

*Elements of Equality*

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## Abstract

In this work I defend the thesis that there are three individually attractive and mutually supportive elements of equality, namely distributive equality, relational equality, and basic equality, all of which should be of our concern, and be integrated into an egalitarian conception of justice. To begin with, I argue that egalitarian distributive principles that regulate the major institutions of society are best seen as grounded in our concerns for fairness in the distribution of benefits and burdens, as well as in the procedure which gives rise to distributive outcomes. I then argue that the justification of distributive principles may also be regarded as a constitutive part of an articulation of the relational ideal of equality, and that no egalitarian should forsake distributive equality in light of our commitments to distributive fairness and procedural fairness. Finally, I argue that the idea that democratic citizens are one another's equals should be interpreted as suggesting that they are all to be governed by egalitarian principles of justice, which have no interest in giving differential status or treatment to any of them as far as they have the capacity to fully understand and act in accordance with the demands of justice.

## Contents

Introduction	1
Chapter 1. Moral Arbitrariness, Procedural Fairness, and Reciprocity: Rawls's Egalitarianism Revisited	10
1.1. Moral Arbitrariness and Rawls's 'Intuitive' Argument	10
1.2. Procedural Fairness, Reciprocity, and the Difference Principle	14
1.3. The Limits of Fair Equality of Opportunity	25
1.4. The Transformation Thesis	30
Chapter 2. If You're an Egalitarian, How Come You Want to be Free?	39
2.1. Cohen's Challenge to the Basic Structure Restriction	39
2.2. Rawls on the Institutional Division of Labour	43
2.3. Scheffler on Moral Pluralism and Egalitarian Liberalism	46
2.4. The Argument from Freedom and Reasonable Pluralism	54
Chapter 3. Fairness, Luck, and Equality: Reflections on Dworkin and Luck Egalitarianism	69
3.1. Distributive Fairness, Luck, and Equality	70
3.2. Fairness, Equal Concern, and Respect for Persons	73
3.3. The Prospects for Luck Egalitarianism	85
Chapter 4. The Relationalist Critique of Luck Egalitarianism	95
4.1. The Harshness Objection and the Disrespect Objection	95
4.2. Rethinking the Relationalist Argument from Equal Respect	107
4.3. Justifying Claims of Justice	111
Chapter 5. The Relationalist Critique of Distributive Equality	124
5.1. What is the Point of Relational Equality?	124
5.2. Distributing Relational Goods	138
5.3. Relational Equality and Distribution	151
5.4. Equality as a Deliberative Practice	162

*Contents*

Chapter 6. Justice and Basic Equality	176
6.1. The Problem of Variation	176
6.2. The Enhancement Thesis	178
6.3. The Non-Differentiation Thesis	182
6.4. Equal Opportunity, Equal Respect, and Reciprocity	190
6.5. A Defence of the Relational Conception of Basic Equality	198
Conclusion	203
Bibliography	204

## Introduction

In this essay I reflect on several dimensions of the literature on egalitarian justice which have been heatedly disputed ever since John Rawls published *A Theory of Justice* half a century ago.<sup>1</sup> My main thesis is that egalitarians should uphold a conception of justice which includes three individually attractive and mutually supportive ideas of equality, namely distributive equality, relational equality, and basic equality.

For a long while Rawls's favoured conception of justice, 'justice as fairness', was considered as a paradigmatic *distributive* view about justice.<sup>2</sup> Its two well-known principles of justice purport to distribute fundamental rights and duties in a way that entitles every citizen to a fully adequate scheme of equal basic liberties, fair equality of opportunity, and a prospect of life that is preferable to that under any alternative institutional arrangements if she is one of the least fortunate members of society.

Crudely put, I understand distributive egalitarianism as mainly concerned with the grounds on which it is justified to distribute benefits and burdens equally. A number of distributive egalitarians have also intensively surveyed the question regarding which goods are the relevant ones when we think about distributive justice.<sup>3</sup> I shall however set that question aside throughout this work, for I believe that this inquiry into the 'metric' or 'currency' of egalitarian justice—namely, the attempt to answer the 'equality of what?' question—need not be the main focus

<sup>1</sup> Rawls, *A Theory of Justice*.

<sup>2</sup> For this assessment, see Young, *Justice and the Politics of Difference*, ch. 1.

<sup>3</sup> See, for example, Sen, 'Equality of What?'; Sen, *Inequality Reexamined*; Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*, chs. 1, 2, and 6; Cohen, *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*, chs. 1, 2, and 4.

## *Introduction*

of the defence of distributive egalitarianism. Instead, I hold that distributive egalitarians must begin with the proposition that, for whatever good that arouses their distributive concerns, there is a presumption to distribute that good equally. I shall also set aside the question whether equality as a state of affairs is intrinsically valuable; for I think the thesis that equality is in itself good, or inequality bad, is not essential to distributive egalitarianism.<sup>4</sup> In my view, what is crucial for the defence of a distributive conception of equality is the justification of distributive equality; and I hold that the presumption of equality is best justified on the grounds that equality is fair when there is no weightier consideration that suggests otherwise, and that inequality is unfair and in that respect unjust when it obtains for no good reason.

