

FAIR TERMS OF SOCIAL COOPERATION AMONG EQUALS

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I

In his remarkable review of John Rawls's *Theory of Justice*, Ronald Dworkin draws attention to the following passage in that book in which Rawls distinguishes two conceptions of equality and deems the latter more fundamental: 'Some writers have distinguished between equality as it is invoked in connection with the distribution of certain goods [. . .] and equality as it applies to the respect which is owed to persons irrespective of their social position. Equality of the first kind is defined by the second principle of justice[. . .] But equality of the second kind is fundamental' (Rawls 1971: 511). Dworkin maintains that Rawls's 'original position is well designed to enforce' this second kind of equality, which he characterizes as an 'abstract right to equal concern and respect, which must be understood to be the fundamental concept of Rawls's deep theory'. Unlike Rawls's principle of fair equality of opportunity or equal liberty, according to Dworkin, this 'right to equal respect is not, on [Rawls's] account, a product of the contract, but a condition of admission to the original position'. We have identified 'one right, therefore, that does not emerge from the contract, but is assumed, as the fundamental right must be, in its design' (Dworkin 1973: 531–2).

Twelve years later, in 'Justice as Fairness: Political, not Metaphysical', Rawls offered the following commentary on Dworkin's interpretation:

[Dworkin] proposes that the original position with the veil of ignorance be seen as modeling the force of the natural right that individuals have to equal concern and respect in the design of the political institutions that govern them[. . .] This is an ingenious suggestion but I have not followed it in the text[. . .] I think of justice as fairness as working up

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into idealized conceptions certain fundamental intuitive ideas such as those of the person as free and equal, [. . .] and as connecting these fundamental intuitive ideas with the *even more fundamental and comprehensive* intuitive idea of society as a fair system of cooperation over time from one generation to the next. (Rawls 1985: 236n19; emphasis added)

In *Justice as Fairness: A Restatement*, Rawls maintains that this ‘idea of society as a fair system of social cooperation’ is the ‘*most fundamental*’ one: ‘the central organizing idea in trying to develop a political conception of justice for a democratic regime’ (Rawls 2001: 5; emphasis added). Similarly, in *Political Liberalism*, he writes that ‘the fundamental organizing idea of justice as fairness, within which the other basic ideas are systematically connected, is that of society as a fair system of cooperation over time, from one generation to the next’ (Rawls 1993: 15).

What Rawls describes as the less fundamental idea of ‘free and equal persons’ figures in the spelling out of his account of what renders a system of cooperation fair. Rawls characterizes citizens as ‘those engaged in cooperation’ (Rawls 2001: 5). He maintains that

they are regarded as equal in that they are all regarded as having to the essential minimum degree the moral powers necessary to engage in social cooperation over a complete life[. . .] [S]ince we view society as a fair system of cooperation, the basis of equality is having to the requisite minimum degree the moral and other capacities that enable us to take part fully in the cooperative life of society. (Rawls 2001: 20)

Rawls’s claims in *A Theory of Justice*, regarding the moral arbitrariness of the good or bad fortune of one’s natural endowment and the social position into which one was born, are advanced for the specific purpose of ruling out the exploitation of these contingencies in a manner that would render terms of social cooperation unfair. They are not, as some have interpreted them (e.g., Cohen, 2008), an independent expression of a more sweeping ‘luck egalitarian’ principle calling for compensation for the unfairness of some being less well off than others through no fault or choice of theirs. See, for example, Rawls’s explanation of how the

deeper idea of reciprocity implicit in [the difference principle] is that social institutions are not to take advantage of contingencies of native endowment, or of initial social position, or of good or bad luck over the course of life, except in ways that benefit everyone, including the least favored. This represents a fair undertaking between the citizens seen as free and equal with respect to those inevitable contingencies. (Rawls 2001: 124)

Rawls explains that this ‘idea of reciprocity is implicit in the idea of regarding the distribution of native endowments as a common asset. Parallel but not identical considerations hold for the contingencies of social position and of good and bad luck’ (Rawls 2001: 124). As Jonathan Quong has put it, on this reciprocity-based conception of justice, ‘[C]ooperative activity is not a means to achieve equality, equality is a principle to regulate cooperative activity’ (Quong 2011: 83).

