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Liberal Dependency Care Versus Subject-Centered Liberal Justice

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Abstract

John Rawls and Asha Bhandary use David Hume's conditions of justice to frame the original position choice from which principles of justice are selected. To use Hume's conditions in this way excludes from representation those who are not full cooperators, including people who need lifelong dependency care. This implies that their claim to dependent care is not a fundamental claim of justice, but must have significantly lower priority. This article argues that an appropriate theory of liberal dependency care will abandon this Humean framing assumption, and will treat the claim to dependency care as a fundamental requirement of justice.

Résumé

John Rawls et Asha Bhandary utilisent les conditions de justice définies par David Hume pour encadrer le choix de la position originale à partir de laquelle les principes de justice sont sélectionnés. Utiliser les conditions de Hume de cette manière exclut de la représentation ceux qui ne sont pas des coopérateurs à part entière, y compris les personnes qui ont besoin de soins de dépendance pendant toute la vie. Cela implique que la demande de soins de ces personnes n'est pas une revendication fondamentale de justice, mais qu'elle doit avoir une priorité nettement inférieure. Cet article soutient qu'une théorie libérale appropriée de la prise en charge de la dépendance abandonnera ce cadrage humien et traitera la demande de prise en charge de la dépendance comme une exigence fondamentale de justice.

Keywords: Bhandary; dependency care; disability; Hume; justice; liberalism; Rawls

1. Introduction

David Hume compares the 'artificial virtue' of justice to a vaulted arch in which "each individual stone would, of itself, fall to the ground" if not held in its place by all the others. Hume continues, "nor is the whole fabric supported but by the mutual assistance and combination of all its corresponding parts" (Hume, 1983b, p. 305). Like stones in a vault, each just action takes its place to mutually support and be supported by the actions of others. In a simple arch, the whole edifice will fall if one stone (or one person) fails to do its (or her) part. Everyone must contribute, or the entire

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system will fall to ruin. Because he adopts this conception of justice, Hume must exclude non-contributors from the mix. Those too weak to bear their portion of our cooperative burden simply cannot be part of the arch created by the coordination of our just actions. Those who will not or cannot contribute are a fatal weakness that will cause the arch to crumble into a disorganized heap. And once the arch falls, all bets are off. No individual stone can play its role once the others have fallen. Justice, in Hume's sense, is a shared cooperative activity that either achieves its end — cooperative benefits that no individual could produce without mutuality and coordination with others — or crumbles into disorganization (Bratman, 1992).

Following Allen Buchanan (1990), I will call this Humean view 'justice as reciprocity.' Many otherwise quite different liberal political theorists, from John Rawls (1971, 1993, 2001) to David Gauthier (1986), have incorporated elements of Hume's conception of justice, and its companion idea the doctrine of the circumstances of justice, as central pillars of liberal theory. Like Hume, Rawls identifies the circumstances of justice as the "conditions under which human cooperation is both possible and necessary" (Rawls, 1971, p. 126). When these circumstances do not obtain, no relations of justice can arise. On Hume's view, it is conceptually impossible for people to treat one another unjustly when they are not in the circumstances of justice with respect to one another. Following Hume, Rawls excludes from representation in the original position those who are non-contributors, who cannot bear their portion of the shared cooperative burden, and who therefore have no direct claim to participate in the joint benefits produced by cooperation. This makes it difficult for Rawls's theory to incorporate, as subjects of justice, persons who are unequal contributors, and non-contributors who cannot bear their reciprocal burdens and who therefore cannot claim a share of the cooperative benefits. In a Humean world, people who are permanently in need of dependent care over the course of their lifetimes must rely on the benevolence and good-will of others.

Hume was right to identify shared cooperative activity as a philosophically interesting and socially important category of human action. I will argue that Hume's use of the word 'justice' picks out a different concept from the conception of justice that embodies the best contemporary liberal view. But my argument is not with Hume, but with contemporary liberal theorists who have, I believe, too quickly incorporated aspects of the Humean view in the wrong place and in the wrong way. My targets therefore include Rawls (1971, 1993), Harry Brighouse (2001), Cynthia Stark (2007), Samuel Freeman (2013), as well as the subject of this symposium, a recent and excellent book by Asha Bhandary (2020). I will urge that Bhandary and others would do well, in the words of John Gillespie Magee, to "slip the surly bonds" of Hume. But my remarks here must be taken in the spirit of a constructive critique. I hope to help improve the views I discuss here, not to refute them.

