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The Rawlsian Principles of Justice Reconsidered

by

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The Rawlsian Principles of Justice Reconsidered

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Abstract: Of Rawls's two principles of justice only the second has received attention from economists. The second principle is concerned with the social and economic conditions in a just society. The first principle, however, has largely been neglected. It claims, that all people in society should have equal basic liberties. In this paper Rawls's first principle is characterised in a freedom of choice framework. The analysis reveals conceptual problems of the Rawlsian approach to justice.

JEL classification: D63

1 Introduction

One of the rare examples of a philosophical book that has attracted economists' attention is John Rawls's *A Theory of Justice*. Rawls addresses a number of questions relevant to normative economics. Economists' discussion has focused on the derivation of the principles of justice (e.g. Arrow 1973b), the just savings principle (e.g. Arrow 1973a; Grout 1977; Solow 1974), and most importantly the difference principle. By now, every textbook in public economics introduces the *Rawlsian social welfare function* which has been developed from the difference principle as defined in Rawls's second principle of justice (cf. Hammond 1976).

To begin with, I give a full quote of the two principles of justice.

"First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle

Social and economic inequalities are to be arranged so that they are both

(a) To the greatest benefit to the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

First Priority Rule (The Priority of Liberty)

* I am indebted to John Broome and Ortrud Lessmann for helpful comments.

The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty.

There are two cases:

(a) a less extensive liberty must strengthen the total system of liberty shared by all; (b) a less than equal liberty must be acceptable to those with the lesser liberty.

Second Priority Rule (The Priority of Justice over Efficiency and Welfare)

The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle. There are two cases:

(a) an inequality of opportunity must enhance the opportunities of those with the lesser opportunity; (b) an excessive rate of saving must on balance mitigate the burden of those bearing this hardship." (Rawls 1971, 302f)

While the second principle received tremendous attention from economists,¹ the first principle is hardly mentioned at all. On the face of it, this is no surprise. The second principle's place is at the centre of normative economics, while the first principle seems to be relevant only to political philosophy, politics and the law profession. Rawls himself suggests a division of labour between economics and political philosophy when he proposes a lexical order between the two principles as stated in the first priority rule. The role of economics is strictly within the constraints of the system of basic liberties.

Taking a closer look, however, it is not at all clear why the first principle did not enter the economic debate. As early as 1970 the notion of rights has been brought to normative economics by Amartya Sen's seminal paper. The more recent literature on the value of freedom of choice has also broadened economists' scope beyond traditional welfare economics. But, to my best knowledge, until today no attempt has been made to give a unified account of the *two* Rawlsian principles of justice from a social choice perspective. The next section explains, why this has been the case. Section 3 is an attempt to spell out the meaning of "an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all" (Rawls 1971, 302). Section 4 describes the relationship between the first and second principle of justice. Section 5 concludes.

2 Equal basic liberties in a social choice perspective

There is still an unsettled debate about the notion of rights in economics. Some take rights to be an integral part of normative economics and social choice theory. In this view the allocation of rights is a matter of social choice. Others see rights as "constraints within which a social choice is to be made" (Nozick 1974, 166). Those, like Nozick, who hold the latter

¹ A formal characterisation of the second principle of justice has been provided by Plott (1978).

view are committed to a disciplinary division of labour between political philosophy and normative economics, more precisely, a hierarchical division of labour between the two disciplines: the boundaries of economics are determined by philosophy. This division of labour is not adequate.² Were there no scarce things we desire there would be no such thing as economics; but there would be no such thing as ethics either. It would not make sense to assign rights to anybody, if there were no scarce resources and individuals did not have any mutually incompatible preferences. In a sense, economics is even a more general discipline than ethics. Crusoe living alone on an island has to cope with scarcity. This is where economic investigation starts. There is scarcity, but there is no conflict. Ethics is required when Friday arrives on the island, provided both have conflicting interests.

