equally, because neither would know who had produced the grain and who had not, and in any case, neither could afford to distribute it on the basis of desert because that would give a fifty percent chance of getting the zero share, which would mean he would not survive the winter. In the example given, each islander would know that one deserved the grain and one did not. They would know that an equal distribution is not a just distribution. But that would have no influence on their decision because they are making a rational calculation of their self-interest in dividing the grain, not a rational assessment of what a just distribution of the grain would be. Since the two are not the same, the result of the Rawlsian scheme is not, except by coincidence or definition, justice.

In the light of the preceding example, let us consider again the paradigm of the pie cutting. The Rawlsian method certainly provides a shrewd strategy about how to get the pie cut equally, but is the result justice? That would depend on whether justice requires, in all cases, or in particular cases, an equal division. But in some cases, as the preceding example illustrates, justice clearly does not require or even allow an equal division. Rawls's distribution is faulty because it divorces distribution from a number of things that can legitimately give a claim to a particular share of a distribution. Thus allocation, à la Rawls, divorces distribution from contribution (who bought or brought the pie

makings?), effort (who baked it?), risk (what if there are a number of pies from which to choose the one to divide, but one is booby-trapped so that it will explode and kill the slicer?), need (what if some among whom the pie is to be divided are fat and well-fed, but others are malnourished or starving?), skill or excellence (what if two come to the party, each bringing a pie, but one is a good cook and the other is not, how then should the pies be divided?), or responsibility and performance (again two cooks, but one exercises care to be clean and use sanitary ingredients while the other, sloppy in habits and careless in cooking, is likely to have a pie that will make people ill?). None of these—contribution, effort, risk, need, skill, excellence, responsibility, and performance—is dealt with adequately by the Rawlsian scheme, except perhaps need, and need only if an equal distribution will meet the needs of all, which of course it won't—consider the medical problems of people requiring a clotting factor for their blood or a kidney machine. Either requires more expense than the average income share of even the richest society on earth, hence in these cases an equal division would be a fatal division.

John Rawls does, of course, modify the “first principle of just distribution,” equality,¹⁴ but only on grounds that accept an equal division as the fundamentally fair division, and only on terms by which it would be acceptable to men who have a right to an equal division. Those terms, as seen by his Representative Man (or Men), are that inequality will be allowed if it is to the benefit of all, or more specifically, if it is to the benefit of the least advantaged, that is, to those who will get the smallest shares (this is termed the Difference Principle).¹⁵ Thus some are to be allowed to have more than others, but only on condition that this improves, in an absolute sense, the position of the poorest off. Rawls gives recognition here to the need to provide incentives for production, to the possibility that the size of the social pie to be distributed can be increased by rewarding productive effort or contribution (and, conversely, that the size of the pie can be reduced by not giving such rewards). Hence, an unequal distribution of the pie that increases the size of the pie can be to the advantage of the person or group receiving the smallest slice, *if* the fruits of that greater effort induced by unequal shares are themselves shared with the poorest group.

Does this modification of Rawls's first principle of distribution (equality), to allow inequality as long as it benefits all and specifically the poorest or “least advantaged,” salvage the justice of the Rawlsian scheme? Well, let us see. Consider again the case of the islanders. Under the original agreement, each is to get half of the social pie. Let us assume that amounts to fifty bushels of wheat apiece. Let us also assume that fifty bushels is just enough to get a man through the winter and that chances of survival and comfort would both make additional wheat desirable. Assume too that it is possible, through further work,

¹⁴Rawls, *A Theory of Justice*, pp. 150–51.

¹⁵Rawls, *A Theory of Justice*, p. 83. See also pp. 75ff. and 150ff.

planning, and development of skills, for the one who produced a crop to increase his production from 100 to 200 bushels. But our hard worker balks. He is unwilling (out of spite? out of greed? out of a sense of justice and self-respect?) to make this further effort if he must distribute this additional production on the same basis as his original production (even shares for himself and the hit man). Under these circumstances (the refusal of the producer to do the best he can under a simple pooling of assets), it may be to the advantage of the hit man to allow an unequal distribution in favor of the producer *so long as the hit man gets a portion of the extra production*. So let us say that the producer is allowed two-thirds of anything he produces above the first-year base, which is divided equally. Under these terms the producer will get, if he increases his effort and planning so as to double his production, not the fifty bushels he got the first year (half of his production of 100 bushels), but 117 bushels (50 percent of the base production of 100 bushels plus 67 percent of the extra production of 100 bushels). The hit man, now the "least advantaged" since he will get fewer bushels than the producer,¹⁶ agrees to this unequal distribution because he gets, *still without any effort on his part*, an increased standard of living. (He now gets 83 bushels rather than the 50 he was getting.) Moreover, this system contributes to his reform, behaviorally speaking. He now decides not to kill the producer because a virtually guaranteed income of 83 bushels a year with no effort on his part is a better deal than getting the entire crop of 100 or 200 bushels for one year by knocking the producer on the head and then having to make his own crop in succeeding years.

