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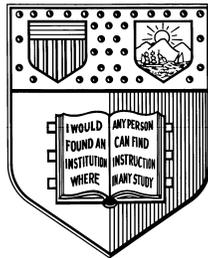
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Primary Goods Revisited: the “Political Problem” and Its Rawlsian Solution

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1. Introduction

1.1 Relations between the “subjective” and “objective” aspects of the proper currency of justice remain unsettled.¹ On the one hand, objections featuring the “tame housewife,” cheerful crippled “Tiny Tim,” the “expensive tastes”-cultivating “Louis,” or the Scanlonian ascetic have underscored the insufficiency of subjective welfare to accommodate concerns about preferences that either are formed under conditions of injustice or are themselves in some sense unjust (cf. Sen (1987), Cohen (1989), Dworkin (1981), Scanlon (1975, 1988)). On the other hand, focusing exclusively on the objective face of *distribuenda* raises concerns about fetishism, rendering obscure why persons would demand such materials in the first place. Yet bringing the two faces of distributive currency together can import tension into accounts of an appropriate *distribuendum*, even threaten incoherence.² The

¹ Thanks to Arthur Applbaum, Eric Cavallero, and Daniel Markovits for comments. Thanks to G. A. Cohen for letting us use unpublished parts of his “Rescuing Justice from Constructivism.” Risse is grateful to an audience at Boston University for helpful discussion of a predecessor of this paper in February 2002. He is also indebted to students in his seminar on Rawls at Yale in fall 2001, especially to Elizabeth O’Connor for her discussion of the Roemer-material. Hockett is grateful to John Roemer for many discussions of justice questions generally and of some of the ideas set forth in Section 3 particularly. For abbreviations of Rawls’ works, see the explanations preceding the literature references.

² The “currency” or the “*distribuendum*” of a theory of social justice is whatever it is in terms of whose distribution the basic structure is regulated. Examples include welfare and resources, appropriately defined. If, say, resources are the *distribuendum*, then principles of justice regulating the basic structure of society are expressed in terms of distributive resources. We say that a currency or *distribuendum* is “subjective” if the satisfaction of principles of justice formulated in terms of that currency must be verified at least in part by reference to claims either about mental states or about the correspondence of states of the world to mental

issue is strikingly similar to what Michael Smith calls the “moral problem,” the task of rendering moral claims both subjectively motivating and intersubjectively intelligible and authoritative (cf. Smith (1995)). The argument over the distributive currency is a justice-theoretic counterpart to the “moral problem.” Let us call it the *political problem*.

It is illuminating for the discussion about the currency of distributive justice to revisit primary goods with this perspective in mind. This study seeks to show that primary goods provide a solution to the political problem, and to apply insights obtained by developing that view to two important criticisms. The first is Roemer’s claim that a contradiction besets Rawls’s account of primary goods. The second is Arneson’s claim that those goods suffer an index problem that Rawlsians have failed to solve. Our Rawlsian rebuttals of these criticisms are “test cases” of the “political problem” and its Rawlsian solution. To put our goal differently, the most important challenges for the choice of primary goods as currency of justice are: first, how to argue for that choice to begin with; second, how to respond to an inconsistency charge that draws on the way in which these goods combine subjectivity and objectivity; and third, how to compare bundles of such goods in a manner that does not emphasize their subjective at the expense of their objective attributes. This study responds to each of these challenges that arise straight from the nature of primary goods.

Primary goods emerge strengthened from our discussion. Rawlsians have underestimated the complexity and import of these issues, but opponents have underestimated the resources Rawlsians have at their disposal to address them. This

states. Examples are welfare defined in terms of experiential states and welfare defined in terms of the satisfaction of desires or long-term plans. Our definition is designed to match those cases, but for our purposes there is no need for a more elaborate account. A currency is objective if it is not subjective:

introduction concludes with a summary of the elements of Rawlsian justice as fairness that bear upon the “political problem”. Section 2 develops the “political problem”-oriented perspective on the debate over the currency of justice. Adopting that perspective allows us to develop a feature of primary goods that must be central to any defense of these goods as currency. While developing that feature, we also address (and reject) a view present in the recent work of Richard Arneson and G. A. Cohen, namely, that Rawls does not offer us a theory of distributive *justice*, but a theory of *social regulation*. With that feature in place, section 3 addresses Roemer’s criticism, and section 4 the index problem. Section 5 concludes.

1.2 We begin with a brief reprise of some essentials of Rawlsian justice as fairness in broad contours. “The most fundamental idea in [his] conception of justice,” Rawls tells us, “is the idea of society as a fair system of social cooperation over time from one generation to the next” (R, p 5). Fair *terms* of cooperation are modeled as a hypothetical agreement among those engaged in it, reached under conditions fair to all. The *original position* specifies these conditions. The content of the agreement, the principles of justice, concerns what Rawls calls the *basic structure* of society: “the way in which the main political and social institutions of society fit together into one system of social cooperation” (R, p 10).

Rawls conceives the persons engaged in his “fair system of social cooperation” as *free* and *equal*, these latter attributes in turn conceived in terms of what Rawls calls two *moral powers*. These powers are, first, the capacity for a sense of justice – that is, the capacity to understand, apply, and act from the principles of political justice specifying the

satisfaction of a distributive norm expressed in terms of objective currency can be verified without reference to experiential or mental states – e.g., by inspection of a bank account alone.

fair terms of social cooperation; and second, the capacity for a conception of the good – that is, the capacity autonomously to conceive, revise, and rationally pursue an ordered set of ends characteristic of a person’s conception of what constitutes a worthwhile life. Persons are equal in the sense that each is as capable as all others of engaging in cooperation over a complete life as one among many citizens possessing identical moral worth. Persons are free (autonomous) in the sense that they regard both themselves and one another as holding conceptions of the good, and as entitled to make claims upon their political institutions to advance those conceptions provided they accord with the principles of justice. Rawls argues that the deliberation of free and equal agents so conceived in the original position leads to agreement upon the following two *principles of justice* (R, p 42):

- (a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all.
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society.

The first principle (the principle of equal liberty) is to be realized before the second is applied, and the first clause of the second principle (the principle of fair equality of opportunity) before the second clause (the difference principle).

Both to provide content to the notions of a liberty and of social or economic (in)equality as mentioned in the principles of equal liberty and fair equality of opportunity, and to identify the least advantaged members of society mentioned in the difference principle, we require a metric or metrics. Rawls’s proposed metric, required only in

connection with the difference principle, is an *index of primary goods*.³ Primary goods consist in such freedoms, opportunities, social conditions and generally necessary, all-purpose resources as enable citizens to develop and exercise their two moral powers and to pursue their conceptions of the good. They are “things needed and required by persons seen in the light of the political conception of persons, as citizens who are fully cooperating members of society, and not merely as human beings apart from any normative conception” (R, p 58). Primary goods might be viewed as material correlates of the moral powers of Rawlsian persons. They do not conduce uniquely to any *one, comprehensive* conception of the good (in the way that religiously required goods may belong uniquely to religious ways of life); instead, they are goods *all* citizens will tend to prefer more of rather than less, because their use conduces to attainment of virtually *any* rational life plan’s ends.

Rawls provides the following (admittedly supplementable⁴) list of primary goods (R, p 58f; cf. p 44 for the liberties under (i)):

- (i) The basic rights and liberties: freedom of thought and liberty of conscience, political liberties and freedom of association, as well as the rights and liberties specified by the liberty and integrity of the person; and finally, the rights and liberties covered by the rule of law.
- (ii) Freedom of movement and free choice of occupation against a background of diverse opportunities, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them.
- (iii) Powers and prerogatives of offices and positions of authority and responsibility.
- (iv) Income and wealth, understood as all-purpose means generally needed to achieve a wide range of ends, whatever those may be.
- (v) The social bases of self-respect, understood as those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.

³ See section 4, below, on why the index is required only in connection with the difference principle.

⁴ Cf. *Restatement*, section 51.

In a well-ordered society, the difference principle applies only after goods (i), (ii), and, in what we term its “availability aspect,” (iii)⁵ are secured (which follows from the order in which the principles are to be applied); and by definition each of these goods – (i), (ii), and (iii) in its availability aspect – would be interpersonally quantified and distributed equally over the citizenry. Then, to effect interpersonal quantity-comparisons for distributions of goods (iii) in its “consequential aspect,” (iv), and (v), which are amalgamated, and more specifically to identify the least advantaged in implementing the difference principle as distribution rule for those remaining goods, we need an index of those goods; we require relative *weights* attached to the goods in such a way that we can compare and maximize ordered *sets* of them across individuals. Lesser amounts of one good can be “offset” by greater amounts of some other good(s).

2. Arguing for Primary Goods

2.1 TJ provides little argument for why a fair system of cooperation should require primary goods rather than some other currency. Discussed mainly in TJ 15, primary goods gain most mileage from objections to utilitarianism’s mandate that *aggregate* happiness be *maximized* (cf. TJ, section 5 and 29). However, the “equality-of-what” debate shows that, first, one can endorse welfare as currency while rejecting its *maximization*; and that, second, the *prima facie* range of currencies also includes Dworkin’s “resources,” Arneson’s “opportunit[ies] for welfare,” Cohen’s “access[es] to advantage,” Sen’s “capabilities,” and possibly others (cf. Dworkin (1981b), Arneson (1989, 1990), Cohen (1989), Sen (1980,

⁵ We say “in its availability aspect” here and, later in this paragraph, “in its consequential aspect” for reasons laid out in Section 4.

1992)). In light of the first point, no defense of primary goods can rely on the rejection of utilitarianism rather than welfarism per se. In light of the second, no defense of any one currency can rely principally on criticism of other candidates, but must make a case for its own plausibility relative to the others.⁶

Rawls's account of distributive currency remains underdeveloped after TJ. Consider a passage from PRIG, which contains one of the most sustained discussions of these goods Rawls offers after TJ. After discussing the role of primary goods, Rawls says (p 453f):

The difficulty is that the state can no more act to maximize the fulfillment of citizens' rational preferences, or wants (as in utilitarianism), or to advance human excellence, or the values of perfection (as in perfectionism), than it can act to advance Catholicism or Protestantism, or any other religion. None of these views of the meaning, value, and purpose of human life, as specified by the corresponding comprehensive religious or philosophical conceptions of the good, are affirmed by citizens generally, and so the pursuit of any of them through basic institutions gives the state a sectarian character. To find a shared idea of citizens' good that is appropriate for political purposes, political liberalism looks for an idea of rational advantage within a political conception that is independent of any particular comprehensive doctrine and hence may be the focus of an overlapping consensus.

