

THE BASIC STRUCTURE, THE VEIL OF IGNORANCE
AND THE LEAST WELL-OFF,
IN RAWLS' THEORY OF JUSTICE

Varteres Bourmayan

A THESIS

in

The Department

of

Philosophy

Presented in Partial Fulfillment of the Requirements for
the Degree of Master of Arts in Philosophy
Concordia University
Montreal, Canada

February, 1975.

THE BASIC STRUCTURE; THE VEIL OF IGNORANCE

AND THE LEAST WELL-OFF,

IN RAWLS' THEORY OF JUSTICE

Vartéres Bourmayan

ABSTRACT

This paper will discuss a number of problems arising in John Rawls' book, A THEORY OF JUSTICE. In the first chapter two important concepts in Rawls' theory of justice are considered. In Section 1, an attempt is made to clarify Rawls' concept of the basic structure, and in Section 2, Rawls' concept of the veil of ignorance in the original position is discussed, and the grounds for the justification of Rawls' veil of ignorance are examined. The concepts of the basic structure, and the veil of ignorance constitute the bases for the construction of Rawls' schema of justice by means of his two principles of justice.

The aim of the second chapter is to examine Rawls' claim that his contractual society provides justice at the level of each contracting person. Specifically, the second chapter examines whether Rawls' contractual schema provides justice at the level of the least well-off person in the

contract. This is important as it touches on one of the important issues in Rawls' theory of justice. Rawls argues that justice in his contractual society would have been achieved if every contractor received a fair share of the goods available in society. To demonstrate that his contractual society is just, Rawls tries to show that the least well-off person in the contract would receive a fair share of the goods he desires. However, I shall argue that Rawls fails to identify the least well-off and the goods that the least well-off would find desirable. In the second chapter I will explore some of the reasons for Rawls' failure to identify the least well-off.

TABLE OF CONTENTS

ACKNOWLEDGMENT	1
PLAN OF THE DISCUSSION	1
CHAPTER I	
SECTION 1: THE BASIC STRUCTURE	5
1.1 Preliminary Remarks on the Basic Structure	6
1.2 Rawls' Definition of the Basic Structure	8
1.3 First Interpretation of the Basic Structure	10
1.4 Second Interpretation of the Basic Structure	12
1.5 Relation of the Basic Structure to the Original Position	12
1.6 Third Interpretation of the Basic Interpretation	15
Conclusion	16
SECTION 2: THE VEIL OF IGNORANCE	17
2.1 The Original Position	18
2.2 The Veil of Ignorance	20
2.3 The Parties' Awareness of the Extent and Implications of the Veil of Ignorance	22
2.4 The Parties' Awareness of their Mutual Disinterest	24
2.5 The Parties Awareness of the Particulars of their Rational Plan of Life	26
2.6 Hare's Criticism of Rawls' Veil of Ignorance	28
2.7 Raphael's Empiricist Argument	34
2.8 Rawls' Answer to the Types of Arguments Given by Hare and Raphael	36
Conclusion	40

CHAPTER II

SECTION 1: IDENTIFICATION OF THE LEAST WELL-OFF	42
Introduction	42
1.1 The Parties' Capacity for Justice and the Parties' Reliance on Each Other to Honor the Principles of Justice	44
1.2 The Lexical Ordering of the Two Principles of Justice	49
1.3 The Choice of Goods in the Original Position	55
1.3.1 Guessing in the Choice of Primary Goods	58
1.3.2 Qualitative Versus Quantitative Choices of Primary Goods	59
1.3.3 When Do Parties Adjust Their Conception of the Good to Their Situation?	61
1.4 Three Qualifications in Rawls' Theory of Justice	62
1.4.1 The Right is Prior to the Good	63
1.4.2 Well-Ordered Society	64
1.4.3 Procedural Prudential Judgments	65
1.5 Rawls' Inability to Identify the Least Well-Off	67
1.5.1 Representative Parties and Representative Individuals	71
1.5.1.1 Identification of the Rational Plan of Life of the Least Well-Off Person	75
1.5.2 Identification of the Least Well-Off by Using the Difference Principle	76
1.5.2.1 Identification of the Rational Plans of Life of the Parties	80
1.6 The Choice of the Principles of Justice	81
1.7 The Difference Principle as Arbiter Between the Better-Off and the Least Well-Off	84

CONCLUSION 88

BIBLIOGRAPHY 91

ACKNOWLEDGMENT.

I wish to thank Dr. Stanley G. French, my thesis advisor, for his patience and encouragement.

PLAN OF THE DISCUSSION

In this paper I discuss a number of problems arising in John Rawls' book, A Theory Of Justice.¹ These are the following: (a) whether Rawls in his theory of justice intends to use the notion of the basic structure of society as the most fundamental contractual framework; (b) whether the veil of ignorance in Rawls' original position is adequate; and (c) why Rawls was unable to identify the least well-off person in the basic structure of society.

Rawls claims that his main endeavour in A Theory Of Justice is to construct a social contract structure which will, if taken in its entirety, lay the basis for an inherently just society. Such a social structure, by virtue of its contractual structure alone, will guarantee a sufficient theoretical basis for a just society. The fundamental principle of Rawls' theory of justice is "Justice is the first virtue of social institutions"⁽³⁾.² Immediately accompanying this principle

¹John Rawls, A Theory Of Justice (Harvard University Press, 1971).

²Numbers in brackets will correspond to page numbers in A Theory Of Justice.

are the following two principles: (a) "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override" (3), and (b) "Justice denies that the loss of freedom for some is made right by a greater good shared by others" (28).

The above three principles embody the subject matter of Rawls' two principles of justice upon which his theory of justice is founded.

First principle: ". . . each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others" (60).

Second principle: (Difference Principle)
"Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity" (83).

These two principles are to be adopted by representative parties in an original contractual position, under a veil of ignorance. According to Rawls, the basic structure appears to form the fundamental grounding for justice when the above two principles of justice are adopted.

Rawls considers his treatment of the notion of the basic structure adequate for the needs of his theory of justice. He takes this position even though he states that the notion of the basic structure is intuitive. In Section 1 of the first

chapter, I will argue that the notion of the basic structure is vague and almost impossible to clearly understand. In Section 2, a discussion of the veil of ignorance will confront us with numerous problems. Rawls introduces the veil of ignorance to establish the possibility that impartial judgments can be made by persons in the basic structure. By depriving the contracting parties of all knowledge relating to specific facts in their actual life, Rawls claims to have shown the impartiality of the judgments that lead the parties to adopt the two principles of justice. In Section 2 of the first chapter, I will argue that the veil of ignorance does not provide adequate support for the type of impartial decisions the contracting parties are assumed to make in the basic structure.

In the second chapter, I will present some of the reasons that I feel lead to Rawls' inability to identify the least well-off person in the basic structure. Rawls claims that the difference principle provides the necessary means to identify the least well-off person and to identify the primary goods that such a person would desire to fulfill his personal aims in life. In explaining his inability to identify such a person and the goods that such a person would desire, Rawls implies that it was a failure on his part rather than a failure of the theory of justice as a whole. I will argue that, on

the contrary, his failure to identify the least well-off person is due to problems inherent in his theory of justice.

CHAPTER I

SECTION 1: THE BASIC STRUCTURE

In this section I will present three possible interpretations of the concept of the basic structure that appears in Rawls' theory of justice: (a) that the basic structure is the most fundamental contractual framework in Rawls' contractual society, (b) that by means of the concept of the basic structure Rawls may have intended to base his theory of justice on a structural model close to that of his ideal moral geometry, (c) that in Rawls' contractual society the basic structure becomes the most fundamental contractual framework after the two principles of justice have been chosen by the parties of representative contractors in the original position. Whether any single one of the above interpretations of the basic structure clearly explains what Rawls might mean by the concept of the basic structure remains undecided. This indecision is due to the fact that Rawls does not discuss at any satisfactory length the meaning of the concept of the basic structure. He expects the student of his theory of justice to grasp the meaning of the concept of the basic structure

intuitively. According to Rawls, we can grasp the meaning of the concept of the basic structure intuitively once all the details of his theory of justice are brought into a clear perspective. In what follows, I will try to give an exposition of his concept of the basic structure, to the extent possible.

1.1 Preliminary Remarks on the Basic Structure

According to Rawls, a society can be made just if its institutions are just.³ The unjust man is a product mainly of unjust institutions (245). A theory of justice must first of all be a theory of social justice and must guarantee a sense of justice on the part of the contracting persons.⁴ Such a theory of justice must try to find a way towards a scheme of social cooperation by means of a just arrangement of the major social institutions (35). The conception of justice to be used in the theory of justice must be one, according to Rawls, which deals with the proper balance between the competing claims that persons make in a cooperative social setting (10). The theory of justice provides contractual principles such as the two principles of justice. By

³"Institutions are patterns of human conduct defined by public systems of rules. . . ." (492).

⁴"A sense of justice is an effective desire to apply and to act from the principles of justice and so form the point of view of justice" (567).

means of the two principles of justice we can assign the proper rights and duties to persons participating in the basic structure of society. At the same time, the theory of justice, by means of the two principles of justice, allows us to define the rules to be used for the just distribution of burdens and benefits that are necessary consequences of social cooperation (5).

That justice ought to be the foundation of society implies for Rawls that, in the elaboration of this theory of justice, he must first of all describe what he calls the basic structure of society. Once this is done, he can then elaborate on the principles of justice that this basic structure is founded upon. Such a description of the basic structure is necessary because of the central role it plays in the foundation of the theory of justice. Rawls states that the basic structure is "the primary subject of justice". This means that the basic structure describes the distributive manner of the fundamental rights and duties in the major social institutions. These rights and duties, in turn, effectively determine the right division of the advantages that result from social cooperation (7).

Rawls' notion of the basic structure becomes at once problematic. He admits that the concept of the basic structure he is going to use in the theory of justice is somewhat

vague (9). In the elaboration of this theory, he does not attempt to describe clearly the specific meaning of the basic structure; instead, he claims that "a conception of the basic structure is worth having for its own sake" (9) but does not tell us to what this worth is due. He then proposes to consider the principles of justice which apply to the basic structure. In what follows I will attempt to reconstruct the meaning of the basic structure as implied in various parts of the book.⁵

1.2 Rawls' Definition of the Basic Structure

The closest Rawls gets to a definition of the basic structure is the following:

The basic structure is a public system of rules defining a scheme of activities that leads men to act together so as to produce a general sum of benefits and assigns to each certain recognized claims to a share in the proceeds (84).

Among the rules referred to by Rawls are his two principles of justice (see above, p.2). The exact relation of the two principles of justice to the basic structure is not very clear in Rawls' exposition. He states that the fundamental aim of his theory of justice is to establish the priority of justice

⁵All substantial references to the basic structure in the book are found in pages 7, 9, 11, 54, 55, 57, 61, 62, 64, 84, 91, 96, 259.

over economic efficiency and the priority of personal liberty over economic advantages (261). To achieve this aim, he introduces his two principles of justice. These two principles "primarily apply" to the basic structure of society (61) and are "the object of the original agreement". According to Rawls, as I will elaborate below, an intuitive explication of how the two principles of justice apply to the basic structure would be that the two principles, by providing rules for the just organization of society, define a fair organization of the social, economic, and political life of society. Such a fair organization in turn defines the basic structure of society (7). The original agreement referred to above is the original contractual agreement. The two principles of justice are, specifically, those principles of justice which rational persons of equal rationality would agree to choose in the original position.⁶ The choice of the principles of justice would be made under the universally objective conditions of perfect equality and personal autonomy in circumstances that are fair.