These observations regarding the fundamentality of the idea of society as a fair system of cooperation shed some light on the debate between two rival egalitarian interpretations of Rawlsian justice as fairness. As I have noted, there are those who read Rawls’s passages on moral arbitrariness as revealing underlying luck egalitarian commitments. For them, justice as fairness is grounded in a commitment to compensation for the unfairness of some being less well off than others through no choice or fault of theirs. These people then accuse Rawls of inconsistency in failing to apply his principles of distributive justice globally or to those with special medical needs or severe disabilities. These interpretations of Rawls are opposed by those such as Anderson and Scheffler who read Rawlsian justice as fairness as fundamentally relationally egalitarian rather than luck egalitarian: as grounded in our claims to be treated as equals rather than to equal treatment, as Dworkin went on to formulate this distinction (Anderson 1999: 287–337; Scheffler 2003: 5–39; Dworkin 1977: 273).

I believe that both interpretations are mistaken. Rawlsian justice as fairness is neither fundamentally luck egalitarian nor relationally egalitarian. Rather, the most fundamental idea is that of society as a fair system of cooperation, and each egalitarian idea should be read as an implication or ‘spelling out’ of this most fundamental idea (Rawls 2001: 25).

Moreover, as I hope to show in the following sections, it enriches our understanding of the nature and importance of social justice to see it as a spelling out of the fundamental Rawlsian idea of fair terms of social cooperation for mutual advantage.

II

What we call the welfare state serves not only to relieve poverty and otherwise redistribute from rich to poor, which Nicholas Barr has described as its Robin Hood function. It also serves to pool our risks through social insurance, in a manner that is to the expected advantage of each (Barr 2001). Paul Krugman has declared that ‘the U.S. government is [. . .] best thought of as a giant insurance company with an army. When you talk about federal spending, you’re overwhelmingly talking about Social Security, Medicare, Medicaid, and defense’ (Krugman 2011). Both of these aims of the welfare state—poverty relief through

redistribution from rich to poor and mutually advantageous insurance against risk—are present in the provision of pensions, which I shall treat in the remainder of this article as a case study to illustrate the fruitfulness of conceiving justice as fair terms of social cooperation.

Through the transfer of income from the middle to the later years of our lives, pensions provide a solution to the problem we would otherwise face of living so long that we find ourselves lacking sufficient resources to sustain ourselves and prosper throughout retirement. This solution is realized through the continual transfer of the fruits of the labor of those who are relatively young, healthy, and able-bodied to those who are elderly, no longer in work, and often infirm, in a manner that involves cooperation over the life cycles of overlapping generations.

Should these transfers be conceived and defended as the redistribution of resources between distinct individuals to eliminate unchosen misfortune? There are compelling reasons, grounded in a commitment to fairness in the way things turn out, for the state to relieve poverty in old age by redistributing from those who are known to have had greater fortune in accumulating wealth during their lifetimes, to others who are known to have had less good fortune. Such reasons are implied by luck egalitarian theories, which political philosophers such as Dworkin and Cohen have identified with justice (Dworkin 2000; Cohen 2008).

Or should these transfers be conceived and defended as a form of cooperation between persons that is to the expected benefit of each? On this different understanding, a failure to provide pensions collectively would be condemned in large part as irrational because such failure is inefficient and wasteful, rather than being condemned as a breach of a duty to alleviate the unchosen misfortune of those who are known to be badly off. These considerations can ground a reciprocity-based defense of pensions as constituting fair terms of social cooperation for mutual advantage, which are the terms that Rawls has identified as the fundamental organizing idea of justice as fairness.

We can shed light on this latter approach by drawing attention to the ways in which pensions involve *intrapersonal* transfers from one's more fortunate to one's less fortunate self, where these selves can be understood either temporally or modally. On a temporal understanding, there is a consumption-smoothing transfer of resources from one's young, healthy, and productive self to one's elderly, infirm, and unemployable self. On a modal understanding, there is a transfer of resources between different possible retirements one might end up experiencing, from those in which one's annual income would otherwise be high to those in which this income would otherwise be low. These transfers are to each person's expected advantage, which is made possible by a fair sharing of the fruits of social cooperation that arise through the efficiencies reaped by the pooling of the risk of outliving what one could save for one's retirement on one's own.

