

## CHAPTER V

### RAWLS ON DUTIES, RIGHTS, AND “JUSTICE BETWEEN GENERATIONS”

In the preceding chapter, I have attempted to summarize the basic tenets and structure of Rawls's theory of justice, "justice as fairness." With this foundation now established, we can move on to Rawls's specific views concerning the duty to, and rights of, future generations. While this chapter will, like the last, be primarily expository, it will present Rawls's views in somewhat more detail and with more completeness. After all, Rawls's treatment of the posterity issue takes up only a minute fraction of this long book.

I will begin this chapter with a presentation of Rawls's conceptions of *obligations*, *duties* and *rights*. Following that, I will explain his explicit position concerning "justice between generations" and the related issue of "time preference." The chapter will close with a brief comment concerning the relevance of the posterity question to Rawls's theory of the good.<sup>1</sup>

#### 29. Rawls on Obligations, Duties and Rights

What, according to Rawls, is the basis and justification of moral obligations and duties? The answer is both unequivocal and unsurprising: "Natural duties and obligations," he says, "arise only in virtue of ethical principles." And what principles? "Those that would be chosen in the original position." He continues: "Together with the relevant facts of the circumstances at hand, it is these criteria that determine our obligations and duties, and single out what count as moral reasons" (p. 348). Furthermore, obligations and duties presuppose a concept of social justice, and thus "the content of just institutions must be defined before the requirements of individuals can be set out" (p. 110). Fortunately, since we have already examined Rawls' ideas concerning the original position (§23, above), the principles of justice (§24), and just institutions (§25), we are prepared to move directly to the distinguishing features of Rawls's concept of obligation and duty. We will find that, in certain significant particulars, Rawls's concepts are quite similar to those developed in the second chapter of this dissertation (§6).

*Obligation.* To understand Rawls's concept of obligation as distinguished from "natural duties," it is necessary first to consider his "principle of fairness." According to this principle, a person is required to obey the operating rules of an institution if the following conditions obtain: (a) "the institution is just (or fair); that is, it satisfies the two principles of justice" (pp. 112-113); and (b) the person "has voluntarily accepted the benefits of the arrangement [afforded by the institution] or taken advantage of the opportunities it offers to further one's interest" (p. 112). (The voluntary arrangements may also include such personal performative acts as giving promises, etc..) The Hobbesian rationale for this principle has a ready, common sense appeal to it:

The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission. We are not to gain from the cooperative labors of others without doing our fair share. (p. 112. See also pp. 342-343).<sup>2</sup>

(This is very similar to the argument that Crito heard in Socrates' cell.)

The remaining characteristic features of obligation follow easily enough. (c) "The content of obligations is always defined by an institution or practice the rules of which specify what it is that one is required to do" (p. 113). (d) "Obligations are normally owed to definite individuals; namely, those who are cooperating together to maintain the arrangement in question" (p. 113). Thus, according to Rawls, "By definition the requirements specified by the principle of fairness are the obligations. All obligations arise in this way . . . . Obligatory ties presuppose just institutions, or ones reasonably just in view of the circumstances" (p. 112).

Clearly, the mutual acceptance in society of the principle of fairness is "a great collective asset" (p. 347). To appreciate this, one need only imagine, if possible, a community in which persons were unable to make promises or agree to contracts. The ability of one person, through his trust and confidence, to accept a binding obligation with another can enhance the liberty and well-being of both. The principle of fairness is clearly in the common interest, and would thus be readily adopted in the original position (p. 348).

*Natural duties.* Unlike obligations, natural duties follow directly from the contractarian argument: they are principles "that would be acknowledged in the original position" (p. 115). Unlike obligations, duties refer to no intervening "principle of fairness." Because duties are principles that would be agreed to behind the veil of ignorance, there can be no reference (as with obligations) to such contingencies as agreements voluntarily entered into, presuppositions of express or tacit consent, or particular institutions or social practices. Furthermore, duties are not necessarily owed to definite persons; rather, they are owed to "persons generally"; they "obtain between all as equal moral persons" (p. 145).<sup>3</sup>

It would be useful now to explicate a few of the basic positive features of "natural duties" -- useful, but rather difficult. For, while Rawls provides us with a clear and concise analysis of his concept of obligation, his treatment of the natural duties is less explicit. He opens his discussion with the following disclaimer: "There are many natural duties, positive and negative. I shall make no attempt to bring them under one principle. Admittedly this lack of unity runs the risk of putting too much strain on priority rules, but I shall have to leave this difficulty aside" (p. 114). He follows with a set of sample "duties," and proceeds on to a list of features *not* shared with obligations (such as those listed in the preceding paragraph). What are we left with? Perhaps little more than the following: natural duties are (a) minimum moral requirements, (b) that would be agreed to in the original

position, (c) that are owed to persons generally, and (d) that are associated, not only with special status and offices, but with conditions of communal life in general.

At this point, we might be well advised to follow Rawls's example by examining a few sample "natural duties." First, there is "the Natural Duty of Justice:"

The most important natural duty is that to support and further just institutions. This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves. (p. 334)

Later in this chapter (§32), we will find that this "duty of justice" plays a crucial role in Rawls's examination of "justice between generations." Another duty is "the Duty of Mutual Respect:" "This is the duty to show a person the respect which is due to him as a moral being; that is, as a being with a sense of justice and a conception of the good" (p. 337). Finally, we have "the Duty of Mutual Aid." The main advantage of this self-explanatory duty "is not measured by the help we actually receive but rather by the sense of confidence and trust in other men's good intentions and the knowledge that they are there if we need them" (p. 339). There are, of course, many more natural duties. However, these are the duties to which Rawls gives particular attention.

What, then, are the essential differences between natural duties and obligations? The duties, says Rawls, refer to "those institutions or aspects thereof which must inevitably apply to us since we are born into them and they regulate the full scope of our activity" (pp. 343-344). The obligations, on the other hand, "apply to us because we have freely done certain things as a rational way of advancing our ends" (p. 344). "Obligations," then, are "moral requirements that derive from the principle of fairness, while other moral requirements are called 'natural duties.'" (p. 343).

Earlier, I referred to duties and obligations as "minimum moral requirements." The qualification is important, for Rawls readily admits that virtuous acts can be performed "beyond the call of duty." Such extraordinary acts of benevolence, mercy, heroism, and self-sacrifice are called "supererogatory acts." Such acts, says Rawls:

Are not required, though normally they would be were it not for the loss or risk involved for the agent himself. A person who does a supererogatory act does not invoke the exemption which the natural duties allow. For while we have a natural duty to bring about a great good, say, if we can do so relatively easily, we are released from this duty when the cost to ourselves is considerable. (p. 117)

"Justice as fairness," it seems, makes moderate and "reasonable" moral demands upon the ordinary citizen, while at the same time allowing for the extraordinary acts of saints and heroes.

How do Rawls's concepts of *obligation* and *duty* compare with the concepts developed in the second chapter of this dissertation? (§6) (The reader may find it useful to re-read this section, or at least page 15). To begin, Rawls acknowledges that his analyses of obligation and duty have been "drawn from" the same papers by Hart (1958) and Brandt (1964) that were utilized in my analyses of these concepts (Rawls, 113 n. See also §6, above). Even so, there are some noteworthy differences. In particular, concerning *duties*: (a) Unlike Brandt, Rawls does not attach duties to particular "offices and stations"; rather, duties apply to all persons engaged in moral deliberation and functioning in morally significant activities. Rawls's use of duties" is, in this respect, much broader than that of Brandt and Hart. By extending the reference to "offices and stations" to encompass "status and roles" and even "moral communities," I have adopted an interpretation much closer to that of Rawls (Cf. p. 14, above). (b) Unlike Brandt, Rawls apparently has little reluctance to speak of "duties not to," i.e., "duties of forbearance." Again, I concur with Rawls (Cf. p. 14, above). (c) Most significantly, Rawls's account of "duty" incorporates elements of his particular normative theory of justice -- "justice as fairness." (I will have more to say about this presently.)

Concerning *obligations*: Rawls's concept is quite similar to that developed earlier in this dissertation. Aside from Rawls's significant reference to "the principle of fairness," which will be discussed shortly, the following differences are noteworthy: (a) My account does not refer to "institutions," as does Rawls's. While I feel that my use of "obligation" relates quite well to institutional arrangements, I wish also to make clear provision for personal and individual obligations. Rawls's use of "obligation" might allow for such individual arrangements, but only as an extension of the "institutional sense." This seems to me to be an unnecessary complication. (b) My provision that the content of obligation "is acknowledged by all contracting parties" (p. 14, above) seems to be missing from Rawls's account except, perhaps, by implication. I see nothing in Rawls's theory that is inconsistent with this provision. Perhaps its exclusion is an oversight.

