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The Proper Metric of Justice in Justice as Fairness

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THE PROPER METRIC OF JUSTICE IN JUSTICE AS FAIRNESS

by

CHARLES BENJAMIN CARMICHAEL

Under the Direction of Christie Hartley and Andrew Jason Cohen

ABSTRACT

I explore the problem of using primary goods as the index for determining the least-advantaged members in a society in Rawls's theory of justice. I look at the problems presented to Rawls by Amartya Sen and his capabilities approach. I discuss the solutions to Sen's problems given by Norman Daniels, who argues that primary goods are able to take capabilities into account. Finally, I supplement Daniels, arguing that the parameters Rawls uses to define his theory limit Sen's objection and that primary goods are the appropriate metric of justice in Rawls's theory.

INDEX WORDS: John Rawls, Metric of justice, Amartya Sen, Norman Daniels, Justice as fairness, Theory of justice, Disabled, Capabilities

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CHARLES BENJAMIN CARMICHAEL

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1 INTRODUCTION

There is much debate in political philosophy about the proper metric of justice - that is, how we should measure how well individuals are doing for purposes of justice. John Rawls famously adopts primary goods as the proper metric of justice in his theory of justice, but this choice for the metric has not been without criticism. Primary goods are the general things needed by persons in order to fully develop as human beings and live a complete life.¹ Rawls uses primary goods to determine who are the least-advantaged members of a society. Philosopher Amartya Sen argues that Rawls's choice to use primary goods leaves the actual well being of some citizens, in particular the disabled, unaccounted for.

Arguments against primary goods have asserted that primary goods are not representative of the capabilities an individual may have, but rather are the means to opportunities. Serving as means, primary goods are mostly resources. Primary goods are the means to capabilities, freedoms, and achievements. Capabilities are representative of what an individual is able to achieve. Sen states that a, "capability is... a set of vectors of functionings, reflecting the person's freedom to lead one type of life or another."² For example, a capability would be an individual's ability to walk, or see clearly, or to play basketball or paint well. Freedoms are what a person can do, or what she is able to achieve with her capabilities. Achieved functionings are the ends that an individual has actually achieved. Achieved functionings are things such as fulfilling one's career goals, becoming an artist, or writing a play.³

Amartya Sen has argued that Rawls's choice to use primary goods as the metric of justice does not go far enough in focusing on the opportunities that are available to individuals. Sen

¹ John Rawls, *Justice As Fairness: A Restatement*, ed. Erin Kelly (Cambridge, Massachusetts: Harvard University Press, 2001), 57-58.

² Amartya Sen, *Inequality Reexamined* (Cambridge, Massachusetts: Harvard University Press, 1992) 40.

³ *Ibid*, 40.

thinks that primary goods are not a good indicator of how individuals are doing. Two individuals may have the same resources and have very different capabilities. In particular, Sen cites the disabled as being unaccounted for by Rawls's theory. Sen believes that capabilities are able to represent the plight of the disabled because their welfare is restricted, not by any goods, but by what they are able to do. Accordingly, Sen believes that capabilities should be used as the metric of justice.

In this paper, I defend Rawls's choice of primary goods as the proper metric of justice. To begin, I will briefly discuss some of the main components of Rawls's view, and I will explain Rawls's choice of primary goods as the metric of justice. Next, I will note Sen's objections to using primary goods as the proper metric of justice. Further, I will consider Norman Daniels's defense of Rawls's choice to use primary goods as the metric of justice. Daniels argues that Rawls is able to extend the space of primary goods to include many of the capabilities that Sen believes are missing from Rawls's approach. In particular, Daniels focuses on including the health status of an individual as part of the equality of opportunity. By including health status, primary goods are able to extend their reach into the space that Sen's capabilities occupy. In addition to reinforcing Daniels's argument, I will argue that primary goods are the proper metric of justice because the parties in the original position must have basic capabilities in order to be fully cooperating members of a society. Further, I will argue that Sen undermines the role of primary goods by focusing on income and wealth. Daniels's work will be expanded in order to give a fuller response to Sen. I will also show that the primary goods wealth and income, can be used to measure a person's capabilities and accurately represent a citizen's well-being.

2 RAWLS'S THEORY AND THE METRIC OF JUSTICE

In *Political Liberalism*, John Rawls states the fundamental question of political justice as follows: “What is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next?”⁴ Rawls makes clear that he thinks justice concerns fair cooperation. In this section, I will focus on the point of justice and its relation to Rawls’s conception of society. I will also discuss Rawls’s conception of citizens, because of its importance to the discussion of the metric of justice.

To theorize about principles of justice for a constitutional democracy, Rawls specifies three main features of a political conception of justice. First, Rawls says that the subject of justice is the “basic structure” of society. Rawls defines the basic structure as the “main political and social institutions and the way they hang together as one system of cooperation.”⁵ Rawls states that, “The political constitution with an independent judiciary, the legally recognized forms of property, and the structure of the economy..., as well as the family in some basic form, all belong to the basic structure.”⁶ Further, it should be noted that Rawls takes the basic structure of a just society to be a modern constitutional democracy.⁷

The second feature of a political conception of justice is that it should be a freestanding view. A political conception of justice applies to the basic structure. A political conception of justice is not a comprehensive doctrine and, accordingly, does not take other facets of society as its subject. A comprehensive doctrine is an individual’s conception of how to live. An

⁴ John Rawls, *Political Liberalism* (New York: Colombia University Press, 1993) 3.

⁵ Rawls, *Justice as Fairness*, 8.

⁶ *Ibid*, 10.

⁷ Rawls, *Political Liberalism*, 11.

individual's beliefs, values, and personal and familial conduct, among other things are all part of her comprehensive doctrine. A political conception of justice may be supported by comprehensive doctrines, but it is independent of any comprehensive doctrine.⁸ This independence from any comprehensive doctrine is what makes a political conception "freestanding."

