

# Rawls and the Forgotten Figure of the Most Advantaged: In Defense of Reasonable Envy toward the Superrich

JEFFREY EDWARD GREEN *University of Pennsylvania*

*This article aims to correct the widespread imbalance in contemporary liberal thought, which makes explicit appeal to the “least advantaged” without parallel attention to the “most advantaged” as a distinct group in need of regulatory attention. Rawls’s influential theory of justice is perhaps the paradigmatic instance of this imbalance, but I show how a Rawlsian framework nonetheless provides three justifications for why implementers of liberal justice—above all, legislators—should regulate the economic prospects of a polity’s richest citizens: as a heuristic device for ensuring that a system of inequalities not reach a level at which inequalities cease being mutually advantageous, as protection against excessive inequalities threatening civic liberty, and as redress for a liberal society’s inability to fully realize fair equality of opportunity with regard to education and politics. Against the objection that such arguments amount to a defense of envy, insofar as they support policies that in certain instances impose economic costs on the most advantaged with negative or neutral economic impact on the rest of society, I attend to Rawls’s often overlooked distinction between irrational and reasonable forms of envy, showing that any envy involved in the proposed regulation of the most advantaged falls within this latter category.*

## OVERCOMING LIBERALISM’S BLINDNESS TO THE “MOST ADVANTAGED”

Contemporary liberal philosophies are guided by the fundamental premise of free and equal citizenship as the foundational framework for thinking about justice. Although the commitment to free and equal citizenship might seem to preclude any class-based differentiation among the citizenry, in fact liberal philosophies frequently appeal to some notion of the *least advantaged* members of society as an essential socioeconomic category for reasoning about and implementing social justice. Yet this willingness to transact in class-based social differentiation has been largely one-sided, as a striking lacuna within contemporary liberal philosophies is their general failure to treat the *most advantaged* members of society as a distinct class. This tendency of recent liberal philosophy to operate with an explicit and lively concern for the least advantaged unparalleled by an equal concern for the most advantaged is perhaps

most starkly evinced in John Rawls’s highly influential theory of justice. At the center of Rawls’s philosophy is the “difference principle,” which holds that a system of inequalities is just only if it contributes to, and ideally maximizes, the prospects of the least favored class (Rawls 1967, 134–40; 1968, 163; 1971a, hereafter “T”; 2001, hereafter “R”). The difference principle, then, explicitly invokes the least advantaged class, but makes no direct mention of the most favored. Contemporary Rawlsians, who continue to work through the implications of the difference principle for both domestic and global politics, only perpetuate this privileging (Cohen 2010a, 99–128; Pogge 1989, 272–73; Wyatt 2012).

In devoting vastly disproportionate theoretical attention to the least favored vis-à-vis the most favored, Rawls is hardly idiosyncratic, but rather only the most well-known philosophical example of a broader trend underlying the dominant institutions and ideas informing the shape of present-day liberal democracies. Indeed, one of the recurring assumptions of contemporary liberal philosophies of various kinds is that social justice should focus on raising the expectations of the least advantaged members of society and not, say, on devoting special regulatory attention to the most advantaged. The philosophical theory that Rawls (R, 120) considered the strongest rival to his own account—a liberal utilitarian model that secures only a basic minimum for all citizens, in the manner of contemporary welfare-capitalist states, but does not call for the more egalitarian policies envisioned by the difference principle—parallels Rawls in defining social justice in a way that makes appeal to the least advantaged without also referring to the most advantaged. More recent articulations of liberal justice, even if they depart from Rawls in other respects, repeat his relative blindness to the most favored members of society. Influential theories, such as Dworkin’s “equality of resources” model, for example, focus on insulating democratic citizens

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Jeffrey Edward Green is the Janice and Julian Bers Assistant Professor in the Social Sciences, University of Pennsylvania. 208 S. 37th Street, Philadelphia, PA, 19104 (jegr@sas.upenn.edu).

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from undeserved ill fortune rather than identifying and regulating the most advantaged as a class.<sup>1</sup> The same might be said of Ackerman and Alstott's "stakeholder society" proposal.<sup>2</sup> Capability theorists, such as Sen and Nussbaum, who conceptualize justice as securing for all citizens the opportunity to realize certain basic human "functionings," likewise present the main thrust of liberal progressivism in terms of bettering the lot of the disadvantaged and also revising a merely economic conception of impoverishment.<sup>3</sup> Even many luck egalitarians, who roughly speaking are driven by the principle that only inequalities that stem from free choices as opposed to undeserved circumstances are just, often invoke this principle not to combat all undeserved inequalities (including those of the most advantaged), but only the undeserved disadvantages besetting the least advantaged.<sup>4</sup>

This philosophical trend is paralleled by the prevalent institutions of the liberal welfare state that are oriented around providing a social safety net rather than combating inequality as such. It is reflected, too, in the fact that in recent years numerous countries (Australia, Austria, New Zealand, Singapore, Sweden, the United States) have reduced or repealed the estate tax, which primarily affects the wealthiest citizens (Duff 2005; Scheve and Stasavage 2012). Even the principle of progressive taxation has met growing resistance (see Graetz and Shapiro 2005, esp. 4–5, 266–67)—and progressive taxation has been institutionalized in var-

ious nations through tax brackets that do not even include a category for the superrich.<sup>5</sup>

From one perspective liberal philosophy's relative blindness to the most advantaged is entirely understandable. It stems from a sensible concern with the most needy members of society, many of whom lack basic necessities such as food, shelter, and safety; from the widespread belief in the importance of wealth as an incentive to maximize social production; and from a reluctance to engage in socially divisive "class warfare." Yet despite these concerns, there is reason to be suspicious of the imbalance in liberal theory. By focusing on the least advantaged much more than the most advantaged, liberal theories enforce a conception of the polity in which the basic distinction is between the many who are sufficiently well off and the few who are disadvantaged, when it may be that the reverse diagnosis is more appropriate: the many who are relatively poor or powerless vis-à-vis an elite with great political power and wealth (see Fraser and Gerstle 2005; Hacker and Pierson 2010; Krugman 2003; Phillips 2002).<sup>6</sup> To the extent that social scientific literature suggests that the economically most advantaged have disproportionate access to politics and influence over political decision making, liberal philosophy's relative inattention to the most advantaged may prove not just groundless but unwise as well (see Bartels 2008; Gilens 2005; Jacobs and Skocpol 2005; Winters and Page 2009). As new social movements, such as the Occupy Movement, begin to challenge this prevalent silence about the most advantaged, there is added urgency for a liberal society to clarify both to itself and its rivals what grounds if any there are for identifying and specially regulating the most favored class.

The central claim I pursue in this article is that John Rawls, although symptomatic of liberalism's privileging of the least advantaged over the most advantaged when thinking about justice, also suggests three reasons why the implementation of liberal justice requires identifying and potentially regulating the economic expectations of the most advantaged, sometimes without any (or even negative) economic benefit to the rest of society. I argue that the same three grounds on which Rawls explained the need for a just society to take a special interest in its *least favored* members—the *heuristic* grounds of using the expectations of the least favored to clarify and simplify complex judgments about just distributions, the *protective* grounds of ensuring that the basic liberties of the poorest citizens not be undermined by insufficient material resources, and the *redressive* grounds of affording special attention to the least advantaged as the class most likely disadvantaged by the arbitrary effects of the

<sup>1</sup> Even if Dworkin defends a theory of justice where individuals' "wealth and other resources depend on the value and costs of their choices, but not on their luck, including their genetic luck in parents and talents" (2006, 108), his proposed hypothetical insurance market that is to realize this vision is more concerned with the undeserved disadvantages of the unfortunate than with the undeserved advantages of the fortunate. The insurance market is designed primarily to compensate those who are low skilled, unemployed, disabled, or otherwise unable to secure a reasonable standard of living; it does not aim to neutralize the luck of investment income and other forms of "option luck"; it insists on an *ex ante* approach to equality (which aims to distribute the costs of insuring against possible risks) over an *ex post* approach (which aims to neutralize undeserved distributions after they have occurred); it calls into question the very notion of the most advantaged by suggesting that those who doggedly pursue and obtain wealth suffer from an absurd conception of the good (2000, 107); and despite its ideal of making all inequalities the result of ambition and choice rather than endowment and luck, it recognizes, *and accepts without problem* (2000, 104–6), that the more talented and lucky will continue to have more than the untalented and unlucky.

<sup>2</sup> Ackerman and Alstott (2000) propose giving each citizen \$80,000, funded by a tax on the wealthiest 41% of the country, in order to supply all members of society with the resources to be effective democratic citizens, not to identify or regulate the most advantaged as such.

<sup>3</sup> Nussbaum, for example, lists 10 essential human capabilities meant to describe the minimum conditions for "a life worthy of human dignity" (2006, 76–78).

<sup>4</sup> Richard Arneson, for instance, defends a prioritarian version of luck egalitarianism that holds that "justice requires us to maximize a function of human well-being that gives priority to improving the well-being of those who are badly off and those who, if badly off, are not substantially responsible for their condition in virtue of their prior conduct" (2000, 340). Cohen (2008), however, does present a version of luck egalitarianism more directed against unjust advantages, and my argument here is in the spirit of his liberal egalitarianism.

<sup>5</sup> Consider, for example, the top income tax brackets for the following countries in 2011: Canada (\$128,800), UK (£150,000), Australia (\$180,000), and the United States (\$372,951).

<sup>6</sup> Of course much depends on specific cases. See, e.g., Lupu and Pontusson's (2011) finding that the allegiance of middle-income voters depends on the *structure of inequality*: they are more likely to ally with the poor and support redistribution when the distance between the middle and the poor is smaller relative to the distance between the middle and the rich.

natural and social lotteries—also provide good reasons for expanding the regulatory attention of a just liberal order to include the economic expectations of the most advantaged. Specifically, I argue that liberal societies, in particular *implementers* of liberal social justice,<sup>7</sup> have justification to single out and regulate the superrich as a way to help realize the difference principle in light of heuristic challenges regarding its application, as a means of counteracting excessive inequalities that undermine basic liberties (especially those pertaining to educational and political opportunity), and as redress for the fact that even the most well-ordered liberal societies cannot fully realize liberal norms of free and equal citizenship.