I shall reject the view that the notion of rights lies outside economics. On the other hand it is not quite clear how to integrate the concept of rights into economics and social choice theory. The very paper that introduced rights to normative economics (Sen 1970) has also revealed the fundamental problem, which thereby arises. Granting a right to (however minimal) liberty to (at least two) individuals in society may be incompatible with the Pareto principle. "The Impossibility of the Paretian Liberal" (Sen 1970) was an attempt to weave the notion of rights into economics; but it failed in this respect, just because it showed that normative economic theory grounded on the Pareto principle could not accommodate such a concept. Before Sen's paper there was no normative economics beyond Paretian welfare economics. This may be the reason, why the notion of rights did not become more popular in normative economics. There was no normative economics other than welfare economics. This continued to be so and has only recently started to change. Here I do not attempt to survey the debate Sen's 1970 paper started.³ Instead I want to go back to Rawls's first principle of justice.

A just society, where everyone is granted a right to equal basic liberties, is obviously incompatible with the Pareto principle given Sen's (1970) result. However, according to Rawls efficiency is not an issue when it comes to basic liberties. Basic liberties should be distributed equally, not efficiently. In the next section, I give a formal characterisation of "the most extensive total system of equal basic liberties compatible with a similar system of liberty for all" (Rawls 1971, 302). Of course, everyone has an intuitive idea what it means that people have equal rights, that people are equally free to do certain things, that everyone enjoys the same liberties. The attempt to make the intuitive notion of equal liberties precise does, however, reveal a problem. Liberties have to be comparable across persons.⁴ According to Rawls liberties are primary goods and a comparison of goods is assumed to be unproblematic. Primary goods are what "every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life." (Rawls 1971, 62) It seems,

² For a more detailed argument see Weikard (1992) and the references therein.

³ For this I refer to Sen (1976) and Wrigglesworth (1985).

⁴ This is discussed in Carter (1995).

however, that a stronger claim is needed to explain why an equal division of liberties should be regarded as just: Liberties are presumed to be wanted by every rational person *with the same strength*. Equal liberties are sufficient as a principle of justice only if liberties are equally important to everyone.

Primary goods fall in different categories. The basic types of primary goods are "liberty and opportunity, income and wealth, and the bases of self-respect" (Rawls 1971, 62). Note that the first principle of justice, which is lexically prior to the second, is about the distribution of liberties while the second principle is about opportunities, income and wealth. Thus, we may well say that the primary goods are hierarchically ordered, liberties being in the top category. Rawls specifies what he regards as basic liberties: "freedom of thought and liberty of conscience; freedom of association; and the freedom defined by the liberty and integrity of the person as well as by the rule of law; and finally the political liberties" (Rawls 1982, 162), which is not meant to be a complete list.

As I explained at the beginning of this section, individual freedom is restricted for reasons of scarcity. Total freedom for all is not feasible. If person i is free to perform some action a , then others are no longer free to perform actions incompatible with a without impinging on i 's freedom. This, I take it, is a general feature of freedom. One may object that it does not hold for freedom of thought. In a sense this objection is valid and everyone can have total freedom of thought. What goes on in person i 's mind is (physically) compatible with any thought process of others. Freedom of thought, it seems, cannot be a matter of conflict. However, a conflict will immediately arise when the issue of consideration is freedom to express one's thoughts. For example, if a group of people meet for discussion, total freedom to express one's thoughts is impossible when the meeting is of finite duration.

3 The economics of basic liberties

Here I discuss two cases. A person may have less than total freedom because resources necessary to exercise freedom are scarce (section 3.1). Furthermore, a person's freedom may be restricted for the sake of others' freedom. (section 3.2). A system of equal basis liberties will be characterised in section 3.3.

3.1 *Scarce resources*

An action which does not restrict any other person's freedom directly may still do so indirectly when the action requires the use of scarce resources. Consider freedom of speech. This will in any relevant sense imply the possibility to be heard. If only one person can be listened to at a time and if time is scarce, the most extensive equal freedom of speech may be to grant everyone the same amount of time to speak while others keep quiet.