The third feature of a political conception of justice is that it can be expressed in terms of public reasons - reasons that are agreeable to all in the public political culture and not expressed in terms of any individual's comprehensive doctrines or personal beliefs. This third feature relates to the second feature; the content of a political conception is not based on any particular comprehensive doctrine. Values based on comprehensive doctrines may enter the public political culture, but must be offered along with public reasons.⁹

The purpose of justice is closely related to Rawls's political conception of society. Rawls understands society as a "fair system of cooperation over time, from one generation to the next."¹⁰ This is a basic definition of society, which leaves the concept of social cooperation in need of further explanation. Rawls identifies three main characteristics of his idea of social cooperation. First, cooperation is not merely supported by laws, but also by publicly accepted conventions and procedures. Cooperation is publicly accepted as regulating conduct. Second, cooperation only involves terms of public reason. These fair terms include the notion of reciprocity, which I will return to shortly. Third, cooperation requires each participant to be aware of her end goals. These end goals are what each participant is trying to achieve by the advantage of participating in society.¹¹

⁸ Ibid, 12-13.

⁹ Ibid, 13-16.

¹⁰ Ibid, 14.

¹¹ Ibid, 16.

3 RAWLS'S CONCEPTION OF PERSONHOOD

As noted above, Rawls's idea of personhood and citizenship is in need of further exposition. Understanding Rawls's conception of citizenship will shed light on the fundamental problem of justice and the use of primary goods in his theory. Rawls emphasizes that his notion of personhood is a political conception of personhood, and that a person is someone "who can be a citizen." A citizen is a "normal and fully cooperating member of society over a complete life."¹² Several questions arise because of this definition: What is a normal member of society? What is a fully cooperating member of society? What is meant by a complete life?

The first two questions have similar answers. Because Rawls's conception of personhood is conceived with his notion of society in mind, a person is normal when she is fully able to participate in the society that Rawls describes. Rawls, for the sake of simplifying his theory, assumes that persons are normal when they are able to be fully cooperating members of society. Fully cooperating members of society have "physical needs and psychological capacities within some normal range."¹³ If a person does not have the physical ability or mental capacity to participate in society, as a system of cooperation, then she is not normal. Similarly, a person is not fully cooperating if she does not accept the fair terms of cooperation. Specifically, if persons do not accept reciprocity as the motivation for political society, then they are not fully cooperating citizens.

¹² Ibid, 18.

¹³ Ibid, 272, note 10.

The last question, concerning a complete life, is also answered by returning to Rawls's notion of society. Society, as stated earlier, is considered to be closed and perpetuating from generation to generation. Thus, a citizen is considered to be a part of society for her entire life.¹⁴

Citizens are also considered to be free and equal. Citizens are free because they are reasonable and possess two moral powers, a capacity for a sense of justice and a capacity for a conception of the good. Citizens use their reasonableness and the two moral powers to achieve freedom by publicly recognizing the principles of justice and acting from them¹⁵ Rawls states that "having these two powers to the requisite minimum degree" makes citizens equal. Citizens possess these two moral powers and so are able to participate in society as a fair system of cooperation. Without these moral powers, citizens would not be able to publicly endorse the fair terms of cooperation.¹⁶

Citizens have more than a capacity for a conception of the good; they have a "determinate" conception of the good. A citizen's determinate conception of the good may be altered and change over time, but, at any given moment, it expresses what that citizen is personally striving to achieve. A determinate conception of the good may include a person's commitments to other persons, religious or philosophical views, and other things she values in her life.¹⁷

4 RAWLS'S TWO PRINCIPLES OF JUSTICE

Rawls provides two principles of justice that he believes would be accepted by citizens in the original position. The original position is a point of view that allows persons to come to fair

¹⁴ Ibid, 18.

¹⁵ Ibid, 77-78.

¹⁶ Ibid, 19.

¹⁷ Ibid, 19.

agreement about the terms of society. All persons are represented by parties in the original position. These parties come to an agreement on the constraints of what is reasonable. The parties are able to come to a fair agreement because, “in the original position, the parties are not allowed to know the social positions or the particular comprehensive doctrines of the persons they represent. The parties also do not know persons’ race and ethnic group, sex, or various native endowments such as strength and intelligence, all within the normal range.”¹⁸ This lack of knowledge is because the parties are said to sit behind a veil of ignorance.¹⁹

Rawls’s two principles are as follows:

1. “Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;”²⁰
2. “Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).”²¹

These two principles are adopted by the parties in the original position behind the veil of ignorance. The two principles of justice apply to the two roles of the basic structure. “In one role the basic structure specifies and secures citizens’ equal basic liberties and establishes a just constitutional regime. In the other role it provides the background institutions of social and economic justice in the form most appropriate to citizens seen as free and equal.”²²

The first principle guarantees each citizen basic liberties. Rawls has compiled the basic liberties into a list: “freedom of thought and liberty of conscience; political liberties and freedom

¹⁸ Rawls, *Justice As Fairness*, 15.

¹⁹ Rawls, *Political Liberalism*, 25.

²⁰ Rawls, *Justice As Fairness* 42.

²¹ *Ibid*, 42-43.

²² *Ibid*, 48.

of association, as well as the rights and liberties specified by the liberty and integrity of the person; and finally, the rights and liberties covered by the rule of law.”²³ These liberties provide the ground of equality amongst citizens in society. Rawls’s first principle of justice must be satisfied before attempts are made to satisfy the second principle of justice.

The second principle has two parts: fair equality of opportunity and the difference principle. Fair equality of opportunity provides each citizen with a fair chance of holding any public offices or social positions (of course, there are inequalities affiliated with each of these). Once this first part of the second principle is satisfied, then the difference principle can be addressed.

The difference principle serves as the basis for reciprocity, by providing an appropriate benchmark for comparison so that all members of society receive benefit because of their participation as fully cooperating members of society.²⁴ The difference principle brings about reciprocity by requiring that inequalities benefit the least-advantaged.

