

## 11. FAIR EQUALITY OF OPPORTUNITY: JOHN RAWLS' (BEST) FORGOTTEN PRINCIPLE

LARRY A. ALEXANDER  
UNIVERSITY OF SAN DIEGO

**ABSTRACT.** Although discussions of John Rawls' *A Theory of Justice* generally refer to Rawls' two principles of justice, and although Rawls himself labels his principles "the two principles of justice", Rawls actually sets forth three distinct principles in the following lexical order: the liberty principle, the fair equality of opportunity principle, and the difference principle. Rawls argues at some length for the priority of the liberty principle over the other two. On the other hand, Rawls offers hardly any argument at all for the priority of the fair equality of opportunity principle over the difference principle. In this article I will argue that making the fair equality of opportunity principle separate from and lexically prior to the difference principle is both intuitively unattractive and inconsistent with Rawls' method of deriving principles of justice from the choices of rational contractors in the original position.

### INTRODUCTION

Although discussions of John Rawls' *A Theory of Justice*<sup>1</sup> generally refer to Rawls' two principles of justice, and although Rawls himself labels his principles "the two principles of justice", Rawls actually sets forth three distinct principles. The first principle--the liberty principle--requires equal rights to the most extensive total system of equal basic liberties.<sup>2</sup> The second principle has two parts:

Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.<sup>3</sup>

Because Rawls makes the second part--fair equality of opportunity--lexically prior to the first part--the difference principle--Rawls has in fact set forth three principles of justice in the following lexical order: the liberty principle, the fair equality of opportunity principle, and the difference principle.<sup>4</sup>

Rawls argues at some length for the priority of the liberty principle over the other two. His argument consists in stating the societal conditions and psychological assumptions that would lead his rational

contractors in their original position to choose the priority of the liberty principle rather than Rawls' general conception of justice, in which all primary goods, including liberty, can be traded for other kinds of primary goods, such as income.<sup>5</sup> Although commentators have vigorously attacked Rawls' argument for the priority of liberty on the grounds that Rawls' notion of a system of liberties to be maximized is unclear, that his separation of liberties from other primary goods such as opportunities and wealth erroneously assumes a clear conceptual boundary, and that his psychological assumptions regarding the willingness to trade liberties for other primary goods are dubious, Rawls' failure to satisfy his critics on these scores is not due to inattention to the argument for the priority of liberty within or without *A Theory of Justice*.

On the other hand, Rawls offers hardly any argument at all for the priority of the fair equality of opportunity principle over the difference principle. Indeed, there are really only two brief passages in Rawls' entire book that present arguments for that priority.<sup>6</sup>

In this article I will argue that making the fair equality of opportunity principle separate from and lexically prior to the difference principle is both intuitively unattractive and inconsistent with Rawls' method of deriving principles of justice from the choice of rational contractors in the original position, at least without making implausible psychological assumptions. Although I will concentrate solely on Rawls' theory, the importance of my arguments, if successful, does not stem solely from the importance of Rawls' work, though that work is indeed important. Equality of opportunity is a very powerfully charged political slogan in our society, one with which practically everyone desires to affiliate, though with different meanings. Yet one of the implications of my attack on Rawls' version of equality of opportunity may be that equality of opportunity, *viewed as it tends to be as but one principle within a more general program for justice*, is either incoherent, arbitrary, or normatively unattractive.<sup>7</sup> If that implication is correct, such issues as merit hiring versus affirmative action, or how to allocate the education budget, will have to be resolved on grounds other than which resolution is faithful to equality of opportunity.