An investigation into the basic structure of society will reveal the fundamental inequalities in society that are

⁶Henceforth the original contractual position will be referred to as the original position.

the result of one's personal endowments, income, family, and social relations. Such an investigation into the basic structure will determine one's starting place in the contractual situation and the immediate prospects that one can reasonably expect by one's membership in the contract (17). This means that the investigation into the basic structure will place the contracting parties in a situation where each contracting person in the party ought to treat others not only as means, but as ends in themselves. In the basic structure, each person must treat other contracting persons in accordance with the first principle of justice (179f.). The basic structure reflects the fundamental nature of man, namely, that he is rational. If he is placed in an environment of just institutions, his rationality will reflect itself in his desire to act justly.

1.3 First Interpretation of the Basic Structure

The problem with Rawls' notion of the basic structure is that it is not very clear precisely what it stands for. All references to the basic structure in the text are cursory, reflecting Rawls' statement that "the concept of the basic structure is somewhat vague" (9). One possible interpretation is that the basic structure may stand in the theory of justice as the most fundamental contractual framework of the contractual society. A fundamental contractual framework would be a

framework in which the principles of justice are to establish the just contractual nature of the society in the basic structure. In this interpretation, the basic structure would be a kind of functional framework in which the principles of justice are found and the nature of the contracting parties revealed. This is what Rawls may have meant by stating that the basic structure is the primary subject of justice; but Rawls seems to imply that the principles of justice and the nature of the contracting parties are somehow uniquely placed in the basic structure of society. This is to say that a just society is possible by means of the principles of justice and the rationality of the parties because both are found in the basic structure. The basic structure appears to provide a necessary element in Rawls' schema of the theory of justice. It is precisely this element that Rawls does not indicate in his theory of justice. For example, the fundamental social divisions in terms of differences in income, opportunity, etc, are found within the context of the basic structure (7). The rules for the fair distribution of inequalities are similarly found within the context of the basic structure (64). Again, the contractual characteristics of the parties in the original position are all relevant to the theory of justice in terms of the basic structure.

1.4 Second Interpretation of the Basic Structure

We could attempt to interpret the basic structure from a different perspective than that considered in the first interpretation above if we were to consider Rawls' choice of the notion of structure in his concept of the basic structure. The notion of structure comes up repeatedly in Rawls' book. Specifically, he states that his methodological ideal is that of a rigorous deductive moral theory. If such an ideal were to be achieved, all the theoretical claims in his theory of justice would follow from the premises made about the original position. He calls this deductive ideal moral theory "moral geometry" (121). We may suspect then that the concept of the basic structure is a result of this ideal. For example, Rawls may have intended by means of the basic structure to provide a structural model where it could be shown that all the claims made in the course of his theory, as a whole, follow from the principles and positions held by the parties in the original position. This certainly seems to be the intent of the ideal part of the theory of justice (cf.).

1.5 Relation of the Basic Structure to the Original Position

The above considerations, in the first and second interpretations of the basic structure, do not make the meaning of the basic structure any clearer. For example, we may

ask whether, in the absence of the concept of the basic structure, the theory as a whole would lose its consistency. The original position seems to provide sufficient basis to establish the primary contractual concepts as a basis for the deduction of the theory of justice. In the original position, the contracting parties (a) accept the principles of justice, (b) restrict their knowledge of facts, and (c) assume ideal rational capacities. The argument for the rest of the theory is based on some or all of these conditions (see Section 2). The only specific way that the above three conditions are related to the basic structure is through Rawls' statement that they are found within the basic structure; but this claim contributes very little to our understanding of the theory.

We can then raise the question: what is, specifically the relation between the original position and the basic structure? Rawls claims that in the original position the parties determine the principles of justice which form the justice of the basic structure. The implication is that the original position is somehow temporarily prior to the formation of the basic structure. The case here seems to be that in the original position the parties choose the principles of justice which are to establish the justice of the principles in the basic structure. This leaves us with the problem that we do not know whether the principles of justice chosen in the

original position form the basic structure, i.e., we are told by Rawls that the basic structure is a public system of rules. The rules referred to by Rawls are such rules as the two principles of justice. By stating that the basic structure is a system of rules, Rawls could be interpreted to mean that the basic structure is somehow established on the basis of the rules chosen in the original position. If we could give such an interpretation to Rawls, we would then be left with the problem of whether or not the basic structure is absent prior to the decisions taken by the parties in the original position.

Does the basic structure exist prior to the original position? Does the basic structure exist as an unjust structure prior to the original position? Rawls would seem to imply, but nowhere states clearly, that the decisions taken in the original position do not form the basic structure, but rather, provide the just structuring of the basic structure.

If this is what he intends us to understand, the original position would have to occur in some previous basic structure where the structuring of the principles of justice present in it, whatever the structuring may be, is not just. This possibility does not seem very likely as Rawls claims that the principles of justice chosen in the original position are freely chosen, rational principles that originate within the

context of the original position. For example, although the principles of justice are not created in the original position, the rational choice situation the parties find themselves in is solely responsible for the choice of the principles of justice. However, this does not seem to rule out the possibility that the choice of the principles of justice occurred within the context of the basic structure.

1.6 Third Interpretation of the Basic Structure

The question above, whether the basic structure is temporally prior to the original position, poses the following difficulty: if the original position was temporally prior to the formation of the basic structure, the contracting persons entering into the original position would find themselves in a basic structure which would be similar to a basic structure they lived in prior their entry in the contract. As the basic structure, according to Rawls, is a public system of rules, the contracting persons, prior to their final choice of the two principles of justice in the original position, would have to live under certain public rules. These public rules are the ones the contracting persons would intend to relinquish as soon as the two principles of justice were chosen. If such rules existed prior to the choice of the two principles of justice, my first interpretation of Rawls' basic structure

would have to be modified. In my first interpretation, Rawls' concept of the basic structure is seen to mean the most fundamental contractual framework of the contracting society in the original position. Such a fundamental framework would imply that it includes all the rules the contracting persons used in the original position at one time or another. The modified interpretation of Rawls' basic structure would have to include the qualification that the basic structure becomes the most fundamental contractual framework only after the two principles of justice have been chosen by the parties in the original position. This modified interpretation of the basic structure preserves the role of the basic structure as the most fundamental contractual framework, and at the same time emphasizes that the basic structure is a result of the contractual rules chosen by the parties in the original position.

Conclusion

The considerations in this section provide us with three interpretations of Rawls' basic structure. However, none of these interpretations states the exact relation of the rules, chosen by the contracting parties in the original position, with the basic structure. Rawls discusses at some length how the two principles of justice in the original position, and under the veil of ignorance, form the contract

of his just society. One condition for the formation of the contract is the removal of all knowledge of facts related to the lives of individuals in society. By spreading a veil of ignorance on all such knowledge, Rawls hopes to attain impartiality on the part of the contractors. Impartiality under the veil of ignorance, according to Rawls, would enable the contractors in the original position to choose rules of justice that would be fair to all.

In Section 2, I will consider Rawls' concept of the veil of ignorance in the original position, and examine whether Rawls, by means of the theoretical device of the veil of ignorance, would guarantee an impartial choice of the rules of justice.

SECTION 2: THE VEIL OF IGNORANCE

Having analyzed Rawls' concept of the basic structure I now turn to his concept of the veil of ignorance in the original position. I introduce Rawls' concept of the veil of ignorance at this point, because, along with his concept of the basic structure, the veil of ignorance has, as a theoretical device, some important consequences in the foundations of Rawls' theory of justice; namely, in the choice of the rules of justice.

2.1 The Original Position

In discussing Rawls' concept of the basic structure, we noticed that his notion of the original position is of fundamental importance. Indeed, taking a closer look at the theory of justice, the original position can be seen to be one of the foundations upon which Rawls attempts to base the justification of his theory of justice. Specifically, Rawls desires to use the original position as the theoretical basis for the theory of justice, thus enabling him to establish the fairness of the principles of justice. The original position provides Rawls primarily with a framework where, by means of a veil of ignorance, the contracting parties are given circumstances which will necessarily lead to a choice of principles of justice which are fair to all contractors.

In the previous section, we saw that the two principles of justice form the basic structure of society and are "the object of the original agreement". The two principles of justice are, specifically, the principles of justice that the parties of rational persons would agree to choose in the original position. The choice of the principles of justice is to take place under the following conditions: (a) the choice of the principles of justice must be made by all contracting parties, (b) each party in the basic structure must be regarded as equal in rights as any other party, and

(c) each party must be free and be surrounded by circumstances that would not prejudice their choice of the principles of justice. Rawls introduces the concept of the original position to provide the contracting parties with an objective framework in the contract. He tries to attain an objective framework, primarily, by removing all those subjective elements (e.g., the contractor's place in society, class position, income, natural endowments, strength, intelligence, etc.) that he feels would prejudice the contracting parties in their choice of the principles of justice. He thus aims to achieve an impartiality on the part of the parties which will ensure a sufficient basis for the choice of fair principles of justice.

Rawls states that the concept of the original position is intuitive; however, he claims that even though it is intuitive, the way the original position is used in the theory of justice "suggests its own elaboration" (21). One of the elements in the original position which seems to suggest this elaboration is the veil of ignorance. In what follows, I will consider the problems involved concerning the veil of ignorance in the original position, as the veil of ignorance forms the major portion of the intuitive notion of the original position.

2.2 The Veil of Ignorance

The contracting parties in the original position⁷ are under a veil of ignorance. For example, they have no knowledge relating to their particular social, psychological or intellectual state. They do not know their place in society, their class position, their income, their natural abilities and endowments (e.g., intelligence, strength, etc.), their specific psychological propensities, their particular political system and their particular rational plan of life (12ff., 136ff.). They are also ignorant of all contingencies which induce personal conflicts and prejudices (19).

Deprived of specific knowledge, the parties have general knowledge. For example, they have knowledge of all the relevant laws and theories in the basic structure, the nature of humanity and its environment. They have true general beliefs (454), and they know their obligations and the interpretations of these obligations (206). They know that their society is subject to the circumstances of justice and its implications. They understand the general facts about human society, human psychology, political affairs and economic theory; in other words, they know all the general facts that impinge upon their choice of the principles of justice (137).⁷

⁷ Rawls uses the phrase 'human psychology' in a very broad sense. Under human psychology he classifies empirical psychology and moral psychology; see, e.g., his chapter entitled "The Sense of Justice".

Rawls assumes that each person is fully rational and, moreover, equally rational with every other person (139). The parties have, therefore, the ability to understand and to act upon all the principles of justice that are adopted in the original position (19). They also have the ability to make rational assessments that are unaffected by considerations of particular contingencies (172).

The function of the veil of ignorance in Rawls' political theory is to guarantee that all decisions made in the original position will be fair. The parties, being ignorant of all facts relating to their personal contingencies, will prefer those principles of justice which will insure a just contractual situation in the basic structure. Rawls assumes, because of the veil of ignorance, that the same principles of justice will always be chosen. The same principles will be chosen because each party is equally rational as every other party in the original position, and each party will be convinced by the same arguments. By such an unanimous conviction, an unanimous conception of justice will be formed. (139f.).

Rawls justifies the conception of the veil of ignorance by the claim that he is using it only as a theoretical device to ground his theory of justice in the original position.

2.3 The Parties' Awareness of the Extent and Implications of the Veil of Ignorance

Rawls' primary aim in introducing the veil of ignorance, as we have seen, is to remove all subjective contingencies (i.e., personal prejudices, etc.) from the contractual process. What is uncertain here is whether the parties themselves are aware of the extent and implications of the veil of ignorance. Rawls assumes that under the veil of ignorance, the parties are fully rational, (meaning that the parties will be able to choose the fairest possible rules of justice under the given circumstances of the veil of ignorance), and implies that they are aware of the extent of their rationality, (meaning that the parties can rely on their rationality to choose the right rules of justice). If Rawls had extended the veil of ignorance to cover the ignorance of the extent of the rationality of the parties (that is, if the parties were not aware that they were making the right choices in their choices of the rules of justice), his claim that the parties are fully rational would not stand. But is it compatible that the parties are fully rational and yet are not aware of the full implications of the veil of ignorance while they are subjected to it? For example, while it may be admissible that the parties are ignorant of the differences of their genetic capacities (to ensure, according to Rawls, equality in the choice

of the rules of justice), is the ignorance of the effect such differences could have on the parties' rational decisions admissible? If the parties are assumed to have such ignorance, then, while they are under the veil of ignorance, they will not know whether the veil of ignorance is adequate or redundant in some of its details.