Rawls’s theory, unlike other social contract theories, does not rely on the idea of mutual advantage as the motivation for society, but reciprocity. Rawls describes reciprocity as being “between the idea of impartiality...and the idea of mutual advantage.”²⁵ Reciprocity does not necessarily create an advantage for all members of society. Reciprocity means that all citizens should benefit from their cooperation and participation as members within society. For Rawls, this means that citizens that participate in social cooperation and conduct themselves according to the rules of social cooperation, should benefit from their participation. Rawls more specifically defines reciprocity stating, “in justice as fairness, reciprocity is a relation between citizens expressed by principles of justice that regulate a social world in which everyone benefits

²³ Ibid, 44.

²⁴ Rawls, *Political Liberalism*, 16-17.

²⁵ Ibid, 16.

judged with respect to an appropriate benchmark.”²⁶ Rawls believes that the idea of reciprocity is an important aspect of the idea of equality, and that the two principles of justice, primarily the difference principle, bring about reciprocity.²⁷

The difference principle takes the distribution of natural endowments to be a common asset so that all cooperating members of society share the benefits of this distribution. Without the difference principle, Rawls states “the structure of social worlds and the general facts of nature would be to this extent hostile to the very idea of democratic equality.”²⁸ Important to note is that no particular natural asset is taken to be a common asset, but the distribution of natural assets is taken to be a common asset by the difference principle. Rawls finds that no person is morally deserving of her natural endowments because desert takes an intention of the will and no person has intentions before she has natural endowments – natural endowments are a matter of luck. Rawls states, “that moral desert always involves some conscientious effort of will or something intentionally or willingly done...”²⁹ Accordingly, Rawls believes that the parties in the original position, behind the veil of ignorance, would choose the difference principle.³⁰

Without knowing the outcome of the distribution of natural endowments, but knowing that this distribution will give some persons benefits while others will be hindered, Rawls claims the parties in the original position would agree to the difference principle to secure the benefit of the least advantaged. The parties in the original position, shrouded by the veil of ignorance,

²⁶ Ibid, 17.

²⁷ Ibid, 16-17.

²⁸ Rawls, *Justice As Fairness*, 76.

²⁹ Ibid, 74, note 42.

³⁰ Ibid, 74-76.

rationally choose the difference principle because it regulates the social and economic inequalities that parties will encounter once the veil is lifted.³¹

By taking the distribution of natural endowments as a common asset, the difference principle allows for the least advantaged to share in the advantage of those with better natural endowments. Rawls states, “the better endowed are encouraged to acquire still further benefits... on condition that they train their native endowments and use them in ways that contribute to the good of the less endowed.”³² The idea that persons who are not morally deserving of their greater advantage should only be allowed that advantage, when allowing these inequalities is to the greatest benefit to the least advantaged, is the difference principle. In this light the difference principle facilitates the idea of reciprocity. Reciprocity, as expressed by the difference principle, therefore treats persons as equals in society by taking the distribution of natural endowments as a common asset.³³

The difference principle specifies that inequalities are to be to the greatest benefit of the least advantaged, but who are the least advantaged? Rawls uses primary goods as the metric of justice to determine the least advantaged. Primary goods are things required by persons to fully participate in society. Rawls specifies that the list of primary goods that he generates comes from a political conception of the person and not from any particular comprehensive doctrines. All persons, regardless of their personal beliefs and desires, require primary goods. Primary goods are meant to provide a means for all citizens to pursue objective interests. Rawls identifies five kinds of primary goods:

1. “The basic rights and liberties: freedom of thought and liberty of conscience, and the rest.”

³¹ Ibid, 74-77.

³² Ibid, 76.

³³ Ibid, 74-77.

2. “Freedom of movement and free choice of occupation against a background of diverse opportunities, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them.”
3. “Powers and prerogatives of offices and positions of authority and responsibility.”
4. “Income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be.”
5. “The social bases of self-respect, understood as those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.”³⁴

Primary goods serve as a political conception of the needs of citizens. Without primary goods, citizens would not be provided with the assurance that they would have the means to fulfill their comprehensive doctrines. Rawls chooses primary goods as the metric of justice because they serve as a practical means of indexing the needs of citizens. Primary goods take into account interpersonal variations between citizens because they allow each citizen to pursue her own conception of the good. Variations in citizens’ capabilities are addressed by the stipulation that citizens all have capabilities within the normal range. Citizens’ achieved ends and well-being are not represented by primary goods, or chosen as an alternative metric of justice because Rawls does not want to define any parts of an individual’s comprehensive doctrine.

5 SEN’S OBJECTIONS TO RAWLS

I have laid out the grounds of Rawls’s theory and will now turn to the question of whether primary goods are the correct metric of justice. Sen’s discussion focuses primarily on the rights of the disabled in Rawls’s theory and the role these rights play in determining the

³⁴ Rawls, *Justice As Fairness*, 58-59.

metric of justice. To begin, I will return to Rawls's fundamental question of justice and the importance it plays in Rawls's notion of citizenship. Rawls's fundamental question of justice presupposes his understanding of citizens. The notion of citizenship is simplified in order to most easily answer this question. Rawls states that the disabled are to be addressed in an extension of justice and not as the primary subject of this question. Those with temporary disabilities and permanent disabilities, along with future generations, international justice, and animal and nature rights, are considered by Rawls to be problems for the extension of justice, whereas the fundamental question of justice concerns normal fully cooperating citizens over a complete life. Further, Rawls believes that justice as fairness may not be able to answer these questions.³⁵

Essentially, Rawls leaves the problems presented to his theory by the disabled to be dealt with at a later stage because he wants to simplify his theory and isolate the fundamental question of justice. The question of what is owed to the disabled is to be addressed as a question of the extension of and not as the primary subject of justice. Rawls believes the needs of the disabled will be addressed by the legislature of a society. By removing the disabled from the original position, focus can be on determining the best way for normal citizens to live in society and the two principles of justice can be developed without having to deal with the problems of extended justice.