## I

The fair equality of opportunity principle requires that those who have equivalent natural talents and abilities, and who have the same willingness to use them, should have the same prospects for success, irrespective of into where in the social system they are born.<sup>8</sup> The fair equality of opportunity principle goes beyond a system of natural liberty, in which careers are merely legally open to talents,<sup>9</sup> and requires that those of equal talents and motivation have equal opportunities. Redistribution of wealth in the form of free education (and perhaps health care<sup>10</sup>) is thus entailed by the principle of fair equality of opportunity, but not by a system of natural liberty.<sup>11</sup>

What are Rawls' arguments for the priority of the fair equality of opportunity principle? There are only two passages in *A Theory of Justice* devoted to the question, and they are brief and more suggestive than demonstrative. At one point Rawls writes:

First, though, I should note that the reasons for requiring open positions are not solely, or even primarily, those of efficiency. I have not maintained that offices must be open if in fact everyone is to benefit from an arrangement. For it may be possible to improve everyone's situation by assigning certain powers and benefits to positions despite the fact that certain groups are excluded from them. Although access is restricted, perhaps these offices can still attract superior talent and encourage better performance. But the principle of open positions forbids this. It expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them. They would be justified in their complaint not only because they were excluded from certain external rewards of office such as wealth and privilege, but because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties. They would be deprived of one of the main forms of human good.<sup>12</sup>

Three pages later Rawls writes:

Suppose that law and government act effectively to keep markets competitive, resources fully employed, property and wealth (especially if private ownership of the means of production is allowed) widely distributed by the appropriate forms of taxation, or whatever, and to guarantee a reasonable social minimum. Assume also that there is fair equality of opportunity underwritten by education for all; and that the other equal liberties are secured. Then it would appear that the resulting distribution of income and the pattern of expectations will tend to satisfy the difference principle. . . . It is evident that the role of the principle of fair equality of opportunity is to insure that the system of cooperation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range.<sup>13</sup>

Neither of these passages amounts to argument as opposed to assertion. The first contains a very subtle hint that compromises of fair equality of opportunity are unjust because losses of opportunities are not compensated for by gains in wealth and income. Of course, if that were the case, the difference principle itself, which requires social and economic inequalities to be justified by maximizing the welfare of the least advantaged, would be violated by the inequality of opportunity. Thus, the first passage suggests that *no loss of equality of opportunity, no matter how slight, can ever be justified by increases in income and wealth, no matter how great!* As we shall see, given the way Rawls defines fair equality of opportunity, which equalizes the position of those with equal natural talents but does not compensate for inequalities of natural talents, the suggestion is totally implausible.

The second passage suggests that the liberty and fair equality of opportunity principles, if followed, will tend to guarantee compliance with the difference principle. There are two problems with the suggestion. First, Rawls states conditions in addition to the two principles nec-

essary for assuming maximization of the position of the least advantaged. Thus, Rawls talks about insuring competition, full employment, and a reasonable social minimum. Yet he does not make these conditions into independent principles with lexical priority over the difference principle, as he does with the fair equality of opportunity principle. Second, the lexical priority of the fair equality of opportunity principle over the difference principle makes sense only if the two principles can conflict; but in the passage under consideration the former principle is seen as a guarantor of the latter principle, not as a superior competitor.

One must conclude, therefore, that the brief arguments Rawls puts forward in *A Theory of Justice* for the priority of the fair equality of opportunity principle are by themselves unsatisfactory. There are even indications in the book that Rawls is uncertain about the priority of the principle and would be willing to modify or abandon it if, for example, it required abolishing the family.<sup>14</sup>

## II

What are the consequences of accepting the priority of the fair equality of opportunity principle over the difference principle? The basic consequences are: (1) equality of opportunity may not be traded for increases in income and wealth, no matter how insignificant the inequality of opportunity and how great the gains in income and wealth; (2) any inequalities of opportunity must be justified by an increase in total opportunity to those with the lesser opportunity. The two consequences follow from Rawls' second priority rule, which not only makes the fair equality of opportunity principle lexically prior to the difference principle, but also allows inequality of opportunity if such inequality will "enhance the opportunities of those with the lesser opportunity".<sup>15</sup>

Why would the rational contractors in Rawls' original position seek to maximize the minimum level of opportunities available rather than to maximize the least desirable bundle of income, wealth, and opportunities? Put differently, why would the rational contractors place opportunities lexically prior to income and wealth?<sup>16</sup> There are two ways of looking at this question. One is to focus on the equality part of Rawls' principle, the other is to focus on the opportunity part. Neither way produces a satisfactory answer.

