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# John Rawls' Theory of Justice and Mixed Conception with a Social Minimum Principle

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Claremont McKenna College

**John Rawls' Theory of Justice and Mixed Conception with a Social Minimum  
Principle**

submitted to  
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and  
Dean Peter Uvin

by  
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## Abstract

John Rawls was a political philosopher concerned with social justice, specifically the best way that society could be structured so that individual rights and duties were fairly distributed amongst everyone and division of advantages from social cooperation were optimally determined. He believed that this conception of justice rested in principles that would be agreed upon by free, self-interested and rational persons in a starting position of equality and fairness. The principles of the theory of justice are ones that are meant to enable this group of people to cooperate with each other while recognizing that individuals in the group both share the same interests and have conflicting interests. These principles can be understood as underlying our most strongly held ethical beliefs – the ones that exhibit our ability to make the right moral decisions. This paper explains Rawls' theory of justice, Justice as Fairness, considers an alternative known as "mixed conception" and offers Rawls' response to the alternative before delving deeper into the debate to understand whether Rawls' theory of a "mixed conception" should be chosen for a society. Rawls was a notoriously difficult writer so this thesis spends a significant amount of time trying to explicate his views and arguments. With that being said, this thesis does miss out on some key secondary details but hopes to give a clear and compelling picture of his theory, especially the parts that relate to the debate. The debate centers on the choice between the difference principle, which calls for society to maximize the prospects of the least advantaged, and the social minimum principle, which has society set a social minimum that would allow citizens to lead decent lives and take measures necessary to ensure everyone can reach that minimum. In the end, I reach the conclusion that the social minimum principle, in combination with some of Rawls' other principles, should be used as one of the main principles of justice in society.

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## Chapter 1: Rawls' Justice as Fairness

### Purpose

John Rawls set out to create a conception of justice that he felt could be an alternative to utilitarianism, the ethical theory that the best course of action is the one that maximizes utility, commonly construed as well-being or satisfaction of expectations (*A Theory of Justice* xi-xii). The utilitarianism principle that Rawls mainly addresses is the principle of average utility, the utilitarianism principle that directs society to maximize the average utility. This form of utilitarianism contrasts with classical utilitarianism, which cares about maximizing the total weighted utility. The total weighted utility is calculated by taking expectations of representative persons in society, weighting them by the number of people with those particular expectations, and adding them together. Rawls believes that the principle of average utility is to be favored over classical utilitarianism because it implicitly allows a decent level of utility that each person must be allowed to possess and Rawls considers this to be important (*A Theory of Justice* 140-141). Following classical utilitarianism would likely mean allowing average utility to fall to its lowest acceptable point. For example, governments may consistently promote population growth (as each new person holds some utility) right up to the point where the utility gained in the addition of another person would be smaller than the drop in total utility of existing persons. This could mean more than ten billion people living on Earth having to share the same resources. In that kind of scenario, everyone would have lives that were miserable and barely worth living whereas following the principle of average utility can ensure decent lives with opportunities for self-expression and growth. Rawls considers

the latter consequence to be the rational choice between the two (*A Theory of Justice* 141). Another reason to favor it is because he will later make the assumption that the parties deciding on principles of justice are self-interested and therefore not concerned with total utility, only their own utility (*A Theory of Justice* 160).

Utilitarianism was noted by Rawls as the “predominant systematic theory” in modern moral philosophy. (*A Theory of Justice* xvii) He thought an alternative was necessary to form as a foundation for the institutions of constitutional democracy, specifically one that prioritized peoples’ basic rights and liberties (*A Theory of Justice* xi-xii). Utilitarianism says that an action can be just and should be followed if the cost of the sacrifices of the few it involves are outweighed by the gains to be had by many. Rawls found this problematic because of “an inviolability founded on justice that even the welfare of society as a whole cannot override” that he believes is present in every individual. (*A Theory of Justice* 3) Rawls thought there were principles we all believed in and relied upon that could not be overridden or sacrificed under any circumstances.

## Method

Rawls believes that a process that he calls reflective equilibrium is essential to check that the principles of justice he reaches are correct.<sup>1</sup> This process will allow us to independently test if the theoretical arguments he gives for the principles and the principles themselves are correct. He claims that we actually use reflective equilibrium in

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<sup>1</sup> This entire paragraph draws upon pages 18 and 41-42 in *A Theory of Justice*. For ease of readability and convenience, I will be using this practice of footnotes in place of parenthetical citation when an entire paragraph draws upon the same material.

our ordinary lives. Rawls supports the idea that people ordinarily have a moral capacity to recognize right from wrong and that they have a desire to follow that moral capacity when it is within their capabilities. It is this moral capacity that will form the basis of the construction of the correct theory of justice. First, the members of a group will lay out their considered judgments, ethical beliefs about specific situations that everyone in the group shares and are held by many members of society. An obvious one is “it is wrong to torture babies for fun” as this is recognized as a fundamental offense under all circumstances. We are asked initially to generalize from these specific considered judgments to general principles. At the same time, we attempt to come up with theoretical arguments that lead to the same principles that rely on moral premises that are a lot more broad and abstract than considered judgments. A moral premise could be “harm is generally wrong.” These theoretical arguments and frameworks, which Rawls will offer, can help us see if the principles that emerge from the process we conduct with considered judgments are correct. We make many judgments every day and a theory of justice fills the role of giving us principles that we follow in order to make those judgments when it comes to specific situations. Rawls recognizes the likelihood that in trying to come up with a set of principles, one may come up with a really compelling set don’t match one’s judgments perfectly. This is a sign of “certain irregularities and distortions” that lie in considered judgments that show them to be fallible even though we believe strongly in them (*A Theory of Justice* 18). Thus, we can modify our considered judgments because we have theoretical reasons for believing that the principles they lead to are wrong or we see this strong disconnect between the considered judgments and the compelling principles. One considered judgment that American society used to have was that slavery

was morally permissible but theories like “all men are equal” and problems in the theoretical argument of the principle that underlay that considered judgment (black men and women were inferior to white men and women and could be treated as property) caused us to seriously question that judgment and revise it. Reflective equilibrium is meant to be a back and forth process where considered judgments and principles of the theory are modified until they match each other in a way that we find most coherent and acceptable with solid theoretical backing.

One might wonder how Rawls can justify the use of reflective equilibrium itself and what other alternatives there may be. The method of reflective equilibrium is mostly thought of as a coherence account of justification, and contrasts with its main opponent, foundationalist accounts of justification (Daniels). This paper accepts the interpretation of reflective equilibrium as a coherence account of justification. Foundationalist accounts will take certain moral beliefs as fixed and unrevisable that are directly justified. In other words, these accounts accept basic moral beliefs that need not rely on anything else for their justification (Daniels). In contrast, Rawls believed that even our strongest moral convictions should be considered provisional fixed points and their correctness relies on their fitting principles that we come up with and having the right theoretical support for them (*Theory of Justice* 18). Rawls believed that a conception of justice must come from the “mutual support of many considerations” because to propose the existence of something like self-evident premises or basic beliefs would be to rely upon our fallible intuitions instead of a careful and deliberate process like reflective equilibrium (*Theory Of Justice* 19). This process can be very helpful because it can help one decide one’s

stance on certain issues that one is unsure about and come up with coherent and consistent views that are supported by principles.

## The Original Position

Though Rawls has given us a method to check principles of justice, we still need to have a position from which to start our reasoning to obtain the principles themselves. Rawls is a social contract theorist<sup>2</sup>. Social contract theories present the view that the morals and government of a society are dictated by an agreement made at the conception of the society that all agree to in a so-called pre-society “state of nature” where individuals hold no binding power over one another. His original position is intended to reflect the state of nature in the social contract theory and is the situation where people act as representatives of all adults and choose and agree for once and for all what is just and unjust. Imagine a collection of individuals that have a chance to design a new society and its institutions by deciding on the correct conception of justice. This original position is supposed to embody the conditions that we all agree would result in legitimate principles. What is special about this original position is that though we can think of it as a gathering of people, “the original position must be interpreted so that one can at any time adopt its perspective” and presumably, reach its conclusions once we understand how it is to be specified (*Theory of Justice* 120). Rawls stipulates that people in this original position have to be free and rational persons and thinks we agree these two traits must be possessed by those in the original position. (*Theory of Justice* 10) Freedom and

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<sup>2</sup> Unless otherwise noted, this paragraph paraphrases material from pages 15-17 in *Theory of Justice*.

rationality possessed by the people will allow them to be able to willingly choose the correct principles of justice after deliberation without being coerced to do otherwise. To ensure that everybody has a voice and can be free in the maximum sense of the word, Rawls also mandates that the persons in the original position have to be equal. In addition, no person is supposed to have a special understanding of the “good”, or “justice”. The point of the original position is to figure out what these two concepts are so the parties in it cannot have preconceived notions of what they should or should not be.