Thus understood, the egalitarian character of justice as fairness is manifest in its distributive principles that not only secure equal basic rights and liberties, but also constrain social and economic inequalities, which are permitted only if they benefit all members of society, including the least advantaged, provided all who have the same talents and willingness have equal chances to obtain advantaged social positions. In fact, in spite of the numerous criticisms that have been put forward against it, it is my view that justice as fairness is still unrivalled as the most plausible distributive egalitarian conception of justice.

In Chapters 1 and 2 of this work I try to vindicate this claim by engaging with two of G. A. Cohen's influential critiques of justice as fairness.<sup>5</sup> These two objections run as follows. First, Cohen argues that Rawls is not wholly faithful to the rationale behind his theory, which is that the influences of social, natural, and fortuitous contingencies are arbitrary from a moral point of view, and their differential impact on people's lives should therefore be neutralized. Second, Cohen challenges Rawls to explain why his principles of justice only apply to 'the

<sup>4</sup> Cf. Parfit, 'Equality or Priority?'

<sup>5</sup> *Rescuing Justice and Equality*, pt. 1.



## *Introduction*

basic structure of society', namely the public system of rules which comprises the major social, political, and economic institutions, rather than applying to individuals as well. After all, the economic behaviour of these individuals may also have a considerable impact on the benefits that members of society, including the least advantaged, gain by participating in social cooperation.

With the help of my interpretative work, I argue that Cohen's two challenges to justice as fairness can be successfully met. According to the interpretation I submit in Chapter 1, although Rawls does acknowledge that it is in an intuitive sense unfair that distributive shares are strongly influenced by, say, our natural talents and social conditions, he does not argue from that fact to the conclusion that their effects need to be neutralized in the name of distributive fairness. Instead, Rawls is concerned to regulate the basic structure by principles which are fair in a procedural sense, for it is one of Rawls's basic ideas that the fairness of a procedure can be transmitted to the outcome arising from it, so that what results from a fair procedure will likewise be fair. In contrast to the influential reading advocated by Cohen, I suggest that we can make sense of Rawls's view on this matter only if we put its reference to the idea of procedural fairness into perspective.

In fact, Rawls is well aware of the fact that the principles of justice in justice as fairness do not completely eliminate arbitrary inequalities that some people, like Cohen, may find intuitively unfair. Although I am inclined to side with Rawls's critics on this point, I believe that he does have a definitive answer to this problem, which is to my knowledge hitherto underexplored by his sympathizers and opponents alike. On my reading, Rawls's justification for the principles of justice in justice as fairness ultimately appeals to the idea of reciprocity, according to which all members of society are to benefit from their participation in a fair system of social cooperation. Rawls argues that the acknowledgement of the relation of reciprocity between them will have the effect of making these citizens consider a society well-ordered by his principles of justice to be just; for he believes

## *Introduction*

that their attitude towards the distribution of natural endowments, as well as other contingencies, will be transformed in light of the fact that the society they live in is governed by principles which appropriately express the idea of reciprocity.

With respect to Cohen's second objection, I argue in Chapter 2 that there is a rationale for Rawls to resist applying the principles of justice to individuals, which appeals to the idea of freedom. According to my interpretation of justice as fairness, although it may be desirable for citizens to have an egalitarian disposition, and behave in a way that is most beneficial to the worst off members of society, they also have a highest-order interest to form, revise, and rationally pursue their own plans of the good life, which are to be regarded as self-authenticating as far as they are compatible with their duty to abide by the demands of just institutions; for this is what their freedom consists in. If my defence of the Rawlsian position is successful, Cohen's immanent critiques cannot force us to adopt a conception of justice which is both reasonable and more egalitarian than justice as fairness.

Cohen's critique of justice as fairness is part of a trend which attempts to move beyond Rawls, and people have come up with alternative theories of equality which in my view are also committed to procedural and distributive fairness in their own ways. In Chapter 3 I discuss two of these, namely Ronald Dworkin's 'equality of resources' and so-called luck egalitarianism, both of which understand the idea of distributive equality as fundamentally concerned to neutralize the impact of what people cannot be held responsible for, namely luck, but to leave things as they are if they result from people's own genuine choices, for which they are themselves to be held responsible.<sup>6</sup> I argue that the plausibility of these theories hinges on whether they offer cogent interpretations of the ideas of distributive and procedural fairness, and I conclude that they are partly successful in fulfilling that task. Relatedly, I argue against the view that the choice between candidate theories

<sup>6</sup> See Dworkin, *Sovereign Virtue*; Cohen, 'On the Currency of Egalitarian Justice'.

## *Introduction*

of equality or justice depends on whether any of them best interprets either the Dworkinian idea of equal concern and respect, or that of basic moral equality, for the reason that these notions do not themselves give us enough guidance on how they are to be interpreted or conceptualized.

