

## Types of Justice

### *Abstract*

By reflecting on the method Rawls used to develop justice as fairness, I aim to work towards a theory that is able to address issues of justice he left untouched or underdeveloped. I note two areas of incompleteness in Rawls’s theory: his basic needs principle and his discussion of conceptions of justice that apply to associations and personal relationships. This incompleteness is understandable, since he is explicit that justice as fairness is presented as a conception of only one type of justice. My view sees justice as having four types. Each type has its own circumstances, its own relationship, and its own principles. What makes them types of the same thing is that they all concern what I call the (mis)use of world-shaping power. I provide an analysis of Rawls’s method for developing his conception of one type of justice, and I show that the method can be used to develop a conception of another type of justice, which I call basic justice. This takes a step towards addressing the shortcomings of Rawls’s discussion of a basic needs principle. Further, the method points the way towards a Rawlsian account of justice for associations and personal relationships.

One way in which Rawls’s account of justice is incomplete is that he notes that the liberty principle “may be preceded by a lexically prior principle requiring that basic needs be met”.<sup>1</sup>

[M]easures are required to assure that the basic needs of all citizens can be met so that they can take part in political and social life. ... [B]elow a certain level of material and social well-being, and of training and education, people simply cannot take part in society as citizens, much less as equal citizens.<sup>2</sup>

He does not provide a full articulation of a basic needs principle or a developed discussion of it.<sup>3</sup>

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<sup>1</sup> John Rawls, *Justice as Fairness: A Restatement*, edited by Erin Kelly (Cambridge, MA: Harvard University Press, 2001), §13: p. 44 note 7; cf. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), I §1: p. 7.

<sup>2</sup> Rawls, *Political Liberalism*, IV §7: p. 166.

<sup>3</sup> Rawls does not provide a basic needs principle, but he does cite (on pages 7 and 166 of *Political Liberalism*) work by Rodney Peffer and Frank Michelman.

A second aspect of incompleteness comes from justice as fairness being “a political, not a general, conception of justice”.<sup>4</sup> We can see from the following passage that political justice is not all there is to justice.

The principles of political justice are to apply directly to [the basic] structure [of society], but they are not to apply directly to the internal life of the many associations within it, the family among them. ... [T]here are appropriate conceptions of justice that apply directly to most if not all associations and groups, as well as to the various kinds of relationships among individuals. Yet these conceptions of justice are not political conceptions.<sup>5</sup>

[T]he basic structure and the associations and social forms within it are each governed by distinct principles in view of their different aims and purposes and their peculiar nature and special requirements.<sup>6</sup>

In addition to political justice, there is also justice related to associations, as well as justice related to personal relationships. Rawls offers only a conception of political justice.

A complete account of justice would need to determine how many types of justice there are, provide conceptions of each of them, and explain how they are types of the same thing. The aim of this paper is to take steps towards such an account. I will begin with a sketch.

### The sketch

I see justice as consisting of four types, which I call: *basic, economic, personal, and associational*. Before I explain this division, it would be helpful to explain how they are types of the same thing. To do this, we can ask what injustice, in general, is.

Rawls writes that “[i]njustice ... is simply inequalities that are not to the benefit of all.”<sup>7</sup> He has in mind inequalities in life prospects as these are affected by the design of the basic structure of society—a design that is achieved by the use of the power of a government, or *political power*. His claim, then, is that injustice is the use of political power to design a basic structure that yields inequalities that are not to the benefit of all. This phrase has three pieces: (i) the fact that political power is used, (ii) what the power is used for—namely, to design a basic structure, and (iii) the condition that makes such a use of political power unacceptable—namely, that it yields inequalities that are not to the benefit of all.

This description is too specific to serve as a general description of injustice. Regarding the first piece, in addition to political power, there is also the power of

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<sup>4</sup> Rawls, *Restatement*, §4: p. 11.

<sup>5</sup> Rawls, *Restatement*, §50: pp. 163-164; cf. John Rawls, “The Idea of Public Reason Revisited,” *The University of Chicago Law Review*, 64/3 (1997), 765-807 at pp. 788-789.

<sup>6</sup> Rawls, *Restatement*, §4: p. 11.

<sup>7</sup> John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Harvard University Press, 1999), §11: p. 54.

social norms, or *social power*, which is relevant for types of justice other than political justice. The second piece is significant because designing a basic structure is what I will call a *world-shaping action*. This is an action that changes the rules, norms, or physical features of an environment with the aim of making some things easier for at least some people. One example of world-shaping is how establishing (or redesigning) the basic structure of a society changes the rules in order to make large scale productive cooperation easier among its members. There are many other world-shaping actions. Concerning the third piece, once we acknowledge that injustice can come from the use of two kinds of power to do a variety of world-shaping actions, we should not expect that there is only one condition that can make any such use of power unacceptable.

We can say, then, that injustice is the use of power to do world-shaping actions that are unacceptable. More succinctly: *Injustice is the misuse of world-shaping power*. Accordingly, a duty of justice is a moral demand to be accountable for the way you use power to world-shape. There are many other moral demands that are not duties of justice.