Concerning *both* duties and obligations: (a) I have made no reference in this section to the moral sentiments of *guilt* and *shame* suffered by those who violate their duties and obligations, or to the indignation felt by those who are wronged by such moral feelings. While Rawls has little to say about these moral sentiments *within* the sections explicitly devoted to duties (Rawls, §§ 19, 51) and obligations (Rawls, §§ 18, 52), he does, as we have seen, devote considerable space to these sentiments in the third part of his book ("Ends") dealing with his theory of the Good (§24, above). Accordingly, the "internal sanctions" of guilt and shame which are included in my accounts of both obligation and duty should be added to Rawls's concept. Indeed, I doubt that Rawls would have much quarrel with any of Brandt's four moral features of obligation and duty -- i.e., *conscience*, reflection on *character*, *principle*, and *stringency*. (See the paragraph from Brandt quoted in pp. 11-12, above).

(b) Of foremost importance is the fact that Rawls's accounts of "duty" and "obligation" cannot properly be classified as definitions or explications of either ordinary or philosophical concepts in current use. Instead, they are stipulations appropriate *within* the context of his theory of justice but not applicable elsewhere. In other words, Rawls's interpretations of "obligation" and "duty" are not metaethical statements of how these terms function in ethical discourse; rather, they are themselves

assertations of normative ethics. (This point is not intended to be criticism. Rawls's normative use of these terms is quite straightforward and philosophically legitimate, given the methods and aims of his enterprise.) The normative element, in both cases, is found in the reference to the "principles of justice" and other alleged agreements issuing from the original position. For this reason, there is a fundamental distinction between Rawls's (normative) formulations of duty and obligation and my (metaethical) explications. (The normative content of Rawls's concepts can, of course, be "generalized out" by substituting, for references to "the original position" and "the principles of justice," a non-specific term such as "moral principles, whatever they might be.") It is important, therefore, that we clearly distinguish the morally neutral (metaethical) uses of these concepts from the normative uses; that is, Rawls's interpretations of "obligation" and "duty" should be employed *only* if we wish, in that context, to presuppose his principles of justice.

*General rules and specific circumstances.* Having labored to generate a list of obligations and duties, Rawls has produced a significant problem as well: how to adjudicate between conflicting duties and obligations.<sup>4</sup> In Rawls's words, the problem is "How are these duties to be balanced when they come into conflict, either with each other or with obligations, and with the good that can be achieved by supererogatory actions?" The priority rules derived from the original position will not do, since they apply to the relationships among the general principles of justice (Cf. §22). Specific practical circumstances are something else, and Rawls quite candidly admits that "there are no obvious rules for settling these questions." He continues:

We cannot say, for example, that duties are lexically prior with respect to supererogatory actions, or to obligations. Nor can we simply invoke the utilitarian principle to set things straight . . . . I do not know how this problem is to be settled, or even whether a systematic solution formulating useful and practicable rules is possible. (pp. 338-340)

And there he leaves the matter: "I shall not attempt to discuss these questions of priority in full generality" (p. 340). However, it must be said in Rawls's favor that, while he does not attempt to identify general principles for settling moral dilemmas concerning duties and obligations, he does devote considerable thought and space to two sample problems: those of conscientious objection and civil disobedience (§§55-59). I found his sensitive treatment of these issues to be quite impressive, if of little direct relevance to this dissertation.

*A duty to posterity?* I have chosen to title this dissertation "Rawls and the Duty to Posterity." But why not ". . . the *Obligation* to Posterity?" By now, the answer should be clear. Our moral dealings with posterity (a) are to indefinite persons, and (b) are non-voluntary (i.e., we will affect the future whatever we do: "we cannot escape history"). Obviously, the term "obligation," as understood by Rawls and analyzed earlier in Chapter II, is, in both these respects, inappropriately applied to posterity.

What then of "duties" as I defined the term earlier (§6). This interpretation of the term is appropriate in that the moral requirements of the present generation to posterity (a) apply by reason of this generation's opportunities and circumstances, (b) are involuntary and morally binding, and (c) are

owed to persons generally -- i.e., to those yet to be born. Furthermore, following Brandt's criteria (pp. 19-20, above), these duties are moral in that they (a) involve the *conscience*, (b) reflect upon *character*, (c) are matters of *principle*, and (d) have *priority* over "claims of manners, custom, taste," etc.

What of Rawls's interpretation of "duty?" In most of its features, his use of the term fits the issue quite well. There is, however, a fundamental difficulty. To apply "the duty to posterity" in Rawls's sense, is to presuppose that such a duty would be chosen in the original position, under conditions described in *A Theory of Justice*. Whether or not this is the case is, of course, the essential question of this dissertation.

*Rights.* Strange to say, the word "rights" is not indexed in *A Theory of Justice*, although the concept pervades the entire book, particularly in those portions dealing with Rawls's theory of the Right.<sup>5</sup> One aspect of Rawls's view concerning rights, bearing significant implications for the posterity issue (i.e., "the rights of moral personalities"), will shortly receive close attention. Otherwise, I will have little more to say concerning Rawls's treatment of rights, since we have already covered much of this ground, explicitly in Chapter IV and implicitly in the earlier parts of this section dealing with obligations and duties. First, I shall recapitulate the familiar material.

All of the obligations and duties described by Rawls and summarized earlier entail corresponding rights. In particular, the principle of fairness, which according to Rawls is presupposed in all obligations, dictates that all persons engaged in cooperative endeavors have "a right" to fair treatment. Rawls is quite explicit about this:

When a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have *a right to similar acquiescence* on the part of those who have benefitted from their submission [my italics]. (p. 112)

In addition, the three "natural duties" that we listed above can each be rephrased in terms of corresponding rights; namely, (a) the right to enjoy the advantages and protection of just institutions; (b) the right to have respect as a member of the moral community; and (c) the right to receive assistance in times of emergency. All these rights, and more, are derived from (d) the right to be treated according to the principles of justice; that is to say: (i) the principle of equal liberty, (ii) the principle of equal opportunity, and (iii) the principle of fair distribution according to the difference principle (Cf. Rawls, pp. 302-303 and §24 of this dissertation).

*Equal rights of moral personalities.* What kinds of beings, then, have the *right* to be treated according to the principles of justice? Rawls answers that all beings with "the capacity for moral personality" are so entitled. He identifies two features of the "moral personality":

First they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life); and second they are capable of having (and are assumed

to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree. (p. 505)

Rawls stipulates that both these features characterize, axiomatically, the parties in the original position. "After all, the parties are thought of as adopting these criteria to regulate their common institutions and their conduct toward one another; and the description of their nature enters into the reasoning by which these principles are selected" (p. 505). It follows, then, that:

Equal justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation. One should observe that moral personality is here defined as a potentiality that is ordinarily realized in due course. It is this potentiality which brings the claims of justice into play. (p. 505)

Rawls believes that this "capacity for moral personality" is a *sufficient* condition for the entitlement of equal justice; i.e., if a person has this capacity, then he necessarily has these rights (p. 505).<sup>6</sup> Rawls prefers, however, to "leave aside" the question of whether a capacity for moral personality is also a *necessary* condition for the right to equal justice (p. 506), thus leaving open the issue of whether "justice" applies to brain-damaged humans, animals, or natural objects (all of which lack a "moral capacity") (see also Rawls p. 512). He sets the matter aside, however, with an apparent presumption that moral capacity is, in fact, necessary for the right of equal justice. Thus, at the very beginning of his discussion of "the basis of equality" (§77), he writes: Our conduct toward animals is not regulated by these principles [of justice], or so it is generally believed" (p. 504). In any case, Rawls does not seem to feel that the issue of the *necessity* of moral personality is very important. It is the *sufficiency* that matters.

I assume that the capacity for a sense of justice is possessed by the overwhelming majority of mankind, and therefore this question does not raise a serious practical problem. That moral personality suffices to make one a subject of claims is the essential thing. We cannot go far wrong in supposing that the sufficient condition is always satisfied. Even if the capacity were necessary, it would be unwise in practice to withhold justice on this ground. The risk to institutions would be too great. (p. 506)

While Rawls may have good reasons to confine his attention to the sort of "justice" owed to beings with a moral capacity, I feel that he may be a bit hasty in his dismissal of the issue of justice to other beings and entities. The so-called "rights of nature" may have significant bearing upon the question of justice to future persons -- or so I will suggest later in this dissertation (§42).<sup>a</sup>

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<sup>a</sup>The concept of "the rights of nature" has acquired outlandish interpretations and implications in the hands of some writers unacquainted with philosophical subtleties – or so I argue in "Environmental Ethics Without Philosophy," *Human Ecology: A Gathering of Perspectives*, ed. R. Borden, Society for Human Ecology, 1986, and at more length in my unpublished "'Can the Environmentalist Escape Philosophy?'" at my website: [www.igc.org/gdfly/papers/cep.htm](http://www.igc.org/gdfly/papers/cep.htm) .

