

Scanlon means that any more stringent egalitarian principle would have to ascribe a cost to inequality, and no theoretical justification has been given which would enable one to ascribe a precise cost.)

There is one way we should mention whereby even more egalitarian principles might be gotten from Rawls' original position. Rawls imagines rational self-interested persons behind a veil of ignorance choosing principles to govern their institutions. He further imagines, in the third part of his book, that when raised in a society which embodies these principles, people thereby develop a sense of justice and a particular psychology (attitudes towards others, etc.). Call this Stage I of the argument. Stage II of the argument would involve taking *these* people who are the result of Stage I and the operation of a society in accordance with Stage I principles, and placing *them* in an original position. The Stage II original position contains individuals with the psychology and sense of justice which is the product of Stage I, rather than individuals who are (merely) rational and self-interested. Now these persons choose principles to govern the society they are to live in. Will the principles they choose in Stage II be the same principles chosen by the others in Stage I? If not, imagine people raised in a society embodying the Stage II principles, determine what psychology *they* would develop, and place *these* individuals, who are the products of Stage II, in a Stage III original position, and continue as before to iterate the process. We shall say that the iterated original position yields particular principles P if 1) there is a Stage n original position wherein P is chosen, and P is also chosen in the Stage $n + 1$ original position, or 2) if new principles are chosen in each new stage of the original position, these principles converge to P at the limit. Otherwise, no particular principles are yielded by the iterated original position, e.g., succeeding stages of the original position oscillate between two sets of principles.

Are Rawls' two principles in fact yielded by the iterated original position, that is, at Stage II do the people with the psychology Rawls describes as resulting from the operation of his two principles of justice, themselves choose those very principles when *they* are placed in an original position? If so, this would strengthen Rawls' result. If not, we face the question of whether any principles are yielded by the original position; at what stage they are yielded (or are they yielded at the limit); and what precisely *those* princi-

ples are. This would seem to be an interesting area of investigation for those souls who choose to work, despite my arguments, within the Rawlsian framework.

NATURAL ASSETS AND ARBITRARINESS

Rawls comes closest to considering the entitlement system in his discussion of what he terms the system of natural liberty:

The system of natural liberty selects an efficient distribution roughly as follows. Let us suppose that we know from economic theory that under the standard assumptions defining a competitive market economy, income and wealth will be distributed in an efficient way, and that the particular efficient distribution which results in any period of time is determined by the initial distribution of assets, that is, by the initial distribution of income and wealth, and of natural talents and abilities. With each initial distribution, a definite efficient outcome is arrived at. Thus it turns out that if we are to accept the outcome as just, and not merely as efficient, we must accept the basis upon which over time the initial distribution of assets is determined.

In the system of natural liberty the initial distribution is regulated by the arrangements implicit in the conception of careers open to talents. These arrangements presuppose a background of equal liberty (as specified by the first principle) and a free market economy. They require a formal equality of opportunity in that all have at least the same legal rights of access to all advantaged social positions. But since 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, 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 favored or disfavored 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.³³

Here we have *Rawls'* reason for rejecting a system of natural liberty: it “permits” distributive shares to be improperly influenced by factors that are so arbitrary from a moral point of view. These

factors are: "prior distribution . . . of natural talents and abilities as these have been developed over time by social circumstances and such chance contingencies as accident and good fortune." Notice that there is no mention *at all* of how persons have chosen to develop their own natural assets. Why is that simply left out? Perhaps because such choices also are viewed as being the products of factors outside the person's control, and hence as "arbitrary from a moral point of view." "The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit."³⁴ (What view is presupposed here of character and its relation to action?) "The initial endowment of natural assets and the contingencies of their growth and nurture in early life are arbitrary from a moral point of view . . . the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously. . . ." ³⁵ This line of argument can succeed in blocking the introduction of a person's autonomous choices and actions (and their results) only by attributing *everything* noteworthy about the person completely to certain sorts of "external" factors. So denigrating a person's autonomy and prime responsibility for his actions is a risky line to take for a theory that otherwise wishes to buttress the dignity and self-respect of autonomous beings; especially for a theory that founds so much (including a theory of the good) upon persons' choices. One doubts that the unexalted picture of human beings Rawls' theory presupposes and rests upon can be made to fit together with the view of human dignity it is designed to lead to and embody.

