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Rights and Distributive Economic Justice*

Abstract: The paper has three main sections. The first is concerned with developing the idea of a democratic system of rights. The second section turns, then, to constructing an idea of economic justice suitable to such a system. The paper concludes, in its final section, with a brief reflection on and assessment of the general line of argument taken.

1. Basic Rights in a Democratic System

Here it might prove useful first to analyze basic political rights as civil rights and then, after that, to determine wherein they differ from ordinary, garden variety civil rights. Active civil rights, taken in the most general sense, are simply political rights universal within a given society. They are beneficial ways of acting, or ways of being treated, that are specifically recognized and affirmed in law for each and all the citizens there (or, ideally, for all individual persons there) and are actively promoted.

Some civil rights are important because they have a distinctive moral pedigree (of the sort associated with human rights). And the social commitment to them, probably, reflects this consideration to one degree or another. But specific, individual civil rights need not enjoy such a foundation; for a society could commit itself wholeheartedly to certain beneficial ways of acting or of being treated even in cases where a strong moral pedigree was lacking.

* *A note on references/sources:* For a characterization of rights, in contrast to alternative accounts, and for the grounds on which I think the one I've relied on is to be preferred, see chs. 2-5 of my book *A System of Rights* (1993a). For the point made about rights as beneficial, see chs. 2, 5, and 10. For the point about the fundamental compatibility of basic rights with justified democratic majority rule, see chs. 7 and 12, in particular; and, for a convenient summary of the main argument, see the short paper *Basic Rights* (1993b), on which section 1 of the present paper is based. For the point about the role of the checking devices as fundamentally democratic in character, see *A System of Rights*, ch. 7; and for problems with judicial review in particular, see the paper I co-authored with Steve Griffin, *Constitutional Rights and Democracy in the U.S.A.: The Issue of Judicial Review* (1995). Finally, for the point about the self-correcting character of democratic procedures, see *A System of Rights*, ch. 7. (This idea is taken from Thorson 1962, esp. ch. 8; and also pp. 120-124.) Sections 2 and 3 of the present paper are based in part – in particular the discussion of Rawls – on my paper *Economic Justice: Contractarianism and Rawls's Difference Principle* (1994).

In sum, all civil rights are important rights and all reflect a high level of social commitment. But not all can be justified as representing individuated and practicable and universal moral claims which serve as proper conclusions to sound arguments from principles of critical morality widely agreed upon. Hence, not all can be justified as human rights. Nonetheless, all can be justified in a distinctive way – in accordance with one and the same pattern – and we turn to that pattern now.

The governing supposition is that all rights are, in some way, beneficial to the rightholder. Thus, all proper civil rights (all universal political rights) could be represented as identifying specific ways of acting, or of being treated, which would upon reflection be claimed by each person; for these claimed ways of acting or of being treated are, arguably, part of the 'good' of each person or instrumental to it.

All active civil rights, if true to the initial supposition of benefit, could be regarded as justified insofar as they identify ways of acting, or ways of being acted toward, that satisfy the criterion of mutual perceived benefit. Where this supposition holds good in a given case, then, what is, legally speaking, a civil right actually is a way of acting (or of being treated) that is correctly understood to be in everybody's interest. Or would be so understood, upon reflection (and given time and experience).

Now, active civil rights require an agency (or a coordinated set of agencies) to formulate and maintain and harmonize them. It could be argued that democratic institutions – universal franchise (on a one person, one vote basis), contested voting, majority rule – can, acting as a coordinated set (on a majority electoral base), perform this job. For, it could be claimed that democratic procedures are a stable and relatively reliable way of identifying, and then implementing, laws and policies that serve interests common to the voters or to a large number of them, presumably at least a majority.

On reflection, though, we see that the claim just made (as the basic rationale for democratic rule) is deeply ambiguous. For it covers a number of quite distinct, even disparate, options. Thus, the answer could be read as covering and emphasizing (i) those policies and laws that are in the interest of each and all or, alternatively, as covering and emphasizing (ii) those policies and laws concerned, for example, with national defense or the growth of Gross National Product (GNP), that is, concerned with things that are in the corporate or collective interests of the group of which each is a member (though not necessarily in the interests of each person there) or, finally, as covering and emphasizing (iii) those policies and laws that are in the interests of a large group of people (presumably a majority) though not in the interests of some others (presumably a minority). Indeed, these majority interests might even be detrimental to the interests of a given minority.

Most likely, we do not want to eliminate any of these options from our list of democratic goods altogether. But to stick with all of them in a completely unstructured way, taking them pell mell (which in effect would be to buy into unrestricted majority rule), might seem on first blush to be neither reasonable nor justifiable.

The best solution, then, might be to try to rank these options in some definite order. This ranking, if it could successfully be achieved, would thereby become *part* of the very justification for having and relying on democratic institutions. But if we cannot establish a plausible ranking, then we (as democrats or as citizens of a properly ordered democratic state) are stuck with unrestricted majority rule, and with whatever threat it might pose to the rights of each and all.

