Rawls and Natural Aristocracy

MATTHEW CLAYTON
Brunel University

The author discusses Rawls's conception of socioeconomic justice, Democratic Equality. He contrasts Rawls's account, which includes the difference principle constrained by the principle of fair equality of opportunity, with Natural Aristocracy, which constrains the difference principle only by the principle of careers open to talents. According to the author, many of Rawls's own arguments support Natural Aristocracy over Democratic Equality. In particular, Natural Aristocracy appears well placed to avoid a challenge that naturally arises in consideration of Democratic Equality, with respect to which formal distributive principle should deal with social and natural causes of inequality. The challenge is to cite a morally relevant distinction which supports the appropriateness of dealing with natural causes of inequality differently to those generated by social causes. In support of his proposal, the author also appeals to certain arguments in Rawls's Political Liberalism.

The ideal of equal opportunity has a long pedigree in left-wing political thought. In *A Theory of Justice*, Rawls offers a defence of a principle for the regulation of social and economic inequality, democratic equality, which incorporates the ideal of equality of opportunity and its associated critique of social privilege. As we shall discuss, democratic equality moves beyond equality of opportunity to embrace the difference principle, which arranges inequalities to the greatest benefit of the least advantaged. Nevertheless, Rawls retains a principle of equality of opportunity as a constraint on the operation of the difference principle. In effect, he claims that it is important to reduce the extent to which differences in social environment produce unequal rewards in society *even when* such a reduction would worsen the position of the least advantaged in terms of wealth and income. In this paper I question that claim. To that end, I offer an interpretation of an alternative account of socioeconomic justice, the ideal of natural aristocracy, which Rawls raises but swiftly dismisses in the course of his defence of democratic equality. I shall argue that natural aristocracy is preferable to democratic equality and that many of Rawls's own arguments, in *A Theory of Justice* and his subsequent work, support that conclusion.

1. *Interpretations of the second principle of justice*

Rawls introduces the ideal of natural aristocracy as a candidate for the second principle of justice, one which, along with natural liberty and liberal equality, he rejects in favour of his preferred conception of socioeconomic justice, democratic equality. The four candidate principles are distinguished according to how they interpret his two requirements of such a principle: that "social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all".[1] He offers the following table as a way of considering four different conceptions which differ in their interpretation of these two requirements.[2]

	"Everyone's advantage"	
"Equally open"	Principle of efficiency	Difference Principle
Equality as careers open to talents	System of Natural Liberty	Natural Aristocracy
Equality as equality of fair opportunity	Liberal Equality	Democratic Equality

In elucidating the second principle, Rawls offers two interpretations of each of its components. First, he distinguishes between two senses in which socioeconomic arrangements can be "reasonably expected to be to everyone's advantage". The principle of (Pareto) efficiency involves the application of Pareto optimality to the social and economic institutions of the basic structure of society: it states that socioeconomic inequalities are to everyone's advantage if there exists no feasible alternative set of arrangements in which at least one representative group fares better in socioeconomic terms and in which no group fares worse.[3] The difference principle, which is offered as a superior conception of a

---

[1] Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 60.

[2] Rawls, *A Theory of Justice*, 65.

[3] On Pareto efficiency as applied to social and economic institutions see Rawls, *A Theory of Justice*, 66-72. For further discussion see G.A. Cohen, "The Pareto Argument for Inequality," *Social Philosophy and Policy*, 12 (1995), 160, n. 4. The reference to representative groups means that Rawls regards the distributive principles as applying to the "least advantaged" or "most advantaged", i.e., to individuals or groups defined by *a description* (such as levels of wealth and income), rather than by a *rigid designator*. See Rawls, *A Theory of Justice*, 64; J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 7, n. 5. For further discussion, including the criticism that Rawls sometimes applies distributive principles to rigidly designated rather than representative groups, see John Broome's contribution to Derek Parfit's appendix H, in *Reasons and Persons* (Oxford: Oxford University Press, 1984), and G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), 87-88.

---

distribution which is to everyone's advantage, selects a particular Pareto efficient set of socioeconomic arrangements. The difference principle requires inequalities to be arranged in such a manner that the least advantaged enjoy the highest feasible share of wealth and income and, consistently with this, the next least advantaged group's share is maximised, and so on, until the final requirement is that the most advantaged group's share is maximised. For shorthand, socioeconomic inequalities are unjust only if they harm the worst-off, that is, makes them worse off than they could be. The difference principle is, what Parfit has called, a priority principle applied to the distribution of wealth and income.[4]

The two interpretations of the principle that positions should be open to all are careers open to talents (COT) and fair equality of opportunity (FEO). COT, or formal equality of opportunity, states that positions should be "open to those able and willing to strive for them",[5] and that "all have at least the same legal rights of access to all advantaged social positions".[6] The demands of this principle are a matter of some dispute. For example, while the principle views as unjust legal barriers which deny specific groups entry into particular positions in society, it is unclear whether it also requires employers to refrain from erecting their own barriers. And again, it is unclear whether Rawls means COT to prohibit the use of positive discrimination, certain types of which may have the effect of excluding certain groups, defined by race or sex for example, from the competition for particular places of higher education or professions. Since I want to focus on FEO rather than COT I shall leave these matters unresolved.

FEO does not replace COT, but supplements it with a further requirement. It is worth quoting Rawls's definition at length:

> The thought here is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them. Offhand it is not clear what is meant, but we might say that those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class.[7]

---

[4] Rawls, *A Theory of Justice*, esp. 75-83. For interpretation of the difference principle see Parfit, "Equality or Priority? The 1991 Lindley Lecture" reprinted in M. Clayton and A. Williams (eds.), *The Ideal of Equality* (London: Macmillan, 2000), 81-125, esp. 116-121; Andrew Williams, "The Revisionist Difference Principle," *Canadian Journal of Philosophy*, 25 (1995), esp. 257-66. For an alternative interpretation, see T. Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989), 197.

[5] Rawls, *A Theory of Justice*, 66.

[6] Rawls, *A Theory of Justice*, 72.

[7] Rawls, *A Theory of Justice*, 73.