Before we investigate Rawls' reasons for rejecting the system of natural liberty, we should note the situation of those in the original position. The system of natural liberty is *one* interpretation of a principle that (according to Rawls) they *do* accept: social and economic inequalities are to be arranged so that they both are reasonably expected to be to everyone's advantage, and are attached to positions and offices open to all. It is left unclear whether the persons in the original position explicitly consider and choose among *all* the various interpretations of this principle, though this would

seem to be the most reasonable construal. (Rawls' chart on page 124 listing the conceptions of justice considered in the original position does *not* include the system of natural liberty.) Certainly they explicitly consider one interpretation, the difference principle. Rawls does not state why persons in the original position who considered the system of natural liberty would reject it. Their reason cannot be that it makes the resulting distribution depend upon a *morally* arbitrary distribution of natural assets. What we must suppose, as we have seen before, is that the self-interested calculation of persons in the original position does not (and cannot) lead them to adopt the entitlement principle. We, however, and Rawls, base our evaluations on different considerations.

Rawls has explicitly *designed* the original position and its choice situation so as to embody and realize his negative reflective evaluation of allowing shares in holdings to be affected by natural assets: "Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance. . . ." ³⁶ (Rawls makes many scattered references to this theme of nullifying the accidents of natural endowment and the contingencies of social circumstance.) This quest crucially shapes Rawls' theory, and it underlies his delineation of the original position. It is not that persons who *did* deserve their natural endowments would choose differently if placed in Rawls' original position, but rather that, presumably, for such persons, Rawls would not hold that the principles of justice to govern *their* mutual relations were fixed by what they would choose in the original position. It is useful to remember how much of Rawls' construction rests upon this foundation. For example, Rawls argues that certain egalitarian demands are not motivated by envy but rather, because they are in accord with his two principles of justice, by resentment of injustice.³⁷ This argument can be undercut, as Rawls realizes,³⁸ if the very considerations which underlie the original position (yielding Rawls' two principles of justice) themselves embody or are based upon envy. So in addition to wanting to understand Rawls' rejection of alternative conceptions and to assess how powerful a criticism he makes of the entitlement conception, reasons internal to his theory provide motivation to explore the basis of the requirement that a conception of justice be geared to nullify differences in social circumstances and in natural

assets (and any differences in social circumstances they result in).

Why shouldn't holdings partially depend upon natural endowments? (They will also depend on how these are developed and on the uses to which they are put.) Rawls' reply is that these natural endowments and assets, being undeserved, are "arbitrary from a moral point of view." There are two ways to understand the relevance of this reply: It might be part of an argument to establish that the distributive effects of natural differences ought to be nullified, which I shall call the positive argument; or it might be part of an argument to rebut a possible counterargument holding that the distributive effects of natural differences oughtn't to be nullified, which I shall call the negative argument. Whereas the positive argument attempts to establish that the distributive effects of natural differences ought to be nullified, the negative one, by merely rebutting *one* argument that the differences oughtn't to be nullified, leaves open the possibility that (for other reasons) the differences oughtn't to be nullified. (The negative argument also leaves it possibly a matter of moral *indifference* whether the distributive effects of natural differences are to be nullified; note the difference between saying that something ought to be the case and saying that it's not that it oughtn't to be the case.)

THE POSITIVE ARGUMENT

We shall begin with the positive argument. How might the point that differences in natural endowments are arbitrary from a moral point of view function in an argument meant to establish that differences in holdings stemming from differences in natural assets ought to be nullified? We shall consider four possible arguments; the first, the following argument A:

1. Any person should morally deserve the holdings he has; it shouldn't be that persons have holdings they don't deserve.
2. People do not morally deserve their natural assets.
3. If a person's X partially determines his Y, and his X is undeserved then so is his Y.

Therefore,

4. People's holdings shouldn't be partially determined by their natural assets.

This argument will serve as a surrogate for other similar, more complicated ones.³⁹ But Rawls explicitly and emphatically *rejects* distribution according to moral desert.