Rawls goes on to suggest that "the conception of primary goods addresses this practical political problem." So he still dismisses utilitarianism for its commitment to welfare maximization but ignores forms of welfarism not committed to maximization. Yet *welfare egalitarianism* is a plausible candidate for instantiating that "idea of rational advantage" mentioned at the end of the quoted paragraph. "Attending to each person's welfare equally," rather than "act[ing] to maximize the [aggregate] fulfillment of citizens rational preferences or wants," would not appear to be sectarian in the sense described, at least if a

⁶ G. A. Cohen (1989) points out that Rawls's objections to welfare egalitarianism do not "vindicate the claims of the primary goods metric" (p 913). Rawls himself appears inchoately to countenance the possibility that the list of primary goods might either be supplemented to embrace later understandings of the proper currency of justice, e.g., Sen's "capabilities" (R, section 51), or construed as optimal proxies in light of epistemic constraints on implementable justice such as we develop in this section. It is partly for this reason that we do not attempt a comprehensive comparison, let alone adjudication, between primary goods and other proposed "objective" currencies of justice here.

plausible theory of welfare were available; and welfare egalitarianism would not undermine the notion of the separateness of persons that Rawls claims, in TJ (section 5), utilitarianism does not take seriously. On the contrary: one may insist that there is no better way of taking persons, and their separateness, seriously than attending to each of their individual well-beings, appropriately conceived, and that there is no better way of taking persons *equally* seriously than attending to each person's well-being *equally*.⁷

2.2 Nevertheless, primary goods are implicit in the idea of society as a fair system of cooperation among free and equal citizens over time and under what are called the circumstances of justice (what we henceforth call a “Rawlsian society”). For reasons that will emerge later, we first talk about primary goods as currency of *social regulation*, rather than of *social justice*.⁸ We argue first that considerations stemming from the notion of a Rawlsian society lead to a *publicity constraint* ruling out strictly subjective distribuenda.

7 Consider also the following excerpt from SUPG: “Another feature of a well-ordered society is that there is a public understanding concerning the kinds of claims which it is appropriate for citizens to make when questions of justice arise, and this understanding involves a further understanding as to what can support such claims. These understandings are necessary in order to reach agreement as to how citizens’ claims are to be assessed and their relative weight determined. (...) An effective public conception of justice presupposes a shared understanding of what is to be recognized as advantageous in this sense. Thus the problem of interpersonal comparisons in justice as fairness becomes: given the different and opposing, and even incommensurable, conceptions of the good in a well-ordered society, how is such a public understanding possible?” (P 361) The answer is, once more, given in terms of primary goods. But once more, this passage leaves us wondering precisely why it is that welfare-*egalitarianism* cannot provide the account of “how citizens’ claims are to be assessed.” The two passages (plus surrounding text) from PRIG and SUPG are the most extensive discussions of primary goods that Rawls offers outside TJ.

⁸ Since, however, we shall draw upon the features of Rawlsian society and its constitutive “circumstances of justice” in the arguments of 2.2 and 2.3, we briefly note here why we begin with social regulation before proceeding to justice: (For those circumstances, see TJ, section 22, and R, section 24.) An objection to our argument for primary goods as distributive currency that we address in 2.4 will be that what our argument in 2.2 and 2.3 shows is merely that primary goods are, at best, a currency of social regulation, not a currency of justice per se. Note that whether the objection addressed in Section 2.4 succeeds, talking about the circumstances of justice as we do in 2.2 and 2.3 will nonetheless make sense. If the objection succeeds and there is such an underlying theory of justice, the circumstances of justice will be those in which there is a need for resorting to justice, rather than the circumstances under which it makes sense to speak of justice.

Next we argue that other such considerations show that distribuenda in a Rawlsian society must also be subject to what we call a *guidance constraint*. These constraints limit the choice of a currency of social regulation, and, when conjoined to appropriate conditions on personhood and polity, lead to the list of primary goods as appropriate currency.

First, then, consider the publicity constraint. The circumstances of justice constitute a situation in which contractors share goals with their fellows, but also encounter conflicts of interest.⁹ They share goals because under circumstances of moderate scarcity they benefit from cooperation.¹⁰ They encounter conflicts because not all of them can secure as many of its fruits as they desire. The contractors bear an interest in regulating the basic structure in a manner that allows for public scrutiny so that, first, principles assigning rights and duties and distributing outcomes of social cooperation are common knowledge (everybody knows them, knows that everybody knows them, knows that everybody knows that everybody knows them, etc.), and second, each contractor receives a reasonable degree of assurance that a substantial number of others are complying. Contractors, then, prefer a currency whose distribution (1) actually can be collectively regulated with reasonable effectiveness (as, e.g., collection and redistribution of taxable *income* can be regulated), (2) can be verified to a reasonable degree of certainty (as, again, can taxable income), and (3) can be so verified without drawing on essentially private information, information that can only be obtained through declarations of or intrusions upon the relevant parties.

Condition (1) must hold because, unless the citizenry is capable of governing the

⁹ Cf. TJ, section 22, and for the original Humean passages, *A Treatise of Human Nature*, bk II, pt II, sec. ii, and *An Enquiry Concerning the Principles of Morals*, sec. II, pt. I.

¹⁰ They might share goals for other reasons – e.g., reasons of mutual affection and concern; but such reasons pertain more to what might be termed the “circumstances of sympathy” or “charity” than of justice.

distribution of the relevant currency, there can be no social regulation at all. (2) and (3) capture the idea that, in fairness, each contractor may ask for appropriate access to information about benefits and burdens under their collective control; such is, after all, their only way of assuring themselves that others are cooperating, and the only way to facilitate common knowledge that a substantial number of citizens are doing so. While there might be reasons for citizens to keep information private vis-à-vis other citizens, appropriately accredited officials must be able to ascertain the distribution of the currency on behalf of the citizenry: how much one's neighbor earns may be none of one's business, but that quantum nonetheless is relevantly public.)

The publicity constraint captured by (1), (2), and (3) requires that the currency of regulation not be strictly subjective.¹¹ No unreasonable suspicion of human nature or morbid sense of privacy is required for contractors to refuse to regulate the basic structure on the basis of, say, reports of or intrusive inquiries into mental states. In particular, since free and equal individuals take themselves to be the ultimate judges of the degrees to which their pursuits of the good are succeeding, public deliberation *ought* not concern itself with subjective welfare even if there is reason to think that the public *could know* it. Otherwise, there would be cases of disagreement; and given that others could not reasonably be expected simply to take one's word for the relevant data, those citizens either would have

¹¹ For an elaboration on the role of publicity in TJ and subsequent works, cf. Larmore (2003). However, while TJ already takes parties in the original position to “assume that they are choosing principles for a public conception of justice” (TJ, p 115), publicity is more fully theorized in Rawls's later writings, culminating in the ideas of public reason and overlapping consensus. The Dewey lectures distinguish three “levels,” or senses, of “publicity”. The first is that “society is effectively regulated by public principles of justice” (p 324); the second concerns beliefs about human nature and institutions on the basis of which principles of justice are accepted; and the third level concerns the complete justification of the public conception. It is only if all three forms are exemplified that a well-ordered society satisfies the “full publicity condition” (p 325). This condition ensures that the principles of justice are grounded in a shared viewpoint. Yet arguing that *distribuenda* in a Rawlsian society should be objective only turns on the first level. Within any society guided by even that minimal condition it is implausible, or incoherent, to suggest that decisions about distributive

to intrude upon the first citizen's mental life, or to decide her satisfaction or related state *for* her, either of which would constitute an unacceptable encroachment upon that autonomy protected by the polity's "bracketed" private sphere.¹²

2.3 The notion of a Rawlsian society, then, entails a distinction between a public and a private sphere (whose precise boundaries need not be mapped here), and considerations rooted in each of these spheres (autonomy and inviolability norms in the private, verification in the public) dictate that the distribuendum not be strictly subjective.¹³ Yet this does not yet lead to primary goods as currency of regulation, since there are other objective distribuenda, including Arneson's "opportunit[ies] for welfare," "Cohen's "access[es] to advantage," Dworkin's "resources," and Sen's "capabilities."¹⁴ The notion of a Rawlsian society, however, also requires that the distribuendum be *action-guiding*. After all, such a society is governed by its citizens. While these citizens delegate much of the conduct of government to representatives and administrators, they participate in public discourse shaping the politics of a well-ordered society.

shares with regard to the basic structure should draw upon information to which individuals bear privileged access, and for whose credibility others would have to take their word.

¹² The public-private distinction must not be overemphasized: – TJ, section 79, comes down explicitly against overemphasis on the private over the public; cf. also R 60.2, p 199. And the classic liberal public-private dichotomy can of course be more radically questioned. Because the debate that we are now considering is by and large internal to liberalism, however, we ignore this more radical concern. The distinction is intuitively tractable enough for present purposes. Note that in RMA, p 249, Rawls draws attention to the connection between the contract approach and the emphasis on publicity; see also R, section 33.2. (See also R, section 48.1, where Rawls rejects a lump sum tax on native endowments by pointing out, among other things, that such a tax would create a strong incentive for people to conceal their native endowments; thus imposing such a tax would conflict with the publicity requirements of Rawls's theory.)

¹³ It may, and must, bear a subjective *aspect*, which is not the same as being strictly subjective, as is welfare.

¹⁴ Those other currencies are arguably "objective" in the sense explained above: verification of their distributions does not depend – certainly not wholly – upon references to mental or experiential states.

Much of this discourse is concerned with advancing or assessing claims to distributive shares. For citizens to be involved in such discourse, the basic structure must be regulated in terms of a currency they can integrate into their deliberations and that can provide guidance to them *qua* citizens who not only plan their own lives, but effectively oversee their own government. A currency that is too abstract or too complex to be effectively action-guiding does not allow citizens to participate in such discourse. So a Rawlsian society also gives rise to what we may call a *guidance constraint*, which requires that citizens be able to relate to a currency of regulation in such a way that a language of politics drawing on that currency can guide their actions and decisions as citizens.¹⁵

These two constraints are not merely theorems of Rawlsian theory. Turning on the circumstances of justice, the publicity constraint holds because under those circumstances one cannot settle disputes over social regulation by relying on the testimony or violating the autonomy of parties to a conflict. The second constraint expresses a precondition of any plausible conception of liberal democracy: for citizens to be involved in the political process, politics must be conducted in a manner that both engages their interests and guides their actions and decisions *qua* citizens. However, the constraints stand in some tension: the first insists that the distribuendum not be “*too agent-relative*,” whereas the second insists that it still be “*sufficiently agent-relative*.”