Other stipulations are placed upon this original position that can be bundled up in a “veil of ignorance”, designed to produce fair principles (*A Theory of Justice* 118-119). As Rawls says, “no one knows his place in society his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength...their conceptions of the good or their psychological propensities” (*A Theory of Justice* 11). These stipulations are added to ensure that the principles that emerge are truly fair and are not selected to benefit or harm people in particular circumstances (*A Theory of Justice* 11). The only thing that the parties in the original position know is that society will be subject to circumstances of justice (that they will define) and general facts about human society and other necessary general facts (*A Theory of Justice* 119). Rawls gives as an example of a general fact that “a conception of justice...should generate its own support” (*A Theory of Justice* 119). In other words, the principles in the correct conception of justice should cause people to acquire the sense of justice and act according the principles once it is in place in society. Rawls sees the veil of ignorance as something that many people would naturally come up with if asked to consider conditions in the original position but also sees it as present in Immanuel Kant’s

doctrine of the categorical imperative (*A Theory of Justice* 121-122). Let's take a look at his own argument for the veil of ignorance before examining how Rawls sees it as a natural application of Kant's categorical imperative.

Rawls considered that these specific contingencies (non-necessary facts or properties of people) like possession of wealth or high artistic talent would motivate people to exploit circumstances for their own gain and were arbitrary in a moral sense (*A Theory of Justice* 118). A billionaire in the original position who was cognizant of his own wealth may wish to allow a high level of inequality with privileges for the richest in society or at least push for principles as far as he could in that direction. But Rawls believed that possession of a lot of wealth or one's status as member of a high social class should have no bearing on one's achievements as he considered them irrelevant factors. Thus, the parties in the original position can be forced to argue for a conception of justice using only reasoning with the restrictions listed above. They must come up with principles that everyone will know of and can be complied with by everyone (*A Theory of Justice* 119). Rawls noted that the veil of ignorance actually allows a consensus to be reached on a definite theory of justice (*A Theory of Justice* 120-121). Without it, the billionaire would probably not be able to settle on a set of principles with the vagrant, the blue-collar worker and the university professor in the original position. There would be an extremely complicated bargaining scenario that may not ever reach a conclusion.

The categorical imperative was the key concept in Kant's moral philosophy and holds that potential principles can be satisfactory only if they could be made into universal laws of nature. This means that the principles must be able to be applied unconditionally at any time to any moral agent. Rawls was especially impressed with

Kant's notion of autonomy, which means choosing principles that can best express our own nature as free and equal rational beings<sup>3</sup>. Allowing someone to keep the knowledge they have of their own circumstances would incentivize them to act in accordance with their desires as a specific character or kind of character in society instead of purely as a free and equal rational being. The principles of justice that the parties will generate do not assume particular goals but aim at rational goods any person would want and thus would be suitable for any person.

Since everyone in the original position is equal, free, and rational and lacks knowledge of many distinguishing features that might incline them towards principles that favor or slight themselves or other people, Rawls considers the original position fair and productive (*A Theory of Justice* 16). The veil of ignorance allows there to be a unanimous choice of a conception of justice, instead of the parties reaching an unproductive impasse, because the differences amongst people is unknown and everyone is rational and free (*A Theory of Justice*, 121). A specific choice will be made because there is no reason to hold out and everyone is in favor of cooperation (*A Theory of Justice* 121)

Rawls thinks that these conditions that he places on the original position rely on presumptions that are "natural and plausible" with some that are "innocuous or even trivial" (*A Theory of Justice* 16). Alternative initial positions could involve a different number of parties with distinct characteristics instead of a veil of ignorance, either one or very few. The problem with these initial positions is that either group, especially the former, may come up with principles that members of society would not agree to and thus

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<sup>3</sup> This paragraph paraphrases material from pages 221-224 from *A Theory of Justice*.

would be governed by laws, institutions and practices based on principles of which they did not give their consent to. Without their consent in its formulation, Rawls would argue that the justice in that society would have no jurisdiction over their actions. Without knowing one's circumstances in society or what would be good for them, the parties in the original position must consider what would be acceptable and best for every member of society, regardless of their position as they themselves could become any member. In other words, every possible consequence of the principles must be okay to the parties for them to be agreed upon. An important point that Rawls brings up is that the veil of ignorance fulfills the crucial role of ensuring that the same principles will always be chosen in the original position regardless of time, persons, and any other factor (*A Theory of Justice* 120). This is necessary as the principles of justice should not be contingent – dependent on any factors.

Rawls says that the principles of justice that emerge from the original position will be correct because they are the best results that a social theorist can come up with but he suggests that we, as persons outside of the original position, must use reflective equilibrium to ensure that they and the whole process is correct (*A Theory of Justice* 17). He says we may “see if the principles which would be chosen match our considered convictions of justice or extend them in an acceptable way” (*A Theory of Justice* 17). This is intended to be done in a relativistic way by comparing different sets of principles to see if another set should be chosen and if one's judgments should be revised to match with one of the alternatives. Rawls argues that his Justice as Fairness emerges from the original position that he lays instead of other conceptions of justice (which could arguably come from other original positions with different assumptions built in) and also

argues that reflective equilibrium moves us to choose it over the other conceptions. His explicit comparisons and Waldron's argument on mixed conceptions will be explored further below.

As suggested earlier, reflective equilibrium itself is actually used to justify the original position. Rawls anticipated that some may still wonder why we accept this hypothetical scenario. Though hypothetical, the original position does embody conditions that allow agreed upon principles that come out of a scenario to be fair (*A Theory of Justice* 19). This notion that we want the principles that result from a fair process is virtually indisputable and these conditions are ones that Rawls sees as widely accepted or at least supported by strong philosophical reasons (*A Theory of Justice* 19). It also allows people to have autonomy and comes from a "perspective of eternity" meaning that it doesn't fit a particular human situation but should be accepted by any rational beings (*A Theory of Justice* (ToJ, 514). The original position itself can be seen as the "principle" or theoretical framework in the process of reflective equilibrium that fits with our considered judgments of the right way to reach principles of justice for a society.

A lot more can be said about reflective equilibrium as a way to justify Rawls' entire philosophy, including the acceptance of social contract precepts, but that is not the focus of this paper and I hope that the above exposition serves to give a decent idea of Rawls' two-pronged justification for the original position and how the principles are to be selected.

## Principles of Justice as Fairness

Rawls believes that two principles will be chosen from the original position. They are listed in his exact words below:

First Principle: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar scheme of liberties for others.

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

- a. To the greatest expected benefit of the least advantaged<sup>4</sup> and
- b. Attached to offices and positions open to all under conditions of fair equality of opportunity. (*A Theory of Justice* 53 and 72)

Part a of the second principle is also known as the difference principle and will be referred to as such.

Fair equality of opportunity is the notion that individuals with “similar abilities and skills [and willingness to use them] should have similar life chances” (*A Theory of Justice* 63). One can imagine trying to institute fair equality of opportunity by offering free high-quality public school to all children so that poor students can achieve as much success in the educational system as the rich students attending elite private schools.

An important note is that the principles are arranged in a serial order with the first prior to the second (*A Theory of Justice* 53-54). In other words, no liberties may be

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<sup>4</sup> The principle actually calls for maximization of the welfare of the worst-off, followed by maximization of the welfare of the second worst-off, all the way to the top.

compromised or infringed upon to better serve the second principle. For example, you may not restrict an organization's right to protest freely (if that is a basic liberty in a society following these principles) with the sole justification that it is reducing economic efficiency by block commercial activity.