2. Bhandary's Account of Liberal Dependency Care

In *Freedom to Care*, Bhandary shows that a strong right to dependent care can be incorporated into a liberal political theory of justice. Since the ethics and politics of care have sometimes been presented as an *alternative* to liberalism, broadly construed, Bhandary's view is an important contribution. Bhandary's arguments for

the major conclusions articulated in her project are strong and persuasive, and I share the goal to show that liberal political theory can incorporate strong protection for the right to dependent care. I will provide a critical discussion of the underpinnings of Bhandary's view, but I find myself broadly in agreement with her project. Along with work by Stark (2007), which has importantly influenced Bhandary, *Freedom to Care* ranks among the very best discussions of a liberal right to dependent care I have found in contemporary literature. In particular, Bhandary's discussion of the way existing institutions for the provision of care are distorted by sexism and racism, and the tools she develops to analyze the resultant injustice of present institutions that provide dependent care constitute a crucial contribution to contemporary literature on this important topic. Bhandary recommends, as a matter of justice, that all who require care should receive it, subject to the constraint that the efforts of caregivers must not be inappropriately conscripted. I will argue here that the resources Bhandary uses to support this goal of universal care are problematic. They are not up to the task assigned to them within her theory. But it is not Bhandary's substantive view that I question here, it is the resources she employs in support of that view, and in particular the use of Hume's doctrine of the circumstances of justice. If I do not mention other aspects of Bhandary's view in my remarks here, it is because I find the view overwhelmingly appealing, and her argument persuasive.

In my comments here I offer arguments which will, I believe, shore up support for aspects of Bhandary's substantive view. I also discuss reservations about some of the resources she marshals on behalf of that view. There is, I argue, an alternate route that leads to the same, or at least a very similar destination. I will argue that Bhandary's view incorporates a mistake that appears in early Rawls, but which he mostly left behind in his later work. This mistake involves failure to fully distinguish between reciprocity-based and subject-centered conceptions of justice. In *A Theory of Justice* (Rawls, 1971), Rawls incorporated Hume's doctrine of the circumstances of justice as a set of conditions that must be met if persons are to have reciprocal obligations of justice. On the standard interpretation of Hume's view, parts of which Bhandary endorses, individuals who lack underlying capacities that make mutually beneficial reciprocal relationships possible simply do not fall within the scope of justice. I will argue that Rawls incorporated Hume's doctrine in the wrong way, and that Bhandary and others have followed Rawls, making the same mistake. I will argue that Hume's doctrine of the circumstances of justice has no place, or at most a qualified place, in an appropriately developed account of liberal dependency care.

3. Permanent Dependency and the Doctrine of the Circumstances of Justice

Liberal political theory has not, for the most part, been structured around our vulnerability to dependency and the need for dependent care. Rawls expressly assumes that parties to the original position represent persons who are able to engage in productive cooperation over the course of a complete life, and to exercise the two moral powers. These include the power to adopt, revise, and rationally pursue a conception of justice, and the capacity for a sense of justice, which supports willingness to cooperate under fair terms. There is a common historical and methodological explanation for the exclusion of dependency: like Hume, Rawls and other contemporary contractarians

assume rough equality, and ask ‘What principles would roughly equal persons select to govern their ongoing social cooperation, from one generation to the next?’ Justice, on this Humean view, involves mutually productive cooperation, and sometimes threats and sanctions against those who might not otherwise cooperate. People who are deeply dependent on others may not be ‘players’ in the mutual-advantage games that constitute a methodological foundation in many liberal theories of justice. In defining the circumstances of justice, Hume famously specifies that “tis only from the selfishness and confin’d generosity of men, along with the scanty provision nature has made for his wants, that justice derives its origin” (Hume, 1983a, p. 495). With Rawls, we may summarize these circumstances as including moderate scarcity, moderate benevolence, and rough equality. Rawls expresses his commitment to Hume’s doctrine of the circumstances of justice in *A Theory of Justice* (Rawls, 1971), and in spite of trenchant early critique from Brian Barry (1978) among others, he seems never to have taken it back.