In enlisting Rawls to make these claims, I develop mostly latent aspects of his thought. It is after all a striking feature of Rawls's philosophy that it makes hardly any direct appeal to the category of the most advantaged.<sup>8</sup> Even if one of the three justifications for implementers of liberal justice taking a special regulatory interest in the most advantaged—the protective grounds—finds overt support in Rawls's writings (as I demonstrate below), with respect to the other two justifications—the heuristic and redressive grounds—my argument clearly extends Rawlsian ideas beyond what Rawls explicitly argued.

Although I explain why these extensions of Rawls's thought are claims to which Rawls might have agreed, and to which contemporary liberals should agree, my effort to further develop Rawlsian liberalism nonethe-

less is likely to meet two kinds of objections. On the one hand, certain Rawlsians will resist engagements with Rawls that are unrestricted to a faithful representation of the master's explicit intentions. On the other hand, certain critics of Rawls, especially those who object to the treatment his work receives as a "sacred" text in contemporary political philosophy (see, e.g., Scherer 2006), will wonder why it is necessary to develop liberal thought through appeal to Rawls at all. Although very different, both objections unite around a resistance to critical appropriation: the one because the texts in question are considered final, the other because the texts in question are considered unnecessary or unworthy interlocutors. Against the first group, I say that political philosophy is historical: we philosophize in the present through conversation with past authors—and Rawls himself both observed and exemplified this fact.<sup>9</sup> Rawls admitted in his later work, moreover, that his account of justice was but one potential answer to how liberals, taking citizens as free and equal members of a fair system of cooperation, might conceive of justice, thereby acknowledging the possibility of alternate arrangements that would be valid, if not superior, future alternatives to his own specific theory (PL, xlviii–xlix). Against the second group of objectors, although I cannot defend Rawls's ideas as being categorically indispensable to any liberal philosophy of justice, it needs to be remembered that Rawls's stunning degree of influence within contemporary political thought is not without reason. That many of Rawls's greatest critics also have been among his greatest admirers, relying on Rawlsian concepts to develop their own competing theories of justice, is a sign that part of the importance of Rawls's work resides in the analytical tools he developed to make his arguments about justice, rather than only in the practical implications of the arguments themselves.<sup>10</sup> My own effort to rely on Rawlsian concepts to extend liberal theory to encompass an explicit, principled concern for the most advantaged class

<sup>7</sup> I decline to use the term "nonideal theory" to describe matters of implementation, both because Rawls is clear that the implementation of domestic principles of justice, especially by the ideal legislators I have in mind, is still part of ideal analysis (T, 195–201/171–76 rev; Rawls 2005, hereafter "PL," 397–98; R, 48, 172–74) and because Rawls tends to reserve the concept of nonideal theory for "injustice," in particular the "substantial and clear injustice" arising from "serious infringements" of basic liberties or "blatant violations" of fair equality of opportunity, both of which might demand civil disobedience (T, 8, 372/8, 326 rev; see Simmons 2010).

<sup>8</sup> If Rawls does briefly refer to the contrast between the "most favored" and "least advantaged" (T, 76/66 rev) and also, in explicating notions such as "chain connection" and "close-knitness," to a three-way contrast between the "most favored," "least favored," and someone in between (T, 81–83/70–73 rev), much more common are contrasts not invoking the most favored: "more advantaged" versus "least advantaged" (T, 157/136 rev; R, 124; 1967, 138; 1968, 169, 170; 1975, 263) or "more advantaged" versus "less advantaged" (R, 62, 123–30). Now it is true that Rawls does discuss something like the superrich in confronting a hypothetical situation in which close-knitness does not apply (i.e., when it might happen that altering the prospects of the more advantaged has no effect on the least advantaged). Rawls clarifies that in such a situation the difference principle should be interpreted as "the lexical difference principle," which holds: "in a basic structure with *n* relevant representatives, first maximize the welfare of the worst-off representative man; second, for equal welfare of the worst-off representative, maximize the welfare of the second worst-off representative man, and so on until the last case which is, for equal welfare of all the preceding *n*-1 representatives, maximize the welfare of the *best-off representative man*" (emphasis added). Yet, if this is a circumstance in which Rawls does appeal to the "best off," it is also one where he marginalizes the very category, because Rawls immediately adds that he "shall always use the difference principle in the simpler form" (T, 83/72 rev): that is, not in a form that might require explicit and direct attention to the most favored, in part because he believes "in actual cases [the lexical difference principle] is unlikely to be relevant" (T, 72 rev).

<sup>9</sup> In a reflection on his pedagogy, Rawls (2000, xvii) says he followed Kant's view, from *The Critique of Pure Reason* B866: "[W]e cannot learn philosophy; for where is it, who is in possession of it, and how shall we recognize it? We can only learn to philosophize, that is, to exercise the talent of reason, in accordance with its universal principles, on certain actually existing attempts at philosophy, always, however, reserving the right of reason to investigate, to confirm, or to reject these principles in their very sources." Rawls's *Theory* can be seen as a critical appropriation of the social contract tradition, particularly Kantian deontology and Rousseau's notion of the general will, to model the modern requirements of justice. Cohen (2010b, 2) reports, "Rawls...once said...that his two principles of justice could be understood as an effort to spell out the content of [Rousseau's idea of] the general will."

<sup>10</sup> For example, Dworkin (1977, xii) pursues an alternative liberal vision in part "through an analysis of John Rawls's powerful and influential theory of justice." Nozick's seminal statement of libertarian political philosophy devotes more than 50 pages to *Theory*, claiming, "Political philosophers now must either work within Rawls's theory or explain why not" (1974, 183)." G. A. Cohen (2008, 11), one of Rawls's most strident critics in recent years, working from a luck-egalitarian perspective, begins his critique of Rawls with remarkable praise: "at most two books in the history of Western political philosophy have a claim to be regarded as greater than *A Theory of Justice*: Plato's *Republic* and Hobbes's *Leviathan*."

follows in this tradition of thinking simultaneously with and beyond Rawls.

But in thinking beyond Rawls, I mean less to disagree with him in any particular respect than to extend and develop his philosophy, showing that the same underlying grounds Rawls appealed to as justifying a liberal society's special concern for the least favored also support it taking a principled regulatory interest in the economic expectations of the most favored. It is significant to note in this regard that Rawls's own thinking vis-à-vis the singling out of particular classes for special regulatory concern underwent an evolution during his lifetime. In his early articles Rawls articulated his vision of social justice with much less concern for the category of the least favored: although Rawls made the *protective* argument that the realization of basic liberties requires a "social minimum" (Rawls 1963b, 88), he presented the difference principle without appeal to any class, defining it only as the principle that "all" or "everyone" must be made to benefit from a social system generating economic inequalities (1958, 48, 50; 1963a, 75, 76; 1963b, 98). From his 1967 article "Distributive Justice" onward, however, Rawls relied additionally on the "final" or "full" conception of the difference principle (T, 60, 302/52, 266 rev), which he defined as the norm that inequalities are perfectly just "when the prospects of the least fortunate are as great as they can be" (1967, 138). Rawls's evolution in his thinking with regard to the least favored not only led him to reflect on two additional grounds (*heuristic* and *redressive*) on which a liberal society might legitimately single out a specific class for special concern but also ought to raise the possibility that this evolution is not complete: that, in particular, the same three grounds—*heuristic*, *protective*, and *redressive*—for devoting regulatory attention to the least favored also justify a liberal society taking an active regulatory interest in the most advantaged. This further evolution of the Rawlsian paradigm—with its implication for liberal thought more generally—is the principal argument I defend.

The following three sections invoke, respectively, heuristic, protective, and redressive justifications for why a liberal polity ought to identify and potentially reduce the economic expectations of its most advantaged class, sometimes even when doing so has neutral or negative economic benefit for the rest of society. In the final section, I respond to the objection that my argument, in its endorsement of singling out the most advantaged class and subjecting it to economic burdens potentially without compensating material benefit for the rest of society, is guilty of *envy* vis-à-vis the most favored class. Appealing to Rawls's often overlooked and incorrectly marginalized distinction between irrational and non-irrational forms of envy, I argue *not* that my defense of regulating the most advantaged is free from envy but that to the extent there is envy at stake it falls within the latter category (specifically, what I describe below as Rawls's notion of "reasonable envy"). Just as Rawls is the paradigmatic instance of liberal philosophy's relative inattention to the most advantaged yet at the same time suggests the grounds on which to overcome this inattention, so is he both reflective of the

broader political culture's castigation of envy yet at the same time instructive about the need for implementers of social justice, above all legislators, to overcome in certain key circumstances their normally appropriate unwillingness to impose economic costs on the advantaged that tend to leave all other representative figures materially worse off.<sup>11</sup>

### Extending the Heuristic Argument: The Importance of the Most Advantaged Class to Implementation of the Difference Principle

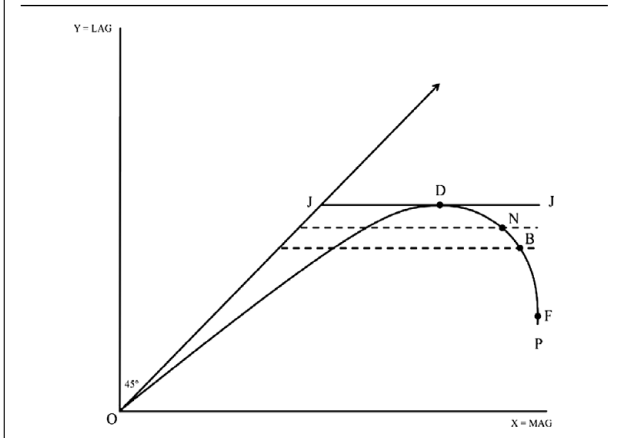
One of Rawls's principal justifications for having liberals identify and afford special concern to the least favored class is that the economic expectations of this class serve an important heuristic role in a society's effort to realize the difference principle. Rawls came to recognize that, without further specification, the criterion that everyone benefit from a system of inequality is indeterminate. In *Theory*, Rawls admits that the notion of "everyone's advantage" is an "ambiguous phrase" (T, 61, 65/53, 57 rev; also see 1967, 134–40; 1968, 154)—and that defining injustice as "simply inequalities that are not to the benefit of all... is extremely vague and requires interpretation" (T, 62/54 rev). Rawls's later articulations of the difference principle correct this problem, now specifying that just inequalities, in benefiting everyone, should specifically advantage—and ideally *maximally* advantage—the expectations of the *least favored* (1968, 163; also see 1967, 134–40; 1975, 263; T, *passim*; PL, 6, 261, 271; R, 42–43, 59, 65, 99–100).<sup>12</sup> A related heuristic benefit of specifying the difference principle in terms of ideally maximizing the expectations of the least favored is greater simplicity in application. If the initial conception of the difference principle seemed to require measuring the benefits accruing to each representative person in a society, the expanded definition simply "selects one representative for a special role" (T, 97–98/83 rev).