It is because the constraints are entailments of the circumstances of justice and

¹⁵ This point also appears in TJ, section 23, when Rawls discusses constraints on the concept of the right. He says: “[P]rinciples are to be universal in application. They must hold for everyone in virtue of their being moral persons. Thus I assume that each can understand these principles and use them in his deliberations. This imposes an upper bound of sorts on how complex they can be, and on the kinds and number of distinctions they draw” (p 114).” In addition to publicity and the guidance constraint, other considerations bear on the selection of principles of justice (cf. again TJ section 23). However, we are here concerned principally with the currency of social regulation rather than its principles. Principles come into play again in Section 4, in that their interplay with particular primary goods determines the contours of what ever “index problem” Rawls (or any other proponent of an “objective” currency) might face.

liberal democracy and because they jointly militate against excessive agent-relativity (“subjectivity”) and inadequate agent-sensitivity (excessive “objectivity”) that a parallel to what Smith (1995) calls the “moral problem” suggests itself. Recall that problem: For moral argument to be intelligible, moral claims and judgments must be taken to express beliefs about facts. Yet at least given Humean moral psychology, it is a mystery how such beliefs can motivate us. The moral problem is to account for moral commands in a manner that makes sense of these seemingly conflicting ideas – the ideas of moral facts “external” to the person, and of “internal” moral motivation bound up with such facts – both of which are crucial to morality. Since much contemporary thinking about politics is shaped both by the fact that we live under the circumstances of justice (motivating the “objectivity”-oriented publicity constraint) and by the conviction that a liberal democracy is the proper form of government (motivating the “subjectivity”-oriented guidance constraint), it is appropriate to underscore the importance of finding a currency that meets both conditions by labeling this challenge the “political problem.”

The list of primary goods enumerated in 1.2 meets both requirements, while many other candidates for *distribuendum* – even arguably objective ones proposed after TJ – either do not meet those requirements or do not do so absent further elaboration. (Recall that Rawls thought of the list of primary goods as somewhat open: if we think of that list as being delineated by these criteria, we can see why: they leave open some space for discussion and disagreement.) Additional considerations about personhood and institutions will have to be assessed to formulate Rawls’s two principles and their relative priorities, but *these* two conditions – publicity and guidance – even by *themselves* plausibly deliver the list of primary goods, at least given basic assumptions about personhood (assumptions

of the sort that lead to the whole list of commonly discussed distribuenda of justice). That they solve the political problem strikes us as a crucial feature of primary goods.

2.4 We have argued that the publicity constraint and the guidance constraint must be satisfied by any currency of *social regulation* in a liberal democracy operating under the circumstances of justice. That does not show that these constraints must be satisfied by any currency of *justice*. Social regulation might be guided by values in addition to justice, or it might merely constitute an *application* of justice in the presence of contingent social facts. Rawls intends for primary goods to be the currency of justice, rather than social regulation, and insists the latter is shaped by factors other than justice (TJ, p 8f). Yet especially the publicity condition evokes doubts as to whether it constitutes a condition of justice: free and equal contractors adopt it because they have reasons not simply to accept the word of, or to intrude upon the autonomy of, a fellow citizen for information essential to the resolution of a dispute. Yet justice itself might not be so constrained: what is just, one may say, must be so irrespective of epistemic or pragmatic concerns. Rawlsian justice might be thought an attempt at “applied” justice-theory before the correct “pure” theory has been worked out.

G. A. Cohen and Richard Arneson defend such a “pure” view. Arneson (1997) sums up the essentials in a paragraph Cohen uses as an epitaph to a work in progress:

We need to know what matters to us morally for its own sake before we can begin to address in a sensible way the issue of how to achieve what matters to the greatest possible extent, given the epistemic and other practical constraints of life as we know it. No doubt the theory of justice is many levels of abstraction removed from the sphere of policy determination. But we cannot decide on appropriate proxy measures for the in practice unmeasurable qualities we really care about until we decide what we really care about. At this stage in our inquiry the appeal to the constraints of feasibility is premature.

In light of these remarks we distinguish between a *moral* and a *political notion of justice*. The moral notion is what Arneson alludes to, and is a property of the distribution of “advantage,” properly conceived. The political notion is what we have introduced above, or at any rate a notion that takes account of what appear to be *essential* circumstances of human living-arrangements: it is best characterized as a property of institutions that jointly constitute the basic structure of society. Recall that Rawls famously calls justice “the first virtue of institutions, as truth is of systems of thought” but not the first virtue of the distribution of “advantage,” and talks about “justice in social cooperation” (TJ, p 3). Moral justice governs what advantages persons should have according to our best moral theories, whereas political justice governs relationships among persons within institutions.

Pace Arneson, the political notion is still “many levels of abstraction removed from the sphere of policy determination.” Rawls, after all, thinks of the selection of principles of justice as the first of a four-stage process that proceeds from the selection of such principles through the design of a constitution to legislation and adjudication (cf. TJ, section 31). Also, while Rawls thinks of justice as the *first* virtue of institutions, he adds that there are other virtues of institutions that affect policy choice (TJ, pp 3-9). Consider the analogy to truth: while truth is the first virtue of systems of thought, appropriateness of utterance is governed by other virtues (prudence, etiquette) too; the same is true of policy-choice. So on neither conception do principles of justice coincide with principles of social regulation.

It follows from the characterization of moral justice as a property of an appropriate distribution that conditions like our two constraints *cannot* bear on what *moral justice is*. If justice is a property of distributions, then properties of institutions (such as the

aforementioned two) cannot constrain justice, but only its application. Yet if justice is a property of institutions, other properties of institutions can constrain it. Justice may then be a property of institutions that is itself a conjunction over such properties. The term “social justice” is ambiguous between those notions: moral justice is “social” justice because it is concerned with a *distribution across* individuals, whereas political justice is “social” justice because it is concerned with basic living arrangements of individuals sharing social space. From the point of view of political justice, many aspects of advantage and its distribution are natural facts (e.g., brute luck, natural assets). But “what is just and unjust,” says Rawls (TJ, p 87), “is the way that institutions deal with these facts.”

We recognize the distinction between what we have labeled “moral” and “political” justice to be preliminary in the sense that there appears to be a dispute about whether there are indeed these two notions or whether one of them is untenable *qua* notion of justice. Cohen and Arneson argue that there is only one notion of justice, and it is what we call moral justice. Rawls argues that there is only one notion, but it is what we call political justice (cf. PL, p 182, note 11). We refrain from taking a view on this matter to any extent larger than essential for our argument since it draws on methodological questions that take us far afield (“Can one coherently think of justice in a constructivist manner?” vs. “Can one coherently think of justice in any non-constructivist manner?”). What is essential for present purposes is that there is a viable notion of “political justice”; what is not is whether there is *also* a moral notion, and if so, what the relationship between these notions is.

The sketchy considerations above indicate that there is (at least) a political notion. Justice, in this sense, is ascribed to institutions if they are designed in such a way as to treat people fairly. This is not a definition, but that we can naturally talk like this suggests that

we do indeed possess such a notion. If people are being treated improperly by their institutions, they have a complaint *in justice*, even if they are being treated unfairly for the sake of some underlying moral notion of justice. This may sound paradoxical, but given the distinction between the two notions of justice, it is easy to see how this may occur. Suppose an intrusive policy is implemented for the sake of approximating moral justice, perhaps since this notion has turned out to have a subjective currency. Then individuals may have a complaint *in (political) justice* against the institutional implementation of such a rule.

So it does seem appropriate to talk about a notion of political justice. But then the same considerations that determine primary goods to be the appropriate currency of social regulation entail that they are the appropriate currency of political justice. Again, that does not mean that justice is all there is to social regulation. But the differences among considerations entering into social regulation are not in the currency, they are in the principles. Now, suppose one denies that there is political justice distinct from moral justice, or that, however one determines the relationship between moral and political justice, the publicity constraint and the guidance constraint are not constraints *of justice*. Then we are back with the argument in 2.2 and 2.3, which shows independently that primary goods, *qua* currency of social regulation, must still serve as proxies for whatever the currency of justice is; norms of liberal democratic politics themselves will require it. So if our two constraints do not function as constraints upon justice, then justice will be only one normative concern bearing upon the proper conduct of politics.

Primary goods, we have argued, constitute a currency appropriately conceived to *solve* the “political problem” – they bear appropriately “objective” and “subjective” aspects. While the commingling of these aspects imports some tension into the theory of

justice – or, perhaps better stated, gives expression to a tension inherent in *any* full account of the proper relations between and among persons under the (ineluctably political) circumstances of justice itself – we think that primary goods offer means of navigating in between the Scylla and Charybdis that constitute that tension. This is perhaps best shown by exhibiting the manner in which Rawlsian resources as we have elaborated them can be employed to circumvent the two most important criticisms of primary goods found in the literature, criticisms clearly rooted in the relations between primary goods’ subjective and objective aspects. These are Roemer’s “inconsistency” and Arneson’s “index problem.”

3. Roemer’s “Inconsistency” Argument

3.1 Roemer (1996, chapter 5) presents a wide-ranging discussion of Rawls, arguing that his theory is both implausible and inconsistent. This section discusses one of Roemer’s more important contributions in that chapter. That contribution represents one instance, we believe, of what we call the “political problem,” and our handling of it a “test case” of the Rawlsian-spirited solution to that problem. Since Roemer’s argument is an intriguing attempt to engage Rawls on his own territory by showing that he endorses more commitments (some accommodating necessary “objectivity,” some accommodating necessary “subjectivity”) than his theory can incorporate, it is unfortunate that it has yet to attract more philosophic interest. While we argue that Roemer’s argument does not display an unavoidable inconsistency, discussing it forces us to reconsider some of Rawls’s most basic commitments with regard to primary goods and their relation to happiness. After introducing Roemer’s argument, we explore two possible Rawlsian responses. While both come with costs, both are open to Rawlsians

Roemer's objection draws on the connection between primary goods and happiness. To capture happiness (well-being), Roemer uses a real-valued utility function u_i for each individual i ($1 \leq i \leq N$, for N individuals). To capture i 's share of goods he employs a real-valued *index* function ρ_i . Both u_i and ρ_i are defined on ordered sets of primary goods. The values assigned by the index functions must be comparable across individuals for us to assess whether one of two individuals has a bigger share of goods, which in turn we must do to use primary goods to specify the least-advantaged.¹⁶ That is, expressions of the sort

$$\rho_i(x) > \rho_j(y), \rho_i(x) < \rho_j(y), \text{ or } \rho_i(x) \# \rho_j(y)$$

must be determinate and meaningful (true or false, rather than indeterminate or pointless) for any i and j and ordered sets of goods x and y . With this point in mind, what can we say about the relationship between u_i and ρ_i for any i – that is, about the connection between happiness and primary goods? Roemer quotes two statements from TJ regarding this connection. On the one hand, Rawls claims that “[w]ith more of these goods men can generally be assured of greater success in carrying out their intentions and in advancing their ends whatever these ends may be” ((1971), p 92; (1999), p 79). On the other hand, Rawls also claims that “we are happy when our rational plans are going well, our more important aims being fulfilled, and we are with reason quite sure that our good fortunes will continue” ((1971), p 548; (1999), p 480).¹⁷ Roemer takes these claims to entail

(1) For all x, y and for all i , $\rho_i(x) \leq \rho_i(y)$ if and only if $u_i(x) \leq u_i(y)$.