As already mentioned, I see justice as consisting of four types, which I call: *basic, economic, personal, and associational*. The four types of justice have significant areas of overlap in practical application, yet it is important to be able to distinguish them in our thinking. They result from two distinctions. The first distinction is about the kind of power: *political* or *social*. The second distinction is about the kind of aim people have when they take world-shaping actions. What I will call *primary* types of justice deal with world-shaping that aims to facilitate the meeting of basic needs. *Secondary* types of justice deal with world-shaping that aims to facilitate flourishing (or, in other words, pursuing our conceptions of the good). This can be represented as follows:

|           |                         |                              |
|-----------|-------------------------|------------------------------|
|           | Political               | Social                       |
| Primary   | <b>Basic justice</b>    | <b>Personal justice</b>      |
| Secondary | <b>Economic justice</b> | <b>Associational justice</b> |

World-shaping that is done by using political power, or *political world-shaping*, raises concerns of either basic or economic justice, depending on whether the aim is meeting basic needs or flourishing. These are not perfect labels. Rawls uses the term “basic justice” with a different meaning. I am using it to refer to issues of justice that are related to how people seek to make it easier to meet basic needs through political world-shaping—that is, using political power to change the rules, norms, or physical features of an environment. The label “economic justice” also has the potential to mislead, since it deals with more than issues that are narrowly economic in the ordinary sense. By economic justice, I mean issues of justice that concern how people use political power to change an environment with the aim of

improving the amount and distribution of resources beyond what is needed for meeting basic needs, so that people can have greater ability to make use of their liberties in pursuit of their conception of the good. Putting the same point another way, economic justice is about political world-shaping that aims to facilitate flourishing by improving people's resources so as to increase the value of liberties.<sup>8</sup>

World-shaping that is done by using social power, or *social world-shaping*, raises concerns of either personal or associational justice, again depending on the aim. The power of social norms affects people's opportunities for, and within, personal relationships among family, friends, and intimate partners. Social power also affects people's opportunities for belonging to, and participating in, associations—by which I mean groups defined by some shared aspect of identity, such as faith, culture, ideals, interests, and so on. For the two social types of justice, I have chosen *personal justice* as the label for issues of justice that concern world-shaping that aims at basic needs, and *associational justice* if the aim is flourishing. This reflects the thought that the main—but not only—value of personal relationships is their importance for people's emotional and psychological basic needs; whereas the main—but not only—value of associations is their importance for flourishing via the pursuit of shared conceptions of the good. People surely do pursue flourishing also through personal relationships, but when injustice causes some people to lack personal relationships, the main harms concern basic needs. Likewise, associations surely sometimes do also help satisfy basic needs of their members, but an unjust lack of associational belonging is mainly harmful because of its effect on people's opportunity to pursue shared ends.

Each type of justice has its own *circumstances of justice*, its own *relationship of justice*, and its own *principles of justice*. The circumstances of a type of justice are the conditions under which it is both possible and necessary to use the power in question to take world-shaping actions to facilitate the aim in question. An analysis of the circumstances of a type of justice yields an explanation of how and why people are in the relationship of that type of justice. An analysis of the relationship of a type of justice yields a *challenge of justification*, which the principles of a type of justice are meant to answer.

The central thought is this. There is far more to justice than the issues Rawls discusses; and yet his theory suggests a way to arrive at principles for the issues he neglects. To generate principles, we must understand the relevant relationship (and its corresponding challenge of justification). We cannot hope to understand each of the relevant relationships if we assume that the particular circumstances of justice that help Rawls explain the issues he discusses will illuminate all issues of justice. The Rawlsian/Humean circumstances of justice are suitable for the particular relationship Rawls discusses.<sup>9</sup> To understand each of the relationships

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<sup>8</sup> For a discussion of Rawls on the value of liberties, see Christopher Lowry, "Sen's Capability Critique," in *John Rawls: Debating the Major Questions*, edited by Sarah Roberts-Cady and Jon Mandle (Oxford: Oxford University Press, forthcoming).

<sup>9</sup> Rawls calls this (with potentially confusing terminology in the context of this paper) "the political relationship".

relevant to other issues of justice, we will need accounts of the circumstances of the other types of justice.

This gives us a way to fill in the two incomplete features of Rawls's view noted at the start. The missing basic needs principle can be generated by developing a conception of basic justice using the circumstances-relationship-principles process just described. The process also allows us to develop the two social types of justice: personal and associational.

This paper aims to make some progress on the first of these tasks—developing a conception of basic justice. To do that, I will first explain where justice as fairness fits into my view of the four types of justice. Next, I will draw on justice as fairness in order to provide an illustration of the circumstances-relationship-principles process. I will then use that process to take some steps towards a conception of basic justice.

### **How justice as fairness fits in**

We know from earlier quotes that justice as fairness is a political type of justice, rather than a social type. This means that it is concerned with the power of a government. It is worth explaining the reason for this. Rawls draws a (perhaps overly) sharp distinction between political power and social power. His brief remarks on social power focus on the power within an association, such as a church. Rawls notes that the liberty principle secures people's right to leave any such association. On that basis, he concludes that any social power that applies to a person via membership in any association is voluntary.

[M]embership in all associations is voluntary at least in this sense: even when born into them, as in the case of religious traditions, citizens have a right to leave them unmolested by the coercive power of the government. Furthermore, no association comprises all of society.<sup>10</sup>

Rawls's view is that social power applies to people voluntarily because they can evade it by exercising their right to leave the relevant association.

In light of this position, one might expect Rawls to argue that the power of a government is likewise voluntary because people can evade it by exercising their right to leave the state's territory (i.e., to emigrate). He argues, instead, that political power applies to members of society involuntarily. He seeks to defend this position by describing how costly it is to emigrate.

[N]ormally, leaving is a grave step: it involves leaving the society and culture whose language we use in speech and thought to express and understand ourselves, our aims, goals, and values; the society and culture whose

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<sup>10</sup> Rawls, *Restatement*, §43: p. 144. See also Rawls, *Political Liberalism*, VI §3: p. 221; and Rawls, "Public Reason," pp. 788-790.

history, customs, and conventions we depend on to find our place in our social world.<sup>11</sup>

Implicit in Rawls's argument is the claim that leaving an association is significantly less costly than leaving your society. He concludes:

The state's authority cannot, then, be freely accepted in the sense that the bonds of society and culture, of history and social place of origin, begin so early to shape our life and are normally so strong that the right of emigration ... does not suffice to make accepting its authority free, politically speaking, in the way that liberty of conscience suffices to make accepting ecclesiastical authority free, politically speaking.<sup>12</sup>

This is why justice as fairness tackles only political power, and is therefore a political type of justice.