Put crudely, FEO requires there to be a match between one's relative level of natural assets and willingness to use them, and one's relative enjoyment of socioeconomic advantage. In this interpretation, FEO is a source-specific egalitarian principle. It asserts that we have reason to reduce the gap in economic prospects that exists between equally talented and motivated members of different social classes.[8]

Before I proceed to evaluate Rawls's defence of FEO we should note an ambiguity in the principle that relates to the question, "opportunity for what?" In the passage above, Rawls talks variously of "positions", "success", "life chances", "prospects of success", "prospects of culture and achievement", and "expectations". As Pogge has pointed out, it is ambiguous whether "opportunity" is a separate primary good or whether it is reducible to access to positions conferring wealth and income. On the first interpretation, opportunity is a distinct primary good, characterised by access to, or a chance of achieving, education or desirable jobs, or positions of authority, for example. Alternatively, FEO and the difference principle might be viewed as regulating the distribution of the same set of economic goods, by dealing with two distinct *causes* of inequality in the enjoyment of them: this reading suggests that FEO deals with inequalities in wealth and income (and derivatively inequalities in opportunities which produce inequalities in wealth and income) which arise from social contingencies, and the difference principle deals with natural causes of such inequalities by allowing them to produce inequality when this is beneficial to the worst-off.[9]

In my reading of the relevant passages, Rawls takes the substantive component of FEO to be *both* (a) wealth and income and (b) access to other goods, such as education, culture and employment, that are not necessarily valuable merely in virtue of their contribution to the acquisition of wealth and income. I return to this issue in section 7.

Rawls employs the two distinctions outlined above—with respect to the notions of "everyone's advantage" and positions being "equally open"—to offer four conceptions of the second principle of justice, which governs socioeconomic arrangements. These are: *the system of natural liberty*, which consists of COT and the principle of efficiency; *natural aristocracy* which requires COT and the difference principle; *liberal equality*, which requires FEO and the principle of efficiency; and Rawls's favoured conception, *democratic equality*, which

---

[8] My reading of FEO as an egalitarian principle is not uncontroversial. See, for example, Pogge's excellent discussion in *Realizing Rawls*, 166-9. Pogge claims that certain passages of *A Theory of Justice*—at 102 and 303, for example—suggest a different way of dealing with the social causes of inequality: that they should be allowed and governed by the maximin rule. From this perspective, socioeconomic inequalities which are the product of differences in social environments are unjust only if they harm the least advantaged. While I agree with Pogge that Rawls equivocates between egalitarian and maximin readings of FEO, I believe the egalitarian reading has more credence as an interpretation, not least because it is characteristic of the passage quoted above in which Rawls regards himself as defining the principle.

[9] Pogge, *Realizing Rawls*, 167-9.

---

is the conjunction of FEO and the difference principle, the latter being lexically constrained by the former. My critique of Rawls's view aims to establish that if Rawls is right to reject natural liberty and liberal equality, he ought to recognise that natural aristocracy is preferable to democratic equality, and that many of his own arguments support that conclusion.

2. *Rawls's intuitive argument for democratic equality*

Rawls's intuitive argument[10] for democratic equality appeals to the *prima facie* unfairness of allowing inequalities to be caused by factors that are "arbitrary from a moral point of view". He reviews two alternative conceptions of socioeconomic justice, the system of natural liberty and liberal equality, and argues for his favoured conception, democratic equality, as remedying the deficiencies of those conceptions.

The system of natural liberty constitutes a vision of socioeconomic justice which regards inequality as just if, and only if, it is the product of a Pareto efficient economy constrained by the principle of COT. Positions of economic advantage should be open to any individual able and willing to occupy them. If such a requirement is respected, then any Pareto efficient inequality which arises from the socioeconomic system is just. Rawls has advocates of a free market economy in his sights, and explains what is unjust about such a system.

> [S]ince there is no effort to preserve an equality, or similarity, of social conditions, except insofar as this is necessary to preserve the requisite background institutions [i.e., those required by the first principle, COT, and Pareto efficiency], the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies. The existing distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets—that is, natural talents and abilities—as these have been developed or left unrealized, and their use favoured or disfavoured over time by social circumstances and such chance contingencies as accident and good fortune. Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.[11]

Under the system of natural liberty, individuals are unequally advantaged in terms of their prospects of obtaining economic resources. Some are born with talents which command high remuneration within society, while others are born without such skills. Similarly, some enjoy relatively more propitious social circumstances for the development of highly rewarded skills. But, these contingencies are arbitrary from a moral point of view.

---

[10] The intuitive argument of Ch. 2 of *A Theory of Justice* is contrasted with the formal contractarian argument that seeks to derive the two principles of justice from the original position. See T. Nagel, "Equality," in his *Mortal Questions* (Cambridge: Cambridge University Press, 1979), 118. For further discussion of the relationship between the two arguments, see B. Barry, *Theories of Justice* (Berkeley: University of California Press, 1989), 213-15.

[11] Rawls, *A Theory of Justice*, 72.

Rawls's claim is that natural and social contingencies are morally arbitrary causes of inequality and, as such, do not justify the inequality which they cause.[12] Some important questions arise in the interpretation of which causes of inequality are morally arbitrary and which criteria should be adopted for distinguishing between what is morally arbitrary and what is morally relevant. For example, does an inequality that is the product of one individual putting in more effort compared to another individual who is similar in every other respect count as an inequality that is generated by a morally arbitrary source? Nevertheless, since the present critique proceeds even if we grant Rawls's view of these matters, we need not broach them here.

The move from natural liberty to liberal equality, which supplements COT with FEO, removes one morally arbitrary source of economic inequality. Were FEO fully satisfied, it would no longer be the case that economic inequality is influenced by differences in social and economic backgrounds: the influence of the class system on the generation of inequality would be eliminated. While Rawls might regard that as a significant improvement, liberal equality would remain unjust, because it fails to deal adequately with another source of inequality, natural contingency, which is no less arbitrary from a moral point of view. As he says:

> [O]nce we are troubled by the influence of either social contingencies or natural chance on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other. From a moral point of view the two seem equally arbitrary.[13]

Now, if social and natural contingencies are on a par, in the sense that neither is a cause of inequality which justifies that inequality, and Rawls recommends that the former should not affect one's relative share of economic resources, then it would appear that neither should the latter. However, Rawls does not take this line but argues, instead, that natural contingencies should be allowed to produce inequality on condition that such inequality benefits, or at least doesn't harm, the worst off economic group in the way specified by the difference principle. In this manner, Rawls arrives at his preferred conception of socioeconomic justice, democratic equality. First, he appeals to the moral arbitrariness of social causes of inequality. Second, he notes the moral equivalence between natural and social contingencies as causes of inequality. And, third, he argues that democratic equality is just, because it deals appropriately with potential determinants of inequality through the principle of FEO, which deals with social contingencies, and the difference principle, which deals with natural contingencies.

