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Justice: Means versus Freedoms

This article is concerned with the informational basis of justice. The informational basis of a judgment identifies the information on which the judgment is directly dependent and—no less important—asserts that the truth or falsehood of any other type of information cannot *directly* influence the correctness of the judgment.¹ The informational basis of judgments of justice thus determines the factual territory over which considerations of justice would *directly* apply. (The implications on other matters would be derivative.)

The analysis presented here derives a good part of its motivation and structure from Rawlsian theory of justice as fairness.² However, I argue

This is a part of a longer paper (“The Territory of Justice”) which formed the text of my Marion O’Kellie McKay Lecture given at the University of Pittsburgh on September 16, 1988. My greatest debt is to John Rawls for his enormously helpful comments (even though I am critical of his theory of justice in this article). I have also profited a good deal from the suggestions of G. A. Cohen, Ronald Dworkin, Derek Parfit, Thomas Scanlon, and Kevin Sontheimer.

1. The diverse forms and varying roles of the informational basis of normative judgments have been discussed in my “Informational Bases of Alternative Welfare Approaches: Aggregation and Income Distribution,” *Journal of Public Economics* 3 (1974): 387–403; “On Weights and Measures: Informational Constraints in Social Welfare Analysis,” *Econometrica* 45 (1977): 1539–72; “Informational Analysis of Moral Principles,” in *Rational Action*, ed. R. Harrison (Cambridge: Cambridge University Press, 1979), pp. 115–32; “Well-being, Agency and Freedom: The Dewey Lectures, 1984,” *Journal of Philosophy* 82 (1985): 169–221; and “Information and Invariance in Normative Choice,” in *Social Choice and Public Decision Making: Essays in Honor of Kenneth Arrow*, ed. W. P. Heller, R. M. Starr, and D. A. Starrett (Cambridge: Cambridge University Press, 1986), pp. 29–55.

2. J. Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971); “Social Unity and Primary Goods,” in *Utilitarianism and Beyond*, ed. A. Sen and B. Williams (Cambridge: Cambridge University Press, 1982), pp. 159–85; “Justice as Fairness: Political not Metaphysical,” *Philosophy & Public Affairs* 14, no. 3 (Summer 1985): 223–51; “The Priority of Right and Ideas of the Good,” *Philosophy & Public Affairs* 17, no. 4

that the interpersonal comparisons that must form a crucial part of the informational basis of justice cannot be provided by comparisons of holdings of *means* to freedom (such as “primary goods,” “resources,” or “incomes”). In particular, interpersonal variability in the conversion of primary goods into freedom to achieve introduces elements of arbitrariness into the Rawlsian accounting of the respective advantages enjoyed by different persons; this can be a source of unjustified inequality and unfairness.

This claim, which I had presented in a very elementary form in my Tanner Lecture at Stanford University in 1979,³ has recently been disputed by Rawls. He has argued that my criticism of his theory presupposes the acceptance of some specific “comprehensive doctrine”—some unique view of the good—and thus goes against what he calls the “political conception” of justice.⁴ I argue here that this claim is mistaken. More positively, I argue that a theory of justice based on fairness must be deeply and directly concerned with the *actual freedoms* enjoyed by different persons—persons with possibly divergent objectives—to lead different lives that they can have reason to value.

I. INFORMATION: PERSONAL AND COMBINATIONAL

The informational base of substantive theories that ground ethical judgments on the lives of persons can be roughly split into two types of intrinsically relevant information: (1) *focal personal features*, and (2) *combining characteristics*. To illustrate, for the standard utilitarian theory, the only intrinsically important focal personal features are *individual utilities*, and the only usable combining characteristic is *summation*, yielding the *total* of those utilities. “Welfarist” theories, of which utilitarianism is a particular example, retain the former part (utilities as the focal personal features), but can use other combining characteristics, for example, utility-based maximin (or lexicographic maximin), or summation of concave transforms of utilities (such as summation of the logarithms of utilities).