We can understand the principles within "Justice as Fairness" better if we think about how they are practiced in American society today. The principle of equality is most prominently manifested in the First Amendment to the Constitution, as it protects the right to freedom of speech and religion. The government allows you to say anything in any medium with restrictions that are intended to preserve the rights of others. One of these restrictions concerns incitement, or advocacy of the use of force. Speech that advocates for the use of force violates the rights of a certain individual or individuals to not be harmed. In addition to these two, Rawls offers freedom of the person and political liberty, among others (*A Theory of Justice* 53). These rights are limited because while they are extensive, they are designed to ensure the exercise of these rights does not infringe upon the liberties of other people. Other examples of basic liberties can be found in the Fourth Amendment (Unreasonable Searches and Seizures) and the Sixth Amendment (Right to a Fair Trial)

As for the second principle, American society does have measures intended to reduce social and economic inequalities such as programs like food stamps (credits given to people who fall below a certain income threshold to buy food) that comprise part of the safety net. However, the inequalities that are present in society were not the result of a process designed to advantage everyone and certainly did not end up doing so. These inequalities largely came to be due to the operation of the free market, institutional

racism going all the way to slavery, and laws and regulations that have aimed to help certain groups of people. In addition, positions and offices have not been open to all citizens throughout US history and even today there are still issues despite the presence of laws designed to combat them.

Two important points have to be made about the difference principle, one concerning redistribution to the poor and the other concerning the allowance of the worst-off to not work and be rewarded.

It is common-sense upon reading the difference principle to think that Rawls wants to heavily tax the wealthy or reduce the budget for certain governmental programs to redistribute to the least advantaged. However, Rawls thought that there would not have to be as much redistribution as in current society because the guarantee of equal basic liberties and the implementation of fair equality of opportunity would greatly decrease the disparities that currently exist in society (*Justice as Fairness: A Restatement* 161). Both of these would allow a lot more people to be educated, healthy and have increased opportunities to find work and improve their prospects economically (*A Theory of Justice* 136 - 137) Thus, there would be less distribution and there would be a stronger emphasis on changing institutions so as to improve the income and wealth of the least advantage

Another concern people have upon examining the difference principle, one that can still be held given one's correct understanding of redistribution under the principle, is that the poor that do nothing would still receive tremendous benefits from society. Rawls addresses this by pointing out there is an assumption in the difference principle that citizens are willing to work (if they are able) and share in society's burdens if they

believe fair cooperation exists<sup>5</sup>. He thus mandates that only citizens that do work hard, assuming they are capable of doing do, will receive support from society. Thus, there would be no free-loaders in a Rawlsian society.

## Arguments behind the Principles of Justice<sup>6</sup>

Rawls believes that once you accept his hypothetical original position, the principles of justice that he proposes would be reached by the parties through deliberation behind a veil of ignorance where each party is deliberating from the position of their own self-interest (*A Theory of Justice* 102). The reasoning he has to give is highly intuitive and will let us see why these two principles were picked among all the possibilities.

In the original position, the veil of ignorance ensures that individuals cannot secure benefits for themselves or a group that they are a part of and as rational individuals, there is no reason why they would seek out to be disadvantaged anyway. As each party cannot gain more than an equal share and has no desire for anything less than an equal share, the parties would agree to principles mandating equal distribution instead of a principle that allows for unequal distribution. This means they would want maximum equal basic liberties for everyone. Rawls also notes that the parties in the original position would acknowledge the possibility that they may have “moral or religious obligations which they must keep themselves free to honor” behind the veil of ignorance (*A Theory of Justice*, 181). He calls this equal liberty of conscience a fixed point in our considered judgments and it is a further consideration behind the serial order of the principles as we

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<sup>5</sup> This sentence and the following sentences in the paragraph paraphrase material from page 179 in *Justice as Fairness: A Restatement*.

<sup>6</sup> Unless otherwise stated, this section paraphrases material taken from pages 102 to 105 in *A Theory of Justice*

would not want to sacrifice these liberties for any utility. The crux of Rawls' argument is that people recognize they should be able to do whatever they want and pursue the interests they have as long as they don't infringe upon the rights of other people and their basic liberties.

For the second principle, Rawls says that there should be social and economic inequalities. The appeal of the difference principle is made apparent by comparisons to its alternatives. One might initially think that the parties would opt for an equal division of income and wealth instead of any inequality but this turns out not economically efficient at all. If everyone was guaranteed to have the same income and wealth, productivity would heavily slump as people would have no motivation to work hard and improve. People would also not necessarily enter the careers and the positions in which they would be the most productive as they may opt for the ones that are easiest and most convenient. It turns out that social and economic inequality can improve the lives of everyone compared to perfect equality. Of course we would want some productivity rather than the total economic collapse that perfect equality would generate. Now we face the question of how much inequality to allow.

Rawls adds a specific condition attached to inequality. Due to the possibility of the parties in the original position ending up as the least advantaged in society, Rawls' thinking goes that they would only allow inequalities that benefit the least advantaged the most. The main alternative to this that Rawls sees is allowing inequalities to be what he calls "pareto-optimal" (*A Theory of Justice* 58). This is often a term used by economists to refer to a situation where goods are distributed so that there is no way of redistribution so that one person or group can have their circumstances improved without

disadvantaging someone else. Imagine baking a hundred cookies and giving them all to different groups in society. Pareto-optimal efficiency could lead to a situation where some individuals are extremely poor while others are extremely rich even as society as a whole improves. One group could have 90 cookies and 10 other groups could each share 1 cookie but that would be acceptable. A related problem is that there are many different points at which society would be efficient and there would be no way of deciding which one is most valid (*A Theory of Justice* 61). As we will see later, Rawls believes this problem of “vagueness” is unacceptable and wants to be able to pinpoint the level of inequality that would best serve society. Overall, Rawls thinks that the precision, security and efficiency generated by the difference principle cause us to choose it over egalitarian, utilitarian and pareto-optimal principles.

Fair equality of opportunity is added on as a condition to the second principle concerning the arrangement of inequalities to try to correct the problem of natural and social contingencies on the initial distribution of assets (*A Theory of Justice* 77-78). In layman’s terms, Rawls understands that while the initial distribution in society may be fair, factors like good luck or the social connections one has access to thanks to one’s parents can have a serious effect on how one’s talents and abilities are developed and used. He believes those factors are arbitrary from a moral point of view and thus should not have such an influence. The only way to balance against this problem is to add fair equality of opportunity to create a more meritocratic society where your position in the social system has no effect on your success or social mobility.

Rawls thinks that these two principles allow the privileged and the unprivileged to work together in the face of necessity to improve overall welfare. It ensures that the

advantaged in society do not work to increase their advantage at the cost of the less fortunate.

## Argument against Utilitarianism

In the original position, Rawls says that people would not pick the principle of average utility and would instead opt for the principles in Justice as Fairness (*A Theory of Justice* 152). Though the paper's focus is not on utilitarianism as it relates to Rawls, this paper explains Rawls' argument against it to give a better idea of how one should think about the original position.