Rawls may respond that the adequacy or inadequacy of the veil of ignorance, as a state of affairs, is resolved prior to the entry of the parties in the original position. He implies that the parties, being fully rational, can foresee all the aspects involved under the veil of ignorance prior to entry. Yet, would he not be assuming too much? For example, Rawls assumes that no unforeseen or unplanned problem will arise under the veil of ignorance. This assumption is in line with his premise that the veil of ignorance is a theoretical situation; however, while the veil of ignorance is a theoretical situation, the rationality of the parties does not appear to be theoretical. Rawls never states that the rationality of the parties in the original position is a theoretical one; on the contrary, while he makes it plain that the rationality of the parties in the original position is ideal, he, nevertheless, seems to imply that this ideal rationality is founded on the rationality of persons in actual life. Specifically, Rawls' claim that the parties in the original position are

not aware whether they have an aversion to take chances (192) is a clear indication that the rationality (of the parties) he is thinking of, is somewhat less than purely ideal. Can the parties, though, be allowed to be ignorant of their inclination or aversion to take chances, and at the same time be ignorant of the extent and implications of the veil of ignorance? Is not ignorance of the extent and implications of the veil of ignorance, ignorance that some kind of chance is being taken in deciding certain problems? It seems to me that Rawls is contradicting himself by subjecting the parties in the original position to the type of uncertainty, as argued above, of which he specifically wants them to be deprived.

2.4 The Parties' Awareness of their Mutual Disinterest

The problem concerning the parties' awareness of the extent and implications of the veil of ignorance in the original position arises in a more serious way. Rawls states that "One feature of justice as fairness is to think of the parties in the initial situation as rational and mutually disinterested" (13). The problem here is whether the parties under the veil of ignorance are aware that they are mutually disinterested. Rawls does not discuss this point.

I think that this problem is genuine enough to deserve some discussion for the following reason: the veil of

ignorance in the original position has two primary aims. The first is to rule out all subjective contingencies that may influence the parties' choice of the principles of justice in the original position; and the second, to rule out all inter-party rivalry (such as the interests of one party over another) in the choice of the principles of justice. The rationality of the parties in the original position is a disinterested rationality. This means that while persons in the original position try to advance their own rational interests as far as possible, they do this in the absence of any gains at the expense of identifiable persons in the basic structure. The parties are not envious of each other and do not attempt to injure or confer benefits on each other (144). These conditions are ensured by the fact that the parties have a sense of justice (that is, they respect each other's rights) and, moreover, by the fact that this sense of justice is known publicly (that is, each party is aware that mutual rights will be respected) (155).

If the parties under the veil of ignorance are aware of their sense of justice including the condition of disinterested rationality, surely they must also be aware of their mutual disinterest. Rawls implies that disinterested rationality is not a result of the veil of ignorance; rather it is a condition to which the parties must comply in order to enter

into the original position. Why then do the rationally disinterested parties need the wide veil of ignorance imposed on them? Do they, for example, need to be ignorant of their class position or social status to be able to choose the principles of justice? It seems to me that these two conditions are redundant. If the parties are rationally disinterested and they have a sense of justice, then surely they will not take advantage of their class position or social status. Do not rational disinterest and a sense of justice specifically imply this?

2.5 The Parties' Awareness of the Particulars of their

Rational Plan of Life

Another problem arises when Rawls claims that the parties in the original position do not know the particulars of their rational plan of life, but at the same time Rawls assumes that they know that they have one (137). Rawls views a person as a "life lived according to a plan". This plan includes such things as the person's aims, causes, and intentions in life (408). Rawls defines a person's rational plan of life in the following way:

... first, a person's plan of life is rational if, and only if, (1) it is one of the plans that is consistent with the principles of rational choice when these are applied to all the relevant features of his situation, and (2) it is the plan among those

meeting this condition which would be chosen by him with full deliberative rationality, that is, with full awareness of the relevant facts and after a careful consideration of the consequences (408). Secondly, a person's interests and aims are rational if, and only if, they are to be encouraged and provided for by the plan that is rational for him (409).

The problem I want to raise here is whether or not the parties under the veil of ignorance need to have complete ignorance of all the particulars in their rational plan of life. This question is relevant because Rawls ties a person's happiness in closely with his rational plan of life. Rawls states that, since persons vary in their genetic abilities to do certain things, they will secure their happiness only if they choose the idiosyncratic plan of life which best suits their capacities and needs. (409). Choosing the right plan of life seems to be a very important matter in the life of every person. I will argue here that a rationally disinterested person with a sense for justice could be allowed to know certain details of his rational plan of life under the veil of ignorance. My argument is based on Rawls' claim that "the combination of mutual disinterest and the veil of ignorance achieves the same purpose as benevolence" (148). This claim, by insuring that each person's rights will be respected, implies that each person will not interfere with the interests of anyone

else in the basic structure. A benevolent person of this type, I think, could safely be allowed to know certain details of his plan of life while he is still under the veil of ignorance. For example, he could be allowed to know certain details of his moral choices in actual life. Such knowledge could in no way interfere with his choice of the principles of justice in the original position, as he is benevolent. The argument which follows is derived from R.M. Hare's criticism of Rawls' thick veil of ignorance.⁸

2.6. Hare's Criticism of Rawls' Veil of Ignorance

Hare argues that to achieve impartiality in the original position we need only assume that the contracting persons in the original position are ignorant of their roles as individuals in their ordinary lives, i.e., outside the contractual situation of the original position. Impartiality could be achieved in the original position even if we allowed the contracting people to know the entire history of the world in their ordinary lives.⁹ In the original position we could even allow people to know the course of events in ordinary

⁸R.M. Hare, "Rawls' Theory of Justice - I", The Philosophical Quarterly, vol. 23, No. 91, April 1973, pp.144-155; "Rawls' Theory Of Justice - II", The Philosophical Quarterly, vol. 23, No. 92, July 1973, pp.241-252.

⁹'Ordinary life' refers to life outside the hypothetical situation of the original position.

life. Knowledge under the veil of ignorance could even be extended to include "the alternative courses of history which could be the result of different actions by individuals in it."¹⁰ This could include the knowledge that there would be individuals in ordinary life, say individuals a, b, c, . . . , who could be affected in specific ways by individuals in ordinary life. The only limit to the extent of knowledge, in the form of a veil of ignorance, would be set by the restriction that each individual, a, b, c, . . . , in the original position would not know which individual (say r) he was from among the individuals a, b, c, . . . , in ordinary life.

If we restated Hare's argument and referred to contracting parties instead of people in the original position, the new argument would still preserve Hare's point.¹² That is, the parties would be allowed to know details about ordinary lives, outside the original position, as long as they remained ignorant

¹⁰Hare, "Rawls' Theory Of Justice - I", p.151.

¹¹Ibid.

¹²In the context of Hare's argument it is not clear whether 'people' (in the original position) corresponds to Rawls' 'representative parties' (in the original position) or to 'representative persons' among the various representative parties (in the original position). By restating Hare's argument, in terms of representative parties, my intention is to remove the above ambiguity. For a more detailed discussion see page 52ff., below.

of their particular place and identity in the original position. For example, the parties in the original position could be allowed to know all of the following details about various individuals in ordinary life who are represented in a certain party in the original position. They could know the individuals' class position or social status, their fortunes in the distribution of natural assets and abilities, their particular rational plans of life, and finally their particular psychological and economic contingencies. Such a veil of ignorance could, in no way prejudice the parties' judgments in their choice of principles of justice in the original position, as the parties would be unable to make subjective judgments.

Hare calls Rawls' veil of ignorance "the thick" veil of ignorance. This is the veil of ignorance which disallows knowledge of all specific facts that have relevance to actual life.¹³ A veil of ignorance which would allow some knowledge of specific facts from actual life; in what follows, I will call "Hare's" veil of ignorance.

I think that Hare's argument is essentially correct, but it needs one minor qualification concerning the rationality of the parties in the original position. Rawls claims that the parties in the original position, under the veil of

13

"Rawls' Theory of Justice - I", p.152.

ignorance, are fully rational, and he seems to imply that they are equally rational. It appears that by imposing a veil of ignorance Rawls' intention was twofold: first, to insure the impartiality of the parties in the original position, and second, to create an ideal frame of reference in the original position to insure equal and full rationality for all parties. That is, Rawls seems to assume that the thick veil of ignorance will justify an ideal, equal capacity of rationality for the parties in the original position. Hare's veil of ignorance would alter Rawls' theory of justice. If the parties in the original position were allowed to know the particulars of an individual's life in ordinary life, even though impartially, the parties would, nevertheless, know which individual in ordinary life has certain degrees of intellectual capacities.¹⁴ One example would be that in which the parties in the original position could make estimates of the percentage of superior intellectual capacities at any given historical moment in ordinary life. The parties could then use these estimates in their present situation under the veil of ignorance. Although the parties under the veil of ignorance could not know which contracting person or contracting party in the original position falls under what percentage of intellectual capacities,

¹⁴According to Rawls, there is an unequal distribution of intelligence in ordinary life (278).

this knowledge could still influence their impartiality. For example, Rawls claims that the parties under the veil of ignorance make unanimous decisions on the principles of justice. The parties are capable of this because they are all endowed with an equal rational capacity to deal with the principles. If the parties, in the original position, knew that a certain percentage of individuals in ordinary life would probably be unable to meet the necessary standards of rationality, required by them for the choice of the principles of justice in the original position, unanimous consent for the choice of the principles of justice would be difficult to obtain.

From the above argument, we can see that Hare's veil of ignorance would not be in agreement with some of the conditions imposed by Rawls in the original position (e.g., the condition of unanimous consent for the choice of the principles of justice). Hare is aware of this difficulty; he sees no appropriate solution under Rawls' contractual schema of justice.¹⁵

Hare, however, by introducing his version of the veil of ignorance, enables us to see a major difficulty in Rawls' veil of ignorance; namely, that Rawls' veil of ignorance is

¹⁵ "Rawls' Theory of Justice - I", p.252f.

too restrictive and takes too many things for granted. For instance, Rawls stipulates that under the veil of ignorance the parties are to remain ignorant of differences in natural endowments and capacities (137).¹⁶ This stipulation is a result of Rawls' assumption that individuals in actual life have different degrees of natural endowments and capacities (278, 307).¹⁷ If we were to accept Rawls' assumption that there are differences in the intellectual endowments of individuals, this assumption is hard to justify under Rawls' veil of ignorance: For example, if we assumed that in the original position individual representatives among the contracting parties have different degrees of natural intellectual capacities, equal rationality in the original position would hardly follow; for under the veil of ignorance, even though the parties are allowed to have general knowledge only, it could still be possible that some intellectually superior persons from among the contracting persons could use their knowledge much better than others. The intellectually superior persons could therefore be in a position to see much better the implications of whatever principles are adopted in the original position.

¹⁶ Rawls restricts knowledge concerning the differences of the natural endowments and capacities of the contracting parties to avoid any prejudices, in the choice of the principles of justice, that may arise from such knowledge.

¹⁷ By 'natural' Rawls seems to mean genetic (108).

Even though they are impartial, the intellectually superior persons' firmer grasp of the principles could exert an unequal influence on the unanimous decisions of the parties in the original position.