There is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert. Justice is happiness according to virtue. While it is recognized that this ideal can never be fully carried out, it is the appropriate conception [according to common sense] of distributive justice, at least as a *prima facie* principle, and society should try to realize it as circumstances permit. Now justice as fairness rejects this conception. Such a principle would not be chosen in the original position.⁴⁰

Rawls could not, therefore, accept any premiss like the first premiss in argument A, and so no variant of this argument underlies his rejection of differences in distributive shares stemming from undeserved differences in natural assets. Not only does Rawls reject premiss 1, his theory is not coextensive with it. He favors giving incentives to persons if this most improves the lot of the least well off, and it often will be because of their natural assets that these persons will receive incentives and have larger shares. We noted earlier that the entitlement conception of justice in holdings, not being a patterned conception of justice, does not accept distribution in accordance with moral desert either. Any person may give to anyone else any holding he is entitled to, independently of whether the recipient morally deserves to be the recipient. To each according to the legitimate entitlements that legitimately have been transferred to him, is not a patterned principle.

If argument A and its first premiss are rejected, it is not obvious how to construct the positive argument. Consider next argument B:

1. Holdings ought to be distributed according to some pattern that is not arbitrary from a moral point of view.
2. That persons have different natural assets *is* arbitrary from a moral point of view.

Therefore,

3. Holdings ought not to be distributed according to natural assets.

But differences in natural assets might be *correlated* with other differences that are not arbitrary from a moral point of view and that are clearly of some possible moral relevance to distributional questions. For example, Hayek argued that under capitalism distribution generally is in accordance with perceived service to others. Since differences in natural assets will produce differences in ability to serve others, there will be some correlation of differences in distribution with differences in natural assets. The principle of the system is *not* distribution in accordance with natural assets; but differences in natural assets will lead to differences in holdings under a system whose principle is distribution according to perceived service to others. If conclusion 3 above is to be interpreted in extension so as to exclude this, it should be made explicit. But to add the premiss that any pattern that has some roughly coextensive description that is arbitrary from a moral point of view is itself arbitrary from a moral point of view would be far too strong, because it would yield the result that *every* pattern is arbitrary from a moral point of view. Perhaps the crucial thing to be avoided is not mere coextensiveness, but rather some morally arbitrary feature's *giving rise to* differences in distributive shares. Thus consider argument C:

1. Holdings ought to be distributed according to some pattern that is not arbitrary from a moral point of view.
2. That persons have different natural assets is arbitrary from a moral point of view.
3. If part of the explanation of why a pattern contains differences in holdings is that other differences in persons give rise to these differences in holdings, and if these other differences are arbitrary from a moral point of view, then the pattern also is arbitrary from a moral point of view.

Therefore,

4. Differences in natural assets should not give rise to differences in holdings among persons.

Premiss 3 of this argument holds that any moral arbitrariness that underlies a pattern infects the pattern and makes it too morally arbitrary. But any pattern will have some morally arbitrary facts as part of the explanation of how it arises, including the pattern

proposed by Rawls. The difference principle operates to give some persons larger distributive shares than others; which persons receive these larger shares will depend, at least partially, on differences between these persons and others, differences that are arbitrary from a moral point of view, for some persons with special natural assets will be offered larger shares as an incentive to use these assets in certain ways. Perhaps some premiss similar to 3 can be formulated so as to exclude what Rawls wishes to exclude while not excluding his *own* view. Still, the resulting argument would *assume* that the set of holdings should realize some pattern.

Why should the set of holdings be patterned? Patterning is *not* intrinsic to a theory of justice, as we have seen in our presentation of the entitlement theory: a theory that focuses upon the underlying principles that generate sets of holdings rather than upon the pattern a set of holdings realizes. If it be denied that the theory of these underlying principles *is* a separate theory of distributive justice, rather than merely a collection of diverse considerations from other areas, then the question becomes one of whether there *is* any separate subject of distributive justice which requires a separate theory.

On the manna-from-heaven model given earlier, there might be a more compelling reason to search for a pattern. But since things come into being already held (or with agreements already made about how they are to be held), there is no need to search for some pattern for unheld holdings to fit; and since the process whereby holdings actually come into being or are shaped, itself needn't realize any particular pattern, there is no reason to expect any pattern to result. The situation is not an appropriate one for wondering, "After all, what is to become of these things; what are we to do with them." In the non-manna-from-heaven world in which things have to be made or produced or transformed by people, there is no separate process of distribution for a theory of distribution to be a theory of. The reader will recall our earlier argument that (roughly) any set of holdings realizing a particular pattern may be transformed by the voluntary exchanges, gifts, and so forth, of the persons having the holdings under the pattern into *another* set of holdings that does not fit the pattern. The view that holdings *must* be patterned perhaps will seem less plausible when it is seen to have the consequence that people may not choose to

do acts that upset the patterning, even with things they legitimately hold.