Further, justice as fairness is a secondary type of justice, rather than a primary type. This means that it is concerned with world-shaping that aims to facilitate flourishing. As noted above, Rawls is addressing matters of justice in a situation that presupposes that everyone's basic needs have been met. This shows that justice as fairness is not a primary type of justice. Further, the following passage makes it clear that it is a secondary type:

[T]he worth of liberty to persons and groups depends on their capacity to advance their ends within the framework the system defines. ... Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This defines the end of social justice.<sup>13</sup>

In his writing Rawls uses "political justice" and "social justice" interchangeably, which makes the last sentence of this passage potentially confusing in the context of this paper. The sentence should be interpreted as being about the end of Rawls's conception of justice. The ultimate aim of justice as fairness—an aim that is meant to be achieved by the two principles working together—is to secure basic liberties and then maximise people's ability to make use of the basic liberties to advance their ends. In other words, the aim of the two principles working together is to facilitate flourishing by improving people's ability to pursue their conceptions of the good. This shows that justice as fairness is a secondary type of justice.

Justice as fairness is therefore a conception of economic justice. By this, I do not mean that the two principles concern only issues that are narrowly economic in the ordinary sense of that term. Rather, I mean that justice as fairness is concerned with how people use political power to do world-shaping that aims to

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<sup>11</sup> Rawls, *Restatement*, §26: p. 93; cf. Rawls, *Political Liberalism*, VI §3: p. 222.

<sup>12</sup> Rawls, *Restatement*, §26: p. 94; cf. Rawls, *Political Liberalism*, VI §3: p. 222.

<sup>13</sup> Rawls, *Theory*, §32: p. 179; cf. Rawls, *Restatement*, §45: p. 149.

improve the amount and distribution of resources people can use to make use of their liberties in pursuit of their conception of the good; or, in short, it is concerned with political world-shaping that aims to facilitate flourishing.

### **The circumstances of economic justice**

I will now use justice as fairness an example to illustrate the circumstances-relationship-principles process for developing a conception of justice. I neither assume nor argue that justice as fairness is a flawless conception of economic justice.

The first step is to describe the circumstances. Rawls, following Hume, writes that “[t]he circumstances of justice may be described as the normal conditions under which human cooperation is both possible and necessary.”<sup>14</sup> This description is too broad, because it does not specify the aim of cooperation or the type of cooperation. My view is that the circumstances of a type of justice are the conditions under which it is both possible and necessary to use the power in question to take world-shaping actions to facilitate the aim in question.

When people cooperate, their aim can be the minimal aim of meeting basic needs or the more ambitious aim of flourishing. Further, three types of cooperation should be distinguished. First, there is cooperation that is sustained by affection or by trust earned by an individual over time. I will call this *natural cooperation*.<sup>15</sup> It does not give rise to issues of justice, because no world-shaping power is used to facilitate it.<sup>16</sup> The other two types of cooperation are those that are made possible because of social world-shaping and political world-shaping. I will call these *social cooperation* and *political cooperation*.<sup>17</sup> An example of social cooperation is an informal recreational game without a referee, which is made possible because of the combination of general social norms and norms specific to the game. Informal recreational games often run smoothly precisely because of the players’ adherence to the relevant norms, without which the game would quickly break down due to

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<sup>14</sup> Rawls, *Theory*, §22: p. 109.

<sup>15</sup> Natural cooperation may also involve power dynamics between the people involved. It is hard to imagine any human relationship that is completely without power dynamics. (I thank Jamie Sewell and Eva Kittay for raising this point.) We should distinguish power dynamics that are fuelled by social norms and those that are not. If a social norm creates and sustains a power dynamic in a relationship, and the power dynamic facilitates cooperation, then this is social cooperation, rather than natural. This may happen in bad ways—for example, a group of people cooperate by following the decisions of the most masculine man in the room, whose unofficial authority is implicitly and unconsciously acknowledged because of the influence of patriarchal social norms. On the other hand, power dynamics are not always fuelled by social norms. Imagine a relationship between two people whose power dynamic is the opposite of what we would expect given prevalent social norms, and is caused instead by differences in, say, strength of personality or demonstrated skill. This would be natural cooperation. Of course, the distinction between natural and social is not always sharp in practice.

<sup>16</sup> Natural cooperation does, however, give rises to moral issues that are not justice issues. Justice is only a part of morality.

<sup>17</sup> There is a risk of confusion, since Rawls uses the term “social cooperation” to refer to what I call political cooperation.

confusion or conflict. An example of political cooperation is how the rules of the basic structure of a society—and the enforcement of those rules—enable fruitful economic interaction among otherwise strangers. The basic structure creates an artificial minimal trust, without which such interactions would often not occur.

For economic justice, the aim of cooperation is flourishing and the type of cooperation is political. The circumstances of economic justice are the conditions under which it is both possible and necessary to use political power to design a basic structure that can make large-scale cooperation sustainable, thereby improving the amount and distribution of resources people can use to make use of their liberties to pursue their conceptions of the good. In short, these are the conditions under which political cooperation to facilitate flourishing is both possible and necessary. I will call political cooperation that aims at flourishing *economic cooperation*.