I think that an ordering would, in fact, emerge as we reflected on these options (while keeping in mind that further one, of unrestricted majority rule). Here it would be decided, I am suggesting, that policies or laws should conform to a definite schedule of priorities. In sum, the ordering of permissible options, put in terms of the interests involved, would be (i) the interests of each and all over (ii) the good of the corporate whole and either or both of these over (iii) a mere majority interest. And a mere majority interest would have to be understood in a very definite way – as limited to those policies and laws that concern interests the helping or hurting of which is compatible with serving interests under either of the first two considerations. For the notion of democratic goods does not include any interest of the majority that harms rather than serves such *vital* interests of a minority.

The upshot of my overall argument, to this point, is that the setting required by civil rights can be provided by democratic majority-rule government. Democracy, in its turn, needs a justification and this, I have suggested, can best be provided by giving preference to policies that serve the interests of each and all and by avoiding policies that override these interests. From what I said earlier, about mutual perceived benefit, it should be clear that such a preference would include, as a proper subset, universal political (or civil) rights.

One further point before we proceed. Institutional design would need to see to it that democratic institutions, in order to stay in character with that which *justified* them, did not supersede or significantly impair civil rights. Accordingly, institutional design would include certain checking devices (such as judicial review or executive veto) among the democratic institutions. For in justifying democratic rule in the way that we have, we have in effect rejected unrestricted majority rule as itself unjustifiable. Necessarily, then, checks must be installed to prevent unrestricted majority rule and to keep democratic institutions true to what justifies them. But these checks, if well designed and effective, are not 'external' to democratic ideals or in any way antidemocratic. There is here no 'tension' in principle between basic rights and majority rule (as Madison and others have supposed). Rather, the checking devices are themselves to be numbered among the fundamental democratic institutions.

In the account I have given, what were initially two quite independent elements – civil rights and democratic procedures – have been systematically brought together and connected to one another, by argument. Our two key notions (accredited civil rights – of individual persons – and justified democratic government) are mutually supportive of one another. Thus, they can form the central undergirding of a distinctive political system, one in which civil rights are accorded priority.

This priority does not arise from the idea of universal rights, as one might have initially supposed, but, rather, from the idea of democratic institutions, as justified. Perhaps, it would be clearer, though, to say that this priority arises from the connection and grounding of each of the two key elements in the same justificatory pattern, in the idea of mutual perceived benefit.

Before we leave this account, a refinement must be noted. The relation between the non-defective operation of democratic institutions, on the one hand, and the production of civil rights laws, on the other, is at best only probabilistic. We have merely identified a tendency.

There are other relevant considerations we could cite here as well (for example, the possibility of cyclical majorities, the distortions introduced by strategic voting, the problem of constructing a 'general good' or common interest out of the perceived interests of the various individuals involved). For all these reasons, then, the actual operation of parliamentary democratic institutions is an inherently imperfect way to realize that very thing which it is presumably a principal object of those institutions to achieve, namely, the formulation and promotion of civil rights justifiable by the standard of mutual perceived benefit (and, of course, the maintenance of the goal of not overriding such rights).

Thus, we will never be in a position to say that literally all civil rights laws actually are in the interest of each and everyone. But we do have adequate evidence for saying that long-established civil rights are in that interest. For long-established civil rights are rights that have passed the test of being proposed by legislative majorities and of being initially affirmed and, then, supported over the years by the checking devices (as employed by the other major political institutions in that society). And they are rights that have survived the scrutiny of time and experience and public discussion; they have been winnowed by the self-correcting character of the democratic process.

Long-established civil rights, assuming here that a highly concurrent favorable social opinion exists in their case, are the paradigms, the exemplars of rights justifiable on the regulative standard of mutual perceived benefit. They have a peculiar title, then, to be regarded as basic rights in a democratic system of rights.

This account of basic rights is, I think, a sound account. It does not ignore the fact that civil rights, including the basic ones, are themselves political constructions and involve certain express undertakings. Quite properly, then, this account politicizes the notion of basic constitutional rights. It recognizes that decisions must be taken here, and lived with. It recognizes that such rights must be formulated (subject to revision) and maintained and harmonized, like all rights, in political give and take.

Indeed, this particular conception of basic rights may be the only one fully compatible with the idea of justified democratic majority rule and, hence, the only kind of basic right we can reasonably expect to flourish in a democratic system of civil rights. And given the mutually supportive character of our two key notions – civil rights and democratic government – such basic rights, like the democratic institutions themselves, will be among the institutional essentials in a democratic system of rights.

In a society modeled on such a system, long-established civil rights (as basic or constitutional matters) would enjoy priority even over those justified civil rights that are not themselves long-established or supported by a strong social consensus. Thus, in American law (to cite one example), the right to freedom of political speech or of the press might trump a right to privacy which, absent these rights, would normally prevail. Such basic rights (as those of speech or press) are not to be superseded or significantly impaired by these lesser rights or by other normative considerations (such as national security or GNP or aggregate net welfare).¹ And certainly not by *mere* majority interests.

