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**Justice as Fairness and
the American Welfare
Reform Debate**

**Lynette A. Whitfield
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Throughout American history, the problem of poverty has been a controversial moral and political dilemma. Unfortunately, the majority of persons living in poverty are children, who are unable to change their situation. According to the 1986 Current Population Survey, 60.35% of the persons living in poverty were under the age of 18.¹ Social policies indicate that policy makers sense a moral obligation to provide some sort of material assistance to the needy. However, with the exception of two states, welfare benefits are not sufficient to raise a family above the poverty line². The public consensus is that current welfare policies are in need of reform, but there is little agreement about how it should be done.

Contemporary theories of distributive justice have also addressed the issue of the distribution of basic goods and services to the least advantaged in society. These theories range in scope from strict egalitarianism to desert-based principles.³ In John Rawls' *A Theory of Justice*, he proposes a theory of distributive justice which he calls justice as fairness.⁴ Rawls' theory concentrates upon the basic structure of society and the way in which social institutions regulate basic rights and duties. Rawls maintains

¹ Beyond Welfare: New Approaches to the problem of poverty in America. Ed. Harrell R. Rodgers, Jr. New York: M.E. Sharpe, Inc., 1988. p. 7.

²Committee on Ways and Means, U.S. House of Representatives, *Overview of Entitlement Programs: 1994 Green Book*, Washington, D.C.: U.S. Government Printing Office, 1994. P. 366.

³Strict egalitarianism demands that each person should hold the same level of material goods and services. In contrast, desert-based principles of distributive justice assert that people deserve certain material goods and services in accordance with their contribution to society.

⁴Rawls, John. 1971. A Theory of Justice. Cambridge, MA: Harvard University Press.

that a distribution of primary social goods within a society must be done in order to maximize the position of those who are the worst off in society.⁵ Although Rawls' theory of justice represents an abstract description of a just society, I maintain that this theory provides an excellent theoretical framework with which to analyze the reformation of the current American system of public assistance.

In my examination distributive justice and public assistance benefits, I will take the following path. First, I will present an overview Rawls' theory of justice, concentrating upon the distribution of primary social goods in accordance with the two principles of justice established within the original position. In an examination of the first principle of justice, I will also present Rawls' distinction between equal liberty and the worth of liberty. This distinction is important as it relates to the inequality of the worth of liberty to the least advantaged members of society. In understanding the second principle of justice it is necessary to examine the definition of primary social goods, as well as Rawls method of fairly distributing these goods. I will then contrast Rawls' justice as fairness with the utilitarian description of a just society. I will also present the egalitarian implications of Rawls' theory as they apply to current welfare reform issues. By placing my examination of the American welfare system within the theoretical framework of justice as fairness, I will illustrate the benefit of this theory in the analysis of the allocation of resources to alleviate poverty, homelessness, and other afflictions of the poor.

⁵This distribution must be done in accordance with a principle of equality. A discussion of this principle can be found later in this paper.

In John Rawls' A Theory of Justice, he seeks to incorporate the concept of equality with an extensive theory of justice. Rawls refers to his theory of justice as "justice as fairness."⁶ By using this title, Rawls is not asserting that justice and fairness are the same thing, but rather that the principles of justice are determined within an original conceptual framework that is fair. This original framework is called the "original position of equality," and is a hypothetical situation in which rational persons, acting as agents on behalf of the concrete members of a society, choose the principles of justice behind a "veil of ignorance."⁷ Rawls maintains that decisions made in the original position are fair because within the veil of ignorance, people are not aware of their social status, natural abilities, intelligence, personal conception of the good, individual psychological features, or their age. In addition, Rawls explains that behind the veil of ignorance, people are also ignorant of the particular facets of their own society.

Rawls maintains that all members persons would be similarly situated within the original position and the principles chosen would be those which are best for the entire community; because no one would be aware of their particular situation, there would be no way in which a person could decide upon a principle of justice in such a way that it would be to her/his advantage. Fred D'Agostino explains the impartiality that Rawls' theory aims to achieve with the following analogy:

My agent A cannot hold out for some social settlement that favors people with those characteristics; s/he doesn't know what they are. S/he will therefore have to protect my interests, as s/he must as

⁶Ibid., p.12-13.