The parties in the original position face uncertainty when choosing their principles because they pretty much know nothing about the interests that they are representing but the principles are supposed to govern the rest of their lives and their descendants' lives. This is guaranteed by the veil of ignorance. One of their options is utilitarianism. Utilitarian principles governing a society would result in one with a wide variance in the well-being and possession of income and wealth of the individuals in, with everything designed with the goal to maximize average utility. Some people would end up in a pretty terrible state in this society, without the means to escape their state. The parties thinking in the original position acknowledge this to be possibility for them and Rawls thinks nobody would want to have this as a possibility open to them (*A Theory of Justice* 1155). Since there are multiple ways for a society to implement utilitarian principles, the specific details of what the average utility or who the worst-off is and how many of them there are is unknown. In this scenario, Rawls believes that the

representatives would follow the maximin rule, the rule to “adopt [out of] the alternatives the worst outcome of which is superior to the worst outcomes of the others” (*A Theory of Justice* 133). In other words, they would ensure that their worst case scenario is as good as possible. This reflects how risk-averse Rawls thinks we would be in the original position when choosing principles that will underlie the basic structure of society and ones we must abide by due to our agreement. Rawls believes that when one follows the maximin rule without knowledge of the likelihood of different outcomes, one will not choose any conception of justice that could lead to unacceptable minimum outcomes but will only choose a conception of justice with a satisfactory worst outcome (a level where he/she is willing to live) (*A Theory of Justice* 135-136). He also thinks we don’t really care about social mobility as long we’re guaranteed to be above a decent social minimum. This means that a utilitarian society with many chances for the worst off to climb up out over poverty into prosperity would still be largely irrelevant to the parties. The utilitarian society is likely to have unacceptable minimum outcomes so that the majority of society can benefit off of the labor and sacrifice of the minority. Rawls thus argues that the parties behind the veil will see that a satisfactory minimum and protection of liberties is guaranteed by the difference principle whereas the utility principle does not and could lead to terrible conditions such as those found in slavery. I’ve given the above argument based on rational choice against utilitarianism on behalf of Rawls but this paper later introduces another moral argument that another author sees Rawls as giving against utilitarianism.

## Chapter 2: Debate between Justice as Fairness and Mixed Conceptions

### Mixed conceptions<sup>7</sup>

Though Rawls spends most of his book, *Theory of Justice*, defending Justice as Fairness as the choice of those in the original position against the “Principle of Average Utility”, he does spend some time defending it against the “mixed conception” conceptions of justice as he believes many see them as more plausible than his theory. A “mixed conception” of justice takes the principle of greatest equal liberty in Justice as Fairness and its priority over the other principle as correct but substitutes the difference principle for the principle of average utility, subject or not subject to a constraint and with or without fair equality of opportunity. The “mixed conception” that Rawls focuses on is the one that philosophers generally consider the most plausible and substitutes the difference principle for a principle that guarantees a decent minimum before creating a social system with the highest average wealth possible. In other words, it has as part of it the principle of average utility with a minimum boundary, which Rawls will later call the principle of restricted utility. While in Rawls’ imaginary country he seeks to put the least advantaged in the best possible position, countries like the United States follow much closer to the “mixed conception” with a social minimum that’s “guaranteed” though measures like welfare and most of the government’s efforts spent on boosting the economy to increase average utility. Below is a simple table based on one used by Jeremy

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<sup>7</sup> This entire section paraphrases material from Chapter 49, Comparison with Mixed Conceptions, from pages 277 to 285 in *A Theory of Justice*.

Waldron<sup>8</sup> to illustrate two societies, one with the social minimum principle and the other with the difference principle:

Figure 1: Societies based on social minimum and difference principle

	Economy governed by the social minimum principle	Economy governed by the difference principle
Best-off 20%	\$ 200,000	\$ 160,000
Middle 60%	\$ 60,000	\$ 50,000
Worst-off 20%	\$ 20,000	\$ 30,000

The numbers in the table refer to yearly income earned by an individual. The table shows that the first society has a stronger economy though the worst-off earn less than their counterparts in the other society. The extra prosperity is instead shared by the top 80%. Keep in mind that with the social minimum principle in place, everyone is guaranteed to earn a certain level of income (one can imagine it to be just below \$20,000 in this case) and incentives can be introduced that **do not** have to help the worst-off in society but are designed to reward productivity. The table will be used later on when Waldron's arguments are introduced.

It's important to note that Rawls is not able to use the argument he used against the utilitarian view against mixed conceptions because of the primacy of the first principles and the guarantee of a decent minimum. Like in Theory of Justice, liberties will never be sacrificed for utility when following mixed conceptions because the equal

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<sup>8</sup> Waldron uses an outdated table in his chapter, Rawls and the social minimum.

liberty principle takes precedent over the second principle concerning inequalities. The worst off in society will not have a life that people would not want to live because the representatives have agreed to the level of the decent minimum. Rawls' has two main interconnected arguments against mixed conceptions. One concerns the selection and adjustment of this decent social minimum and the other is that the difference principle, not the principle of restricted utility, is the one that accords with our considered judgments after some reflection. In a way, the second argument for the difference principle offers a solution to the problem with the social minimum illustrated with the first argument.

Rawls believes that the principles behind this determination of the decent social minimum would rely too much on intuitive judgments. Consider how a policy maker would determine this level. At first, she would consider the necessities for living, including shelter, food and clothing of reasonable quality and access. These would constitute the baselines for survival. Already we run into issues concerning quantity and quality. What constitutes decent affordable housing? How much emphasis should be placed on nutrition if that involves higher costs? What kind of goods do we have to bundle into a package for new mothers? These and many other questions must be answered to set a minimum. It seems almost uncontroversial to add other benefits like basic education (including adult education and vocational classes), healthcare coverage but these face more complexities in terms of spelling out actually what these benefits should be. Beyond the necessities and benefits (and assuming the policymaker figures out the particular details of them), it becomes more problematic to consider whether things such as opportunities to see arts & entertainment, access to the internet and higher

education should be considered part of a decent social minimum and different people will likely have different answers. The social minimum would need to be flexible enough to be applied as society changes so it is something that needs to be constantly revisited. By contrast, the difference principle is a lot more straightforward as it calls for the prospects of the least favored to be promoted as far as possible. One can even see how applying Rawls' two principles would result in a similar outcome as applying mixed conceptions with the principle of restricted utility, as Rawls suspects would be the case. Setting inequalities to benefit the worst off in society will be in effect guaranteeing them a social minimum because they would be raised to have the best prospects they could possibly have, though the minimum here is not set by a material standard as with a typical social minimum. Since the difference principle allows helping every group in society starting with the worst-off<sup>9</sup>, average utility will also increase. The increase in average utility here would be a consequence of the difference principle without there being a deliberate attempt to have it happen. This idea that they could be the same seems to assume the mixed conception of being capable of adopting a very high social minimum that would mirror the "social minimum" in effect with the difference principle.

Now let's see how Rawls thought that the difference principle was acceptable to us through reflective equilibrium. Rawls understood that we often seek to meet the ends of average utility and parity/equality but have difficulty weighting each one. In other words, it's common sense for us to want society to be as best off as possible but for there also to be balance and equality so everyone can enjoy prosperity. He argues that a

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<sup>9</sup> In addition to the elaboration of the principle in footnote 1 whereby everyone is directly aided with priority on the worst-off, helping the least advantaged in society will reduce negative elements in society like crime and allow them to contribute more to the economy and society.

conception of justice cannot be one that allows us to just exercise our judgment to the best of our ability within a framework but needs to be precise. This precision ensures that we are not trying “to exercise one’s judgment as best one can within the framework of these ends as guidelines” (*A Theory of Justice* 280). This exercise of one’s judgment would make answering certain questions of justice very difficult as we’d have to balance different ends like average utility and equality and we can come up with different uncertain answers. Rawls entertains the idea that our everyday judgments are guided by the difference principle but drops it shortly after. Rawls considers the consequences that come from following the two principles of justice as acceptable to us and our convictions upon reflection. He gives an example of how the difference principle accords with our considered judgments and back this up with political theory. Rawls points that that is typical for a democratic society to appeal to the common interest, to wish to promote the greater good. Understanding this to mean more than just maximizing the efficiency in society and recognizing that there is no way for a government to aid everyone equally, the least advantaged in the society seems consistent with respecting equal liberties and fair opportunity, both values that a democratic society also cherishes (the first principle and a part of the second principle with its independent rationale). Rawls thinking here is that since this practice is something widely done and one in which we have confidence in, it can be one of those fixed points that does match the difference principle that he has developed from the original position and should act as support for its legitimacy. The difference principle is supposed to accord with our considered judgments, as this example tries to show, and to also be a satisfying way to answer those questions that common sense is incapable of answering.