One might be inclined to think that a conception of justice that is essentially based on the possibility of reciprocal cooperation and threat among roughly equal persons would not constitute a good starting point if one hopes to argue that people requiring dependent care have a basic right to receive it, and that others who are in a position to provide such care have an obligation of justice to provide it. But Bhandary urges that a liberal theory of dependent care can incorporate Hume’s doctrine of the circumstances of justice without crumbling:

Contrary to a liberal assumption that caregiving occurs naturally, I claim that we receive dependency care as the result of social cooperation. Consequently, the fact that all humans are dependent on others to care for us when we are young — as well as toward the end of life (for most people) — must be included among the circumstances of justice. (Bhandary, 2020, p. 10)

I take the “assumption that caregiving occurs naturally” to refer to parental care of children, or to the common assumption that care will be provided by people who care, out of love and benevolence, or as a result of free exchange in an open market. Some liberal theories do assume that caregiving occurs naturally in this sense, though it may be a mistake to identify this as a standard assumption of liberal theories. As Bhandary points out, all human lives include periods of dependence in childhood, and most also include a period of dependence in older age. Sadly, the natural bonds of parenthood and family are insufficient to respond to all of the legitimate claims that arise in every human society. In every society, there are children who lack parents, children who have abusive and careless parents, and children whose parents are simply *not* spontaneously or naturally inclined to provide care. As Bhandary urges, every society has older people who need care that is not ‘naturally’ provided. And every society has some members who are permanent dependents, unable to participate in forms of mutually advantageous cooperation that are the core of Humean justice. Any liberal theory that treats people as self-authenticating sources of claims must recognize that these people’s needs constitute a high-priority claim against the basic institutions of society. As Bhandary rightly points out, these claims to care are claims to *be cared for* by others who also have rights and needs, and who

are also self-authenticating sources of claims. Like other rights, the right to dependent care must take its place among the competing claims of others. In circumstances of scarcity, the need for dependent aid may exceed the supply. In such circumstances, there is an obligation to ensure that needs will not be unmet. But this cannot be an excuse to violate the rights or deny the claims of providers.

Bhandary argues that our universal need for childhood care, and our near-universal need for care later in life should be incorporated among the conditions of justice, and must be taken into account by parties to the original position choice. Once they are so included, we can then explain and justify institutions that provide dependent care as a matter of mutually beneficial social cooperation, a response to this shared vulnerability. By including our human vulnerability to dependence among the circumstances of justice, Bhandary hopes to develop a conception of liberal dependency care that maintains a commitment to reciprocity, as represented by Hume's doctrine of the circumstances of justice. Like Rawls, Bhandary treats the circumstances of justice as a condition that defines whose interests will be directly reflected in the original position, and by implication, it determines the scope of the fundamental obligations and rights implied by the principles chosen from the original position.

An objection will immediately occur: while fully cooperating citizens who are, at some point in their lives, non-dependent adults will have the vulnerability Bhandary describes, other people are prevented by disability from ever being fully-cooperating citizens. If they are motivated by self-interest, as Rawls and Bhandary agree, and if their only commitment to the institutions that provide care is an interest based on reciprocity and mutual advantage, then it will be advantageous for them to develop arrangements among themselves to provide that care to other cooperators who share this common vulnerability.

But some people are dependent from the start and are never in a position to engage in relations of mutually advantageous cooperation. Under Humean and Rawlsian assumptions, it would be in the narrow reciprocity-based interest of adult cooperators to exclude permanent non-contributors from participation in the cooperative scheme they develop, since care for non-contributors, or insufficiently productive cooperators, will be costly and not fully reciprocal. A Humean framework of justice as reciprocity will require exclusion of such dependents. Reciprocity-based justice will not therefore provide support for institutions that cover universal care for all of those who need it, but only for those who fall into the need for care after being in a prior condition in which they could contribute to the care of others. Lifelong dependents — people who are permanently, throughout their lives, unable to participate in mutually advantageous cooperation governed by rules of justice — will not be in the circumstances of justice with respect to those who are represented in the original position. They will therefore lack representation at this first stage of deliberation — the selection of fundamental principles. More importantly, their exclusion from the original position implies that they are not *subjects* of justice to whom obligations of justice are owed.