There is another route to a patterned conception of justice that, perhaps, should be mentioned. Suppose that each morally legitimate fact has a "unified" explanation that shows it is morally legitimate, and that *conjunctions* fall into the domain of facts to be explained as morally legitimate. If p , and q are each morally legitimate facts, with their respective explanations as morally legitimate being P , and Q , then if $p \wedge q$ is also to be explained as morally legitimate, and if $P \wedge Q$ does not constitute a "unified" explanation (but is a mere conjunction of different explanations), then some further explanation will be needed. Applying this to holdings, suppose there are separate entitlement explanations showing the legitimacy of my having my holdings, and of your having yours, and the following question is asked: "Why is it legitimate that I hold what I do *and* you hold what you do; why is that joint fact *and all the relations contained within it* legitimate?" If the conjunction of the two separate explanations will not be held to explain in a unified manner the legitimacy of the joint fact (whose legitimacy is not viewed as being constituted by the legitimacy of its constituent parts), then some patterned principles of distribution would appear to be necessary to show its legitimacy, and to legitimate any nonunit set of holdings.

With scientific explanation of particular facts, the usual practice is to consider some conjunctions of explained facts as not requiring separate explanation, but as being explained by the conjunctions of the explanations of the conjuncts. (If E_1 explains e_1 and E_2 explains e_2 then $E_1 \wedge E_2$ explains $e_1 \wedge e_2$.) If we required that any two conjuncts and any n -place conjunction had to be explained in some unified fashion, and not merely by the conjunction of separate and disparate explanations, then we would be driven to reject most of the usual explanations and to search for an underlying pattern to explain what appear to be separate facts. (Scientists, of course, often do offer a unified explanation of apparently separate facts.) It would be well worth exploring the interesting consequences of refusing to treat, even in the first instance, any two facts as legitimately separable, as having separate explanations whose conjunction is all there is to the explanation of them. What would our theories of the world look like if we required unified explanations

of *all* conjunctions? Perhaps an extrapolation of how the world looks to paranoid persons. Or, to put it undisparagingly, the way it appears to persons having certain sorts of dope experiences. (For example, the way it sometimes appears to me after smoking marijuana.) Such a vision of the world differs fundamentally from the way we normally look at it; it is surprising at first that a simple condition on the adequacy of explanations of conjunctions leads to it, until we realize that such a condition of adequacy must lead to a view of the world as deeply and wholly patterned.

A similar condition of adequacy on explanations of the moral legitimacy of conjunctions of separate morally legitimate facts would lead to a view that requires sets of holdings to exhibit an overall patterning. It seems unlikely that there will be compelling arguments for imposing such a principle of adequacy. Some may find such a unified vision plausible for only one realm; for example, in the moral realm concerning sets of holdings, but not in the realm of ordinary nonmoral explanation, or vice versa. For the case of explaining nonmoral facts, the challenge would be to produce such a unified theory. Were one produced that introduced novel considerations and explained no *new* facts (other than conjunctions of old ones) the decision as to its acceptability might be a difficult one and would depend largely on how explanatorily satisfying was the new way we saw the old facts. In the case of moral explanations and accounts which show the moral legitimacy of various facts, the situation is somewhat different. First, there is even less reason (I believe) to suppose a unified explanation appropriate and necessary. There is less need for a *greater* degree of explanatory unity than that provided when the same underlying principles for generating holdings appear in different explanations. (Rawls' theory, which contains elements of what he calls pure procedural justice, does not satisfy a strong condition of adequacy for explaining conjunctions and entails that such a condition cannot be satisfied.) Secondly, there is more danger than in the scientific case that the demand for a unified explanation will shape the "moral facts" to be explained. ("It can't be that both of those *are* facts for there's no unified patterned explanation that would yield them both.") Hence success in finding a unified explanation of such seriously primed facts will leave it unclear how well supported the explanatory theory is.