Now, the view that egalitarian justice is primarily a matter of distributing benefits and burdens has been acutely contested in the last two decades. According to what is now often termed as the *relational* egalitarian view, equality is an ideal, contrasting with forms of hierarchy, concerning how people are to relate with one another in public and private spheres. As Elizabeth Anderson puts it, the point of relational equality is negatively speaking to eliminate oppression and domination, and positively speaking to create and maintain a society in which democratic citizens are related as equals.<sup>7</sup> Relational egalitarians reasonably emphasize that the relational ideal of equality does have distributive implications, but they are also usually keen to stress that it is simply misguided for egalitarians to be concerned with distributive questions irrespective of the relational contexts from which they arise. Apart from their shared vision of a society of equals, the revolt against the distributive conception of equality is also a common enterprise that unites many relational egalitarians.

In Chapters 4 and 5 I reflect upon the apparent rift between the distributive conception and the relational conception of equality. To begin with, I consider in Chapter 4 a number of objections to luck egalitarianism, put forward by Anderson among others, which is said to be a distributivist theory that contains most if not all of the ingredients that offend the relationalist. I argue that these objections fail, for on the one hand the accusation that luck egalitarianism has very implausible implications seems to involve exaggeration, and on the other hand it is sensible for luck egalitarians to formulate their theory as a pluralist view about justice,

<sup>7</sup> 'What Is the Point of Equality?'.

## *Introduction*

which may include whatever principles that help it to be more plausible. I also argue, *pace* Anderson, that luck egalitarianism is not at a disadvantage when it comes to the justificatory framework within which its principles are defended; for one thing, it need not presuppose any particular view on that issue.

In Chapter 5 I go on to consider, more generally, the relationalist challenges to the distributive view. As I said, I suspect that there is a widespread discontent among relational egalitarians with any view that is mostly concerned to articulate the idea of distributive equality. I argue that the relationalist's hostility towards distributive egalitarianism is unfounded. It should be noted immediately, for a start, that it is actually unclear why egalitarians must choose between distributive and relational equality. It is simply very natural to think that egalitarians should be committed to both of these, and aim to integrate them into their favoured conception of justice. Indeed, I assume that all those who endorse distributive equality are also happy to acknowledge one or another relational ideal of equality. The same, however, could not be said about relational egalitarians. With few exceptions,<sup>8</sup> relational egalitarians characteristically disapprove of the idea of distributive equality, and count that rejection as part and parcel of their defence of the relational view.

In other words, there is a curious asymmetry. On the one hand, distributive egalitarians never suggest, as far as I know, that the pursuit of an egalitarian society is not worthwhile. Although some are more explicit about this than others, they all hold that it is consistent and congenial to endorse distributive and relational equality altogether; and some of them further hold that to search for the right distributive principles is also to articulate some of the constitutive features of an egalitarian society. On the other hand, relational egalitarians such as Anderson often claim that the very idea of distributive equality is unmotivated, and at any

<sup>8</sup> See, for example, Schemmel, 'Why Relational Egalitarians Should Care About Distributions'.

## *Introduction*

rate questions about distribution only make sense if they are asked in contexts where the distribution of benefits and burdens has an impact on interpersonal relationships that should be of concern to egalitarians.

In view of this asymmetry, I am mainly concerned to defend the distributive view against the relationalist critique. I argue, to start with, that egalitarians may accommodate the relationalist's concerns within a distributivist framework which includes principles that secure the equal distribution of 'relational goods'. I argue, moreover, that it is a mistake for relational egalitarians to side with the sufficiency view about distribution, for there is no reason why they should have no concerns for fairness that lend support to distributive egalitarianism. I also argue, finally, that Samuel Scheffler's proposal to articulate relational equality as a deliberative practice between those who regard and treat one another as equals does not undermine the distributive view; I point out that egalitarian distributive principles may still have their roles to play even if one accepts Scheffler's practice-focused account, such as to limit the range of options that may be decided by a deliberative practice, or to provide guidance when it involves distributive issues.

My sympathy, in other words, sides with those who accept the compatibility of distributive and relational equality. My belief is that, for whatever other projects a theory of egalitarian justice must commit to, it must aim to specify the sense in which distributive equality matters. I hold that those who forthrightly forsake a commitment to distributive equality fail in this requirement, and that they do not really believe in egalitarian justice. By defusing the challenges the relationalist puts forward to distributive egalitarianism, I hope to gesture towards the way in which distributive and relational equality can be reconciled.

As I would like to put it, distributive equality and relational equality are two elements that should be accommodated within an egalitarian conception of justice. There is also a third element, namely *basic* equality, that has drawn much interest in recent years. Briefly put, according to the principle of basic equality, there is a

## *Introduction*

range of individual beings who are to be regarded and treated as equals in virtue of some properties they possess. It is fair to say that this principle is widely accepted, but there is one serious problem that any account of basic equality must encounter, namely that the properties which presumably ground the basic status of any individual being are most likely to be scalar ones that vary in degrees. No two persons are the same. No matter which morally significant and empirically verifiable property is chosen to be the base property of basic equality, say the capacity for being sentient, intelligent, self-conscious, rational, or autonomous, it is plain that we shall find variations not only among humans and other animals, but also among human beings themselves.

In Chapter 6, I contend that there is an account of basic political equality which can be justified as an integral part of justice as fairness, for the latter includes principles which appropriately deal with all sorts of variations among citizens in a liberal democratic society. According to this Rawlsian account of basic political equality, the fact that there are variations among democratic citizens should not threaten to undermine their basic equality in the first place, for the principles of justice in justice as fairness are exactly tasked to cope with various contingencies that give rise to interpersonal variations.