It is worth noting that lifelong dependents fall into different categories, and that these different categories are relevant from the perspective of Rawls and Bhandary. Some permanent dependents are fully capable of developing and possessing the

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two moral powers. That is, with the assistance of caregivers, they have the capability to adopt, revise, and rationally pursue life plans, and can develop, over the course of life, a sense of fairness and willingness to cooperate with others when cooperative rules are fair. I assume here that possession of a sense of justice is a conditional virtue: it implies that those who have a sense of justice will be *willing* to cooperate on fair terms, not that they are presently able to do so. I believe this assumption is consistent with Rawls's account of this second moral power. In a subject-centered view, it seems clear that such persons should be fully represented in the original position, even if they lack the ability to participate in mutually advantageous cooperation. Other lifelong dependents, however, face cognitive challenges that make it impossible for them to articulate life plans. Some lack the capability to comprehend the ideas of fairness and cooperation, without which one cannot have a sense of justice. Lacking the capacity to acquire and exercise the two moral powers, can such persons receive representation in the original position? Surely such persons deserve appropriate care. Arguably, they should have a *claim* to receive care as a matter of *right*. I will argue that they should be regarded as subjects of justice to whom obligations of justice are owed.

The problem is not merely a theoretical one, since it touches on real questions about the nature of institutions that provide dependent care to those who need it. Where health insurance that supports provision of dependency care is privately provided and purchased, relatively healthy people have an interest in segregating themselves into low-risk insurance pools. They share an interest in protecting themselves against the possibility that they may become dependent, but the cost of their insurance will be significantly lower if they can exclude from participation those who are at higher risk of dependency, those who are already dependent, and especially those who are *permanently* dependent throughout the span of their lives. Hume's conception of justice as reciprocity among persons who are in the circumstances of justice leaves behind those who are in need of lifelong dependent care. Even framed within the original position, parties appear to have the same reason to *exclude* consideration for permanent dependents. Bhandary is right to insist that dependent care should be a matter of *right* not assumed as a matter of natural benevolence on the part of care providers. Those who require dependent care should be able to claim it as a matter of justice, not subject to the whim of others' charity. But this right will not flow from a conception of justice as mutual advantage, even if 'advantage' is judged from the perspective of parties to a Rawlsian original position. It will crucially depend on the description of the persons whose interests these parties are understood to represent.

The obvious remedy for this lacuna Bhandary inherits from Rawls's theory is to abandon the assumption that the parties to the original position represent the interests of persons who are roughly equal in physical and mental powers. Even adding that they share vulnerability to need dependency care early and later in life will be insufficient. Instead, the parties to the original position choice should represent the interests of all individuals whom we are to understand as self-authenticating sources of claims. If the claims of people who are permanently in need of dependent care are authentic, if they are claims of justice, and if those on whose behalf these claims are asserted are regarded as self-authenticating sources of claims, then they need to be

taken into account early in the process. To accomplish this, the Humean doctrine of the circumstances of justice would not simply be revised to include the universal vulnerability and need for dependent care, as Bhandary suggests. Instead, the Humean doctrine should be abandoned, at least as the criterion for representation in the original position choice. The original position should include representation for all members of the community of persons who are subjects of justice, who are regarded as self-authenticating sources of claims, and to whom obligations of justice are presumptively owed.

4. Can It Be Done?

I have suggested that Bhandary's account of the original position wrongly omits representation for lifelong dependents who are unable to contribute to the system of mutually advantageous cooperation created by principles of justice. It is not enough, I have argued, to urge that the parties to the original position represent persons who are *vulnerable* to dependency while otherwise capable of participation in schemes of mutually advantageous cooperation. The predicament of those dependent persons who need lifelong care raises a special problem that is not adequately addressed, even when this human vulnerability is included as a characteristic of the persons whose interests must be represented in the original position.

But can the interests of permanent dependents be represented in the original position? The problem is most pronounced for those who face cognitive challenges that make it unlikely or impossible that they could ever possess Rawls's two moral powers. How can their interests be taken into account within a Rawlsian scheme?