¹⁶ This index function does not pertain to goods (i), (ii), or the “availability aspect” of good (iii) (on the latter which, again, see section 4), that is, rights and liberties, freedom of movement and opportunity to choose an occupation. Those goods are covered by the first principle, which is lexically prior to the second. Also, it may be objected that it is unnecessary for Rawls's account that we be able to say of any two individuals which is better advantaged. What we have to be able to do, instead, is to compare the primary goods shares of “representative” individuals of different groups, where the groups are defined in terms of some broad sociological features. That is true, but the subsequent discussion is not affected by this point.

¹⁷ Cf. TJ p 393, for additional confirmation that happiness is indeed meant to be subjective.

That is, a person is happier with an ordered set x of primary goods than with such a set y if and only if she obtains a higher index of those goods.¹⁸ So the more primary goods a person receives, the happier she is, and vice versa. Put in mathematical jargon, $:_i$ is *ordinally equivalent* to u_i . Yet in virtue of u_i 's measuring i 's happiness, any two functions u_i and u_j will *not* in general be ordinally equivalent. For otherwise it would be true for any two agents i and j that if one set of primary goods makes i happier than another such set, the same is true for j as well, while that does not seem correct since these two individuals will in general have different life plans and thus need different sets of primary goods. But if u_i and u_j are not in general ordinally equivalent, the index functions $:_i$ and $:_j$ will not in general be ordinally equivalent either. For if they were, the connection between the u 's and the $:_i$'s displayed in (1) would entail that, indeed, u_i and u_j are ordinally equivalent. What this discussion shows, then, is that the following three claims are inconsistent:

- 1) *Commensurability*: Any individual is happier the higher an index of primary goods she receives, and vice versa (i.e., equation (1)).
- 2) *Primary Goods Comparability*: Any two index functions $:_i$ and $:_j$ are ordinally equivalent.
- 3) *Denial of Utility Comparability*: Not all pairs of utility functions u_i and u_j are ordinally equivalent.

The argument above establishes this inconsistency by showing that the conjunction of Commensurability and Denial of Utility Comparability entails the denial of Primary Goods Comparability. Roemer develops this formally by means of a standard function-theoretic proof to absurdity but the basic phenomenon is intuitive: if any two index functions $:_i$ and

¹⁸ One may say that it would be rather uncharitable to impute this claim to Rawls as stated, baldly, without a *ceteris paribus* clause. For we need only consider that health is not among the social primary goods, but is a "natural" primary good and thus not subject to social distribution. Imagine Joe enjoys a given set of primary goods in world A, and the same set plus a dollar in B - but alas, in B (though not in A) Joe has cancer. If (1) entails that Joe is happier in B than in A, then (1) is ludicrously implausible. While Roemer does indeed not

u_i and u_j are ordinally equivalent and so are any two functions u_i and u_j , then by transitivity of the equivalence relation any two functions u_i and u_j are as well.

3.2 To avoid this inconsistency, Rawls must either renounce or weaken some of the claims. We consider both possibilities and begin by exploring whether Rawls can resolve the inconsistency by dropping a claim. Denial of Utility Comparability is not a plausible candidate. For although Rawls' conception of happiness is not hedonistic (see TJ, section 83), insisting on utility comparability (which on a classical treatment of negation¹⁹ is what the rejection of that condition amounts to) undermines the subjective element in any plausible conception of happiness. For rejecting Denial of Utility Comparability is to claim either that some or that any two utility functions are ordinally equivalent, that is, to claim that for some or any two people and for some or any bundles of primary goods x and y , if x makes one person happier than y , this is true for the other person as well. Persons, alas, are not as like-minded as this suggests. Rejecting Denial of Utility Comparability also would render obscure why Rawls justifies his choice of primary goods by their being a basis for interpersonal comparisons (R, p. 60); if utilities were comparable, primary goods would not be necessary for this purpose.

Rejecting Primary Goods Comparability seems infeasible as well. For without this feature primary goods lose their ability to guide "interpersonal comparisons required for workable political principles" (R, p 60), which is one of their core tasks. Denial of Utility

add a *ceteris-paribus* clause, we will do so later. Thus this *prima facie* implausibility of (1) will not affect the outcome of our discussion.

¹⁹ We consider a *nonstandard* treatment of negation in connection with "weakening" one or more of the Rawlsian claims below, section 3.3. In such case rejection of a denial need not entail an affirmation; it can amount to an ascription of mere indeterminacy.

Comparability is required by a plausible “subjective” element, Primary Goods Comparability by a plausible “objective” element in primary goods. This leaves us with Commensurability. Before exploring whether Commensurability *can* be given up, we must guard ourselves against making a mistake that makes dismissing Commensurability seem natural. Rawls tends to make claims such as “it is not implied that those with the same index have equal well-being, all things considered; for their ends are generally different and many other factors are relevant” (RMA, p 241f, see also KCE, p 261; SUPG, p 370; section VII of FG, section IV of PRIG). Yet while primary goods do not allow for *interpersonal* comparisons of happiness, we cannot dismiss Commensurability with a reference to *this* point. For such a dismissal entails that primary goods cannot even be used for purely ordinal *intrapersonal* comparisons of happiness, and so involves more than mere appeal to a well-known Rawlsian claim regarding interpersonal comparability. So let us explore what more is involved in – indeed, the *costs* of – dismissing Commensurability.

Exploring those costs involves exploring what claims about the relationship between “subjective” happiness and primary goods remain available after the rejection of Commensurability. Other things being equal, it would be beneficial for Rawlsian theory if its distribuendum were not severed from happiness. Otherwise the pressure on arguments to justify primary goods as the currency of justice rises tremendously, to the point where the choice of these goods may appear fetishistic, devoid of intuitively appreciable interest to hypothetical justice-contractors in the original position. In addition, we could expect there to be considerable compliance problems in society if the basic structure were regulated by principles that were formulated in terms of goods that bore no relationship to individuals’

autonomously conceived well-being. The statements Roemer quotes to demonstrate the inconsistency show that Rawls himself tries to make sure that such problems do not arise.

One may think that, even if we reject Commensurability, certain other claims about the relationship between happiness and primary goods will remain available, namely the claims that “the more primary goods a person has, the happier she is, other things being equal,” and “for any one primary good it is true that the more of this good a person has, the happier she is, other things being equal.” (This would represent a weakening of the equivalence relation – “if and only if” – to an implicative relation – “if”.) Yet neither statement can be maintained if we reject Commensurability outright. Consistency comes at the expense of severing primary goods from happiness. Recall the notation introduced in 3.3 To investigate the present claim, we have to move to an enlarged space, where we do not look at vectors x (x being such an ordered set of primary goods) but at vectors (x, y) , where x is what it was before, and y is whatever else influences a person's happiness, chosen in such a way that any factor that could make any agent happy appears in the model. (We have to move to that space to make sense of the “other things being equal” clause.) Then the functions u_i are defined on all such vectors (x, y) , and so are the functions v_i . However, any index function is defined such that $v_i(x, y) = v_i(x, y')$ for all x, y and y' (because the v_i 's only depend on primary goods). So we obtain the following conditions, parallel to those for the original space, this time slightly more formal:

- 1') *Commensurability II*: For any agent i and vectors (x, z) and (y, z) , $v_i(x, z) \geq v_i(y, z)$ if and only if $u_i(x, z) \geq u_i(y, z)$; in other words, $v_i(_, z)$ is ordinally equivalent to $u_i(_, z)$ for any z .
- 2') *Primary Goods Comparability II*: For any two agents i and j and for any ordered sets of primary goods x and y and any set of additional goods z , $v_i(x, z) \geq v_i(y, z)$ if and only if $v_j(x, z) \geq v_j(y, z)$; in other words, $v_i(_, z)$ is ordinally equivalent to $v_j(_, z)$ for any z .

3') *Denial of Utility Comparability II*: It is not the case that for any two agents i and j and for any ordered sets of primary goods x and y and any set of additional goods z , $u_i(x, z) \succ u_i(y, z)$ if and only if $u_j(x, z) \succ u_j(y, z)$; in other words, $u_i(_, z)$ is *not* ordinally equivalent to $u_j(_, z)$, where $u_i(_, z)$ is the function that we obtain by keeping any z fixed.

The “other things being equal” clause in Denial of Utility Comparability II is captured by looking at functions $u_i(_, y)$, which by definition keep “things other than primary goods” fixed, and in Commensurability II by the fact that we are looking at vectors (x, y) and (x', y) , rather than the more general construction (x, y) and (x', y') . If it is correct that “the more primary goods a person has, the happier she is, other things being equal,” then either these claims must be consistent, or it must be possible to reject either Primary Goods Comparability II or Denial of Utility Comparability II while keeping Commensurability II. Yet the same considerations proving the original conditions to be inconsistent also show these conditions to be inconsistent. Furthermore, we cannot drop Primary Goods Comparability II for the same reason that we could not drop Primary Goods Comparability (those two conditions being identical); and we cannot drop Denial of Utility Comparability II because it makes the same claim in the enlarged space that Denial of Utility Comparability makes in the original space and thus for the same reason cannot be rejected.

So Rawls cannot endorse that “if a person’s situation changes only by an increase of primary goods, she will be the happier for it,” or that “the more primary goods a person has, the happier she is,” with or without a ceteris-paribus phrase. What is more, manipulations of the equations show that it is also false for any single good g that the more

she has of it, the happier she is, with or without a ceteris-paribus clause. So the problem does not arise because we are considering *bundles* of goods, rather than single goods.²⁰

There is yet more to this argument aimed at weakening the connection between happiness and primary goods. One may think that it remains open to Rawls to hold that the possession of a basic stock of primary goods is a *necessary condition* for happiness (this is the other “if” relation that we might try in place of the “if and only if” relation): without such a basic stock, nobody can be happy; primary goods provide the background before which individuals must develop their own life plans to achieve happiness. The possession of at least a basic stock of such goods enables them to become happy, but happiness does not consist in their possession, nor is it related to them in ways dismissed above. What it means to talk about “a basic stock” of primary goods would have to be worked out, but for our purposes the idea is clear enough. Yet even that connection is more than Rawls can maintain.²¹ For one can easily think of, say, very ascetic people whose happiness does not stand and fall with primary goods.²² It might well be empirically true for many if not most people in a Rawlsian society that a basic stock of primary goods is necessary for them to be happy, but there is little if any reason to suppose that this will be true of all of them. So

²⁰ For any primary good g , let $x \setminus g$ be the full bundle of primary goods without g . The relevant claims would then be formulated as follows for this case: (a) “For any two agents i and j , for any primary good g , for any ordered sets of primary goods $x \setminus g$ and $y \setminus g$, and any set of additional goods z , $u_i(g, x \setminus g, z) \geq u_i(g, y \setminus g, z)$ if and only if $u_j(g, x \setminus g, z) \geq u_j(g, y \setminus g, z)$. (b) “It is not the case that for any two agents i and j , $u_i(_, z)$ is ordinally equivalent to $u_j(_, z)$, where $u_i(_, z)$ is the function that we obtain by keeping z fixed; (c) “For any agent i and vectors $(g, x \setminus g, z)$ and $(g, y \setminus g, z)$, $u_i(g, x \setminus g, z) > u_i(g, y \setminus g, z)$ if and only if $u_i(g, x \setminus g, z) \geq u_i(g, y \setminus g, z)$.”