3. *Rawls's rejection of natural aristocracy*

Natural aristocracy is the principle of socioeconomic justice that is constituted by the difference principle lexically constrained by COT.[14] Rawls says little with respect to the details of its requirements or the defence that might be offered in its support. His remarks on the ideal are largely captured in one short paragraph:

> Before turning to the conception of democratic equality, we should note that of natural aristocracy. On this view no attempt is made to regulate social contingencies beyond what is required by formal equality of opportunity, but the advantages of persons with greater natural endowments are to be limited to those that further the good of the poorer sectors of society. The aristocratic ideal is applied to a system that is open, at least from a legal point of view, and the better situation of those favoured by it is regarded as just only when less would be had by those below, if less were given to those above. In this way the idea of *noblesse oblige* is carried over to the conception of natural aristocracy.[15]

Prior to engaging in any evaluation of the ideal it is important to clarify a potential misunderstanding which might be the product of Rawls's statement of the ideal. Since in natural aristocracy the difference principle is constrained only by COT, it follows that natural and social determinants of inequality are treated as, in principle, on a par from the point of view of justice. It is, therefore, relevant to note that inequality can, in principle, legitimately arise from social privilege as well as greater natural endowment. This point might be obscured by the term *natural* aristocracy, for that label might be thought to allow inequality to be produced by differences in natural potential, but not from differences that are attributable to differences of class, for example. If natural aristocracy had that implication, it would be identical to the principle of democratic equality. So, it is important to note that natural aristocracy permits inequalities to be passed down through generations by advantaged people helping their descendants to develop greater productivity than others. Thus, as Rawls says, the aristocratic ideal is consistent with a social system which is less open, where "openness" is specified by inter-generational mobility between social classes as specified by the principle of FEO.[16]

Rawls pays natural aristocracy little attention, since he mistakenly regards it as unstable in the same way as liberal equality. It is worth quoting his statement of the argument, some of which I referred to above:

> Now both the liberal conception and that of natural aristocracy are unstable. For once we are troubled by the influence of either social contingencies or natural chance on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other. From a moral standpoint the two seem equally arbitrary. So however we

---

[12] Here I follow G.A. Cohen's interpretation: "a cause of inequality is 'morally arbitrary' if it does not justify that inequality because of the kind of cause of inequality it is". "The Pareto Argument for Inequality," 161. For an alternative interpretation of moral arbitrariness which does not rest on claims about the character of the *causes* of inequality, see T.M. Scanlon, "The Significance of Choice," reprinted in Stephen Darwall (ed.), *Equal Freedom* (Ann Arbor: University of Michigan Press, 1995), 73-8.

[13] Rawls, *A Theory of Justice*, 74-5.

---

[14] Rawls, *A Theory of Justice*, 65.

[15] Rawls, *A Theory of Justice*, 74.

[16] For an excellent discussion of the relationship between the ideal of equality of opportunity and the analysis of social mobility by sociologists, see A. Swift, "Class Analysis from a Normative Perspective," *British Journal of Sociology*, 51 (2000), 663-79.
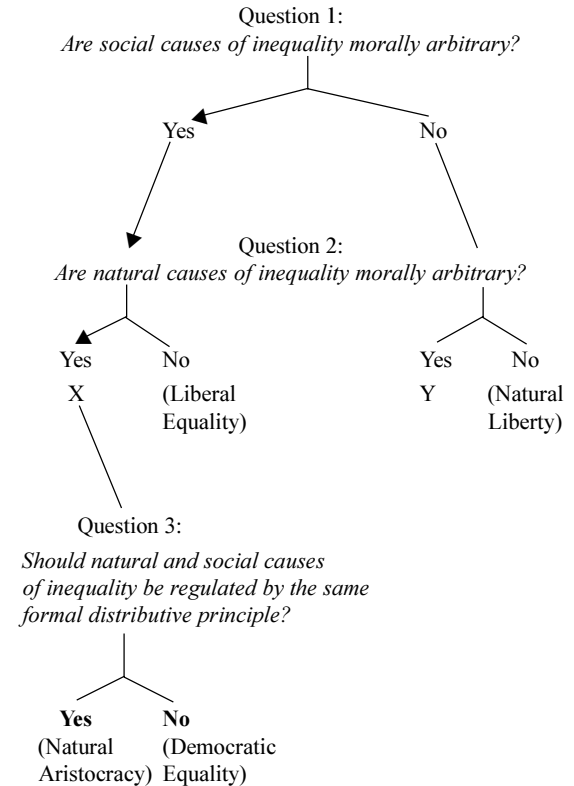
move away from the system of natural liberty, we cannot be satisfied short of the democratic conception.[17]

In this passage it seems that Rawls interprets natural aristocracy in a somewhat different way to his own initial statement of the ideal, in which it is defined as an arrangement of social and economic inequalities that satisfies the difference principle subject to COT.[18] The natural reading of the quotation appears to be that whereas liberal equality regards social causes of inequality to be morally arbitrary while natural causes are not, natural aristocracy argues the opposite, that is, that social causes of inequality are not morally arbitrary, but natural causes are. For if Rawls is read in this way, his claim that both ideals are unstable would be correct, in the sense that both would be susceptible to an immanent critique. While each conception deals with one morally arbitrary source of inequality, it fails to deal with another source of inequality that is similarly arbitrary. Thus, while liberal equality seeks to eliminate social causes of inequality, it does not acknowledge the moral arbitrariness of natural determinants of inequality. And, while natural aristocracy regards natural sources of inequality to be arbitrary from the point of view of justice, it fails to recognise that socially produced inequality is similarly arbitrary. Now, if this interpretation is accepted, and the remaining conceptions of social justice were *natural liberty*, which regards either source of inequality as justifying, or permitting, the inequality it produces, and *democratic equality*, which regards both sources of inequality as morally arbitrary, then Rawls's argument would be that there is a straight choice between natural liberty and democratic equality, the resolution of which would turn on the question of whether the determinants of inequality which are beyond one's control are arbitrary from the point of view of justice: Rawls would respond affirmatively to this question.[19]