I turn now to our final positive argument which purports to derive the conclusion that distributive shares shouldn't depend upon natural assets from the statement that the distribution of natural assets is morally arbitrary. This argument focuses on the notion of equality. Since a large part of Rawls' argument serves to justify or show acceptable a particular deviation from equal shares (some may have more if this serves to improve the position of those worst off), perhaps a reconstruction of his underlying argument that places equality at its center will be illuminating. Differences between persons (the argument runs) are arbitrary from a moral point of view if there is no moral argument for the conclusion that there ought to be the differences. Not all such differences will be morally objectionable. That there is no such moral argument will seem important only in the case of those differences we believe oughtn't to obtain unless there is a moral reason establishing that they ought to obtain. There is, so to speak, a presumption against certain differences that can be overridden (can it merely be neutralized?) by moral reasons; in the absence of any such moral reasons of sufficient weight, there ought to be equality. Thus we have argument D:

1. Holdings ought to be equal, unless there is a (weighty) moral reason why they ought to be unequal.
2. People do not deserve the ways in which they differ from other persons in natural assets; there is no moral reason why people ought to differ in natural assets.
3. If there is no moral reason why people differ in certain traits, then their actually differing in these traits does not provide, and cannot give rise to, a moral reason why they should differ in other traits (for example, in holdings).

Therefore,

4. People's differing in natural assets is not a reason why holdings ought to be unequal.
5. People's holdings ought to be equal unless there is some other moral reason (such as, for example, raising the position of those worst off) why their holdings ought to be unequal.

Statements similar to the third premiss will occupy us shortly. Here let us focus on the first premiss, the equality premiss. Why ought people's holdings to be equal, in the absence of special moral reason to deviate from equality? (Why think there *ought* to

be *any* particular pattern in holdings?) Why is equality the rest (or rectilinear motion) position of the system, deviation from which may be caused only by moral forces? Many "arguments" for equality merely *assert* that differences between persons are arbitrary and must be justified. Often writers state a presumption in favor of equality in a form such as the following: "Differences in treatment of persons need to be justified."⁴¹ The most favored situation for this sort of assumption is one in which there is one person (or group) treating everyone, a person (or group) having *no* right or entitlement to bestow the particular treatment as they wish or even whim. But if I go to one movie theater rather than to another adjacent to it, need I justify my different treatment of the two theater owners? Isn't it enough that I felt like going to one of them? That differences in treatment need to be justified *does* fit contemporary *governments*. Here there is a centralized process treating all, with no entitlement to bestow treatment according to whim. The major portion of distribution in a free society does not, however, come through the actions of the government, nor does failure to overturn the results of the localized individual exchanges constitute "state action." When there is no *one* doing the treating, and all are entitled to bestow their holdings as they wish, it is not clear why the maxim that differences in treatment must be justified should be thought to have extensive application. Why must differences between persons be justified? Why think that we must change, or remedy, or compensate for any inequality which can be changed, remedied, or compensated for? Perhaps here is where social cooperation enters in: though there is no presumption of equality (in, say, primary goods, or things people care about) among all persons, perhaps there is one among persons cooperating together. But it is difficult to see an argument for this; surely not all persons who cooperate together explicitly agree to this presumption as one of the terms of their mutual cooperation. And its acceptance would provide an unfortunate incentive for well-off persons to refuse to cooperate with, or to allow any of their number to cooperate with, some distant people who are less well off than any among them. For entering into such social cooperation, beneficial to those less well off, would seriously worsen the position of the well-off group by creating relations of presumptive equality between themselves and the worse-off group. In the next chapter I

shall consider the major recent argument for equality, one which turns out to be unsuccessful. Here we need only note that the connection argument D forges between not deserving natural assets and some conclusion about distributive shares *assumes* equality as a norm (that can be deviated from with, and only with, moral reason); and hence argument D itself cannot be used to establish any such conclusion about equality.

THE NEGATIVE ARGUMENT

Unsuccessful in our quest for a convincing positive argument to connect the claim that people don't deserve their natural assets with the conclusion that differences in holdings ought not to be based upon differences in natural assets, we now turn to what we called the negative argument: the use of the claim that people don't deserve their natural assets to rebut a possible counterargument to Rawls' view. (If the equality argument D were acceptable, the negative task of rebutting possible counterconsiderations would form part of the positive task of showing that a presumption for equality holds unoverridden in a particular case.) Consider the following possible counterargument E to Rawls:

1. People deserve their natural assets.
2. If people deserve X, they deserve any Y that flows from X.
3. People's holdings flow from their natural assets.