My claim is that even if this specification of the difference principle provides implementers of social justice with a clearer criterion by which to evaluate and enact just socioeconomic policies, it is not without its own heuristic challenges—challenges that would be

<sup>11</sup> If the prior principles of justice (e.g., the securing of equal basic liberties) require policies that sometimes leave society materially worse off, I understand the costs at stake in envy (both in its irrational and reasonable forms) as directly economic (not the indirect consequences of securing prior rights) and directly targeted against the better off (not something distributed indiscriminately among wide segments of the society, rich and poor alike); see T, 532, 535–36/466, 469 rev.

<sup>12</sup> Rawls also sometimes describes the difference principle in terms of the *less* favored, especially in simplified hypothetical cases involving only two representative positions (R, 62, 123–130). However, this ought not be seen as challenging the primacy, for Rawls, of the least favored as the class whose prospects ideally are to be maximized. For passages where Rawls uses the *less* and *least* advantaged interchangeably, see T, 75, 104–5, 536/65, 89, 470 rev. Also, see T, 98 (not in the rev), where Rawls defines the less advantaged virtually as the least advantaged: "Surely this gap... the social distance between those who have least and the average citizen... is an essential feature of the less favored members of society."

**FIGURE 1.** “In this figure the distances along the two axes are measured in terms of an index of primary goods, with the x-axis the more advantaged group (MAG), the y-axis the less advantaged (LAG). The line JJ parallel to the x-axis is the highest equal-justice line touched by the OP curve at its maximum at D. Note that D is the [Pareto] efficient point nearest to equality, represented by the 45-degree line. N is the Nash point, where the product of utilities is maximized (if we assume utilities to be linear in indexes of primary goods) and B is the Bentham point, where the sum of individual utilities is maximized (again with the same assumption). The set of [Pareto] efficient points goes from D to the feudal point F, at which the OP curve becomes vertical. . . Society aims, other things equal, to reach the highest equal-justice line measured by the distance from O along the 45-degree line. To do this it moves as far northeast as possible along the OP curve and stops when this curve bends to the southeast” (R, 62, emphasis added).



productively confronted and reduced by having ideal legislators explicitly integrate the economic expectations of the most favored class into their calculations. To understand both the endurance of heuristic challenges regarding implementation of the difference principle and the usefulness of the category of the most advantaged in helping address them, consider Figure 1, one of Rawls's depictions of the meaning of the difference principle (simplified in this case because it models only two representative positions).

In attempting to legislate a just system of inequalities, ideal legislators are under two broad directives. On the one hand, they should seek a system of inequalities that approximates the point at which the least (or less<sup>13</sup>) favored maximally benefit (point D). How they do this depends on which part of the OP curve their society occupies. If it occupies a position of less than ideal levels of inequality (anywhere on the OP curve to the left of point D), they can favor a system of greater inequality so long as it raises the expectations of the

least advantaged (and assumedly all other representative individuals). But if society occupies a position to the right of point D—where ongoing inequalities have been excessive insofar as they have not benefited, but in fact harmed, the expectations of the least advantaged (a space that Rawls calls the “*conflict segment*”; R, 124–27)—ideal legislators must reform the basic structure in a way that reduces inequality and lowers the expectations of the more favored. On the other hand, Rawls (T, 78–79/68 rev) is clear that equidistant misses of the ideal point D are not morally equal: a distribution to the left of D is “just throughout, but not the best just arrangement,” whereas one within the conflict segment is “unjust.”<sup>14</sup> This means that in attempting to approximate an ideal distribution D, legislators have an obligation to avoid the conflict segment and should prefer a point to the left of D over one to the right.

What Rawls did not perceive—but which I do not believe is in any way hostile to Rawlsian justice—is that the proper functioning of the difference principle, in particular the proper policing of the conflict segment, would be aided if implementers of social justice made appeal to as finely calibrated a notion of the most advantaged (e.g., the superrich) as Rawls suggests they rely on for the least advantaged (e.g., “the unskilled worker” or “the lowest income class”; see T, 94, 307/84, 270).<sup>15</sup> Specifically, these implementers should supplement the ideal that the least favored maximally benefit from an ongoing system of inequalities with the ideal that the most favored properly contribute (i.e., the advantages accruing to the most favored class within a system of inequalities should not be excessive in the sense of harming the prospects of the least favored). From the perspective of the most abstracted conception of Rawlsian justice, where it is assumed point D will be achieved, the latter ideal appears superfluous: it is already contained in the former. But from the perspective of ideal legislators, who must work to approximate point D in their specific societies, an explicit concern for the economic expectations of the most favored would serve at least three heuristic goals, all pertaining to the issue of how to hold on to a lively and rigorous conception of the conflict segment over and against various problems threatening to undermine its functionality.

First, insofar as determinations of whether and to what degree a society occupies the conflict segment depend on how finely the representative classes are calibrated, the formal integration of the most favored

<sup>14</sup> Rawls explains, “[T]here is a significant distinction between the cases that fall short of the best arrangement. A society should try to avoid the region where the marginal contributions of those better off are negative since, other things equal, this seems a greater fault than falling short of the best scheme when these contributions are positive” (T, 79/68–69 rev).

<sup>15</sup> For examples of this differential in calibration (e.g., Rawls's tendency to compare the prospects of the *more* advantaged with the *least* advantaged), see T, 157/136 rev; R, 124; 1967, 138; 1968, 169, 170; 1975, 263. Rawls appears to acknowledge this differential when he explains that in applying the difference principle, “it is unnecessary to define weights for the more favored positions in any detail” (T, 94/80 rev).

<sup>13</sup> See note 12.

into the implementation of the difference principle promises to lend precision and greater effectiveness to that principle. To the extent that Rawls presents the difference principle almost always without appeal to the most advantaged—and usually includes only the “more advantaged” that he opposes either to the “less advantaged” (in which case the “more advantaged” is 50% of the population) or to the “least advantaged” (in which case the “more advantaged” is a majority of the population, and a significant one at that)<sup>16</sup>—the difference principle would seem to lack the precision and sensitivity to combat any but the grossest instances of maldistribution. That is to say, without a notion of the “most advantaged,” the conflict segment is limited to calculations that a great number of citizens (50%, if not a supermajority) prosper from a system of inequality to the detriment of the least or less advantaged, thereby potentially failing to include situations, which are perhaps more numerous, when a system of inequality enables a small class of citizens (the most advantaged) to prosper with negative social impact.

Second, when the prospects of the most advantaged are explicitly integrated into efforts to implement the difference principle, the importance of the conflict segment is underlined, rather than marginalized. This might seem like a relatively small issue, but in fact the idea of the conflict segment is difficult to keep in view without a representative class—the most advantaged—whose expectations can serve as a point of reference in evaluating justice. Rawls himself, who operates effectively without a notion of the most advantaged, also evinces a tendency to relegate or ignore the conflict segment, even as he also puts forward this crucial notion. Repeatedly, and indeed for the most part, Rawls presents the difference principle in terms of the forward-looking rightward movement from O to D, rather than the retrospective, corrective, leftward movement from P to D. Even if technically speaking the difference principle calls for both movements, Rawls’s rhetoric and argumentation often emphasize the former to the exclusion of the latter.<sup>17</sup> Given that the difference principle is itself to a certain extent marginalized within Rawls’s theory,<sup>18</sup> the further marginalization of the conflict segment threatens to

effectively neutralize that segment’s critical function. Insisting that the most favored always have their expectations analyzed with respect to the evaluation of ongoing or proposed aspects of a society’s underlying economic structure serves to maintain a vital, if overlooked and threatened, Rawlsian notion.