Nevertheless, Rawls's likening of natural aristocracy to liberal equality is mistaken. Unlike liberal equality, natural aristocracy is compatible with the view, endorsed by democratic equality, that both natural and social causes of inequality are morally arbitrary, in the sense that neither type of cause of inequality justifies the inequality that it produces. Thus, natural aristocracy avoids the instability with respect to the issue of moral arbitrariness that is characteristic of liberal equality. However, while natural aristocracy shares with democratic equality the claim that both social and natural causes of economic inequality are morally arbitrary, it departs from that conception in its view of how justice responds to that fact. Democratic equality seeks to eliminate social causes of economic inequality through FEO, but allows inequality to arise from differences in natural endowment on condition that that inequality maximises the wealth and income of the least advantaged. In contrast, natural aristocracy allows both

[17] Rawls, *A Theory of Justice*, 74-75.

[18] See the table reproduced above from *A Theory of Justice*, 65.

[19] For further discussion of Rawls's argument, see G.A. Cohen, "The Pareto Argument for Inequality," *Social Philosophy and Policy*, 12 (1995), 160-9.

natural and social differences to influence the distribution of wealth and income in a manner that conforms with the concern to prioritise the interests of the less advantaged.

To summarise this piece of exegesis, it might be instructive to distinguish between the various possibilities with the aid of a diagram:

Question 1:
Are social causes of inequality morally arbitrary?

Yes   No

Question 2:
Are natural causes of inequality morally arbitrary?

Yes   No   Yes   No
X   (Liberal   Y   (Natural
       Equality)   Liberty)

Question 3:
Should natural and social causes of inequality be regulated by the same formal distributive principle?

Yes   **No**
(Natural   (Democratic
Aristocracy)   Equality)

Rawls's argument concerning the instability of natural aristocracy and liberal equality is of the form that, for the sake of consistency, one must answer the second question in the same way as one answered the first, and this takes us to either of the extremes of the second level in the diagram: we are required to choose between natural liberty and X. The arrowed lines in the diagram represent the path that Rawls believes we should follow in rejecting, first, natural liberty and, second, liberal equality. Nevertheless, despite his initially eloquent expression of the possibilities, Rawls misplaces natural aristocracy as occupying point Y. I have argued that, like democratic equality, natural aristocracy is a sub-type of position X. The difference between the two conceptions turns on a further question, which Rawls overlooks, that relates to the manner in which morally arbitrary causes of inequality should be regulated. In particular, recall the distinction between *egalitarian* principles, which are concerned to reduce the gap between the expectations of different groups when these are the product

of morally arbitrary causes of inequality, and *prioritarian* principles which are, to varying extents, concerned to attach priority to the distribution of advantage to the less well-off when the causes of inequality are morally arbitrary. While democratic equality accommodates both kinds of principle—through FEO, which is egalitarian, and the difference principle, which is prioritarian—natural aristocracy abandons egalitarianism in favour of thoroughgoing prioritarianism: both natural and social potential causes of inequality can legitimately produce inequalities if such inequality benefits the worse-off.

4. *The intuitive appeal of Natural Aristocracy*

The critique of Rawls's argument becomes evident once a difference is noted between the formal distributive components of FEO and the difference principle. FEO is an egalitarian principle. It asserts that individuals from different social backgrounds should, other things being equal, enjoy equal shares of economic resources: the differential effects of social backgrounds on distributive shares should be eliminated. In contrast, the difference principle is not an egalitarian principle. Rather, it asserts that individuals who enjoy different levels of natural productivity may enjoy unequal shares of economic resources when that maximises the expectations of the worst-off defined in socioeconomic terms. Thus, while social and natural contingencies are equally arbitrary from a moral point of view, Rawls employs different formal distributive principles to deal with them. While FEO seeks to eliminate socially determined inequality, the difference principle permits and regulates naturally determined inequality.[20]

As well as avoiding the immanent critique to which liberal equality succumbs, natural aristocracy appears well-placed to avoid a challenge which naturally arises in consideration of democratic equality, with respect to which formal distributive principle should deal with social and natural causes of inequality. The challenge which democratic equality faces is to cite a morally relevant distinction which supports the appropriateness of dealing with natural causes of inequality differently to those generated by social causes.

In contrast, natural aristocracy avoids this challenge. While it regards both naturally and socially produced inequality as morally arbitrary, natural aristocracy cites one principle, the priority principle, as the appropriate way of dealing with either cause of inequality.[21] It therefore avoids the need to cite a relevant

[20] Note that B. Barry's reconstruction of Rawls's argument (in *Theories of Justice*, 217-34) is somewhat different to Rawls's own view. Barry's reconstruction proceeds from (a) an argument from equality of opportunity to the *prima facie* desirability of equality of outcome to (b) an argument from equality to the difference principle. In Rawls's argument the acceptance of the difference principle is constrained by FEO, which indicates that Rawls retains at least some strictly egalitarian commitments.

[21] Note, however, that natural aristocracy incorporates the difference principle *constrained by COT*. The point that should be stressed here is that this constraint on the difference principle does not open natural aristocracy to the problems that beset democratic equality, because COT does not involve a distinction between natural and social determinants of inequality.

distinction on the basis of which different kinds of formal distributive principle can be defended with respect to different kinds of causes of inequality.

However, it would be premature to conclude that natural aristocracy is the right principle of justice, for there are a number of other conceptions that share this attractive feature with natural aristocracy, but which produce rather different distributive results, for example, utilitarianism and certain egalitarian conceptions. Thus, a complete defence of natural aristocracy must explain its superiority over these other conceptions of justice. The task of establishing that is too large for this paper, for it requires, among other things, discussion of the importance of the concerns of attaching greater moral importance to the advantage of the worse-off, equality and beneficence. In addition, if more than one of these concerns were relevant to political morality, it would be necessary to theorise higher order principles which attach appropriate weights to each, in order to avoid an intuitionistic conception of justice. It is unclear how such a project would proceed.