Therefore,

4. People deserve their holdings.
5. If people deserve something, then they ought to have it (and this overrides any presumption of equality there may be about that thing).

Rawls would rebut this counterargument to his position by denying its first premiss. And so we see *some* connection between the claim that the distribution of natural assets is arbitrary and the statement that distributive shares should not depend upon natural assets. However, no great weight can be placed upon *this* connection. For there are other counterarguments, in a similar vein; for example the argument F that begins:

1. If people have X, and their having X (whether or not they deserve to have it) does *not* violate anyone else's (Lockean) right or entitlement to X, and Y flows from (arises out of, and so on) X by a process that does not itself violate anyone's (Lockean) rights or entitlements,* then the person is entitled to Y.
2. People's having the natural assets they do does not violate anyone else's (Lockean) entitlements or rights.

and goes on to argue that people are entitled to what they make, to the products of their labor, to what others give them or exchange. It is not true, for example, that a person earns Y (a right to keep a painting he's made, praise for writing *A Theory of Justice*, and so on) only if he's earned (or otherwise *deserves*) whatever he used (including natural assets) in the process of earning Y. Some of the things he uses he just may *have*, not illegitimately. It needn't be that the foundations underlying desert are themselves deserved, *all the way down*.

At the very least, we can parallel these statements about desert with ones about entitlements. And if, correctly, we describe people as entitled to their natural assets even if it's not the case that they can be said to deserve them, then the argument parallel to E above, with "are entitled to" replacing "deserve" throughout, *will* go through. This gives us the acceptable argument G:

1. People are entitled to their natural assets.
2. If people are entitled to something, they are entitled to whatever flows from it (via specified types of processes).
3. People's holdings flow from their natural assets.

Therefore,

4. People are entitled to their holdings.
5. If people are entitled to something, then they ought to have it (and

* A process, we might strengthen the antecedent by adding, of the sort that would create an entitlement to Y if the person were entitled to X. I use "Lockean" rights and entitlements to refer to those (discussed in Part I) against force, fraud, and so on, which are to be recognized in the minimal state. Since I believe these are the only rights and entitlements people possess (apart from those they specially acquire), I needn't have included the specification to Lockean rights. One who believes some have a right to the fruits of others' labor will deny the truth of the first premiss as stated. If the Lockean specification were not included, he might grant the truth of 1, while denying that of 2 or of later steps.

this overrides any presumption of equality there may be about holdings).

Whether or not people's natural assets are arbitrary from a moral point of view, they are entitled to them, and to what flows from them.*

A recognition of people's entitlements to their natural assets (the first premiss of argument G) might be necessary to avoid the stringent application of the difference principle which would lead, we already have seen, to even stronger property rights in other persons than redistributive theories usually yield. Rawls feels that he avoids this⁴² because people in his original position rank the principle of liberty as lexicographically prior to the difference principle, applied not only to economic well-being but to health, length of life, and so on. (However, see note 29 above.)

We have found no cogent argument to (help) establish that differences in holding arising from differences in natural assets should be eliminated or minimized. Can the theme that people's natural assets are arbitrary from a moral point of view be used differently, for example, to justify a certain *shaping* of the original position? Clearly if the shaping is designed to nullify differences in holdings due to differences in natural assets, we need an argument for this goal, and we are back to our unsuccessful quest for the route to the conclusion that such differences in holdings ought to be nullified. Instead, the shaping might take place by excluding the participants in the original position from knowing of their own natural endowments. In this way the fact that natural endowments are arbitrary from a moral point of view would help to impose and to justify the veil of ignorance. But how does it do this; why should knowledge of natural endowments be excluded from the original

* If nothing of moral significance could flow from what was arbitrary, then no particular person's existence could be of moral significance, since which of the many sperm cells succeeds in fertilizing the egg cell is (so far as we know) arbitrary from a moral point of view. This suggests another, more vague, remark directed to the spirit of Rawls' position rather than to its letter. Each existing person is the product of a process wherein the one sperm cell which succeeds is no more deserving than the millions that fail. Should we wish that process had been "fairer" as judged by Rawls' standards, that all "inequities" in it had been rectified? We should be apprehensive about any principle that would condemn morally the very sort of process that brought us to be, a principle that therefore would undercut the legitimacy of our very existing.