In such a case equal liberties can be obtained by equal split of resources. One important qualification is needed, however. The individual cost (in terms of resources) to exercise one's freedom must be same for everyone. This is a reasonable assumption only if individuals are sufficiently equal to each other. In the example of freedom of speech the assumption would apply to a Habermasian ideal discourse. In situations closer to reality the assumption would not apply. We have to adopt a more specific interpretation of "equal freedom of speech", such as "equal opportunity to express one's thoughts in public". Thus, more resources have to be allocated to those who face higher costs of expressing their thoughts.

Two conclusions may be drawn here. (a) To exercise one's freedom may require resources. Whenever this is the case, it is by no means easy to determine which allocation of the relevant resources will imply equal liberty. (b) Having adopted Rawls's principles of justice in conjunction with the first priority rule, a society will possibly be committed to spend vast resources to guarantee the most extensive system of liberties. The priority rule prohibits giving up any liberties for the sake of income or wealth.

3.2 *Allocation of rights*

I now turn to the more interesting case: "liberty and integrity of the person" (Rawls 1982, 162). I take it to mean something like personal liberty as defined by Sen (1976, 217): "there are some personal matters in which each person should be free to decide what should happen". Of course, this definition leaves one question unanswered: what are personal matters? For Sen's purpose – he is concerned with minimal liberty – the definition may be sufficient. He just claims that a personal sphere exists without explicitly saying what it contains. Here, we are concerned with the most extensive system of basic liberties. Applying Sen's definition, this just means that as many things as possible should be left to the individual to decide. The personal sphere should be as large as possible.

There are two problems. Firstly, we have to determine whether an issue belongs to one person's sphere rather than to another's. Secondly, we have to spell out the characteristics of the most extensive system of liberties. I turn to the first problem now, while the second is postponed to section 3.3.

Consider the following example. There are two individuals, denoted 1 , 2 . Each has available for use a blue shirt, b , and a white shirt, w . The only relevant aspect in the world is what shirts the individuals wear. Thus, a social situation is fully described by 1 's and 2 's colour of shirt. We denote a situation where 1 wears a blue shirt and 2 wears a white shirt by (b, w) . Other social situations are denoted in the same way. We say that a social situation has two aspects. A person's freedom is her freedom to determine aspects of the social situation. If person 1 is totally free she may determine all the aspects of the social situation. Of course, this is incompatible with person 2 having any freedom at all. In general, a system of rights allocates

aspects of the social situation to personal spheres of the individuals. With this assumption I follow a game form approach to individual rights (see Gaertner et al. 1992, 173ff).

Which aspect of a social situation, if any, belongs to a person's personal sphere? For this example, an obvious way to allocate aspects to individuals is to grant everyone the right to choose the colour of her own shirt. Obvious as it may be, there is an objection to this idea.

EXAMPLE 1 Suppose preferences of 1 and 2 are as follows.

<i>1</i> 's preferences	(w, w)	<i>2</i> 's preferences	(b, b)
	(b, w)		(b, w)
	(w, b)		(w, b)
	(b, b)		(w, w)

The right to choose one's own shirt's colour determines a game described by matrix (1a). As we know from the preferences, for *1* the choice of *w* dominates the choice of *b*, whereas for *2* the choice of *b* is the dominant strategy. Thus, we should expect the outcome (*w*, *b*).

Now consider a different allocation of aspects to individuals. Everyone is granted the right to choose the other person's colour of shirt. The game form of this assignment of rights is given in matrix (1b).