My intention in the above was to give an example demonstrating Hare's argument that Rawls, by proposing the thick veil of ignorance, takes too many things for granted; namely, that Rawls, by assuming that the parties in the original position have different degrees of natural endowments and capacities, would contradict his stipulation that, under the veil of ignorance, the parties must choose the principles unanimously. To demonstrate Hare's argument that Rawls' thick veil of ignorance is too restrictive, in what follows I will argue, with D.D. Raphael, that the general knowledge assumed to be possessed by the parties under the veil of ignorance is insufficient for the needs of the parties in the original position.¹⁸

2.7 Raphael's Empiricist Argument

A difficulty concerning the veil of ignorance arises in the following way: Rawls states that the parties in the original position know only the general facts about human

¹⁸D.D. Raphael, "A Theory of Justice by John Rawls", Mind, vol. LXXXIII, No. 329, January 1974, pp.118-127.

society, the basis of social organization, and the laws of human psychology. David Raphael argues that it does not make sense for Rawls to impose a veil of ignorance on individual facts concerning people's abilities and the character of their own society, while allowing knowledge of the general laws of psychology and the social sciences. Psychology and the social sciences are empirical.¹⁹ To understand these sciences, people must be acquainted with individual facts, since general laws concerning these sciences are based on empirical knowledge. To deprive the parties in the original position from factual knowledge would mean that, under the veil of ignorance, the participating person, being ignorant of his abilities and the particulars of his society, would be deprived of experiential or derived knowledge of anyone's abilities or about any society. Further, the general knowledge under the veil of ignorance, would be so minimal that it would be useless. For example, the general knowledge possessed by people under the veil of ignorance, people who are ignorant of the particular stage of their own civilization, ignorant of their particular society and its problems, would be so general that it could equally well apply to both tribal and industrial societies. However, differences in society are of such significance as

¹⁹ Ibid., p.118ff.

to imply differences in the psychology and the social institutions of these societies. Hence, the sort of "laws" Rawls talks about would tell virtually nothing about predictable behaviour of individuals in actual life.²⁰

2.8 Rawls' Answer to the Types of Arguments Given by Hare

and Raphael

Rawls foresees Hare's and Raphael's type of objections and attempts to answer them in somewhat generalized terms. It may be argued, he writes, that in the original position limited knowledge about persons' situations may render "a rational agreement upon the principles of justice impossible". As persons are ignorant of their aims, "they may find their plans [of life] utterly ruined by the principles to which they consent". Hence, it may be argued that they cannot reach "a sensible decision". Rawls' answer to this type of objection is the following:

. . . the rationality of a person's choice does not depend upon how much he knows, but upon how well he reasons from whatever information he has, however incomplete. Our decision is perfectly rational provided that we face up to our circumstances and do the best we can (397).

²⁰ Ibid., p.122.

Before I proceed to evaluate the above argument, the following qualification must be made. In the above quotation, Rawls does not refer specifically to the problem of the adequacy of the veil of ignorance or to the general knowledge possessed by the parties in the original position. I think, however, that the context of Rawls' argument is general enough to cover all the problems of the adequacy of the veil of ignorance, of general knowledge, and the rationality of persons in the original position.

The curious aspect of Rawls' argument, quoted above, is centered in the peculiar phrasing of his answer couched in such terms as "face up to our circumstances and do the best we can". I think that in one sense Rawls, at this point, abandons his attempt to justify his conception of the veil of ignorance. Could there be anything more vague than a call to face up to our circumstances and within our limitations do the best we can? The importance of this remark, I think, becomes more evident if we remember that Rawls in the early stages of his theory of justice had claimed that the model he aspired to emulate in his theory was that of a moral geometry. However, the above quotation requires some close scrutiny, as it is the clearest Rawls gets on the topic of the adequacy of the type of knowledge possessed by persons in the original position.

In the above quotation, the term "circumstances" referred to by Rawls, in asking us to "face up to our circum-

stances and do the best we can", is ambiguous; namely, are the circumstances those given under the veil of ignorance?

I think that from the context of the whole argument, there is a strong possibility that Rawls is referring to the circumstances of the original position. If we make this assumption, then, Rawls' answer becomes a little clearer. In the original position, Rawls implies (but does not state clearly), the parties make prudential judgments (42, 44).²¹ I think that Rawls, by asking us to face up to our circumstances in the original position, is really asking us to base our decisions in the original position upon prudential judgments (48ff.). This seems very likely to be the case as Rawls claims that the parties in the original position make their decisions upon the choice of the principles of justice in the state of a reflective equilibrium. The state of reflective equilibrium amounts to the same thing as making prudential judgments by means of whatever knowledge has filtered through the veil of ignorance. Rawls thinks that prudential judgments provide effective knowledge for the purposes of the theory of justice. This is based on Rawls' assumption that the persons in the original position know general facts about the world. These

²¹From the context of Rawls' argument, prudential judgments would be made in consideration of all the evidence we have concerning a certain situation, the application of our general knowledge concerning the situation, and our intuitive understanding of the situation.

are "relied upon" as effective knowledge (456), for the purposes of the theory.²² Hence, prudential judgments in the original position seem to increase their justification by the effectiveness of the "relied upon" general knowledge they are based upon.

From the attempt, above, to elicit Rawls' defence against arguments of the type given by Hare and Raphael, I think that Rawls' position is indeed very weak. Even if we accept the possibility of Rawls' type of prudential judgments in the original position, the difficulty still remains as to the possibility of prudential judgments, in the circumstances of the veil of ignorance. Prudential judgments often seem to imply particular blendings of various types of judgments about facts and theory. Prudential judgments are usually introduced by Rawls in a particular situation because deductive judgments by themselves are inadequate. Surely the ideal rationality of the parties in the original position would be a poor candidate to bridge this gap. For instance, to make prudential judgments about a particular inflationary economic situation, the parties in the original position would need some knowledge of particular facts about actual life. For

²²Rawls implies that the general facts are found to be intuitively adequate in dealing with whatever situation we may be presented in the original position.

example, they would need to know such facts as whether a particular inflation is the result of deliberate commercial manipulation, or the result of social struggle in certain parts of society (riots, etc.), or purely the result of confusion due to insufficient knowledge of economic factors. Again, an inflation could be the result of as yet unforeseen climatic or geographical factors. Surely general knowledge or thorough understanding of known economic and social factors cannot at a single sweep suffice for all future planning.

Finally, even if the parties in the original position had faith in their knowledge, there still remains the objection that, as ideal rational persons, they should be able to defend the rationality of their general knowledge in the original position. This type of process could take place only by the knowledge of at least some specific facts to be used as reference.

Conclusion

In this chapter, two important concepts in Rawls' theory of justice have been considered. In Section 1, an attempt was made to clarify Rawls' concept of the basic structure, and in Section 2, Rawls' concept of the veil of ignorance in the original position was discussed, and the grounds for the justification of Rawls' veil of ignorance

were examined. The concepts of the basic structure and the veil of ignorance constitute the bases for the construction of Rawls' schema of justice by means of his two principles of justice.

6 C
The aim of the second chapter will be to examine Rawls' claim that his contractual society provides justice at the level of each contracting person. Specifically, the second chapter will examine whether Rawls' contractual schema provides justice at the level of the least well-off person in the contract. This is important as it touches on one of the important issues in Rawls' theory of justice. Rawls argues that justice in his contractual society would have been achieved if every contractor received a fair share of the goods available in society. To demonstrate that his contractual society is just, Rawls tries to show that the least well-off person in the contract would receive a fair share of the goods he desires. However, Rawls fails to identify the least well-off and the goods that the least well-off would find desirable. In the second chapter I will explore some of the reasons for Rawls' failure to identify the least well-off,

CHAPTER II

SECTION 1: IDENTIFICATION OF THE LEAST WELL-OFF

Introduction

The purpose of this chapter is to trace Rawls' attempt to identify the least well-off in his social contract. As we have seen previously, one of Rawls' aims was to show that in his contractual society justice is provided at the level of each person.²³ To demonstrate that justice is provided at the level of each person, Rawls attempts to show that in his social contract the least well-off would receive a fair share of those primary goods they would need to fulfill their ends of life. The difference principle states that any distribution of the primary social goods in the entire social strata should be based on a fair distribution of the primary goods desired by the least well-off. To demonstrate that the least well-off would receive the primary goods they desire, Rawls attempts to identify the least well-off, and then allocate to them a fair share of the primary social goods. Rawls, however, fails to find a means that would help him identify the

²³See page 1, above.

least well-off; consequently, he fails to find a theoretical tool that would help him to identify those primary goods desired by the least well-off. In this chapter I will argue that (i) the contracting parties in the original position under the veil of ignorance do not have sufficient knowledge at their disposal to identify the least well-off person in the contract, and (ii) Rawls' attempt to identify the primary goods desired by the least well-off is contrary to some of the implications of the difference principle. My aim in introducing these two arguments is to try to show that while Rawls fails to identify the least well-off, the contractors in the original position would be faced with the same difficulty.

The plan of this chapter is the following: before I discuss the above two arguments, (i) and (ii), which is the main purpose of this chapter, I will discuss in (1.1) the parties' capacity for justice and their reliance on each other to honour the principles of justice, in (1.2) the lexical ordering of the two principles of justice and in (1.3) the choice of goods by the parties in the original position. In (1.4) I will give a brief exposition of three qualifications in Rawls' theory of justice. These are; (1.4.1) the right is prior to the good, (1.4.2) the contractual society is well-ordered, and (1.4.3) the parties in the original position make

procedural prudential judgments. Subsections (1.1), (1.2), (1.3) and (1.4) may prove to be tedious to the reader, but they are unavoidable. In the absence of subsections (1.1), (1.2), (1.3) and (1.4), subsection (1.5) (Rawls' Inability to Identify the Least Well-Off) would be incomprehensible and add to much of the confusion that any student of Rawls is faced with. To end the chapter I will present two short criticisms in subsections (1.6) and (1.7). In the first of these, I am concerned with the issue whether the contracting parties choose the two principles of justice in the original position. In the second, I will discuss the question whether the difference principle in the original position satisfies the needs of both the least well-off and those better-off.

1.1 The Parties' Capacity for Justice and the Parties'

Reliance on Each Other to Honor the Principles of Justice

In the first chapter, we saw that Rawls introduces the veil of ignorance in the original position to achieve an impartiality of judgments on the part of the contractors. The contracting parties in the original position would thus be insured that judgments made concerning the contract did not originate from various conflicting interests. Instead, these judgments would, by the fact that they are made for common, impartial ends, be fair to all parties. However, while the

condition of the veil of ignorance may justify Rawls' statement that judgments made in the original position will be impartial, whether these judgments will be fair to all parties (and specifically the least well-off) remains uncertain.

Rawls states that the parties have (a) a capacity for justice, and (b) can rely on each other to honor the principles of justice adopted. Rawls' two conditions, (a) and (b), in addition to the condition of impartiality of judgments made in the original position, would seem to back up Rawls' claim that judgments made in the original position will be fair to all parties, and, specifically, the least well-off. In what follows, I will consider how Rawls derives (a) and (b).

Rawls' fundamental purpose in introducing his theory of justice is to establish, in the framework of a social contract theory, the priority of justice over economic efficiency, and of personal liberty over economic advantages (261). By introducing the two principles of justice in the original position, Rawls attempts to realize the above purpose. In the basic structure, rational representative parties of persons under the veil of ignorance agree to accept the two principles of justice as the basis for their contract. The parties assume that, since the two principles of justice are accepted by all contracting parties in the original position, the two principles of justice are the right ones to apply

throughout the contract (166). Under the contract it is assumed that (a) the contracting parties have a capacity for justice (145), and (b) the contracting parties can rely on each other to honor the principles of justice adopted.²⁴

From (a) and (b), Rawls infers that the contracting parties will honor the two principles of justice under all circumstances. This last inference, Rawls claims, establishes the validity of the two principles of justice within the context of the contract in the basic structure (176).