position? Presumably the underlying principle would be that if any particular features are arbitrary from a moral point of view, then persons in the original position should not know they possess them. But this would exclude their knowing *anything* about themselves, for each of their features (including rationality, the ability to make choices, having a life span of more than three days, having a memory, being able to communicate with other organisms like themselves) will be based upon the fact that the sperm and ovum which produced them contained particular genetic material. The physical fact that those particular gametes contained particular organized chemicals (the genes for people rather than for muskrats or trees) is arbitrary *from a moral point of view*; it is, from a moral point of view, an accident. Yet the persons in the original position are to know some of their attributes.

Perhaps we are too quick when we suggest excluding knowledge of rationality, and so forth, merely because these features *arise from* morally arbitrary facts. For these features also have moral significance; that is, moral facts depend upon or arise from them. Here we see an ambiguity in saying that a fact is arbitrary from a moral point of view. It might mean that there is no moral reason why the fact ought to be that way, or it might mean that the fact's being that way is of no moral significance and has no moral consequences. Rationality, the ability to make choices, and so on, are not morally arbitrary in this second sense. But if they escape exclusion on this ground, now the problem is that the natural assets, knowledge of which Rawls wishes to exclude from the original position, are not morally arbitrary in this sense either. At any rate, the entitlement theory's claim that moral entitlements may arise from or be partially based upon such facts is what is now at issue. Thus, in the absence of an argument to the effect that differences in holdings due to differences in natural assets ought to be nullified, it is not clear how anything about the original position can be based upon the (ambiguous) claim that differences in natural assets are arbitrary from a moral point of view.

Rawls' view seems to be that everyone has some entitlement or claim on the totality of natural assets (viewed as a pool), with no one having differential claims. The distribution of natural abilities is viewed as a "collective asset."⁴³

We see then that the difference principle represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be. Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. . . . No one deserves his greater natural capacity nor merits a more favorable starting place in society. But it does not follow that one should eliminate these distinctions. There is another way to deal with them. The basic structure can be arranged so that these contingencies work for the good of the least fortunate.⁴⁴

People will differ in how they view regarding natural talents as a common asset. Some will complain, echoing Rawls against utilitarianism,⁴⁵ that this "does not take seriously the distinction between persons"; and they will wonder whether any reconstruction of Kant that treats people's abilities and talents as resources for others can be adequate. "The two principles of justice . . . rule out even the tendency to regard men as means to one another's welfare."⁴⁶ Only if one presses *very* hard on the distinction between men and their talents, assets, abilities, and special traits. Whether any coherent conception of a person remains when the distinction is so pressed is an open question. Why we, thick with particular traits, should be cheered that (only) the thus purified men within us are not regarded as means is also unclear.

People's talents and abilities *are* an asset to a free community; others in the community benefit from their presence and are better off because they are there rather than elsewhere or nowhere. (Otherwise they wouldn't choose to deal with them.) Life, over time, is not a constant-sum game, wherein if greater ability or effort leads to some getting more, that means that others must lose. In a free society, people's talents do benefit others, and not only themselves. Is it the extraction of even more benefit to others that is

supposed to justify treating people's natural assets as a collective resource? What justifies this extraction?

No one deserves his greater natural capacity nor merits a more favorable starting place in society. But it does not follow that one should eliminate these distinctions. There is another way to deal with them. The basic structure can be arranged so that these contingencies work for the good of the least fortunate.⁴⁷

And if there weren't "another way to deal with them"? Would it then follow that one should eliminate these distinctions? What exactly would be contemplated in the case of natural assets? If people's assets and talents *couldn't* be harnessed to serve others, would something be done to remove these exceptional assets and talents, or to forbid them from being exercised for the person's own benefit or that of someone else he chose, even though this limitation wouldn't improve the absolute position of those somehow unable to harness the talents and abilities of others for their own benefit? Is it so implausible to claim that envy underlies this conception of justice, forming part of its root notion?*

* Will the lexicographic priority that Rawls claims for liberty in the original position prevent the difference principle from requiring a head tax on assets and abilities? The legitimacy of a head tax is *suggested* by Rawls' speaking of "collective assets" and "common assets." Those underutilizing their assets and abilities are misusing a public asset. (Squandering public property?) Rawls may intend no such strong inferences from his terminology, but we need to hear more about why those in the original position wouldn't accept the strong interpretation. The notion of liberty needs elaboration which is to exclude a head tax and yet allow the other taxation schemes. Assets and abilities can be harnessed without a head tax; and "harnessing" is an appropriate term—as it would be for a horse harnessed to a wagon which doesn't *have* to move ever, but if it does, it must draw the wagon along.