(Fall 1988): 251–76; “The Domain of the Political and Overlapping Consensus,” mimeograph, 1988; “Political Constructivism and Public Justification,” mimeograph, 1988; “Reply to Sen,” mimeograph, 1988.

3. A. Sen, “Equality of What?” in *The Tanner Lectures on Human Values*, ed. S. McMurrin (Cambridge: Cambridge University Press, 1980), 1: 195–220.

4. Rawls, “The Priority of Right and Ideas of the Good”; “Reply to Sen.”

Other examples of focal personal features are liberties and primary goods (Rawls), rights (Nozick), resources (Dworkin), commodity bundles (Foley, Varian), and various mixed spaces (Suzumura, Wriglesworth, Riley). Note that in some cases the personal features are broadly of the outcome type (for example, commodity bundles enjoyed), as they are in welfarist theories such as utilitarianism, whereas in other cases they relate to opportunities, defined in some way or other (for example, primary goods, rights, resources). The selection of personal features must be supplemented by the choice of a combining formula—for example, lexicographic priorities and maximin (Rawls), equality (Nozick, Dworkin, Foley), or various mixed rules (Varian, Suzumura, Wriglesworth, Riley).⁵

There is, obviously, much more to be said about each approach, including how each author sees the interpretational and justificatory issues (for example, the underlying foundational principles, the balance between teleological and deontological reasoning), and how the plural and heterogeneous characteristics of the respective features can be handled (for example, indexing of primary goods, fixing of the hierarchy of rights, evaluation of different resources, weighting of diverse utilities). But in these different approaches to ethics and justice we also see quite different types of informational selection, covering both personal and combining features.

II. CAPABILITY, FREEDOM, AND PRIMARY GOODS

A person's achieved living can be seen as a combination of "functionings," or "doings and beings." Given n different types of functionings,⁶ an " n -tuple" of functionings represents the focal features of a person's

5. Rawls, *A Theory of Justice*; R. Dworkin, "What Is Equality? Part 2: Equality of Resources," *Philosophy & Public Affairs* 10, no. 4 (Fall 1981): 283–345; R. Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974); J. Wriglesworth, *Libertarian Conflicts in Social Choice* (Cambridge: Cambridge University Press, 1985); D. Foley, "Resource Allocation in the Public Sector," *Yale Economic Essays* 7 (1967): 45–98; J. Riley, *Liberal Utilitarianism* (Cambridge: Cambridge University Press, 1988); H. R. Varian, "Distributive Justice, Welfare Economics, and the Theory of Fairness," *Philosophy & Public Affairs* 4, no. 3 (Spring 1975): 223–47; K. Suzumura, *Rational Choice, Collective Decisions, and Social Welfare* (Cambridge: Cambridge University Press, 1983).

6. The same functioning at two different points in time can be formally treated as two different functionings if we are looking not at the achieved living at a particular point in time, but at the life profile of a person over time.

living, with each of its n components reflecting the extent of the achievement of a particular functioning.⁷ A person's "capability" is represented by the set of n -tuples of functionings from which the person can choose any one n -tuple. The "capability set" thus stands for the actual freedom of choice a person has over alternative lives that he or she can lead.

On this view, individual claims are to be assessed not by the resources or primary goods the persons respectively hold, but by the freedoms they actually enjoy to choose between different ways of living that they can have reason to value. It is this actual freedom that is represented by the person's "capability" to achieve various alternative combinations of functionings, or doings and beings.⁸

How do primary goods relate to capabilities? Rawls explains that primary goods are "things that citizens need as free and equal persons," and "claims to these goods are counted as appropriate claims."⁹ Primary goods are "things that every rational man is presumed to want," and include "income and wealth," "the basic liberties," "freedom of movement and choice of occupation," "powers and prerogatives of offices and positions of responsibility," and "the social bases of self-respect."¹⁰ Since primary goods are diverse, some "index" of the holding of primary goods must serve as the comprehensive basis of interpersonal comparison for the Rawlsian assessment of justice. Primary goods can be seen as general-purpose *resources* that are useful for the pursuit of different ideas of the good that different individuals may have. The coverage of "re-