		(1a)		(1b)	
		2's choice	2's choice	2's choice	2's choice
1's choice	1's choice	(•, w)	(•, b)	(w, •)	(b, •)
(w, •)	(•, w)	(w, w)	(w, b)	(w, w)	(b, w)
(b, •)	(•, b)	(b, w)	(b, b)	(w, b)	(b, b)

According to the preferences given above, *1*'s dominant strategy is to choose a white shirt for *2*, while *2*'s dominant choice is a blue shirt for *1*, yielding the outcome (*b*, *w*) which Pareto dominates outcome (*w*, *b*) obtained in matrix (1a). This simple example reveals that an efficient allocation of rights depends on individual preferences. What belongs to the personal sphere of the individual, is not a matter *a priori* knowledge. The rights assignment of matrix (1b) is superior to that of matrix (1a). As can be seen from the preferences, the individuals take a stronger interest in the other person's colour of shirt than in the own colour of shirt. The rights assignment should take into account this fact. Blau (1975), however, argues that preferences like the ones above should be called 'meddlesome preferences', suggesting that such preferences deserve moral blame. From the example it should however be clear that this is not necessarily so. Everyone in society is better off, if she is allowed to act on her 'meddlesome' preferences.

There is another difficulty. The allocation of aspects of the social situation to personal spheres of the individuals depends on individual preferences, but it may be difficult to determine how.

The assignment of rights is a matter of how the relevant aspects of the world are described and individuated.

EXAMPLE 2 Consider the following pair of preferences, where person 1 is not interested in colours but in uniformity and diversity, while person 2 likes blue.

<i>1</i> 's preferences	<i>2</i> 's preferences	(b, b)
(b, w), (w, b)		(b, w)
(w, w), (b, b)		(w, b)
		(w, w)

If we take the standard assignment of rights (everyone chooses her own colour of shirt) *2*'s dominant strategy is *b*, to which *1*'s best response is *w* (see matrix (2a) below). The outcome is (*w*, *b*).

Since *1* is not interested in colours, a right to choose her colour of shirt does not mean much to her. A right to choose between uniformity *U* and diversity *D* would be more adequate with regard to the structure of her interests. Matrix (2b) shows the game form of this rights assignment. The game form (2b) implements the solution (*b*, *w*). *D* is *1*'s dominant strategy to which *w* is the best reply. This solution Pareto dominates the standard assignment of rights. The full description of the situation is still given by a list of colours. However, the relevant aspect for person *1* is not colour as such, but the combination of colours. Granting a right to choose between *U* and *D* improves the final outcome. It is more efficient than the standard rights assignment. But would it still be possible to argue that both persons have been granted equal rights? While it is possible to argue that the rights assignment of matrix (2a) is at least structurally symmetric, this is no longer the case for the rights assignment of matrix (2b). Also note that it is impossible to grant the right to choose between *U* and *D* to both persons.

(2a)			(2b)		
2's choice	(•, w)	(•, b)	2's choice	(•, w)	(•, b)
1's choice	_____		1's choice	_____	
(w, •)	(w, w)	(w, b)	U	(w, w)	(b, b)
(b, •)	(b, w)	(b, b)	D	(b, w)	(w, b)

There are three conclusion to be drawn from these examples. (1) If it is desirable to have an efficient rights system, the preferences of the individuals should be taken into account. To put it differently, if a rights system is designed to serve the individuals in society, it should take into account what the individuals care about. This is the essence of example 1. (2) An efficient rights system may be unfair. It would be unfair, although efficient, to grant all the rights to one person. Structural symmetry of the rights system may aim at equality of rights. (3) Does structural symmetry of the rights system guarantee the equality of rights? Obviously

it does not. If some individuals do and some don't care about having such rights, symmetry will not imply equality. Again, preferences matter. This difficulty may become even worse if individuals structure the world differently. Without agreement about what counts as a relevant aspect structural symmetry cannot be justified. But can we define a notion of equal rights when rights are structurally asymmetric (as in matrix (2b))?