There are three strategies for liberal theorists to consider in this context. One strategy would be to classify those who lack the capacity for the two moral powers as *non-persons*, or to exclude them as subjects of justice. This would not necessarily exclude them from eligibility to receive dependent care, but it would exclude them from the category of subjects who have a *right* to care as a matter of justice, and perhaps would even exclude the possibility that their interests could be represented by third parties. I will not seriously consider this strategy here except to note that it has been critically discussed by others (Brighouse, 2001; Hartley, 2009; Nussbaum, 2006; Richardson, 2006; Silvers & Stein, 2007).

A second strategy is that recommended by Stark (2007), and defended by Bhandary. It involves excluding from original position representation those who are not fully cooperating citizens, including those who lack the capacity for the two moral powers, but re-introducing their interests at a later stage. The principles chosen in the original position are implemented in the articulation of constitutional essentials, including a social minimum that can require that the basic needs of all citizens must be met. Thus, Stark notes that Rawls restricts original position representation to fully cooperating citizens. As Stark explains and expands on Rawls's view, the difference principle applies only to inequalities among fully cooperating citizens. But the needs of those who are unable to fully cooperate are re-introduced at the next stage — the constitutional stage. There, a comprehensive social minimum may be introduced that will include in its scope those whose disabilities prevent them from being full cooperators.

The third strategy for inclusion of permanently non-cooperating dependents in a Rawlsian theory of justice is to urge that persons who lack the capacity for the two moral powers still have interests that can receive direct representation in a Rawlsian original position. On this view, parties to the original position not only represent the interests of fully cooperating citizens, able to possess the two moral powers, but also the needs and interests of those who are unable to fully cooperate, and even those whose challenges make it unlikely or impossible that they could possess the two moral powers.

All three of these strategies face significant problems. The first strategy is objectionable because it relegates those who are not full cooperators to an unacceptable vulnerability, and might deny their status as right-bearers altogether. Since this strategy is not defended by Bhandary or by other liberal theorists, I do not seriously entertain it here.

The second strategy, however, has notable defenders including Stark, Bhandary, Freeman, and (arguably) Rawls himself. As a Rawlsian account of dependent care, it has the virtue that it preserves features of Rawls's own view, including his account of which persons' interests are represented in the original position, and the role of the doctrine of the circumstances of justice as framing the original position. It also incorporates the constraints on the difference principle, which is understood to apply only to fully cooperating citizens. As Stark (2007, p. 139) notes, this limitation provides a convenient response to Kenneth Arrow's famous objection that the difference principle gives *too much* priority to those who are worst off. Arrow notes that "there can easily exist medical procedures which serve to keep people barely alive but with little satisfaction and which are yet so expensive as to reduce the rest of the population to poverty" if they must be allocated by the difference principle (Arrow, 1973, p. 251). As Stark understands Rawls, the difference principle applies only among fully cooperating citizens. This cuts off the possibility that those with excessive needs could constitute a black hole or bottomless pit where public resources must be allocated.

The problem with this strategy is that it discounts the interests of non-fully cooperating dependents *too much*. It implies that their claim to the care they need is not a claim of justice, but a claim of significantly weaker normative force. Bhandary, Arrow, and Stark are right to be concerned that people with expensive permanent needs might impose excessive social costs, including the burden of care imposed on those who provide it. But this can be accomplished, so I will argue, without excluding the interests of non-fully cooperating citizens from the scope of justice.

5. Justice and Permanent Dependence

The third strategy described above would eliminate the Humean circumstances of justice as a condition for representation in the original position.¹ It would forgo the

¹ This third strategy has been defended, in various incarnations, by Nussbaum (2006), who abandons many substantial features of the Rawlsian framework, by Richardson (2006), who defends most non-Humean core elements of the Rawlsian view, and by Hartley (2009). Like Richardson, Hartley retains core elements of Rawls's view, but still restricts obligations of justice to those capable of social reciprocity. Thus, she relinquishes the view that only those who possess Rawls's two moral powers are subjects of

assumption that parties to the original position rationally represent the interests of fully cooperating citizens, and require that they represent the interests of *all* citizens, including permanent dependents. Stark and Bhandary note that this is clearly not Rawls's view. For many reasons, it might seem the least appealing alternative available. Can the interests of persons who do not and perhaps cannot possess the two moral powers be represented in the original position? Will inclusion of people with a profound need for dependent care render a theory of justice vulnerable to Arrow's objection that Rawls's theory gives excessive weight to the predicament of those who are worst off? On a closely related note, does this third strategy, by reducing the role of reciprocity at the first stage of analysis, render caregivers vulnerable to excessive burdens? Would the resultant theory effectively protect *their* interests as self-authenticating sources of claims who have a right to their own lives? In this section, I will address some of the difficulties this suggestion must overcome.