7. An n -tuple is made up by picking one element from each of n sets. The sets need not be numerically metricized (e.g., a set of alternative nutritional achievements may consist of "being well-nourished," "being calorie deficient but otherwise well-nourished," "being deficient in both calories and protein," etc.). Thus, thinking in terms of an n -tuple does not restrict the forms of description in any particular way. In the special case in which the elements of *each* set are measured in terms of real numbers, an n -tuple would be an n -vector, and the analysis would then be confined to the more commonly used—but also more restrictive—format of a vector space.

8. Capability reflects freedom to lead different types of lives. Lives can be defined broadly or narrowly. Furthermore, we also have objectives and values concerning things *other than* the types of lives we can lead, and our ability to achieve them is also a matter of our freedom, broadly defined. I shall not pursue these broader problems here, but their inclusion would not change the arguments presented in this article. On the distinctions between different notions of positive freedom (especially between "well-being freedom" and "agency freedom"), see my "Well-being, Agency and Freedom."

9. Rawls, "The Priority of Right and Ideas of the Good," p. 257.

10. See Rawls, *A Theory of Justice*, pp. 60–65; "Social Unity and Primary Goods," p. 162; and "The Priority of Right and Ideas of the Good," pp. 256–57.

sources" can be extended to include other *means*; Ronald Dworkin has taken his system of ethical accounting in that direction.¹¹ Though there are important differences between Rawls's and Dworkin's approaches, both focus on resources in making interpersonal comparisons, and both seek to answer the question "Equality of what?" in terms of *means* rather than what people can obtain *from* the means.¹²

Given the presumption of versatility of these primary goods or resources (as Rawls puts it, different "comprehensive conceptions of the good . . . require for their advancement roughly the same primary goods"),¹³ they are, in fact, meant to be general-purpose *means to freedom*, that is, they influence *inter alia* the set of alternative lives from which a person can choose. Indeed, that connection with freedom is one of the most attractive aspects of seeing the focal personal features as the holdings of primary goods, given their assumed versatility.

But if we are interested in freedom, is it adequate to concentrate on the *means* to freedom, rather than on the *extent* of the freedom that a person actually has? Since the conversion of these primary goods and resources into freedom to select a particular life and to achieve may vary from person to person, equality in holdings of primary goods or resources can go hand in hand with serious inequalities in actual freedoms enjoyed by different persons.

In the capability-based assessment of justice, individual claims are not to be assessed in terms of the resources or primary goods the persons respectively hold, but in terms of the freedoms they actually enjoy to choose between different ways of living that they can have reason to value. It is this actual freedom that is represented by the person's "ca-

11. Dworkin, "What Is Equality? Part 2: Equality of Resources." I have attempted to evaluate Dworkin's case for resource-based accounting in "Rights and Capabilities," in *Ethics and Objectivity*, ed. T. Honderich (London: Routledge, 1985), pp. 130–48, also published in my *Resources, Values and Development* (Cambridge, Mass.: Harvard University Press, 1984). See also G. A. Cohen, "Equality of What? On Welfare, Resources, and Capabilities," in *The Quality of Life*, ed. M. Nussbaum and A. Sen (Oxford: Clarendon Press, forthcoming), and his "On the Currency of Egalitarian Justice," *Ethics* 99 (1989): 906–44.

12. It must, however, be noted that Dworkin has also proposed enriching the perspective of "resources" by including *as if* insurance mechanisms against certain types of personal handicaps. To the extent that these insurance mechanisms even out differences in different people's ability to convert resources into capabilities, the equality of insurance-adjusted values of resources would be an indirect way of *approaching* the equality of capabilities. Much depends on the scope, coverage, and versatility of the *as if* insurance mechanisms.

13. Rawls, "The Priority of Right and Ideas of the Good," pp. 256–57.

pability” to achieve various alternative combinations of functionings, that is, doings and beings.