Rawls believes that rights belong, not only to beings with moral personalities but also to beings with a *capacity* for such personality, whether or not this capacity is immediately actualized. The extension of the concept is important, for it then follows that:

A being that has this capacity, whether or not it is yet developed, is to receive the full protection of the principles of justice. Since infants and children are thought to have basic rights (normally exercised on their behalf by parents and guardians), this interpretation of the requisite conditions seems necessary to match our considered judgments. (p. 509)

There are difficulties, however. In particular, this vague term "capacity" raises some familiar issues of free-will and personal responsibility. For example, can drug addicts, psychopathic criminals, or other amoral persons be said to have a "capacity" for moral behavior? If not, do they then not have a right to equal justice? (Here is the "necessary condition" question again. Cf. previous page). Suppose that such a person, like Alex in Anthony Burgess's novel, *A Clockwork Orange*, were subject to a massive program of reconditioning and, as a result, acquired a "moral personality." Could it be said that this person thus exhibited his "capacity for moral personality?" Or was this "capacity" not truly his, but rather that of the "behavioral engineers" and their various technologies and programs? What do these questions suggest concerning such a person's "right" to equal justice? I wish only to raise these questions. It is not my purpose in this chapter to engage in a lengthy analysis or criticism of Rawls's position.

One final point in Rawls's position deserves notice. He asserts that persons with the capacity for moral personality have *equal* rights to *equal* justice -- however much or little the moral "capacity" is, in fact, realized (p. 507). A minimal capacity entitles one to full and equal rights. Says Rawls:

The claims of all are to be adjudicated by the principles of justice. Equality is supported by the general facts of nature and not merely by a procedural rule without substantive force. Nor does equality presuppose an assessment of the intrinsic worth of persons, or a comparative evaluation of their conceptions of the good. Those who can give justice are owed justice. (p. 510)

Thus Rawls accepts the position of "equal moral worth" defended by Feinberg and Vlastos (and, for that matter, Thomas Jefferson), and examined earlier in this dissertation (§7, pp. 19-20, above).

Rawls's analysis of "the rights of moral persons" bears significantly upon the posterity issue. In the first place, we will notice that his account contains no time specification. *Any* persons at any time, it seems, are entitled to equally just treatment, provided they have the capacity of (a) a sense of justice, and (b) a conception of their good.<sup>7</sup> Presumably, then, future persons are entitled to such treatment. Rawls certainly believes this, and devotes a section of his book (§44) to an explicit statement of his principles of "justice between generations." Moreover, there appears to be nothing in his analysis of "the basis of equality" of justice (§77), to controvert this earlier affirmation. This question of the bearing of the "capacity of moral personality" upon the issue of duty to posterity is of some interest to us, and we will return to it later.



### 30. Posterity and the Deontological Approach

*The posterity question in the context of justice as fairness.* Of the eighty-seven sections of *A Theory of Justice*, only two (§44, "Justice Between Generations," and §45, "Time Preference") deal explicitly with the topic of the duty to posterity. However, the issue does appear briefly here and there throughout the book. In numerous other places the specific topic under consideration can readily be seen to bear implications for the question of one generation's responsibilities to its successors. In the remainder of this chapter, I will attempt to present most of these scattered points in an orderly and structured sequence.

Paradoxically, the issue of posterity can be seen to be both central and peripheral to Rawls's theory. The significance of the issue to justice as fairness is manifested by the "just savings" clause of the Difference Principle. This reflects Rawls's concern that certain motivational and informational conditions in the original position represent the "considered" moral opinion, evident in ordinary life, that future persons be fairly provided for. Even so, Rawls's explicit treatment of the posterity question is brief, and often vague and sketchy. Some difficult questions are raised therein with little if any suggestion as to how they might be answered in the context of the larger theory of justice. (As promised earlier, I will consider several of these questions in the final chapters.) And yet it is easy to sympathize with Rawls. He has assumed an enormous philosophical task, and in pursuing this task he must first define the general problem and then proceed with an articulation and defense of his general theory. As a previous chapter suggests, this is a large and comprehensive enterprise which consumes, with little wasted space, the largest part of Rawls's lengthy book. It is upon this careful, detailed and extensive theoretical, normative, and meta-ethical foundation that Rawls treats several subsidiary issues, of which one of the more prominent is the posterity question. Accordingly, there is reason to be tolerant about the brevity of Rawls's treatment of the problem.

Rawls's conception of the posterity question might be better understood if we consider the place of his explicit discussion thereof in the sequence of *A Theory of Justice*. The two relevant sections, "Justice between Generations" and "Time Preference" (§§44-45), appear halfway through the book, midway in a chapter titled "Distributive Shares" (Chapter V), which in turn is situated halfway through the second section ("Institutions") of the three main sections of the book. The location is instructive in that it indicates Rawls's inclination to interpret "justice between generations" as a matter of fair distributions, or, to use his phrase, "just savings" for future persons. Posterity, in Rawls's view, has a fair claim upon part of the "moderately scarce" resources available to a given society. Accordingly, one might even say that, according to the difference principle, the least favored living members of society are in "moral competition" for these resources with their counterparts in succeeding generations. Rawls, then, perceives the problem of "just savings" to be one of fairly balancing distributions of primary goods between the less favored members of present and future generations. It would be unfair, however, to suggest by this that Rawls is concerned solely with the "savings" of tangible resources, goods, and capital assets. On the contrary, he writes also of the duty to "save" (better, *preserve*) just institutions and such "gains in civilization" as the arts, technology, and the sciences. Rawls presents a good summary of these points:

The appropriate expectation in applying the difference principle is that of the long-term prospects of the least favored extending over future generations. Each generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation. This saving may take various forms from net investment in machinery and other means of production to investment in learning and education. (p. 285)

*A deontological approach to posterity.* Because it is a deontological theory, justice as fairness does not require that one simply measure the good that results from a policy of provision and savings for posterity. Thus, for example, neither average nor total "utility" are the criteria of the justice of such a policy. Very well, then, how are we to determine these criteria. We should, by now, be well-prepared to anticipate Rawls's answer: "The criteria for justice between generations are those that would be chosen in the original position" (p. 292). However, it is not quite all that simple, for as we shall shortly discover, Rawls has stipulated some conditions in the original position that are both highly pertinent and specific to the issue of justice between generations. These conditions, as well as the criteria of justice resulting therefrom, deserve, and will receive, careful and critical scrutiny. Suffice it to say, for the moment, that the principles of justice described earlier (§24, above), apply between generations as well as among contemporaries. Thus the "natural duty" to uphold just institutions (Cf. p. 137, above) entails that each generation is morally required to preserve and enhance the justice of these institutions, and that the course of history should aim toward a condition of ideal justice, as described by the "ideal theory" of justice as fairness. However, while each generation should do *as much* as is required for "just savings" for the future, it need not do more. Rawls's theory calls for just saving, but not for heroic sacrifices, by the predecessor generations. *Both* the saving and the receiving generations are entitled to fair treatment, even if the long-term sum of average benefit is less than the optimum possible.

The contrast with the teleological theory of utilitarianism now becomes quite clear. The utilitarian claims that, if the next few generations must suffer extreme austerity to maximize utility over the long run, then it is just that they suffer, for the greatest *good* determines the *right* (Rawls, p. 287). Justice as fairness, on the other hand, insists that justice must be secured immediately and in the short-term *while* justice (i.e., the ideal society) is being sought as a long-term goal. According to the difference principle, greater benefits for the fortunate, however great, cannot justify further burdens upon the least favored. In general, says Rawls, generations "are not subordinate to one another any more than individuals are. The life of a people is conceived as a scheme of cooperation spread out in historical time . . . . No generation has stronger claims than any other" (p. 289).

As a deontological approach to the posterity question, justice as fairness is spared some of the grave, and perhaps fatal, difficulties faced by the utilitarians, who are obliged to assess the total benefits, to all foreseeable generations, of alternative proposed policies. For instance, the utilitarians must face such troublesome issues as: (a) Can we adequately predict the future? (b) Can we anticipate the needs and tastes of future generations-i.e., the "utilities" of future persons? (c) Can we act to bring about desired results? To what degree of efficacy and probability? (d) What programs and policies will bring about the greatest benefits to future generations, at proportionately the least cost to one's

contemporaries? (e) Conversely, what will be the costs to future persons of the benefits that we now take for ourselves? Clearly, these questions raise enormous scientific and epistemological problems. Furthermore, by their very nature they cannot be directly verified by those who pose them, for the results are generally to be manifest beyond the lifetimes of the original planners and assessors.