The first problem involves the imaginative leap required to represent the interests of lifelong dependents, especially dependents whose cognitive challenges may render them permanently unable to adopt, rationally revise, and pursue a conception of the good, and to cooperate with others on fair terms. If it is difficult to imagine ourselves in the lives of people who require lifelong care, is it reasonable to suppose that parties to the original position will be able to effectively represent their interests? But this problem is not peculiar to the third strategy. Indeed, it arises for any theory that hopes to provide people who face cognitive challenges with appropriate care that responds to their needs and interests, whether they are lifelong dependents or early/late-in-life dependents. We may inadequately understand people's needs, and may misinterpret their interests, but any theory that requires care will require that their needs be interpreted as well as they can be, and that we provide care that reflects our best understanding of their interests and needs. Any description of the task assigned to the parties to the original position choice will require that they interpret the needs of those they represent. Expanding the pool of those whose interests must be taken into account is not, I submit, an impossible stretch.

The second problem involves the positive role of reciprocity and mutual cooperation. Maintaining the Humean role for reciprocity, as Rawls and Bhandary both do, might seem to be necessary for a theory that aims to qualify the obligation to provide care with a requirement of respect for the rights of caregivers. Bhandary emphasizes that the obligation to provide care must be limited by the legitimate claims of caregivers, whose lives matter, and who are also understood to be self-authenticating sources of claims. In a society like our own, where the social obligation to provide care is distorted by racist and sexist norms and social expectations, Bhandary's emphasis on the claims of caregivers is especially important.

But there is a difference between *reciprocity* and *conflict of claims*. Respect for caregivers requires recognition of the prospective conflicts between their valid claims and

justice, but does not move to a fully subject-centered conception. Like Richardson, I here leave somewhat vague the specific account of precisely which characteristic renders an individual an appropriate subject to whom duties of justice can be owed. The view defended here is that all individuals with interests that can be represented (non-metaphorically) by a guardian *ad litem*, and who are properly regarded as *self-authenticating sources of claims* are subjects of justice. A full defence of this view will require more than can be provided in this brief comment.

the competing claims of those who require dependent care. Bhandary is right to urge that both must receive proper weight in the context of public deliberation. But the original position is *designed* to be an idealized context for evaluating the competing claims of citizens who will have different interests and needs. The parties to the original position, as described by Rawls, are to find principles of justice that reflect the second-order interests of those they represent, in particular, their interest in having the ability to pursue their conception of the good, regardless of the specific content of that conception. Like others who receive representation in an appropriately devised original position, permanent dependents also have this second-order interest. They have a *good* to be protected, and there are different conceptions of the good that they might wish to pursue. Even in extreme cases, their interests are not so obscure that they cannot be represented in the real world, for example, by a guardian *ad litem*. This alone should be enough to show *a fortiori* that their interests might be taken into account in an appropriately described original position choice. If those in need of permanent care are regarded as self-authenticating sources of claims, then their claim to care should receive its proper consideration in the articulation of the requirements of justice, and as claims on the basic institutions of society. They should take their place among the competing claims of others, which must be sorted out in the original position choice.

This change in the description of the original position might have radical implications: it might impose qualification on the difference principle itself, or on the relative priority given to principles selected in the original position. But Rawls himself considers the possibility of such a qualification in *Political Liberalism* (Rawls, 1993) when he considers important aspects of the principles of justice that are simply left out of the earlier statement of that theory given in *A Theory of Justice* (Rawls, 1971). Noting one important omission, he writes, "In particular, the first principle covering the equal basic rights and liberties may easily be preceded by a lexically prior principle requiring that citizens' basic needs be met, at least insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise those rights and liberties" (Rawls, 1993, p. 7). A lexically prior needs principle would not be a trivial addition. As described here, this prior principle would require satisfaction of those needs necessary to exercise the first principle's rights and liberties. It will not be possible for *some* permanent dependents to exercise these rights and liberties, and for others, the cost of answering needs that would facilitate this exercise might be heavy. Thus, we are led to the third major problem facing the proposal under consideration.