It is important to distinguish capability—representing freedom actually enjoyed—from both (1) primary goods (and other resources), and (2) actually chosen lives (and other realized results). To illustrate the first distinction, a person who has a disability can have more primary goods (in the form of liberties, income, wealth, and so on) but less capability (owing to the handicap). To take another example, this time from poverty studies, a person may have more income and more nutritional intake than another person, but less freedom to live a well-nourished existence because of a higher basal metabolic rate, greater vulnerability to parasitic diseases, larger body size, or pregnancy. Similarly, in dealing with poverty in the wealthier countries, we have to take note of the fact that many of those who are poor in terms of income and other primary goods also have characteristics—age, disability, disease-proneness, and so on—that make it more difficult for them to convert primary goods into basic capabilities, for example, the ability to move about, to lead a healthy life, and to take part in the life of the community. Neither primary goods nor resources, more broadly defined, can represent the capability a person actually enjoys.

In the context of inequality between women and men, the variable conversion rates of primary goods into capabilities can be quite crucial. Biological as well as social factors (related to pregnancy, neonatal care, conventional household roles, and so on) can place a woman at a disadvantage even when she has exactly the same bundle of primary goods as a man. The issue of gender cannot be properly addressed if advantage and disadvantage are seen merely in terms of holdings of primary goods, rather than the actual freedoms to lead different types of lives that women and men respectively enjoy.¹⁴

To illustrate the second distinction, a person may have the same capability as another person, but nevertheless choose a different bundle of functionings in line with his or her particular goals. Furthermore, two persons with the same actual capabilities and even the same goals may end up with different outcomes because of differences in strategies that they follow in exercising their freedoms.¹⁵

14. On this see my “Gender and Cooperative Conflict,” WIDER discussion paper, 1985, in *Persistent Inequalities*, ed. I. Tinker (New York: Oxford University Press, 1989).

15. For arguments in favor of concentrating on achieved living, as opposed to capabili-

It is important to see the distinction both (1) between freedom and the means to freedom, and (2) between freedom and achievement. Rawls's belief that my case for comparing capabilities, as opposed to holdings of primary goods, must be based on choosing a specific "comprehensive" view of the good¹⁶ ignores *inter alia* the significance that is attached to the distinction between freedom and achievement—specifically, between capabilities and functionings—in the capability approach.

III. FREEDOM AND COMPREHENSIVE VIEWS

In responding to my critique, Rawls summarizes his interpretation of my objection thus: "The idea of primary goods must be mistaken. For they are not what, from within anyone's comprehensive doctrine, can be taken as ultimately important: they are not, in general, anyone's idea of the basic values of human life. Therefore, to focus on primary goods, one may object, is to work for the most part in the wrong space—in the space of institutional features and material things and not in the space of basic moral values."¹⁷ Rawls then responds to his interpretation of my objection as follows: "In reply, an index of primary goods is not intended as an approximation to what is ultimately important as specified by any particular comprehensive doctrine with its account of moral values."¹⁸ Rawls sees the need to avoid commitment to a particular comprehensive view as crucial to the conception of justice as fairness. "The main restric-

ties, in answering the question "Equality of what?" see G. A. Cohen, "Equality of What? On Welfare, Resources, and Capabilities."

16. Rawls, "The Priority of Right and Ideas of the Good," pp. 258–59.

17. *Ibid.*, pp. 256–59.