While the questions may be of some interest to deontologists such as Rawls, they do not have the primacy of importance that they have to the utilitarians. Rawls has designed his theory so that provision need only be made for the next few generations (a feature that I will question in § 40). In addition, as we have just noted, the present generation is not required to make "unfair" sacrifice for the sake of the future; the difference principle implies a "floor" of privation below which a generation is not required to suffer for the benefit of its successors. This could considerably simplify the problem of assessing benefits. Briefly, then, the approach of justice as fairness to the posterity issue is this: given, first, an ideal conception of the just ("well ordered") community and the principles of justice that operate therein, and given an assessment of current institutions and the degree of partial compliance therein with the principles of justice, each generation is to determine a rate of savings of resources and capital, and an investment of effort, education, and technology necessary to maintain and to advance just institutions for the immediately succeeding generations without requiring extreme (unjust) sacrifices by one's contemporaries. This is, says Rawls, the policy that would be chosen in the original position by individuals ignorant of their own personal circumstances, and thus unaware of whether they would personally stand to gain or to lose by such a policy. In a passage which well summarizes these points, Rawls writes:

It is . . . characteristic of the contract doctrine to define a just state of society at which the entire course of accumulation aims. This feature derives from the fact that an ideal conception of a just basic structure is embedded in the principles chosen in the original position. In this respect, justice as fairness contrasts with utilitarian views. The just savings principle can be regarded as an understanding between generations to carry their fair share of the burden of realizing and preserving a just society. The end of the savings process is set up in advance, although only the general outlines can be discerned. Particular circumstances as they arise will in time determine the more detailed aspects. But in any event we are not bound to go on maximizing indefinitely . . . . The [just] savings principle represents an interpretation, arrived at in the original position, of the previously accepted natural duty to uphold and to further just institutions. In this case the ethical problem is that of agreeing on a path over time which treats all generations justly during the whole course of a society's history. What seems fair to persons in the original position defines justice in this instance as in others. (pp. 288-289)

### **31. Posterity and the Original Position**

"The criteria for justice between generations," says Rawls, "are those that would be chosen in the original position" (p. 292). Fortunately, since we have already reviewed Rawls's subtle and

complicated notion of the original position, we can move directly to a consideration of these features of the original position that bear directly upon the question of posterity and then to an examination of the principles and policies of justice to future generations that follow from these conditions.

In the previous chapter (p. 109) I devised a diagrammatic representation of the basic elements of Rawls's theory of justice. I would like to present it again, but this time as it applies to the question of justice between generations.

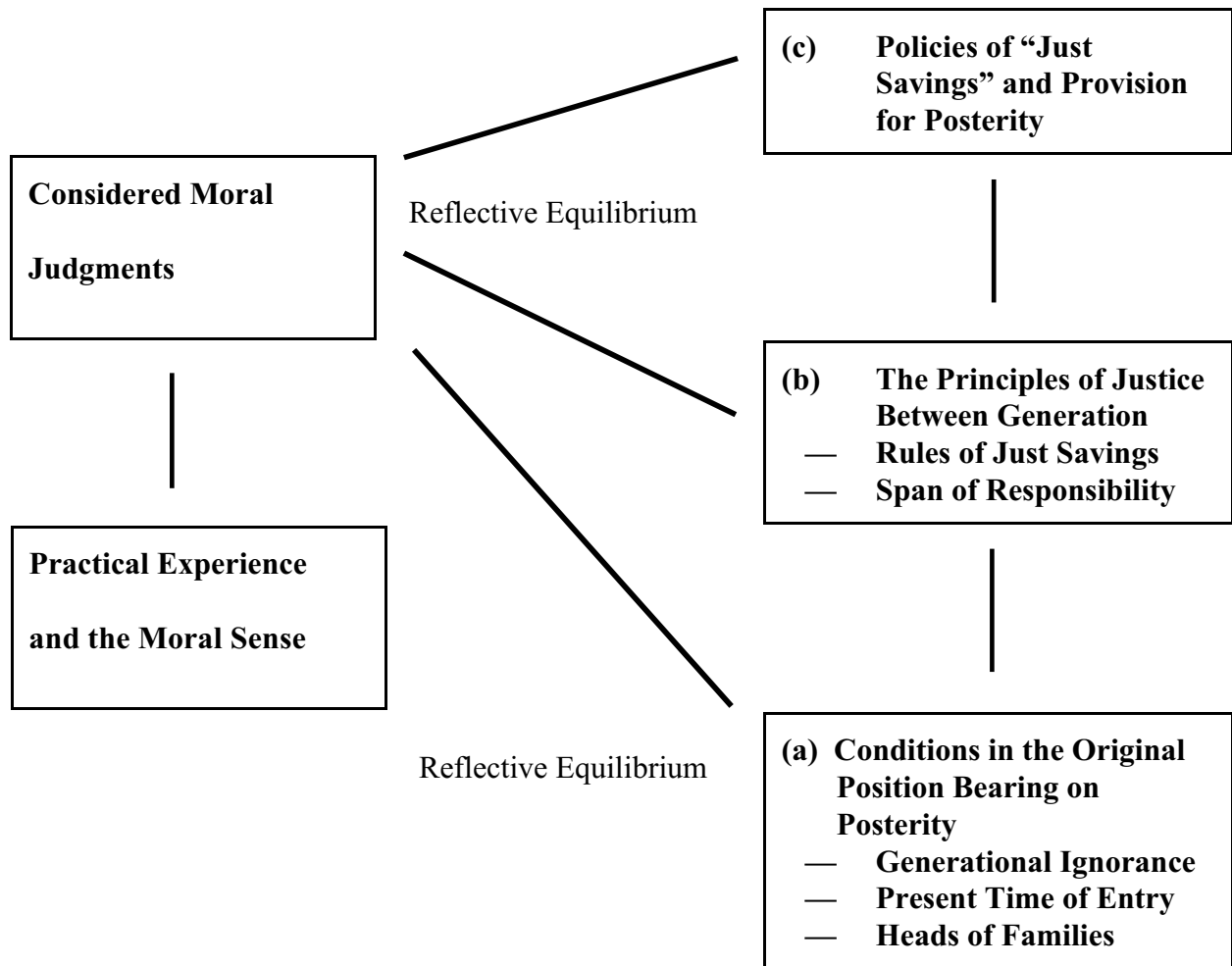


Figure 3. The Structure of "Justice as Fairness" Applied to "Justice Between Generations"

In this section, I will list some conditions in the original position which bear directly and specifically upon the question of justice between generations (item a, above). The following chapter (VI) will primarily be concerned with a critical analysis of these conditions. In the section which follows this (§32), I will present some of the rules and principles of justice toward future generations which are derived from the hypothetical deliberations in the original position (item b). Critical examinations of these rules and principles will appear both in Chapter VI and VII. Since Rawls's discussion of "justice between generations" consists largely of generalities, I have little expository material to offer concerning specific policies of "just savings" that might be entailed from the general principles derived by Rawls (item c in Figure 3, preceding).

*Generational ignorance.* The first condition bearing upon posterity follows clearly from the general conditions of the original position, described earlier (§23, above). We will recall that the parties in the original position know virtually nothing of their personal circumstances beyond the veil of ignorance. Significantly for the posterity issue, this means that they do not know "to which generation they belong or, what comes to the same thing, the stage of civilization of their society. They have no way of telling whether it is poor or relatively wealthy, largely agricultural or already industrialized, and so on" (p. 287). The result of this condition, says Rawls, is that the interests of *all* generations are equally weighed in the original position:

Since no one knows to which generation he belongs, the question is viewed from the standpoint of each and a fair accommodation is expressed by the principle adopted. All generations are virtually represented in the original position, since the same principle would always be chosen. An ideally democratic decision will result, one that is fairly adjusted to the claims of each generation and therefore satisfying the precept that what touches all concerns all. (p. 288)

It follows, then, that in the original position, the moral legislators "must choose principles the consequences of which they are prepared to live with whatever generation they turn out to belong to" (p. 137). In other words, the parties, by establishing rules for the provision of their successors are, by implication, making provision for *themselves*. This curious and significant feature, with its intimations of "the golden rule," adds considerable intuitive support and systematic reinforcement to Rawls's treatment of "justice between generations."