The essential feature of the Rawlsian account of basic political equality is that its justification of basic equality between democratic citizens is part and parcel of the defence of the conception of egalitarian justice within which it is embedded. That is, its plausibility depends on the theory of justice in which it is integrated, not the other way round; and it does not ground basic equality in one or another moral ideal, such as respect for persons. What is crucial, on this view, is a matter of whether a set of elements, including an account of basic political equality under consideration and principles that cope with interpersonal variations, *cohere* well with one another in a conception of justice which is preferable to its alternatives. To put it otherwise, to say that democratic citizens are one another's equals just

## *Introduction*

is to say that they are entitled to be regarded and treated indiscriminately in accordance with some reasonable principles of justice.

My defence of the Rawlsian account of basic equality means to illustrate a general point, already hinted at in Chapter 3, namely that all theories of justice have their ways to account for the idea of basic equality, which are to be recovered from the principles they include; but these interpretations of that idea can only be as plausible as the theories themselves, no more and no less. This implies that the charge of violating the principle of basic equality does not have any independent force against any particular egalitarian theory of justice. It is merely a roundabout way to say that the theory itself is implausible.

## Chapter 1.

### Moral Arbitrariness, Procedural Fairness, and Reciprocity: Rawls's Egalitarianism Revisited

#### 1.1. Moral Arbitrariness and Rawls's 'Intuitive' Argument

Rawls argues that guaranteeing formal equality of opportunity, which gives everyone the same legal rights to compete for all advantaged social positions, is not sufficient for a social system to be just, for it allows people's chances to obtain positions and offices to be too significantly influenced by contingent factors for which they are not responsible:

[S]ince there is no effort to preserve an equality, or similarity, of social conditions ... the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies. ... Intuitively, the most obvious injustice of the system ... is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.<sup>1</sup>

In view of the deficiency of formal equality of opportunity, Rawls favours the principle of fair equality of opportunity, which requires that those who have similar talents and willingness to pursue offices and positions have equal chances of obtaining them.

As Rawls also notes, however, the promise of fair opportunity still falls short of the ideal of egalitarian justice: 'For one thing, even if it works to perfection in eliminating the influence of social contingencies, it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and

<sup>1</sup> *A Theory of Justice*, 72/62–63 rev.



talents.’<sup>2</sup> To make good on this lack, Rawls claims that the principles which regulate social and economic inequalities have to counteract not only arbitrary inequalities that arise from social contingencies, but also those resulting from the distribution of natural endowments. He thereby proposes to supplement the principle of fair opportunity with the difference principle, according to which an inequality are justified if and only if it is most beneficial to the worst off members of society. According to Rawls, the difference principle expresses the idea of *reciprocity*, according to which all who abide by the fair terms of social cooperation are to benefit from their participation.

But according to a popular reading of Rawls’s so-called ‘intuitive argument’, the central aim of justice is to counteract the morally arbitrary influence of social and natural contingencies.<sup>3</sup> I shall call this idea *the moral arbitrariness rationale*, which states that it is unjust to permit distributive shares to be improperly influenced by morally arbitrary factors, because it is *unfair* for some people to be worse off than others for no good reason. Indeed, Thomas Nagel writes: ‘It is the development of such a sense of unfairness which provides the most effective support for equality as a social ideal.’<sup>4</sup> As the thought goes, to condone arbitrary inequalities is to fail in the requirement of equal treatment in a substantive sense. On this interpretation of Rawls’s argument, then, it is the moral arbitrariness rationale that motivates him to endorse both the principle of fair opportunity and the difference principle. In particular, the difference principle is justified because, in line with the concern that motivates him to endorse fair equality of opportunity, it helps to further counteract the effects of the natural contingencies.

Cohen objects, however, that Rawls’s argument, thus understood, is not valid, and that the difference principle ‘does not establish the justice of the inequalities

<sup>2</sup> Ibid., 73–74/63–64 rev.

<sup>3</sup> See Kymlicka, *Contemporary Political Philosophy: An Introduction*, ch. 3. Cf. Scheffler, ‘What is Egalitarianism?’; Freeman, ‘Rawls and Luck Egalitarianism’.

<sup>4</sup> *Equality and Partiality*, 106.

that Rawls thinks are just.’<sup>5</sup> Based on Brian Barry’s ‘two-stage’ reconstruction of Rawls’s argument, which Cohen dubs ‘the Pareto argument for inequality’, he argues that the key premise of the second part of this argument, which purports to show why *inequalities* permitted by the difference principle are justified, contradicts the moral arbitrariness rationale that underlies the presumption of *equality* established in the first part of the argument. Now, we may state the Pareto argument as follows:<sup>6</sup>

*The first stage: from equal opportunity to equality*

- (1) Social and economic inequalities are to a great but indeterminate extent caused by natural, social, and fortuitous contingencies which are morally arbitrary.
- (2) Insofar as morally arbitrary factors have an impact on people’s chances of obtaining advantaged social positions, their differential influences should be neutralized in the name of equality of opportunity.
- (3) From (1) and (2), it follows that a presumption of equal distribution, as a necessary and sufficient condition for equality of opportunity, is justified.