Nevertheless, natural aristocracy might remain a plausible basis for further reflection on social and economic justice. While I agree with Parfit that Rawls's (lexical) difference principle is too extreme because it attaches *absolute* priority to benefiting the worse-off,[22] I believe the priority view has considerable plausibility as an approach to socioeconomic justice.[23] If this is right, then the argument I advance is significant, for it suggests that some conception akin to natural aristocracy is preferable to some principle akin to democratic equality and certain other conceptions of socioeconomic justice.

The challenge which might be put to the Rawlsian account is that it must cite a morally relevant distinction between natural and social determinants of inequality which justifies the different kinds of treatment they receive from FEO and the difference principle respectively. If they are considered from the point of view of moral arbitrariness, then, since they are equally arbitrary, there is a *prima facie* case for a similar principle, or package of principles, to deal with both. If FEO is a just principle for dealing with social contingencies, because it ensures that they do not cause inequality, then why should socioeconomic arrangements not seek to eliminate the differential effects of natural contingencies? Alternatively, if inequality caused by natural contingencies is just if it maximally benefits the least advantaged, then why should inequality not be allowed to arise as a product of social contingencies if this would also benefit them? The *prima facie* case for a single principle of socioeconomic justice, which rests on the equivalent moral arbitrariness of these potential sources of inequality, raises these relevant questions. The challenge facing Rawls is to cite a morally relevant distinction between different causes of economic inequality that renders it appropriate to deal with them in different ways. Rawls and others

[22] See D. Parfit, "Equality or Priority?" 116-121.

[23] For defence of the priority view which appeals to the idea of unanimity or reasonable rejection, see T. Nagel, "Equality," 122-7; T. Scanlon, "Contractualism and Utilitarianism," in A. Sen and B. Williams (eds.), *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), 123-8.

cite certain considerations which allegedly serve to make good this distinction. I examine these in the following sections. Prior to that, however, I attempt to show that a similar inadequacy arises in his argument for democratic equality as the unanimous choice of representatives in the original position.

5. *The Argument from the Original Position*

Justice as fairness claims that the two principles of justice would be chosen by representative individuals within the original position: such individuals would adopt the maximin rule for ranking candidate principles of justice, and the two principles are the maximin choice among alternative conceptions of justice.[24] Representatives within the original position are stipulated as being mutually disinterested, with a preference for primary social goods, and as able to choose rationally between alternative principles. In addition, they are deprived of particular information to ensure that everyone is similarly situated, and that they cannot exploit natural and social contingencies to their advantage. The parties are required to choose principles to govern the basic structure from a list of alternatives, constrained by certain formal conditions: the principles must be general, universal, public, able to impose an ordering on conflicting claims, and final.[25]

Rawls claims that in the original position, representatives would adopt the maximin rule for ranking candidate principles of justice. The maximin rule prefers that principle, or set of principles, which ensures that the worst off position under the operation of the principle is better than the worst off position under the operation of any of the alternative principles. Rawls claims that the maximin rule ranks his two principles of justice above the principle of utility, and certain other alternatives.[26]

The original position argument for the two principles of justice has been questioned at various stages of the argument.[27] My remarks concern the issue of

[24] Rawls, *A Theory of Justice*, 152.

[25] Rawls, *A Theory of Justice*, 130-6.

[26] See Rawls, *A Theory of Justice*, esp. 150-83, 315-25; J. Rawls, "Reply to Alexander and Musgrave," *Quarterly Journal of Economics*, 88 (1974), 633-55.

[27] It has been criticised along the following lines:

1. The derivation of principles from the original position does not establish their justice since hypothetical agreements have no moral force. This kind of objection is raised and discussed by R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1978) ch. 6, esp. 150-59, and D. Lyons, "Nature and Soundness of the Contract and Coherence Arguments," in N. Daniels (ed.), *Reading Rawls* (Stanford, Cal.: Stanford University Press, 1989), esp. 156-60.

2. The choice of principles from the original position is irrelevant from the point of view of their justice since the characterisation of the original position is inadequate for the purposes of conferring justice on the chosen principles (e.g., because it excludes morally relevant information). See, for example, T. Nagel, "Rawls on Justice," in N. Daniels (ed.), *Reading Rawls*, 6-12.

3. Even if the two principles are the maximin choice of principles within the original position, they lack justice since the maximin rule would not be adopted in the original position, and the rule which would be adopted would rank an alternative principle higher than Rawls's two principles. See Nagel, "Rawls on Justice," 12; Lyons, "Nature and Soundness of the Contract and Coherence

whether the maximin rule selects the two principles over some alternative set of principles. In order to assess this, we need a characterisation of the alternatives, one of which Rawls provides in Section 21 of *A Theory of Justice*. These are, in order of alleged justice, the two principles, mixed conceptions, classical teleological conceptions, intuitionistic conceptions, and egoistic conceptions. Rawls's main concern is to establish the adequacy of the two principles in serial order over average utilitarianism and particular mixed conceptions. Whether or not he succeeds is not my concern here. Rather, I am interested in how we should rank different conceptions which endorse the first principle, but offer different opportunity principles as a component of the second principle. In particular, I am concerned with the pairwise comparison between Rawls's second principle, democractic equality, and an alternative "second principle" constituted by natural aristocracy.[28]

If we adopt the maximin rule in ranking alternative principles that might govern the basic structure, would we prefer a second principle of justice which included FEO as a lexical constraint upon the difference principle, or one which included a weaker principle, such as formal equality of opportunity? Recall that maximin ranks alternative principles by reference to how the worst off representative group fares under them. It ranks highest those principles that ensure the highest feasible level of advantage for the least advantaged in society.

It appears, however, that FEO would not be selected by maximin. FEO claims that in certain circumstances inequality is impermissible *even if* it benefits the least advantaged. Those circumstances are ones in which the inequality arises from social contingencies. The principle of FEO renders it impermissible for the basic structure to allow social contingencies to produce inequalities in socioeconomic advantage. Yet maximin reasoning favours allowing such inequalities, i.e. the difference principle unconstrained by FEO.