But I would not claim that any state in the world today is closely modeled on a democratic system of rights, or even that any state will ever become one. I've merely spelled out a direction for development that exists in some places to some degree today: a tendency of certain states, fitfully democratic, to give priority to basic rights. Great Britain may be one of those states; Australia or Canada or the United States may be another. For these countries have tried (sporadically and imperfectly and without adequately articulating this ideal) to model themselves, to an appreciable extent, on a democratic system of rights.

2. Distributive Economic Justice

The question we must ask ourselves, at this point in history, is whether the main goal of any such nation is to be *simply* a democratic system of rights, albeit an admittedly imperfect one. Would this suffice? Are rights enough to ensure justice?

The point of asking such a question is to direct attention to the place of social justice, in particular, within a democratic system of rights. This is an issue that has not, up to now, been wholly effectively dealt with within the frame of this particular set of ideas.

I can, at best, only sketch an answer to this question about justice. We can begin with a straightforward claim: Many issues of justice are captured, more or less adequately, through an analysis of the rights (in particular, the basic rights) involved.

¹ The point here is not to say that individual civil rights always have a priority over collective or aggregative goods; rather, it is to say that these goods are not to have precedence over such rights (to say, in sum, that collective goods are not licensed to significantly impair or supersede rights). The argument, of course, assumes the normal or standard case. One can imagine other kinds of cases – in what Rawls calls "constitutional crisis" (such as a civil war) or what Walzer refers to as "extreme necessity" or "extreme emergency" (such as national survival in time of war, e.g., the case of Great Britain in the early stages of the Second World War). My argument here is that, in such cases, the survival of rights (the system of rights) may well be at stake and that the collective good interest and the interest in rights would then be coincident; hence, advancement of the collective interests does not supersede rights in such cases. For the discussion of these hard cases, see Martin 1993a, ch. 5, section 4; also pp. 159-65. The discussion in the present note responds specifically to a point raised by Peter Sutch at the 1995 Gregynog conference (in Wales), at which the argument of the present paper was initially shaped.

But it appears that not all issues of justice can be handled in this way. For example, standard defenses, and often criticisms, of affirmative action (as it is called in the U.S.) are characteristically put in terms of justice – in terms of compensatory justice or of distributive justice.² But, arguably, a policy of affirmative action, even when justified on such grounds, does not reduce to a question of basic rights. Why not?

For one thing such policies are understood to be temporary in nature. More important, they are not ways of being acted toward that are a means to (or parts of) the good of *each and all*. Rather, they are policies that benefit some individuals (members of some groups) but do not, unlike basic rights, benefit all individual citizens or benefit each of them equally and in the same way.

The issue then is whether economic justice fits this particular pattern: where, even though it is typically understood to be a matter of justice, it is not readily resolvable into a question of basic rights. In order to focus discussion here let us put one well-known contemporary theory of economic justice, that of John Rawls, under the magnifying glass.

Rawls claims that inequalities among persons stem in important ways from differences in people's natural endowments and in their initial social circumstances. He claims as well that in a just or well-ordered society resultant inequalities in positions and in income and wealth can be allowed – indeed, should be allowed – subject to certain conditions. Among these conditions are requirements that he lays on the basic political and social and economic arrangements. (These arrangements would include such things as the ownership and management of the means of production.) What Rawls requires of such basic arrangements, no matter how they're set up as to their precise detail, is that their constituent institutions work together in such a way as (1) to encourage contributions that (2) increase the production of goods and services, which in turn are so distributed as to (3) improve the level of income and wealth of the various income groups involved.

A society that met this standard would be 'thoroughly just' in Rawls's view. But to be 'perfectly just', it would also have to *maximize* the level of income and wealth of the least well-off group in particular.

This last point (the point about maximizing the minimum) is not intended to identify a benefit for everyone but only for those in the bottom group. Moreover,

² Affirmative action has been much discussed in the philosophical and legal literature of recent years. See, e.g., for a fairly current helpful study on the justice of affirmative action, Rosenfeld 1991. There is also an interesting series of U. S. Supreme Court decisions on affirmative action, stretching from *Bakke v. Regents of the University of California* (1978) to *Adarand Constructors v. Peña* (1995). The Court's opinion in both *Bakke* (written by Powell) and *Adarand* (written by O'Connor) seems to affirm the justice of affirmative action, as do many of the concurring and dissenting opinions. One view, however, would deny this claim altogether: the view that constitutional justice under the Fourteenth Amendment is color-blind and hence that justice, relevantly conceived, is incompatible in principle with any form of racial-classification based affirmative action; such action is always simply unjust. This view is advanced, for example, in the concurring opinions of Thomas and Scalia in *Adarand*. For background discussion of the philosophical issues here, see Dworkin 1986, ch. 9.

the distributive effects enjoined by the overall operation of this principle are not the same for everyone; they are not even the same for everyone in the target group, the bottom one-fifth, say. The relevant effects here, rather, are the effects on a 'representative' person within that target group; they are effects on an ideal-type *average* individual in the bottom group.