And so inequality rears its head. Is it just? Apparently so, according to the Rawlsian scheme, for this deal can be agreed to from behind the Veil of Ignorance. (Given a choice of 50 bushels while the other also gets 50, or 83 bushels while the other gets 117, the rational choice, excluding envy as Rawls exhorts us to, is to choose 83.) But is it just in any traditional sense of justice as desert? Is it just according to our deepest intuitions of justice (one of the measures by which Rawls proposes that we reach a reflective equilibrium)? Of course not, for the producer is still entitled to what he produces by his effort and planning, which is the whole 200 bushels, and the hit man is still entitled to all he has produced, which is still not a kernel.¹⁷ Allowing inequality in order to increase incentives and thereby increase the size of the social pie to be distributed does not, then, eliminate the radical injustice that can be produced under the Rawlsian scheme. Moreover, once the Veil of Ignorance is stripped away, it can be surmised that the hardworking producer will be unable to see

¹⁶One peculiarity of the Rawlsian view of justice is that, as Rawls uses the term, it is the hit man who does no work but gets a living through the efforts of another who must be termed the "least advantaged" (i.e., he gets the smaller share) and not the hard worker who supports both himself and the idler. What, one wonders, are the "advantages" of the hard worker?

¹⁷On grounds of humanity the worker might not allow the other to die of starvation, but surely there is nothing in justice that would require him to give, as a matter of desert, equal shares to the other.

the justice in either the original arrangement, by which he produced 100 bushels and got 50, or its modification, by which he worked doubly hard to produce 200 bushels, only to get 117 while the other man on the island sits idly by. He will be unable to see the justice of either deal because neither is a just deal, or so our "clearest intuitions of justice" will surely tell us.

Nor do the critics of the Rawlsian scheme, who point out its peculiar results in multiparty distributions as opposed to two party distributions, salvage the scheme by their modifications. Take for example the extremely sophisticated and compelling critique by Douglas Rae.¹⁸ He shows clearly that Rawls's Maximin principle disfranchises all but the least advantaged and can give intuitively outrageous allocations in certain not unlikely circumstances. In the stead of Rawls's rule of Maximin, Rae proposes a rule of "general advantage," which means "we are willing to choose avoidable inequalities only if this can be accomplished without sacrifices to the interests of any stratum."¹⁹ (This still assumes that the idle hit man is entitled to 50 percent of the base production, thereby accepting the basic and outrageous assumption.) Under this rule an inequality will be permitted only if it "is to the advantage of some strata yet to the disadvantage of no strata."²⁰ Some at least must gain by any inequality and none lose. Aside from the fact that the application of this principle would seem to forbid nearly any political decision in a wide range of matters (apply it, for example, to the possible alternatives in the energy crisis), it does not solve the fundamental injustice possible under the Rawlsian scheme. Consider again our island. Rawls's initial scheme gives the hit man something for nothing, indeed, equal shares with the producer. As modified by the Difference Principle and Maximin, the hit man can get even more while still contributing nothing. Rae's modification only means that, in addition to the hit man getting his share of the producer's labor, so must every other person on the island if more arrive. (The base division is still an equal division.) No mathematical formula for distribution giving deliberate free riders a share of others' labored production is just. (And a scheme that does reward idlers is well-designed to produce more idlers and bitter resentment, or falling production, by others. It is a system designed to bring out the worst in our natures and to reduce the size of the social pie.) Rae has rearranged an unjust manner of deciding allocations. He certainly has not corrected it.

A Critique of Method

The Rawlsian method (or strategy) for finding justice, while ingenious, cannot give an adequate account of the principles of just distribution. Nor can

¹⁸Douglas Rae, "Maximin Justice and an Alternative Principle of General Advantage," *American Political Science Review*, 69 (June 1975), 630-47.

¹⁹Rae, "Maximin Justice," p. 645.

²⁰Rae, "Maximin Justice," p. 646.

modifications of the scheme that accept his premises. The Rawlsian scheme and its modifications fail for the following reasons.