*The second stage: from equality to the difference principle*

- (4) Compared to any presumably just equal distribution, there typically exist strongly Pareto-superior inequalities which are advantageous to everyone, including the least advantaged members of society.
- (5) It is irrational for the least advantaged to prefer an equal distribution to a strongly Pareto-superior distribution which is most beneficial to them.
- (6) From (3), (4) and (5), it follows that the difference principle, according to which social and economic inequalities are to be arranged to the greatest benefit of the least advantaged, is justified.

<sup>5</sup> *Rescuing Justice and Equality*, 88.

<sup>6</sup> See Barry, *Theories of Justice*, 217–234; Cohen, *Rescuing Justice and Equality*, 89.

Assuming the truth of the factual premises (1) and (4), the nub of Cohen's critique of the Pareto argument is that there exist two potentially conflicting ideas, which respectively lend support to the normative premises (2) and (5). As I said, when Rawls tries to make the case for fair equality of opportunity, that suggestion is often taken to imply that all arbitrary inequalities are in an intuitive sense unacceptable in light of the moral arbitrariness rationale. But the difference principle, which expresses the idea of reciprocity according to Rawls, indicates on the contrary that an inequality which has arbitrary causes is acceptable when it is most advantageous to the least fortunate, even if it benefits others even more for no good reason.

Cohen is correct to point out that the apparent inconsistency between the normative premises of the Pareto argument is disturbing. For a start, if it is true that Rawls's justification for the principle of fair equality of opportunity and the difference principle decisively hinges on the moral arbitrariness rationale, then any institutional arrangements that do not fully neutralize the differential impact of contingent factors may be plausibly regarded as less than perfectly just. Moreover, and more specifically, it is not clear how the difference principle can be justified, for it appears to permit inequalities which are clearly condemned by the moral arbitrariness rationale. Furthermore, it is also no longer clear whether Rawls's view is coherent, if it is motivated by two conflicting ideas, according to which one seems to indicate, in Cohen's words, 'that accidental inequality is unjust',<sup>7</sup> and another that inequality is to be preferred when it is to the advantageous to the least well off.

To engage with Cohen's critique, my main aim in this chapter is to offer a coherent interpretation of Rawls's egalitarian conception of justice. To begin with, against the grain of the influential interpretation, according to which Rawls's

<sup>7</sup> *Rescuing Justice and Equality*, 8.

argument is crucially premised on the claim that arbitrary inequalities are unfair in an ordinary, intuitive, sense, I argue that it instead makes essential reference to a procedural notion of fairness, which helps it to justify a presumption of equal distribution, as well as the difference principle that permits inequalities when the requirement of reciprocity is appropriately satisfied. That is to say, in contrast to Cohen's emphasis of the central importance of the moral arbitrariness rationale, I suggest that this rationale in fact plays a lesser role in Rawls's argument.

Moreover, I argue that Rawls's argument for the principle of fair equality of opportunity, even though it makes reference to the moral arbitrariness rationale, does not ever purport to arrive at the conclusion that the differential impact of arbitrary factors on people's lives should be wholly neutralized. As is illustrated by his claim that it is necessary to reconcile the principle of fair opportunity with the institution of family, Rawls explicitly acknowledges that it is practically impossible to eliminate all arbitrary inequalities. But Rawls believes that democratic citizens can make peace with arbitrary inequalities when they are appropriately regulated by the principles of justice, especially the difference principle; for they will then recognize that they are related in a reciprocal cooperative venture which benefits everyone. This, I suggest, is Rawls's considered response to the claim that arbitrary inequalities are always unfair and for that matter unjust: he claims that people's attitude towards social, natural, and fortuitous contingencies and the inequalities they give rise to will be transformed in light of their recognition of the relation of reciprocity between them.

## 1.2. Procedural Fairness, Reciprocity, and the Difference Principle

To explicate what I consider to be a coherent interpretation of Rawls's view, a natural place to start with is his 'official' argument that draws upon the idea of the social contract. Rawls postulates a hypothetical scenario, which he calls 'the

original position', where mutually disinterested parties—in the sense that they only care about the realization of their own conceptions of the good—are tasked with reaching an agreement in respect of the principles of justice. The role of these principles is to regulate the major social, political, and economic institutions that constitute the basic structure of society, and they have the function of determining the distribution of 'social primary goods', which Rawls assumes are things that everybody needs whatever else one may need to lead a good life and to act as a just citizen. These include the basic rights and liberties; freedom of movement and choice of occupation; powers and prerogatives of offices and positions of responsibility; income and wealth; and the social bases of self-respect.<sup>8</sup>

The defining feature of the original position is that the parties in this initial situation are prevented by 'the veil of ignorance' from having information about their own natural talents, social backgrounds, views about the good life, and the particular circumstances of the society they live in. According to Rawls, situating the parties behind the veil of ignorance

ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain.<sup>9</sup>

The passage illustrates that it is essential to Rawls's argument from the original position that there is a fair initial situation for the parties to deliberate about the principles of justice, for when that condition is satisfied the agreement the parties arrive at should also be fair. As Rawls puts it, the name of his theory,

<sup>8</sup> See Rawls, *Theory*, 62/54 rev.; Rawls, *Justice as Fairness: A Restatement*, 57–61.