Finally, the most advantaged class has a role to play—as the bearer of the “burden of proof” that a system of inequalities is not too excessive compared to the ideal distribution D (i.e., that a society does not occupy the conflict segment)—within the context of uncertainty likely to surround any implementation of the difference principle. Rawls is clear that “there is often a wide variety of reasonable opinion as to whether the principle is satisfied” (1969, 184; also see 185; R, 48). Specifically, implementers face at least four sources of uncertainty: disagreement about the current diagnosis (who is relatively favored and unfavored at present), how a proposed policy will affect the relevant parties in the future, whether the policy will not only benefit the least favored but also maximize their expectations compared to all other alternatives, and whether the selected policy has in fact achieved its aims. So that the egalitarian element of the difference principle not be negated by the ability of opponents of justice to claim that their own preferred policies best serve the interests of the least favored (see R, 125), it is essential that the most advantaged class—as the best situated representative of the advantaged—bear the burden of proof within a context of uncertainty. In saying that the most advantaged are “best situated,” I mean three things: that the most advantaged have the most resources to withstand the costs of a less-than-perfect application of social justice; that their expectations most directly affect absolute levels of inequality; and that, for heuristic reasons, under conditions of uncertainty, their expectations can serve as a proxy of the advantaged more generally.<sup>19</sup>

That is to say, when in doubt, legislators seeking to implement the difference principle should prefer to impose too many rather than too few economic costs on the most advantaged class, so as to veer toward too little rather than too much inequality. It might seem that, in attending to uncertainty in this way, I am disagreeing with Rawls, who argues (T, 201/176 rev) that citizens need to accept that on many questions of social and economic policy it is simply not clear what the

<sup>16</sup> Figure 1, which is from R, 62, demonstrates the first of these formulations (also see R, 123–30; Rawls 1975, 263–64), whereas the latter formulation occurs in Rawls 1967, 138; 1968, 169, 170; T, 157/136 rev; 1975, 263; R, 124.

<sup>17</sup> Typical is the following statement: “[T]he crucial point is that the difference principle can be regarded as an agreement to consider the distribution of natural assets as common property and to *share in the benefits* of this distribution whatever it turns out to be. Those who have been favored by nature. . . *may gain from their good fortune only on terms that improve the situation* of those who have done less well. . . . One is led to the difference principle if one wishes to frame the social system so that no person gains or loses from his arbitrary place in the distribution of natural endowments or from his *initial position* in society without going on to receive *compensating benefits* in return” (Rawls 1968, 165; emphasis added). Also see Rawls 1958, 50; 1963, 82; 1971b, 203; 1975, 262; T, 131 rev.

<sup>18</sup> The difference principle is marginalized in the sense that it is lexically posterior to two other principles of justice. Further, because of the inevitable uncertainty and controversy Rawls thinks will surround its precise requirements, Rawls argues that its specific

provisions are not to be written into a polity’s constitution as is the first principle of justice (which specifies equal basic liberties); rather, particular legislatures, guided by the difference principle, will give it provisional shape (R, 47–48). For the same reason, Rawls also thinks that the difference principle is not properly considered an object of civil disobedience, which instead should be limited to severe, and therefore *clear*, violations of the first principle of justice and of fair equality of opportunity (1969, 184).

<sup>19</sup> The third of these aspects of the “best situatedness” of the most advantaged extends Rawls’s own reasoning: just as Rawls appeals to, but does not officially assume, “chain-connection” whereby the maximization of the prospects of the least favored is presumed to raise the prospects of everyone else (T, 80–81/69–71 rev), so can we make an informal assumption that a society in which the most advantaged are not benefiting unfairly within a system of inequality is likely, or more likely, to be one where other advantaged classes are not either.

difference principle requires—and that in such cases of indeterminacy, “we must fall back upon a notion of quasi-pure procedural justice,” according to which the justice of a distributive scheme should be seen as inhering not in its substance (whether a system of inequalities is indeed mutually beneficial) but in its being enacted by a legitimate legislature. But even if such an approach requires that ordinary citizens relent from rigorism regarding the difference principle—because they must acknowledge that “the appeal to justice is not sufficiently clear and its resolution is best left to the political process” (1969, 184)—it still demands that legislators, within the political process, have some heuristic to guide their decision making in such contexts. Importantly, Rawls provides an account of what this heuristic should be. Recall that legislators committed to Rawlsian justice are under two moral directives: they should seek a system of inequalities that ideally maximizes the prospects of the least favored, but additionally, in the event that their policies miss the ideal distribution (D)—something virtually guaranteed under conditions of uncertainty—they are to prefer less than ideal rather than more than ideal levels of inequality (T, 78–79/68 rev). Taken together these two directives would appear to necessitate as a matter of effective legislative practice placing the burden of proof on the more—and in particular, as I am arguing here, the *most*—advantaged class. Legislators should identify the most advantaged as the class whose expectations are subject to special scrutiny in ensuring that a system of inequalities is not within the conflict segment and that therefore bears the risks of uncertainties in this regard.

When one considers the strong likelihood that the underappreciated conflict segment is precisely that part of the OP curve occupied by contemporary liberal-democratic societies,<sup>20</sup> any marginalization of that segment within a theory of justice is surely regrettable for liberals committed to a notion of distributive justice that is more rigorous than the old, Lockean standard that the poor merely benefit at all from a system of inequality. An advantage of a direct and explicit concern for the most advantaged is that it counteracts such marginalizing forces.

### Extending the Protective Argument: The Threat to Liberty from the Most Advantaged

A second way in which those at the economic bottom of society enter into Rawls’s theory of justice involves Rawls’s argument that some minimum amount of income and wealth is a precondition for the effective maintenance of the basic rights and liberties guaranteed in his first principle of justice (rights such as the freedom of speech, religion, person, assembly, and so

<sup>20</sup> The critique most frequently leveled against such societies is not that they do not permit sufficient inequalities to enable productive gains, nor that the least advantaged have not gained at all in absolute terms from the economic and political system generating inequalities, but that these productive gains have not been fairly distributed: that the less advantaged would be better off if the underlying system of inequalities was less unequal (Bartels 2008; Hacker and Pierson 2010; Krugman 2003).

on). Before obtaining whatever additional gains the least favored receive through the difference principle, all citizens according to Rawls are to be guaranteed a “social minimum” as a condition of their basic liberties, on the assumption that there is a threshold level of resources below which other liberties lose their meaning (PL, 228; R, 48, 162).

My claim—one that Rawls shares, even if its importance for singling out the most advantaged is something he does not strongly emphasize—is that the norm of protection justifies not only a floor on income and wealth but also a ceiling. Like insufficient resources, too much inequality can also undermine the value of certain basic liberties. Although Rawls’s difference principle is explicitly opposed to making judgments about particular levels of inequality being intrinsically just or unjust (because it locates the justice of a system of inequalities in distributions that are mutually beneficial and that ideally maximize the prospects of the least favored, regardless of how equal or unequal these distributions turn out to be), the difference principle is *not* the only distributive principle within Rawls’s theory of justice. There are two other principles, and even if they do not look to allocate specific shares in a predetermined manner, they are very much concerned about relative distributions and the problem of *excessive inequalities*. In an important footnote to *Justice as Fairness: A Restatement*, Rawls clarifies this point:

It is sometimes objected to the difference principle as a principle of distributive justice that it contains no restrictions on the overall nature of permissible distributions. It is concerned, the objection runs, solely with the least advantaged. But this objection is incorrect: it overlooks the fact that the parts of the two principles of justice are designed to work in tandem and apply as a unit. *The requirements of the prior principles have important distributive effects*. Consider the effects of fair equality of opportunity as applied to education, say, or the distributive effects of the fair value of political liberties. We cannot possibly take the difference principle seriously so long as we think of it by itself, apart from its setting within prior principles (R, 46n, emphasis added).

As Rawls makes clear here, beyond the difference principle there are two other crucial distributive principles within his theory: the fair value of political liberties (which “ensures that citizens similarly gifted and motivated have roughly an equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class”; R, 46; also see 149) and the fair equality of opportunity (i.e., “those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin, the class into which they are born and develop until the age of reason”; R, 44). What is highly significant about these two principles is that Rawls understands them as being threatened by too much inequality—or what he terms “excessive accumulations” and “excessive concentrations” of wealth

and income (1958, 52–53; 1961, 161; 1963b, 77, 89; 1967, 140, 141; T, 73/63 rev; R, 44, 161).<sup>21</sup>

Rawls's recognition of the problem of excessive inequality places him within a long tradition of republican thought concerned about the capacity of the wealthy to corrupt the political process and abuse the less fortunate. On the assumption that the balance of property inevitably shapes the balance of power, numerous republican thinkers historically argued for curbing wealth inequality both to protect ordinary citizens from harm threatened by the very rich (Aristotle 1932, 1295b4–15; Jefferson 1984, 841; More 1965, 67) and to make political power more likely to be placed in the hands of the meritorious rather than the merely wealthy (Harrington 1977, 202, 231, 460; Montesquieu 1989, 44–45, 94–96; Plato 1989, 584d, 737e). Although underemphasized by present-day liberals, market utopians, and even many contemporary republican thinkers (see McCormick 2006, 163), the danger posed to liberty by the superrich is something Rawls does acknowledge. Yet, whereas this older republican tradition worried primarily about the threat of actual usurpation of liberties by the wealthy, with Rawls the concern is more that the raw discrepancy in wealth can make certain liberties come to lose their value. Although Rawls does not extensively elaborate the nature of the “political domination” (R, 44) engendered by excessive inequalities, Freeman suggests that in the case of fair equality of opportunity, “there comes a point at which the degree of inequality is so great that, even if it satisfies the difference principle, . . . it nonetheless causes [the least favored] to feel diminished and less than civic equals of those who are more advantaged, leads them to see themselves as failures, and therefore neglect taking advantage of opportunities to educate and develop their capacities.” In the case of the fair value of political liberties, Freeman speculates that Rawls has in mind situations in which “because of the enormous inequalities of opportunities and unequal political influence that the capitalist welfare state allows, the less advantaged tend to withdraw from political and civic participation, seeing it as pointless, and suffer therewith a loss of their self-respect” (Freeman 2007b, 131, 132–33; see T, 277–78/245–46 rev; R, 51, 159).

Rawls does not define when accumulations of property become excessive, instead referring the question to political bodies, such as legislatures (1967, 143).<sup>22</sup> But this is precisely why implementers of justice, who follow Rawls in understanding that excessive inequalities

can undermine the capacity of free and equal citizens to enjoy civic equality with respect to education and politics, need to police the upper bounds of the distribution of income and wealth and, in so doing, operate with a lively sense of the most advantaged class.