6 CAPABILITIES

The objections that Sen raises about the use of primary goods as the metric of justice are rooted in the difference principle. Primary goods are supposed to be used to assess which citizens are the least-advantaged members of society. However, Sen believes that primary goods

³⁵ Ibid, 20-22.

are an inefficient and inaccurate method of determining the least-advantaged in society. Sen holds that capabilities provide a more accurate method of gauging the least-advantaged because of human diversity. Humanity is quite diverse, and this means that people will have different freedoms because they have different capabilities, even if they have the same primary goods. For example, given an equal division of primary goods, a highly intelligent person will have very different freedoms available to her than a mentally disabled person.³⁶ Sen also states that “a person may have more income and more nutritional intake, 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 simply because of pregnancy.”³⁷ Such human diversity greatly affects an individual’s ability to convert resources into ends.

When attempting to determine what part of the population is the least-advantaged, Sen holds that capabilities must be used as the metric of justice. Capabilities, used as the metric of justice, allow for an individual’s range of freedoms to be accurately assessed. Capabilities take into consideration other features of an individual that primary goods overlook. These “entrenched” features include a person’s age, race, gender, location, and other inherited endowments.³⁸

Sen’s primary objection to Rawls’s choice to use primary goods as the metric of justice is that they fail to directly acknowledge a person’s actual freedoms, but instead focus on the means to those freedoms. Sen believes this failure is caused by the focus on income and wealth as the base of equality when using primary goods as the metric of justice. By focusing on income and wealth, primary goods ignore the great range of human diversity and the effects this diversity has on an individual’s freedoms. Sen states, “for example, equal incomes can still leave much

³⁶ Sen, 8.

³⁷ Ibid, 81-82.

³⁸ Ibid, 8-9.

inequality in our ability to do what we would value doing. A disabled person cannot function in the way an able-bodied person can, even if both have exactly the same income.”³⁹

Sen provides two other reasons that he thinks primary goods are problematic for determining the least-advantaged members of society; first, “the existence of other important means;” and second, “interpersonal variations in the relation between the means and our various ends.”⁴⁰ As stated above, Sen cites many entrenched personal characteristics that should be considered when assessing an individual’s means to freedoms. These characteristics are a significant part of how an individual is able to turn the means to freedom into actual freedoms. Further, the ability to convert primary goods into freedoms may be hindered or improved by social relations and physical characteristics.⁴¹

Sen credits Rawls with moving away from achievements and toward freedom by using primary goods as the metric of justice. However, Sen still believes that primary goods remain in the wrong space to properly serve as the metric of justice. Having a certain level of primary goods is not a good indicator of the freedoms an individual is actually able to enjoy given human diversity. Only by making capabilities the focus of the metric of justice, will the least-advantaged members of society be properly identified. Sen emphasizes that if Rawls truly wants to value the freedoms that a person has and to provide citizens with equal opportunities, “then we have to look at the *choices* that the person does in fact have, and we must not assume that the same results would be obtained by looking at the *resources* that he or she commands.”⁴²

Sen provides a detailed analysis of why primary goods are not the best choice for the metric of justice. He proposes that a theory of justice can be analyzed based on two features:

³⁹ Ibid, 20.

⁴⁰ Ibid, 29.

⁴¹ Ibid, 33.

⁴² Ibid, 38.

first, “the selection of *relevant personal features*”; and second, “the choice of *combining characteristics*.”⁴³ The relevant personal features are all the information that influences how a theory of justice measures a person’s welfare. The combining characteristics are the methods chosen for a theory of justice that totals the relevant personal features. For Rawls’s theory, the relevant personal features include primary goods and the combining characteristic is the difference principle. These two features provide the idea of what Rawls’s theory demands in terms of equality. Having isolated these two features as comprising the basis of equality in Rawls’s theory, Sen has pinpointed that Rawls’s theory of justice is concerned with maximizing the position of the least-advantaged members of society in terms of their liberties and primary goods. Understanding the demands of equality in Rawls’s theory allows for Sen to focus on precisely which variables are most important in assessing the position of the least-advantaged.⁴⁴

Rawls’s conception of justice has two features that Sen believes are important to note: first, the subject of Rawls’s theory is political; second, a Rawlsian conception of justice is founded on a principle of toleration that recognizes no one comprehensive doctrine as right. As political, Rawls’s theory focuses on the basic structure of society. Sen points out that freedom, liberties, and equality of opportunity form the basis of equality for all citizens in Rawls’s theory. Rawls’s theory demands these things for citizens of a just society. However, Sen believes that by focusing on the means to freedom instead of freedoms, that primary goods allow for inequalities to occur amongst citizens.⁴⁵ Sen states, “the central question... is whether such inequalities of freedom are compatible with fulfilling the underlying idea of the political conception of justice.”⁴⁶

⁴³ Ibid, 73.

⁴⁴ Ibid, 73-75.

⁴⁵ Ibid, 72-81.

⁴⁶ Ibid, 81.

At this point, Sen has identified the problem with using primary goods as the metric of justice; primary goods serve as a means to freedoms, but are still not representative of freedoms, and because of this, Rawls's theory may fail to fulfill the demands of justice that it imposes. Sen believes an alternate theory that uses capabilities as the metric of justice is needed.⁴⁷

Having posed this rigorous challenge, the next step in Sen's project is to distinguish capabilities from primary goods. Sen states, "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 by the freedoms they actually enjoy to choose the lives that they have reason to value."⁴⁸ Capabilities cannot be represented by primary goods according to Sen. Primary goods represent the means to achieved functionings, whereas capabilities represent the freedom to achieve functionings. Capabilities are what an individual is able to do in order to achieve her goals in life. Capabilities range from being able to read and write, to properly digest food, or to walk normally. Sen notes, however, that like primary goods, capabilities allow individuals to choose different ends to achieve. Unlike primary goods, capabilities represent what individuals are actually able to achieve.⁴⁹

7 RAWLS'S RESPONSE TO SEN

In response to Sen's objection, Rawls looks to the first principle of justice.⁵⁰ The first principle of justice includes a guarantee of the fair value of equal political liberties for all citizens. Rawls states, "This guarantee means that the worth of the political liberties to all citizens, whatever their economic or social position, must be sufficiently equal in the sense that

⁴⁷ Ibid, 79-81.