<sup>9</sup> *Theory*, 12/11 rev.

*justice as fairness*, ‘conveys the idea that the principles of justice are agreed to in an initial situation that is fair.’<sup>10</sup>

It is very important to note that the notion of fairness that Rawls refers to in his characterization of the original position is different from the intuitive sense of fairness I alluded to above. The notion of fairness which I mentioned to illustrate the moral arbitrariness rationale appears to be primarily concerned with a property of states of affairs. It is typically instantiated in a distribution where some are worse off than others for no good reason—although it may also be appealed to when there are considerations that count against an equal distribution. As we have seen, Rawls suggests that a social scheme that merely secures formal equality of opportunity appears unfair in this intuitive sense, because it is indifferent to whether there is a level playing field, even if no one is formally forbidden from competing for advantaged social positions. For want of a better term, I shall refer to this idea as *distributive fairness*.

By contrast, the idea of fairness that Rawls makes use of in the argument from the original position is essentially a property of procedures. I find it congenial to call it *procedural fairness*, even though the term Rawls himself prefers is ‘pure procedural justice’.<sup>11</sup> When the idea of procedural fairness is used to characterize the conditions of the reasoning in the original position, Rawls suggests that the agreement reached in the original position is fair in the sense that the agreement honours each party’s equal claim to as great as possible a bundle of primary goods. As we will see presently, Rawls argues that the commitment to procedural fairness

<sup>10</sup> Ibid.

<sup>11</sup> I think the distinction between these two senses of fairness in the text roughly corresponds to Rawls’s distinction between ‘pure procedural justice’ and ‘imperfect procedural justice’. I cannot pursue this topic further, but I do want to note one thing: Rawls appears to hold that the idea of imperfect procedural justice, which assumes that there are standards with respect to the correctness of distributive outcomes independent of the procedures that give rise to them, hardly has any application with respect to fundamentals of distributive justice, except for the case of the justice of a constitution. See *ibid.*, 84–90, 221–228/74–78, 194–200 rev. Cf. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 81–84.

implies a presumption of equal distribution of primary goods. But he also argues that it is procedurally fair for the parties in the original position to agree to the difference principle which permits an inequality in holdings.

Now, when Rawls proposes to replace formal equality of opportunity with fair equality of opportunity, the latter is favoured as fair in the procedural sense, or so I argue. As Rawls puts it, ‘the role of the principle of fair opportunity is to insure that the system of cooperation is one of pure procedural justice.’<sup>12</sup> On my interpretation, Rawls suggests that the distributive unfairness in formal equality of opportunity will be duly mitigated if there exist fair procedures to be followed, so that those who have the same talents and willingness will have equal chances to pursue advantaged offices and positions. As it is clear that a procedurally fair distribution of opportunities is consistent with unequal outcomes, we should keep in mind that the pursuit of procedural fairness does not necessarily imply that all who are fairly treated will end up in similar situations.

But as I shall further explain below, Rawls in fact thinks that it is practically impossible to fully realize the ideal of procedural fairness, and the principle of fair opportunity can only guarantee procedural fairness to a reasonable extent; this is indeed one important reason why Rawls has to supplement it with the difference principle. As an illustration, we may notice that Rawls does not fully subscribe to what he calls ‘the principle of redress’, which ‘holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must ... redress the bias of contingencies in the direction of equality.’<sup>13</sup> Instead, he suggests that ‘although the difference principle is not the same as that of redress, it does achieve some of the intent of the latter principle.’<sup>14</sup> I shall not delve into the question whether Rawls has good reason to leave the principle of redress aside;

<sup>12</sup> *Theory*, 87/76 rev.

<sup>13</sup> *Ibid.*, 100–101/86 rev.

<sup>14</sup> *Ibid.*, 101/87 rev.

here I allude to his remark merely to support one interpretive claim: namely, that although he aims to secure procedural fairness in the distribution of opportunities by the principle of fair opportunity, Rawls does not propose to neutralize all arbitrary advantages pertaining to people's chances to obtain advantaged positions and offices.

With these preliminaries in mind, let us turn to Rawls's argument:

Now consider the point of view of anyone in the original position. There is no way for him to win special advantages for himself. Nor, on the other hand, are there grounds for his acquiescing in special disadvantages. Since it is not reasonable for him to expect more than an equal share in the division of social primary goods, and since it is not rational for him to agree to less, the sensible thing is to acknowledge as the first step a principle of justice requiring an equal distribution. Indeed, this principle is so obvious given the symmetry of the parties that it would occur to everyone immediately.<sup>15</sup>

Rawls claims that a principle of equal distribution is fair to all the parties in the original position because they are fairly situated when they deliberate. In light of the informational restrictions under the veil of ignorance, no party is able to secure an agreement that favours only himself. Starting from the assumption—which seems fair in the distributive sense—that each of the parties in the original position has an equal claim to ask for a largest possible bundle of social primary goods, a presumption of equal distribution of all social primary goods, or what Rawls calls 'the benchmark of equality', is justified on the ground that from any party's standpoint it represents a rational choice. Now, we may think that justice as fairness is an egalitarian conception of justice because it makes a *prima facie* case for distributive equality.