*The present time of entry interpretation.* One might suppose that, with no knowledge as to the generation to which he belongs, each party in the original position might, individually, belong to any generation.<sup>8</sup> Rawls, however, does not choose to allow so simple an interpretation. He prefers to stipulate that all parties belong to the same, if unknown, generation. He describes this, rather cryptically, as "the present time of entry interpretation." Thus stated, the condition seems rather clear and straightforward. However, Rawls's justifications for it are sudden, brief, obscure, and confusing. Indeed, I am in the unpleasant circumstance of having to admit that I do not clearly understand what Rawls means by the "present time of entry interpretation," much less why he feels a need to introduce it into the original position. I suggest that the fault lies more with Rawls -- on its face, a rather audacious defense of my situation. I will use two strategies to support this claim: first, I will

cite several philosophers who share my perplexity (see note 10, p. 262, below); and second, I will present, for the readers own evaluation, virtually all that Rawls has to say about the present time of entry interpretation. (This will not be difficult, since the passages in question comprise scarcely more than two paragraphs.)

To the best of my knowledge the term "present time of entry" first appears in the section dealing with "the veil of ignorance" (Rawls, §24).<sup>9</sup> In the immediate context, Rawls indicates that it is impossible, behind the veil of ignorance, for the parties to plan, bargain, or conspire for their personal advantages, "since they cannot identify themselves either by name or description." (p. 140) Rawls continues:

The one case where this conclusion fails is that of saving. Since the persons in the original position know that they are contemporaries [!] (taking the present time of entry interpretation), they can favor their generation by refusing to make any sacrifices at all for their successors; they simply acknowledge the principle that no one has a duty to save for posterity. Previous generations have saved or they have not; there is nothing the parties can now do to affect that. So in this instance the veil of ignorance fails to secure the desired result. (p. 140)

Now notice once again the clause: "Since the persons in the original position know that they are contemporaries (taking the present time of entry interpretation) . . . ." Clearly, the tone of this clause indicates an earlier use of the phrase "present time of entry," and an earlier argument to the effect that the parties know that they belong to the same generation. However, after a careful search, I am unable to locate any such passages in *A Theory of Justice*. (Rawls's generally excellent index offers no help in this case).<sup>10</sup> The remainder of the above passage indicates, I believe, the obscurity of Rawls's argument. Resuming the passage:

Therefore I resolve the question of justice between generations in a different way by altering the motivation assumption [i.e., by adding the "heads of families conditions," see below]. But with this adjustment no one is able to formulate principles especially designed to advance his own cause. Whatever his temporal position, each is forced to choose for everyone. (p. 140)

So ends Rawls's first treatment of the "present time of entry interpretation," quoted here in its entirety.

The condition reappears near the close of the crucial section on "justice between generations" (Rawls, §44). There, Rawls argues that "the difference principle does not apply to the saving problem," since "there is no way for later generations to improve the situation of the least fortunate first generation" (p. 291). He continues:

The [difference] principle is inapplicable and it would seem to imply, if anything, that there be no saving at all. Thus, the problem of saving must be treated in another fashion. If we

imagine that the original position contains representatives from all actual generations, the veil of ignorance would make it unnecessary to change the motivation assumption. But as we noted earlier (§24 [in the passage quoted above]) it is best to take the present time of entry interpretation. Those in the original position know, then, that they are contemporaries, so unless they care at least for their immediate successors, there is no reason for them to agree to undertake any saving whatever. To be sure, they do not know to which generation they belong, but this does not matter. Either earlier generations have saved or they have not; there is nothing the parties can do to affect it. It seems best to preserve the present time of entry interpretation and therefore to adjust the motivation condition. The parties are regarded as representing family lines, say, with ties of sentiment between successive generations. (pp. 291-292)

This is essentially all that Rawls has to say concerning the "present time of entry interpretation." As the passage indicates, this condition (for what it may be worth) necessitates a further modification in the original position; namely, that the parties must understand that they "represent family lines" and thus have "ties of sentiment" with their immediate successors. I will have more to say of this "heads of families condition" in a moment.

In addition to these explicit statements, there are a few brief and vague suggestions of Rawls's preference for the "present time of entry interpretation." In a very early passage, Rawls states that the principles of justice are "the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of *their association*" (p. 11, my italics). Virtually the identical remark appears again at the beginning of his third chapter (pp. 118-119). Significantly, *both* passages are found *before* Rawls set forth the details of the "original position." Even so, one *might* construe from this that the "rational persons" referred to above are members of the original position, and that the phrase "their association" suggests that the community within the original position is to continue at a specific time and place *beyond* the veil of ignorance. However, aside from the passages quoted above (pp. 140, 291-292), I am not aware of such a presumption by Rawls. Furthermore, since Rawls elsewhere states that the principles of justice are general and universal and thus binding upon all persons at all times and places (pp. 131-132), he need *not* make this assumption, for the "rules of association" would thus apply whenever and with whomever *each* of the parties in the original position may find themselves, once the veil is lifted.

What justification is there for the "present time of entry interpretation?" Why should Rawls want to introduce this awkward complication into the structure of the original position? Gregory Kavka suggests two possible advantages: (1) "It makes it easier to imagine oneself being in the original position," and (2) "it connects the choice of principles to the motivations of actual persons in the real world" (1975, p. 249). Later in his paper, Kavka argues that these "advantages" are clearly offset by the resulting arbitrariness, obscurity, complication, and "inelegance" (pp. 250-251). As I will point out in the next chapter (§§ 38-9), I must agree with this assessment.

*The heads of families condition.* As we have just noted, Rawls believes that, if the parties of the original position understand that they are members of the same, if unknown, generation ("the present time of entry interpretation"), they will conclude that a policy of "just savings" will be of no advantage to them, since they will be unable to increase their legacy from the immutable past (p. 292). Thus, if just provision is to be made for the future, a motivating condition must be added to the original position. This Rawls provides with "the heads of families condition." In his section dealing with "the circumstances of justice" (§22), Rawls first presents the condition in the following passage:

The parties are thought of as representing continuing lines of claims, as being, so to speak, deputies for a kind of everlasting moral agent or institution. They need not take into account its entire life span in perpetuity, but their good will stretches over at least two generations. Thus representatives from periods adjacent in time have overlapping interests. For example, we may think of the parties as heads of families, and therefore as having a desire to further the welfare of their nearest descendants. As representatives of families their interests are opposed as the circumstances imply. It is not necessary to think of the parties as heads of families, although I shall generally follow this interpretation. What is essential is that each person in the original position should care about the well-being of some of those in the next generation, it being presumed that their concern is for different individuals in each case. Moreover for anyone in the next generation, there is someone who cares about him in the present generation. Thus the interests of all are looked after and, given the veil of ignorance, the whole strand is tied together. (pp. 128-129)

Like the passages dealing with the "present time of entry interpretation," this paragraph appears suddenly, briefly, and with little if any support for its claims. The succeeding paragraph is concerned with a separate issue. Other features of this passage are noteworthy: (a) "The parties are thought of as representing continuing lines of claims," (By whom? Rawls? The reader? Themselves? The other parties?). (b) "We may think of the parties as heads of families," but this is apparently not necessary. (Rawls, however, seems to regard the parties as having this role). (c) Notice the tentativeness in this passage; e.g., "are thought of," "we may think," or additionally, "being, so to speak, deputies . . . ," etc. (d) The parties in the original position should "care" about *individuals* in the next generation. (e) Thus, presumably, provision for remote generations is accomplished only through a sequence of "carings" for adjacent generations. (I will have more to say about this in the next section, and in §40 of the next chapter).

Rawls claims that the heads of families condition, unlike the present time of entry interpretation, serves another purpose in his theory. He argues that the parties' concern for their immediate descendants leads these parties to accept a strong, and lexically prior, principle of liberty. Accordingly, those proposing to modify the "heads of families condition" as it affects the question of "just savings" might also consider the effect of such a modification upon the argument for the priority of liberty (Cf. §39, below).



*The principle of paternalism.* Among the necessities of human life is the circumstance that the care and welfare of some persons, such as the young, the demented, and the infirm, must at times be the responsibility of other persons. What moral principles are to guide the policies and actions of those in charge of the well-being of others? Justice as fairness offers some insightful suggestions here. First of all, and of fundamental importance, "those who care for others must choose for them in the light of what they will want whatever else they want once they reach maturity" (pp. 208-209), or recover their rational abilities; that is to say, the *primary goods* must be secured. As more is known about the individual's own tastes, preferences, and conception of the good, to the degree that these tastes, preferences, and conceptions are rational and mature, further care should be taken to act in accordance with this personal good or "rational plan of life." The final justification of a paternalistic policy is that "with the development or recovery of his rational powers the individual in question will accept our decision on his behalf and agree with us that we did the best thing for him" (p. 249).