In the previous chapter, we saw that Rawls introduced the veil of ignorance to achieve an impartiality of judgment on the part of the contracting parties in their choice of the principles of justice. In the above paragraph we see that Rawls introduces two conditions, (a) and (b). What Rawls does not state clearly, however, is how he derives (a) and (b). Are (a) and (b) derived from the impartiality of the parties in the original position, or are they supplementary conditions added to that of impartiality? In the case of the parties' capacity for justice, Rawls clearly states that (a) is deduced from the stipulations made about the original position (176); but how (a) is derived and from what principles in the original position, he does not elaborate. Rawls seems to argue

²⁴To the two principles of justice are attached the conditions of generality (131), universal applicability (132), publicity (133), capacity to order conflicting claims (134), and finality (135).

that the impartiality of the contracting parties in the original position; and the benevolent attitude the parties take in the original position, endow the parties with a capacity for justice, but how they do so Rawls does not tell us. However, even if we accepted Rawls' argument, the problem still remains whether capacity for justice does follow from the type of impartiality and benevolence Rawls defines in the original position.

As we have seen in the previous chapter, Rawls argues that the veil of ignorance and the mutual disinterest of the parties in the original position amount to the same thing as benevolence.²⁵ I think that Rawls is contradicting himself in this argument. Benevolence usually implies an interest in the welfare of other people, but Rawls specifically stipulates that the contracting parties in the original position do not take an interest in each other's affairs. On the contrary, they try to advance their own good as much as possible within the limits set by the restrictions in the basic structure. It would seem that for Rawls not to contradict himself he must imply that the parties, by agreeing not to interfere with each other's interests, become benevolent and are thus endowed with a capacity for justice.

If the analysis above is correct, then Rawls' claim that the parties in the original position have a capacity for

²⁵ Page 20, above.

justice would be based solely upon the grounds of non-interference by the parties in each other's affairs. However, can non-interference alone endow the parties with a capacity for justice? For instance, the parties in the original position may agree not to interfere with each other, not from self-motivated reasons, but only because it is a stipulation set into the contract. They may not transgress this stipulation for the reason that they would be assured that others would not transgress their own interests as long as the rules of the contract were obeyed by all parties. Surely this does not imply that the parties obey the contract from a capacity for justice or for reasons of benevolence. All that it implies is that the parties, in keeping their side of the contract, make sure that others will keep theirs as well. It would seem that Rawls, by endowing the parties with a capacity for justice, is really introducing a new stipulation in the contract, one that does not follow from his two principles of justice or from the original position as a whole.

The case of the reliance of the parties on each other to honor the principles of justice adopted in the original position is more difficult to analyse. Rawls states that "I shall rely upon the fact that for an agreement to be valid, the parties must be able to honor it under all relevant and foreseeable circumstances" (175). The problem with this

statement is that Rawls gives us the impression that his statement is somehow based on some facts derived from his theory of justice. However, the fact that Rawls relies upon, namely, that for an agreement to be valid the parties must honor it under all relevant and foreseeable circumstances, is actually not a fact; on the contrary, what Rawls calls a fact, is really an intuitive statement.

As we see above, it is not clear how Rawls derives (a) and (b), namely, that the parties have a capacity for justice, and that they can rely on each other to honor the principles of justice adopted. This lack of clarity raises the question; what will ensure that judgments made in the original position will be fair to all parties, and specifically, to the least well-off? Rawls indicates that one of the elements that will help us is what he calls the "lexical ordering" of the two principles of justice. According to Rawls, by lexically ordering the two principles of justice we will be assured that judgments made in the original position will be fair to all parties, and specifically the least well-off. In the following section, I will consider the lexical ordering of the two principles of justice.

1.2 The Lexical Ordering of the Two Principles of Justice

In this section, I introduce Rawls' concept of the

"lexical ordering" of the two principles of justice. Among others, Rawls, in introducing lexical ordering, has the following two aims: first, to establish personal liberty as the primary aim of his contractual society; second, to ensure the fair treatment of the least well-off in the contract. This is best done by (a) refusing to sacrifice their liberty to social and economic advantages on the part of the majority of the contractors, and (b) denying that a loss of the political rights of the least well-off can be justified for economic gains. Lexical ordering allows Rawls to clarify, to the extent possible, the rights possessed by each representative party under the two principles of justice. Consequently, a clear delineation of the rights possessed by the parties could give us a chance to get closer to an understanding of Rawls' claim that justice is the primary aim of his contractual society.

By introducing Rawls' concept of lexical ordering we will have a chance to look at one of the many difficulties in Rawls' book, namely, the distinction he makes between the ideal part of his theory of justice and its more general parts. The ideal part of Rawls' theory of justice is based upon the lexical ordering of the two principles of justice. In the "general" theory of justice, Rawls sacrifices some of the liberties of the least well-off (in contradiction to lexical

ordering) with an aim to secure the future liberty of the least well-off. Rawls, however, does not justify the distinction between the ideal and the general parts of his theory of justice.

The two principles of justice are lexically ordered. Lexical ordering, according to Rawls, demands that the first principle of justice must be satisfied before we can apply the difference principle. The first part of the difference principle, "Social and economic inequalities are to be arranged so that they are . . . (a) to the greatest benefit of the least advantaged . . .", must be satisfied before we can apply the second part, "Social and economic inequalities are to be arranged so that they are . . . (b) attached to offices and positions open to all under conditions of fair equality of opportunity." Lexical ordering means that given a set of principles, say a, b, c, . . ., the justification of b depends on a, of c on b, and so on (42-44). The lexical ordering of the two principles implies that denial of equal liberty cannot be justified by an increase of social and economic advantages, nor can political rights be foregone in exchange for economic gains. These conditions follow from the stipulation set in the first principle that "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others". That is, the

first principle stipulates that liberty ought to be the primary consideration when decisions are made in the original position. If we have satisfied the requirements of the priority of liberty in the original position, then we can begin to consider the social and economic stipulations of the difference principle.

The first principle defines all political liberties such as freedom of speech, thought, liberty of conscience, and the liberty of the person. The difference principle defines the distribution of the basic goods, income, wealth, and well-being, and determines the structure of social organizations. At the same time, the difference principle implies that while there may be differences in income and wealth among the parties, their distribution in the basic structure must be to everyone's advantage. Similarly, positions of authority and the means of the distribution of power must be accessible to all parties (61). These conditions imply that while certain inequalities are permissible in the basic structure, each person must benefit from them. In other words, in the original position the inequalities that are foreseen must create a prospect which is more advantageous to the parties than the absence of the inequalities. This however does not imply that the parties exchange their basic freedom for their economic well-being. The parties in the original position allow only

such inequalities as will confirm the priority of liberty and at the same time guarantee an improvement in the well-being of those who suffer from inequalities.

At this point, there is a certain amount of ambiguity in Rawls' theory. In the purely formal parts of the book, which comprise most of Part One, Rawls claims that liberty is prior to economic considerations and that liberty should not be sacrificed for economic gains. Rawls refers to this as the ideal part of the theory of justice. In the less formal Parts Two and Three, he reverses this condition and claims that in certain situations the least well-off members of society must suffer a certain degree of inequality in the distribution of primary goods to assure that their basic liberties will be preserved (151f.). The problem here is the following: while in the ideal part of the theory of justice the priority of liberty is embedded in the lexical ordering of the two principles of justice, in the later parts of the theory, the less ideal parts to which Rawls refers as the "general" theory of justice, liberty loses its absolute priority on purely pragmatic grounds. Rawls' reason for this shift in his theory is that, in actual society, the ideal scheme of justice does not obtain. We must therefore compromise the ideal stand of the theory of justice in situations where certain inequalities will assure the preservation of the priority of liberty in the future.

The question that arises here is whether the general conception of the theory of justice in any way follows from the two principles of justice. As we have seen above, Rawls claims that the general conception of his theory allows for certain inequalities to enter into the basic structure for the preservation of future liberty. He seems to imply, however, that by preserving future liberty, the general conception of his theory of justice, in a sense, follows from the two principles of justice introduced in the ideal part of his theory; but he never states how. Actually, the two principles of justice do not allow for the introduction of the general theory. The lexical ordering of the two principles disallows the sacrifice of liberty and equality for any pragmatic gains. Rawls, in introducing his general theory of justice, seems to rely on purely intuitive grounds. In fact his entire presentation of the problem points in this direction.

The parties start with a principle establishing equal liberty for all, including equality of opportunity, as well as equal distribution of income and wealth. But there is no reason why this acknowledgment should be final. If there are inequalities in the basic structure that work to make everyone better off in comparison with the benchmark of initial equality, why not permit them? (151) t.

This sudden switch in the theory of justice is very much in

line with Rawls' claim that, whenever necessary, intuitive considerations should be allowed to enter in the theory to insure the validity of the theory of justice (46). In what follows however I will be dealing only with the ideal part of the theory of justice.

1.3 The Choice of Goods in the Original Position

In this section, I will present briefly three arguments pertaining to the way the parties in the original position choose those goods they find necessary. I introduce these arguments because Rawls ties a person's rational plan of life in with the goods he desires. In turn, as we will see later on, a person's rational plan of life is instrumental in the attempt to identify his position in the social strata of Rawls' contractual society. Specifically (as I will argue later on), for Rawls to identify the least well-off in the contract, he must identify their rational plan of life and the goods the least well-off desire to fulfill such a plan. In what follows, I present the following three considerations: first, whether the parties in the original position can avoid guessing in their choices of primary goods; second, whether the parties' choices of primary goods can be qualitative; third, whether the parties adjust their conceptions of the good to their situation while they are still in the original

position, or whether this is done later on when they reverse their perspective to that of their actual life.

In the original position, contracting persons do not know their conception of the good. Rawls assumes that all they know is that they prefer a larger index of primary goods to a smaller one (93, 142). Primary goods are defined as those goods a rational man wants whatever else he wants. The index of primary goods is defined as those goods which a representative individual can look forward to in drawing up his plan of life. Examples of primary social goods would be the following: rights, liberties, opportunities, powers, income, wealth, and a sense of one's own worth (92). By stating that persons in the original position are ignorant of their conception of the good, Rawls seems to mean that they are ignorant of the specific goods they desire in ordering their lives, and the specific way in which these goods influence and shape their rational plan of life.²⁶ Hence, by stating that the persons in the original position are

²⁶I do not wish to suggest that there are no problems in what Rawls has to say about persons' conception of the good. In fact, on this and the following pages the notions of the good, a person's good, primary goods and the priority of the right over the good, give rise to numerous problems. However, a sufficient discussion of the above, would involve a discussion of Rawls' "thin" and "full" theories of the good (see Part III of A Theory Of Justice), which, would take me beyond the scope of this thesis.

ignorant of their conception of the good, Rawls seems to imply that they are ignorant of the specifics of their rational plan of life.²⁷ A person's good, Rawls states, is determined by what is for him the most rational long-term plan of life given under reasonably favorable circumstances. Success in carrying out this plan of life assures a person's happiness (92f.).

Rawls states that, irrespective of the details of individuals' rational plans of life, he "assumes" that there are some goods they would prefer more of rather than less. With more of these goods, individuals can be generally assured of a greater success in advancing their ends in life (92). Even though in the original position they are deprived of information about their particular ends in actual life, Rawls implies that by choosing a large share of primary goods in the original position they assure themselves that they will attain the goods they desire in actual life. Guided by the theory of the good as stated above, and their knowledge of the general facts of moral psychology, they are able to avoid guessing in their choices of primary goods, and, in the original position, make rational decisions in the sense that ordinary people make them in actual life (143).

²⁷ See page 20, above.