First, the Rawlsian strategy for finding the just distribution presupposes rather than proves his answer. The Rawlsian strategy, after all, is that of the harried mother with the pie to be divided equally. But the mother chooses that strategy from a wide range of possible strategies only because she *wants* an equal division. Had she wanted an unequal division, as in other circumstances she might, she would have chosen differently. If, for example, she had told her children that she would divide a pie among them according to how faithfully and well they performed their duties, and some had done their chores while others had not, then it would have been unjust to pick a strategy that would give equal slices to all, and presumably she would not have done so. The Rawlsian or harried mother's strategy, then, is only a good strategy if equal shares for all is the goal, and it will only produce a just distribution if that particular set of circumstances calls for an equal division. But the strategy itself, which is merely a tool for gaining a particular end, tells us nothing about what end should be sought or what justice requires. It is only a universally applicable strategy if justice *always* requires an equal division, which a moment's reflection will show is absurd. Analytically, then, the Rawlsian strategy for finding justice tells us *how* to make people *want* an equal division, not *whether* we should make them want an equal division, and certainly not that an equal division is what justice always requires.²¹

Second, the Rawlsian strategy for locating justice, like the mother's strategy for getting an equal division of the pie, is a variant of the Modern strategy for getting people to do the right thing. That strategy relies upon self-interest (carefully guided by proper institutions) rather than upon nobility of character (which is hard to produce and dangerous to depend upon) to get desirable behavior. Thus democracy relies, to a considerable degree, upon making it to the self-interest of the politician to pay attention to the needs and desires of the electorate (by periodic elections with legalized opposition), while absolute monarchy (or its modern dictatorial equivalents) depends upon proper education (or revolutionary fervor) to produce nobility of character and a sense of *noblesse oblige*. For all our complaints about democracy, few of us would want to rely for long on the sense of *noblesse oblige* of others to get them to do what is right for us. It is safer to structure institutions so that it is to the others' self-interest to pay attention to us. Or so, at least, we Moderns believe. The outstanding utilization of this strategy is that of the founders of the American regime, and the theoretical defense of it is to be found in *The Federalist Papers*, especially

²¹Rawls mentions the technique used by the mother to get an equal division of the pie. He cites it as an example of "perfect procedural justice" (p. 85). He notes, however, that it presumes that there is an "independent criterion for what is a fair division, a criterion defined separately from and prior to the procedure which is to be followed" (p. 85). He does not notice that this constitutes a damning critique of his own apparatus for defining justice.

numbers 10 and 51. It is upon this strategy that both the harried mother and Rawls depend, the first successfully, the second unsuccessfully. The mother succeeds because her apparatus *does* make it to the interest of the one who chooses to choose what she wants chosen, and what we must presume ought to be chosen. But Rawls, despite his elaborate apparatus of Original Position, Veil of Ignorance, initial equality, and pursuit of self-interest, fails. He fails because his structure, upon which he relies to give us an objective account of justice, does not make it either *possible* or to the *interest* of those who choose to choose a truly just distribution.

In particular, the Rawlsian structure fails because the same Veil of Ignorance that was designed to hide from those in the Original Position their place in the society-to-be in order to prevent them from rationalizing their self-interest and calling it justice, also hides from them all the particular details that they must know if they are to know what a just distribution is. Thus it hides from them who produced the grain on that island and who did not, which makes it impossible for them to know who earned that grain and who did not, and it hides from them all information about individual efforts or lack of effort, about individual contributions or lack thereof, about handicaps, choices, needs, duties fulfilled, or responsibilities not met. It hides from them, in other words, precisely what they must know to distribute justly, unless just distribution among individuals has absolutely nothing to do with what those individuals choose or do or leave undone, and that is a patent absurdity that would make the whole concept of a just or unjust distribution meaningless. Consequently, the Rawlsian scheme does not lead those in the Original Position (or us) to justice unless that hit man deserves as much as the hard worker. Analytically, the scheme cannot lead those in the Original Position to justice because it blinds them to all the individual actions and choices that are the foundation of a just distribution. Analogically, Rawls has given us Justice blindfolded to make her impartial, but he has deprived her of the scales by which alone she can tell what justice among individuals requires.

Finally, the Rawlsian scheme fails because it fails at the very heart of the Modern strategy: It fails to structure the choices of those men in the Original Position so that it is to their self-interest to choose the just distribution. Failing in this, the scheme fails in everything. The product of its choices becomes merely a careful calculation of self-interest in a situation of uncertainty and that, as we have seen, has no relationship except purest chance with what justice requires. Thus our two men of the island, put behind the Veil, will divide that grain equally. They will not make that decision because they think it the just distribution—Rawls commands them not to decide that way, and besides, how could they know the just distribution when blinded to the facts of who had produced the grain and who had not?—instead they will make that decision because it is the safe and prudent division for them in the absence of knowledge about who had produced that grain, and they will continue to insist

on an equal division even in the face of certain knowledge that one had produced and was entitled to all the grain and the other none, as long as they do not know who the producer was (it might have been the other) and as long as they are guided, as Rawls has them guided, by prudent calculation of self-interest. They will choose what we can see to be an outrageously unjust distribution, and what they can see to be an outrageously unjust distribution, because the structure Rawls has built does not make justice and self-interest coincide. And so, since making it to the self-interest of those in the Original Position to choose justice is the foundation upon which Rawls builds his claim that he has found an objective way to give an account of what justice requires, the whole Rawlsian scheme collapses.