⁷Ibid., p. 12.

their trustee, only by holding out for a social settlement in which no one's interests are given short shrift.⁸

This does not mean, however, that people in the original position are completely ignorant of any facts about society. On the contrary, Rawls contends that the people in the original position are knowledgeable about the general aspects of human societies, such as economics, political theory, psychology, sociology, etc. Without this general knowledge, they would not be able to make informed decisions about any principles of justice, nor would they be able to gauge the implications of their decisions.⁹ In addition, the agents within the original position would not see themselves as individuals isolated from society. Instead, they would view themselves as related to and responsible for the subsequent generations of persons within that community.

Rawls contends that because the agents within the original position would be similarly situated, there is no reason for an individual agent to expect more than an equal share of social goods and liberties.¹⁰ Therefore, Rawls asserts that agents within the original position would first decide upon a principle of equality. This first principle dictates that, "Each person is to have an equal right to the most extensive basic liberty

⁸D'Agostino, Fred. 1996. "Original Position." Stanford Encyclopedia of Philosophy (23 Feb. 1996): 5 pp. Online. Internet. 18 Mar 1997.

⁹Rawls, p. 137-8.

¹⁰Because the agent has no knowledge of her/his social or economic status, agreeing to a principle that would divide social goods un-equally would not be rational. Rawls contends that no rational person would agree to anything less than an equal share of social goods and basic liberties. (Rawls, p. 150)

compatible with a similar liberty for others.”¹¹ In addition, Rawls maintains that a second principle would be adopted by agents within the original position. The second principle states, “Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”¹²

Rawls defines the liberties guaranteed by the first principle as, “...roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech, assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.”¹³ The second principle is primarily concerned with the distribution of wealth and income, and the structure of social institutions. Rawls explains that the first principle always takes priority over the second. These two principles of justice are specific points of a more general theoretical framework which dictates that, “All social values...are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.”¹⁴ Inequalities in basic liberties cannot be justified by any greater economic advantages, whereas social and economic inequalities may be justified by adherence to the first principle.

¹¹Rawls, p. 60.

¹²Ibid., p. 60.

¹³Ibid., p. 61.

¹⁴Ibid.

Because of his emphasis upon the basic structure of society and social institutions, Rawls limits his discussion of liberty to the legal and constitutional restrictions upon liberty. He explains that for the purposes of this examination, liberty can be defined in regards to three areas: (1) the free agent, (2) the restrictions that the agent is free from, and (3) what the agent is free to do or not to do.¹⁵ Consequently, a person is at liberty to perform an action [X] when that person is free from restrictions to either perform X or not to perform X, and when this freedom is protected from the interference of other individuals. In addition, Rawls contends that there must be a legal duty, on the part of the government and other individuals, not to interfere with a person's liberty to perform X. This legal duty of non-interference is not valid unless the liberty in question falls within the boundaries of the first two principles of justice. Therefore, because an action such as slavery would not be a liberty that satisfies the principles of justice, there would be no legal duty of non-interference.¹⁶

Rawls asserts that basic liberties must then be examined as a system, rather than individually evaluating each one. This approach follows his structural concept of justice and is necessary because liberties often conflict with each other. He notes that the worth of a particular liberty is dependent upon the boundaries of other liberties. A clear example of this can be found in the freedom of assemble. While Rawls lists this as a basic liberty, he would distinguish this freedom from specific rules of conduct such

¹⁵Ibid., p. 202.

¹⁶Ibid.

as mob action, obstruction, or violent protest.¹⁷ These specifications restrict the freedom of assembled groups, but are necessary so that all individuals are able to benefit from this freedom.¹⁸

Although philosophical discussions on the subject of liberty often concentrate on the definitive meaning of liberty, Rawls chooses instead to concentrate upon the value or worth of liberty. He maintains that equal liberty and the worth of liberties are two distinctly different concepts. Rawls views liberties as the complete system of equal citizenship, whereas the worth of liberties are to be weighed in accordance to a groups ability to advance within this complete system. Assume for example, that there is a basic liberty to interstate travel; although everyone would be entitled to this liberty, only those who possessed the means to travel would be able to exercise this liberty. Consequently, the worth of this specific liberty would be greater for those who had the means to enjoy it, in comparison to those who did not possess the same means to interstate travel. Therefore, although the first principle of justice calls for an equal right to basic liberties, it does not require that these liberties carry an equal worth among individuals.