1.3.1 Guessing in the Choice of Primary Goods

Rawls' reasoning concerning the first point that I raised above, namely, whether the parties in the original position can avoid guessing in their choices of primary goods, is the following: the parties in the original position, by choosing as large an index of primary goods possible under the given circumstances, avail themselves of a large range of goods to choose from.²⁸ This, combined with a thorough knowledge of their general aims and ends in life, and a knowledge of the general facts of moral psychology, enables the parties to choose specifically some of those goods they would desire in ordinary life. Rawls makes the assumption that the large index of the goods chosen will necessarily include a fair number of those goods that the parties would find desirable to possess in ordinary life. Moreover, because the parties are rational and have a general knowledge of human psychology, they will be certain that their choices of goods will include goods that are desirable for the success of their plans of life in ordinary life. Rawls, in effect, assumes that the parties in the original position can have some knowledge of

²⁸ In this problem I will confine my argument to the specific case of making guesses concerning primary goods. I will not touch upon the larger argument whether the parties in the original position can avoid taking chances in their choice of principles of justice. This later question necessitates an examination of the utilitarian aspects of Rawls' theory of justice, an area which is beyond the purposes of this paper.

specific facts about their desires in ordinary life. How else could the parties be certain that among the goods chosen in the original position there are goods which would be desirable in ordinary life? The general knowledge of human psychology could tell the parties little or nothing about the psychology of people in ordinary life. This, coupled with the fact that the large index of goods chosen in the original position may include a wide variety of goods, which would be desirable only under specific conditions in ordinary life, necessitates some knowledge of specific facts.

For example, under ordinary conditions in actual life, a large number of people may value such goods as liberty, equality, the right to adequate nutrition, etc.; but during periods of civil strife, some people may come to value, as primary goods, such things as unquestionable obedience to a leader, and particular means of self-defence. Will the goods chosen in the original position necessarily include the above goods, or some of them? I think that Rawls' claim that the parties in the original position can avoid guessing in their choice of primary goods is not really compatible with the thick veil of ignorance he imposes in the original position.

1.3.2 Qualitative Versus Quantitative Choices of Primary Goods

Here I will discuss the second problem that I raised above, namely, can the parties' choices of primary goods be

qualitative? The reason I raised this problem is the following: will the large index of goods chosen in the original position guarantee that the quality of these goods is equal to the quality expected by them in ordinary life? Rawls attempts to answer to this type of objection in the following way: it may be argued against his position, he says, that "expectations should not be defined as an index of primary goods" but "as the satisfaction to be expected when plans are executed using these goods" (94). Such an argument may be based on the assumption that a person's happiness depends on the way he fulfills his rational desires by using goods the way he finds best, rather than by acquiring the greatest possible index of primary goods. Rawls replies that his theory of justice is not concerned with the use persons make of their primary goods in order to measure or maximize the satisfaction they achieve. "Nor does it try to evaluate the relative merits of different conceptions of the good." Instead, he "assumes" that persons are "able to adjust their conceptions of the good to their situation". As long as their conceptions of the good are compatible with the principles of justice, it is unnecessary to make an interpersonal comparison of the worth of their conceptions (94).

The problem above is the following: Rawls makes an assumption which he does not justify. Is it sufficient to

argue that if a person's conception of the good is compatible with the principles of justice, this compatibility alone provides enough grounds to justify the assumption that a person will be able to adjust his conception of the good to his situation? The two principles of justice do not imply such an assumption. All that they assert are conditions which provide for an equality in justice, and equal social and economic opportunities. Unless, as seems likely to be the case, Rawls' assumption is an arbitrary condition which is introduced to conveniently cover the problem.

1.3.3 When Do Parties Adjust Their Conception of the Good to Their Situation?

The problem that arises from Rawls' argument above is whether the parties adjust their conception of the good to their situation while they are still in the original position, or whether this is done later on when they revert their perspective to that of actual life. If this later case was true, and Rawls seems to imply that it is (91), the problem still remains that in the original position the parties will be ignorant of the type of adjustments they may have to undertake in their ordinary lives. This uncertainty in turn may influence the rationality of their choices of primary goods in the original position. On the other hand, if the parties

were to adjust their expectations while they are still in the original position, this would imply that they had at least some knowledge of the specifics of their ordinary lives.

This, of course, is impossible under the veil of ignorance.

Either way, the problem remains unresolved.

The conclusions drawn from the above three arguments are the following: first, Rawls' claim that the parties in the original position can avoid guessing in their choices of primary goods is not compatible with the thick veil of ignorance he imposes in the original position; second, Rawls does not indicate, in a satisfactory way, how the parties in the original position can make a qualitative choice of primary goods; third, the problem, whether the parties adjust their conception of the good to their situation while they are still in the original position or whether this is done later on when they reverse their perspective to that of actual life, remains unresolved.

1.4 Three Qualifications in Rawls' Theory of Justice

In this section I will give an exposition of three important qualifications that Rawls introduces in his schema of justice. These are the following: (i) in the original position the right is prior to the good; (ii) the contractual society is well-ordered; and finally, (iii) the parties in the

original position make procedural prudential judgments. Rawls, in order to demonstrate that his contractual society provides justice at the level of each person relies heavily on the above.

1.4.1 The Right is Prior to the Good.

The two principles of justice require the parties in the original position to choose those primary goods which would not contravene the conditions of equality of justice and equality of economic and social opportunities. In this way, the two principles define a range of choice of primary goods that persons must respect. This means that the parties in the original position must make sure that each primary good they choose does not violate the concept of right found in each of the two principles of justice.²⁹ The goods which the parties choose shape and determine their rational plans of life. In turn, Rawls defines a person's good as being his personal rational plan of life under reasonably favorable circumstances (92f., 395). Hence, since a person's good must be drawn according to the concepts of right found in the two principles of justice, Rawls states that the concept of right

²⁹"The intuitive idea is this; the concept of something's being right is the same as, or better, may be replaced by, the concept of its being in accordance with the principles that in the original position would be acknowledged to apply to things of its kind" (111).

in the basic structure is prior to that of the good (41).

The parties in the basic structure, as moral persons, are entitled to equal justice.³⁰ According to Rawls, this is a condition which follows from the capacity of the parties to have a sense of justice and a conception of the good in the basic structure. This capacity for justice and conception of the good, endows the parties with a desire to conform to the two principles of justice. Because the parties are equally free, and are moral persons, their rational plans of life are basically the same. Moral personality, according to Rawls, is a sufficient condition to be entitled to equal justice (505), for as equal and moral persons, the parties will accord to each other the justice they are entitled to. Hence, Rawls claims that those who give justice in the basic structure are owed justice (510).

1.4.2 Well-Ordered Society

As moral persons, the parties will necessarily seek justice above everything else. In the original position, the parties accept the priority of the right over the good. They do so, because the two principles of justice in the original

³⁰ "Moral persons are distinguished by two features: 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" (505).

position are rational, and in their rationality is implicit the fact that the parties' adherence to them will necessarily improve the parties' positions (496f.). By accepting the priority of the right over the good, the parties define their association as one of a well-ordered society (5). In a well-ordered society, the distribution of the goods is rational, in a situation that is just (25). That is, the parties by confining their choices of primary goods within the limits of the concept of right, as defined by the two principles of justice, secure the justice of their choices. Similarly, this choice of goods does not prejudice the liberty and social economic equality of anyone else. This assures that the distribution of goods in the basic structure is both rational and just.

1.4.3 Procedural Prudential Judgments

The hypothetical situation of the original position is aimed at setting up a fair procedure of deliberation which will guarantee that the principles of justice, agreed to by the parties in the original position, will be just (136). According to Rawls, the original position is set up in such a way as to provide a fair procedure for the choice of the principles of justice. If this fair procedure is properly followed, it will assure a fair outcome. Examples of the rules that such

procedural judgments would be based upon, could be the following: the priority of liberty, the veil of ignorance, and the priority of the right over the good. Any prudential choices or decisions made in the original position following these rules will assure a just outcome. This procedural aspect of the original position guarantees to the parties that their agreements are free from "arbitrary contingencies or the relative balance of social forces" (120). Hence, the rationality of the parties is understood to be one which makes prudential procedural judgments.³¹

Rawls' aim in the original position is to replace moral judgments by those of rational prudence (94). This eliminates all possibility that previously held moral concepts could influence the parties' choices of principles of justice. On the other hand, rational prudential deliberation limits the reliance on intuitive appeal (44). This latter point is significant as it provides the basis for Rawls' claim that the rational choice decisions made by the parties in the original position act at the same time as sufficient grounds for justifying the validity of the principles of justice (42). However,

³¹Rawls does not state precisely what he means by rationality. His most explicit references to it are: (i) that it is meant in the Kantian sense (40), (ii) "The concept of rationality must be taken as far possible in the narrow sense, standard in economic theory, of taking the most effective means to a given end" (14), (iii) page 143, where it is defined descriptively only.

all appeal to intuition is not eliminated. Rather, Rawls' aim is to reduce rather than eliminate the role of intuition in the choice of principles of justice. For, as he confesses, reliance on intuitive judgments cannot be eliminated (44).

1.5 Rawls' Inability to Identify the Least Well-Off

The purpose of this section is to point out some of the difficulties Rawls is faced with in his attempt to identify the least well-off. Rawls must identify the primary goods that the least well-off find necessary in order to realize their plans of life. To do this, Rawls proposes to identify the least well-off party in the basic structure, but he fails to do so. Consequently, he fails to identify the primary goods that the least well-off would find necessary to fulfill their plans of life.

I present several arguments outlining the reasons that I believe lead Rawls to this failure. I divide these arguments in the following two subsections: in subsection (1), I first of all point out a distinction Rawls makes between representative parties and representative individuals, and then argue that the representative parties in the basic structure could not identify the least well-off representative individual in the basic structure; in subsection (2) I use the difference principle to argue that Rawls could not identify the least well-off group as a whole because this would imply that there is a fixed identifiable number of primary goods that the least well-off group would

desire. The implication that there is a fixed identifiable number of primary goods is contrary to some of the implications of the difference principle. The reason I subdivide my argument in this way is to try to show that while Rawls fails to identify the least well-off, the contractors themselves, in the original position, would be faced with the same difficulty.

The main tenet of the difference principle in the basic structure is that all distribution of goods, and specifically of primary goods, ought to benefit everyone, and specifically the least advantaged group in society. Similarly, all distribution of primary goods should maximize the long-term prospects of the least advantaged (14, 15, 157).³² Although the difference principle allows inequalities in the distribution of goods, this inequality itself is just, as its actual effect is to maximize the welfare of the least well-off. What Rawls in effect assumes is that the existence of a hierarchy of welfare in the basic structure is unavoidable. The only way to offset this hierarchy of welfare is to require that the greater benefits enjoyed by those better off should be a condition for the improvement of the welfare of the least advantaged.

³²Rawls introduces the lexical difference principle which says: maximize the welfare of the least well-off, next those right above them on the ordinal scale, until we reach the n-1 social group on the ordinal scale of welfare (83).

The occurrence of this dichotomy between the upper and lower strata of parties in the basic structure, according to Rawls, is due to the natural fact that people in actual life are genetically different and are endowed with proportionally varying capacities. Similarly, some people in actual life are born in a family or environment which favors their starting places in society more than others (96). The differences in genetic endowments or favored family and environment are not, in themselves, just or unjust. These are natural facts. The injustice attributed to genetic endowments or favored family and environment is rather the result of how these differences are used for egocentric purposes (102). The difference principle, however, offsets the above uneven distribution by requiring differences to be held as a common asset for the benefit of all. Thus, the most favored parties in the basic structure are allowed distributive benefits if such an allowance necessarily implies a continual increase of benefits for the least well-off (82, 158). At the same time, the distributive assets in the basic structure should be such that a loss by those better off should imply a corresponding loss to the least well-off, and vice-versa. All this is to take place in the basic structure under conditions which allow each person to seek to maximize his personal good. According to Rawls, each person should seek to maximize his personal

good. According to Rawls, each person should seek to maximize his personal good regardless of any altruistic motives, that is motives aimed at benefiting the rest of the social strata. This finally, according to Rawls, confirms the status of the difference principles as a principle of mutual benefit (102):

The problem for Rawls, at this point, is to identify the least well-off. He must show that the difference principle is applicable at the level of the least well-off if he is to justify the claim that justice is rendered at the level of each person. Rawls' reasoning seems to be the following: the expectations of persons in the original position are defined as the index of the goods that representative individuals can look forward to (92). The difference principle states that social and economic inequalities must be to the advantage of the least well-off representative individual. Rawls "assumes" that the difference principle can define the least favored members of society. Since we do not know how disadvantaged the least well-off are, the theory of justice need not define their "cardinal measure of welfare"; but once we can identify this group, we can take "their ordinal preferences . . . as determining the proper arrangement of the basic structure" (396). However, Rawls indicates that he has no clear method to help identify the least well-off

representative individual (98).