### Extending the Redressive Argument: The Shadow of Unfairness within Well-Ordered Societies and the Need for Redress

A third reason Rawls provides for singling out the least advantaged concerns redress: because the least favored on average have suffered the most from arbitrary disadvantages of the natural and social lotteries (Rawls 1975, 258–59), they have a claim to be singled out by the difference principle as the representative class whose income and wealth (along with other primary goods) ideally are to be maximized in the implementation of a just system of inequalities. In justifying why the least favored in particular deserve to play a special heuristic role in the evaluation and implementation of justice, Rawls appeals to a redressive logic of compensation. Note that this form of compensation is distinct from the kind that is supposed to occur among reciprocally engaged free and equal citizens, whose differences in wealth and income are to be limited by the constraint that the less favored benefit—or are compensated—by any system of inequalities (T, 102, 536/87, 470 rev). Rather, the compensation I mean to highlight, and the one that links Rawls's philosophy to a theory of redress, is the notion that, when determining whether all citizens benefit from a system of inequalities, it is the expectations of the least advantaged that are to be privileged in the analysis because it is they who are most unfavored by the morally arbitrary distributions of the natural and social lotteries and by the imperfect capacity of a liberal society to partially correct for them even in the sense of fully establishing fair equality of opportunity.<sup>23</sup> It is this latter kind of compensation that Rawls has in mind when he acknowledges that “it may appear that the difference principle is arbitrarily biased toward the least favored.” Rawls's response is that “those favored by social and natural contingencies [should] regard themselves as already compensated, as it were, by advantages to which no one (including themselves) had a prior claim.” Those who are not favored, the least advantaged, are entitled to their own kind of compensation in the form of a difference principle that privileges their interests when administering and evaluating justice (1975, 263–64). Similarly, in one key passage from *Theory* (73–74/63–64 rev; also see R, 124), Rawls argues that the least advantaged do not morally deserve their (on average) inferior placement in the natural lottery, nor is the principle of fair equality of opportunity fully realizable, and for these reasons they are entitled to be singled out by the difference principle.<sup>24</sup>

<sup>21</sup> Because, as I argue in the next section, these liberties are not fully realizable, what is undermined by excessive accumulations is the amount of these liberties that can be realized.

<sup>22</sup> Although Rawls makes it clear that a well-ordered property-owning democracy will not permit “very large inequalities. . . so that the control of the economy and much of political life rests in a few hands” (R, 138)—and although he argues that campaign finance legislation is one key component of this effort (PL, 356–63)—Freeman (2007b, 90) is correct, I think, when he argues that Rawls's account of what constitutes excessive accumulations “is left quite vague.” On the possibility of defining excessive inequalities in terms of the *structure* of inequalities (specifically, the distance between the middle income and the poor relative to the distance between the middle income and the rich), see Lupu and Pontusson (2011).

<sup>23</sup> On two different senses of compensation in Rawls, see Freeman (2007a, 118).

<sup>24</sup> I cannot accept that Rawls's claim about his principles of justice acting as a mitigation of the social and natural lotteries is a mere



To be sure, in drawing attention to the redressive elements of Rawls's justification for singling out the least favored, I do not mean to attribute to him the luck-egalitarian position that all undeserved inequalities are to be compensated. Clearly Rawls is not a luck egalitarian. He differentiates his theory from a wholesale philosophy of redress.<sup>25</sup> In addition, he provides at least three reasons for allowing inequalities, even morally undeserved ones, to persist so long as they are part of a mutually beneficial social structure: the rationality of choosing absolute gains for all over the mere reduction of undeserved inequality (and, relatedly, the need for incentives for unequal rewards to motivate productive gains and the efficient allocation of resources) (T, 151/131 rev; R, 55, 203); the practical difficulty of enforcing a luck-egalitarian scheme (T, 87–88/76 rev; R, 68); and the entitlement (as opposed to moral desert) of individuals to be remunerated for their productivity (including individuals whose productivity is a function of morally arbitrary advantages; Rawls 1958, 48; 1967, 152; 1968, 170).

Still, if Rawls is opposed to efforts to neutralize all luck in an economic distribution, as I have indicated he is not altogether against redress, because his very particularization of the least favored as the class whose prospects are to be maximized in the implementation of the difference principle rests in part on redressive grounds. The question to ask of Rawls, then, is not *whether* luck should be mitigated at all, but *how much* mitigation is consistent with his principles of justice. The claim I want to make is that there are Rawlsian grounds for extending redress to include the most advantaged, so that implementers of justice would aim to mitigate not only the arbitrary disadvantages of the least favored but also the arbitrary advantages of the most favored. Specifically, my argument is that the two distributive principles beyond the difference principle that I discussed in the previous section—the fair value of political liberties and fair equality of opportunity—are important not only because they require for their protection policies that counteract excessive accumulations of property but also because they are principles, as Rawls acknowledges (at least in the case of fair equality of opportunity), that cannot be fully fulfilled. This circumstance means that even a so-called well-ordered society of the type Rawls hoped to see emerge would never be free of a kind of residual unfairness—or what I term a *shadow of un-*

*fairness*. Such unfairness legitimates a claim of redress against at least the most favored class of society—the class prospering the most within an imperfectly fair system and thus, through costs placed on it, the best situated to *acknowledge* (and also remedy, however partially) the persistence of unfairness in an otherwise well-designed liberal regime. Rawls does not make the point, but I take it as a justifiable extension of his philosophy.<sup>26</sup>

Consider the principle of fair equality of opportunity, the lexically prior portion of Rawls's second principle of justice. It is here where Rawls comes closest to explicitly recognizing the shadow of unfairness. The principle that all similarly talented and motivated children should have the same prospect of success regardless of their social class of origin will never be fully realized, Rawls admits, so long as there are institutions like the family:

[T]he principle of fair opportunity can be only imperfectly carried out, at least as long as the institution of the family exists. The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances. *It is impossible in practice to secure equal chances of achievement and culture for those similarly endowed, and therefore we may want to adopt a principle [i.e., the difference principle] which recognizes this fact and also mitigates the arbitrary effects of the natural lottery itself*" (T, 74/64 rev, emphasis added).

As Rawls makes clear, he is aware of the problem of implementing fair equality of opportunity and invokes this circumstance as a justification for the difference principle: the difference principle, which privileges the least advantaged, "recognizes this fact" and mitigates it to some degree. Yet, even if Rawls appeals to shortcomings in the implementation of fair equality of opportunity as a justification for the difference principle, there is no escaping the fact that these shortcomings also disturb the difference principle itself. Although Rawls's argument in the previous passage is to appeal to the imperfection of fair equality of opportunity to justify the difference principle, he also repeatedly claims that the difference principle's refusal to understand particular distributions as being *intrinsically* just

"informal argument" intended only to refute libertarianism (Scheffler 2003, 9). The appeal to luck mitigation occurs beyond section 12 of *Theory*, which Rawls says is not "strictly speaking" a grounds for the difference principle (T, 75/65 rev); see, e.g., Rawls 1967, 140; 1968, 161–62, 1975, 263–64; T, 96, 101, 123/82, 87, 106–7 rev. Moreover, critics who argue that Rawls was no luck egalitarian, that he did not aim to altogether *neutralize* morally arbitrary factors, still recognize that he aimed to *mitigate* these factors, at least in the context of combating gross inequality (Freeman 2007a, 117).

<sup>25</sup> Rawls speaks to the subtlety of his approach—his support of a partial but not full commitment to luck mitigation—when he acknowledges, "Although the difference principle is not the same as that of redress, it does achieve some of the intent of the latter principle" (T, 101/87 rev; also see T, 100/86 rev; Rawls 1968, 155).

<sup>26</sup> To avoid misunderstanding, two points of clarification should be made. First, as I elaborate below, redress ought not be imposed when doing so *clearly* makes the rest of society worse off—though where there is uncertainty about this consequence, there is room for redress. Second, although my argument does not specify just what kinds of policies ought to define redress, it is helpful to envision redress as involving not mere tax payments, but direct financing of public goods such as schools, infrastructure, and public monuments—much like the special economic burdens placed on economic elites in ancient popular republics like Athens and Rome (see Hansen 1991, 110–15; Lintott 1999, 94–121; Millar 1998, 73–94; Ober 1989, 199–234). As a public acknowledgment of a liberal society's failure to realize fully its own principles, redress needs to be more than merely a burden placed on the most advantaged, but should be a *public* burden with which the rest of society might engage—and so, also perhaps, a kind of quasi-honor in the manner of a legalized and compulsory *noblesse oblige*.

or unjust only works insofar as there is fair equality of opportunity:

[T]he role of the principle of fair opportunity is to insure that the system of cooperation is one of pure procedural justice [i.e., one in which there is no external standard of what constitutes a just distribution or excessive inequality, but only a procedure—in this case, the difference principle—that yields a limitless number of possible distributions, all just]. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range (T, 87/76 rev; also see R, 46n).

Rawls may be correct in his claim that the difference principle reduces some of the residual unfairness that accrues from a world without full fair equality of opportunity, but he does not pursue the further implications of this phenomenon: namely, that without a more complete fair equality of opportunity, the difference principle's indifference toward wealth concentrations (so long as they are mutually beneficial) is no longer a fully fair mechanism of distribution. A liberal society's willingness to tolerate vast inequalities—to let “distributive justice...take care of itself”—erodes insofar as similarly talented and motivated individuals cannot expect similar opportunities and rewards. The family is clearly one key cause of this disequilibrium of expectations; relatedly, much social scientific research demonstrates how the class structure into which a child is born is a strong predictive factor of the economic and social opportunities experienced as an adult (Bowles, Gintis, and Groves 2005; Sacks 2007).