Rawls considers the first principle to be clearly stated and easily interpreted. However, the ambiguity of the language in the second principle leads to interpretive difficulty. Specifically, Rawls asserts that the phrase "everyone's advantage," contains

¹⁷The freedom of assembly example is not to be confused with civil disobedience, which Rawls defines as public non-violent political activity. Later in the text, Rawls develops a three point justification for civil disobedience and the duty of justice.(Rawls, p. 371-377)

¹⁸Rawls, p. 203.

two possible interpretations. The phrase, "everyone's advantage" can either be interpreted as a *principle of efficiency*, or as a *difference principle*. The principle of efficiency would dictate that social structures are designed in such a way that there is no way to improve the socioeconomic situation of one group in society without declining the socioeconomic condition of another group. This principle is problematic when applied to situations in which there is an unequal distribution of primary goods and liberties. For example, in holding with the principle of efficiency, the exploitation of low wage labor for the profit of the employer would be deemed efficient; there would be no way to reform such an institution without declining the socioeconomic condition of the employer.¹⁹ Therefore, Rawls finds that the principle of efficiency is defective in that it would allow for situations that are efficient, rather than just.

Interpreting this point as a *difference principle* would mean that society is to be structured so that the least advantaged in society can reasonably expect to benefit from the inequalities resulting from the basic social structure. In order for the difference principle to produce situations that are just, it is first necessary to ensure that society is structured in such a way that there is a fair equality of opportunity. This equality of opportunity would guarantee that persons with the same abilities and motivation have an equal chance of holding institutional positions of power, regardless of the socioeconomic position that they came from.²⁰ Rawls refers to this interpretation as the democratic interpretation of equality, because it combines a fair equality of opportunity

¹⁹Ibid., p. 71.

²⁰Ibid., p. 83.

with the difference principle. Rawls explains that, "This principle removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged."²¹

Once the interpretive boundaries of the second principle of justice are established by use of the difference principle, Rawls then examines the manner in which social goods should be distributed. He asserts that the distribution of social goods and basic liberties is a purely procedural issue. He explains that perfect procedural justice involves two essential properties.

First, there is an independent criterion for what is a fair division, a criterion defined separately from and prior to the procedure which is to be followed. And second, it is possible to devise a procedure that is sure to give the desired outcome.

The main assumption is that within the system of procedural justice, there is a method with which to determine what is just, and a set procedure to use to achieve it.²² Rawls maintains that if a society begins with an underlying fair equality of opportunity and designs social institutions that support this equality, then the resulting pattern of distribution satisfies the difference principle. He states, "The intuitive idea is to design the social system so that the outcome is just, whatever it happens to be, at least so long as it is within a certain range."²³ Therefore, as long as social institutions are

²¹Ibid., p. 75.

²²To contrast this point, Rawls uses the comparison of a perfect system of procedural justice, to an imperfect system of procedural justice. An imperfect procedural justice is one in which there is no established procedure that is guaranteed to produce a just outcome.

²³Rawls, p. 85.

structured correctly, the distribution procedures that follow from these institutions are most likely just. However, Rawls notes that it is the principle of fair opportunity that provides stability to this system of distributive justice; without this principle there is no way to guarantee that the distribution of primary social goods follows pure procedural justice.²⁴

Rawls defines primary goods as things which are necessary means to a rational man's desired end. In spite of individual differences in 'life plans', Rawls maintains that there are certain primary goods that are commonly desired by rational individuals. He states, "Greater intelligence, wealth and opportunity for example, allow a person to achieve ends he could not rationally contemplate otherwise."²⁵ The more of these goods that a person has, the greater chance that person has of achieving her/his ends. In the discussion of distributive justice, Rawls focuses upon those primary goods which are regulated by the structure and laws of the institutions of society. He refers to these regulated primary goods as primary social goods because of this connection to social institutions.