### 1.

If we look at Rawls' statement of and commentary on the fair equality of opportunity principle--"Social and economic inequalities are to be arranged so that they are . . . attached to offices and positions open to all under conditions of fair equality of opportunity" (and momentarily disregard his second priority rule that allows inequalities of opportunities that maximize the opportunities of those with the fewest opportunities), the emphasis is clearly in *equalizing* the competitive positions of those with the same natural talents and the same willingness to use them. Stated simply, the idea is that if A and B each have the same inborn ability to be physicians and the same willingness to be physicians, but A, born wealthy, has been able to pay for medical training and B, born poor, has not, B should be given free medical training up to the point where A's wealth no longer is an advantage to

A in the competition for medical positions. Would the rational contractors accept such a principle as lexically prior to the difference principle?

- a. At the outset it is unclear how Rawls would treat the following kind of case under his fair equality of opportunity principle.<sup>17</sup> Both A and B have the same ability to handle the job of chief neurosurgeon at a Fargo, North Dakota, hospital, but A lives in Bismark and B lives in Juneau, Alaska. Because of the interviewing costs, A is at a competitive advantage over B for the position. If there is no comparable job in Alaska for which B would be at a competitive advantage because of interviewing costs, must the government, perhaps at outrageous costs in income, see that interviewing opportunities as well as talents are equalized for those of the same inborn abilities in order to comply with Rawls' principle? Would such a reading of the principle be acceptable to Rawls' contractors? Is such a reading intuitively plausible? (Note: similar questions can be raised about the characteristics that function as imperfect but efficient proxies for talent, including perhaps race and sex.)
- b. Assuming Rawls can give a satisfactory account of how to handle the various factors that might place A and B in different competitive positions despite their same inborn abilities and their equal development of those abilities, we come to two further problems. Rawls' principle requires equal opportunity for those with equal willingness to make an effort in the same way as he regards other talents and abilities--as the product of undeserved endowment in the morally arbitrary natural lottery and/or undeserved social circumstances.<sup>18</sup> It is therefore unclear why Rawls' contractors would be so concerned to equalize chances for those with equal inborn talents only if they possessed an equal willingness to employ those talents. If A and B have equal talents, but A, due to a favorable family situation, has developed a willingness to make a greater effort than B, why must not society spend whatever resources it takes to increase B's willingness to make an effort until it equals A's? Alternatively, why must not society forbid employers to take account of A's superior willingness to make an effort? Of course, either alternative may be terribly expensive; but then that's what making equal opportunity lexically prior to income and wealth is all about.
- c. The argument in the preceding section suggests an even more extreme possibility. The fair equality of opportunity principle only requires equalizing the competitive positions of those with equal inborn abilities. But why stop there? Why not equalize the competitive positions of those with *unequal* inborn abilities? After all, inborn abilities are as morally arbitrary for Rawls as the extent of their development.<sup>19</sup> Of course, society might have to make ridiculous sacrifices in income and wealth in an attempt to equalize everyone's abilities. But if equal opportunity is to be regarded as lexically prior to income and wealth, the sacrifice must be made. If such a sacrifice seems both intuitively unacceptable and also implausible from the standpoint of Rawls' contractors, why cannot the same be said of the sacrifices required by the half-hearted egalitarianism of the fair equality of opportunity principle?