Unquestionably, the very notion of "paternalism" carries pernicious implications of censorship, the prosecution of "crimes without victims," and other infringements upon personal liberty. Rawls is well aware of this and thus warns that paternalistic principles "must not be interpreted to license assaults on one's convictions and character by any means so long as these offer the prospect of securing consent later on" (p. 250). Accordingly, the parties in the original position will take care to fashion principles of paternalism that will "guarantee the integrity of their persons and their final ends [i.e., personal goods] whatever these are" (p. 250).

Clearly, future generations fall under the necessary conditions of paternalism, since the welfare thereof is unavoidably affected by the actions and policies of the living. How then is the principle of paternalism to apply in this case? Since the persons in the original position "are prevented from knowing any more about their descendants than they do about themselves . . . they must rely upon the theory of primary goods" (p. 209). Furthermore, they will plan for the future in a manner that minimizes risk. Rawls argues that, since men are generally motivated by "the desire to have one's decision appear responsible to one's descendants who will be affected by it," they are "more reluctant to take great risk" for their successors than for themselves. Accordingly, they will take such risks "only if there is no way to avoid these uncertainties, or when the probable gains, as estimated by objective information, are so large that it would appear to [one's descendants to have been] irresponsible to have refused the chance offered even though accepting it should actually turn out badly" (p. 169).

Given these primary goods, secured through a minimum of risk, it will be the responsibility and the privilege of future persons, once they become actual, to seek and secure their own rational plans of life.

It might be useful, in closing this section, to reiterate Rawls's essential point that the principles of "justice between generations" are principles that would be chosen in the original position. And since the parties in the original position "virtually represent" all generations, Rawls concludes that:

We can now see that persons in different generations have duties . . . to one another just as contemporaries do. The present generation cannot do as it pleases but is bound by the principles that would be chosen in the original position to define justice between persons at different moments of time. In addition, men have a natural duty to uphold and to further just institutions and for this the improvement of civilization up to a certain level is required. The derivation of these duties . . . may seem at first a somewhat farfetched application of the contract doctrine. Nevertheless these requirements would be acknowledged in the original position, and so the conception of justice as fairness covers these matters without any change in its basic idea. (p. 293)

### 32. "Just Savings"

From the general conditions of the original position (described in §23, above), and those special conditions that bear particularly upon the posterity issue (just described in the previous section), the parties will formulate and adopt the rules and principles that define "justice between generations." In this section we will examine the most significant of these rules and principles, and some of the issues that might be raised in the original position as the question of "just savings" is deliberated.

*The span of responsibility.* Rawls, we will recall, believes that "the present time of entry interpretation" might lead the parties of the original position to adopt no savings principle whatever (p. 292). To forestall such a result, he introduces the "heads of families condition" which, in turn, gives rise to "ties of sentiment between successive generations" (p. 292). Thus, as "heads of families," the parties are assumed to have "a desire to further the welfare of their nearest descendants" (p. 128). Motivated by these circumstances in the original position, the parties will devise a schedule of "just savings," based upon what is perceived to be "reasonable for members of adjacent generations to expect of one another at each level of advance" (p. 289).

A most significant feature of Rawls's scheme of "just savings" is that he proposes to define "justice between generations" on a step-by-step basis. Thus, each generation is to attempt to balance:

How much at each stage [of social and economic development] they would be willing to save for their immediate descendants against what they would feel entitled to claim of their immediate predecessors. Thus imagining themselves to be fathers, say, they are to ascertain how much they should set aside for their sons by noting what they would believe themselves entitled to claim of their fathers. When they arrive at an estimate that seems fair to both sides, with due allowance made for the improvement in their circumstances, then the fair rate (or range of rates) for that state is specified. (pp. 289-290)

(The amount of savings, it should be noted, varies with the stage of development of the generation in question.) The next step in Rawls's analysis is startling: "Once this is done for all stages, we have defined the just savings principle. When this principle is followed, adjacent generations cannot complain of one another; and in fact no generation can find fault with any other no matter how far

removed in time" (p. 290). If I read this correctly, Rawls seems to be claiming that justice *between adjacent* generations will necessarily add up to justice *among all* generations, however remote they might be. (Later, in §40, I will contend that this "chain-link theory" of duty to posterity is untenable.)

In sum: perceiving themselves as "heads of families," the parties in the original position will be motivated to stipulate principles of "just savings" to provide for the welfare of identifiable persons in the successor generation (or two) with which they have ties of affection. Just savings for these individuals will, step by step, result in "justice *among* generations" throughout the course of history.

*Just savings and the difference principle.* The difference principle, we will recall, stipulates that "social and economic inequalities are to be arranged so that they are . . . to the greatest benefit of the least advantaged, consistent with the just savings principle" (p. 302). The "just savings" clause in this principle indicates that the "least advantaged" are to be treated as members of a continuous class. Thus, while representative members of the *current* class of "least advantaged" are entitled to just compensation for inequalities (to the point that less inequality would be of less benefit to them), these compensations are "constrained" by the needs of *future* disadvantaged persons. This means, in a sense, that the least advantaged members of the current generation, and their counterparts of future generations, are in competition for "just redistributions." Thus, though the prospects of the presently disadvantaged must be justly enhanced, these compensations are to be modified by future needs. In short, "the appropriate expectation in applying the difference principle is that of the long-term prospects of the least favored extending over future generations" (p. 285). Summarizing the just savings constraint upon the difference principle, Rawls states that "it is the representative men" from the least advantaged in each generation, who by virtual adjustments are to specify the rate of accumulation" from generation to generation. He continues:

In any generation their expectations are to be maximized subject to the condition of putting aside the savings that would be acknowledged. Thus the complete statement of the difference principle includes the savings principle as a constraint. Whereas the first principle of justice and the principle of fair opportunity limit the application of the difference principle within generations, the savings principle limits the scope between them. (p. 292)

By stating that the savings principle is a "constraint" upon the difference principle, Rawls is suggesting nothing less than that an "unconstrained" difference principle would void all possibility of savings, which is to say, of historical progress (p. 291). Why is this? To illustrate this problem, consider two adjacent generations, X and Y. As we just noted, according to the difference principle, the least favored of one generation is in "moral competition" with the least favored of the other. Now a savings principle would require that the least favored of the prior generation, X, sacrifice *still more* for the sake of the least favored successor generation, Y. However, if generation Y has progressed relative to the condition of X (as a result of prior savings), the least endowed of generation X have sacrificed for the sake of the relatively better-off "least favored" of generation Y. This is a clear violation of the difference principle.

Why, then, should the parties accept a scheme that might require them to limit their expectations for the sake of their better-off successors? The answer should be clear: By opting for a savings principle, they are opting for historical progress, step-by-step, and generation-by-generation. Virtually *every generation* gains thereby. Thus, not knowing which generation they belong to, the parties will rightly conclude that a decision to "sacrifice" for the sake of their successors virtually assures that, as "successors" themselves, they will gain by the agreement. They can only "lose" by this agreement (and then not much) on the minuscule chance that they find themselves as members of a very early generation. (Rawls says "the first generation" -- a notion that I discount in §37, below).

*What is to be saved?* Rawls, with his talk of "just savings" sounds at times more like an investment banker than a moral philosopher. A closer inspection of his position shows that by "savings" he means more than setting aside goods and capital, however important these may be to future generations. "Capital," to Rawls, "is not only factories and machines, and so on, but also the knowledge and culture, as well as the techniques and skills, that make possible just institutions and the fair value of liberty" (p. 288). Accordingly, to Rawls, "just savings" entails that:

Each generation must . . . [1] preserve the gains of culture and civilization, . . . [2] maintain intact those just institutions that have been established, . . . [and 3] put aside in each period of time a suitable amount of real capital accumulation. This saving may take various forms from net investment in machinery and other means of production to investment in learning and education. (p. 285)

But does even this generously broad interpretation of "savings" adequately cover the scope of "just provision of posterity?" Is a fair "savings" of institutions, artifacts, machinery, etc., all that should be asked of a generation? Might it not also, for example, be required to take the time, trouble, and expense to examine, assess, and project the consequences of its proposed actions and policies? And if these actions and policies are seen to threaten greater harm to future persons than benefits to one's own generation, is there not entailed therein a moral duty to desist? If so, in what sense is such "moral forbearance" an instance of "just savings?"