Unlike the case with basic rights, then, the benefits required by economic justice cannot be reduced to a *rule* which specifies an identical way of acting or of being treated and proclaims it for everyone (or at least for everyone *if* their incomes were above a certain level). The guarantee of a minimum income level can attach over a given period (a year let us say or, perhaps, five years) only to some. And over a lifetime only some – but not likely each and everyone – can have the benefit of this guarantee.

Such restricted beneficial effects are not appropriate to basic rights. Rawls concludes, then, that the result required by his principle of distributive economic justice – in particular, in its maximizing version – is not, properly speaking, itself a basic right.

Another point is worth making here as well. It could be argued that, even if the result required by 'perfect' Rawlsian economic justice *could* be a basic right, it is not *in fact* one in Great Britain or in the United States; for it is not recognized and maintained in either country as a basic right. Indeed, it could be further argued (as Rawls himself does) that the required result *should* not, given the precise character of the American political system, be recognized and maintained there as a basic constitutional right; instead, the required result should properly be a legitimate object of legislative policy but *not* a feature of the fundamental constitution itself.

Rawls's reason for saying that the maximin principle should not be incorporated as a feature of the verbatim text (or of the understood text) of the U.S. Constitution is that he does not want that principle to become an object of interpretation by American courts. Rather, he wants the basic determinations and principal implementations of policy to remain within the province of the legislature (in this case, of the U.S. Congress).

By the way, the argument I have just described in Rawls is a long-standing feature of his writings. It is especially evident in his recent writings and is quite explicit there.³

The debate is by no means closed on this matter, but I think enough has been said to suggest that distributive economic justice (at least as Rawls conceived things) may not be a matter of basic rights at all.

Let me add another consideration here. It concerns a point of procedure in normative political theory (a self-imposed policy or rule, if you will). Let us, to focus attention, imagine a difficult philosophical issue. Say, whether speech merely as discourse (as distinct from immediate incitement) can ever be harmful, or at least harmful in such a way or to such a degree as to justifiably require its

³ See, for one example, Rawls's Tanner Lectures (1981), reprinted as Lecture VIII, in his *Political Liberalism* (1993), 338-39 esp.; see, for another, *Political Liberalism*, Lecture VI, in n. 23 on pp. 236-37.

restriction or even its prohibition. German law provides an instance of such a case in its prohibition of mere speech that denies the Holocaust. When one is confronted with such a question (as the one this German law raises), I think it a good rule of procedure to *assume* the more difficult case, to posit (for the sake of argument) that the more dire situation obtains. And then to conduct one's arguments, at least initially, on *that* ground. In the example under discussion, we would begin by assuming that mere discourse could sometimes be significantly harmful. The point, presumably, would then be (if one is an advocate of freedom of speech and the press) to argue that such speech nonetheless ought to be legally protected (as Dworkin, for instance, has recently argued respecting the German law cited earlier).⁴

For, clearly, if mere speech were *never* harmful, then the case against ever prohibiting it by law could fairly easily be made out.

We should follow a parallel line of reasoning in the issue we are presently concerned with in this paper, distributive economic justice. Here we would assume that some important matters of justice (for instance, this very one) *cannot* be reduced simply to matters of basic rights. For if the easier case were assumed (that all matters of justice are matters of rights) then we'd have relatively little problem in squaring distributive economic justice with basic rights *per se*.⁵

Accordingly, if distributive economic justice is to be fitted into our account of a democratic system of rights, we should begin (as a matter of good philosophical hygiene) by assuming the harder case. We should begin by assuming, if only for the sake of argument, that it is not itself a matter of basic rights. And we must try to fit it into our account of a democratic system of rights on some other basis.

Let me suggest how it might be accommodated there on some such basis. In our previous account of a democratic system of rights two quite distinct elements – civil rights and democratic procedures – were brought together and connected to one another, by argument. This particular systematic connection was underwritten by the intrinsic affinity each element exhibited (under analysis) for the other, based on their shared justification by the standard of mutual perceived benefit.

By the same token, if distributive economic justice could itself be shown to be a matter of *everyone's* benefit – or, at least, of every income group's benefit – then it might plausibly come within that same orbit.

Granted, it is not an identical benefit for everyone or an equal benefit; but it is something positive for all groups and, in that sense, a *mutual* benefit. And if the various allowable levels of benefit could be acknowledged as benefits from the perspective of *every* income level, assuming any such level to be both adequate

⁴ See Ronald Dworkin's opinion piece, *Should Wrong Opinions be Banned?* (1995).

⁵ Mill is widely interpreted as holding (in his *Utilitarianism*, ch. 5) that all matters of (moral) justice are matters of rights and all matters of rights (at least those that can be morally endorsed) are matters of justice. The idea that rights and justice are coincident or 'correlative' notions is, indeed, widely shared or even endorsed, as with Barry (the source of the term quoted, in his book *Liberty and Justice: Essays in Political Theory 2*, 187). Tom Campbell, cogently in my view, argues against any such correlation in his 1974 article *Rights Without Justice*, 445–48.

and acceptable, then it would be a matter of mutual *perceived* benefit. Allowing for these caveats, then, the idea we are contemplating is not too far-fetched to be worth further consideration.