²¹ One reason for thinking this, however, is mistaken. One may object as follows: If a basic stock of primary goods is a prerequisite for happiness, how would we explain that Rawls thinks that individuals want more primary goods rather than less and cares about *maximizing* the share of primary goods for the least well-off? Yet this objection fails. For it fallaciously assumes that talk about primary goods in maximizing terms can be maintained only in terms of the connection between happiness and primary goods; that is, it assumes that the sense in which individuals “want” more primary goods rather than less is tied to happiness. We shall see in 3.3 that that is not the case.

primary goods cannot even be related to happiness by way of a necessary condition. All we can find in pursuing this line of inquiry is a rough empirical connection between a basic stock of primary goods and happiness. Thus we cannot abandon Commensurability without seriously severing or weakening (to merely “rough empirical” status) the connection between happiness and primary goods. So let us look further into this idea of “weakening” Commensurability to something like a “rough empirical” connection.

3.4 Recall that we are exploring the costs of renouncing Commensurability. We see now that this option does not amount to rejecting an extreme view while views “nearby” remain available. We can derive two lessons from the discussion in 3.1 and 3.2. First, *if* any of the three conditions in the inconsistency argument can be given up, it is Commensurability. Indeed, Commensurability can be dropped, since endorsing a strong connection between happiness and primary goods is inessential to Rawls’ contractarianism. Thus Roemer’s argument fails as a demonstration of the inconsistency of *all* views that can reasonably be labeled “Rawlsian.” Yet second, we have also seen that such a solution comes at significant costs, putting pressure on the justification of primary goods as distribuenda. While hard-core Rawlsians will not find this too high a price, most anybody else may well do so.

We are thus led to explore whether *weakening*, rather than *dropping*, one or more of the original three conditions is a better way of circumventing or dissolving Roemer’s inconsistency. We argue next that, indeed, such a strategy succeeds in doing so without imposing the costs of the earlier strategy. (Though it might be thought to impose costs of another sort.) Crucially, Roemer’s formulations of Rawls’s claims fail to capture one plausible account of the relationship between the “public” nature of primary goods and the

²² One might think of Scanlon’s religious ascetic in this connection. Scanlon (1975, 1988).

“private” nature of life plan satisfaction, and between those “private” entities themselves, that Rawlsians might find attractive.

Recall the centrality of publicity to the Rawlsian enterprise as discussed in Section 2. That centrality affects our treatment of private entities like life plan satisfactions and happiness in at least two ways. First, only what is suitably public (as explained in Section 2.2) is *accessible* to political deliberation. It is plausible to construe Rawls’s theory as conceiving life-plan satisfaction and happiness as excluded from that domain. If so, then Commensurability becomes dubious as a statement endorsed by Rawls’s theory because it does treat those two things as publicly accessible. Call this the “epistemological” bite of the publicity constraint. Second, again as explained in Section 2.2, only what is suitably public can enter into political deliberation without encroaching on *autonomy*: A central tenet of liberal political morality is that each individual is final arbiter of her own good, or welfare. Quite apart from “purer” epistemic considerations, then, a Rawlsian also will be compelled to *deem* states of satisfaction *politico*-epistemically unavailable to, i.e., “nuncognizable” by, the broader public – to “bracket” such matters from political deliberation. Call this the “liberal” bite of the publicity constraint.²³

Once we see this, Denial of Utility Comparability becomes as dubious as Commensurability. Unlike Commensurability, Denial of Utility Comparability does not treat life plan satisfaction as accessible by linking it to something that is by construction publicly accessible; but like Commensurability, Denial of Utility Comparability is a statement concerning entities about which Rawls’s theory is not supposed to speak. If we

²³ Compare Rawls’s treatment of “comprehensive metaphysical doctrines,” themselves recognized as animating those “conceptions of the good” the desire to facilitate the pursuit of which motivates parties in the original position to contract for a just basic structure, but which may not legitimately form the bases of political argument over justice.

cannot know, publicly determine, or legitimately take political notice of, whether any person's life-plan satisfaction or happiness has increased, decreased, or remained unchanged, we certainly cannot know, determine or take political notice of whether they have done so in unison. So "weakening" and reformulating rather than merely "dropping" seems to require that we reformulate two rather than one of our three conditions.²⁴

Fortunately, reformulations of both Commensurability and Denial of Utility Comparability in accordance with the thoughts just rehearsed are available and consistent with Primary Goods Comparability. The appropriate formalization, however, has to be done in a non-classical logic. In this sense there is a cost here just as there was in connection with *dropping* Commensurability, if only the pragmatic one entailed by the fact that political philosophers will be uneasy about going down this avenue since non-classical logics are not in the usual tool kit of political philosophy and might conjure up ghosts that were not expected to be summoned by a discussion of primary goods. Nevertheless, this strategy succeeds in dissolving Roemer's inconsistency, and at any rate, as pointed out above, we leave it to the reader to decide which of these two strategies – reformalizing and accordingly reinterpreting, or simply dropping, Commensurability – to adopt.

How, then, does the reformalization option proceed? Note first that, on the one hand, the publicity constraint prevents our positing a tight relation of classical logical equivalence ("if and only if"), à la Roemer, between any two terms at least one of which is essentially "private," such as utilities or degrees of satisfaction. On the other hand, *some*

²⁴ One may object that Denial of Utility Comparability should be treated differently from Commensurability. For Commensurability claims that allegedly private entities become accessible to political discourse whereas Denial of Utility Comparability is a statement from the viewpoint of theorists about political discourse that might seem not to entail that private entities become accessible to the realm of the political. Yet let us, for now, not worry about that; it raises a point that we explore more fully below.

sort of relation ought to be formulable. For we all know, *apart* from the demands of the publicity constraint and as a matter of such “common sense” as enters into the original position, that there are likely to be certain “empirical” relations (as we observed at the end of 3.2) that tend to exist between objective states of the world and subjective states of varying degrees of satisfaction with the world; and contractors in the original position are not stripped of all commonsense understanding of these relations. (Just as they know that they have (radically private, autonomously conceived) life-plans, even while not knowing their *particular* life plans).²⁵ So the publicity constraint does not preclude the objective world’s bearing subjective significance for political justice-contractors, as, say, Roemer, insisting on a particular reading of the Rawlsian passages he quotes, might object. It just pushes that subjective significance off to the side once political deliberation has commenced, and requires that “pushing off to the side” to be formulated in terms of something other than a classical equivalence or inequivalence relation. We also know, from the discussion concluding 3.2, that a classical implication relation (“if,” rather than the stronger “if and only if”) will not do the trick.

The questions, then, are how this “pushing off to the side” should be captured formally, and the sense in which Roemer’s formulations fail to do so. Consider the second question first: The key is our observation that Roemer’s argument proceeds by way of a

²⁵ Indeed, notwithstanding the publicity constraint’s limitations on legitimate political deliberation, some such intuitive relating of states of the world to states of satisfaction seems necessary to *motivate* Rawlsian contractors in the original position to formulate and choose any rules *governing* that world in the first instance. (It is that intuitive relating which renders concern with primary goods, themselves “objective” features of the material world, non-fetishistic in the sense observed in section 3.1. As noted there in connection with the costs of severing primary goods from welfare, their relation to life plan-satisfaction is what makes primary goods *matter* to people – it is what makes them “goods” rather than mere fetishes – and thus motivates persons to contract behind the veil of ignorance with a view to their distribution. But as noted in the previous paragraphs, persons’ satisfactions are inherently nonpublic in what one may call quasi-positivist epistemology and liberal politics. So satisfactions will *motivate* justice-contracting as a sort of *background* condition bringing people to the justice table (the original position) in the first place, but they will not enter into the *terms* of the contract.)

function-theoretic proof to absurdity from posited “classical” relations between the relevant terms. Such proofs and “classical” relations, by dint of their implicit assumptions of semantic bivalence and the Law of Excluded Middle, are illicit where the relations between related phenomena are less determinate or cognizable than classical equivalence or implicative relations. For where relations are inherently uncertain or politically non-cognizable it cannot be said to be determinately true (in the case of Commensurability) or false (in the case of Utility Comparability) that rises or falls in primary goods holdings are accompanied by rises or falls in degrees of life plan satisfaction, or that a rise or fall in one person’s satisfaction derived from consecutively held primary goods bundles is accompanied by a rise or fall in another person’s satisfaction derived from the same consecutively held bundles. To quasi-positivist epistemology, these propositions are not, at least at present, definitively verifiable or falsifiable. And to liberal politics, they would not be legitimately *relevant* in *political* deliberation even if they were.²⁶

An adequate formalization of the three claims singled out by Roemer must give expression to the epistemic indeterminacy, and the political noncognizability, of one or both of what we have labeled “Commensurability” and “Denial of Utility Comparability”. We can do this by formalizing the controversial claims in a standard non-classical logic

²⁶ There are various Rawlsian passages suggesting that a “rough and ready,” “empirical,” or “practical” relation between primary goods and lifeplan-satisfaction is all that Rawls had in mind all along. See, e.g., Rawls, PRIG, p 455: “What is crucial is that in introducing [additional primary goods] we recognize the limits of the political and the practicable: First, we must stay within the limits of justice as fairness as a political conception of justice that can serve as the focus of an overlapping consensus; and second, we must respect the constraints of simplicity and availability of information to which any practicable political conception (as opposed to comprehensive moral doctrine) is subject.” See also the later reference, on the same page, to “the *practical* nature of primary goods” (emphasis supplied). And page 456: “Nor does [justice as fairness] try to *estimate* the extent to which individuals *succeed* in advancing their way of life – their overall scheme of final ends” (emphasis again supplied). And Rawls, TJ, p. 80: “[Justice as fairness] does not look behind the use which persons make of [primary goods] in order to *measure*, much less to maximize, the satisfactions they achieve” (emphasis again supplied).

admitting of a third semantic value intermediate between determinate truth and falsity, a value roughly corresponding to the notions of “indeterminacy,” “unknowability,” or, as we now call it for purposes of political justice, “noncognizability”. Indeed, one of us has elsewhere demonstrated formally²⁷ how standard non-classical logics – many of them expressly designed to handle cases of epistemic (though not yet “political”) indeterminacy such as those just described in connection with Rawls’s claims and ultimate purposes – offer Rawls an intuitively attractive way out of Roemer’s derived contradiction. As it happens, however, they do so only if indeed *both* Commensurability and Denial of Utility Comparability are reformalized. But this is a welcome result. For as we noted above, the sense in which “private” or “subjective” phenomena might be taken or deemed to be epistemically indeterminate or politically noncognizable (“bracketed” or “off the table”) suggests that the same considerations apply in precisely the same manner to both Commensurability and Denial of Utility Comparability alike.