Only in one instance, concerning "genetic endowments," does Rawls hint at the question of "just forbearances." Early in the book he writes:

In the original position . . . the parties want to insure for their descendants the best genetic endowment (assuming their own to be fixed). The pursuit of reasonable policies in this regard is something that earlier generations owe to later ones, this being a question that arises between generations. Thus over time a society is to take steps at least to preserve the general level of natural abilities and to prevent the diffusion of serious defects. (p. 108)

However, after a few additional comments, Rawls announces that he will "not pursue this thought further." Unfortunately, he is as good as his word. As I will point out in Chapter VII, I feel that this is but one of several serious omissions on Rawls's part.

*Establishing the rate of savings.* What, then, are the limits to "just savings?," At the outset of his discussion of this question, Rawls admits that it is not presently possible to arrive at a precise response. He writes: "How the burden of capital accumulation and of raising the standard of civilization and culture is to be shared between generations seems to admit of no definite answer" (p. 286). But an admission that there is no "*definite* answer" need not entail the conclusion that there is no answer whatsoever, or "that certain bounds which impose significant ethical constraints cannot be formulated" (p. 286). Very well, what then are the *imprecise* rules for establishing a fair rate of savings? Rawls argues that, in seeking this rate:

The persons in the original position are to ask themselves how much they would be willing to save at each stage of advance on the assumption that all other generations are to save at the same rates. That is, they are to consider their willingness to save at any given phase of civilization with the understanding that the rates they propose are to regulate the whole span of accumulation. In effect, then, they must choose a just savings principle that assigns an appropriate rate of accumulation to each level of advance. Presumably this rate changes depending upon the state of society. When people are poor and saving is difficult, a lower rate of saving should be required; whereas in a wealthier society greater savings may reasonably be expected since the real burden is less. Eventually once just institutions are firmly established, the net accumulation required falls to zero. At this point, a society meets its duty of justice by maintaining just institutions and preserving their material base. (p. 287)

The reader may perceive an apparent inconsistency here. In the foregoing passage, the first sentence states explicitly, and the second implicitly, that "all generations are to save at the same rates." Yet later on, Rawls states that "the rate changes depending upon the state of society." I will assume that Rawls is more careless than contradictory, and that he means that the rates are the same, if the stage of development is the same; they are otherwise variable. The sentence immediately following, (i.e., "when people are poor . . . .") not to mention several other passages, clearly supports this interpretation.

It is important to recall that, while each generation should save *as much* as is fair, it should not be called upon to save *more* than is fair. While each generation should contribute its fair share to the advancement of civilization toward the ideal, "well-ordered" condition, each generation has the right to secure and protect its own interests and to pursue its own appropriate aims. In other words, generations "are not subordinate to one another any more than individuals are. The life of a people is conceived as a scheme of cooperation spread out in historical time. It is to be governed by the same conception of justice that regulates the cooperation of contemporaries" (p. 289). It follows, then, that there is an "upper bound on how much a generation can be asked to save for the welfare of later generations . . . . Each age is to do its fair share in achieving the conditions necessary for just institutions and the fair value of liberty; but beyond this more cannot be required" (p. 298).

There is a further limit to savings. The predecessor generations are obligated to further just institutions and conditions of life for their successors. They are not, however, called upon to insure

*opulence* for future persons. "It is a mistake," says Rawls, "to believe that a just and good society must wait upon a high material standard of life." He continues:

What men want is meaningful work in free association with others, these associations regulating their relations to one another within a framework of just basic institutions. To achieve this state of things great wealth is not necessary. In fact, beyond some point it is more likely to be a positive hindrance, a meaningless distraction at best if not a temptation to indulgence and emptiness. (p. 290)

Some commentators (notably Brian Barry, 1973, pp. 119-120) detect a strain of puritanism in this passage. However, as I survey the condition of the privileged classes in this country and elsewhere, I find it difficult to disagree with Rawls.

*The first and last generations.* Suppose, then, that a progressive schedule of savings is adopted for all generations and, at least to some degree, followed. Will this be fair to all generations? Rawls perceives a difficulty here involving both extremities of the historical sequence. Put simply, the "first generation" is called upon to give without receiving, while the "last" receives without giving in return. Rawls states the problem in this manner:

Every generation, except possibly the first, gains when a reasonable rate of saving is maintained. The process of accumulation, once it is begun and carried through, is to the good of all subsequent generations. Each passes on to the next a fair equivalent in real capital as defined by a just savings principle . . . . This equivalent is in return for what is received from previous generations that enables the later ones to enjoy a better life in a more just society. Only those in the first generation do not benefit, let us say, for while they begin the whole process, they do not share in the fruits of their provision . . . . (p. 288)

In following the savings principle, each generation makes a contribution to later generations and receives from its predecessors. The first generation may benefit hardly at all, whereas the last generations, those living when no further saving is enjoined, gain the most and give the least. Now this may appear unjust. Herzen remarks that human development is a kind of chronological unfairness, since those who live later profit from the labor of their predecessors without paying the same price. (pp. 290-291)

Rawls sees a resolution to these apparent "injustices" in the fact that they are simply inevitable, beyond remedy, and thus nonmoral. It is, he says, "a natural fact that generations are spread out in time and actual exchanges between them take place only in one direction. We can do something for posterity, but it can do nothing for us. This situation is unalterable, and so the question of justice does not arise" (p. 291). However, just as contemporaneous persons will *each* benefit if *all* agree to act justly, so too may each generation (with, again, the possible exception of the first), benefit if *all* "agree" to make provision for their successors. This "agreement," of course, cannot be made in fact. It can, however, be made hypothetically. Justice as fairness, and the device of the original position, are attempts to illustrate and justify this "agreement" (p. 291).

The notion of "the last generation" seems to me to be somewhat ambiguous. Rawls appears to mean by this the generation (and its successors) which reaches a level of wealth, justice, and well-being such that no further saving is required (p. 290). (I will call this ""the utopia scenario.") However, the "last generation" might also be the final generation *to exist*, due, say, to a cosmic catastrophe or nuclear warfare (the "bang scenario"). Finally, a "last generation" might be the final generation with a remnant of civilization before its successors dissolve into perpetual savagery (the "whimper scenario"). I will later argue (§37, below) that *none* of these scenarios in any way challenges the moral validity of "the just savings principle." Furthermore, I will suggest that the "first generation problem" is no problem at all, because, quite simply, there *is* no such generation!

### 33. "Time Preference"

Does time of occurrence, by itself, constitute moral grounds for assessing the values of the actualization of a good? Rawls thinks not. "The mere difference of location in time, of something's being earlier or later, is not in itself a rational ground for having more or less regard for it" (p. 293). Following Sidgwick, Rawls argues that "in the case of an individual the avoidance of pure time preference is a feature of being rational," in that "rationality implies an impartial concern for all parts of our life" (p. 293). Unlike the utilitarian, Sidgwick, Rawls is unwilling to make a firm and simple generalization from the rule of "no time preference" for individual personal goods, to a similar rule for universal (inter-personal) goods; albeit he believes that the analogy is instructive. As a deontologist, Rawls feels that "the argument against time preference must be of another kind" (p. 294). This other argument, not surprisingly, is based upon the conceptual model of the original position. Given the condition of generational ignorance, he points out, the parties in the original position will have no cause to bestow more favors upon one generation over others. Since there is no *time preference* in the original position, there can be no *time preference* in the principles of justice derived *from* the original position. Writes Rawls:

In first principles of justice we are not allowed to treat generations differently solely on the grounds that they are earlier or later in time. The original position is so defined that it leads to the correct principle in this respect. In the case of the individual, pure time preference is irrational: it means that he is not viewing all moments as equally parts of one life. In the case of society, pure time preference is unjust: it means (in the more common instance when the future is discounted) that the living take advantage of their position in time to favor their own interests. (p. 295)

It will not do, of course, to treat the decision in the original position not to utilize time preference as *proof* of the justice of this policy, if the condition of generational ignorance is accepted without supporting argument. Very well: why, then, should the parties in the original position *not* know of the generation to which they belong? In reply, Rawls seems to raise a "burden of proof" challenge and suggests that no morally significant and relevant reason is available for including this information in the original position (see Rawls, §24, "The Veil of Ignorance"). The same argument,

of course, can be employed in support of both the individual and general rules of "no time preference."