Let us consider why economic cooperation is both possible and necessary. To think about why it is necessary, we can start with Rawls's claim that it "makes possible a better life for all than any would have if each were to try to live by his own efforts."<sup>18</sup> This claim needs to be improved, since a person who tries to live by their own efforts would not survive past the first few days of infancy. A better comparison is between cooperation with and without political world-shaping. The first step of that comparison is to imagine a group of people who only have natural cooperation. Such cooperation would be sustainable only on a scale so small that people's resources to pursue their conception of the good would be meagre. If we add social cooperation, cooperation could presumably be sustainable on a somewhat larger scale.<sup>19</sup> Economic cooperation (i.e., cooperation that uses political power and aims at flourishing) is necessary insofar as people have a desire for more resources to pursue their conception of the good than is achievable via natural and social cooperation. More specifically, it is the desire to have your ability to work restricted by the rules of a basic structure in order to increase your productivity (through large scale cooperation) for the sake of having a greater share of resources to make use of your liberties to pursue your conception of the good. I discuss this further in the next section. Economic cooperation is possible insofar as such effects can be achieved by means of a basic structure. Summing up, people

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<sup>18</sup> Rawls, *Theory*, §22: p. 109. In the *Restatement* (§24: p. 84) he asserts "the necessity of social cooperation for all to have a decent standard of life." One might be tempted to read these as competing statements, but I think we can accept both. Insofar as we want to meet our needs, political cooperation is necessary; and insofar as we want to improve our life beyond a decent life, political cooperation is necessary. That being said, the second of these is what Rawls's arguments depend on. As we saw above, his primary interest is not how people use government power to meet their needs, but rather how they use it to enhance their ability to pursue their ends. This is especially clear in Rawls's arguments against the principle of restricted utility, which focus on issues that occur after basic needs are met. See, Rawls, *Restatement*, §38: pp. 127-130.

<sup>19</sup> It may be that a group of humans who have natural and social, but not political, cooperation is something that simply does not happen. It may be that social norms and authority structures always exist concurrently. If so, it would still be the case that the deficiencies of natural cooperation call for, among other things, political cooperation.



are in the circumstances of economic justice with each other if (i) they have a desire for more resources to pursue their conceptions of the good and (ii) that desire would be better satisfied if they were to use political power to join together in a system of economic cooperation.

### **The economic relationship**

The second step in the circumstances-relationship-principles process is the relationship. Let us consider Rawls's description of what he calls the political relationship. This is the relationship between "fully cooperating participants" of a system of cooperation. Its distinctive features are that it is an involuntary relationship that is sustained by the use of government power, which is coercive power.<sup>20</sup> This relationship is too broad. Those features are true of both types of primary justice—economic and basic—and so are part of both *the economic relationship* and *the basic relationship*. To understand the economic relationship, we need to know more about the world-shaping that is specific to it.

My view is that the relationship of a type of justice exists between, on the one hand, people who have political influence over the world-shaping in question and, on the other hand, people who are in a position to make claims because of how the world-shaping in question affects them. A person can belong to both groups. The world-shaping related to economic justice is the design of a basic structure's elements that restrict its members' ability to work in order to increase their productivity (through large scale cooperation) for the sake of facilitating flourishing by improving people's resources to pursue their conceptions of the good. A person's ability to work is restricted in the following sense. In the absence of a basic structure, individuals would be free to choose whether to work in cooperation with others, with whom to cooperate, and on what terms. Let us call these *cooperative liberties*.

What reason is there to attribute this specific natural freedom to humans? The desire relevant to economic justice (i.e., the desire for more resources to pursue one's conception of the good) is morally discretionary, by which I mean that there is no moral duty to act on it. For example, if a number of people have the opportunity to mutually improve the amount and distribution of resources among them by using government power to bind themselves together in a single system of economic cooperation, justice does not require that they do so. The circumstances of economic justice are the conditions where this opportunity presents itself. Because what is at stake is an increase in resources beyond what is needed for basic needs, people may, without any injustice, refuse the opportunity. This is the sense in which people have cooperative liberties. The economic relationship is created if people use (or create) government power to seize the opportunity, thereby restricting the cooperative liberties of the people affected.

A basic structure restricts cooperative liberties in the following ways: it forces cooperation among all members of a system of economic cooperation, it

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<sup>20</sup> Rawls, *Restatement*, §54: p. 182.

restricts cooperation with people outside of that system, and it imposes terms of cooperation. Although it is true that in a democratic society every member has the potential to politically influence the design of the basic structure in order to make it more aligned with their own preferences about cooperation, the basic structure is imposed on all members, including those who would choose differently if it were up to them.<sup>21</sup> We can say, then, that the economic relationship is an involuntary relationship that involves the use of political power to take world-shaping actions that restrict cooperative liberties for the sake of facilitating flourishing by improving people's resources to pursue their conceptions of the good.

When a system of economic cooperation is created and/or sustained by political world-shaping, this puts all the members of that system into the economic relationship. The economic relationship exists among people who are subject to the relevant political power *and* have the capacity to be an economic participant. This second condition is needed in order for cooperative liberties to be important to the person in a way that their restriction is morally troubling. The moral significance of the economic relationship comes from the involuntary restriction of cooperative liberties. If a person is unable to be an economic participant, then a restriction of their cooperative liberties does not affect them, and so they cannot be in the economic relationship with others. This indicates a serious limit of economic justice. If our best understanding of the capacity to be an economic participant does not attribute this capacity to some members of society, then a conception of economic justice will not be helpful in articulating their rights; although other types of justice will be.

If there are people outside of the geographical boundaries of a system of economic cooperation whose cooperative liberties are restricted enough by that system that they are owed justification, then they would also be in the economic relationship with the members of that system. However, I will assume that normally this is not the case, and will proceed on the assumption that the economic relationship exists among all and only members of a system of economic cooperation.