(Rawls might reply to these and other examples that I shall present that his principle of fair equality of opportunity applies only to "sectors" of society, ruling out the effect of social class on the opportunities of the similarly endowed and motivated but ruling out nothing more.<sup>20</sup> This ploy for averting the difficulties of individual cases has been attacked widely and well by others.<sup>21</sup> In any event, I can ignore it, for the point of my examples can be made using broad social classes and "representative persons" rather than individuals. Suppose, for example, that a representative person from the lowest social class possesses less inborn ability and less willingness to work than representatives of the higher classes. If ability and willingness to work are morally arbitrary endowments, then why should equality of opportunity take them, but not the effects of income and wealth, as givens? Put somewhat differently, why is Rawls concerned with the opportunities of the lowest economic class rather than the opportunities of the lowest class in terms of abilities or the lowest class in terms of willingness to work? Although the examples I use refer to individuals, my points can be made quite easily with representatives of social classes.)

- d. If Rawls can answer the objections of the previous sections, he still must answer the primary question of why the equality mandated by his fair equality of opportunity principle is so important as to be lexically prior to the difference principle for the distribution of income and wealth. Consider a situation in which there are two relevant positions--a position requiring great skill and a menial position. There are two persons to fill those positions, A and B, persons who happen to have equal natural talent but whose circumstances have left A much better qualified for the skilled position. Without Rawls' fair equality of opportunity principle, but instead operating only with Rawls' difference principle, society would probably award the skilled job to A. It might then distribute income or other benefits to B to compensate him for his having a menial job. Its aim would be to maximize the value of the least valuable package of job, income, and other benefits. With the fair equality of opportunity principle, society would have to spend resources on educating B up to A's level. At that point, each would have a 50% chance at the skilled and menial jobs. Suppose B wins the skilled job. He and A have now switched roles from those of the previous example, but with this difference: the resources used to educate B are no longer available to compensate A for his menial job. The worse off person, whether A or B, must perforce be worse off than without the fair equality of opportunity principle, *since the same two jobs must be filled, but with less income to the jobholders.*<sup>22</sup>

Rawls might say that the second situation only appears inferior to the first. Although the jobs are identical, and the income in the second situation is lower, the second situation has equality of opportunity, which more than compensates for the loss of income. If, however, equality of opportunity does not translate into better jobs or income for the worse off, it is difficult to understand why Rawls' rational contractors in the original position would value it.<sup>23</sup>

The basic problem with the priority of the fair equality of opportunity principle over the difference principle is one that Rawls' own argument suggests. The fair equality of opportunity principle standing by itself represents what Rawls calls the "liberal equality" conception of justice.<sup>24</sup> Rawls declares it to be intuitively defective because, "even if it works to perfection in eliminating the influence of social contingencies, it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents."<sup>25</sup> Rawls therefore supplements it with the difference principle, which is to mitigate the arbitrariness of the national lottery.<sup>26</sup> Rawls argues at great length both for the intuitive attractiveness of the difference principle and for its being chosen by his rational contractors behind their veil of ignorance, thus attempting to demonstrate that it is a principle we hold in "reflective equilibrium."<sup>27</sup> Yet Rawls inexplicably makes the principle subordinate to the fair equality of opportunity principle, which he recognizes to be an inadequate principle of justice by itself, and which the preceding examples show: (1) may quite frequently conflict with the difference principle, and (2) represents only one arbitrary stopping point among the indefinite number conceptions of equality of opportunity between natural liberty and the difference principle.<sup>28</sup>

## 2.

Looking at Rawls' fair equality of opportunity principle and its lexical priority with an emphasis on *equality* leaves the principle and its priority unjustified. But there is another possible emphasis in looking at the principle, and that emphasis is on *opportunity*. The emphasis is warranted by Rawls' allowance of inequalities of opportunity where such inequalities "enhance the opportunities of those with the lesser opportunity". Rawls' idea is that "fair" equality of opportunity is not strict equality of opportunity. It is, rather, a "difference principle" notion of equality of opportunity, one that requires maximizing the opportunities of the worst off class (defined in terms of opportunities).