The third problem is closely related: people needing lifelong care require significant help from others. If their claim to care is reflected in the principles of justice, there is reason for concern that their needs will swamp other claims (Arrow, 1973). Rawls's theory may be interpreted to require that *all* resources be allocated to a small number of people who are worst off. Arrow's concern is that Rawls's theory, and the difference principle in particular, will require too much.

However, Arrow's objection applies expressly to the interpretation of the difference principle, not to the structure of the original position. The original position is *ideal* for arbitrating among competing claims for resources, and the parties to the original position would of course select principles that would not 'give up too much' on behalf of those they represent. A principle that places unacceptable burdens on caregivers,

denying their status as self-authenticating sources of claims, would be rejected as surely as would a principle that predominantly allocates caregiving burdens according to racist or sexist criteria. Elsewhere, Rawls describes the purpose to be achieved by wealth and saving; he says that the goal is “just basic institutions for a free constitutional democratic society ... and to secure a social world that makes possible a worthwhile life for all its citizens” (Rawls, 1999, p. 107). All reasons for thinking that a principle of justice would fail to achieve freedom and ‘worthwhile lives for all’ are reasons to think that that such a principle would be rejected by parties to the original position. Allocating *all* resources to the neediest would be unjust, because it would fail to give proper weight to the competing claims of others. For the same reasons, allocating care in a way that imposed excessive burdens on caregivers would be unjust because such treatment is inconsistent with the claims of those who provide care. These are serious concerns, and they are good reasons to reject Arrow’s interpretation of the difference principle. Perhaps they partly explain Rawls’s comments about the addition of a needs principle in *Political Liberalism* (Rawls, 1993, p. 7 and p. 228). However, the problems they represent arise even under the standard understanding of Rawls’s view in which Hume’s circumstances of justice constrain the original position. They need to be addressed whether or not Hume’s conditions of justice are abandoned, and representation in the original position is expanded to include those who are in need of permanent dependent care.

The view that Humean conditions of justice should be dropped as a condition for representation in the original position may seem radical and perhaps counterintuitive. However, in other contexts, Rawls is rightly careful to provide a context for rational self-interest and reciprocity. The idea that ‘the reasonable frames the rational’ embodies the thought that self-interest and reciprocity must be constrained by the artifice of the original position, not the other way around. The veil of ignorance is a powerful representational tool because it deprives self-interested agents of the ability to pursue personal self-interest without taking the interests of others into account. We get this ordering backwards if the rational frames the reasonable — that is, if we use Hume’s conditions of justice as a condition for representation in the original position, and thus to exclude from the outset those in need of permanent care.

I began with Hume’s metaphor of justice as a vaulted ceiling in which each stone provides support for those around it. This image raises fears that the inclusion of some who are unable to carry a load, who are unable to function as fully cooperating or even as minimally cooperating members of society, might cause the entire edifice to fall to ruin. I have argued that the structure of justice is less fragile than Hume’s metaphor would imply: we can include those in need of permanent care at the first stage of analysis, as full members of society whose claim to needed care takes its place among the claims of other self-authenticating sources of claims. It is worth reflecting, in this regard, that when the vaulted ceiling of the cathedral of *Notre Dame de Paris* was compromised during the recent fire, many individual stones fell to the floor of the sanctuary. In spite of this, most of the vault maintained its integrity. Some of the stones were, in effect, non-contributing or not-necessarily contributing elements of the vault.

Like the vaulted ceiling of a cathedral, the social edifice of justice is far less fragile and precarious than Hume’s metaphor would imply. It will not collapse because of

the inclusion, even at the most basic level, of the claims of people in need of permanent dependent care. We can of course imagine less favourable circumstances than our own. If the claims of those in need of dependent care are weighty, if the proportion of people who require this care is large, it may become impossible to maintain the integrity of the system while providing for all needs. Rawls certainly contemplated the predicament of burdened societies that are too poor to support necessary institutions of justice (Rawls, 1999, p. 106). He recommended, for such societies, that they introduce a system of intergenerational saving so that future generations might not face the same tragic choices. Perhaps we are not burdened in the sense Rawls had in mind: our failure to provide appropriate care appears to be a problem of injustice, not inadequate resources.

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