This description of the economic relationship does three things: (i) it provides an account of the relevant moral background (namely, that there are cooperative liberties); (ii) it identifies the aim of the world-shaping (namely, to improve members' resources to pursue their conceptions of the good); and (iii) it explains why the world-shaping in question stands in need of justification (namely, that it restricts cooperative liberties). This yields a challenge of justification: What can make it permissible to use political power to restrict cooperative liberties for the sake of greater resources to pursue our conceptions of the good?

The challenge of justification is about how to resolve a tension between our conception of ourselves as free beings and our involuntary membership in

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<sup>21</sup> Cf. Rawls, *Restatement*, §54: p. 182.

society.<sup>22</sup> Our cooperative liberties cannot be restored, and so we must seek another way to make economic cooperation acceptable to people who see themselves as free. After writing that “[t]he state’s authority cannot ... be freely accepted”, Rawls continues:

Nevertheless we may over the course of life come freely to accept, as the outcome of reflective thought and reasoned judgment, the ideals, principles, and standards that specify our basic rights and liberties and effectively guide and moderate the political power to which we are subject. This is the outer limit of our freedom.<sup>23</sup>

This shows the connection between the economic relationship and the principles of economic justice. The purpose of the principles is to help people reach the outer limit of their freedom, which is about being able to accept the fact of their involuntary subjection to political power and yet at the same time to affirm their understanding of themselves as free.

### **Principles of economic justice**

The final step in the circumstances-relationship-principles process is to explain how the principles of economic justice seek to answer the justificatory challenge that comes from the economic relationship. We can make sense of how Rawls’s principles seek to do this if we say that members of a political society can see themselves as free only if the political power to which they are subject treats them as equals. In other words, being able to see yourself as an equal is what makes the involuntary imposition of political authority acceptable and reconcilable with your sense of yourself as free. A difficulty that arises is that a rationally well-designed basic structure will include significant undeserved inequality in income and wealth, as well as in authority and responsibility.<sup>24</sup> How, then, for example, can minimum wage workers, who find themselves at the bottom of a system of coercively imposed undeserved inequality, experience that very system as something that affirms their equality alongside all other participants? This is the purpose of Rawls’s principles.

We hope that even the situation of the least advantaged does not prevent them from being drawn into the public world and seeing themselves as full members of it, once they understand society’s ideals and principles

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<sup>22</sup> We can think about what Rawls calls “the strains of commitment” as being caused by this tension. See *Restatement*, §38: pp. 128-130.

<sup>23</sup> Rawls, *Restatement*, §26: p. 94.

<sup>24</sup> The reasons for undeserved inequality are familiar. Certain inequalities will incentivize greater productivity from individuals with more talent and dedication. With the help of redistributive policies, this can yield a standard of living for everyone that is better than it otherwise would be. Yet the unequal distribution of talent and dedication is significantly affected by luck. The inequalities in question are therefore undeserved, even though justified.

and recognize how the greater advantages achieved by others work to their good.<sup>25</sup>

Rawls's principles identify inequalities that are to the benefit of all, which should be acceptable to participants who see themselves and each other as equals; and this helps people reach the outer limit of their freedom.

Putting together these pieces, we get the following picture. People are in the circumstances of economic justice whenever (i) they have a desire to enhance their opportunities for flourishing by making their labour more productive by engaging in large-scale cooperation and (ii) their situation presents them with an opportunity to do so by using political world-shaping. The people who are owed a justification are the people whose cooperative liberties are restricted by the world-shaping in question. I have assumed that these are all and only the members of a system of economic cooperation. The people responsible are the people with influence over the relevant political decisions; the more influence a person has, the greater their responsibility. The economic relationship holds between everyone who belongs to at least one of those two groups. The justificatory challenge for economic justice is about how to reconcile coercively imposed undeserved inequalities with our sense of ourselves as free. Rawls's two principles seek to answer this challenge by explaining how such inequalities can affirm our equality.

In the next several sections, I will use the circumstances-relationship-principles process to take some first steps towards developing a conception of basic justice.

### **The circumstances of basic justice**

Recall that the circumstances of a type of justice are the conditions under which it is both possible and necessary to use the power in question to take world-shaping actions to facilitate the aim in question. For basic justice, the power is political power and the aim is meeting basic needs. I will call political cooperation to meet basic needs *basic cooperation*. To think about why basic cooperation is necessary, we can once again imagine a group of people who only have natural cooperation. Such cooperation would be sustainable only on a scale so small that some members' basic needs would not be met or at least would not be secure against adverse events like invasion, extreme weather, disease outbreaks, and so on. Assuming that social cooperation cannot entirely solve this problem, political cooperation is necessary to meet our needs, or at least to meet them more securely.

Recall that economic cooperation is necessary only insofar as we wish to satisfy a desire for more resources for flourishing. In contrast, the necessity of basic cooperation comes from our basic needs, not merely a desire. A human being inevitably has needs and, moreover, inevitably must to varying degrees depend on

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<sup>25</sup> Rawls, *Restatement*, §38: p. 130.

others to meet their needs during the course of their life.<sup>26</sup> In short, we are vulnerable and interdependent. To make it easier for us to meet our basic needs, we can use political world-shaping to establish a cooperative system through which each member of society must do their part to make sure every member's basic needs are met, and to establish a national border. A well-designed basic structure will facilitate basic cooperation by making it more likely that all members will be included in the system of support to meet basic needs and that all members who are able to contribute to the system will be made to do so on a fair basis. Border control is required primarily as a response to the risk of attack, but also because the sustainability of a society's system of basic cooperation may require placing some limits on immigration (although any such limits should be minimised). Basic cooperation is possible insofar as such effects can be achieved by means of a basic structure. Summing up, people are in the circumstances of basic justice with each other if (i) they are vulnerable and interdependent and (ii) their basic needs would be more securely met if they were to use political power to join together in a system of basic cooperation.