It is not clear how Rawls imagines a difference principle with regard to opportunities, as opposed to wealth and income, would work. Perhaps the idea is this: At some point, raising B to competitive equality with A, who has similar inborn talents, becomes so costly in terms of societal resources that the number of opportunities for those with the fewest opportunities is less than what it could be were equality not pursued. This fair equality of opportunity principle, if interpreted to bar any inequality among those of similar talents, would surely require a massive expenditure of resources on training; and additionally, or perhaps alternatively, it might require limiting the private educational expenditures of the wealthy and perhaps abolishing the family. The costs of such measures might result in a reduction of the total number of opportunities available to the least talented persons in society.

If Rawls is concerned with maximizing the opportunities among those with the fewest opportunities, two questions remain: How are we to understand the idea of maximizing opportunities, and is the idea one that would lead the rational contractors in Rawls' original position to give maximizing the minimum number of opportunities priority over the difference principle applied to income and wealth?

- a. One conception of maximizing the minimum number of opportunities begins by assuming a fixed number of possible positions in the society. Thus, in a society of three persons, A, B, and C, there are three possible positions: menial, skilled, and managerial. A and B have similar inborn talents, though A is wealthier and has developed his talents to a greater extent through private tutoring. C is less talented than A or B. If nothing were done to change this situation, A would have three opportunities (he could handle all three jobs), B would have two opportunities (he could handle the menial and skilled jobs), and C would have one opportunity (menial). If B were to be educated at public expense up to A's level, as the fair equality of opportunity principle would seem to mandate, he and A would each have three opportunities, and C would have one. (The fair equality of opportunity principle, with the emphasis on *equality*, leaves C untouched, since only B, not C, has inborn talents equal to A's.) On the other hand, if B were not equalized with A, the resources saved might be sufficient to raise C to B's level of skill, despite C's lesser inborn ability. The refusal to follow the fair equality of opportunity principle thus would lead to increasing the opportunities for C, the worst off.

The problem with this approach, if this is how Rawls wishes us to proceed, is that it can be carried to an absurd result. Thus, additional resources might be spent--or limitations might be placed on the amount A benefits from his favorable family and financial circumstances--to equalize B and C with A. Now all three will have three opportunities, an improvement in the number of opportunities for the least advantaged relative to the situation where only B and C were equalized. Of course, the drain on resources to produce this equality might drastically lower the quality of the opportunities available at the same time it increases the number of those opportunities for the least advantaged. Thus, the positions--menial, skilled, and managerial--might be transformed into very menial, menial, and semi-skilled. And the income attached to those positions might be greatly reduced. But such appears to be the mandate of maximizing the opportunities of the least advantaged, at least against a background of a fixed number of positions.

- b. It appears, therefore, that we must understand maximizing the opportunities of the least advantaged in some way that does not involve a fixed number of positions. For with a fixed number of positions, inequalities of opportunities never improve the opportunities of the least advantaged numerically as much as equality of opportunity for all persons, and equality of opportunity for all would have such drastic effects on the quality of the opportunities and on income that rational contractors would surely reject it.

Perhaps, then, we should understand opportunities in the sense that one's opportunities are increased if one has increased career flexibility, not just among pre-defined positions, but also in terms of the ability to modify and create positions. Thus, in our three position society, a person who is trained for both the skilled and the menial positions has fewer opportunities than the person who is trained only for the menial but not the skilled po-



sition, but who is also trained as an artist, a singer, and an auto racer, positions that will replace the menial position as the third social position if the person chooses one of those careers rather than the menial position.