It might be thought that FEO is not, in fact, inconsistent with maximin. FEO might be the principle for the distribution of socioeconomic advantage which best serves the realisation of the difference principle. In other words, it complements, rather than constrains, the difference principle and, therefore, is the appropriate choice in the original position if the maximin rule applies. Yet this reply cannot claim that which FEO claims for itself, namely, that were the dif-

Arguments," 160-63; J. Waldron, "John Rawls and the Social Minimum," *Journal of Applied Philosophy*, 3 (1986), 21-33; Williams, "The Revisionist Difference Principle," 267-69.

4. The maximin rule for ranking alternatives does not favour the two principles over some alternative principle or set of principles. David Lyons, for example, argues that Rawls has not shown that the maximin rule favours the two principles over utilitarianism. See Lyons, "Nature and Soundness of Contract and Coherence Arguments," 163-67.

[28] Strictly speaking, then, my discussion of the original position argument does not challenge Rawls's view that, from among the alternatives *he* lists, the two principles are the preferred conception of justice from the point of view of justice as fairness. Rather, my suggestion is that a fully adequate conception of justice must defend the derivation of its principles of justice from the original position from a wider range of candidate principles of justice, which includes those principles that Rawls describes elsewhere in *A Theory of Justice*.

ference principle to countenance socioeconomic inequality arising from social contingencies, it would remain impermissible since it would violate the lexically more important opportunity principle. If FEO were not a constraint upon the difference principle, but merely an implication of its operation, then establishing it as an independent principle of justice would be redundant.[29] The discussion over FEO would become one concerned with the institutional requirements of the difference principle, analogous to the discussion over whether justice as fairness is better implemented through market socialist or capitalist economic institutions.[30]

A second reply to the above argument agrees that the lexical priority of FEO is inconsistent with maximin, but claims that the difference principle should be constrained by independent considerations of fairness. Roughly, the argument would be that the difference principle countenances inequalities to the extent that they are not to the detriment of the worst-off, but a basic structure involving the difference principle is just only if it allocates positions of relative advantage fairly. The procedure by which individuals acquire relative socioeconomic advantage must be just.[31]

I shall discuss the argument from procedural justice forthwith. It is sufficient for present purposes to stress that Rawls does not, and cannot, appeal to such considerations of fairness in his argument that FEO would be chosen by representatives within the original position. The original position is characterised by a veil of ignorance which deprives the representatives of knowledge of conceptions of justice. Considerations of fairness are relevant in establishing which kinds of knowledge should be excluded from parties within the original position. Nevertheless, the veil of ignorance which Rawls endorses as appropriate for the purposes of discovering principles of justice is one which excludes knowledge of procedural fairness in the allocation of opportunities.

6. *Democratic equality and pure procedural justice*

We have established that the arguments from moral arbitrariness and the original position are insufficient to justify democratic equality in preference to natural aristocracy. I turn, now, to other arguments which appeal to the idea of FEO as a principle of fairness in the distribution of positions of socioeconomic ad-

---

[29] B. Barry, *The Liberal Theory of Justice* (Oxford: Oxford University Press, 1973), 83.

[30] Here, I do not wish to disparage such a defence. I mean only to point out that its attribution to Rawls would be a misinterpretation of his position. It should be stressed, in addition, that an instrumental argument for FEO could be rendered consistent with Rawls's argument if the benefits of FEO related to the first principle of justice. For example, Rawls might claim that fair equality of *political* opportunity is required for instrumental reasons: if, for example, FEO contributed to the fair value of political liberties and would, therefore, contribute to the achievement of more just legislation. Whether or not FEO, or some less demanding opportunity principle, is required for the sake of the first principle is, however, another matter.

[31] Rex Martin seems to interpret Rawls in this way. See *Rawls and Rights* (Lawrence: University Press of Kansas, 1985), 71.

vantage. I begin this examination with Rawls's remark that FEO offers the requisite conception of procedural justice:

> It is evident that the role of the principle of fair equality of opportunity is to insure that the system of cooperation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range.[32]

A few pages earlier he offers an explanation:

> [I]t may be possible to improve everyone's situation by assigning certain powers and benefits to positions despite the fact that certain groups are excluded from them. Although access is restricted, perhaps these offices can still attract superior talent and encourage better performance. But the principle of open positions forbids this. It expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater effort of those who were allowed to hold them.[33]

And, Rawls goes on to claim that their complaint is reasonable in part because they are excluded from the wealth and income which are attached to the position.[34] Rawls's thought is that the inequality which is the product of the operation of the difference principle could be unjust even if it is beneficial for everyone. It would be unjust if certain individuals or groups were unfairly excluded from occupying the positions to which economic resources are attached. Justice obtains only if inequalities benefit everyone *and* unequal positions of advantage are distributed fairly. I take it that this intuition is a common one that is cited in support of the idea of equal opportunity. The question is whether it supports FEO as the appropriate conception of equal opportunity.[35]

Consider a case of a distribution that is universally beneficial but treats certain persons unfairly. Suppose that the basic structure included the difference principle, so that the inequality which exists is maximally beneficial to the worse-off. Despite this, particular individuals are excluded from occupying a position of relative advantage purely in virtue of their skin colour. (We must assume, in addition, that this exclusion is not detrimental to the operation of the difference principle, which is to say that were these individuals given access to such positions the worse-off would be no better off.) This is a case of injustice, because individuals are excluded on grounds that are irrelevant from the point of view of justice. A principle to which we might appeal is that it is unjust if some are excluded from occupying positions of advantage without good reason. This would render it unjust to exclude individuals from such positions from motives such as

---

[32] Rawls, *A Theory of Justice*, 87.

[33] Rawls, *A Theory of Justice*, 84.

[34] The other part of the legitimate complaint is that they are excluded from self-realisation, which I discuss in the next section.