Thus, distributive economic justice might enter the frame, the political space, appropriate to a democratic system of rights on this very basis. In being concordant with the notion of mutual perceived benefit (or something closely akin to that notion), distributive economic justice shares an important feature with the main elements of that system – with basic rights and democratic political institutions, as justified.

Let's pause a moment now and take stock, before we move on. The point I've just made would seem to follow *if* distributive economic justice could be shown to be a matter of the mutual benefit of every income group. But is this particular notion of distributive economic justice one that could gain wide acceptance or is it, on the contrary, simply one person's idea (say, Rawls's or mine)?

I must be brief here. I think this notion could command a surprisingly wide assent. Why so? Because it is deeply rooted in existing theory; there is in effect already a consensus about economic justice. For we can point to a single, common, underlying idea of economic justice (or, better, to an element within that idea) which can be found in Locke, in Adam Smith, in Marx, and in much recent contractarian theory (in Rawls, as I've already indicated, but also in Gauthier and in Nozick – if we count Nozick as a contractarian of sorts, though more Hobbesian than Lockean in certain respects).

The root idea here, put very crudely, is that the arrangement of economic institutions requires, if it is to be just, that all contributors benefit or, at least, that none are to be left worse off. Thus, the root idea requires that if some individuals (say, those in the top 20%) improve their standard of living (measured in terms of real income and wealth), others should do so as well; no group, not even those least well-off (say, those in the bottom 20%), should be left behind. All should continually improve their lot in life together. None at least are to be left worse off.

Of course, important differences come in the way each thinker embeds this root idea in an overall theory. Locke puts it in a state of nature, and thus within the context of a theory of natural rights; Smith lodges it in an open and competitive market (in a "natural system", as he called it) and then puts that ultimately within the confines of a rather utilitarian scheme of justification; and Marx embeds it in a system of proper social ownership of the means of production and that, in turn, is set within his theory of historical materialism.

I've already indicated that the root idea is also one we can plausibly ascribe to Rawls. For he seems committed to the principle that "every income group is to benefit or, at least, none is allowed to become worse off". Indeed, Rawls says this, quite explicitly, at a number of points.⁶

⁶ Let me add to this claim about Rawls a qualification that should be noted. At some stage (as we follow a Rawlsian pattern of reciprocal improvements), we could conceive options which, if any one were taken, would leave us at a point (on a 'curve', so to speak, or in a region) where no further reciprocally improving changes were possible. Here the only way members of any one class could be better off (say, the members of x_2) would be for

Any significant difference between Rawls and these other theorists would again come mainly in the way Rawls incorporates this root idea in his overall theory. At least in *Theory of Justice* (1971) he does so by locating it within a "well-ordered society" organized in accordance with certain recommended principles of justice that, in turn, are themselves justified by a rather Kantian social-contract type of reasoning.

To sum up. I've made a quick but plausible case, ultimately on inductive grounds, for saying that there is a root idea of distributive economic justice. This root idea can be stated, in simplest terms, as "every income group benefits or, at least, none is to become worse off". And I've suggested that this root idea is not in any way idiosyncratic; for it has, historically, been supported on natural rights, utilitarian, Marxist, and contractarian grounds. Finally, I've suggested that mutual perceived benefit (or something closely akin to that) can plausibly be regarded as centrally tied in with this root idea and, thus, with the idea of economic justice, historically regarded. Given this tie in, we have a presumptive case for making the issue of justice so conceived a matter of public political policy in a democratic system of rights.

Let us next try to determine what might be the likely shape for policies of economic justice to take in such a system. The root idea (that every wage-earning group benefits, over time) will, of course, be present. Thus, people in a given democratic society are justified in moving from one set of economic arrangements to another (say, to a new tax law and attendant scheme of expenditures) if all income groups benefit (or at least none are left worse off).

This idea, when carefully stated, becomes the principle of (pareto) efficiency.⁷ Often, though, several such efficient arrangements are feasible, given a single

those in another class (say, x_1) to be worse off. When this point, this 'curve' or frontier, has been reached, we have reached the 'pareto optimal' zone. Obviously, options to *move* to such a frontier can be taken, but no further moves within it are thereafter allowed (for none could be reciprocally improving). In short, Rawls's theory (in my view) is governed, despite his frequent invocation of the maximin ideal, not by that ideal but by the notion of reciprocal or mutual benefit. (See esp. Rawls 1971, 79, 104-5, 585.) On this interpretation, then, pareto *optimality* is a limiting case (in the way just described); on the 'everybody benefits' principle, one can move *to* the optimality zone but not *within* it, so to speak. Once optimality is achieved, presumably at the maximin point, the only acceptable step is to preserve a steady state, an equilibrium of sorts. Rawls goes only so far, then, with the notions associated with Pareto's name. And here I have responded to a criticism of my paper, at the Gregynog conference, by Manfredi LaManna (and clarified for me by Ken George and by Gabriella Slomp). For additional discussion and useful background on Rawls, see my article, referred to in *a note on references/sources* (above), and, more generally, my book *Rawls and Rights* (1985), esp. chs. 4, 5, and 8.