## Waldron's arguments against Rawls

Jeremy Waldron, a law and philosophy professor, argued that a needs-based conception of a social minimum is better supported by Rawls' arguments for the difference principle than the difference principle itself (Waldron 251-252). The needs-based conception refers to a social minimum that is necessary for "people to lead decent and tolerable lives" (Waldron 250). This is in contrast to a social minimum based on an egalitarian principle where society's goods are equally divided and then distributed amongst its members. This is part of a conception of justice that is a "mixed conception" for it contains the principle of average utility subject to a constraint involving a needs-based social minimum, and Waldron favors this principle over the difference principle in Rawls' theory of justice. We'll quickly see what Waldron sees as Rawls' objections to the social minimum specifically then explore Waldron's own positive arguments for the social minimum using Rawls' theory first and then claims about need. One can see Waldron as responding to the two arguments I present on Rawls' behalf above.

Before we go into arguments, we try to gain a better understanding of the difference in societies governed by the social minimum principle and the difference principle and the existence of a social minimum in a society with Justice as Fairness. Waldron comes up with an imaginary case very similar to the one illustrated in the table above to allow him to contrast the earnings of various classes in society in economics governed by the two principles<sup>10</sup>. As you can see from the table, the economy governed

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<sup>10</sup> This paragraph paraphrases material from pages 254-255 from Waldron's chapter, Rawls and the social minimum.

by the social minimum is overall more productive than the economy governed by the difference principle. Waldron makes the key observation that the difference principle would make society adjust inequalities solely so that they benefit the worst off in society the most whereas the social minimum principle does not make society focus on those individuals unless they are below the social minimal level. If no one is below this level, the social minimum principle will allow for inequalities if they serve a utilitarian purpose to maximize average utility. Notwithstanding Rawls' concern that the application of the social minimum principle may be equal in effect to the principle of the difference principle, one can expect more inequality to result from the social minimum principle. This greater inequality actually spurs more productivity as shown in the example, perhaps through promoting savings and investment by companies and incentivizing individuals to work harder. There is a school of thought that Rawls is open to in his later writings that the greater inequality in a society like the one with the social minimum would not result in greater productivity but I will be adopting Waldron's assumption that his society would in fact be more prosperous. The social minimum in Rawls' society is the point that maximizes the expectations of the least advantaged group whilst still being low enough so that economic efficiency isn't compromised.

Waldron sees an implicit answer and an explicit answer for Rawls' rejection of the social minimum conception in *A Theory of Justice*. The implicit argument is that the greater inequalities allowed by the social minimum conception (check out the left column vs. the right column in Figure 1) means one could face a worse worst possible outcome and no one would take that risk (Waldron 254-255). The explicit argument is that the social minimum cannot be set on non-intuitionistic grounds or in a way that doesn't refer

to the difference principle (Waldron 255). This is the first argument I elaborate on in the “Mixed conception” section right before this section.

Waldron sets on the task to set the social minimum, something that Rawls figures could not be done in a principled, rational manner. To do this, he incorporates Rawls’ reasoning against utilitarianism that Rawls uses as support for the difference principle to arrive at the social minimum instead<sup>11</sup>. He feels that the social minimum is best supported by Rawls’ rejection of utilitarianism and Rawls’ theory.

Waldron sees Rawls as arguing that it is irrational for the parties in the original position to take the risks involved in accepting a principle with utilitarian elements thinking that they’ll end up doing well. This irrationality is not because of the uncertainty as I suggest Rawls thinks it is but because taking this risk would be a one-off gamble whereby the parties recognize that the consequences would likely be almost permanent in the sense that people will remain in the social position they start out with. In this one-off gamble, Rawls believes that the maximin rule should be applied. To do otherwise and choose utilitarian principles or other principles with a lot of inequality is to irrationally think that bad luck will be balanced by good luck and a terrible start in life will be balanced by fortunate events. Though these considerations play a part in Rawls’ argument favoring the difference principle over the principle of mixed utility, Waldron interprets Rawls’ main argument to actually be a moral one that is tied to these considerations.

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<sup>11</sup> The definition of the social minimum is covered in section III of Waldron’s chapter, from pages 256 to 263.

Waldron believes Rawls' main objection against the adoption of utilitarian principles in the original position is that the parties will reject average utilitarian principles because they are not sure they can do what is required of them if they fare poorly in the "gamble" and have to live unsatisfactory lives. The contract created in the original position requires an absolute commitment from the participant (in all circumstances) to the life that he/she will live. Rawls himself points to this problem regarding the "strains of commitment" as critical in arguing against utilitarianism and for his principles. Waldron quotes Rawls in saying "the parties must weigh with care whether they will be able to stick with their commitment in all circumstances" (Waldron 260). If one is unlucky enough to be one of the least advantaged in the society governed by utilitarian principles, Waldron believes that the individual will not be able to maintain a full commitment to society's institutions. Instead, it is a lot more likely that the individual will be sympathetic to a change in the utilitarian society for something else. With this in mind and the determination of the parties to meet their commitments and act honorably, participants will not take any bets that have as a possibility of "desperate poverty" (Waldron 261). Here we can try and examine further the reasoning behind individual's abandonment of full commitment in the case where she turns out to be one of the least advantaged. Waldron asks whether this is because the individual is aware of the possibility that the lot of the worst in society could be improved or whether this is because the individual is unsatisfied with their level of well-being regardless of what may be possible. Waldron thinks that the advocate for the difference principle will say that the level of disaffection of someone is the same regardless of what level of welfare they are at if inequality with other classes is equal in both cases. For example, the advocate would

say disaffection felt by someone that earned \$10,000 a year in a society would be the same as someone earning \$18,000 in a different society if both had the same level of inequality and both income levels were considered below the poverty line. Waldron disagrees and does see a difference and thinks that a guarantee of a social minimum would dramatically increase coincidence in the parties to honor their commitments because he feels the source of the disaffection comes from not enjoying a decent level of welfare instead of not being in the best situation possible.

Waldron thinks that people in the original position do not turn naturally to the difference principle where the worst-off are guaranteed to be at the best position they could be but would rather opt for the social minimum principle, where the worst-off are guaranteed to be at a decent position. This principle fixes a minimum just above the level where individuals would not be able to keep their complete commitment to the institutions of society or serious disaffection and discontent will occur and is a precise fix to the problem concerning the “strains of commitment”. This would allow the members in the original position to be confident that they are bargaining in good faith. Waldron adds that the suggestion by Rawls that this principle produces results equal with the difference principle relies on the assumption that “a member of the worst-off group in any society will always withdraw his allegiance from its institutions if they impose *any* avoidable sacrifices on him, no matter how well off he is”. In other words, the worst-off in society would have the disaffection mentioned earlier in any scenario in which their expectations are not maximized. Waldron considers this unrealistic as it is unreasonable for them to have such a high standard for the lives of the least advantaged in society (Waldron, 263). Waldron considers his answer to Rawls’ objection a satisfactory way to

“produce a basis for determining a social minimum...neither intuitionistic nor dependent in the last resort on a covert appeal back to the difference principle” (Waldron, 263).

Waldron claims he has successfully defined a social minimum here that is both precise in a non-intuitionistic manner and robust (people can seriously commit to it) but if this is so, this only removes some of the problems with the social minimum principle. Waldron still must argue why those in the original position would choose the social minimum principle over the difference principle for their theory of justice.

Waldron then uses another angle to positively plead his case that does not rely on Rawls' specific writings<sup>12</sup>. He emphasizes that the choice that the parties in the original position face is used as a device allowing us to understand fundamental ideas behind justice like freedom and equality. He thinks that by parallel, it is possible to take claims about the social minimum in the original position to understand the fundamental ideas and values behind the social minimum.

The principle of Waldron's social minimum is backed by claims about need. Need can involve having to endure a lack of something vital and the manifestation of this kind of need can be seen by violent actions taken to procure what is lacked. Contract theories depend on members of a society working with its institutions and thus stress allegiance and voluntary cooperation of its members. Waldron believes that individuals in a society should not have the kind and degree of need that spurs reckless impulsion of action (equivalent to the breach of a commitment) like starting a violent revolution as that need at a certain level can seriously threaten the viability of society. He also thinks that “the reckless impulsion of action by need is a *normal* human phenomenon and not something

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<sup>12</sup> Waldron's positive argument is contained in section IV of Waldron's chapter from pages 263 to 267.

irregular or rare” (Waldron 266). Thus, in producing principles of justice to govern a society, we must ensure that this need is not present. This need is backed up by our basic ethical convictions and thus cannot be suppressed by force.