[35] Rex Martin makes a similar point, that an inequality might be unfair to someone even if it is beneficial to everyone. See his *Rawls and Rights*, 66. One way of putting this is that the difference principle is a fair distribution of economic resources between *representative*, or non-rigidly designated, groups. Nevertheless, it is appropriate to consider justice in this way only if access to representative groups is open in the appropriate way to rigidly designated, or actual, persons.

prejudice or intolerance, or, more controversially, by stereotyping or statistical discrimination.[36]

Such a principle is independent of considerations of whether inequality is beneficial for all. Rawls's idea of FEO as a principle which secures pure procedural justice is that, from the point of view of justice, whatever inequalities arise from the operation of the difference principle are just only if positions of relative advantage are distributed fairly. For then no specific individual can complain that they are excluded without good reason.

Let us grant the point that justice requires more than universal benefit, since this is compatible with some individuals being unjustly treated. The question becomes, does treating individuals procedurally justly require FEO? Now, if the appeal to unjust treatment is an appeal to refraining from treatment for which one has no good reason, then we require a conception which enables us to distinguish between good reasons and poor reasons. But this takes us back to our initial question: why do we have a good reason to allow inequalities to arise from differences in natural talent but not socially induced talent? Thus, the appeal to the ideal of procedural justice or equal treatment does not provide any independent support for FEO, because our conception of what is required for pure procedural justice depends on our interpretation of fair exclusion. No doubt, *if* FEO ensures that no one is unfairly excluded from positions of advantage, then its incorporation within the basic structure would guarantee pure procedural justice. Nevertheless, an appeal to the role of FEO as a guarantor of pure procedural justice offers no independent support for it. It must be established independently as a principle of fair treatment.

7. *FEO, Self-Realisation and Political Liberalism*

A widespread left-wing view holds that FEO, which seeks to eliminate the differential effects of social class on education and employment, is justified as a means of enabling every individual to realise her potential as indicated by her natural endowment. Rawls incorporates this view as key part of his defence of FEO. He writes:

> [T]he reasons for requiring open positions are not solely, or even primarily, those of efficiency . . . if some places were not open on a fair basis to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them. They would be justified in their complaint not only because they were excluded from certain external rewards of office such as wealth and privilege, but because they were debarred from *the experience of the realisation of self which comes from a skilful and devoted exercise of social duties*. They would be deprived of one of the main forms of human good.[37]

---

[36] For instructive discussion of the justice of different kinds of exclusion, see R. Arneson, "Against Rawlsian Equality of Opportunity," *Philosophical Studies*, 93 (1999), 89-97. More generally, while Arneson does not discuss natural aristocracy in any detail, many of his arguments against democratic equality are similar to the arguments made here.

[37] Rawls, *A Theory of Justice*, 84, my emphasis.

Here Rawls distinguishes between wealth and income, which are among the external benefits that employment confers, and the skilful performance of one's social duties, which is a good that is internal to employment, a good that is experienced as self-realisation. While Rawls offers little more by way of argument from the notion to self-realisation in employment to FEO as a constraint on the difference principle, the question remains whether this is a promising Rawlsian justification of democratic equality.

Note, first, that the appeal to self-realisation leads us to change our interpretation of FEO in a way that has the potential to meet the principal challenge to democratic equality outlined above. Recall that the challenge for Rawls is to cite a morally relevant distinction between natural and social causes of economic inequality that justifies the adoption of formally different principles to regulate them. However, the distinction between external and internal goods from employment might enable us to offer a response to the challenge. Under the revised understanding, FEO and the difference principle should not be understood as different formal principles regulating different potential causes of inequality of the *same goods* of wealth and income. Instead they offer accounts of how *different goods* ought to be distributed from the point of view of justice. Whereas FEO distributes opportunities for employment or the occupation of different social positions, the difference principle is a principle that regulates the inequalities of wealth and income that are attached to those positions. Because FEO regulates a different primary good, educational and employment opportunity, it does not seem counter-intuitive that a formally different principle for its distribution might be justified. So it remains open for defenders of FEO to argue that the distinctive requirements of self-realisation in employment require opportunities for education and employment to be distributed in a manner that seeks to eradicate the differential effects of class background on one's prospects of success in these fields.

To be successful, the argument would have to support three controversial claims. First, it must establish that individual self-realisation derived from the skilful performance of social duties is an element of human well-being. Second, it must show that our interest in self-realisation is not defeated by our interest in obtaining wealth and income; it must show that if it is to establish FEO as a lexical constraint on the operation of the difference principle. And, third, the argument must explain why different individuals' competing interests in self-realisation are fairly satisfied by FEO, which allows unequal access to social positions on the basis of differences in natural talent and willingness to deploy it.

Rawlsians may avoid a detailed examination of these claims, however, because the fundamental premise of the argument, that self-realisation is a component of well-being, is inadmissible within a political conception of justice of the kind that Rawls now affirms. For the sake of the creation and maintenance of an overlapping consensus, justice as fairness must refrain from appealing to any comprehensive conception the validity of which is disputed by reasonable per-

sons.[38] Thus, any justification of principles of justice, such as FEO, which appealed to such controversial premises would lack legitimacy, since it would fail to elicit the free agreement of reasonable individuals who reject the value of self-realisation through work. Perhaps the individuals in question view the good life in terms of material consumption or single-minded devotion to God and, therefore, view the occupation of any particular social position as merely a means to the satisfaction of these external projects. However, it is difficult to see how such individuals could be described as unreasonable just in virtue of their rejection of the particular conception of the good at the centre of the self-realisation argument.[39]

It is also difficult to see how the self-realisation argument might be revised so as to avoid violating Rawls's political liberalism. One suggestion is that we might appeal to a *political* conception of self-realisation. That conception would presumably appeal to Rawls's political conception of the person as having an interest in developing and exercising her sense of justice and her capacity for a conception of the good.[40] To be sure that would, no doubt, support the adoption of a principle of justice that is lexically prior to the difference principle, one which gave individuals access to educational resources and the social conditions necessary to satisfy the specified interests. For example, if individuals are to develop the capacity rationally to form, revise and pursue a particular comprehensive doctrine then, arguably, they need to develop an awareness of a range of alternative doctrines that might be followed, and to be equipped with the necessary mental and physical capacities to evaluate and pursue them. That interest justifies the provision of a good deal of education.[41]

Note, however, that such an interest supports a very different kind of principle compared to FEO. In the first place, FEO allows the naturally privileged more opportunity than the naturally disadvantaged, while the interest in educational opportunity generated by the political conception of the person is an interest common to all. Second, there is little reason to think that the egalitarian component of FEO would also be characteristic of a principle whose aim is to develop individuals' interests under the political conception. For the latter would seem to justify a distribution of educational resources that ensured that everyone had merely *sufficient* opportunity to realise and exercise her two moral powers. And, finally, the political conception of the person does not pick out as especially relevant, as the conception of self-realisation that supports FEO must do, an interest in occupying any particular kind of office or job. One can develop and deploy a sense of justice and a capacity for a conception of the good without regarding employment as intrinsically valuable. If that is the case, then it is doubtful that the political conception of self-realisation would support a

principle, like FEO, which rests on an account of advantage that regards employment as an important intrinsic good.