⁷ That is, in a situation where there are two or more beneficial options for change, we should choose – where such choice is possible – that one which is 'efficient' (that is, which is more beneficial for *each* of the parties or groups involved). Thus, we understand the notion of everyone's continual benefit, in such a way as to be compatible with what is called pareto efficiency. Of course, on this understanding there may be (from the perspective of a given point) *several* efficient solutions. Here we would need a tie breaker, an

determinate starting point, and these turn out to be arrangements that are, compared with one another, pareto incomparable. What then?

In such an event, that arrangement (among those available) which minimizes the difference in income between the top-most and the least well-off group should be selected and implemented. This constraint at least seems a plausible one to add here – that is, in the context of a democratic system of rights. For it has the merit of recommending the selection of that one alternative which minimizes the necessary inequality required to be imposed, consistent with satisfaction of the root idea that every group is to be benefitted.

Thus, an 'everybody benefits' or efficiency principle constrained by some form of egalitarianism emerges as a likely, perhaps even the preferable, account of distributive economic justice when seen from the perspective of contemporary democratic theory (as given in the account of a democratic system of rights). For the root idea of economic justice – (a) that every group benefit – as constrained (b) by a reasonably vigorous egalitarianism would appeal, in *each* of these crucial emphases, to values already central to the idea of a democratic system of rights. Hence, it could suitably guide democratic decision making there.

My guiding intuition throughout this section of my paper has been that setting the root idea of economic justice within a democratic framework should yield a distinctive principle of economic justice, one that is peculiarly appropriate to elements within that framework. What counts in a democratic system of rights is what is compatible, in particular what is integral, with the leading ideas of that system. Accordingly, I have tried to show that it would make good sense to incorporate an efficiency-cum-egalitarian theory of distributive economic justice into the theory of democracy, along with basic rights and the democratic political institutions.

Now, as we have already noted throughout, economic justice (historically conceived) is an aggregative notion and best attaches to groups; moreover, such justice, even with the so-called egalitarian constraint, exhibits no real commitment to the strict equality of all citizens. For it does not require that economic benefits or offices of ownership be identically or even substantially the same for each and every citizen (except, perhaps, at some minimum level).⁸ Thus, the conception of economic justice I've recommended is, on this understanding, *unlike* basic rights and justified democratic institutions in important respects.

issue I next take up (in the text). For further clarification, see figure 3 and the subsequent figures and discussion in the article on Rawls referred to in the *note on references/sources*.

⁸ And the minimum level (which concerns the lifetime prospects for income and wealth of, say, the bottom one-fifth of wage earners) is one that the great majority of citizens can reasonably expect to stay above. Putting the matter bluntly, then: the minimum level establishes a right (a provision of benefit) available to all, one that can be maintained where necessary by governmental action; but it is not an *active* provision of benefit for everyone, one that each and all can reasonably expect to benefit from (except, possibly, in indirect ways). It is an active provision of benefit only for some. For this and other reasons it probably should not count, then, as a *basic* politically universal right (even though it is, admittedly, a very important one).

It is unlikely, then, that the requirements of this particular conception of economic justice can count as among the institutional essentials of a democratic system of rights. Even so, these requirements should have a high standing there (given the close kinship of the root idea of economic justice with the formative notion of mutual perceived benefit, the notion which does in fact justify the institutional essentials in that system). Thus, these requirements might plausibly count as being on roughly the same level as some of the most important corporate goods (such as, for example, providing for a suitable level of gross national product [GNP]).

In sum then, and taking as given the relatively high priority of considerations of distributive economic justice, appropriate political policies that are themselves democratically developed would have to be designed to achieve such justice. These policies would be, if properly constructed, policies that made every income group better off (or at least none worse off) over some reasonably determinate period of time, subject (of course) to the egalitarian constraint. Or at least this is the result I have argued for.

I do not want to mislead my readers (and distort understanding) by overemphasizing the term 'policies'. It may well be that a given society will rely primarily on social and economic arrangements (for example, on a reasonably open and competitive supply-demand market or, alternatively, on an ethos of general cooperativeness and special concern for the less well off or on some combination of these) to achieve the result I've been describing. Nonetheless, such arrangements (in the model case we are considering) will be developed and maintained under the scrutiny of appropriate democratic political agencies. And policies designed to remedy defects in the otherwise sound fabric of such arrangements will sometimes be required. I think the need for such scrutiny and for remedial policies (on a wide front and on numerous occasions) is probably inevitable in a complex modern industrial and service economy, such as we find today in Western Europe or North America or the Asian part of the Pacific rim.

And these policies, whether the remedial ones mentioned in the paragraph just completed or the more proactive ones suggested in the paragraph previous to that, would have to be policies that when properly constructed did not supersede or violate existing basic rights in the particular country in question. The various norms I have emphasized in my brief summary are norms appropriate to distributive economic justice when conceived within the framework of a democratic system of rights.