Here, then, is how the three Rawlsian claims might be reformulated, pursuant to the “weakening” of those claims here countenanced, in a standard “epistemic” or three-valued –what we might now also now call “Rawlsian political” – logic (formulations of the original, stronger-form claims appear parenthetically)²⁸:

²⁷ See Hockett, “Primary Goods, Interpersonal Comparisons & Nonstandard Logics.”

²⁸ The formalization is adapted from Hockett, previous note. In brief, for “ \neg ” read “not,” or “it is not the case that.” (We thus use “ \neg ” only as a sentential operator, not as a direct modifier of predicate expressions or as immediately forming class-complements. The same holds for the next three operators.) For “ \sim ” read an ascription of the third semantic value, how ever we construe it, to the sentence that follows the operator. Hence “ \sim ” will read “It is indeterminate whether [or “unknowable or noncognizable whether,” “neither true nor false that,” etc.] is the case.” For “ \equiv ” read “and $\$$ imply/entail one another,” or “if and only if $\$$.” For “ $\forall x: \dots$,” read “for all x’s, ...”; hence, e.g., for “ $\forall x,y: xMy$ ” read “for all x’s and all y’s, xMy ,” or “all x’s and y’s stand in the M relation.” Finally, we introduce an intrasentential relational operator: For “ $\geq_{o/i}$,” read “objectively equals or exceeds for person i .” For “ $\geq_{s/i}$,” read “subjectively equals or exceeds for person i .” By twice indexing the single relational term “ \geq ” rather than once indexing each of the two separate functional operators “ $o(x)$ ” and “ $u(x)$,” we hope to render the new formalizations that follow both

1”) *Weak Commensurability* : $\forall x,y,k: \sim (x \geq_{o/k} y \equiv x \geq_{s/k} y)$
(replacing *Commensurability*: $\forall x,y,k: x \geq_{o/k} y \equiv x \geq_{s/k} y$).
2”) *Primary Goods Comparability* : $\forall x,y,i,j: x \geq_{o/i} y \equiv x \geq_{o/j} y$.
3”) *Weak Denial of Utility Comparability*: $\forall x,y,i,j: \sim (x \geq_{s/i} y \equiv x \geq_{s/j} y)$
(replacing *Denial of Utility Comparability*: $\neg \forall x,y,i,j: x \geq_{s/i} y \equiv x \geq_{s/j} y$ (or
 $\forall x,y,i,j: \neg (x \geq_{s/i} y \equiv x \geq_{s/j} y)$ ²⁹)).

Intuitively, the formulae can be read as follows:

Weak Commensurability reads, “For all primary goods bundles x and y and all persons k , it is (or is deemed to be) indeterminate – epistemically uncertain or politically noncognizable – whether x objectively equals or exceeds y for k if and only if it subjectively does so.” That is, it is (or is deemed to be) indeterminate – epistemically uncertain or politically irrelevant – whether k ’s *index* rises or remains the same in moving from possession of bundle x to possession of bundle y if and only if the *utility* yielded to k by that move does likewise. (Under straight Commensurability, that prospect was definitively affirmed.)

easier on the eye and readily verbalized in simple English at no cost to critical detail. For further discussion, again please see the aforementioned article.

²⁹ As noted in passing in Section 3.2, there is an ambiguity in Denial of Utility Comparability as set forth by Roemer. It might mean that it is not the case that for all “you” and “I,” any primary goods bundle subjectively equals or exceeds (i.e., provides equal or more utility than) another such bundle for me if and only if it does so for you. (This is the “ $\neg \forall x,y,i,j: (x >_{s/i} y \equiv x >_{s/j} y)$ ” rendering.) Or it might mean that for all “you” and “I,” it is not the case that any primary goods bundle subjectively equals or exceeds (i.e., provides equal or more utility than) another such bundle for me if and only if it does so for you. (This is the “ $\forall x,y,i,j: \neg (x >_{s/i} y \equiv x >_{s/j} y)$ ” rendering.) In a bivalent logic, the former rendition amounts to a claim that for *at least one* pair of persons, one bundle will subjectively equal or exceed a second bundle for one of those persons while the second bundle exceeds the first for the other person; whereas the second rendering would be equivalent to the claim that for *any* two people, one bundle will subjectively equal or exceed another bundle for one of those persons only when the other bundle exceeds it for the other person. The latter seems surely to be a stronger claim than Rawls would wish to make, but we need not concern ourselves with this here, since we have seen that neither rendition is consistent with Primary Goods Comparability and Commensurability under classical bivalence. We propose the particular replacement that we do for two reasons: First, the three-valued analogue to the second “classical” formulation better captures the intuitive indeterminacy relation that we provisionally impute to Rawls. And second, either the formula we propose or the other possibility – “ $\sim \forall x,y,i,j: (x >_{s/i} y \equiv x >_{s/j} y)$ ” – affords Rawls an escape from the Roemer inconsistency provided that he also embraces what we have just called “Weak Commensurability”.

Primary Goods Comparability reads, essentially as before, “For all primary goods bundles x and y and all persons i and j , x objectively equals or exceeds y for i if and only if it does so for j .” That is, i ’s primary goods index rises or remains the same in the move from bundle x to bundle y if and only if j ’s index does likewise under the same circumstances.

Weak Denial of Utility Comparability, which could just as easily be named “Weak Utility Comparability” or “Indeterminate Utility Comparability,”³⁰ reads, “For all primary goods bundles x and y and all persons i and j , it is (or is deemed to be) indeterminate – epistemically uncertain or politically noncognizable – whether x subjectively equals or exceeds y for i if and only if it does so for j .” That is, it is (or is deemed to be) indeterminate – epistemically uncertain or politically irrelevant – whether i ’s utility rises or remains the same in moving from possession of bundle x to possession of bundle y if and only if j ’s does likewise under the same circumstances. (Under straight Denial of Utility Comparability, that prospect was definitively denied.)

As noted before, it has been proved that these three propositions are jointly consistent in all standard logics possessed of third (“indeterminate”) semantic values or their syntactic counterparts. All that remains in question is whether the propositions admit of intuitive interpretations that might plausibly be ascribed or charitably appended to Rawls (or Rawlsians) in his (their) treatment of primary goods and the satisfactions that these yield. We believe that we have supplied some such interpretations, and in doing so have offered Rawlsians another way out of Roemer’s derived contradiction, a way that formally captures the objective and subjective features of primary goods and their political

³⁰ For we are replacing the notion of deniability (as *well* as the notion of assertability) here with the notion of indeterminacy, or “weakness”.

treatment. This might seem radical to those unfamiliar with non-classical logics and their epistemic rationales. It is up to the reader to decide whether to accept this reinterpretation of “weakened” Commensurability and Denial of Utility Comparability, or to drop Commensurability. We each incline to one of these options.

4. Arneson’s Index “Problem”

4.1 Arneson (1990, p. 445) argues that primary goods give rise to “a vexing issue – the indexing problem.” “Given that there are several primary goods,” Arneson observes, “the question arises, how can we aggregate a person’s holdings of various primary goods into an overall measure of the size of his primary goods share?” Pursuing this question affords another opportunity to track the interplay between the subjective and objective aspects of justice’s currency, and to apply the Rawlsian answer to the “political problem” to another question. Arneson suggests that there are two responses to his question, neither one palatable to Rawlsians. The first proposes “to make social policy judgments based on (...) claims to knowledge of what is good for people, and so of what value their resource shares really have, regardless of their own opinions on the matter” (ibid., p. 446). Such perfectionism in effect declares an index by fiat. The second response accepts “a subjectivist welfare standard” (ibid.) – that is, allows individuals to impose their own valuations. While the first answer is clearly problematic for Rawlsians, matters are less clear for the second, as we will see presently. Roemer (1996, p. 171) agrees with Arneson that Rawls is faced with a dilemma, but leaves open the possibility that “[t]here may be room for a theory which chooses indices of primary goods which are ordinally equivalent to welfare or (...) to the expected degree of life-plan fulfillment, which is not the same as welfare if individuals are other than risk neutral.” He concludes that “the task for a

Rawlsian must be to find such indices which are justifiable without appeal to a perfectionist standard or to the inherent superiority of some life plans over others” (ibid.), then offers no more assistance.

As a first response, one may say that neither Arneson nor Roemer provides a convincing argument for there actually being an index problem. Their insistence on the existence of this problem turns largely on Rawls’ omission of any discussion of how to devise such an index. Yet this omission is well-motivated: deliberations to design such an index belong to a stage in the process of constitutional design about which there is not much to say from the deliberately abstract point of view taken in TJ. The original position constitutes the first stage of a process of institutional design; the next stage is a constitutional convention, followed by a legislative stage, and the last stage is in the application of laws by judges and administrators. From one stage to the next, more and more information becomes available (cf. TJ, section 31). As Rawls says in the *Restatement*, the second principle applies at the legislative stage (p 48). He emphasizes that it will be open to reasonable disagreement whether the principle is realized, stressing difficulties in comparative assessments of sets of primary goods. As early as RMA, Rawls suggests that the legislative stage is also the appropriate stage for designing an index of the goods distributed according to the difference principle.³¹ He holds a similar view with

³¹ [Great!] As Rawls says in RMA, p 241: “In agreeing to the two principles, the parties agree that in making judgements of justice, they are to use such an index. Of course, the precise weights can hardly be determined in the original position; these may be determined later, for example, at the legislative stage. What can be settled initially is certain constraints on these weights, as illustrated by the priority of the first principle.” See also p 261 of KCE: “[T]he precise weights adopted in such an index cannot be laid down ahead of time, for these should be adjusted, to some degree at least, in view of social conditions. What can be settled initially is certain constraints on these weights, as illustrated by the priority of the first principle. About the index, see also PRIG, p 457, which discusses the different stages through which the index is made more precise. As Rawls is fully aware, it is hard to ascertain whether the difference principle is in fact satisfied (which, of course, is because of difficulties pertaining to the index of primary goods). In R, section 49.5, he points out that the difference principle should be regarded as the kind regulative ideal that is to be

respect to the first principle of justice, suggesting that “further specification of the liberties is left to the constitutional, legislative, and judicial stages” (p 298 in BL). Yet such lack of specificity with regard to both principles at the abstract level of the theorist developing a theory of justice does not amount to a problem, let alone a devastating one.³²

[Terrific!] Not everybody finds this convincing.³³ The concern is that, even if it makes sense to postpone the determination of an index to the legislative stage, the same problem arises there. We need a supportive argument showing that the selection of an index at *that* stage is not arbitrary on the theory’s own terms. We will now propose such an argument. Our solution to the index problem draws, once again, on the manner in which primary goods illuminate the interplay between objective and subjective faces of distributive currency and thus solve the “political problem.” Crucially, the adoption of laws at the legislative stage whose totality captures an index of goods is guided by a background process of “spontaneous indexing” that happens through market processes. These processes stand in a feedback relationship with legislative decisions: the former provide input for the latter, and the latter set the stage on which the former can occur. Yet

found in a preamble of a constitution, rather than a constitutional requirement of the sort that then courts would have to interpret.