Waldron thinks that there is a level of deprivation where no one is able to “support, operate and respect institutions...where he can conceive of any practicable alternative” (Waldron, 264). When enough people reach this level of deprivation, the society they are in loses its legitimacy and faces danger because society is seen to violate basic principles, ones that are arguably present in the first principle concerning equal liberties. The right to be treated with respect and given to chance to fulfill one’s own potential is violated. Supplying this need is possible with a social minimum that is designed expressly to meet the need and the prioritization by society for all to meet this social minimum. When this is done, the citizens will work together with society’s institutions to promote the laws that are derived from accepted principles of justice.

It is key to note that the claims about need do not support the “extra egalitarianism of the Rawlsian difference principle” (Waldron, 267) because fulfilling this need requires only a minimum level of material well-being, not a particularly high level. In other words, Rawls needs another basis to justify why the poor have to have a life higher than the decent minimum that Waldron has managed to justify. The claims about need can be viewed through the process of reflective equilibrium, with those claims as fixed points that we all deeply believe and his argument as the theoretical foundation that proves the social minimum as the appropriate principle that corresponds with those claims.

It must be noted at this point that it is disappointing for Waldron to say there doesn't seem to be a reason to go beyond the fulfillment of needs when it comes to a social minimum when he could have elaborated and positively argued exactly why the fulfillment of needs is as far as we should go. This non-existent elaboration of why going beyond fulfilling needs is unacceptable would pair well with his justification of a social minimum based on needs.

### Rawls' response to Waldron

In his *Restatement* that Rawls published decades after *A Theory of Justice*, Rawls explicitly compared mixed conceptions with the difference principle. Rawls reiterates his view that the principle of restricted utility is the strongest rival to his two principles of justice and gives positive arguments in support of his principles over Waldron's principle followed by a direct refutation of Waldron's arguments (*Justice as Fairness: A Restatement* 120). I will cover the positive arguments and then focus my attention on his direct refutation.

Rawls' comparison between his two principles and mixed conception with the principle of restricted utility was supposed to show how his two principles had an advantage with respect to reciprocity. It is through the lens of publicity that we understand why Rawls thought that reciprocity was to be valued.

Rawls believes that in addition to being general and universal, principles of political justice should also be public<sup>13</sup>. This means that in evaluating principles, those in the original position should consider the consequences of citizens publically recognizing that the principles “are mutually acknowledged and that they effectively regulate the basic structure”. One of the most important consequences Rawls believes those in the original position would consider is that the political conception of justice would serve an educational role. Relying on “commonsense political sociology”, Rawls says that we would think that those growing up in societies governed by the alternatives (both of which share equal basic liberties and fair equality of opportunity) would form conceptions of citizens as free and equal and of society as a fair system of cooperation between citizens viewed as free and equal. Rawls considers the conception of society as a fair system of cooperation to be evident from the rules of conduct that govern a society so he doesn’t elaborate more on it in this section (*A Theory of Justice* 4) Rawls considers this educational role a positive consequence that should be promoted. The question is which principle of distributive justice (difference principle of principle of restricted utility) best fits those conceptions. An easier way of answering the question involves understanding that a fair system of cooperation includes the notion of reciprocity and the issue is identifying which principle supports reciprocity, if either supports it at all.

Reciprocity is the idea that members in a society cooperate and benefit appropriately. Let’s see how the difference principle can result in reciprocity with a simplified society with two groups: the more advantaged and less advantaged where we

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<sup>13</sup> This paragraph and the following paragraphs concerning reciprocity and stability paraphrase material from pages 120 to 126 in *Justice as Fairness: A Restatement*

are only concerned with inequalities of income and wealth only. Starting out from equal division, everyone agrees to move away from inequality to improve everyone's prospects. See what I wrote above, as inequalities should be accepted when everyone's position is improved. Obviously not everyone benefits equally because resources are limited. Instead, initially some gain a lot while others gain a little. Those who gain a little understand this necessary imbalance and allow this to happen. From the perspective of those who gain a little, this group would not tolerate the more advantaged group gaining anything without any gain themselves or with a loss to themselves. This is how Rawls arrives at the difference principle, for it structures inequalities so that the least advantaged are in the best position possible. The least advantaged allow everyone else in society to gain only so far as they themselves benefit and this culminates in them having their prospects maximized. Rawls believes that the difference principle ensures reciprocity all the gains in society will help the worst off so one can think of members of society cooperating to aid the worst off as they improve their own prospects. More specifically, there is an idea in reciprocity that social institutions should not "take advantage of contingencies [circumstances of peoples' lives] of native endowment, or of initial social position, or of good or bad luck over the course of life, except in ways that benefit everyone, including the least favored" (*Justice as Fairness: A Restatement* 124). The difference principle matches this as those who are more naturally or socially fortunate are encouraged to better themselves as long as they help everyone, especially the least fortunate. The principle of restricted utility only has society guarantee a social minimum so there's not explicit talk of cooperation for all of society by its members.

Rawls' third point in favor of the difference principle over the principle of restricted utility concerns stability. Stability refers to the idea that political conceptions of justice need to create their own support and have self-enforcing institutions. In other words, the citizens in these societies should support the political concepts because they see them as reasonable and just. Rawls believes that the more advantaged group would not push to gain more at the cost of the less advantaged because of these three reasons:

1. The educational role of a public political conception urges people to wish for appropriate reciprocity so their conception of society as a fair system of cooperation is matched. The difference principle has that reciprocity (as Rawls argues with the second point).
2. The more advantaged recognize any contingencies that may have helped them and do see opportunities to do better as long as the way they do so helps everyone else too.
3. Mutual trust and cooperation are encouraged by the difference principle when everyone sees no one can benefit solely themselves.

Though he doesn't say exactly why the principle of restricted utility would not lead to a stable society, it is not too difficult to envision why Rawls thought this would be the case. The more advantaged in a society governed by mixed conception would not recognize the principle as containing an appropriate idea of reciprocity. They would likely act on behalf of their own interests, seeking more wealth and income because they do not see social cooperation as an idea enshrined and practiced in their society. They also see how the three contingencies (natural talents, social position, luck) can be taken

advantage of and are not controlled so they wish to capitalize on those too if they possess them.

Rawls moves on to directly attacking the principle of restricted utility with three main points; the first two points concern utility and the last one concerns the social minimum<sup>14</sup>. Firstly, he attacks the indeterminacy of the point where “the sum of individual utilities maximized” when one considers a society with two groups of people, the most advantaged group and the least advantaged group (*Justice as Fairness: A Restatement* 62). How are inequalities to be structured so that average utility is maximized? With uncertainty and unreliability as to where this point is, Rawls here points to the problem with all unclear and ambiguous principles: the potential for disputes and mistrust. This is essentially the first argument that I covered in the “Mixed conceptions” section.

Secondly, Rawls thinks that asking the least advantaged to have to give up benefits for the more advantaged due to the utility part of the principle is too much of a demand to make. That is the case for the principle of restricted utility to maximize average utility while the least advantaged are not asked to give up anything with the difference principle. Rawls makes the distinction that the difference principle relies on reciprocity while the utility principle relies on the weaker disposition of sympathy. As sympathy is weaker, “[t]he psychological strain that may lead to instability are bound to be greater” (*Justice as Fairness: A Restatement* 127). Those living in a society governed with the utility principle have a greater risk of losing faith in society and its principles of justice, and thus a greater chance of breaking laws. As mentioned earlier, this is one

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<sup>14</sup> These points are addressed from pages 126 to 130 in *Justice as Fairness: A Restatement*.

reason why the difference principle is supposed to be preferred to the principle of restricted utility.