18. *Ibid.*, p. 259. Rawls also has a rather different line of answering my criticism in his "Reply to Sen." He argues that his full theory of justice has more "flexibility" than I recognize, and that some of the interpersonal variations I am concerned with can be taken note of at later stages, such as "legislative" and "judicial" ones. It is not altogether easy to be sure what overall procedures and allocational principles would in fact be satisfied by such a complex stagewise structure, but if it is indeed the case that all the relevant interpersonal variations will be effectively dealt with at some stage or other, then that would certainly reduce the force of the criticism. Some of the issues raised by interpersonal variations in the conversion of primary goods into capabilities would then end up receiving attention after all. However, even in terms of this stagewise analysis, the different capabilities to influence legislation and political decisions may call for attention to be paid to this problem at earlier stages as well (e.g., in dealing with the disadvantage of the physically disabled, the undernourished, or the ill in influencing political decisions, even when they have the same bundle of primary goods as the nondisadvantaged).

tion would seem to be this: the ideas included must be political ideas. That is, they must belong to a reasonable political conception of justice so that we may assume (1) that they are, or can be, shared by citizens regarded as free and equal; and (2) that they do not presuppose any particular fully (or partially) comprehensive doctrine.¹⁹

I have discussed elsewhere whether this “political conception,” with the insistence on avoiding any comprehensive view, may limit the scope and range of a theory of justice too severely.²⁰ But I shall not go into that question now. My main concern here is with scrutinizing the adequacy of primary goods specifically for Rawls’s approach of justice as fairness, including his insistence on avoiding the use of any particular “comprehensive doctrine.”

The first problem with Rawls’s reply lies in his misinterpretation of the nature of my criticism. Capability reflects a person’s *freedom* to choose between alternative lives (functioning combinations), and its value need not be derived from one particular “comprehensive doctrine” demanding one specific way of living. As discussed in Section II, it is important to distinguish between freedom (of which capability is a representation) and achievement, and the evaluation of capability need not be based on one exclusive comprehensive doctrine that orders the achievements, including the life-styles and the functioning *n*-tuples.

The second problem, related to the first, concerns Rawls’s claim that primary goods are “not intended as an approximation to what is ultimately important as specified by any *particular comprehensive doctrine*” (emphasis added). The lack of correspondence between primary goods and achievements lies not only there, but also in the fact that, given variable conversion rates of primary goods into achievements, a disadvantaged person may get less from primary goods than others *no matter what comprehensive doctrine* he or she holds. To illustrate the point, consider two persons, 1 and 2, with 2 disadvantaged in some respect (for example, by a physical disability, mental handicap, disease vulnerability, or high basal metabolic rate²¹). Furthermore, 1 and 2 do *not* have the

19. Rawls, “The Priority of Right and Ideas of the Good,” p. 253.

20. In “The Territory of Justice,” secs. 4 and 5. Also discussed in my *Inequality and Freedom* (Oxford: Clarendon Press, forthcoming).

21. In wealthier communities a higher basal metabolic rate may well be an advantage in enabling one to eat more without getting fat, but in conditions of poverty it can increase one’s requirements for food and therefore income (a primary good) to achieve the same level of nutritional functioning.

same objectives or the same conceptions of the good. 1 values A more than B, while 2 values B more than A. Each values 2A more than A, and 2B more than B. The orderings of the two (representing the relevant parts of their respective “comprehensive doctrines”) are as follows:

<i>Person 1</i>	<i>Person 2</i>
2A	2B
2B	2A
A	B
B	A

With the given set of primary goods, person 1 can achieve 2A or 2B, as well as—though there may be no great merit in this—A or B. On the other hand, given 2’s disadvantage, with the very same primary goods 2 can achieve only A or B. Thus, 1’s capability set is (2A, 2B, A, B), whereas 2’s set is (A, B).

Person 1 proceeds to achieve 2A, while 2 settles for B. The problem is not just that 2 is at a disadvantage in terms of one *particular* comprehensive doctrine (his or her own, or that of person 1), but that 2 has a worse deal than 1 *no matter which* comprehensive doctrine is considered. Equality of primary goods has given 2 less *freedom to achieve* and not just less *achievement* with respect to some *one* comprehensive doctrine.