In truth, it is clear that the fruit of the Rawlsian scheme is quite different from what Rawls imagines. Since one does not know from behind the Veil of Ignorance whether one is praiseworthy or blameworthy, producer or parasite, good or evil, it is not to one's interest to make those distinctions. The Rawlsian apparatus of Veil of Ignorance, combined with pursuit of self-interest, makes us indifferent to all that previous theories of justice and previous generations of men had considered important. It makes us indifferent to what is fair or unfair, noble or base. It makes us indifferent to justice itself.

It can be argued that since men in the Original Position made a deal to divide things equally (or unequally according to the Difference Principle), then it is only just that they live up to the bargain. But such an argument only proves that there is a moral presumption in favor of living up to bargains freely entered into, not that there is any reason to believe that this particular bargain or contract describes an intrinsically just distribution. Imagine, after all, the reaction of the producer on our island when he discovers that *he* is the producer, and that he has bound himself for the rest of his life to providing a living for the idler. If he is a man of extraordinarily strong character, he might say that "a deal is a deal," but he certainly would not advise his children to take up that burden, nor is there any reason in justice for his children to assume such a burden. Rational calculation of self-interest in a situation of uncertainty is merely that, and not justice, even if it leads to voluntary adoption of a "social contract." Because of that, no such "social contract" can endure, except by force, unless the contract can be seen, on both sides of the Veil, to be just. The Rawlsian contract fails that test.

The Rawlsian method for finding justice fails because its structure presupposes, without proving, that an equal division is a fair division; because that same structure makes us indifferent to whether justice is done; and because, even if we cared, it hides from us all knowledge of the particular facts on which claims to a particular share must rest. The Rawlsian strategy makes it to our self-interest to choose a division contrary to our deepest intuitions of justice, and contrary to previous teachings of justice. It can and does defend

outrageously unjust divisions. It simply fails as a serious means of locating justice.²²

The Veil Removed: A Paradox Revealed

We have dealt, so far, with three aspects of the Rawlsian scheme: the apparatus for deciding what justice is and the two conclusions about what constitutes a just distribution—either equal division or inequality according to the Difference Principle. Each one is theoretically inadequate.

Two other features of the Rawlsian scheme are striking. The first is the principle of equal liberty (Rawls's first principle of justice),²³ which assumes that the dignity and glory of man is to freely choose his own values and life-style and to act accordingly, as long as those actions are just. The other feature is his assertion that those who produce or contribute more are not, in justice, due greater reward than others because that production or contribution stems not from voluntary effort or choice, but from genetic endowment or favorable early environment²⁴—a clear denial of man's responsibility for his actions, and a clear contradiction to the emphasis on freedom and liberty.

It is, in fact, a paradox. Rawls tells us that he values liberty so highly that he will not sacrifice it to utility or greater happiness, but he then adopts a view of man that denies man's freedom and responsibility for his actions by attributing his achievements or lack of them to his genes or luck of birth and place. In the end, Rawls puts himself and his theory into a hopeless bind. If a man is free and is, consequently, responsible for his actions and choices (or his inaction and evasions), then justice must be individual and the Rawlsian theory of distribution (his second principle of justice) is destroyed at its foundation. But if a man's efforts deserve no reward, if a man is to be treated as an involuntary and determined product of genes, status, and early environment,

²²The Rawlsian theory is not a satisfactory account of justice. But it might be argued that it is, at least, a notable defense of compassion for the poor and helpless, or, as Rawls would say, "the least advantaged." But even here the system fails. It fails because it confuses justice and compassion in a way that will destroy both. It will destroy justice because, in the attempt to aid the poor, it obliterates all distinctions between the earned and the unearned, between producer and parasite, and to do that renders the concept of justice meaningless. It will destroy compassion because human nature revolts against aiding alike and equally those who are helpless and cannot help themselves and those who merely want to ride on the efforts of others—on that shoals the welfare program founders today—not because people are heartless (all polls show that most favor aid to the needy), but because their sense of justice is outraged by what they perceive as a widespread cheating and taking advantage of compassion. To protect both justice and compassion, the distinction between the two must be maintained: to obliterate the distinction, as Rawls does, is a benefit to neither—it can only corrupt our view of justice and destroy our sense of compassion. (These same arguments, it may be noted, apply to the confusion of justice and the sense of fraternity.)

²³Rawls, *A Theory of Justice*, p. 60.

²⁴Rawls, *A Theory of Justice*, pp. 74, 104.

then there is no point in making equal liberty (which is meaningless without free will and individual responsibility) the first principle of justice. Paradoxically, the Rawlsian theory refutes itself. To defend either of its two basic principles requires the destruction of the foundation of the other. In the end, Rawls has proved to be his own severest critic.