Nevertheless, this discussion of the possibility of a political conception of self-realisation does affect the argument of earlier sections where natural aristocracy was preferred to democratic equality. If the foregoing remarks are sound, then it might be argued that natural aristocracy, as well as democratic equality, should be rejected in favour of a second principle of justice in which the difference principle is constrained, not just by careers open to talents, but also by a principle of access to education and other relevant opportunities sufficient to develop and exercise one's moral powers. One reply to that suggestion, which requires further elaboration than I can offer here, would insist on the great importance of our satisfying what Rawls himself describes as our highest-order interests. Given the significance of these interests, it might be more appropriate to theorise them as falling under the protection of the first principle.

Rawls's recent emphasis on the need to theorise a political conception of justice can therefore be seen to threaten one of the bases of his defence of FEO. He faces the following dilemma: that we can either regard our interest in self-realisation as a partial account of well-being, in which case it is incapable of generating a reasonable overlapping consensus and, therefore, inadmissible within an political conception of justice; or we can view is as related to Rawls's political conception of the person, in which case it is difficult to see how it supports FEO.

In addition, political liberalism threatens FEO in a more direct way. One of the aims of a political conception of justice is to ensure that the political domain is *publicly* acceptable to reasonable persons. Rawls shows that publicity has a number of levels: (1) that there should be public allegiance to the principles of justice and *public recognition that the basic social and political institutions of society are just*; (2) that it should employ only beliefs and values that are uncontroversial between reasonable persons; and (3) that the full justification of the conception of justice should be publicly accessible. Given the publicity requirement and, in particular, its first level, it counts against the justice of a principle if its institutionalisation cannot be publicly recognised.[42] Yet this is a problem to which FEO succumbs, for it trades on a distinction between natural and social determinants of inequality that is difficult to make in both theory and practice. For instance, it is not at all clear whether we can meaningfully cite a distinction between nature and society in identifying the causes of a person's success. For example, if we accept the notion of there being different *levels* of natural talent, we must accept that the level of natural talent one enjoys will be

---

[38] See *Political Liberalism*, parts 1 and 2.

[39] For a similar argument, see Arneson, "Against Rawlsian Equality of Opportunity," 98.

[40] See *Political Liberalism*, esp. 18-20, 29-35.

[41] See, for example, *Political Liberalism*, 41

[42] As A. Williams has shown, this requirement has considerable significance, for it provides a basis on which to reject extensions of the difference principle so that it regulates the day-to-day economic behaviour of individuals via an egalitarian social ethos as well as the tax and spend polices of government. See Williams, "Incentives, Inequality, and Publicity," *Philosophy and Public Affairs*, 27 (1998), 225-47. Williams offers a Rawlsian response to G.A. Cohen's "Where the Action Is: On the Site of Distributive Justice," *Philosophy and Public Affairs*, 26 (1997), 3-30.

influenced by the prevailing social attitudes, which value certain attributes over others and which may well change over the course of a life. Thus, one's enjoyment of natural talent will be, to some degree, socially determined.[43] Even if this theoretical problem is surmountable, there remains the long-standing practical difficulty of accurately measuring a person's level of natural talent. And, in the absence of a clear, publicly verifiable measure of natural talent, it is unlikely that FEO, which is defined in terms of the distinction between nature and society, can satisfy the requirement that principles of justice should be such that their implementation can be publicly recognised.

8. *Conclusion*

I have argued that many of Rawls's own arguments within *A Theory of Justice* and in his subsequent work support the ideal of natural aristocracy over his own preferred conception of socioeconomic justice, democratic equality. I shall not summarise those arguments here. I shall conclude by emphasising an important point of agreement with Rawls, which might be obscured by my defence of a so-called aristocratic ideal. That ideal might be interpreted as forbidding government from intervening in the spheres of education and employment to improve social mobility, or the relative chances of children from working class homes achieving advantaged social positions. The ideal might seem to recommend that all social privilege should remain untouched and, instead, be employed to work for the benefit of the less advantaged in society. However, understood correctly, natural aristocracy does not have such limited ambitions. Its acceptance that individuals can justly become relatively advantaged as a product of living in a more propitious social environment is, in two important respects, limited. First, the existence of inequalities of wealth and income in society, from which social privilege partly derives, is limited by the operation of the difference principle: inequalities that fail maximally to benefit the least advantaged in wealth and income are condemned as unjust. So, under natural aristocracy it is likely that social privilege will exist to a lesser degree when compared to the system of natural liberty, for example. And, second, if, as some think, increasing social mobility in society would enable talent more effectively to be revealed, developed, and deployed, then, despite its name, natural aristocracy would require institutions to take steps to reduce the influence of class on one's prospects for economic advantage, by placing taxes on the purchase of private education, for example. Thus, natural aristocracy might embrace the ideal of equality of opportunity as an effective social policy for the realisation of the difference prin-

[43] As Rawls himself acknowledges, in reply to Musgrave's proposal of a lump-sum tax on natural abilities: "[I]ntelligence, for example, . . . has indefinitely many dimensions that are shaped and nurtured by different social conditions; even as a potential, as opposed to a realized, capacity it is bound to vary significantly in little understood ways. And among the elements affecting these capacities are the social attitudes and institutions directly concerned with their training and recognition." See Rawls, "Reply to Alexander and Musgrave," 655; and Pogge, *Realizing Rawls*, 164-65.

ciple, while rejecting it as a claim about what is owed to individuals from the point of view of justice.[44]