In *How to Pool Risks across Generations*, I set out the case for the collective provision of pensions on grounds of reciprocity rather than redistribution (Otsuka 2023). I do so not out of any denial of the soundness of a redistributive case for pensions. Those who are impoverished in old age, through no choice or fault of theirs, are entitled to pensions as a matter of egalitarian justice. Even when their impoverishment can be attributed to past choices for which they can be held responsible, they might still be entitled to pensions as an upshot of their equal claim to worldly resources.¹ Rather, I appeal to grounds of reciprocity because I think a strong case for collective pensions remains, even in the absence of grounds for redistribution from rich to poor. As Barr has written: ‘Even if all poverty and social exclusion could be eliminated, so that the entire population were middle class, there would still be a need for institutions to enable people to insure themselves and to redistribute over the life cycle’ (Barr 2001: 1). There would, for example, remain a case for the collective provision of occupational pensions. Such provision would be justified by virtue of the fact that the risk-sharing of such arrangements is to the expected advantage of each.

III

In the actual world of unequal income, collectively funded defined benefit (DB) occupational pensions that are proportionate to earned income would be an improvement over a status quo characterized by individual retirement accounts consisting of defined contribution (DC) pension pots that are proportionate to similarly unequal incomes. On account of the benefits of risk-pooling and the transfer from those who would otherwise be richer to those who would otherwise be poorer that this involves, such DB pensions would often be more egalitarian than the pensions that such DC pension pots would yield under the same employer and member contributions.²

Though they would generally constitute an improvement over DC pension pots in the dimension of equality, collective DB pensions proportionate to income here and now would nevertheless fall short of the realization of egalitarian justice. Given the extent to which actual inequalities in income are explained by circumstances beyond the control of individuals, they would fail to realize a luck egalitarian principle of pensions proportionate to incomes that are unequal if and only if these inequalities are traceable to people’s responsible choices

1. For a spelling out of the nature and grounds for such a claim, see Otsuka (2003: ch. 1) and Otsuka (2018: 121–37).

2. Given the declining marginal utility of money, the egalitarian effects of these transfers would be more pronounced when measured in terms of welfare rather than money.

rather than such circumstances (Dworkin 2000: ch. 2). Insofar, therefore, as DB pensions are proportionate to existing earnings, their efficient delivery of pension income through risk-pooling would at least mirror, even if not magnify, injustices in the actual distribution of earned income.

Justice is nevertheless promoted by collective pensions proportionate to income, even when the distribution of income itself is not in accord with egalitarian principles. There is a justice-based case for collective pensions, because justice should be conceived of, not as fundamentally a matter of the elimination of the unfairness of unchosen, brute bad luck, but rather as fundamentally involving Rawlsian fair terms of social cooperation for mutual advantage in the division of the fruits of the labor of workers.

Rawls writes that '[f]air terms of cooperation specify an idea of reciprocity' (Rawls 1993: 16). Hence his 'most fundamental' 'idea of society as a fair system of social cooperation' is one of reciprocity rather than equality. It is in the spelling out of reciprocity that Rawls brings equality into the frame: we do things to reciprocal advantage, on fair terms, where such terms are egalitarian. Rawls writes that

the idea of reciprocity lies between the idea of impartiality, which is altruistic (being moved by the general good), and the idea of mutual advantage understood as everyone's being advantaged with respect to each person's present or expected future situation as things are. As understood in justice as fairness, reciprocity is a relation between citizens expressed by principles of justice that regulate a social world in which everyone benefits judged with respect to an appropriate benchmark of equality defined with respect to that world. (Rawls 1993: 16–17)

In rejecting the 'idea of mutual advantage', Rawls maintains that justice might call for the transformation of a present-day 'society in which property, in good part as a result of fortune and luck, is very unequal into a well-ordered society regulated by [his] two principles of justice.' Justice might call for such a transformation even if, as is likely, not all can expect to gain from it, relative to the egalitarian status quo. Those, for example, 'owning large properties' can expect to lose 'greatly' (Rawls 1993: 17).

We can agree with Rawls that it is not a necessary condition of justice that all must be expected to benefit, relative to an unequal status quo. But this does not rule out the possibility of mutually beneficial moves from an unjustly unequal status quo that promote justice.

In the quoted passage, Rawls analyzes reciprocity as fair terms of social cooperation for mutual advantage, as measured against a benchmark of equality. Both mutual advantage and equality figure in Rawls's idea of reciprocity. Each element has a role.