A fundamental difficulty with the distribution of primary social goods is establishing a method with which to determine what a fair distribution would be. According to the serial order of the two principles of justice, basic liberties and opportunities are both consistently equal. The only primary social goods that would vary in their distribution are authoritative powers, income, and wealth. Therefore,

²⁴Ibid., p. 87.

²⁵Ibid., p. 93.

Rawls contends that it is necessary to institute an index by which to measure the value of different primary social goods. He states that because of the difference principle, "The only index problem that concerns us is that for the least advantaged group. The primary goods enjoyed by other representative individuals are adjusted to raise this index, subject of course to the usual constraints."²⁶ Therefore, he asserts that in order to ensure a fair distribution of primary social goods, the agents in the original position need only focus upon the ways in which the distribution of such goods affects the least advantaged.

Rawls' justice as fairness implies that on a basic level there should be some areas of equality among persons. There are many moral theories which propose that a just society is dependent upon a certain amount of equality among individuals. Within this group of theories of justice, utilitarianism has remained the subject of contemporary philosophical discussion. Rawls seeks to present an alternative to the utilitarian doctrines that have evolved in the field of social ethical theory. He spends a considerable amount of time contrasting justice as fairness to the classic utilitarian tradition.²⁷ The most obvious distinction is the theoretical difference between the teleological and the deontological approaches to moral theory.

Although there are many different utilitarian theories, one common assertion in

²⁶Ibid., p. 93-94.

²⁷Although Rawls goes into considerable detail in contrasting these two theories, for the purposes of this paper, I have chosen to limit the comparison to two main theoretical differences; (1) the teleological vs. deontological approach, and (2) the use of principles appropriate on an individual basis for the evaluation of a whole society, rather than applying social principles to the individual.

these theories is that an action is right if it maximizes the good. In this assertion, the “good” is defined independently from and prior to what is right. In John Stuart Mill’s utilitarian philosophy, he exemplified this doctrine through what he referred to as the *greatest happiness principle* (GHP). This principle dictates that an action is right in so far as it tends to produce the greatest happiness and is wrong as it produces the opposite of happiness.²⁸ Therefore, utilitarianism can be defined as a teleological ethic which relies upon the consequence of an action to determine whether or not the action is right. Mill contends that the greatest sum of happiness or pleasure is the measure upon which to judge your action. If happiness is to be measured in the context of a community, then individual actions that cause an individual harm, while at the same time producing a greater happiness for the community, would be determined to be “right”.

Justice as fairness is a deontological approach in that it does not determine an action to be right if it maximizes a previously and independently defined good. In other words, it does not rely upon the consequences of an action as a basis for determining what is good. Instead, a principle of equal liberty is agreed to be right prior to any knowledge of what the particular consequences of adhering to this principle would be.

Rawls states,

Hence in justice as fairness one does not take men’s propensities and inclinations as given, whatever they are, and then seek the best way to fulfill them. Rather, their desires and aspirations are

²⁸Mill, John Stuart. 1861. “Utilitarianism.” Classics of Western Philosophy, Third Edition. Ed. Steven M. Cahn. Cambridge, MA: Hackett Publishing Company, 1977. 1063-1104.

restricted from the outset by the principles of justice which specify the boundaries that men's systems of ends must respect...in justice as fairness the concept of right is prior to that of the good.²⁹

To further contrast this theoretical difference between classic utilitarianism and justice as fairness, it is useful to examine the example of slavery. This example provides an illustration of one of the difficulties Rawls finds with utilitarianism and individual liberties. If a vast majority of individuals derived great happiness from the enslavement of a minority of individuals, Mill's greatest happiness principle would determine that slavery was right. However, Rawls finds that such a situation would be incompatible with justice as fairness as it would clearly violate the first principle of equal liberty. Therefore, Rawls maintains that, "...the interests requiring the violation of justice have no value. Having no merit in the first place, they cannot override its claims."³⁰ More specifically, Rawls contends that classic utilitarianism denies any inviolable individual rights. On the contrary, classic utilitarianism allows for an individuals' happiness to interfere with the liberties of others. He contrasts this aspect of classic utilitarianism to justice as fairness by stating, "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override."³¹

Another theoretical difference between classic utilitarianism and justice as fairness is the way in which the principles of a society are evaluated. Rawls contends

²⁹Rawls, p. 31.