However, Rawls hastens to add the following remarks:

<sup>15</sup> Ibid., 150–151/130 rev. I cite the revised text, which is slightly different from the original edition.



But ... there is no reason why this initial acknowledgement [of a principle of justice requiring an equal distribution of all social primary goods] should be final. Society should take into account economic efficiency and the requirements of organization and technology. If there are inequalities in income and wealth, and differences in authority and degrees of responsibility, that work to make everyone better off in comparison with the benchmark of equality, why not permit them? ... Thus the basic structure should allow these inequalities so long as these improve everyone's situation, including that of the least advantaged ... Because the parties start from an equal division of all social primary goods, those who benefit least have, so to speak, a veto. Thus we arrive at the difference principle.<sup>16</sup>

As the passage indicates, Rawls supposes there are considerations that justify departures from the benchmark of equality. For instance, he thinks it is most likely that the basic structure of society has to include market mechanisms that help to allocate goods and services efficiently, even though their proper functionings may inevitably give rise to social and economic inequalities.<sup>17</sup> On Rawls's view, no one can reasonably object to inequalities when they improve everyone's condition. Indeed, he claims that a principle that enjoins 'the equal distribution of all primary goods [is] *irrational*, since it does not permit society to meet certain essential requirements of social organization, and to take advantage of considerations of efficiency, and much else.'<sup>18</sup> Rawls therefore contends that the reasoning that initially favours a principle of equal distribution in the original position should ultimately settle on the difference principle, which permits social and economic inequalities when they are most beneficial to the least advantaged members of society, as compared to the benchmark of equality.

According to Rawls, the original position is a 'device of representation' which models our considered conviction that 'the fact that we occupy a particular social

<sup>16</sup> Ibid., 151/130–131 rev. I cite the revised text, which is different from the original edition.

<sup>17</sup> Ibid., 270–274/239–242 rev.

<sup>18</sup> *Political Liberalism*, 329; emphasis added.

position is not a good reason for us to accept, or to expect others to accept, a conception of justice that favors those in this position.<sup>19</sup> By extending ‘the same idea ... to other cases’, the veil of ignorance imposes ‘appropriate restrictions on what are to count as good reasons.’<sup>20</sup> On my interpretation, what Rawls suggests is that we have good reasons to accept a distribution when and only when it can be delineated as resulting from a fair procedure, and the device of the original position, which represents a procedurally fair initial situation, helps us to specify these reasons.<sup>21</sup> However, it appears that we can also identify these reasons in a simpler way, as Rawls sometimes states his argument without referring to the original position:

Imagine, then, a hypothetical initial arrangement in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and organizational powers would make everyone better off than in this hypothetical starting situation, then they accord with the general conception.<sup>22</sup>

What Rawls alludes to as ‘the general conception’ of justice is the following: ‘All social values—liberty and opportunity, income and wealth, and the bases of

<sup>19</sup> ‘Justice as Fairness: Political not Metaphysical’, 401.

<sup>20</sup> Ibid.

<sup>21</sup> See also Rawls, *Theory*, 183/159 rev.: ‘The form of the argument for the two principles is that the balance of reasons favors them ... Thus the agreement of the parties depends on weighing various considerations. ... Yet ... when everything is tallied up, it may be clear where the balance of reasons lies. If so, then to the extent that the original position embodies reasonable conditions used in the justification of principles in everyday life, the claim that one would agree to the principles of justice is perfectly credible.’ (Here I cite the revised text, which is different from the original edition.) Cf. Cohen, ‘The Original Position and Scanlon’s Contractualism’.

<sup>22</sup> *Theory*, 62/54–55 rev. See also Rawls, *Political Liberalism*, 281–282, for a passage which may make one uncertain whether or not a structurally similar argument stated there is addressed from within the standpoint of the original position. Cohen says it is *not*, for Rawls appears to be merely ‘reviewing “intuitive considerations”’ (*Rescuing Justice and Equality*, 164 n. 33). This textual evidence is however not decisive, since Rawls also writes that he is ‘presenting some intuitive remarks’ in section 26 of *Theory* (150/130 rev.), where he clearly is addressing the argument from the original position.

self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.<sup>23</sup> Justice as fairness, by contrast, is a ‘special conception’ of justice, consisting of the two principles of justice and a couple of priority rules which arrange them in a strict order. On one formulation, these principles of justice are stated by Rawls as the following:

- (a) Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).<sup>24</sup>

According to the priority rules in justice as fairness, the principle of equal liberties (a) has an absolute priority over the second principle (b) that regulates social and economic inequalities; and the principle of fair opportunity has a similar priority over the difference principle. The basic structure of society is to be arranged to satisfy the principle of equal liberties first, and then the principle of fair opportunity, and then finally the difference principle; and it should never be the case that an interest guaranteed by a higher-order principle is sacrificed for the sake of an interest guaranteed by a lower-order principle.