3. A Reflection and Assessment

The notion of distributive economic justice, as distinct from ideas of property ownership and of natural rights, was not an important one in the period of the Enlightenment, the period from which many modern ideas and institutions (including basic rights and democratic institutions) take their rise. Today, though, it is an important, indeed, an insistent part of our everyday political consciousness. And just as we could not afford to let go unresolved the supposed tension

between democratic institutions and basic rights (a tension that, by the way, was itself a staple of eighteenth-century political thought), so we must try as well to integrate distributive economic justice into the basic patterns of national life (where these are defined, as in the model case, by the institutional essentials of a democratic system of rights).

In concluding the argument of this paper, and as a main part of my assessment of the project it proposes, I think it necessary to establish one point in particular, a point that may not be, as yet, wholly clear. The argument I have conducted in this paper is intended to show two things merely: that the meeting of the criterion set by the everybody benefits-cum-egalitarian constraint is a *sufficient* condition for distributive economic justice and that the criterion, so understood, would be both acceptable and integral within a democratic system of rights.

In short, if the criterion is actually met in a country modeled on such a system, that fact would be a sufficient condition for saying that the distributive economic arrangements there were just, for rebutting claims (should such be made) that they were *unjust*. The satisfaction of the criterion marks a sufficient condition for saying that the various levels of income and wealth for representative groups (say, the top 20% of wage earners on down through the bottom 20%) in that country were not contrary to justice.

I have not argued, however, that the meeting of this criterion is a *necessary* condition for distributive economic justice in such a system. In other words, if the criterion is *not* being met in a country modeled on a democratic system of rights, it does not follow (from that fact alone) that the distributive economic arrangements there are positively unjust. Or so my argument is meant to suggest.

One might say: well, then, your proposed criterion, on this interpretation, is very weak; for it does not tell us what is *unjust* (but only what is, presumably, uncontroversially just). So we don't really know how to assess pertinent policies when they don't meet the criterion. We don't know what to say about a country (perhaps our own, in fact) that doesn't or can't meet and stay with the criterion on a more or less consistent basis. What then happens to reasonable and informed debate about economic policy in such countries? It will lack a meaningful focus. For, although meeting the criterion may be a usable and significant ideal to achieve, failing to meet it can occasion no real concern. Perhaps, in the end then one simply shrugs and says, "Well, nobody's perfect" (or words to that effect).

This is a serious challenge to my account. I think a reply to it, and a defense of the procedure I have been following (and of my interpretation of its end result), is in order. At least I want to indicate the merits of such an interpretation.

Perhaps the simplest way to proceed here, in making this reply, would be to begin with a question. Why might one even be inclined to say that meeting the criterion is *not* a necessary condition for distributive economic justice in a democratic system of rights? (And, perhaps, should not be one there.)

At least four reasons for thinking that satisfying the criterion should not be a *necessary* condition for distributive economic justice could plausibly be advanced. They could, for purposes of reference and ready recall, be identified as: (1) historical reasons, (2) reasons of limited knowledge and of reliance on shared

normative intuitions and of the indeterminacies these introduce, (3) reasons of conceptual indeterminacy in the efficiency-cum-egalitarianism criterion itself, (4) reasons of democracy.

Only the last of these crucially concerns the argument of the present paper. Let me turn, briefly then, to this particular argument from democracy.

Consistent and determined adherence to a necessary condition requirement would be inappropriate within a democratic system of rights. For to insist on such adherence would be inconsistent with the institutional essentials – in particular, those identified with the idea of democracy (contested voting, majority rule) – which constitute the theoretic system of political institutions and ideas which we must rely on to ground the idea of distributive economic justice, justificatorily, in the first place.

I say this because, in a democratic system of rights, one is committed to the notion that majority rule decision making, so long as it conforms to the priorities established there, is itself decisive and determinative. Distributive economic justice (as we have conceived it) does not have the status of a democratically derived basic right or set of such rights in the theoretic system we are discussing and thus cannot control democratic decisionmaking, as one of its proper objects. Indeed, the profile of justice in such a system must itself conform, in appropriate ways, to democratic norms, norms which include (as we have noted) contested voting and majority decision among their crucial and defining features.

Consistent and determined adherence to a necessary condition requirement would take us *outside* our justifying net, would put us in liege to an extrasystemic abstraction, a mere philosophic icon (a slogan really – of no great merit, it turns out on inspection), and cause us to lose our moorings in the very system of institutions and ideas whence we had begun. And we would have surreptitiously turned a mere historical fact, an inductive generalization from modern discourse about distributive economic justice (as captured in the root – or everybody benefits – idea and its obvious importance), into an absolute, into the governing norm, into the very idea of justice. Such platonism is unseemly in a democratic system of rights.

It would be far better, in my view, to take satisfaction of the efficiency-cum-egalitarianism criterion, not as an unvarying rule (or, even worse, as an invariant rule justified by metaphysical intuition), but to take it as a regulative principle, to guide policy in a democratic system of rights, on the basis that it is wholly justified within such a system to perform exactly that role. My argument here is simply that this is the only view (or the best view) of that criterion, and of its role, which is wholly compatible with a democratic system of rights (in particular, with its peculiarly democratic features) – and, granting, of course, that satisfaction of that criterion is not itself a basic democratic right.