- i. If we adopt this notion of what Rawls might mean in referring to increasing opportunities, we must then confront the following problem. As we spend resources to educate people liberally so that they are quite flexible and can pursue a variety of careers, we forgo the opportunity to use those resources to educate people to excellence in a more limited number of careers. Thus, we have to choose between educating a person to be an excellent doctor and educating her to be either a mediocre pianist or a mediocre electrician. Which choice will maximize the opportunities? Is that question even meaningful, as opposed to the questions, Which choice will maximize her income?, or Which choice will maximize her self-respect and her satisfaction? If the quality as well as quantity of opportunities counts in determining whether opportunities have been maximized--and Rawls actually uses the word "enhance" rather than "maximize"--then determining when opportunities have been maximized or whose opportunities are greater will prove impossible. It is not that sets of opportunities cannot be compared according to some metric (such as utility). For example, one can compare the opportunities of the excellent doctor and the mediocre but more flexible pianist/electrician in terms of whose opportunities are the more lucrative, or whose opportunities are the more satisfying, and so forth. What one cannot do is compare them in terms of whose opportunities are "greater" *sans phrase*.
- ii. Additionally, as we spend resources on education, we dry up resources that provide the supporting technology and the consumer demand for various careers. How do we compare the opportunities of the highly skilled doctor who lacks the sophisticated equipment he has been trained to use and the patients he has been trained to use it on with the less skilled plumber who has plenty of customers and all the equipment he is capable of using? Again, asking whose opportunities are "greater" *sans phrase* appears meaningless.
- iii. The rational contractors in the original position would not choose to maximize their career flexibility at the expense of income and wealth, even if we assume, as Rawls does in arguing for the lexical priority of liberty, a minimum level of income and wealth. The rational contractors would, of course, be concerned with their status as producers as well as their status as consumers. But for Rawls to show that they would seek at a certain level of wealth to forgo the pursuit of wealth and pursue only the goal of increasing career opportunities in terms of numbers or quality requires support from psychological theory, support Rawls fails to provide, more likely because it is not available. Rawls' argument for the Aristotelian principle, which, if correct, might support the rational contractors' general preference for careers demanding maximum virtuosity over additional wealth once a certain

minimum level of wealth has been attained, would not support the total priority of opportunities over wealth.<sup>29</sup> Moreover, Rawls neither proves the Aristotelian principle nor links it with the lexical priority of fair equality of opportunity.

### III

Rawls has advanced no good argument for the lexical priority of his fair equality of opportunity principle or its internal difference principle. Indeed, he has given no reason why his rational contractors would even choose such a principle as a principle independent of, much less prior to, the general difference principle. The latter principle is sufficient if it assigns the appropriate values to increases in both the range of skills and levels of skill, so that bundles of opportunities, income, and wealth can be compared to determine the least advantaged, the next least advantaged, and so forth. Of course, one will need a unit of measurement that permits interpersonal comparison and in addition permits weighing opportunities against wealth, and that in turn may require a return to something like an interpersonal utility comparison, with all of its problems.<sup>30</sup> But then Rawls never really gets around that problem anyway.

### ENDNOTES

<sup>1</sup> J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) (hereinafter referred to as *Rawls*).

<sup>2</sup> *Ibid.*, 302.

<sup>3</sup> *Ibid.*, 302.

<sup>4</sup> *Ibid.*, 302-03.

<sup>5</sup> *Ibid.*, 541-48.

<sup>6</sup> Rawls likewise ignores the need to argue for the priority of the fair equality of opportunity principle and the need to clarify it in his work subsequent to *A Theory of Justice*. See "Social Unity and Primary Goods", in A. Sen and B. Williams, ed., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), 159-85; "The Basic Liberties and Their Priority", in S. McMurrin, ed., *The Tanner Lectures on Human Values III* (Cambridge: Cambridge University Press, 1982), 1-87; "Kantian Constructivism in Moral Theory", *Journal of Philosophy* 77 (1980), 515-72; "The Basic Structure as Subject", *American Philosophical Quarterly* 14 (1977); 159-65; "Fairness to Goodness", *Philosophical Review* 84 (1975), 536-54.

<sup>7</sup> See Westen, "The Concept of Equal Opportunity", *Ethics* 95 (1985), 837-50; Williams, "The Idea of Equality", in B. Williams, *Problems of the Self* (Cambridge: Cambridge University Press, 1973), 230-49.

<sup>8</sup> *Rawls*, *supra* note 1, at 73.

<sup>9</sup> *Ibid.*, 72.

<sup>10</sup> See Daniels, "Health-Care Needs and Distributive Justice", *Philosophy and Public Affairs* 10 (1981), 146-79.