Basic cooperation and economic cooperation often seem, in practice, to be made possible by a single system of economic cooperation that includes distributive requirements to meet basic needs, including defence. If a given group of people are able to use political world-shaping to bind themselves together in a cooperative system to meet basic needs, then they are often able to add further elements to that system to make it also a system of economic cooperation that aims at flourishing. It may often be difficult to distinguish which parts of a basic structure aim to meet basic needs and which parts aim, more ambitiously, to improve the amount and distribution of resources beyond what is needed for basic needs. That being said, it is possible for people to be in the circumstances of basic justice without being in the circumstances of economic justice, and vice versa.

Consider what basic cooperation without economic cooperation might look like. Two self-governing groups could create an overarching political authority to which members of both groups are subject, with a mandate that is limited to the goal of securely meeting the basic needs of everyone in the two groups. Each group could retain autonomy over political decisions that are not required for this goal. Those decisions could be made in different ways by the two groups in order to reflect their preferences about how to facilitate economic cooperation within each group. An arrangement like this could occur for at least two reasons. First, suppose that joining together to meet basic needs would be mutually beneficial, but that further cooperation aimed at flourishing would benefit only one of the two groups. The other group would do better if they each had their own system of economic cooperation. In order to be in the circumstances of economic justice, economic cooperation must be necessary for both, in the sense that joining together in economic cooperation must help each group better satisfy their members' desire

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<sup>26</sup> For discussion of dependency, see Eva Feder Kittay, *Love's Labor: Essay on Women, Equality, and Dependency* (New York: Routledge, 1999).

for more resources to pursue their conceptions of the good. In the supposed case, the two groups are in the circumstances of basic justice, but not the circumstances of economic justice. Second, suppose that being in a single system of economic cooperation would be mutually beneficial, but one group simply chooses to decline the opportunity. In this case, they are in the circumstances of economic justice, but they are not all members of the same system of economic cooperation; and so the economic relationship exists within each group, but not between the groups.

Conversely, consider economic cooperation without basic cooperation. Imagine two groups each have adequate defence abilities and an adequate system to meet their members' needs. Basic cooperation between them is not necessary, but let us suppose that economic cooperation is. That is, they do not need each other to meet basic needs, but they would be able to increase their resources by using political power to create a single system of economic cooperation covering both groups. The mandate of the overarching system would be limited to the aim of facilitating economic cooperation, leaving each group to make its own political decisions about defence and other aspects of basic cooperation within each group. In this case, they would not be in the circumstances of basic justice, but they would be in the circumstances of economic justice. If they choose to seize the opportunity, then they would be in the economic relationship.

It is worthwhile to distinguish between economic and basic justice. Although people who are in the circumstances of one of these types of justice with each other are often also in the circumstances of the other type, this is not necessarily the case. The scope of justice—that is, who owes justice to whom—is not necessarily the same for the two types.

### **The basic relationship**

Let us now consider the basic relationship. Our discussion related to the economic relationship described the relevant moral background (cooperative liberties), the aim of the world-shaping (to increase our resources to pursue our ends), and why that world-shaping requires justification (restriction of cooperative liberties). Because the world-shaping related to economic justice restricts cooperative liberties, its justification involves a reconciliation between political authority and our sense of ourselves as free.

The moral background for basic justice involves vulnerability and interdependence. Everyone is born into a situation of complete dependency. Even those who in adulthood appear to be independent are not fully so. Eva Kittay expresses this point well when she writes that “the independent individual is always a fictive creation of those men sufficiently privileged to shift the concern for dependence onto others.”<sup>27</sup> Further, everyone is at every moment vulnerable to having their ability to meet their own needs reduced by injury or illness.<sup>28</sup>

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<sup>27</sup> Kittay, *Love's Labor*, p. 17.

<sup>28</sup> Martha Albertson Fineman, “The Vulnerable Subject: Anchoring Equality in the Human Condition,” *Yale Journal of Law & Feminism*, 20/1 (2008), 1-23.

Universally shared vulnerability creates a moral push for us to have concern for the unmet needs of others. The personal history of every human who reaches adulthood includes having been the recipient of such concern. If in adulthood you find yourself having to decide whether or not to help someone else meet their needs, it is important to note that the possibility of you being in such a position comes from others having decided to help you meet your needs. More specifically, in the absence of political cooperation, the extent to which you have ongoing security against unmet basic needs depends significantly on the extent to which people tend to (i) help others when those others are unable to meet their own needs and (ii) refuse to help more people when doing so would jeopardise their ability to adequately help the people they are already helping. This can be phrased as a disposition to *always and only help people in need when you expect to be able to do so successfully*. I am not making any claim about how often people display this disposition. Nonetheless, in a situation without political cooperation our security against vulnerability would depend on the extent to which people are so disposed.

We might be tempted to think that a more restricted disposition could play this role, such as a similar disposition that applies only when there are also ties of affection, or a relationship of trust, or a debt of help owed to the person in need, or an expectation of reciprocation. Human vulnerability, however, is not confined in these ways. Anyone may find themselves in need and unable to appeal to affection, trust, a debt, or the likelihood of being able to reciprocate. Our security against this vulnerability depends on others having the disposition as originally formulated: to always and only help those in need when you expect to be able to do so successfully.