Structural symmetry requires separability of the relevant aspects of the world. Aspects are separable if all individuals care about these aspects separately and not about the relation between different aspects. A right to choose between U and D granted to one person does not leave a similar separated sphere in which others can make their decisions. Without this kind separability the meaning of "equal rights" will not be definable.⁵

3.3 *A system of equal basic liberties*

The purpose of this section of the paper is to characterise the most extensive system of equal basic liberties. From section 3.2 it is clear that such an endeavour may be in vain. Section 3.2 explains that we have reasons to doubt separability of the relevant aspects of the world and why separability may be important for defining "equal liberty". Despite this scepticism I shall assume separability, i.e. the relevant aspects of the world can be described and individuated such that a choice concerning one aspect is independent of all other aspects.

I use the following notation to characterise the most extensive system of equal basic liberties. Let the set of all relevant aspects be A . Typical elements of A are denoted a and a' . Society consists of I individuals denoted as i, j . We can now state the following definition.

DEFINITION 1 (separability): Aspects of the world are separable if and only if for each aspect $a \in A$ free choice is not restricted by the choices on other aspects $a' \in A \setminus \{a\}$.

The precise meaning of "system of liberties" is given by

DEFINITION 2 (system of liberties): A system of liberties $S(A)$ assigns to each person i a set of aspects $A_i \subseteq A$ upon which i is free to decide. Formally, $S(A) = \{A_1, A_2, \dots, A_i, \dots, A_I\}$ and for all $i, j \in I$ and $i \neq j$: $A_i \cap A_j = \emptyset$ and $\bigcup_{i \in I} A_i \subseteq A$.

It is obvious that an attempt to characterise a system of equal liberties requires some sort of comparability of liberties across persons. Let us take the possibility of interpersonal comparisons of liberties for granted. With regard to utility comparisons Nozick (1985, 161) observes "the fact that we make such comparisons every day on an *ad hoc* and intuitive basis. It would be surprising if our ordinary (and often apparently obvious) judgments were

⁵ Telling people to mind their own business aims at creating separated spheres such that a symmetric rights assignment becomes more plausible than it would be otherwise. Education attempts to change "meddlesome" preferences.

completely built on sand." Similarly there must be some truth in judgements concerning interpersonal comparisons of liberties. I adopt the following axioms.

AXIOM IL (importance of liberties): Each person i attaches a weight $w_i(a) \in \mathbb{R}^+$ to each aspect $a \in A$ such that $w_i(a) \geq w_i(a')$ if and only if the right to decide on a is at least as important as the right to decide on a' . $w_i: A \rightarrow \mathbb{R}^+$.

AXIOM CL (comparability of liberty): $w_i(a) \geq w_j(a')$, $i \neq j$ if and only if a is at least as important to person i as a' to person j .

For illustration, suppose that what happens close to my home is more important to me than what happens elsewhere in the world. Therefore I attach a greater weight to the right to determine what happens in my house than to the right to determine what happens in my garden. My garden is more important to me than the parking lot across the street and so forth. The weights can be interpreted as the inverse of the distance between me and an aspect.

Two additional axioms are needed to capture the idea of a system of equal basic liberties.

AXIOM MPL (minimal personal liberties) Each individual has a minimal personal sphere. $A_i \neq \emptyset$. There is at least one aspect for each individual to decide.

AXIOM EBL (equality of basic liberties): If $a' \in A_j$ and $w_i(a) \geq w_j(a')$ then $a \in A_i$. If j is granted the right to decide on aspect a' then each individual should be granted the right to decide upon all aspects that are at least as important to her as a' is to j .

One can derive the following propositions.

PROPOSITION 1: If an aspect a lies in sphere of anyone's basic liberties A_i , a is allocated to the individual to whom it is more important.

Proof: This follows directly from Axiom EBL. \square

PROPOSITION 2: If an aspect a is equally important to two (or more) individuals i, j no one will be granted the right to decide on a in any system of liberties.

Proof: If $a \in A_i$ then according to EBL $a \in A_j$. However, this is impossible in a system of liberties. \square

PROPOSITION 3: Let a_i be the most important aspect for person i . For all i , $a_i \in A_i$ in any system of liberties.