This does not mean that a liberal society cannot make great strides in correcting how much the social contingencies of one's birth determine life expectations, but it does mean that institutions such as the family create limits to just how much fair equality of opportunity can be achieved. This problem has been addressed in different ways. Some take issue with the family itself on liberal grounds; however, this proposal seems undesirable (insofar as the family ought to be considered a “concession to human nature” as Rawls might have put it) and, in any case, potentially invalidated by the prior freedom to associate. Libertarian critics such as Nozick have argued that the inability to fully realize fair equality of opportunity demonstrates its inappropriateness as a norm of justice, but such a critique conflates unenforceability with invalidity (Nozick 1974, 167). Finally, certain defenders of Rawls, such as Freeman (2007b, 98), have argued that the meaning of fair equality of opportunity is in fact more limited than meritocracy: that “Rawls does not understand FEO as requiring equal chances for the equally endowed,” but only the more minimal norm that “people, whatever their natural abilities and social circumstances, be given the means to fully develop and effectively exercise the talents and abilities that they are endowed with, so that they may engage in public life as equal citizens, and have a fair opportunity to compete with others of similar abilities for positions within the range of their developed skills.” The problem with this apologist position, however, is that it overlooks instances

where Rawls explicitly calls for equal opportunities for the equally endowed as a condition of a just society,<sup>27</sup> it appeals to a problematic teleological notion of “full development,” and even the more minimal standard it upholds (those with similar *developed* skills have fair opportunity to compete with others of similar abilities) is still clearly undermined, at least at the margins, by social class and the influence of the family.

Notwithstanding the substantial educational resources a liberal society will devote to all of its citizens, and especially perhaps to the least advantaged, it is nonetheless clear that, given two equally talented and motivated children, the one born into a privileged background will have greater prospects not only of wealth but also of culture, education, and “success” relative to a child born into an underprivileged background. This circumstance occurs not just in the United States but even within the world's most egalitarian educational systems (Blom, Melin, and Tanskanen 2009; Edlund and Svallfors 2009; Martin and Wajcman 2004). Even if the impact of socioeconomic status on children's life prospects operates on the margins, it is unfair and it helps provide justification for a liberal society committed to free and equal citizenship to single out and seek redress from the most advantaged, the group that has prospered the most under an imperfectly fair system and is therefore best able to publically acknowledge and partially remediate such unfairness.

A similar situation obtains for the fair value of political liberties—even if Rawls does not make an argument in this regard. Although a liberal society can always try to approximate a situation in which all citizens, regardless of economic and social background, have an equal chance to hold office and influence election outcomes, it is difficult to point to a polity in human history where the very rich did not have superior political opportunities. Rawls, it is true, does not confront this circumstance as a permanent feature of political life. He denies that the scarcity of political space (the existence of a few high offices in a polity of millions) is itself a mark against equal political liberty (Rawls 1958, 50; 1963b, 75; 1971b, 195); and he thinks that various liberal reforms, such as campaign finance legislation, can make it so that the equally endowed and motivated “have roughly an equal chance of influencing the government's policy and of attaining positions of authority irrespective of their economic class” (R, 46). Although this ideal is noble and its approximation certainly worth striving for, the shadow of unfairness and, with it, the

<sup>27</sup> See, e.g., T, 73/63 rev: “[T]hose who are at the same level of talent and ability and who have the same willingness to use them should have the same prospects of success regardless of their initial place in the social system. ... In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class” (also see T, 93/80 rev; R, 44; Rawls 1967, 143). Thus, even if Rawls acknowledges (e.g., T, 74/64 rev) that fair equality of opportunity cannot be entirely achieved within his system, he elsewhere—and, it seems, more often—suggests the full realization of fair equality of opportunity is a condition of a just society.

need for redress arise from the inescapable confluence of economic and political power that has made the economically well-off, on average, more likely to exert political influence than the disadvantaged.<sup>28</sup> In the United States, this confluence is suggested by an abundance of social scientific literature pointing to the likelihood that politics is significantly shaped by inequality: Those with great wealth have more access to government, policy outcomes have been shown to be skewed to the interest of the wealthy, those who win office are on average far wealthier than ordinary citizens, and those who leave office have far greater opportunities for enriching themselves after their term is finished (Bartels 2008; Gilens 2005; Jacobs and Skocpol 2005; Winters and Page 2009). But even within relatively more egalitarian societies, such as European and especially Nordic democracies, there is clear evidence of the disproportionate influence of the wealthy within politics.<sup>29</sup>

Importantly, extending this logic of mitigation to also include the particularization of the most advantaged as a distinct class deserving special regulatory attention is fully compatible with the three constraints on redress Rawls puts forward. First, because redress is constrained by the notion that all are supposed to benefit, there is no question of pursuing redress to a point that obviously leads to lower expectations for the rest of society.<sup>30</sup> Second, although it is true that the extension of redress to the most advantaged would require an additional set of applications (focusing on the most advantaged and not just the least advantaged), it would not result in the determination of deservedness and specific allocative shares for an entire population, something Rawls finds, rightly I believe, highly impractical. Finally, it is not correct to say that the extension of redress disrespects the entitlement of the most advantaged class to benefit from the productive use of their labor and capital, because any redress would only regulate the highest levels of income and wealth, ensuring

<sup>28</sup> Consider Verba, Scholzman, and Brady (1995, 1): “No democratic nation—certainly not the United States—lives up to the ideal of participatory equality”—a conclusion that repeats an earlier finding (Verba, Nie, and Kim 1978, 1): “The political advantage of those citizens more advantaged in socioeconomic terms is found in all nations, certainly in all those for which we have data.”

<sup>29</sup> Although the politics of European democracies—with their greater use of proportional representation, higher voting rates, simpler registration rules, and more extensive welfare policies—may be less affected by economic inequality, studies continue to demonstrate an effect, especially with respect to nonelectoral forms of participation and the tendency of such regimes, grounded in the fear of capital flight, to rely on regressive indirect taxation to fund welfare programs (Beramendi and Rueda 2007; Roller and Rudi 2008, 253, 267). On oligarchic tendencies in Nordic democracies, see Skopek, Bucholz, and Blossfeld (2011) and Winters (2011, 278–80).

<sup>30</sup> In this respect the redress argument is like the heuristic argument, but unlike the protective argument, in not wanting to impose burdens on the most advantaged that clearly lower the prospects of the rest of society. But redress against the most favored would be a grounds for reducing inequality when there is *neutral* material impact on the rest of society, a situation about which, as Van Parijs (2003) has shown, Rawls is ambivalent. Against Van Parijs’s opposite recommendation (2003, 232), redress would be a reason for resolving this ambivalence in an egalitarian direction, at least as pertains to the most favored class.

that those to whom it applied would retain their status as the wealthiest individuals (and retaining, too, their entitlement to remuneration for productive gains).

Clearly, the failure of a society to fully realize fair equality of opportunity and the fair value of political liberties is not as severe an injustice as despotism or other blatant violations of basic liberties. Nonetheless these two principles are fundamental not only to Rawls but also to multiple strands of liberalism more generally and to the political attitudes of ordinary citizens.<sup>31</sup> By using the terminology *shadow* of unfairness, I mean to refer to a level of residual unfairness that is not likely enough to destabilize a regime through generating disobedience and unrest, but nonetheless is real and important and thus sufficient to require some compensation from the class that most benefits from the inability of a liberal society to adequately escape the feudal confines of blood and lineage.<sup>32</sup>

### Confronting the Accusation of Envy: In Defense of Reasonable Envy toward the Superrich

I have argued on three different grounds—heuristic, protective, and redressive—not simply that it is consistent with a Rawlsian conception of justice to single out and potentially regulate the upper bounds of the economic expectations of the most advantaged, but that as part of this process there are certain cases when it is legitimate to impose economic burdens on the most favored that have either a neutral or negative material impact on the rest of society. The protective argument, which aims to prevent inequalities that are so excessive that they threaten civic liberty, justifies regulation of the most advantaged even when the rest of society would be worse off in economic terms. The redressive argument, as I have explained, legitimates the imposition of economic burdens on the most advantaged that would have a neutral material impact on other representative members of a political community. And although the heuristic argument does not sanction lowering the prospects of the most advantaged class when doing so *clearly* would have a negative or neutral impact on the rest of society, its support of having the most advantaged bear the burden of proof that a society’s system of inequalities is outside the prohibited conflict segment means that it legitimates economic bias against the most advantaged under conditions of uncertainty.<sup>33</sup>

Critics will object that in its defense of potentially subjecting the most advantaged to costs without compensating economic benefit for the rest of society, my

<sup>31</sup> On fair equality of opportunity as a widely endorsed principle, see McCall and Kenworthy (2009), Page and Jacobs (2009); Gilens (2000); Hochschild (1986); and Smith and Kluegel (1986). For Rawls’s *own* seeming endorsement of the full realization of fair equality of opportunity as a condition of a just society: see note 27.

<sup>32</sup> On treating political legitimacy not as an all-or-nothing term, see Dworkin (2006, 97).