The very fact that Rawls describes equality in the distribution of goods as a benchmark implies that such equality does not exhaust justice. If, for example, there were no cooperation in a world where, as nature would have it, there were no unchosen inequalities among different individuals, we would have perfect luck egalitarian justice. But Rawlsian justice would be absent, as there would be no fair terms of cooperation that make all parties better off, when measured against a benchmark of equality. More generally, social justice would be absent in such luck egalitarian circumstances. Only natural justice would obtain.

In addition to mutual advantage that arises from an equal baseline, there is another way in which equality might combine with mutual advantage to constitute fair terms of cooperation: mutual advantage might be realized among parties *who regard one another as equals*. Rawls refers to the benchmark of an equal division in the passage I have quoted. But elsewhere he often speaks of ‘fair terms of social cooperation between citizens *regarded as free and equal*’ (Rawls 2001: 79; emphasis added). These two conceptions of equality can come apart, in ways that bring out the importance of the latter, as I shall now illustrate.

It is plausible to maintain that a benchmark of equality should be choice sensitive: one involving equality of opportunity for goods rather than equality of outcome when the two come apart. Rawls himself is sympathetic to the idea that Malibu surfers who have chosen not to work have received all the primary goods to which they are entitled in the form of leisure, even though they lack enough material resources to sustain themselves (Rawls 1993: 181–82n9). From a baseline of equality of opportunity, these surfers might seek earnings from employment when their hunger becomes too great. It would, however, be unjust because exploitative for capitalists to take advantage of the surfers’ vulnerability by offering them sweatshop terms even if the transactions are mutually advantageous. The capitalists would not be showing regard for the surfers as equals, but rather regarding them as people to be taken advantage of, even though the exploitative transactions arise from a justly equal baseline.

I have just argued that mutual advantage from the surfer-capitalist baseline of equal opportunity for goods needn’t be just because it might involve failure to treat people as equals. I shall now argue that mutual advantage from an *unequal* baseline needn’t be *unjust* because it might involve a regard of one another as equals in a manner that vindicates the transaction.

Among mutually advantageous moves from an unjustly unequal baseline, we should distinguish cases in which the mutually advantageous move involves an exploitative offer that takes advantage of the vulnerability of the weaker party from those in which the stronger party does not take advantage of the weaker party.

The collective provision of defined benefit occupational pensions is of this latter type. It therefore counts as a case of genuine reciprocity even though it arises

from an unjustly unequal baseline. Under a collective arrangement, parties voluntarily bring their pension contributions to the collective, pool the risks of these resources, and then get back in proportion to what they put in. How much different individuals are able to put in might be a reflection of an unjustly unequal baseline distribution of income. But the unjustly rich do not take advantage of, or otherwise benefit from, the fact that others are poor. Rather, insofar as their agreement is concerned, the positions of the different parties are symmetrical.

Consider an analogous case in which a wealthy carpenter has constructed a sailboat without a sail and a poor weaver has weaved sails. They would each like to sell what they have produced. Suppose that the value of each sold separately does not add up to the value of the two together, given the synergy of their combination. If the poor weaver were desperate for the extra proceeds from the synergistic sale, perhaps the wealthy carpenter could drive a hard bargain for a disproportionately great share of these proceeds. That would be to take advantage of unequal bargaining power. By contrast, an agreement analogous to a collective pension is one in which they voluntarily split the extra proceeds in a manner that is proportional to the market value of each when sold separately.

IV

I shall close this discussion with the following questions: Why should those who are young, able-bodied, and productive agree to pay for the pensions of those who are elderly, infirm, and out of work? Should they do so out of a duty to redistribute their known fortune to others who are known to be unfortunate, in order to eliminate the unfairness of life? If the answer to the latter question is 'Yes', then we will have to rely on the capacity of the fortunate to identify with the fates of badly off strangers and altruistically agree to open their wallets to them. And if the fortunate will not agree, then we will need to find a Robin Hood who will rob from the rich against their wills, to give to the poor.

As I indicated in section 2, we can conceive of the case for collective pension provision differently, as a form of reciprocity. This takes the form of cooperation between persons, which is to the mutual advantage of each with regard to their prospects. We can conceive of the resources that pension schemes transfer, not simply as transfers between different people but rather as transfers within the possible future lives of each individual: as transfers from one's more fortunate possible future selves to one's less fortunate possible future selves.