1.5.1 Representative Parties and Representative Individuals.

I think that among other problems, Rawls' failure to identify the least well-off is the result of several problems that arise in his theory of justice. The first problem is the distinction he makes in the original position between representative parties and representative individuals.³³ The persons who enter into the contract in the original position are members of representative parties (4). Each party represents the interests and points of view of a certain section of society in ordinary life. By submitting to the veil of ignorance, they lose all their subjective contingencies of ordinary life and become hypothetical persons. At certain points in the theory of justice, Rawls introduces the notion of a representative individual in the original position (54, 91, etc.). The question here is whether there are differences, if any, between Rawls' notion of representative parties and representative individuals. I think that there are.

First, the parties are groups of representative persons

³³ Whenever Rawls uses the word "individual" in his theory of justice, he always means a hypothetical representative individual (54, 92ff., 108, 110, 115, 119, etc.). He introduces the theory of the original position specifically to disbar non-representative individuals who would enter the contract carrying with them their personal prejudices.

of equal rationality who serve a single set of points of view. Representative individuals appear to be singular members from among the representative parties (97f.). Second, each party is made up of persons of equal rationality, equal capacity for justice, and the same rational plan of life. Under the veil of ignorance, they constitute a unit which reasons and acts alike. A representative individual appears to have an idiosyncratic rational plan of life and appears to think and act according to the dictates of his personal interests.

The above differences become more emphatic when, in S18, S19, Rawls attempts to extend the principles to extend the principles of justice adopted by the representative parties in the original position to the level of representative individuals in the original position under the veil of ignorance. The problem until S18, S19, was that while we knew how representative parties were expected to act under the contract, this was not known at the level of the representative individual.³⁴ In S18, S19, Rawls states that all the principles of justice adopted by the parties in the original

³⁴I do not wish to suggest that there are no problems in what Rawls had to say about representative parties. However, to discuss this problem I would have to go beyond the scope of this thesis.

position should be equally valid at the level of each representative individual. In doing so Rawls uses the notion of a 'representative individual' and a 'representative person' synonymously (90-95).

From the above considerations, I think that Rawls does not use 'parties', 'individuals' and 'persons', as synonyms. The above notions are introduced into the theory of justice for specific theoretical purposes as I will indicate below. The problem here is whether Rawls can extend the theory of justice from the level of the contracting parties to the level of the representative individual. I think that he cannot for the following reason: Rawls specifically introduces the representative parties under the veil of ignorance to eliminate all possibility of judgments that would be made from personal points of view and from psychological contingencies. Since the parties act as a collective rationality to eliminate all possibility of personal prejudice, a representative individual is not likely to achieve the same level of impartiality. Being an individual, even though a representative one, his aims and interests are more specific and matter of fact, thus different from those of the party as a whole. For example, a representative individual trying to secure a large index of primary goods may come to realize certain personal needs which, as the member of a uniform party,

he would have no way of realizing.

It seems that the representative individual plays two roles in the basic structure. On the one hand, he is a member of a representative party; on the other, he is a representative of himself. In such a situation, it is probable that, while as a member of the party he would make a certain decision, these decisions however may conflict with his personal interests. That is, he may find out that his plans of life do not fit under the guidelines set by the party. In such a case, as he is committed to advance the index of his personal goods, he may come to prefer his own interests rather than those of the party as a whole. Or, if he submits to the guidelines set by the party, he may find his personal rational plan of life frustrated.

The above distinction between representative parties and representative individuals, I think, has some bearing on Rawls' failure to identify the least well-off person in the basic structure. The parties under the veil of ignorance must identify the least well-off representative person. They can identify the least well-off person only by identifying his ordinal preference of primary goods. As parties, however, they are dispossessed of all knowledge relating to particular persons. Moreover, as a person is a representative of a certain party of persons, he will possess desires and aims in

life which the representative parties are barred from knowing. Even if the parties were to draw in broad outline the general aims and desires of the least well-off person, being ignorant of his psychological peculiarities, the parties may frustrate his plans of life by drawing for him one set of ordinarily selected primary goods over another.

1.5.1.1 Identification of the Rational Plan of Life of the Least Well-Off Person

The above argument can be repeated in terms of the rational plan of life of the least well-off person. The parties, in order to be able to determine the ordinal preferences of the primary goods of the least well-off person, must first of all identify his rational plan of life. However, the parties under the veil of ignorance can determine the rational plan of life of other parties only, not the rational plan of life of individuals in their numbers. This is because individuals represent specific points of view and desire specific primary goods. The representative least well-off individual has idiosyncratic needs and desires in life; hence he chooses primary goods that satisfy the idiosyncrasy of his rational plan of life. The parties, on the other hand, have general plans of life, and their choice of primary goods is aimed at satisfying a wide variety of plans of life among

the plans of life of the representative persons in their numbers.

There is a further difficulty at this point. Rawls seems to connect the personality of the representative individual with his rational plan of life. He seems to imply that a person's rational plan of life is the formative basis of his personality (408). If this were the case, then the problem of identifying the rational plan of life of the least well-off turns into the more specific problem of identifying his personality; but this becomes the more impossible because under the veil of ignorance, the parties are specifically disbarred from knowing the personality (i.e., traits and character) of any person.

1.5.2 Identification of the Least Well-Off by Using the Difference Principle

Here I would like to present a second argument relating to Rawls' failure to identify the least well-off. As we have seen above, Rawls does not provide sufficient basis for an identification of the rational plan of life of the least well-off person. I will now examine whether Rawls could identify the rational plan of life of the least well-off group as a whole by using the difference principle (98). We begin the discussion by asking the following question: can the least

well-off be represented in terms of unifying interests?

This is suggested by consideration of both parts of the dif-

ference principle. From the first part, "Social and econo-

mic inequalities are to be arranged so that they are . . .

to the greatest benefit of the least advantaged . . .", we

can deduce that the unifying interests of the least well-off

are to derive the greatest benefit from all social and eco-

nommic inequalities. From the second part, "Social and econo-

mic inequalities are to be arranged so that they are . . .

attached to offices and positions open to all under conditions

of fair equality of opportunity", we deduce that the unifying

interests of the least well-off are to attain the best offices

and positions that are compatible with the social and economic

inequalities with which they are faced.

Now Rawls indicates that at least some of the ine-

qualities are imposed on the least well-off by those better-

off. Accordingly, the aim of his theory of justice is to

minimize this violation in the social and economic life of

the least well-off. Rawls claims that in a perfect society,

i.e., one of perfect equality and rationality, inequalities

would not exist. It follows that the society he is consider-

ing is one of imperfect rationality. The problem then is

whether imperfect rationality is due to the acts of those

better-off, or due to the acts of all the members of the

contractual society. A discussion of this point is not attempted by Rawls for obvious reasons. It is obvious that the inequalities are not imposed by the least well-off on themselves. The choice, of imposing inequalities on the least well-off, falls upon the better-off, as Rawls does not maintain that all inequalities are due to the social and economic schema of society (S17). It would be possible then that those better-off deliberately impose at least some inequalities on the least well-off; or, the least well-off suffer inequalities because of some shortcoming in the rational plan of life of the better-off. Both of the above cases would indicate imperfect rationality on the part of those better-off. These considerations, however, leave the rationality of the least well-off undefined.

Rawls tries to overcome the above difficulty by postulating a disinterested rationality in the basic structure. That is, all the parties in the basic structure would try to improve their positions without taking any interest in each other. However, the difference principle postulates that economic and social welfare is to be achieved specifically by curtailing conflicting interests. On the part of the least well-off, their economic and social welfare depends directly (a) upon their successful curtailment of the conflict of interest between themselves and the better-off, (b) upon their

successful ordering of the rational plan of life of the better-off, and (c) upon the imposition of certain procedures (e.g., that of benefits to be derived by the least well-off from an inequality) in the social and economic domains. The point here is that the difference principle provides two rational principles which are supposed to order the rational plans of life of the representative parties; but the difference principle, far from discouraging rational conflicting interests (for example, the difference principle directs the least well-off to improve their welfare precisely by overriding the interests of the better off), encourages them as the only criteria for equality, at the level of each person. For example, while the condition of disinterested rationality directs the parties to improve their positions without taking any interest in each other, the difference principle directs the least well-off to achieve equality by pointing their attention specifically on the interests of the better off. Surely this does not imply the level of impartiality meant to be achieved by means of disinterested rationality.

The implication that can be derived from the above argument is that Rawls fails to identify the preferences of the least well-off specifically because preferences are ordered by the conflicting interests within the dichotomy between those who are well-off and those who are not. To speak as though there

is an identifiable set of primary goods that are preferred by the least well-off, does not seem to make sense. The preferences of the least well-off are guided by the conflict of interests within their particular social and economic domains. In other words, Rawls, by means of his two principles of justice, attempts to provide a fixed point of stability, from the point of view of the original position, to guide all social and economic planning. The difference principle, on the contrary, rules out all such stability.

1.5.2.1 Identification of the Rational Plans of Life of the Parties

The above argument can be repeated in terms of the rational plans of life of the parties. To try to identify a rational plan of life is contrary to the difference principle. The rational plans of life of the parties, parties who have a desire to achieve for themselves a greater index of primary goods possible, depends upon the conflicts of interests within the social and economic divisions. The plan of life of any party depends upon the successful curtailment of the plans of those who are prone to take advantage of existing inequalities. Rawls considered a rational plan of life as a guide to social and economic planning. The theory of justice itself seems to make a rational plan of life subject to the temporal

conflict of interests in the basic structure. Far from having identifiable and stable rational plans of life, as Rawls wishes the parties to have, the parties have rational plans of life which change, and are guided, not from fixed points of interests, but rather from a changing environment of conflicts and interests within the social and economic strata.

1.6 The Choice of the Principles of Justice

In this section I will argue that the parties in the original position do not choose the principles of justice; they only assent to the choices presented to them as conditional to their entry into the contract. The distinction I want to point out is between (a) the free and unconditional rationality that Rawls implies the parties possess, and (b), the rationality which assents to the right choices presented to them. The reason I present this argument is to try to show that Rawls' claim that the two principles of justice are objective is not as clear as he assumes it to be.

As we have seen in Subsection 1.5, Rawls confines primary goods to the area of rational choice. Primary goods are those things that rational persons desire above all else. That is, if we were to examine a set of primary goods judged necessary by the parties in the original position, we would find that to desire them is rational, for the particular

choice of the goods themselves indicates that desiring them is rational. What Rawls does not show, however, is what particular indicative factors enter in the rationality of the choice of one set of primary goods over another. His only qualification is that the rationality of the choices the parties make in the original position is congruent with the rationality of the principles of justice. Rawls seems to suggest that there exists an objective set of some primary goods that will be chosen in the original position, irrespective of temporal factors in ordinary life. He does not however specify the basis for the objectivity of these goods. He tells us only that the difference principle will be violated in their absence. What is important though is that Rawls seems to associate the parties' claim to rationality with their choices of certain primary goods. He also seems to suggest that the types of goods the parties would choose will be an indicative factor of their rationality.

Now, Rawls does not suggest that persons in the basic structure have an unfailing ability to choose the necessary rational and just primary goods; otherwise the two principles of justice would be superfluous. What he seems to suggest is that the two principles of justice and the rationality of the parties enable the parties to choose the necessary primary goods without failure. In other words, the parties'

rationality alone does not necessarily provide them with a procedural capacity for valid rational choice. The parties' rationality provides the parties only with a rationally assertive capacity to agree to those goods dictated by the two principles of justice. However, if the parties' rationality is only assertive and they use it only to affirm the right choices made for them, this seems to indicate that in the original position the parties do not choose the principles of justice but only assent to their rational validity.