<sup>33</sup> I explain below why this bias might be considered collectively disadvantageous, economically speaking, over the long term.

argument is not simply guilty of envy—the disconcertion at the greater wealth of others and the seemingly irrational desire for those with more to have less, even if it results in neutral or negative economic consequences for everyone else—but, in its enviousness, guilty of something widely opposed within the broader political culture and, in particular, by Rawls himself.<sup>34</sup> Rawls, after all, explicitly invokes the anti-envying mentality of “mutual disinterest” and defends it, arguing that citizens must not be expected to have other-regarding sentiments—whether altruism or envy—when determining the content of social justice behind the veil of ignorance (T, 128, 148, 253–54/111, 128, 223–24 rev). Rawls says citizens, so engaged, who are dismayed by another’s economic success—if such success emerges from an underlying political and economic system that maximizes their own expectations—are “shortsighted” (T, 151)<sup>35</sup> because they are in effect preferring to have less simply so that others have less too. Rawls’s apparent view about the irrationality of envy is by no means idiosyncratic, but reflective of a general opposition to envy within the broader political culture. Libertarians and other critics of redistributionist schemes, for example, have long suggested that such schemes are rooted in envy and for this reason are invalid (Cooper 1982; also see Freud 1949; Nietzsche 1998; Nozick 1974). Many liberal egalitarians resist this charge, but not the assumption that were liberal egalitarian principles rooted in envy, this circumstance would be a check against those principles (Norman 2002; Young 1989).<sup>36</sup> Major contributions to liberal social philosophy have taken aim against envy, castigating it as a destructive, antisocial psychology (Mill 1998, 10, 87, 250; Tocqueville 2000, 189, 479–82). The philosophical objection to envy from prominent liberal philosophers is paralleled by long-standing Christian objection to envy as one of the cardinal sins (see Epstein 2003, xi, 87; Fernández de la Mora and De Nicolas 1987, 19–42) and by the attitudes of ordinary citizens, especially Americans, whose opposition to envy—and in particular to capping the upper expectations of the most well-off citizens—has been documented in repeated studies for decades (Hochschild 1986; Lane 1986; McCall and Kenworthy 2009; Page and Jacobs 2009). This opposition to envy is political and not simply ethical, insofar as it has contributed to recent efforts in numerous nations

to remove or reduce the estate tax, employ tax brackets without a category for the superrich, and increasingly object to progressive taxation as such (Graetz and Shapiro 2006; also see McCall and Kenworthy 2009).

Notwithstanding these considerations, however, such a one-sided account of Rawls’s theory of envy is incomplete, unbalanced, and thus mistaken. Rawls’s endorsement of mutual disinterest and his parallel critique of envy are not absolute: he makes an important distinction, often unobserved in the secondary literature, between ordinary, irrational, inexcusable envy and another form that he describes as “not irrational”—an envy “where it would be unreasonable to expect someone to feel differently” (T, 534/468 rev; PL, 284; R, 88). The crucial claim I want to defend is both that this latter form of non-irrational envy has an important role to play in the *implementation* of Rawlsian justice and that the kinds of envy implicated in my defense of extending liberal regulatory attention to include the economic expectations of the most advantaged fall within this category of non-irrational envy.

Rawls’s delineation of the concept of non-irrational envy has not received sufficient attention. Indeed, numerous recent commentators have overlooked the notion altogether (e.g., Lehning 2009; Pogge 2007; Taylor 2011; Voice 2011). In part this lack of attention stems from the fact that Rawls himself provides only a brief sketch of the concept. But it also arises because the usual treatment of the notion among scholars who have examined it is to marginalize non-irrational envy as having to do only with Rawls’s arguments about the stability of his principles of justice (their capacity to generate the sources of their own support, in part by not producing rancorous sentiments, such as envy, in the citizenry) and not also about the *implementation* of the principles themselves (Freeman 2007b, 269; Mandle 2009, 130–32; also see Maffettone 2011, 111).<sup>37</sup> In other words, the usual reading of non-irrational envy is that Rawls appeals to it only as an *excusable rancorous sentiment* that he thinks will be more curtailed in societies governed by his proposed principles of liberal justice, not that it has any positive role to play in the effective instantiation of those principles *as the willingness of implementers of justice sometimes to impose costs on the advantaged without compensating economic benefit for the rest of society* (which might be called *reasonable envy*).<sup>38</sup>

<sup>34</sup> Rawls’s explicit definitions of envy (T, 144, 532, 533, 535–36/124, 466, 467, 469 rev) limit it to situations where the imposition of costs on the advantaged has a *negative* impact on the rest of society, rather than also a *neutral* one. But insofar as Rawls is ambivalent about the latter circumstance—sometimes appearing to treat it too as irrational (see T, 82–83/72 rev; also see Van Parijs 2003)—and insofar as others have treated the latter explicitly as envy (e.g., Nozick 1974, 239), I consider both phenomena under the heading of envy.

<sup>35</sup> The revised edition does not include this phrase, but Rawls elsewhere invokes the same idea of the irrationality of envy as something “collectively disadvantageous” (T, 144, 532/124, 466 rev), writing, “envy tends to make everyone worse off” (T, 144/124 rev) and, as such, “tends to harm both its object and its subject” (T, 533/467 rev).

<sup>36</sup> Even theories affirming the ideal of comparative fairness do not ground themselves in, and often explicitly differentiate themselves from, an affirmation of envy (Broome 1995, 168–69; Temkin 2003, 768–69; also see Cohen 2008).

<sup>37</sup> Tomlin (2008), however, argues that the relegation of envy to issues of stability is untenable—that because envy is a fact of human psychology it ought to enter deliberations in the Original Position and be allowed to alter the selection and justification of principles of justice. But my focus is on exploring the role of envy, neither in the selection of principles nor primarily as pertains to stability, but as regards the *implementation* of justice—and to show that Rawls’s theory already suggests that envy (the imposition of costs on the advantaged even when it leads to worse economic consequences for all) has a role to play in this context.

<sup>38</sup> Reasonable envy, therefore, would relate primarily to the *policy* of imposing costs on the advantaged that tend to make everyone worse off economically (T, 144, 532, 533/124, 466, 467 rev), not the various “destructive feelings” (T, 144/125 rev)—“lack of confidence,” “impotence,” “anguish,” “inferiority,” and “hostility” (T, 532, 535–

Although I find it incorrect, the reduction of non-irrational envy to excusable envy is understandable, if only because Rawls's most prolonged engagement with the concept of non-irrational envy confronts the notion in precisely this sense (T, 531–32, 534–41/466, 468–74 rev; R, 88, 180, 202). In these passages, Rawls argues that, although normally it is irrational for individuals to want those with more to have less when doing so will have a negative impact on their own material welfare, there are circumstances when inequalities are so great that they harm the self-respect of ordinary citizens and thereby undo the irrationality normally attached to envious sentiments:

A person's lesser position as measured by the index of objective primary goods may be so great as to wound his self-respect; and given his situation, we may sympathize with his sense of loss. . . . For those suffering this hurt, envious feelings are not irrational; the satisfaction of their rancor would make them better off. When envy is a reaction to the loss of self-respect in circumstances where it would be unreasonable to expect someone to feel differently, I shall say that it is excusable" (T, 534/468 rev).

Rawls thinks it is an advantage of his proposed principles of justice that they are less likely than alternative schemes, especially utilitarianism, to generate such excusable rancorous sentiments (T, 537/469–70 rev).

But this usual treatment of non-irrational envy is overly narrow on two grounds: It neglects the way in which envy has a role to play in the *implementation* of justice (and is therefore not just excusable but *reasonable*), and it forgets that beyond the problem of excessive inequalities there are at least two additional situations in which the normal irrationality of envy is abrogated. Both aspects of this richer, more expansive conception of envy are suggested in the following passage:

[A] rational person. . . follows the plan which will satisfy more of his desires rather than less, and which has the greater chance of being successfully executed. . . . [A] rational individual does not suffer from envy. He is not ready to accept a loss for himself if only others have less as well. He is not downcast by the knowledge or perception that others have a larger index of primary social goods. *Or at least this is true so long as the differences between himself and others do not exceed certain limits, and he does not believe that the existing inequalities are founded on injustice or are the result of letting chance work itself out for no compensating social purpose*" (T, 143/124 rev, emphasis added; also see T, 144, 530, 532, 533/124, 464, 466, 467 rev).

The first thing to note about this passage is that Rawls acknowledges there are *three* instances when envy is not irrational: not just the problem of excessive inequalities but also inequalities that stem from an unjust basic structure (in which either basic liberties or fair equality of opportunity has not been fairly secured) and inequalities that do not satisfy the difference principle (but involve an economic system in which income and wealth accrue to winners of the natural and social

36/466, 469 rev)—Rawls treats as causes and consequences of envy when conceived as an excusable rancorous sentiment.

lotteries without less fortunate members of society also benefiting from the inequalities being generated; see T, 530/464 rev).

The second crucial thing to note about this passage is that it comes not from the final Part III of *Theory of Justice* where Rawls engages with the issue of stability, but from Part I, "Theory" (specifically, chapter 3, "The Original Position," section 25: "The Rationality of the Parties"), where Rawls discusses the general conception of rationality presumed to govern the adoption and implementation of the two principles of justice (T, 143/124 rev).<sup>39</sup> The suggestion is that the three forms of non-irrational envy Rawls mentions arise in *two* separate contexts: not just in relation to the matter of stability (where theories of justice are evaluated with regard to how much excusable envy they generate<sup>40</sup>) but also in relation to the Original Position (where the three forms of non-irrational envy become contexts in which it is reasonable for implementers of justice to impose economic burdens on the advantaged with negative or neutral benefit to the rest of society.)

To be sure, I do not mean to say that the initial *adoption* of the two principles of justice is guided by envy for Rawls. In this regard, Rawls is clear that envy plays no role.<sup>41</sup> But, as Rawls explains, the Original Position can be disaggregated so as to refer to an initial adoption stage, where the two principles are selected, and to three successive stages—the constitutional convention (where the first principle, with its idea of equal basic liberties, is constitutionalized), the legislative stage (where legislators select the social and economic policies required by justice), and the judicial stage (where particular cases are adjudicated)—all of which have to do not with the selection of the principles, but their *implementation* (T, 195–201/171–76 rev). As the veil of ignorance is gradually lifted at each successive stage, each stage still models an ideal form of rationality pertaining to the implementation of justice.<sup>42</sup> If envy does have a potential role to play in the implementation of justice, as Rawls suggests, it would be at the legislative stage, where legislators ideally seek the passage of laws and policies that realize the social and economic

<sup>39</sup> Likewise, when Rawls does launch his discussion of excusable envy in conjunction with stability in Part III, he suggests that the idea of a non-irrational form of envy is not new, but has been implicated "throughout [the book]" (T, 530/rev 464).

<sup>40</sup> To be sure, though, Rawls explicitly links "excusable envy" only to one of these three forms: excessive inequalities (T, 530–41/464–74 rev).