The attack on the social minimum concerns the strains of commitment and the ability to make an agreement in good faith. Rawls, like Waldron, understands that the strains of commitment can be too excessive if the minimum guaranteed in society is not high enough or when there is no minimum. Rawls elaborates on the excessive strains of commitment that Waldron explains and points out that though there's one way in which their excessiveness can cause us to take violent action because society's conception of justice is rejected by the least advantaged, there is also a milder way in which the least advantaged "grow distant from political society and retreat into [their] own social world" (*Justice as Fairness: A Restatement* 128). In the second kind of scenario, the principles are not recognized as correct or belonging to the participants. Since the utility principle says that strains of commitment are excessive when individuals do not get the share of resources they are owed that allow them to fulfill their essential needs, Rawls thinks that social minimum would only cover essential needs. Even if that social minimum prevents strains of commitment from being excessive in the first way (regarding violent action), it does not do so in the second way where the least advantaged feel like they are part of society and identify with its ideals and principles. The difference principle derived from reciprocity goes beyond the basic needs to help the least advantaged affirm the principles of justice and consider themselves to be full members of society. Importantly, they see the principles as fair as they regulate inequalities affected by the three contingencies of social class, natural talents and good fortune.

Due to the complex nature of Rawls' arguments in the Restatement, I will now attempt to summarize them:

Rawls believes that thinking of the consequences of everyone in a society recognizing and affirming political principles makes us understand the educational role political conceptions of justice have on its members. These conceptions stress that citizens are free and equal and society should contain reciprocity, both conceptions that should be valued. The difference principle contains this notion of reciprocity as all inequality and efforts at improving one's prospects have the goal of benefitting everyone, especially the poor.

With regards to the social minimum principle, the point where average utility is maximized cannot be determined, the strains of commitment have a greater chance to be broken as the least advantaged have to give up more than they would with the difference principle and they would not feel like they are fully a part of a political society that they recognize as fair and cooperative.

## Chapter 3: Analysis of the Debate

For the analysis section, I'll first consider Rawls initial objections in *Theory Of Justice*, examine how adequately Waldron has responded to Rawls' initial objections, then look at what Rawls' new objections in his Restatement have to offer to the debate, before weighing the merits of both sides to consider who has made a better case for their side.

### Rawls' initial arguments

Firstly, a quick note on Rawls' second argument against mixed conception in *A Theory Of Justice*. Rawls' example of how democratic societies appeal to the common interest by propping up those who are the least advantaged seems problematic. While it is true that is often is a political convention of a democratic society to appeal to the common interest, this does not necessarily mean that these societies understand the convention as helping the least advantaged. Very often in the United States, you hear politicians advocating for policies because their implementation will help the middle class, the largest socio-economic group in the country. Or they may believe that appealing the common interest means passing policies that will improve the average spending power of everyone in the country, perhaps through something like an economic stimulus package. The first example demonstrates how we can understand the appeal to the common interest as benefitting the largest group in society whereas the second example contains a utilitarian slant. Moreover, Rawls points out that "[s]ince it is impossible to maximize with respect to more than one point of view, it is natural, given the ethos of a democratic society, to single out that of the least advantaged..." (*A Theory*

*of Justice* 280-281). It is true that we cannot maximize two or more points of view (for that would mean sacrificing resources that could be used to maximize one point of view to advance other points of view) but Rawls assumes that in our convention of appealing to the common interest, we only wish to maximize one point of view when that is almost never the case. Appealing to the common interest can mean implementing policies that help different groups of people in different ways. Rawls stresses the importance of society as a system of fair cooperation so he must recognize that solely maximizing the prospects of the least advantaged would not be acceptable to many members of society if no other points of view are considered.

If the political convention of a democratic society to appeal to the common interest cannot be used to back the difference principle, is there perhaps another fixed point or belief that we hold strongly that naturally leads to the difference principle? Rawls talks about how a conception of justice needs to have a fairly detailed weighting of aims. These aims include prosperity, equality, social mobility, among others. The priority of equality seems at first glance to be a worthy aim, as most of us hold equality of all sorts in high regard. Even though no political system totally advocates for relative socio-economic equality, democratic socialist philosophies call for them to a significant extent. Relative socio-economic equality amongst members of a society has various merits: participation by everyone in the political process, reduction of corporate greed and crime alongside reduction of criminal behavior with the intention of escaping poverty, stronger protection of civil rights and liberties and the feeling by citizens that they are full members of society. There are all consequences that parties in the original position would agree are positive.

The difference principle seems like a logical principle with which to create a society with relative social parity. All citizens would be allowed to use legal means to improve their prospects through means such as entrepreneurship, but their efforts would simultaneously improve the welfare of the least advantaged. This ensures that the worst-off will always have their lives improved with any improvement in society and a significant disparity between the rich and the poor would not emerge. So even though I find problems with Rawls' use of the political convention of a democracy to appeal to the common interest as an instance of policies that we have a lot of confidence in to support the difference principle, I hope my substitution of society's appeal to equality is adequate.

### Waldron's defense of the social minimum

Rawls' contention that one is not able to set the social minimum in either a non-intuitionistic way or as high as possible as the difference principle calls for is, in my opinion answered by Waldron so I'll just quickly cover how that works out. Following the spirit of Rawls' philosophy, Waldron points out that answering the problems of the "strains of commitment" does not require the difference principle. Instead, since a decent minimum is set by the individuals in the original position above the point where they cannot keep their complete commitment to the institutions of society and justice, society is set up so that the discontent and problems regarding the "strains of commitment" do not emerge. Waldron considers this a precise fix with there being no reason to go as far as the difference principle. Waldron disagrees with Rawls' as to the indeterminacy of the

social minimum; as he believes that it is a task that psychologists and sociologists are well equipped to perform. Rawls seems to agree that Waldron's answer to his criticism about intuitionism is valid given how he does not mention it in the *Restatement*.

With that being said, Waldron has simply defended against the critique that the social minimum cannot be defined appropriately. Like I said earlier, he has not given us a reason for those in the original position to prefer the social minimum principle over the difference principle. On Waldron's behalf, I will propose one reason here.

The poor often call for provision of the necessities by the government and the opportunity to obtain a job so that they may provide for their family in time. Both of these are provided by the implementation of both principles. However, the difference principle goes further than this as it maximizes the chances of the worst-off to live well. An example of what the difference principle would do for the worst-off that the social minimum may not (keeping in mind the necessity to guarantee basic equal liberties and fair equality of opportunity) is that the worst-off may receive housing subsidies for housing of a quality above decent housing that others in society would not. One can understand how the worst-off could feel that this was something they did not truly want or deserve. This would be especially true in a society governed by the difference principle where the worst-off are only marginally worst off than the average citizen. This example hopes to demonstrate that the worst-off appreciate assistance given to them by the government but do not want to receive the maximum level of support possible even if they are working hard. This goes beyond the idea of pride and concerns the self-worth of individuals. As Waldron points out, Rawls seems to think that the selection of the difference principle in the original position requires the belief that the worst off should

have to make no sacrifices at all in their pursuit of economic security and personal fulfillment. However, we all recognize that sacrifices have to be made, that even if we work our hardest life will present setbacks and obstacles that we have to confront. The overcoming of these setbacks and obstacles make us stronger, wiser and more mature. Allowing us to overcome them instead of removing them from our way treats us with the self-respect we deserve in virtue of the moral status we have as human beings. A social minimum provides the level of material and psychological security that would allow one to use their own talents and skills to attempt to make a decent living on their own terms while supporting a fair society that treats people with self-respect.

Waldron's positive argument based on claims about needs requires some parsing to figure out exactly how it works. Waldron thinks that there is a level of deprivation where no one is able to "support, operate and respect institutions...where he can conceive of any practicable alternative" (Waldron 264). When enough people reach this level of deprivation, the society they are in loses its legitimacy and faces danger because society is seen to violate basic principles, ones that are arguably present in the first principle concerning equal liberties. The right to be treated with respect and given to chance to fulfill one's own potential is violated. Taking a parallel approach to the one he took in the previous argument concerning the "strains of commitment", Waldron proposes that a social minimum is necessary, one set above the point where people fall into this need.