³² [Great!] This discussion also provides us with a response to an interesting argument by Blair (1988). Blair points out that the index problem can be rephrased as a problem in decision-theoretic aggregation. Next he introduces three conditions that he regards as elementary and that bear strong similarities to standard constraints on aggregation used in social choice theory. And then he shows that these conditions leave us only with a highly restrictive class of aggregation functions. One of them is a kind of universal-domain condition requiring that the desired aggregation function be able to rank any constellation of assignments of primary goods to individuals. That is, no correlation among primary goods is allowed to enter into the definition of this function. (It is not the case that, if you have so much of one primary good, you just cannot have only so little of another primary good.) However, if an index only needs to be found at the “constitutional” stage, then Blair’s result poses no threat any more: for at that stage general facts about the respective society are known, and no universal domain assumption is plausible any more.

³³ While this solution seems straightforward and was suggested by Rawls himself early on, it was contested almost right away. Gibbard (1979) does not find Rawls’ move comforting, insisting that we still need to say

this solution works only in Rawlsian societies that possess the required markets. Let us elaborate. We start by stepping back and asking, in light of insights gathered earlier, just what the index problem should be taken to be, and will proceed from there to our solution.

4.2 An index registers comparative valuational “weightings” – rates of “substitution” or “trade” – between “goods.” Such rates are critical to the reduction of vector to scalar quantities when single-scale comparisons are needed, such as “overall” consumer price levels at different times, “gross” domestic products across economies, or “total” scores of applicants to a graduate school who compete along various dimensions. “Goods” might be the sorts of items traded in markets (apples, oranges, etc.), or objects and characteristics judged desirable in other settings, for instance, “diverse” ethnicity, standardized test scores, and good grades associated with applicants to graduate schools under review by admissions committees.

Rates of “substitution” or “trade-off” between goods can emerge spontaneously, as in somebody’s forgoing some goods for others or in individuals’ exchanging goods; or can be imposed by an authority (e.g., a university admissions committee). A numéraire good (“money”) typically emerges in the case of spontaneous trade, as a means of reducing multiple traded items, in comparative measurability terms, to a single cardinal scale. Some functionally equivalent metric – such as a “point” system assigning different values or “weights” to differing ethnicities, standardized test scores and undergraduate course marks among applicants to a graduate school – generally appears in “imposed” index scenarios. This “imposed” index scenario is analogous to a perfectionist answer to the

something about how the representative individual would choose, given that sort of information. According to Gibbard, the move we made in the preceding paragraph does not solve the problem, but merely shifts it.

“index problem.” An authority *decrees* “what is good,” and how good each good is in relation to others. The “spontaneous” index scenario is analogous to a subjective welfarist answer to “the index problem.” It involves either an individual’s subjective preferences, or an aggregative rate of comparative valuation among goods emerging from trading among individuals.

So in what sense may indexing actually be a problem for Rawls? Arneson thinks Rawls must embrace either perfectionism or welfarism and that both are inconsistent with his other commitments. We grant the point for *imposed* indexing, but Rawlsian principles may not require us to banish all consideration of subjective welfare from primary goods and their indexation. Section 3 shows that Rawls ties primary goods to happiness, that there is good reason to do so, and makes a proposal for how he can do so consistently. So spontaneous indexing is not all by itself problematic. To show that Rawls faces an indexing “problem” more needs to be said than that preferences have *some* relevance in indexing primary goods, a point which Rawls can happily admit. So let us investigate how primary goods implicate the *need* of an index and so give rise to a potential index problem.

Owing to the lexicographical ordering of the principle of equal liberties over that of fair equality of opportunity, and of the latter over the difference principle, Rawls faces comparative questions at three levels. The questions that arise at the levels of the first principle and of the equality-of-opportunity principle differ from the questions at the level of the difference principle. As Rawls explains, “since the basic liberties may be limited when they clash with one another, none of these liberties is absolute; nor is it a requirement that, in the finally adjusted scheme, all the basic liberties are to be equally

provided for (whatever that would mean). Rather, however these liberties are adjusted to give one coherent scheme, this scheme is secured equally for all citizens” (p 295). So goods governed by the first principle must be available to all citizens equally. Equality here applies to a coherent scheme of liberties within which different individual liberties must be pondered and adjusted to each other.³⁴ The first principle does not require an index, but an interpretation of the liberties in such a way that they form a “fully adequate scheme of equal basic liberties.” A similar point applies to the principle of fair equality of opportunity, but Rawls discusses this much less.

So only goods associated with the *third* “level” of distribution implicate an indexing concern. Which goods are these? Clearly, goods (i) and (ii) (basic rights and liberties, and freedom of movement and free choice of occupation) are not “third level” primary goods, and good (iv) (income and wealth) clearly is. Goods (iii) (powers and prerogatives of offices and positions of authority and responsibility) and (v) (social bases of self-respect) are less clear. Arneson (ibid., p. 445) writes as though good (iii) were a straightforward instance of primary goods of the third level. However, Rawls requires that powers and prerogatives of offices be made equally available, at least formally, to all. So good (iii) is a “level two” good in its “formal availability,” and a “level three” good in its “consequential” aspects: the *value yielded the holder* of offices and positions of authority and responsibility must be indexed with other “third level” goods, while the formal

³⁴ “The Basic Liberties and their Priority” (reprinted in *Political Liberalism*) contains Rawls most thorough treatment of the (revised) first principle. Cf. also TJ, p 56: “The first principle simply requires that certain sort of rules, those defining basic liberties, apply to everyone equally and that they allow the most extensive liberty compatible with a like liberty for all. The only reason for circumscribing basic liberties and making them less extensive is that otherwise they would interfere with one another.” And see *Political Liberalism*, p 356/7: “[I]t needs to be emphasized that the basic liberties constitute a family, and that it is this family that has priority and not any single liberty itself, even if, practically speaking, one or more of the basic liberties may be absolute under certain conditions.” Section 10-12 of “The Basic Liberties and their Priority” contains a discussion of how the relevant pondering of liberties could occur.

capacity to attain such positions must be equal across persons. Similarly, good (v) understood as aspects of basic institutions necessary to persons' senses of self-worth and self-confidence, bears both formal availability and consequential aspects. They are to be made formally and fully available on an equal basis to all, whereas the self-respect that is consequent on their attainment is presumably subject to the difference principle.

4.3 It is only for these “level three” goods – or for the level three aspects of the level-complex goods (iii) and (v) – that the need for an index arises. It is also in connection with these goods that critics have underestimated the capacity of Rawls’s scheme to yield spontaneous indexing and hence for the Rawlsian legislative stage to be guided by such indexing. We now offer a solution to the index problem posed by those goods that exploits that capacity. The point of this solution is, again, to offer guidance at the legislative stage for the decisions that give rise to the index of goods as it is captured by legislation, and this guidance stems from spontaneous indexing as it occurs in market processes “in the background.” Legislative and market processes affect each other: legislation shapes markets but is also guided by spontaneous indexing that occurs on markets and that we are about to explain. Legislators will think of such spontaneous indexing as societal data providing information about the society for which the legislation is designed. Since these processes happen over time, no circularity worries arise. That solution is in the spirit of our proposal of how primary goods combine objective and subjective demands on justice theory’s currency and thus solve the political problem.

We hasten to caution that this solution does not apply to all relevant Rawlsian societies. Recall that the special conception of justice (in which the preservation of equal rights and liberties obtains priority over socio-economic gains) presupposes

reasonably favorable conditions to obtain. That is, we suppose historical, economic, and social conditions to be such that, provided the political will exists, effective political institutions can be established to give adequate scope for the exercise of those freedoms. These conditions mean that the barriers to constitutional government (if such there are) spring largely from the political culture and existing effective interests, and not from, for instance, a lack of economic means, or education, or the many skills needed to run a democratic regime (*Restatement*, p 47).

Not in all societies thus characterized will markets be sufficiently developed to allow for our argument to succeed – but they will be in such societies that have, at the same time, surpassed a certain level of economic development.

By way of elaborating our proposal, note first, that in an economically sufficiently well-developed Rawlsian society, financial markets will be well enough developed to render income and wealth analytically indistinct: the latter embraces the former (as capitalized) as genus embraces species. Also, the value yielded by good (iii), in so far as that value is understood in distinction from good (v), will itself be traded on the labor market (which is integrated with product and financial markets). It will sometimes constitute a portion of the “pay” afforded those who occupy positions of authority and responsibility, enabling employers to pay smaller salaries in so far as authority and responsibility are desirable, and requiring them to pay more in so far as those incidents of employment are undesirable. In other cases occupying positions of authority and responsibility is pay-raising because the marginal difference made by each individual is greater the higher up in the hierarchy she or he is, and so is the harm done by their

mistakes. Which way authority and responsibility go will depend on additional features of the job: as far as public offices are concerned, for example, authority and responsibility are pay-lowering (think of positions such as mayor or governor), whereas in the private sector they are normally pay-raising (think of upper-level managerial jobs). Reflecting on why authority and responsibility sometimes go this way and sometimes the other would take as too far afield. Either way, the fact that the relevant positions are positions of authority and responsibility factor into their market value. The value yielded by good (iii), then, in a market society will be money-valued and spontaneously commensurated with income. Thus goods (iii) and (iv) are indexed, via market operations, in appropriately developed Rawlsian societies, and can inform the legislative process accordingly.

Good (v) is less determinate in that an answer draws on what institutions are under consideration as constituting the social bases for self-respect. In general, Rawls takes the stance that *all* primary goods provide social bases for self-respect, and that his theory as a whole must be evaluated by its success at putting everybody in a position to develop “a confident conviction of the sense of one’s own value, a firm assurance that what one does and plans to do is worth doing.” (Collected Papers, p 158; cf also p 241 and p 314; also Pol Lib, p 82, p 181, pp 318/9, and Restatement, p 60). It is because of this all-encompassing role of self-respect that Rawls sometimes calls these social bases the most important primary good. So the social bases of self-respect are on the list of primary goods not because there are such bases *in addition* to rights or income that should be counted as primary goods, but partly to emphasize this overarching role of self-respect, and partly as a place holder for possible additions to the list (such as leisure or freedom from pain) for which a case on the grounds of self-respect could be made.