<sup>41</sup> See T, 538/471 rev: "to insist upon equality as the two principles of justice define it is not to give voice to envy" as "the claims to equality supported by the two principles do not spring from these feelings." See T, 144, 151, 530/124, 131, 465 rev; R, 87–88.

<sup>42</sup> As Rawls explains, "It is essential to keep in mind that the four-stage sequence is a device for applying the principles of justice. This scheme is part of the theory of justice as fairness and not an account of how constitutional conventions and legislatures actually proceed. It sets out points of view from which the different problems of justice are to be settled" (T, 200/176 rev). Or, as he later puts it, "[T]he four-stage sequence describes neither an actual political process, nor a purely theoretical one. Rather, it is part of justice as fairness and constitutes part of a framework of thought that citizens in civil society who accept justice as fairness are to use in applying its concepts and principles" (PL, 397).

conditions required by a just society—and do so with information about the nature of the distributions within their society, with “the full range of general economic and social facts. . .brought to bear” (T, 199/175 rev).

My claim is that any envy relating to the protective, heuristic, or redressive justifications for imposing regulatory burdens on the most favored can be seen as falling, respectively, within the three categories of reasonable envy that Rawls mentions: excessive inequalities, inequalities not bound by the difference principle, and inequalities founded on injustice.<sup>43</sup> The first of these assertions—that to the extent the protective grounds for capping the economic expectations of the most advantaged involve elements of envy because such capping might very well lower everyone’s material welfare, such envy is reasonable if it is part of the legislative effort to combat excessive inequalities—is straightforward and something Rawls clearly affirms. It is not simply that Rawls (1967, 143) expects legislators to enact policies to counteract excessive accumulations of property. What also is key is that Rawls says explicitly that legislators so engaged are acting on, or at least responding to, a non-irrational form of envy. In *Political Liberalism*, Rawls makes it clear that non-irrational envy is a *constraint* which legitimates laws and policies that limit the upper bounds of wealth:

The two principles also specify an ideal form for the basic structure in the light of which ongoing institutional

<sup>43</sup> Given my treatment of reasonable envy more as a *policy* (the willingness, as part of the implementation of justice, to impose costs on the more advantaged with neutral or negative economic effect on the rest of society) than as a *rancorous psychology* of ill will (see note 38), it might be asked whether the envious elements of the heuristic, protective, and redressive grounds for regulating the most advantaged are better described in terms of *resentment*, not envy—where resentment is understood, as Rawls defines it, as a *moral* critique of others having more than us, when we have reason to think that their having more is a consequence of “unjust institutions. . .or wrongful conduct on their part” (T, 533/467 rev). But there are at least three reasons for preferring “reasonable envy” to “resentment.” First, Rawls does not treat as an explicit or necessary element of resentment what is essential to his (and my own) notion of envy: an imposition of costs on the advantaged that tends to make everyone worse off in material terms. Second, none of the three cases fits perfectly within the rubric of resentment. The inequalities lessened by the protective grounds for regulating the most advantaged stem neither from gross injustice (the failure to realize the two principles, independent of issues pertaining to their fair value) nor from the wrongful conduct of any individual: indeed, Rawls explicitly links such counteracting of excessive inequalities to the reduction of excusable envy in the citizenry (PL, 284, also see T, 545/478 rev), not to the satisfaction of resentment. The heuristic grounds for imposing costs on the most advantaged with potential negative impact on the rest of society relate to preventing the *possibility* of injustice under circumstances of uncertainty (not rectifying some known, actual, concrete form of injustice) and likewise involve no accusation of wrongdoing on the part of the most advantaged. And if the redressive grounds for reasonable envy do find support in the residual unfairness of a society’s inability fully to realize fair equality of opportunity with regard to education and politics, the “injustice” in question is not an avoidable offense, nor are the most advantaged guilty of any wrongdoing in this case either. Third, because Rawls himself presents non-irrational envy—specifically the excusable envy generated by excessive inequalities—as a situation that demonstrates “we can resent being made envious” (T, 534/468 rev), it would seem that, when it comes to non-irrational envy, its distinction vis-à-vis resentment is frayed and that one of the defining features of non-irrational envy is precisely its *moral element*.

and procedural processes are constrained and adjusted. Among these constraints are limits on the accumulation of property. . .that derive from the requirements of the fair value of political liberty and fair equality of opportunity, and the limits based on considerations of stability and excusable envy, both of which are connected to the essential primary good of self-respect. We need such an ideal to guide the adjustments necessary to preserve background justice (PL, 284; also see T, 545/478 rev).

By treating envy here as a constraint, Rawls specifies that it functions both in terms of stability and in terms of implementation—or that stability itself is more than a criterion for passively evaluating rival regimes, but is a basis for implementers of justice to intervene in the economic structure of a just society. This passage is also important because it links the need for legislators to limit inequalities in the name of protecting the fair value of political liberties and fair equality of opportunity with the need for them to act on (or respond to) non-irrational envy—further supporting the notion that any envy pertaining to the protective grounds for regulating the most advantaged falls within one of Rawls’s three categories of non-irrational envy: envy that responds to inequalities that “exceed certain limits” (T, 143/124 rev).

Second, the envious elements of the heuristic grounds for regulating the most advantaged should be seen as falling within the exception to the general irrationality of envy that arises when it is believed that “existing inequalities. . .are the result of letting chance work itself out for no compensating social purpose” (T, 143/124 rev). Given the uncertainty surrounding the successful implementation of the difference principle, the concern that a system of inequalities is too extreme, such that it passes into the conflict segment where it no longer serves compensating social purpose, will be an ongoing problem for legislators, even (and especially) ideally conceived ones. The context of uncertainty means that legislators committed to justice cannot reliably achieve a precise point on the OP curve (see Figure 1), but only a *range*. Their insistence that the most advantaged bear the risks of this uncertainty, and with it their preference for less than ideal rather than more than ideal levels of inequality, means that over time they will produce policies that tend to the left of the ideal distribution D rather than to the right: it means that they will engineer a society where all representative classes tend to have less than the ideal as opposed to one where only some do. Compare this to an alternate scenario where legislators, under no compulsion to treat uncertainty in a biased way, simply could do their best to reach the ideal distribution: over time they would produce a range of systems of inequalities that straddled a space equidistant from both sides of the ideal distribution D. What justifies the former scenario over the latter one—and, with it, a modicum of envy (because the former scenario is in effect the decision for all to have less income and wealth over time than they would under the latter scenario)—is that the two sides of the curve are not morally equal. Because the space to the right of D is one of injustice, but the space to the left is merely less than perfect justice (T, 78–79/68

rev), a society has a moral reason to prefer this otherwise irrational outcome. Since legislators cannot escape the possibility that their policies will lead society into the conflict segment, it is reasonable for them to operate on the basis of a heuristic device that, in privileging too much over too little equality, over time will have the real, if probably limited, envious effect of making all members of society materially worse off.

Finally, to the extent there is an element of envy in the redressive grounds for regulating the most advantaged, which as I have discussed justifies placing economic burdens on the most advantaged even when doing so has a neutral material impact on the rest of society, such envy finds legitimation in Rawls's third exception to the irrationality of envy: the circumstance that, within a society, "existing inequalities are founded on injustice" (T, 143/124 rev). Even if, as I have indicated, the injustice in question is less one of gross and correctible injustice than the residual unfairness stemming from even a well-ordered society's inability to fully realize fair equality of opportunity with regard to education and politics (see note 27), such unfairness—especially when it appears within a theory of *justice as fairness*—is a basis for imposing redressive burdens on the most advantaged that have no economic benefit for the rest of society.

I do not claim that the protective, heuristic, and redressive bases for regulating the most advantaged exhaust the potential meaning of non-irrational envy for Rawls, but only that to the extent envy is involved in my three arguments for extending Rawlsian justice to include a concern for the most advantaged as lively and explicit as normally evinced for the least favored, such envy falls within the category of reasonable envy.<sup>44</sup> Nevertheless, that there is even a category of reasonable envy—that the imposition of economic costs on the advantaged without economic benefit for society has a role to play in the implementation of social justice—ought to be a corrective to the widespread denigration of the notion within contemporary liberal philosophy and the broader political culture. It is worthy recalling that the root meaning of "envy" comes from the word to "see"—so that envy literally means a "hostile look" (Schoeck 1969, 197)—which reminds us that prior to any regulation and imposition of burdens, envy most basically involves a suspicion toward a particular person or class and, so, an identification of them.<sup>45</sup> My arguments for regulating the most advantaged class are

<sup>44</sup> If one of the three situations grounding non-irrational envy—*excessive inequalities*—might appear necessarily to concern the most advantaged, it is conceivable that the other two situations (failure to realize the difference principle and injustice) potentially involve burdens on a wider segment of society. My argument for devoting regulatory attention to the most advantaged does not rely, then, on logical features of reasonable envy itself, but rather on the heuristic, protective, and redressive grounds discussed in the three previous sections.

<sup>45</sup> Because I have argued for an understanding of reasonable envy that is largely detached from rancorous sentiments (see notes 38 and 43), "hostility" should be understood more in terms of vigilant patrolling of the most advantaged (see McCormick 2006) than of animosity.

at the most fundamental level arguments for *identifying* this class—a stipulation that might seem meager at first, but is actually quite substantial in light of the surprising absence of the concept within major discourses of contemporary liberal thought, not to mention tax codes that define the upper bracket so low that the superrich remain hidden from view. Given the current context where leading philosophies, civic attitudes, and political practices all align with a refusal to seek out the most favored members of society, such an identification would itself be a major, if initial, accomplishment of a liberal society's willingness to evolve its understanding of justice to more directly reflect, and indeed extend and further particularize, Rawls's (R, 125) insight: "In the well-ordered society of justice as fairness it seems that those most likely to be discontent are the more advantaged."

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