A further argument for the discounting of pure time preference (and thus for generational ignorance in the original position) might be an appeal to ordinary "considered moral judgments," (with which, we will recall, both the conditions and conclusions of the original position should be in "reflective equilibrium"). As we examine ordinary moral debate, we will find that few advocates will blandly suggest that such-and-such a policy is morally acceptable since the admitted harm that it causes will, after all, be in the remote future and will not affect us personally. (I will readily admit and lament the fact that such premises are all-too-often *covertly* present in policy arguments). As an example, consider once more the current policy debates concerning the disposal of nuclear wastes and the use of chloro-fluorocarbons. (Cf. p. 49, above). I have heard and read many arguments by the *proponents* of nuclear power and aerosols. Among these arguments are: (a) there is no proof that these technologies will be harmful; (b) the benefits outweigh the harm; (c) science will find a solution in the future. *Never* have I heard the policies defended on the grounds that, while they will, in fact, cause grievous harm, these calamities will fall, not upon us or our children, but upon remote generations. I suggest that the lack of such arguments in public debate testifies to a widespread "considered moral judgment" *against* "pure time preference."<sup>11a</sup>

All this is an argument against pure time preference -- the position that time, *of itself*, is morally relevant. Rawls readily admits that time is generally associated with probability and change. Thus, "a present or near future advantage may be counted more heavily on account of its greater certainty or probability, and we should take into consideration how our situation and capacity for particular enjoyments will change" (pp. 293-294). Accordingly, we may properly choose early gratifications over postponements *because* the earlier rewards are more likely to be realized, or more attuned to what we believe our tastes will be at the time in question. But while the efficacy of an action and the certainty of its results may diminish with time, this is a contingent, and not a logically necessary, fact. There are conceivable, and probably actual exceptions. Indeed, I have just cited two of them. The damages caused to nuclear wastes and ozone depletion are more likely to occur in the remote than the immediate future. Furthermore, in the ozone case, even if the manufacture of all chloro-fluorocarbons were to cease immediately, the severity of the consequences of their past use will *increase* with time.

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<sup>a</sup>I can not endorse this paragraph today (2001), for I have since come to appreciate the salience of the concept of "time discounting" which is accepted axiomatically by neo-classical economists and, through them, widely accepted by policy makers. I deal with the discounting issue at some length in my "A Search for Sustainable Values" forthcoming in *The Journal of Sustainable Development*. Also at my website at, [www.igc.org/gadfly/papers/sustain.htm](http://www.igc.org/gadfly/papers/sustain.htm). The first section of that paper appears as an Addendum to Chapter VI, below.



### 34. Posterity and the "Full Theory of the Good"

In his long, detailed, and careful development of "the Full Theory of the Good," Rawls has virtually nothing to say, directly and explicitly, concerning the good of caring for posterity. Nonetheless, this final third of *A Theory of Justice* is rich in implications for the posterity question. In the following chapters I will argue that the "present time of entry" and "heads of families" conditions in the original position are untenable. However, without these conditions it would appear that posterity's interests would be ill-served in Rawls's original position. I will suggest (in §45) that, in his development of the Full Theory of the Good, Rawls describes elements of moral psychology and human nature which, if assessed in the original position and even added to the index of primary goods, would provide cogent support for principles of "justice between generations."

I note with particular interest and appreciation Rawls's explication of "the Aristotelian principle" (Rawls, §65), "the morality of principles" (§72), and "the moral sentiments" (§73). In these sections, and in numerous other parts of his analysis of the Good, Rawls indicates how *self-respect* (a primary good!) is integrally connected with what I call *self-transcendence*, an involvement of the person with projects, institutions, and ideals beyond the scope of his own knowledge, power, and *lifetime*. The realization and experience of self-transcendence is, I suggest, an aspect of the primary good of self-respect that the parties in the original position would strive to secure in their lives beyond the veil of ignorance. Furthermore, it is a good that might serve to instill a sense of duty extending from one's own time to the remote future. (The concept of *self-transcendence* will assume considerable importance in the final chapter of this dissertation.)

But isn't a theory of duty to posterity based on the *good* for the individual inherently limited and self-serving? Doesn't such an approach eventually reduce the "duty to posterity" to "incentives," or "motives," or "benefits" (to the agent) of such a duty, rather than the *justice* of the duty? Isn't this exactly what Rawls's deontological approach is seeking to avoid?

Not necessarily. Recall that the parties in the original position are *not* benevolently motivated, but rather are themselves self-serving and "mutually disinterested." Recall too that Rawls holds a "thin theory of the good" to be a necessary ingredient of the original position. I will argue that my suggested revisions and elaborations of the "motivational assumptions" of the original position will be more universal, and somewhat less arbitrary, than those suggested by Rawls. If my suggestions are valid, then, within the theoretical structure of justice as fairness, the personal "good" of caring for posterity can be shown to be supportive of justice between generations. In fact, in the concluding chapter of this dissertation, I will suggest that Rawls has, in *A Theory of Justice*, the resources for a far stronger case in defense of a duty to posterity than he has, in fact, explicitly presented in the book.

Interestingly, the final words in Rawls's long and impressive book speak of justice between generations, and of its place in the context of the breadth and impartiality that he has attempted in *justice as fairness*. This is an eloquent passage, which will serve well to close our two-chapter account of Rawls's theory of justice.

Without conflating all persons into one but recognizing them as distinct and separate, [justice as fairness] enables us to be impartial, even between persons who are not contemporaries but who belong to many generations. Thus to see our place in society from the perspective of this position is to see it *sub specie aeternitatis*: it is to regard the human situation not only from all social but also from all temporal points of view. The perspective of eternity is not a perspective from a certain place beyond the world, nor the point of view of a transcendent being; rather it is a certain form of thought and feeling that rational persons can adopt within the world. And having done so, they can, whatever their generation, bring together into one scheme all individual perspectives and arrive together at regulative principles that can be affirmed by everyone as he lives by them, each from his own standpoint. Purity of heart, if one could attain it, would be to see clearly and to act with grace and self-command from this point of view. (p. 587)

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## NOTES

1. The material of the next section in the dissertation (§29: "Rawls on Obligations, Duties and Rights") deals largely with §§18-19, and §§51-52 of *A Theory of Justice*. The next section of the dissertation (§30) is transitional. The following two sections (§§31-32) are primarily, though not entirely, concerned with Rawls's crucial and all-too-brief section on "Justice between Generations" (Rawls, §44). The remainder of this chapter touches upon ideas contained in §45 of Rawls's book ("Time preference"), and some general positions developed in the final third of the book.
2. H. L. A. Hart's paper, "Are There Any Natural Rights," contains a virtual paraphrase of Rawls's "principle of fairness" (Hart, 1955, p. 185).
3. Says Rawls: "This feature in particular suggests the propriety of the adjective "natural" (p. 115). Perhaps the close association of the "natural duties" with the agreements in the original position have also prompted Rawls to employ the adjective.
4. In treating this problem, Rawls distinguishes between "duties other things equal" and "duties all things considered." (The distinction holds for obligations as well) (pp. 340-341). These concepts are parallel to the "*prima facie* right" and the "over all right" which we consider earlier in §7.
5. *The Right*, and *Rights* are, of course, distinct moral concepts. The former refers to deontological values, and the latter refers to *claims* against persons, groups, or institutions.
6. For this reason, Rawls chooses to identify "the rights of moral personalities" as natural rights. The claims to such rights:

"Depend solely on certain natural attributes the presence of which can be ascertained by natural reason pursuing common sense methods of inquiry. The existence of these attributes and the claims based upon them is established independently from social conventions and legal norms. The propriety of the term 'natural' is that it suggests the contrast between the rights identified by the theory of justice and the rights defined by law and custom. But more than this, the concept of natural rights includes the idea that these rights are assigned in the first instance to persons, and that they are given a special weight. Claims easily overridden for other values are not natural rights . . . . Justice as fairness has the characteristic marks of a natural rights theory" (Rawls, pp. 505-506n. See also §7, above).
7. Of course, it is quite conceivable that future generations could evolve *away* from such capacities, in which case our duties to such persons (?) might become somewhat problematical. Martin P. Golding states, quite bluntly, that we should have no

obligations toward a future "Programmed Man, fabricated to order, with his finger on the Delgado button that stimulates the pleasure centers of the brain" (1972, p. 99).

8. But in what sense can the parties be said to be "separate" since they are aware of no distinguishing personal characteristics? I have raised this question earlier (p. 100, above), and will return to it again (in §38).
9. This finding follows two careful and complete sequential readings, and several subsequent partial re-readings, of *A Theory of Justice*, during which time I was particularly attentive to, and noted, all passages bearing even remotely upon the posterity question.
10. I can report that my frustration is shared by R. M. Hare. After noting the appearance of the phrase "present time of entry" (in the first passage quoted above -- Rawls, p. 140), Hare remarks that this is "an opaque phrase that I have found nowhere explained." (Hare, July 1973, p. 243). Alas, I must agree with Hare. For still more statements of exasperation with Rawls's treatment of the "present time of entry condition," see Barry (1973, p. 131n), and Kavka (1972, p. 252, n. 20).
11. While Rawls does not explicitly employ this argument in §45 of *A Theory of Justice* ("Time Preference"), I believe that he would find it acceptable.