With these remarks in place, it becomes straightforward to integrate good (v) into our account. To the extent that the social bases of self-respect actually are primary goods governed by the difference principle, they can be integrated in to the process of spontaneous indexing. In so far as the social bases of self-respect are conventionally understood market institutions – firms, business partnerships, sole proprietorships and the like – good (v) is assimilable to good (iii) in all currently relevant respects. In so far as they are non-market institutions that must in effect *compete* with traditional market institutions to attract employees – e.g., governmental agencies and institutions, not-for-profit organizations, etc. – good (v) is again assimilable to good (iii); its consequential yield is, like that of good (iii), subject to spontaneous indexing by a competitive labor market fully integrated with the product, money and financial markets.³⁵

It seems, then, that the *only* institutions whose yields to persons would *not* be spontaneously indexed are institutions that are fully segregated from markets in which other goods (including labor-time) are traded. Apparently, there is only one such institution in advanced market societies exhibiting the canonical Rawlsian “circumstances of justice,” viz., the family. Even here, however, things are not so clear; the only people for whose time, attention and involvement the institution of the family need not compete with other (marketed) attractions, at least now that divorce is easily attained and child-support requirements so easily evaded, are the children – persons generally not treated as full distributees by the theories of justice

³⁵ Analogous remarks hold with respect to leisure, which Rawls has conceded, in his “Reply to van Parijs” [cite], might be added to the list of primary goods. Leisure is, in effect, valued at the rate of income forgone to enjoy it.

So even the goods typically thought yielded by the one institution in a Rawlsian society that is not fully integrated with market institutions are in significant measure spontaneously indexed with other goods in a society exhibiting the Rawlsian circumstances of justice; they can be money-valued for purposes of determining Rawlsian citizens' appropriate distributive shares under maximin. Such indexing, in turn, informs the legislation, and the legislation in turn embodies an index of primary goods governed by the difference principle. Note that this approach does not by any means depend on unrestricted markets. For the functioning of markets will be regulated by laws as well, a feedback process that unfolds over time.

We conclude that Arneson and others have been too quick to assume a hopelessly vitiating incommensurability among – an “index problem” afflicting – Rawlsian primary goods. At least a Rawlsian society with sufficiently highly developed markets will afford ample opportunity for spontaneous indexing of those goods requiring indexing, as will both (a) give appropriate play, through voluntary trading opportunity, to the necessarily subjective aspect of distributive currency, thereby avoiding a hyper-“objective” dictatorial (perfectionist) or fetishistic comparative weighing of disparate goods; and (b) give *no more than* appropriate play to that subjective aspect – that is, not “collapse” into a welfarism indifferent to the guidance, liberal autonomy and fair equality constraints discussed in Sections 1 and 2. So the features of primary goods that rendered them a solution to the “political problem” also ensure that the index problem is solvable.

4.4 We should address a possible objection to our “spontaneous indexing” approach to the index problem. One contestable aspect of perfectionism (or an “imposed” index) is that it

is arbitrary from a moral point of view: citizens are subjected to rates of comparative valuation that ride upon who happens to be able to decree the index. Yet is what we have called “spontaneous indexing” not arbitrary in the same sense, in that the comparative valuations of disparate goods are in this case the product of a distribution of tastes that happens to characterize a particular assemblage of persons?

In response, assuming that all enter trading upon equal terms – with identical initial endowments of goods and information, equal bargaining power and free entry – each trader finds her preferences, her comparative valuations, “counted” equally in the aggregation of comparative social preferences and resultant price index. The price ratios, that is to say, in effect record a kind of “vote” on the comparative social valuations of goods, in which each “voter” has been counted equally. It is difficult to perceive any violation of autonomy here of the sort that would characterize a dictatorial (perfectionist) method of social valuation. The question then is whether it is in any other sense offensive to justice, and, in particular, any justice that is respectful of autonomy, coherently conceivable and realistically pursuable.

It is true that people born into some worlds might find social rates of comparative valuation that afford them the capacity more easily (more cheaply in terms of available goods) to satisfy their preferences than in other worlds. But it is unclear that such differential luck with respect to the preferences of other autonomous citizens with whom one shares ultimate political authority is the proper concern of political justice. For, first, people have some control over and capacity to change their tastes themselves, and it does not seem unfair to expect people to some extent mutually to adjust their tastes in light of the tastes of and resources shared with others; indeed, it would seem unfair (or

prohibitively resource-costly) *not* to expect people to engage in such a process of reciprocal adjustment. This is of course one argument for the selection of “objective” distribuenda, including “opportunity for welfare,” in the first instance. And, second, at least on a liberal understanding of justice, the luck that legitimately concerns justice is that luck which can be compensated for without disrespecting the autonomy of citizens, which treating taste-distributions as matters of fortune presumably would do.

4.5 By way of concluding this section, we ask whether the concerns about indexing are any more acute for Rawls than for other prospective distributive currencies and distribution formula(e). Let us discuss this question with regard to, once again, Arnesonian opportunities for welfare. There appear to be two ways to construe such opportunities: We can view them probabilistically or materially. If we view them probabilistically – as likelihoods of attaining welfare summed over decision trees – then there is no way practically to distribute them at all. (For purposes of the publicity condition discussed in Section 2, measurement looks difficult as well; Arneson purchases commensurability/indexability in theory at the price of complete immeasurability, as a metaphysical, epistemic, and thus normative political-theoretic matter, in practice.) Neither polities nor markets can dole out, confiscate or redistribute opportunities as such; they can only provide, or redistribute opportunities’ formal and material correlates – rights, regulations, educational facilities, occupations, healthy environments, fungible wealth and the like. What are these if not Rawlsian primary goods?

If we view Arnesonian opportunities materially, on the other hand, we face, once again, items in the world that *yield* opportunity for welfare. These, as just suggested,

appear to be nothing other than Rawlsian primary goods. Their indexability per Arnesonian justice therefore will differ from their indexability per Rawlsian justice only if Rawlsian and Arnesonian *distribution principles* diverge. If Arneson equalized rights, liberties and formal opportunities – “first” and “second” level goods – over all persons while maximizing what remains – “third” level goods – he would do what Rawls does, thus face whatever index problem Rawls faces. If he equalized all goods at all “levels” across persons, he would face a degenerate index problem, hence none at all – all would receive “the same” of everything, hence require no index assigning rates of substitution – but would face a more difficult problem – impossibility: we cannot afford everyone “the same” family, “the same” spatial location, etc. If, finally, Arneson equalized, maximized, or subjected to any other distribution formula the totality of all goods, with no attempt at a lexicographical ordering, then he would face an index problem more formidable even than what he attributes to Rawls, or be obliged to “put up on the market” even such goods as presently in advanced democratic societies are thought better insulated from markets – liberty, formal opportunity and the like – for spontaneous indexing. We doubt that Arneson will wish, even in the name of “subjective” welfare, to put voting, freedom from chattel bondage, and cognate interests up for sale.

We conclude, then, that Rawlsian primary goods, when considered in conjunction with Rawlsian distribution principles and their lexicographical ordering, suffer no obviously unique or inordinate index problem. To the contrary, those goods and (ordered) distribution principles appear well calibrated to give appropriate play to the objective aspects of distributive currency necessitated by the publicity and guidance constraints, and to the subjective aspects of distributive currency necessitated by agent-motivatability and

spontaneous indexing in a rights-constrained, liberal market society. Rawlsian primary goods and distribution principles, that is to say, are well designed to answer the “political problem” under the “circumstances of justice.” At any rate they seem to be better suited to that task than equalized Arnesonian opportunity for welfare, and the burden would now seem to be upon competing accounts of justice to show how they address the problem, under such circumstances, more satisfactorily.

5. Conclusion

This paper has proved to be a broadly ranging exercise. While we have confined ourselves, in practice, to the treatment of two isolated problems raised by critics for Rawls’s choice of distributive currency, the considerations that we have adduced in addressing those problems are more general in scope and implication. Primary goods and the putative problems to which they have given rise instantiate a “larger” problem at the heart of justice, viz., the boundary that divides distribuenda in their “objective” and “subjective” aspects. Primary goods are not the only proposed currencies that must consistently and stably chart – or respect – those boundaries. Arnesonian “opportunity for welfare,” for example, runs together an objective – opportunity – and a classically “subjective” – welfare – component. The same seems true of Cohen’s “access to advantage” – access being “objective” and “advantage” being intelligible as such only if conceived either perfectionistically (which we doubt is how Cohen would wish to construe it) or in part at least “subjectively.” And cognate meldings are at work in Senian “capabilities” and Dworkinian “resources.”³⁶ But primary goods, we think, set or chart

the boundaries well. In so doing, they provide an answer to the larger challenge we have labeled the “political problem.” The degree to which competing currencies and distribution principles do likewise is a matter we leave to another day.

Literature

Arneson, R. 1989. “Equality and Equal Opportunity for Welfare.” *Philosophical Studies* 56: 79-95

Arneson, R. 1990. “Primary Goods Reconsidered.” *Nous* 24: 429-54

Arneson, R. 1997. “Rawls, Responsibility, and Distributive Justice.” Forthcoming in *Justice, Political Liberalism, and Utilitarianism: Themes from Rawls and Harsanyi*. Ed. M. Salles and J. Weymark. Cambridge: Cambridge University Press

Blair, D. 1988. “The Primary-Goods Indexation Problem in Rawls’s *Theory of Justice*.” *Theory and Decision* 24: 239-252

Cohen, G. A. 1989. “On the Currency of Egalitarian Justice.” *Ethics* 99: 906-44

Cohen, G. A. in PPA

Dworkin, R. 1981. “What is Equality? Part 2: Equality of Resources.” *Philosophy and Public Affairs* 10: 283-345

Dworkin, R. 2002. “Sovereign Virtue Revisited.” *Ethics* 113: 106-__ (?)

³⁶ Capacities are “objective” in that they, presumably, are independent of affective states; but they *intelligible as capabilities* – i.e., *desirable* capacities – only in as much as they include “subjective” properties. Resources are “objective” in that they are physical items (and perhaps include abstract opportunities as well – see Dworkin (2002)), but are intelligible *as* resources (or opportunities) only in so far as they can be viewed as resources (or opportunities) *for* something that agents *desire* – i.e., again, only in so far as they possess “subjective” properties. (Hence the resort to an “envy test” in thinking-through their proper distribution – see Dworkin (1981b, 2002).)

Gibbard, A. 1979. "Disparate Goods and Rawls' Difference Principle: A Social Choice Theoretic Treatment." *Theory and Decision* 11: 267-288

Hockett, R.

Rawls, J. 1993. *Political Liberalism*. New York: Columbia University Press

Rawls, J. 1999a. *A Theory of Justice*. Revised Edition. Cambridge: Harvard University Press

Rawls, J. 1999b. *Collected Papers*. Ed. S. Freeman. Cambridge: Harvard University Press

Rawls, J. 2001. *Justice as Fairness. A Restatement*. Ed. E. Kelly. Cambridge: Harvard University Press

Roemer, J. 1996. *Theories of Distributive Justice*. Cambridge: Harvard University Press

Scanlon, T. M. 1975

Scanlon, T.M. 1988

Sen, A. 1980

Sen, A. 1987

Sen, A. 1992

Smith, M. 1995 *The Moral Problem*