<sup>11</sup> Rawls, *supra* note 1, at 73.

<sup>12</sup> *Ibid.*, 84.

<sup>13</sup> *Ibid.*, 87.

<sup>14</sup> *Ibid.*, 299-302, 511-12.

<sup>15</sup> *Ibid.*, 303.

<sup>16</sup> To begin with, Rawls does solve one problem by placing opportunities lexically prior to income and wealth. He avoids having to rank various bundles of income, wealth, and opportunities and thus having to find a unit of measurement in terms of which opportunities on the one hand and income and wealth on the other are commensurable. Rawls attempts to skirt the bugaboo of utilitarianism--the interpersonal comparison of utility--by having his rational contractors seek to maximize, not satisfaction or utility, but primary goods. *Ibid.*, 90-95. The idea of primary goods--goods such as liberties, opportunities, income, and wealth that any rational person would want no matter what his conception of the good (*Ibid.*, 62)--not only avoids interpersonal comparisons of utility, but it also avoids the drain on resources caused by those whose handicaps, say, cause them to get low utility yields from resources. Of course, one might deem this latter aspect of the use of primary goods a weakness in Rawls' theory rather than a strength if one assumes that Rawls' rational contractors would be much more concerned about ending up worst off in terms of satisfaction (perhaps because of handicaps) rather than worst off in terms of primary goods. (Rawls' recent attempts to deal with this problem are unsuccessful, in my opinion. See, e.g., Rawls, "Social Unity and Primary Goods", *supra* note 6.)

<sup>17</sup> All of my examples are micro rather than macro-level ones. I hold with Nozick that any attempt to discredit them on that ground is wrong-headed. R. Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), 204-07.

<sup>18</sup> Rawls, *supra* note 1, 74.

<sup>19</sup> *Ibid.*, 15, 73-4, 100-04, 311-12.

<sup>20</sup> See *Ibid.*, 74, 301.

<sup>21</sup> See, e.g., Nozick, *supra* note 17, 190; Fishkin, "Justice and Rationality: Some Objections to the Central Argument in Rawls' Theory", *American Political Science Review* 69 (1975), 615-29, 623-24.

<sup>22</sup> Equality of opportunity could also be attained by allowing *only* menial jobs, jobs for which A and B were equally qualified. The equalizing resources would thus be "spent" on forgoing the wealth more demanding jobs could produce rather than on educating the less skilled up to the level of the more skilled. Cf. Wikler, "Paternalism and the Mildly Retarded", *Philosophy and Public Affairs* 8 (1979), 377-92.

<sup>23</sup> Rawls himself rejects equalizing income and wealth in favor of maximizing the income and wealth of the least advantaged on the ground that preference for the former could only be based on envy, a motive he denies his rational contractors. *Rawls, supra* note 1, 143, 530-41.

<sup>24</sup> *Ibid.*, 73.

<sup>25</sup> *Ibid.*, 73-4.

<sup>26</sup> *Ibid.*, 74. See also M. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), 68-77.

<sup>27</sup> *Rawls, supra* note 1, 48.

<sup>28</sup> See authorities cited in note 7 *supra*.

<sup>29</sup> *Rawls, supra* note 1, 424-33.

<sup>30</sup> It might appear that Rawls' contractors would reject the priority of the fair equality of opportunity principle solely on the ground that the difference principle applied to wealth can achieve the same results by itself. Thus, after providing for food, housing, clothing, and other necessities, a member of the worst off class in terms of wealth can, *if he desires*, devote the entire remainder of his wealth to education and other means for increasing opportunities. Since his wealth has presumably been maximized by the difference principle, so have his opportunities.

The problem with this argument is that education, like wealth, is a good that varies from individual to individual in terms of benefit per each dollar spent. A might have to spend two dollars for a given increase in his skill while B might have to spend only one dollar for the same increase. For that reason, opportunities, income, wealth, and all other determinants of welfare must be lumped together and translated into interpersonally comparable units of welfare to determine how well off individuals are on a comparative basis.