In short, my suggestion is that we treat the criterion for purposes of the present argument as a principle which has weight and consideration within a democratic polity, and thereby take it as a guide to public discussion there and as a standard for assessing results and even for constructing policies there. And I am, following Dworkin, distinguishing it from a hard-edged, either/or rule.

In calling it a principle, I am also distinguishing it from a mere rule-of-thumb. Unlike rules of thumb, it can never be ignored. It always has normative force; it can always serve as a touchstone. Deviations from the criterion are inherently suspect in principle. Certainly some failures of satisfaction are indeed suspect; and some of these may prove (on reflection) to be simply unacceptable and out of character with what justifies a democratic system of rights in the first place.

Consider here the following case (which we can call paradigm case A). All indicators (in all expert hands) show both that some groups are actually worse off (in particular, those in the bottom group, who are now much worse off) and that the disparity between top and bottom has actually significantly increased over time. Both these results are permanently irreversible. Surely, we have here a presumptive case for saying that the distributive arrangements implicated herein are *unjust*.

I would agree. But the case can be conclusively made only *within* the actual operation of a democratic system of rights. The principle we have cited comes from the very justification for having a democratic system of rights at all, and the principle has a definite place in the priorities of any such system (or so I have argued). This is granted, as background. And the conclusion I've endorsed is a presumptive one. But the public debate and the ensuing votes would actually have to *draw* this conclusion, over time and given experience, for it to count as fully conclusive within a given parliamentary state, understood to be itself an exemplar of a democratic system of rights (or at least to be closely modeled on such a system).

In sum, when we say that some such conclusions can be drawn *upon reflection*, the reflection we have in mind is found in free public discourse, in contested voting, in majority decisions, in confirmation through the checking devices, in established public consensus within an ongoing democratic polity over time. Such reflective conclusions as these are authoritative in a given democratic polity and, under the conditions identified, serve to resolve otherwise ineradicable indeterminacies in the inbuilt criterion of distributive economic justice.

Let us consider, in concluding the argument of this section and of the paper, a somewhat different case from paradigm A. We can call it paradigm case B. Here all indicators (in all expert hands) show both that some groups are actually worse off (in particular, those in the top group, who are now marginally worse off) and that the disparity between top and bottom has actually significantly decreased over time. The first result (expected to last, let us say, for a decade) is not permanently irreversible, though the second may well be.

These two cases, A and B, are different in many relevant respects. But they are alike in one: each represents a failure of satisfaction of the efficiency-cum-egalitarianism criterion at a crucial point, at the point of the so-called root idea (as given in the 'everybody benefits' principle). Given this important point of similarity between A and B, do we have a presumptive case (as we did in A) for saying that the distributive arrangements implicated in case B are *unjust*?

My own intuition in the matter – shared with many other people, I would suspect – is that we don't. But, under the terms of our present analysis, this is at

best only a presumptive conclusion. Suppose, now, this very conclusion – the conclusion that such arrangements are not unjust – was in effect drawn within a democratic polity (under the same conditions as in case A: free public discussion, etc.). Such a conclusion-in-effect would be drawn when democratic policy produced or endorsed such a result under those conditions.

The argument of this section of the paper would lead us to endorse this conclusion, from within the confines of a given democratic polity (and ultimately from within the idea of a democratic system of rights). To endorse it as authoritative, as reflectively sound, as a practical and principled way of resolving one of the otherwise ineradicable indeterminacies in the inbuilt criterion of distributive economic justice we have identified, that of efficiency-cum-egalitarianism.

If one accepts this overall conclusion – that the result given in paradigm case B is not presumptively unjust and would not be decided to be, given time and reflection, in a polity modelled on a democratic system of rights – then one cannot consistently believe that satisfaction of the governing criterion is a *necessary* condition of distributive economic justice. Or, to put the matter here somewhat differently, if one thinks the overall conclusion to be based on sound reasons, then one would not take the criterion to be a necessary condition (in the sense that any failure to satisfy the criterion is, under plausible circumstances, *per se* unjust).

4. Conclusion

The question of distributive economic justice is one of the fundamental issues that all democratic countries face today. My paper has suggested that this issue can be confronted within the frame already established by basic rights and by the democratic institutions. Social justice can be on the agenda for political programs within a democratic system of rights. And it is important to be clear in our understanding of the criterion we have tried to establish: it is understood to be a sufficient, but not a necessary condition, for distributive economic justice within any given polity modeled on a democratic system of rights.⁹

⁹ I want to thank a number of friends and colleagues for help and comments on various earlier versions of the present paper. Let me mention in particular Manfreddi LaManna, Ken George, Jack Bricke, Richard DeGeorge, Donna Martin, and David Reidy. The idea sketched in Section Three, that pareto efficiency is not a necessary condition of distributive economic justice, has been sharpened by discussions with Ann Cudd (and by my reading of an unpublished paper of hers) and with Prakash Shenoy (who is quite unsympathetic to my claim). I have used this particular idea to develop a response (in the context of a democratic system of rights) to troublesome criticisms raised earlier, and independently, by Russ Shafer-Landau and by Shanti Chakravarty.

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