With that in mind, let us compare the moral background in the circumstances of economic justice and basic justice. In the circumstances of economic justice, people are free to choose whether or not to act on their desire for more resources for flourishing and whether or not to join together in a system of economic cooperation (thereby entering into the economic relationship). Refusal to cooperate would not be wrong, even if it might in some cases be irrational. In contrast, in the circumstances of basic justice, people have a moral duty to respond to other people's unmet basic needs. The force of this obligation comes from our shared vulnerability and interdependence, or, in short, from our common humanity.<sup>29</sup> Because we are vulnerable and interdependent beings, having your basic needs met by others and meeting others' basic needs is a central source of our sense of human fellowship.<sup>30</sup>

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<sup>29</sup> I am not going to consider here whether this could be extended to non-human animals.

<sup>30</sup> One example of a view that develops this line of thinking is Martha Nussbaum's understanding of *dignity* and *sociability*. See Martha C. Nussbaum, *Frontiers of Justice: Dependency, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006). She argues that human neediness is a source of our dignity, and that our sociability gives us a desire to live together decently—where this means making sure everyone's basic needs are met.

Because of these points, in a situation without political cooperation, you are not simply at liberty to pursue your own advantage in a way that is indifferent to the basic needs of others.<sup>31</sup> On an individual basis, you have a moral duty to always and only help those in need when you expect to be able to do so successfully. Further, if you have the opportunity to improve your ability to securely meet your needs and the needs of others by joining together in a system of basic cooperation, you are not simply free to choose whether or not to seize this opportunity. To acknowledge and preserve your sense of common humanity, you must seize the opportunity. In short, the moral background of the circumstances of basic justice is about common humanity.

Let us now consider the aim of the political world-shaping related to basic justice, and what challenges of justification it raises. Basic cooperation involves world-shaping that aims to make sure every member of a society (or larger group) does their part to work together to meet every member's basic needs. This world-shaping has both inward and outward effects, in the sense that it has the potential to affect both the sense of fellowship among members of the system of basic cooperation, and their sense of fellowship with people who live outside of the system's borders. The inward effects come from the system's need to make sure that the burdens of basic cooperation are shared fairly by all those who can contribute and that the benefits of basic cooperation are extended to all members. The outward effects come from the need for establishing and controlling a border.

To think about the inward effects of a system of basic cooperation, first consider what would give you a sense of common humanity in a situation without political cooperation. You would receive, or be refused, help depending on the individual choices of others who encounter you. That source of a sense of fellowship would be out of your control. On the other hand, you would choose whom to help and how to help them. In this way, you would decide how much fellowship to extend to others. That source of a sense of fellowship would be in your control. A system of basic cooperation changes that. The system exerts authority over you that aims to make sure you contribute fairly, and the system determines who qualifies for help and the nature of that help. This creates a potential for a tension between the political authority to which you are subject and your sense of common humanity with members of your society. To see how, imagine a system that is unjust in two ways: it demands a larger contribution from you than is fair and it avoidably denies support to some who need it. Suppose that you are aware of those in need, but, because of the unfairly large contribution the system demands of you, you are unable to help them directly through charitable actions. The unjust system fails to create a connection between their need and your contribution to the system—the kind of connection you would make through your own decisions in a situation without political cooperation. This damages your sense

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<sup>31</sup> This brings to mind Locke on mutual preservation: “when his own preservation comes not in competition, ought he as much as he can to preserve the rest of mankind” (*Second Treatise*, Chapter II, Section 6).



of fellowship with them. These considerations point us to the challenge of justification related to the basic relationship: to reconcile political authority and our sense of common humanity.

The tension between political authority and human fellowship is even clearer in the case of the outward effects of basic cooperation. Establishing and controlling a border is a world-shaping action through which a society chooses to concern itself with making sure its members' needs are met, while being to a greater or lesser extent indifferent to people outside of its borders. We can say, then, that the basic relationship involves the use of political power to take world-shaping actions to create an inward focus of concern for the sake of meeting the society's members' basic needs. This is in conflict with the disposition that is part of the moral background for basic justice. Universally shared human vulnerability pushes us to have concern for the unmet needs of others, limited only by feasibility. The indifference expressed by border control raises the same justificatory challenge as above: to reconcile political authority and our sense of common humanity.

For the purpose of clarification, we should note the difference between general humanitarian duties and the justificatory challenge related to the basic relationship. Merely being fellow humans does not put people into the basic relationship. Like the economic relationship, the basic relationship exists between, on the one hand, people who have political influence over the world-shaping that designs the system of basic cooperation and, on the other hand, people who are in a position to make claims because of how that world-shaping affects them. This includes all members of a society, as well as possibly some people outside of the society. Concerning outsiders, consider two possibilities. Outsiders could be said to be affected (in a way that entitles them to justification) if their ability to meet their basic needs would be better if the society in question (a) did not have any system of basic cooperation or (b) were more welcoming of new members in a sustainable way. The first of these takes non-interference as the benchmark of justifiability. This is at odds with the moral background of the circumstances of basic justice. And so, we should choose (b) and say that the basic relationship exists between all members of a society, as well as outsiders, if any, whose basic needs would be more securely met if the society were sustainably more welcoming of new members. In contrast, humanitarian duties apply between all humans and call for a whole range of actions, not only the just use of political world-shaping power to meet basic needs.

### **Principles of basic justice**

The final step in the circumstances-relationship-principles process is to explain how the principles of basic justice seek to answer the justificatory challenge that comes from the basic relationship. Recall how this goes in the case of economic justice. The economic relationship involves a restriction of cooperative liberties. That loss of freedom could not be restored. The justificatory challenge is to find some other way to resolve the tension this creates between your membership in a system of

economic cooperation and your sense of yourself as free. I read Rawls as taking the view that the outer limit of your freedom can be reached if the political authority to which you are subject is governed by principles that affirm your equality alongside all members of the system. Rawls's principles do this by allowing only inequalities that affirm our equality—namely, inequalities that are to the benefit of all.