So Waldron does not see a rationale for why we need to go beyond the fulfillment of the need he speaks about to the difference principle. However, this is insufficient once again for the selection of the principle of restricted utility over the difference principle because while he has done an admirable job of backing up the social minimum principle

with claims about need, he hasn't stated why we **have** to stop there with a social minimum. Once again, I'll try to provide the missing step by incorporating talk of claims about wants.

As individuals in a society, we all have wants that do not overlap with our needs. Some of us want supercars, others want our children to receive the best college education and others still want to become professional athletes. Aside from those of us with entitlement issues, we all recognize that there is no obligation on the part of the government or anyone else in society to fulfill these wants. Instead, it is up to us to attempt to fulfill these wants with the acknowledgement that luck will play a factor. The social minimum ensures that our basic material needs and other needs are met so that society has the support of all its citizens but the difference principle would likely aid the worst-off in partially fulfilling their wants because the principle goes beyond our needs. This would likely be true to some degree even if the fair equality of opportunity was followed. What this would do, somewhat surprisingly, is it would promote unfairness in society as society helps the worst-off without any assistance to the rich with regards to their wants. Any "unfair" attempt by the well-off to achieve their wants would be corrected policies following fair equality of opportunity so on balance, the worst-off would make more progress towards their wants. If this sounds implausible or perhaps even impossible, then one concedes that the effect of implementing the difference principle is no different from implementing the social minimum principle given fair equality of opportunity. Then one has to look at the philosophy behind the two principles instead of the results.

At this point in the debate where we've looked at Waldron's response to Rawls with my supplementations, let's take a step back and see where we're at. Rawls said that the setting of a social minimum principle is not possible in a non-intuitionistic way but we've seen Waldron set a social minimum in a precise and robust way. Rawls also said that the difference principle matched out considered judgments, our strongest moral and political beliefs. Keeping in mind my criticism of Rawls' reference to the political convention of appealing to the common interest, Waldron indirectly rejects Rawls' appeal and provides his alternative, theoretical justification for his social minimum principle rooted in claims of need. I've attempted to argue for why the worst-off would prefer a social minimum to having their welfare maximized under the difference principle and explain the problem with going beyond the fulfilment of wants to the partial fulfilment of needs that the difference principle would likely bring about.

I appeal to the ideal of equality (relative as to allow economic productivity) as a belief to ground the difference principle but recognize that people often feel that individuals deserve to largely keep what they earn in their income and wealth, because it is the fruit of their labor. This would allow more inequality than the difference principle does. Rawls would take issue with this because the contingencies (natural talents, social standing and luck) play a large role in what we earn, as effort seems to be the only thing all of us can completely control that has moral relevance to what we produce and earn. Regardless, I believe the debate up to now has been won by Waldron.

## Rawls' *Restatement* objections

In his objections in the *Restatement*, Rawls emphasizes how the difference principle contains the idea of reciprocity while the principle of restricted utility in mixed conception does not. Everything done in that society is meant to help someone else while helping one's self and the hope is that designing society this way will instill these values so that the laws are followed willingly and cooperation is undertaken voluntarily. Rawls' simplified society is also more stable with the more advantaged group content with the elevation of the less advantaged group having their benefits maximized. Waldron did not seem to take the opportunity to respond to Rawls' after his publication of the *Restatement* so I will attempt to defend mixed conceptions on his behalf.

Reciprocity is actually contained in the notion of a social minimum principle, though to a lesser degree. With this principle, allowing all citizens to have the means to live a decent life with equal basic liberties and fair equality of opportunity is the top priority of society. Everyone is indirectly supporting the worst-off in society as the contributions they make are deducted primarily to ensure the worst-off in society stay above a minimum threshold and secondarily to help society as a whole by lifting average utility. What this does is that it allows for reciprocity with more respect for autonomy and overall prosperity in society than the difference principle. There is also room in a society with a social minimum principle for reciprocity to emerge through the implementation of other principles. Rawls talks about ensuring that contingencies do not affect one's success and the lack of faith citizens would have in society as a system of fair cooperation if they see that those contingencies could be taken advantage of. Most of these contingencies would be taken care of anyway with fair equality of opportunity

which is present in both Justice as Fairness and mixed conception. Instead of the difference principle where exploitation of these contingencies is guaranteed to benefit the worst off, a better solution may be severely limiting remaining exploitation in the first place or counterbalancing exploitation when it can't be limited. The latter option would follow the same logic behind fair equality of opportunity. One example of curbing exploitation is to set up a heavy estate tax on the very rich to ensure that social standing isn't completely inherited, so to speak.

Rawls gives three objections directly attacking the social minimum but only the last one merits serious discussion. Rawls again reiterates in the *Restatement* the indeterminate nature of the social minimum. Given what Waldron has said, we have a better idea of where to place the social minimum but it still seems like there would be problems along the lines of what I discussed earlier about the specifics. Perhaps a better idea is to form some sort of loose consensus for what a social minimum consists of and then set it to be slightly above that to be safe and ensure that pinning down exactly what is necessary is not a problem. The problem of the indeterminacy of the point where individual utility is maximized seems like a weak one to me. Once the social minimum is set and has been secured for everyone in society, increasing individual utility is a matter of balancing effective economic legislation with necessary regulation to promote the economy that helps the most people.

Rawls points out that the least advantaged may retreat from the public world under the social minimum because they are not given what they deserve as free and equal citizens. Rawls understands how Waldron's social minimum can make the strains of commitment bearable in one way (with necessities, people will not feel oppressed and

want to take violent action) but not in the second milder way (worst-off are cynical and distant). However, Waldron has explicitly said that the welfare system that would be an implementation of the social minimum principle would not just be a single institution dedicated to help the worst off. Instead, principles of justice as Rawls notes apply to the “basic structure” of society. Every single institution in society will be geared to ensure that all citizens reach the social minimum and this would be recognized by the least advantaged. The least advantaged will see that society is doing all it can to allow them to live decent lives and that is all they are asking for. It is up to the least advantaged then to do what they can to rise above the social minimum and make their lives and future their own. Finally, Waldron does say that a social minimum must be set at the point so that everyone feels like they are “active citizens of this society”, not just so the basic necessities are met and dissent is avoided (Waldron, 270). The retreat of the least advantaged from society would not be a real problem if the social minimum was set appropriate to Waldron’s standards. Rawls may suggest that this point would lead to similar results as the implementation of the difference principle but the approach to how the “basic structure” of society is set up (towards a social minimum instead of helping the worst-off as much as possible) would still be fundamentally different.

### General thoughts

Seeing as Waldron has given a precise and robust definition of a social minimum and has offered an independent rationale to support the social minimum based on claims

of need, Rawls relies heavily on arguments concerning reciprocity to conclude that the difference principle is superior to the principle of restricted utility.

At the core of Rawls' faith in the importance of reciprocity lies his belief that parties in the original position would only accept principles that enable mutual trust and fair cooperation in society. He considers the difference principle the best principle to produce this reciprocity due to the strong level of equality and maximization of the life-prospects of the worst-off that would result from its implementation.

In my contribution to Waldron's arguments and defense against Rawls' objections, I've hoped to demonstrate that not only would parties in the original position not require the level of reciprocity that Rawls believes they would but that they would prefer a social minimum principle because it grants them more freedom and respect regardless of social position they are placed in society. Some of the concerns Rawls has regarding the social minimum can be addressed while others can be taken care of through the implementation of specific policies in a society with a social minimum.

## Conclusion

This thesis has tried to explain Rawls' theory of justice, Justice as Fairness, and shed light on the debate between his principles of justice and what is popularly seen as its strongest opponent, a version of mixed conception with the principle of restricted utility. We see Rawls make two sets of objections in *A Theory of Justice* and then in *Justice as Fairness: A Restatement*. I've argued that Waldron successfully defends the initial objections and use them as a launching pad for positive arguments as to why the social minimum principle should be chosen. I then gave an answer against Rawls' objection concerning reciprocity and give more reasons for why the social minimum would be picked in the original position. Thus, I believe the mixed conception with social minimum principle "wins" out in the debate versus Rawls' Justice as Fairness.

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