³⁰Ibid., p. 31.

³¹Ibid., p. 3.

that on a basic level it is easy to assume that the most reasonable concept of justice is utilitarian. Following the utilitarian doctrine, it is right for a person to advance her/his own ends, in so far as it doesn't affect others. Taking this doctrine further, to the societal level, it would be reasonable to assume that what works for one person could work for an aggregate of individuals. In this situation, the actions of a law maker and an ordinary citizen would be weighted equally; in each situation the actions of the individual determines the allocation of basic liberties and social goods for the whole. Rawls finds difficulty with this point stating, "Utilitarianism does not take seriously the distinction between persons." ³²

In *Liberal Equality*, Amy Gutmann examines the egalitarian implications of Rawls' justice as fairness.³³ She explains that a moral theory is considered to be egalitarian if it, "...on the whole recommends a more equal distribution of goods (broadly defined) and opportunities than exists within the society to which it is addressed by the theorist or by the student applying it at a different time."³⁴ Therefore, Gutmann maintains that when applied to current Anglo-American societies, Rawls' theory has egalitarian implications in both its substance and scope. Gutmann explains that Rawls incorporates a classical liberal position on the equalization of liberties with, "...a potentially radically egalitarian stance on maximizing the worth (or positive side) of

³²Ibid., p. 27.

³³Gutmann, Amy. 1980. Liberal Equality. Cambridge, MA: Cambridge University Press.

³⁴Ibid., p. 2.

liberty to the worst off within any given society."³⁵ In addition, Gutmann contends that once Rawls establishes the first principle of equal liberties, the difference principle implies that absolute equality in the distribution of primary social goods would be an equitable policy. Gutmann proposes that there should be an egalitarian addition to Rawls' first principle of justice. She asserts that in addition to basic liberties there are certain basic goods and services that are also necessary in order for an individual to advance her/his ends. These goods and services would include education and job training, housing and employment, medical care and legal services.

By their nature, both legal and medical care rather frequently require large amounts of money at unpredictable times during most people's lifetimes...Therefore, granting that people within the original position are for good reason risk-averse agents, a strong case can be made either for distributing services in kind or for providing payments tied to the satisfaction of medical and legal needs.³⁶

Gutmann contends that the distribution of legal and medical services would be a rational decision within the original position. This egalitarian addition to the first principle of justice would give welfare rights a higher priority and would provide the means to obtain what she calls a basic effective liberty. This basic effective liberty is defined as the combination of formal liberties with basic welfare rights.

Rawls' theory of justice presents a more holistic approach to social policy-making than the current system seems to provide. Rather than focusing upon the reciprocal interest in providing for and uplifting the status of the poor, policy makers

³⁵Ibid., p. 124.

³⁶Ibid., p. 126.

have instead focused upon the cost-ineffectiveness of current welfare programs. Since individuals are naturally unequal in different areas, Rawls asserts that the members of society who hold a higher economic status must make periodic compensation to those who are in a lesser position. In doing this, those who hold lower positions in society will find their position enhanced. Rawls explains that there is a reciprocal interest in uplifting the status of the lower economic class:

...a society should try to avoid the region where the marginal contributions of those better off to the well being of the less favored are negative. It should operate on the upward rising part of the contribution curve...there is a natural sense in which the harmony of social interests is achieved...Once a society goes beyond the maximum it operates along the downward loping part of the curve and a harmony of interests no longer exists. As the more favored gain the less advantaged lose, and vice versa³⁷.

However, in keeping with the United States Constitution, the right of the individual liberty interferes with Rawls' notion of a fundamental right to the minimum social goods³⁸.