That the parties in the original position do not choose the principles of justice but only assent to their rational validity, seems to tie in with some of the implications of Rawls' theory of justice. For one, the representative parties in the original position do not choose the principles of justice but rather assent to their inherent rationality. Rawls justifies this by the qualification that, even if the parties were to be given a choice from a variety of principles, they would, in effect, choose the two principles of justice. This, I think, indicates that the rationality of the parties is not a free choice type of rationality, but rationality to affirm the right choices.

The restricted form of rationality possessed by the parties has the following consequences. For Rawls, the basic freedom of the person is founded upon the person's rationality;

but, with the restricted rationality Rawls seems to imply, the freedom of the person in the basic structure appears to be questionable. On the other hand, Rawls claims that the two principles of justice are objective as they would be chosen unflinchingly in the original position; however, as it is argued above, in the original position the two principles of justice are not chosen freely by the parties but are made to be chosen as a precondition to the parties; entry into the contract. Thus, the objectivity of the principles of justice does not appear to be that obvious.

1.7 The Difference Principle as Arbitrator Between the Better-Off and the Least Well-Off

According to Rawls, the difference principle implies that social and economic structures within the basic structure should be such that any changes in the fortunes of the least well-off, imposed by those better-off, should reflect a corresponding change in the fortunes of the better-off (S12, S13, 102ff.).³⁵ By this direct relation of fortunes within the social strata, Rawls expects that any violations of the rights of the least well-off by corresponding hierarchical factions in society, will be deterred. Principle A is a procedural one, one which will be valid under all circumstances

³⁵ I will refer to this as principle A.

in the contract. Principle A appears to be one of the bases for the effective application of the difference principle (S12, S13). The difference principle states that all social and economic inequalities ought to be to the greatest benefit of the least well-off. Principle A guarantees that inequalities will, in effect, benefit the least well-off by making it impossible for those better-off to use inequalities for their own benefit alone. Principle A further guarantees that all social and economic changes will affect the whole cross-section of the social and economic strata.

On the occasion of an inequality which is to work for the benefit of the least well-off, there is the following ambiguity: we may have an inequality at the expense of the least well-off; but, in effect, according to the difference principle, it ought to be to their maximum benefit. But, this inequality may cause adverse effects in the social strata initiating it. Principle A, being a procedural one, will invariably apply in the occurrence of all inequalities. However, what principle A indicates is, in effect, that it should become effective only on the imposition of an inequality by an identifiable group of persons, that is, in case there was an economic inequality due to a non-identifiable group in the contract, principle A would nonetheless be effective.

Rawls seems to escape the above objection by implicitly

assuming that all inequalities can be traced to identifiable parties in the basic structure. Suppose this were the case. Then according to the difference principle, all inequalities in the basic structure ought to benefit the least well-off. However, the better-off, while imposing an inequality in the social structure, would immediately, as a consequence, suffer from it. According to Rawls, social and economic inequalities are inevitable even in a near perfect contractual society. Then the only way those better-off could act on inequalities, if the difference principle is to have any effect at all, is in the presence of supererogatory acts, that is, acts directed specifically to benefit the least well-off. However, this is impossible; for according to Rawls, each party tries to enhance its index of primary goods without taking any interest in other parties.

The difficulty above is the result of the implicit assumption made by Rawls that, due to social stratification, certain inequalities ought to occur if the least well-off are to improve their expectations. By the rational application of these inequalities, the difference principles will eventually move those least well-off to a position better-off (151ff., 64ff.); but, of course, this is not possible because principle A, being procedural, specifically forbids this undertaking, as inequalities aimed eventually for the benefit of the least

well-off may be to the immediate benefit of those better-off. The point of my argument here is the following: Rawls, by means of the difference principle (and its implications, e.g., principle A) wants to turn inequalities in the basic structure to the benefit of the least well-off. He tries to do this by introducing the procedural principle A. However, I argue that inequalities in the basic structure can have long or short term effects. Principle A, being a procedural one, does not provide us with a means to distinguish the short or long term effect of an inequality.

Rawls tries to get around the above difficulty by means of the veil of ignorance. As we have seen, under the veil of ignorance the parties cannot identify themselves. Being objective, they will take only such actions as will be to the benefit of the least well-off. These actions are taken on the basis of prudential judgments. As we have seen, however, on the basis of the general hypothetical knowledge the parties possess, prudential judgments are hard to justify. The dilemma we are thus faced with is that Rawls, in order to justify his social structure, introduces prudential judgments, but these prudential judgments under the veil of ignorance are hard to justify.

CONCLUSION

In the introduction to this paper, we saw that Rawls introduced two principles of justice.³⁶ He introduced these two principles in order to construct a social contract structure. The social contract structure was to be just at the level of each contractor. In Chapter I, I discussed two of Rawls' theoretical devices used to ground his social contract theory in a just structure. These were the basic structure and the veil of ignorance. In Section 1 of Chapter I, I gave three possible interpretations of the basic structure. I concluded that a definitive interpretation of the basic structure is impossible. My reason for this conclusion was that Rawls did not discuss to an adequate extent his concept of the basic structure. In Section 2 of Chapter I, I examined whether Rawls justified the veil of ignorance that he thought was necessary on the part of the contractors. With Hare, I argued that Rawls' veil of ignorance was too thick. Rawls, by proposing the thick veil of ignorance, takes too many things for granted. To conclude the chapter, I argued, with Raphael, that under the veil of ignorance, some knowledge of facts from ordinary life was unavoidable.

³⁶

Page 2, above.

In Chapter II, I examined some of the reasons that lead to Rawls' inability to identify the least well-off in the basic structure. I argued that while Rawls failed to identify the least well-off, the contractors themselves were faced with a similar inability to identify the least well-off in the basic structure. Failing to identify the least well-off, Rawls was unable to show that in his contractual society the least well-off would receive a fair share of the goods they desired. To conclude the second chapter, I presented two separate arguments. In the first, I argued that the contractors were unable to choose the principles of justice; they only assented to the choices imposed on them as conditional to their entry into the contract. The purpose of this argument was to question Rawls' claim that the two principles of justice were objective. In the second argument, I tried to show that while Rawls claimed that the difference principle was aimed to secure the welfare of the least well-off, this could not be done unless those better-off acted on behalf of the least-off.

Rawls' book A Theory of Justice is a very complicated work. This is due to the multiplicity of topics discussed, its length, and the great number of intuitive notions introduced in it. However, Rawls' book, I think, is of value because of the problems it raises (some of which have been

discussed in this thesis). Whatever weaknesses it may have are foreshadowed by Rawls' fresh outlook on some of the classical problems in moral theory.

BIBLIOGRAPHY

BOOKS

- Gough, J.W. The Social Contract. 2nd ed. Oxford: At the Clarendon Press, 1957.
- Hart, H.L.A. The Concept of Law. Oxford: At the Clarendon Press, 1961.
- Kant, I. Critique of Pure Reason. Norman Kemp Smith, tr. New York: Macmillan, 1929.
- _____. Groundworks of the Metaphysics of Morals. H.J. Paton, tr. New York: Harper Torchbooks, 1956.
- Mill, J.S. Considerations on Representative Government. Chicago: A Gateway Edition, 1962.
- _____. On Liberty. New York: The Library of Liberal Arts, 1958.
- _____. Utilitarianism. New York: The Library of Liberal Arts, 1957.
- Rawls, J. A Theory of Justice. Cambridge: Harvard University Press, 1971.
- Ross, W.D. The Right and the Good. Oxford: At the Clarendon Press, 1930.
- Rousseau, J.J. The Social Contract. Maurice Cranston, tr. Penguin Books, 1968.
- Sidgwick, H. The Methods of Ethics. 7th ed., London: Macmillan, 1963.

ARTICLES

- Arrow, K. "Some Ordinalist-Utilitarian Notes of Justice", The Journal of Philosophy, Vol. LXX, No. 9, 1973: 245-263.

- Braybrooke, D. "Utilitarianism With a Difference: Rawls' Position in Ethics", Canadian Journal of Philosophy, Vol. III, No. 2, 1973: 303-331.
- Bates, S. "The Motivation to be Just", Ethics, Vol. 85, No. 1, 1974: 1-17.
- Campbell, R. "Theory of Justice. By John Rawls", Dalhousie Law Journal, Vol. 1, 1973: 210-223.
- Choptiany, L. "A Critique of John Rawls' Principles of Justice", Ethics, Vol. 83, No. 2, 1973: 146-150.
- Copp, D. "Justice and the Difference Principle", Canadian Journal of Philosophy, Vol. VI, No. 2, 1974: 229-240.
- Eshete, A. "Contractarianism and the Scope of Justice", Ethics, Vol. 85, No. 1, 1974: 38-49.
- Feinberg, J. "Duty and Obligation in the Non-Ideal World", The Journal of Philosophy, Vol. LXX, No. 9, 1973: 263-275.
- Flew, A. "Social Virtue and Blind Justice", Encounter, November 1973: 73-79.
- Gordon, S. "John Rawls' Difference Principle, Utilitarianism, and the Optimum Degree of Inequality", The Journal of Philosophy, Vol. LXX, No. 9, 1973: 275-280.
- Hampshire, S. "A New Philosophy of the Just Society", The New York Review of Books, Vol. 18, No. 3, Feb. 24, 1972: 34-39.
- Hare, R.M. "Rawls' A Theory of Justice - I", The Philosophical Quarterly, Vol. 23, No. 91, 1973: 144-155.
- _____ "Rawls' A Theory of Justice - II", The Philosophical Quarterly, Vol. 23, No. 92, 1973: 241-252.
- Harmon, M.M. "Social Equality and Organizational Man: Motivation and Organizational Democracy", Public Administration Review, Vol. 34, 1974: 11-18.
- Hart, D.K. "Social Equality, Justice, and the Equitable Administrator", Public Administration Review, Vol. 34, 1974: 3-11.

- Hicks, J.H. "Philosophers' Contract and the Law", Ethics, Vol. 85, No. 1, 1974: 18-37.
- Johnson, O.A. "The Kantian Interpretation", Ethics, Vol. 85, No. 1, 1974: 58-66.
- Keyt, D. "The Social Contract as an Analytic, Justificatory and Polemic Device", Canadian Journal of Philosophy, Vol. VI, No. 2, 1974: 241-252.
- Lyons, D. "Rawls Versus Utilitarianism", The Journal of Philosophy, Vol. LXIX, No. 8, 1972: 535-545.
- Macleod, A.M. "Rawls' Theory of Justice", Dialogue, Vol. XIII, No. 1, 1974: 139-159.
- Mandelbaum, M. "A Theory of Justice. By John Rawls", History and Theory, Vol. XII, No. 2, 1973: 240-250.
- Nagel, T. "Rawls on Justice", The Philosophical Review, Vol. 82, 1973: 220-234.
- Nisbet, R. "Pursuit of Equality", Public Interest, No. 35, Spring 1974: 103-120.
- Norton, D.L. "Rawls' Theory of Justice: A Perfectionist Rejoinder", Ethics, Vol. 85, No. 1, 1974: 50-66.
- Parkeh, B. "Reflections on Rawls' Theory of Justice", Political Studies, Vol. 20, 1970: 478-483.
- Raphael, D.D. "Theory of Justice by John Rawls", Mind, Vol. LXXXIII, No. 329, 1974: 118-127.
- Rawls, J. "Reply to Lyons and Teitelman", The Journal of Philosophy, Vol. LXIX, No. 18, 1972: 556-557.
- "Some Reasons for the Maximum Criterion", American Economic Review, Vol. 64, 1974: 141-146.
- Shue, H. "The Current Fashions: Trickle-Downs by Arrow and Cross-knits by Rawls", The Journal of Philosophy, Vol. LXXI, No. 11, 1974: 319-327.
- Teitelman, M. "The Limits of Individualism", The Journal of Philosophy, Vol. LXIX, No. 18, 1972: 545-556.