This case applies, along the following lines, to those who have recently reached the age of majority and are near the beginnings of their adult lives, most of whom are now able-bodied and productive. Barring miraculous breakthroughs in medical technology or discovery of a fountain of youth, they will

not remain so forever. Some of them will, tragically, become seriously incapacitated during their working years on account of illness or accident. For a few, the illnesses or accidents they suffer will be so serious that they will not survive into old age. The great majority of them, however, will make it into old age and reach a point when they are no longer able or willing to continue working. But they do not now know how long they will live in retirement or how well any investments they try to save up during the next decades for their retirement would fare.

From the perspective of the beginning of their working lives, it is therefore rational for each of them to enter into an agreement with others, who also do not yet know their fates, that, if one turns out to be among the unfortunate whose private pension pots would not have yielded enough for one's retirement, one will receive much more in retirement, whereas those whose pension pots would have overflowed their retirements will receive somewhat less. But this arrangement will work only if each agrees to bind oneself in advance so that, if one turns out to be among the fortunate, one is not allowed to defect from the scheme and go it alone. It is rational for each to agree to share one another's fates by pooling risks across both space and time, on fair terms of social cooperation for mutual advantage.³

References

- Anderson, Elizabeth. 1999. 'What Is the Point of Equality?', *Ethics*, 109: 287–337
- Barr, Nicholas. 2001. *The Welfare State as Piggy Bank* (Oxford: Oxford University Press)
- Cohen, G. A. 2008. *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press)
- Dworkin, Ronald. 1973. 'The Original Position', *Chicago Law Review*, 40: 500–33
- Dworkin, Ronald. 1977. *Taking Rights Seriously* (Cambridge, MA: Harvard University Press)
- Dworkin, Ronald. 2000. *Sovereign Virtue* (Cambridge, MA: Harvard University Press)
- Krugman, Paul. 2011. 'An Insurance Company with an Army', *The New York Times*, 27 April <<https://archive.nytimes.com/krugman.blogs.nytimes.com/2011/04/27/an-insurance-company-with-an-army/>>
- Otsuka, Michael. 2003. *Libertarianism without Inequality* (Oxford: Oxford University Press)

3. Sections 2 and 4 of this article draw on the introduction and conclusion to Otsuka (2023) and are reproduced by permission of Oxford University Press. Section 3, which also appears in more extended form in chapter 4 of *How to Pool Risks*, is an abridged and slightly revised version of section 5 of Otsuka (2017: 229–51), reproduced by permission of Oxford University Press, <https://global.oup.com/academic/product/oxford-studies-in-political-philosophy-volume-3-9780198801238>. An earlier version of this article was presented in September 2021 at the University of Notre Dame for a conference on the fiftieth anniversary of the publication of Rawls's *Theory of Justice*.

- Otsuka, Michael. 2017. 'How to Guard Against the Risk of Living Too Long: The Case for Collective Pensions', in *Oxford Studies in Political Philosophy*, vol 3, ed. by David Sobel, Peter Vallentyne, and Steven Wall (Oxford: Oxford University Press)
- Otsuka, Michael. 2018. 'Appropriating Lockean Appropriation on Behalf of Equality', in *Property Theory: Legal and Political Perspectives*, ed. by James Penner and Michael Otsuka (Cambridge: Cambridge University Press)
- Otsuka, Michael. 2023. *How to Pool Risks across Generations: The Case for Collective Pensions* (Oxford: Oxford University Press)
- Quong, Jonathan. 2011. 'Left-libertarianism: Rawlsian not Luck Egalitarian', *Journal of Political Philosophy*, 19: 64–89
- Rawls, John. 1971. *A Theory of Justice* (Cambridge, MA: Harvard University Press)
- Rawls, John. 1985. 'Justice as Fairness: Political not Metaphysical', *Philosophy and Public Affairs*, 14: 223–51
- Rawls, John. 1993. *Political Liberalism* (New York: Columbia University Press)
- Rawls, John. 2001. *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press)
- Scheffler, Samuel. 2003. 'What Is Egalitarianism?', *Philosophy and Public Affairs*, 31: 5–39