⁴⁸ Ibid, 81.

⁴⁹ Ibid, 80-82.

⁵⁰ Rawls, *Justice as Fairness*, 148-149.

all have a fair opportunity to hold public office and to affect the outcome of elections, and the like.”⁵¹ However, Rawls is not concerned with the disabled in the original position and holding public office and affecting elections is not an issue for many disabled persons. This guarantee is developed by the parties in the original position as a part of the first principle. The fair value of political liberties is an essential part of the two principles of justice according to Rawls. Without this guarantee, citizens will not have a fair opportunity to run for political office, among other liberties, and therefore, the parties in the original position will not have met the requirements of justice as fairness.⁵²

Rawls also addresses Sen’s objection that primary goods exist in the wrong space to evaluate interpersonal variations and, accordingly, are not an accurate means of determining the least- advantaged members of society. Sen believes primary goods do not take into consideration the relation between a person and goods.

In response Rawls states, “ the index of [primary] goods is drawn up by asking what things, given the basic capabilities included in the (normative) conception of citizens as free and equal, are required by citizens to maintain their status as free and equal and to be normal, fully cooperating members of society.”⁵³ Rawls holds that capabilities are taken into account because citizens are normal and fully cooperating members of society. Citizens are thought to possess basic capabilities by the parties in the original position, and because of this are considered free and equal citizens that cooperate within society.

Rawls also responds that Sen assumes one comprehensive doctrine for all citizens by choosing capabilities as the metric of justice. Rawls believes that to choose which capabilities are important for an individual to have is to choose what ends that individual ultimately desires.

⁵¹ Ibid, 149.

⁵² Ibid, 148-150

⁵³ Ibid, 169-170.

The capabilities approach, therefore, would not allow for each individual to have her own comprehensive doctrine. Rawls believes that to preserve a plurality of reasonable comprehensive doctrines, primary goods must be used. Primary goods provide an individual with the means to pursue whatever her comprehensive doctrine is. Capabilities, on the other hand, represent the actual things or ends an individual enjoys. Thus, choosing any set of capabilities all members of society should enjoy assumes a common comprehensive doctrine throughout society.⁵⁴

8 SEN'S COUNTERARGUMENT

Sen identifies two main problems with Rawls's response. First, Rawls's response assumes that capabilities must exist within the space of one comprehensive doctrine. Sen asserts that this is not true. Sen states, "Capability reflects a person's freedom to choose between alternative lives and its valuation need not presuppose unanimity regarding some one specific set of objectives."⁵⁵ Sen explains that capabilities, like primary goods, do not cater to any one comprehensive doctrine and that capabilities can be based on a citizen's needs *as a citizen*. Sen states that the real problem for Rawls is "that a disadvantaged person may get less from primary goods than others *no matter what comprehensive doctrine* he or she has."⁵⁶

Sen shows that primary goods do not reflect the actual freedoms that a person has, but only the resources available to each person. To state Sen's point more simply: persons with equal resources may not be able to utilize them equally. One person may be able to achieve all possible ends with her share of primary goods, while another person with an equal share of

⁵⁴ Ibid, 168-176

⁵⁵ Sen, *Inequality Reexamined*, 83.

⁵⁶ Ibid, 83.

primary goods may not be able to achieve all possible ends because of a disadvantage that hinders her ability to convert primary goods into freedoms.⁵⁷

Sen understands that Rawls focuses on the means to freedom because Rawls believes that to focus on capabilities or ends would involve endorsing a particular comprehensive doctrine for all individuals in society. However, Sen holds that capabilities are distinct from primary goods and the ends they are meant to achieve. Contrary to Rawls's belief, emphasizing capabilities does not necessitate endorsing a particular comprehensive doctrine.

Sen identifies two types of variations in an individual's movement from primary goods to achievements. First, inter-end variation, which acknowledges a plurality of comprehensive doctrines; and second, inter-individual variation, which acknowledges the difference in individual's capabilities to achieve ends promoted by one's comprehensive doctrine. These variations cause significant problems for Rawls in choosing to use primary goods as the metric of justice in his theory. If primary goods do not take into account these variations, Sen believes that they fail to accurately determine the least-advantaged members of society. Capabilities take these variations into consideration, and Sen thinks that because of this, capabilities are a more appropriate choice for the metric of justice.⁵⁸

Sen presents a strong case for the use of capabilities, over primary goods, as the metric of justice. Sen reiterates, "Equality of freedom to pursue our ends cannot be generated by equality in the distribution of primary goods."⁵⁹ I will now turn to Norman Daniels to present a defense of primary goods as the metric of justice.

⁵⁷ Ibid, 83-85.

⁵⁸ Ibid, 85-87.

⁵⁹ Ibid, 87.

9 DANIELS'S DEFENSE OF PRIMARY GOODS

Norman Daniels's defense of Rawls's choice to use primary goods is an attempt to show that primary goods operate in the space that Sen believes only capabilities occupy. Daniels is attempting to expand the range of primary goods to find common ground between Rawls's and Sen's views. By including healthcare as part of an individual's equality of opportunity, Daniels believes that he can expand the space of primary goods into the space of capabilities, and ultimately counter the space problem that Sen has presented.⁶⁰

Daniels begins by defining the normal opportunity range as, "the array of life plans that people in it find reasonable to choose, given their talents and skills."⁶¹ As Sen has stated, disadvantaged individuals in society will have a reduced normal opportunity range. Daniels limits his discussion to the restrictions on normal functioning and therefore focuses on healthcare. Daniels proposes that primary goods can extend into the space of capabilities because primary goods promote equality of opportunity. Equality of opportunity requires that the normal opportunity range for all citizens be realized. Daniels states, "By promoting normal functioning for a population, comprehensive health care – as well as social institutions and goods aimed at maintaining population health – make a significant, but limited, contribution to the protection of fair equality of opportunity."⁶²

Promoting the normal range of opportunity for all citizens necessitates a universal health care system. Daniels notes that for Rawls's theory to promote opportunity, the health care system "will require universal access, without financial barriers, to a system of public health,

⁶⁰ Norman Daniels, "Democratic Equality: Rawls Complex Egalitarianism," In *The Cambridge Companion to Rawls*, ed. Samuel Freeman (New York: Cambridge University Press, 2003), 257-259.