In the case of basic justice, the tension is between your membership in a system of basic cooperation and your sense of common humanity with others. The first question is whether the system of basic cooperation could be designed so as to restore our sense of common humanity. If so, then there would be no need to find another way to reconcile political authority and human fellowship.

Let us consider the question from the perspective of members of a system of basic cooperation. We said before that having your needs met by others and meeting others' needs is a source of a sense of human fellowship. In a system of basic cooperation that interaction is mediated by the system: members contribute to the system—often not in the form of directly meeting others' needs—in order to make the system sustainable, and they expect that the system will, in turn, arrange for adequate support to be provided as needed to all members to meet their basic needs. If the system is able to meet this expectation and if everyone knows and sees that all members who can contribute do so on a fair basis, then members' interactions with the political authority to which they are subject will strengthen, rather than weaken, their sense of common humanity with each other.

A principle of basic justice could be: *All who can contribute will be required to do their fair share to sustain a system that has the capacity to provide all members with adequate support to ensure their basic needs are met.*

Is that expectation achievable? Could a well-designed system of basic cooperation completely satisfy the basic needs of all its members? I would like to think so, but I am uncertain. In health care contexts, for example, it is generally assumed that limit-setting is inevitable: either we limit who receives care or we limit the care everyone receives.<sup>32</sup> For the sake of argument, let us suppose that a just system of basic cooperation will be unable to meet some basic needs for some members some of the time. In that case, we must think about what damages our sense of common humanity. We might be tempted to say that human fellowship is damaged whenever help is not given or help is not received. This assumes that refusal to help is always a denial of common humanity. That would be a mistake. Recall the second part of the valued disposition in the circumstances of basic justice: to refuse to help more people when doing so would jeopardise your ability to adequately help the people you are already helping. Such refusal is justifiable; indeed, it is motivated by a sense of human fellowship: common humanity tells you to help others in need, and in order to do so responsibly and in good faith, you must make sustainable and effective choices about when to help. If refusal to help is

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<sup>32</sup> Norman Daniels and James E. Sabin, *Setting Limits Fairly: Learning to Share Resources for Health*, 2nd ed. (New York: Oxford University Press, 2008).

accompanied by that justification and by regret, then this affirms fellowship, rather than damaging it. A system of basic cooperation can likewise set limits in a way that affirms fellowship among its members. Such limits are tragic, but not unjust.

The second principle of basic justice could be: *Limits should be set on support for basic needs only when doing so is necessary and can be done in a way that affirms human fellowship among all members.*

Let us now consider the question as it applies across borders. Could a well-designed system of basic cooperation restore a sense of common humanity among members of the system and people who live outside of its borders? We must distinguish between (a) non-members whose basic needs would be more securely met if they were allowed to join the system and (b) non-members for whom this is not true (since they belong to another equally good system of basic cooperation). When we consider only the relationship between members and non-members of the second sort, there is no tension between political authority and common humanity. Both groups of people know that each system's inward focus of concern does not, in these cases, stand in the way of everyone in the two groups having their basic needs securely met. The relationship between members and non-members of the first sort is more difficult. Let us suppose that these non-members belong to systems of basic cooperation that are poorly functioning due to factors such as war, corruption, or unjust rule, and that they have a wish to leave these and join the system in question. Recall that I said that the sustainability of a society's system of basic cooperation may require placing some limits on immigration, and that any such limits should be minimised. To think about this, recall the second part of the valued disposition and the idea that there can be refusals of membership that affirm, rather than deny, common humanity. Refusals are justified when they are necessary for the sustainability of continued adequate support for existing members of a system. Refusals of membership should be accompanied by such justification, as well as by regret. As above, this is not unjust, but it is tragic.

There is some similarity here with Rawls's defence of inequalities. Justified inequalities are those that affirm, rather than deny, our equality. Justified refusals are those that affirm, rather than deny, our common humanity. A refusal that is based on the limits of feasibility is one that is justified in this way. There may be other refusal justifications that likewise affirm human fellowship, but I will not explore that question here.

The third principle of basic justice could be: *The benefits of basic cooperation should be extended to anyone willing to join the system, except when refusals of membership are necessary and can be done in a way that affirms human fellowship among all people.*

Putting together these pieces, we get the following picture of basic justice. People are in the circumstances of basic justice whenever (i) they are vulnerable and interdependent and (ii) their situation presents them with an opportunity to more securely meet their own and others' basic needs by using political world-shaping. To acknowledge and preserve their sense of common humanity, they must

seize the opportunity. The people who are owed a justification are the people whose sense of common humanity is threatened by the world-shaping in question. I have argued that this includes not only all the members of a system of basic cooperation, but also non-members whose basic needs would be more securely met if they were allowed to join that system. The people responsible are the people with influence over the relevant political decisions; the more influence a person has, the greater their responsibility. The basic relationship holds between everyone who belongs to at least one of those groups. The justificatory challenge for basic justice is about how to reconcile our sense of common humanity with the inward and outward effects of a system of basic cooperation. The three principles of basic justice presented here seek to answer this challenge by aiming to restore our sense of human fellowship, in some cases by explaining how refusals to help can affirm that fellowship.

### **Concluding remarks**

Justice as fairness leaves many issues of justice untouched or undeveloped. One way to respond to this is to look for ways to apply Rawls's arguments and principles to some of those issues, and much good work has been done in this vein. In this paper, I take a different approach. Instead of seeking to extend the applications of his principles, I look to his method for developing them. There is much more to justice than what justice as fairness is explicitly meant to cover; and yet we can see, or at least draw out, the method used in its development, and apply that method to arrive at conceptions of justice for more types of justice.