In recent welfare reform proposals, there has been a trend towards restructuring the welfare system by limiting government commitments to the poor while maintaining assistance to the truly needy. This trend reflects a return to the ideas about the worthy and the unworthy poor present during the time of the Elizabethan Poor Laws. The Elizabethan Poor Laws were adopted in the early 1600's in England and traveled to

³⁷ Ibid., p. 104-105.

³⁸ According to Rawls' opportunity principle, individual members of society must contribute to the welfare of the less advantaged. The constitution does not prescribe this contribution as a duty of the individual. Contributing to the well being of others may be viewed as interfering with an individual's right to liberty.

America with the colonists. Under these laws, the unemployed were required to return to their place of origin if they were unable to secure employment elsewhere. There were facilities for the “worthy poor” who were either incompetent or physically unable to work, and work programs for persons who were able to work. Criminal penalties were imposed upon unemployed persons who refused to take part in work programs. In addition, the children of the poor could be taken away from their families and made to work as reimbursement for the cost of their parents’ idleness.³⁹

There has however, been a change in the public’s definition of the unworthy poor. Social insurance programs, which were originally perceived as programs that had been earned through contribution through taxes, have recently become the target of budget cutting reforms. Traditionally, social insurance programs were designed for the worthy poor. However, because of the increase in disability claims, many persons receiving this social insurance are considered to be members of the unworthy poor.

Women have also become the new class of the unworthy poor. Because of the nature and scope of persons receiving AFDC benefits, this public assistance program is often said to encourage the “welfare” lifestyle. AFDC provides cash benefits for parents in low income households, and increases according to the number of children living in the household. Because the majority of children receiving AFDC benefits live in female-headed, single-parent households, many critics of the current welfare system maintain that AFDC benefits are rewarding women for having additional children.

³⁹ LaFrance, A.B. Welfare Law: Structure and Entitlement in a Nut Shell. St. Paul, MN: West Publishing Company. (1979) p. 1-3.

The Personal Responsibility and Work Reconciliation Act of 1996⁴⁰ contains multiple reductions aimed towards reducing the number un-wed and teenaged mothers, as well as discouraging women currently on welfare from having more children. In addition, there has been a resurgence in work incentive programs that aim to enable these women to earn an income and eventually leave the welfare system. The State of Wisconsin recently implemented changes to its state welfare policy and has become a model for national welfare reform. These changes include time limits for individuals receiving welfare benefits, mandatory participation in workfare programs, and a reduction in additional benefits for women currently receiving welfare who become pregnant and have more children. The Wisconsin example has been hailed as a solution to the problem of the increasing number of individuals receiving welfare benefits. However, what the Wisconsin example lacks is a Rawlsian examination of the structural forces influencing unemployment, unaffordable child care, teenaged pregnancy, un-wed motherhood, and the fatherhood-and-flight syndrome

Examining current American welfare reform issues within the theoretical framework of Rawls' justice as fairness, policy makers must first concentrate upon the underlying structure of social institutions. An agent situated within the original position would first ensure that each individual holds an equal right to the most far-reaching basic liberties possible, in as much as can be compatible with a similar liberty for other individuals. Because the United States constitution dictates a principle of equality similar to Rawls' first principle of justice, I maintain that for practical purposes we can

⁴⁰ Public Law 104-193, HR 3734, 42 U.S. 1305.

assume that this principle has been satisfied, at least in theory. When this principle of equality is satisfied, the agent would then examine the social and economic inequalities existing in American society. In an attempt to satisfy the difference principle, recommendations for welfare reform would concentrate upon the measure of inequalities produced by existing social institutions. The current American welfare system would fail miserably because the inequalities are not arranged so that the least advantaged in society can reasonably expect to benefit from them. Instead, the American welfare system has been designed in such a way that the most advantaged in society will suffer the least from existing inequalities.

Until the focus shifts from maintaining the status of the rich, to improving the status of the poor, a Rawlsian distributive justice as fairness will never be realized. The current welfare reform debate has primarily focused upon the unworthy poor, their inability to support themselves, and the burden that the least advantaged place upon the most advantaged in society. Therefore, the implications of examining welfare reform within the justice as fairness paradigm would force the American public to view the systematic institutional failures of public assistance, rather than the failure of individuals to overcome the obstacles that this failed system has put before them.