With regard to envy, the difference principle, applied to the choice between either *A* having ten and *B* having five or *A* having eight and *B* having five, would favor the latter. Thus, despite Rawls' view (pp. 79–80), the difference principle is inefficient in that it sometimes will favor a status quo against a Pareto-better but more unequal distribution. The inefficiency could be removed by shifting from the simple difference principle to a staggered difference principle, which recommends the maximization of the position of the least well-off group, and *subject to that constraint* the maximization of the position of the next least well-off group, and this point also is made by A. K. Sen (*Collective Choice and Social Welfare*, p. 138, note) and is acknowledged by Rawls (p. 83). But such a staggered principle does not embody a presumption in favor of equality

We have used our entitlement conception of justice in holdings to probe Rawls' theory, sharpening our understanding of what the entitlement conception involves by bringing it to bear upon an alternative conception of distributive justice, one that is deep and elegant. Also, I believe, we have probed deep-lying inadequacies in Rawls' theory. I am mindful of Rawls' reiterated point that a theory cannot be evaluated by focusing upon a single feature or part of it; instead the whole theory must be assessed (the reader will not know how whole a theory can be until he has read all of Rawls' book), and a perfect theory is not to be expected. However we have examined an important part of Rawls' theory, and its crucial underlying assumptions. I am as well aware as anyone of how sketchy my discussion of the entitlement conception of justice in holdings has been. But I no more believe we need to have formulated a complete alternative theory in order to reject Rawls' undeniably great advance over utilitarianism, than Rawls needed a complete alternative theory before he could reject utilitarianism. What more does one need or can one have, in order to begin progressing toward a better theory, than a sketch of a plausible alternative view, which from its very different perspective highlights the inadequacies of the best existing well-worked-out theory? Here, as in so many things, we learn from Rawls.

We began this chapter's investigation of distributive justice in order to consider the claim that a state more extensive than the minimal state could be justified on the grounds that it was necessary, or the most appropriate instrument, to achieve distributive justice. According to the entitlement conception of justice in holdings that we have presented, there is no argument based upon the first two principles of distributive justice, the principles of acquisition and of transfer, for such a more extensive state. If the set of holdings is properly generated, there is no argument for a more extensive state based upon distributive justice.⁴⁸ (Nor, we have claimed, will the Lockean proviso actually provide occasion for a more extensive state.) If, however, these principles are violated, the principle of rectification comes into play. Perhaps it is

of the sort used by Rawls. How then could Rawls justify an inequality *special* to the staggered principle to someone in the least well-off group? Perhaps these issues underlie the unclarity (see p. 83) as to whether Rawls accepts the staggered principle.

best to view some patterned principles of distributive justice as rough rules of thumb meant to approximate the general results of applying the principle of rectification of injustice. For example, lacking much historical information, and assuming (1) that victims of injustice generally do worse than they otherwise would and (2) that those from the least well-off group in the society have the highest probabilities of being the (descendants of) victims of the most serious injustice who are owed compensation by those who benefited from the injustices (assumed to be those better off, though sometimes the perpetrators will be others in the worst-off group), then a *rough* rule of thumb for rectifying injustices might seem to be the following: organize society so as to maximize the position of whatever group ends up least well-off in the society. This particular example may well be implausible, but an important question for each society will be the following: given *its* particular history, what operable rule of thumb best approximates the results of a detailed application in that society of the principle of rectification? These issues are very complex and are best left to a full treatment of the principle of rectification. In the absence of such a treatment applied to a particular society, one *cannot* use the analysis and theory presented here to condemn any particular scheme of transfer payments, unless it is clear that no considerations of rectification of injustice could apply to justify it. Although to introduce socialism as the punishment for our sins would be to go too far, past injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them.