⁶¹ *Ibid*, 257.

⁶² *Ibid*, 257.

preventive, acute, and chronic care services.”⁶³ Further, any limitations on the system because of lack of resources must be publicly acceptable to all members of society. Given that health care services can be maintained and distributed in a fair manner, then Daniels has presented a health care system that is acceptable within Rawls’s theory.⁶⁴

Daniels identifies the deficit with Rawls’s choice to use primary goods. Daniels states, “[Rawls] makes the simplifying assumption that we can talk primarily about differences in income and wealth and take those primary social goods as proxies for the rest.”⁶⁵ This assumption is a mistake according to Daniels. While it may be easier to assume that income and wealth can represent the other primary goods, this is not necessarily the case. A decrease in income may accompany an increase in other primary goods, while a decrease in other primary goods, may accompany an increase in income. For instance, cutting jobs at a corporation may increase an individual’s income, but it may create anxiety about the security of her own job decreasing her bases for self-respect. Inversely, an individual may have her hours cut at work decreasing her income, but the loss of income may allow her to spend more time with her family or move away from empty consumption and therefore increase other primary goods. Daniels remarks, “where increased income is not a proxy for the rest of the index, because of the resulting effects on opportunity through health inequalities or rights, then we should not accept the increase in income as rational or as something endorsed by the difference principle.”⁶⁶

At this point, it could be possible for Sen to argue that Daniels’s extension of primary goods does not include all of the interpersonal variations that exist amongst individuals in society. Without taking these variations into consideration, Daniels’s extension could still fail to

⁶³ Ibid, 258.

⁶⁴ Ibid, 258.

⁶⁵ Ibid, 261.

⁶⁶ Ibid, 262.

fill the space occupied by capabilities. Daniels's extension is concerned with providing equality of opportunity, especially by providing health care. Accordingly, the interpersonal variations that Daniels takes into consideration are primarily diseases and disabilities that would reduce an individual's normal opportunity range. However, disease and disability may not be the only factors that hinder an individual's opportunity range. Other factors, including skills, such as the ability to read or do simple arithmetic, might be missing from an individual's abilities and would therefore hinder her opportunity range.⁶⁷ Specific skills do not need to be guaranteed, but an individual should have the capabilities needed to participate in the labor market and in civil society. Daniels believes that skills below the normal opportunity range do not necessitate a system that seeks to improve these skills. An individual simply not having a desired skill set does not run afoul of the demands of justice.⁶⁸

10 RESPONSE AND SUPPORT OF PRIMARY GOODS

In my response to the debate between Rawls and Sen over the use of primary goods as the metric of justice, I will argue that because the parties in the original position must have basic capabilities in order to be fully cooperating members of a society, Rawls's choice of primary goods is appropriate. Further, I will argue that Sen's focus on income and wealth undermines the role of primary goods and their ability to answer Sen's challenge. I will expand on Daniels's work in order to give a fuller response to Sen and I will show that primary goods, in particular wealth and income, can be used to take into consideration a person's capabilities and accurately represent a citizen's well-being.

⁶⁷ Ibid, 258.

⁶⁸ Ibid, 259.

Sen holds that primary goods do not adequately consider the space that exists between primary goods and the ends they are used to achieve. This space is occupied by the relationship between means and ends. Sen focuses largely on inter-personal variations between individuals. Each individual has a different set of capabilities that she uses to convert means into ends. Inter-personal variations affect how efficiently a person can convert means into ends. Sen believes because there is such a multitude of variations between individuals that capabilities, and not primary goods, must serve as the metric of justice. He argues that primary goods are too inflexible to accurately represent a person's welfare, and that they are not the only factor in desire satisfaction.

However, this inflexibility is misleading. Rawls's theory of justice has already taken into consideration basic capabilities. In the original position, Rawls narrows his notion of citizenship to properly address the fundamental question of justice. Citizenship, as considered by the parties in the original position, includes all persons that are normal fully cooperating members of society. This excludes persons with severe disabilities, namely those persons without basic capabilities. Without basic capabilities, these persons are not considered by the parties in the original position. The parties in the original position must be able to determine the principles of justice and also agree on the index of primary goods. If the citizens that the parties in the original position represent were unable to utilize primary goods, then the parties would be unable to come to an agreement on the principles of justice and the metric of justice.

Accordingly, the parties in the original position consider citizens to have capabilities within a normal range. Rawls does very little to define what would lie within this normal range, but he is right to establish a boundary. A boundary is a necessity if the parties in the original party are to decide what principles of justice to abide by. Citizens without basic capabilities do

not have the capacity to be normal fully cooperating members of society and are not considered by the parties in the original position. A person without basic capabilities would not possess the capabilities necessary to convert her means into ends. The severely disabled should be understood as persons incapable of rudimentary cognition. Without these basic capabilities, the severely disabled are not normal fully cooperating members of society. This does not mean that Rawls considers the severely disabled to be outside the realm of justice, but they are not addressed in the original position.

Important to note, is that Rawls's boundary primarily excludes persons with severe mental and physical disabilities. Rawls's boundary limits citizenship to persons who are able to determine the principles of justice and agree on an index of primary goods. Thus, some physical disabilities, such as limited eyesight or the inability to walk, would not exclude an individual from citizenship.