Proof: Suppose a_i were more important to person j than to person i , i.e. $w_i(a_i) < w_j(a_i)$, then according to Proposition 1 the right to decide on aspect a_i should be granted to j . Suppose a_i were as important to person j as to person i , i.e. $w_i(a_i) = w_j(a_i)$, then according to Proposition 2 no one will be granted the right to decide on aspect a_i . In both cases i would be left with no basic rights at all which violates axiom MPL. \square

PROPOSITION 4: Define $a_m = \arg \min_{i \in I} (w_i(a_i))$. A system of equal basic liberties exists, if and only if for all aspects a which are at least as import to some person i as a_m is to person m , there exists no other person j , $i \neq j$, who attaches the same or a greater weight to a than i .

Proof: From proposition 3 follows that $a_m \in A_m$. By EBL, if $w_i(a) \geq w_m(a_m)$ then $a \in A_i$. Therefore, $w_j(a) < w_i(a)$ for all i, j , $i \neq j$, since in any system of liberties a cannot be in both, A_i and A_j . \square

If a system of equal basic liberties exists, we define $w = \min_{i \in I, a \in A_i} (w_i(a))$; w is the weight attached to the boundary of everyone's set of equal basic liberties.

PROPOSITION 5: The most extensive system of equal basic liberties can be described by a weight w^* attached to the boundaries of everyone's set of basic liberties. Two conditions must be satisfied. (a) if $w_i(a) \geq w^*$ then $a \in A_i$. (b) For any $w < w^*$ there exist an aspect a and two individuals i, j , $i \neq j$, such that $w_i(a) \geq w$ and at the same time $w_j(a) \geq w$.

Proof: If a system of equal basic liberties exists, the boundary of everyone's set of basic liberties can be extended by lowering the weight attached to the boundary. Extension is possible as long as no aspect is included in more than one persons sphere of basic of basic liberties. In any system of equal basic liberties the lowest possible weight is w^* . \square

Axioms IL, CL, MPL and EBL give the perhaps simplest formal restatement of Rawls's first principle of justice. It coincides with John Stuart Mill's description of liberty: "... there is a circle around every individual human being which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep".⁶

This formalisation reveals the general feature of Rawls's theory of justice that the basic rules of society are determined by giving special attention to the least advantaged. Liberties that cannot be granted to everyone should not count as *basic* liberties for anyone. Concerning basic liberties Rawls is a strict egalitarian. Concerning other primary goods the consequences of egalitarianism are mitigated by allowing for some inequalities. For the distribution of income and wealth the lexical difference principle (leximin) is adopted (Rawls 1971, 82f). The above model suggests that the leximin principle applied to liberties would be a plausible alternative to egalitarianism. However, in such a system the term "basic liberties" will lose its meaning. Clearly, *basic* liberties are liberties that should be granted to everyone. In the above model, where individuals have an equally strong preference for liberties, *basic* liberties must be equal. In addition, individuals may have some non-basic liberties; they may have the right to decide on issues outside their personal sphere. The rights to choose upon non-basic issues

⁶ I took the quote from Gaertner et al. (1992, 162) They refer to Mill's "On Liberty", however there is no page reference and "On Liberty" does neither contain a book 5, nor a chapter 15 and it was first published 1859, not in 1848. I would be grateful for any suggestions leading to the exact reference.

may be distributed unequally, perhaps they may be exchanged. But these rights would not count as basic rights.