If the comparisons were made not in terms of primary goods but in terms of capabilities, 2’s worse deal would be obvious. Person 2’s capability set—(A, B)—is a proper subset of the capability set of 1, namely, (2A, 2B, A, B), shorn of the best elements, no matter which comprehensive doctrine is considered. Capability represents freedom, whereas primary goods tell us only about the means to freedom, with an interpersonally variable relation between the means and the actual freedom to achieve. Rawls is right to think that my objection did relate to primary goods being *means* only, but that problem is not disposed of by saying that they are “not intended as an approximation to what is ultimately important as specified by any particular comprehensive doctrine.”²²

22. Dominance in the space of capabilities does not require agreement on any comprehensive doctrine, since one set can be a subset of another (as in the example given). Furthermore, even when the capability sets are not subsets of each other, for agreement to exist on their ranking, we do not need the acceptance of any one comprehensive doctrine. Partial rankings of capabilities can be based on superiority in terms of *each* of the relevant

IV. PLURAL DIVERSITIES AND JUSTICE

There are in fact two sources of variation in the relation between a person's *means* (such as primary goods or resources) and *ends*. One possibility is *inter-end* variation—different conceptions of the good that different people may have. The other is *interindividual* variation in the relation between resources (such as primary goods) and the freedom to pursue ends. Rawls shows great sensitivity to the first variation, and is keen on preserving respect for this diversity (rightly so, in line with his pluralistic political conception). Rawls does assume that the same primary goods serve all the different ends, and, presumably for the sake of fairness, it must not be the case that some people's ends are so minutely—even though positively—served by the primary goods (compared with the ends of others) that the first group may have a legitimate complaint about judging individual deals in terms of primary goods. This is a question of some importance, but I will not pursue it further here.²³

My concern is with the second—*interindividual*—variation in the relation between resources and freedoms. A person's actual freedom to pursue his or her ends depends on both (1) what ends he or she has, and (2) what power he or she has to convert primary goods into the achievement of ends. The problem of converting goods into the achievement of ends, with which I am primarily concerned here, can be serious *even with* given ends, but it is *not* the case that it can be serious *only with* given ends. The reach and relevance of the second problem is in no way reduced by the existence of the first.

To conclude, we *are* diverse, but we are diverse in *different* ways. One variation relates to the differences that exist among our ends and objectives. The ethical and political implications of this diversity we now un-

comprehensive doctrines. On these and related matters see my *Choice, Welfare and Measurement* (Cambridge, Mass.: MIT Press, 1982), and *Commodities and Capabilities* (Amsterdam: North-Holland, 1985). See also I. Levi, *Hard Choices* (Cambridge: Cambridge University Press, 1986).

23. In fact, Rawls's comprehensive assertion that "there exists no other space of values to which the index of primary goods is to approximate" ("The Priority of Right and Ideas of the Good," p. 259) would seem to overlook the nature of this particular problem. If every possible list of primary goods (and every way of doing an index) makes some people's ends very well served and others terribly minutely so, then the important feature of "neutrality" is lost, and the entire line of reasoning of "justice as fairness" is significantly undermined. Thus, some strong requirements *are* imposed on the relation between primary goods and the space of other values. I shall not discuss this issue further in this article.

derstand much better than before as a result of Rawls's powerful analysis of justice as fairness. But there is another important diversity—variations in our ability to convert resources into actual freedoms. Variations related to sex, age, genetic endowments, and many other features give us unequal powers to build freedom in our lives even when we have the same bundle of primary goods.²⁴

If the freedoms that persons enjoy constitute a major territory of justice, then primary goods provide an inadequate informational basis for the evaluation of what is just and what is not. We have to examine the capabilities that we can actually enjoy. The practical implications of the difference—political as well as ethical—can be enormous.

24. I have discussed some of the empirical issues involved in the variable conversion of primary goods (and resources) into capabilities (and freedoms) in "Indian Women: Well-being and Survival" (jointly with J. Kynch), *Cambridge Journal of Economics* 7 (1983): 363–80; *Resources, Values and Development; Commodities and Capabilities*; "Gender and Cooperative Conflict"; and *Hunger and Public Action* (jointly with Jean Drèze) (Oxford: Clarendon Press, 1989).