In addition to narrowing the parties in the original position, these boundaries indicate that Rawls has taken the capabilities of citizens into consideration. As normal fully cooperating members of society, each citizen possesses basic capabilities within a normal range. Rawls considers each of these citizens to be free and equal individuals, and the inter-personal variations between them to be negligible. Rawls states, "the basic structure is arranged to include the requisite institutions of background justice so that citizens have available to them the general all-purpose means to train and educate their basic capabilities, and a fair opportunity to make good use of them, provided their capabilities lie within the normal range."⁶⁹ Rawls expects citizens to be able to capitalize on their primary goods through the use of their basic capabilities. Rawls acknowledges that, without capabilities, citizens will not be able to utilize their primary goods,

⁶⁹ Rawls, *Justice As Fairness*, 171.

and so Rawls assumes that citizens have capabilities within the normal range. Thus, Rawls has considered the role of capabilities in converting means into ends.

Sen in large part focuses on income and wealth when discussing primary goods. This tendency to consider primary goods as focusing on income and wealth makes primary goods appear more inflexible than they actually are. Norman Daniels begins to bring to light this fact in his analysis of Rawls's primary goods index. Daniels looks to the primary good that guarantees citizens' freedom of opportunity. Daniels believes that in order to assure that citizens have this right, certain basic capabilities must be maintained. Maintaining these basic capabilities arguably requires a universal healthcare system to be in place. Thus, Daniels has been able to address some capabilities from the perspective of primary goods. I believe that by looking at the other primary goods, I will find that Rawls's index of primary goods fully addresses the space between means and ends.

In order to establish the types of capabilities that should be addressed by Rawls's theory, I will turn to Elizabeth Anderson. Certainly, all skills and capabilities are not the concern of a just society. Anderson states that, "the proper negative aim of egalitarian justice is not to eliminate the impact of brute luck from human affairs, but to end oppression, which by definition is socially imposed."⁷⁰ Anderson believes that the state should ensure citizens the capabilities needed to act as free and equal individuals within society. A democratic society is only obligated to guarantee a citizen these capabilities. All other capabilities are not a matter of justice. Anderson cites an example of a poor card player. Card playing has nothing to do with one's citizenship. Being a poor card player does not oppress an individual or threaten her civil liberties. Therefore, the ability to play cards is not a capability guaranteed in a just society.⁷¹

⁷⁰ Elizabeth S. Anderson, "What is the Point of Equality?" *Ethics*, 109 2 (1999), 288.

⁷¹ *Ibid*, 316-317.

Anderson provides parameters in which a clearer idea of the types of capabilities a just society ensures can be formed.

Rawls holds that his theory of justice takes into account a citizen's basic capabilities. Daniels shows that equality of opportunity necessitates a universal health care system for maintaining citizens' basic capabilities. The other primary goods listed are: basic rights and liberties, public office and positions of responsibility, income and wealth, and the social bases of self-respect. Anderson asserts that the capabilities guaranteed by a society should be the ones that maintain an individual's status as free and equal within society. Rawls assumes that basic capabilities are necessary to utilize an individual's primary goods. Further, Rawls believes that primary goods are the means necessary to assure that a citizen is able to pursue her conception of the good as a free and equal member of society. Rawls assumes that citizens are normal fully cooperating members of society that have basic capabilities. The capabilities are such that they enable a citizen to utilize her share of primary goods. If primary goods necessitate the capabilities that are necessary for a citizen to be a free and equal member of society, then the index of primary goods will promote the capabilities that Anderson believes should be guaranteed by a just society.

I will begin by looking at each of the primary goods individually. Basic rights and liberties grant an individual a significant portion of her freedom. Without certain basic capabilities, a citizen would be unable to utilize these freedoms. For example, freedom of speech is a right that is guaranteed in a just society. Without the ability to communicate, one would not be able to appreciate this right. Accordingly, society must grant citizens an infrastructure that allows all voices to be heard. A certain level of literacy would need to be ensured. A forum for public discussion would be needed. Disabilities that affect one's ability to communicate, such

as blindness, hearing loss, and speech impediments, cannot be ignored, but rather must be confronted so that those with such ailments are treated with the respect that is demanded by a free and just society. Thus, guaranteeing freedom of speech and other basic liberties also requires guaranteeing certain basic capabilities. This may require the use of social resources in order to assure that no individual is oppressed. However, society does not have to guarantee that citizens are able to communicate well, only that they are able to communicate on a basic level. Accordingly, guaranteeing freedom of speech means that citizens must have the basic capabilities to communicate.

A citizen's ability to hold public office and positions of responsibility certainly necessitate her having basic capabilities that fall within a normal range. The skills needed to hold public office and other positions require a level of responsibility and education that necessitate basic capabilities. Income and wealth also necessitate a certain level of basic capabilities in order for one to utilize this primary good. Without basic capabilities income and wealth would still be very important to a person's well being, but she would not be able to utilize her income or wealth if she could not pursue a determinate conception of the good.

The social bases of self-respect are important in extending primary goods into the space between means and ends. If a citizen is supposed to be able to develop a sense of self-respect in a political society, then she must have the capabilities necessary to accomplish her ends. Rawls states "social bases are things like the institutional fact that citizens have equal basic rights, and the public recognition of that fact and that everyone endorses the difference principle, itself a form of reciprocity."⁷² While the social bases of self-respect are only institutional factors within society, in order for a citizen to appreciate these goods, she must first have the basic capabilities of a normal member of society. Rawls holds that citizens are not guaranteed an attitude of self-

⁷² Rawls, *Justice As Fairness*, 60.

respect, but merely the social bases needed to build an attitude of social respect. However, a basic set of capabilities must be possessed by a citizen for her to be able to build an attitude of self-respect. Even with the institutional structures in place, Rawls must assume that citizens possess basic capabilities.