To conclude this section, I should clarify how this approach relates to the freedom-of-choice literature. Sen (1988) suggests that freedom of choice has some intrinsic value. Having less choice restricts freedom. Pattanaik and Xu (1992) give three axioms to capture this idea. They show that choice sets are ranked according to the number of elements they contain, if one accepts (i) indifference between no choice situations (all choice sets containing a singleton offer the same freedom of choice, that is, no choice), (ii) strict monotonicity (if $A \subset B$, B offers more freedom of choice than A), and (iii) independence (the freedom of choice ranking of two sets A, B is preserved if one adds a new element to both sets, which initially is neither in A nor in B). The cardinality ranking of Pattanaik and Xu is generalised in Klemisch-Ahlert (1993) who considers subsets of the \mathbb{R}^n as choice sets. Pattanaik and Xu (1992) and Klemisch-Ahlert's (1993) freedom of choice concept is independent of preferences. This is most obvious from Pattanaik and Xu's indifference-between-no-choice-situations axiom. However, as Sen (1991) has pointed out, preferences should matter in judgements about freedom of choice. Bossert, Pattanaik and Xu (1994) propose axioms for the ranking of choice sets when preferences matter.

This paper takes preferences to be important, too. This is implicit in axiom IL. A greater weight is attached to decision rights which are more important to the individual.

The approach of this paper is complementary to the recent literature on freedom of choice. Much of the freedom of choice literature deals with the value of choice between definite alternatives. This paper considers the value of spheres of personal liberties. In this framework it is not necessary to determine the alternatives within a personal sphere. It is not necessary to describe the particular characteristics of those aspects of a situation which fall in someone's personal sphere A_i . The sphere of personal liberties is determined, i.e. decision rights regarding the aspects are distributed, without any information about the possible characteristics of an aspect a as chosen by the person whose right it is to determine a .

4 The priority of basic liberties

According to the first priority rule, liberties are prior to income and wealth. The different types of primary goods are set in lexical order. As a consequence liberties should be extended whatever the costs in terms of income and wealth. In this section I shall query this view.

There are two problems. Why should principles of justice be based on primary goods? What makes liberties more important than income and wealth or, more general, resources?

The notion of primary goods is rather general. They are considered as things useful for every rational person's plan of life. But still, different persons may have different plans of life.

Therefore, they will value the different types of primary goods differently.⁷ Equality in terms of primary goods may imply serious inequality in terms of welfare. In particular, the priority of liberties does not serve well as a principle of justice, because it is biased against those whose plans of life require more resources. Primary goods will serve as a bases for a just distribution only if everyone's rational plan of life requires the same mix of primary goods. But this would be an heroic assumption. Even if this is taken for granted, "priority of liberties" is a debatable principle. The value of liberties is, of course, dependent on the possibility to exercise one's liberties. Berlin's (1958) important distinction between having a right and being capable to exercise a right, points at a problem. The value of a right is not, as one is inclined to think, independent of other circumstances of the social situation. In particular the value of rights is not independent of a person's access to resources. The principle of priority of liberties can be criticised for overlooking this fact.

Here is an example. Freedom of movement is one of the basic liberties. Everyone should be free to travel where she wants. Society can enhance this freedom by building roads to far away places which could not be reached otherwise. However, building roads requires resources. Taxes will have to be raised to finance the roads project. As a result, freedom of movement will be greater, but there is a loss of real opportunity to travel around. People can afford only less travelling.

Lexical priority of liberties vis-à-vis other primary goods cannot be justified.

5 Conclusion

Rawls's first principle of justice can be put in a freedom of choice framework. In section 3.3 of the paper equal basic liberties are interpreted as personal spheres of equal size for everyone. In her personal sphere an individual is free to make any choice she wants to make. However, to exercise one's freedom requires resources. The value of a person's freedom will therefore depend on the availability of resources and on personal preferences. The lexical priority of liberties can hardly be justified if one admits that the value of liberties depends on resources. If a trade-off between liberties and resources exists, liberties and resources should not be treated separately. Instead, it would be desirable to develop an integrated approach in which rights are not treated categorically different from resources. In such a framework rights may be given special weight according to individual preferences. Basic rights should have the status of non-tradable basic goods if regarded as essential for a person's autonomy.

⁷ Cf. Arneson (1990) for a more detailed discussion.

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