At this point, Rawls understands that citizens must have basic capabilities in order to use primary goods, and Daniels asserts that freedom of opportunity necessitates a universal healthcare system in order to maintain basic capabilities. However, this does not go far enough in addressing Sen's concerns. First, a universal healthcare system will help maintain a person's basic capabilities, but equality of opportunity requires more. The infrastructure of a society must also be built with a person's capabilities in mind. The freedom to choose between jobs and different locations is only facilitated by an infrastructure that allows citizens freedom of movement. For example, if a society's highway system connects two cities together, but leaves a third unconnected, then the citizens of the unconnected city no longer have the same freedoms as the citizens in the two connected cities. Similarly, the infrastructure of a society must accommodate citizens with a diverse range of capabilities. A public building cannot be only accessible by a set of stairs; but also by a wheelchair ramp. A crosswalk needs not only visual cues for when to cross, but also audible cues for the visually impaired. These are only examples of possible accommodations that could be made for the disabled. I will not attempt to examine all the possible accommodations that might be made. My project is not to determine how the disabled should be aided, but rather to show that primary goods are the proper metric of justice for a fair and reasonable society. However, I believe that accommodations should be made to address any oppression that hinders a person's ability to act as a free and equal, and fully cooperating individual in a society. Accordingly, the multitude of capabilities that exist within

the normal range must be maintained by the universal healthcare system that Daniels describes, but also be fully accounted for by the infrastructure of society.

Sen's objection still requires a fuller response. Sen maintains that capabilities are a better measure of a person's well being than primary goods. Two persons with the same level of income, but varying capabilities will not be able to convert their incomes into ends in comparable ways. If a person needs a wheelchair, then the amount of money she has to pursue her ends will be offset by the cost of a wheelchair. Rawls and Daniels have both failed to adequately respond to this objection. I will address Sen's objection by looking at how society might determine the severity of a disability.

The severity of a disability may be calculated by how it limits a person, but any remedy for a disability will presumably require money and because of this the severity of a disability should be measured by the amount of money it takes to remedy the disability to the level of basic capabilities. I will refer to this amount of money as the "remedy amount" from this point forward. The remedy amount will be a function of market pressures, government offsets, and technological advances. For example, a person with impaired vision will need some sort of corrective lenses. The lenses will cost money. Some of the factors that would influence the amount of money needed to remedy this disability will be the demand for corrective lenses in the market place and the cost of the materials needed to produce the lenses. An objection to this line of reasoning might be that the remedy amount is an inappropriate way of measuring a disability. Further, one might object that the remedy amount does not take into account how severe the disability actually is or how the disability affects the person. However, I believe that the amount of money needed to remedy a disability is uniquely suited to measure the severity of a disability.

For example, being legally blind and being unable to walk are both very debilitating disabilities if nothing has been done to correct them. However, with corrective lenses the legally blind person is able to see clearly. Glasses are relatively cheap, and what would be a more severe disability is easily remedied. Glasses are cheap presumably because there is a greater demand in the market place for them and they are relatively inexpensive to produce. The person who cannot walk will have to spend much more to have her disability remedied. At the very least a remedy would involve a wheelchair and a modified vehicle or special access to public transportation. A person who cannot walk has a much higher remedy amount than a person who only needs glasses. Important to note is that it is not the effects of the disability on the person that necessarily make it severe, but the cost that it takes to remedy it.

Using the remedy amount to measure a disability may seem insensitive to those with disabilities, but I believe that the remedy amount would have the advantage of adapting to the diverse range of disabilities present in humanity. Using a remedy amount as the measure of the severity of a disability is easily adaptable to the diverse range of disabilities because the amount of money will be tied to the market, which will allow the amount to keep pace with technological and medical advances without the need to alter the metric. Additionally, the remedy amount can account for minor differences in capabilities, including low blood sugar and higher metabolism as the remedies to these are easily accounted for monetarily.

In this respect, primary goods are the more efficient and effective measure of the least-advantaged members of society. Considering the amount of money that is necessary for a person to be able to reasonably and fairly pursue her determinate conception of the good takes into account the severity of her disabilities and more accurately measures her freedom to achieve functionings. Disabilities that cannot be alleviated to a basic level of capabilities because they

have no cure or are severely debilitating regardless of the amount of money spent, are rightly considered as problems for an extension of justice in the legislative stages of a society.

Accordingly, I believe that capabilities should be taken into consideration, and this will require an alteration to Rawls's list of primary goods. Income and wealth are already used as indicators of well being, but are imperfect because capabilities are not represented. The measure of income and wealth should be altered to not only consider a citizen's current level of income and wealth, but also the remedy amount. Thus, a person's income and wealth should be determined by considering all her monetary assets and the amount of money needed to remedy any disabilities the person may have. Primary goods should be altered so that income and wealth can more accurately represent an individual's capabilities. This alteration will involve not only a person's income and wealth, but also the cost of maintaining a person's basic capabilities. This cost is the remedy amount, which when used in conjunction with the other primary goods answers Sen's objections and maintains Rawls's focus on the fundamental question of justice without unnecessarily complicating the metric of justice. With this alteration, primary goods should be able to quell Sen's objection that primary goods fail to consider capabilities and do not accurately represent a person's well being. By using primary goods and the remedy amount a metric of justice is introduced to Rawls's theory that includes not only the means a person has, but also the capabilities she has to achieve her ends.

11 CONCLUSION

I find that Rawls's insistence that the parties in the original position would be able to publicly accept primary goods as the metric of justice requires an assumption that citizens possess a basic set of capabilities. Therefore, I believe that Sen's objection that primary goods

are too inflexible to fill the void between means and ends is misplaced. Rawls does not include capabilities as part of his metric of justice, because basic capabilities are assumed to be possessed by citizens. Further, primary goods necessitate this assumption because citizens would be unable to capitalize upon their primary goods if they were unable to utilize them on a basic level. Rawls's assumption also meets Anderson's criteria that the capabilities that should be guaranteed are those that are necessary for citizens to exist as free and equal in society. Because primary goods are considered to be the political goods necessary for citizens to accomplish their ends as citizens, the assumed capabilities that citizens would need to use these goals must also be the capabilities they need as free and equal citizens. Further, I have shown that Daniels's universal healthcare system should also be supplemented by an infrastructure that takes into account citizens' diverse range of capabilities. I also have provided a method for using income and wealth to accurately represent a citizen's well being by taking into consideration a citizen's set of capabilities.

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