Now, I shall summarize Rawls’s argument for the difference principle as involving the following claims:

- (A) A distribution is justified if and only if it is preferable to an appropriate benchmark of comparison;

<sup>23</sup> *Theory*, 62/54 rev. Rawls goes on to add: ‘Injustice, then, is simply inequalities that are not to the benefit of all.’

<sup>24</sup> *Restatement*, 42–43.

- (B) A distribution is an appropriate benchmark of comparison if and only if it is an equal distribution;
- (C) An unequal distribution is preferable to an appropriate benchmark of equality if and only if it is to everyone's advantage.<sup>25</sup>

As they are formulated, (A) is the general premise of Rawls's argument, and (B) illustrates the initial acknowledgement of the benchmark of equality in that argument, which is defended on the ground that all those who have an equal claim to benefits would agree that a principle of equal distribution is fair. Our main question is how to defend (C). From what we gather from Rawls's remarks, he appears to suggest that considerations of efficiency, along with other institutional demands, make it the case that inequalities permitted by the difference principle are preferable to a Pareto-inferior benchmark of equality. But one might wonder whether Rawls's defence of the difference principle is fully consistent with his egalitarian commitments. The worry is: if Rawls's argument initially establishes that a presumption of equality is fair, and therefore just, to those who are fairly situated, then how could the difference principle, which permits inequalities, also be acknowledged as fair and just? How can Rawls hold that an equal distribution and an unequal distribution are both justifiable to those who have an equal claim to a largest possible bundle of primary goods?

But I think it is not difficult to make sense of Rawls's argument if we remind ourselves that the benchmark of equality and the inequality permitted by the difference principle are both claimed to be fair in the procedural sense. Assuming that everyone has an equal claim to benefit from a fair system of social cooperation,

<sup>25</sup> Strictly speaking, Rawls appears to suggest that a distribution that satisfies (A) alongside (B) and (C) is only 'just throughout, but not the best just arrangement', whereas a distribution is 'perfectly just' if it satisfies all of these and is most beneficial to the worst off. So a more accurate summary of Rawls's claims would be that a distribution is justified if and only if it is most preferable, from the standpoint of the worst off members of society, as compared to an appropriate benchmark of equality. See *Theory*, 78–79/68 rev. I assume that a just throughout arrangement is still justified, but there may exist complications that need not deter us at this stage.

procedural fairness requires only that no one's claim be given lesser weight; it does not assume that a fair bargaining procedure must give rise to a definite outcome. As Rawls explains, it presupposes 'no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed.'<sup>26</sup>

The emphasis on procedural fairness, I note, is what distinguishes my reading of Rawls's argument from Cohen's interpretation, which is substantiated as the Pareto argument stated above. According to the latter, what ultimately motivates Rawls to acknowledge a presumption of equality as an appropriate benchmark of comparison is a sense of distributive unfairness pertaining to any inequalities that have morally arbitrary causes. If this way of understanding Rawls's argument were correct, it would be plausible for Cohen to claim that the difference principle itself contradicts the moral arbitrariness rationale in light of the fact that it does permit arbitrary inequalities.<sup>27</sup> My reading, by contrast, implies no such contradiction. As I have tried to explain, Rawls's egalitarianism is coherent when it is understood as a theory that consistently draws upon the idea of procedural fairness.

Now, I think it is even more important to see that we can only make sense of Rawls's egalitarianism if we put the idea of reciprocity into perspective. I have said that one reason why justice as fairness is an egalitarian theory of justice is that it contains an argument for a presumption of equal distribution. But it is egalitarian in a deeper sense—it acknowledges that everyone has an equal claim to benefit from their participation in social cooperation. This is why Rawls suggests that 'the difference principle expresses a conception of reciprocity.'<sup>28</sup> As he articulates that idea, 'all who are engaged in cooperation and who do their part as the rules and procedure require, are to benefit in an appropriate way as assessed by a suitable

<sup>26</sup> *Theory*, 86/75 rev.

<sup>27</sup> See Cohen, *Rescuing Justice and Equality*, 156–161.

<sup>28</sup> *Theory*, 102/88 rev.

benchmark of comparison.<sup>29</sup> Under the aegis of reciprocity, each citizen's claim to primary goods, which enable him to pursue his conception of the good, is to be given an equal weight. Rawls therefore suggests that 'each representative man can accept the basic structure as designed to advance his interests. The social order can be justified to everyone, and in particular to those who are least favored; and in this sense it is egalitarian.'<sup>30</sup>

According to my interpretation, Rawls's remark implies that the justification of the difference principle, which permits social and economic inequalities that advance everyone's interests, is ultimately premised on the claim that it is an expression of the idea of reciprocity.

Thus understood, the principle of reciprocity defines the basic ground of the legitimate entitlement of a free and equal democratic citizen: as a member who participates together with others in a system of social cooperation, and complies with its fair terms, she is entitled to benefit from her participation insofar as others also gain. As Rawls puts it, 'reciprocity is a relation between citizens expressed by principles of justice that regulate a social world in which everyone benefits judged with respect to an appropriate benchmark of equality'.<sup>31</sup> Alternatively put, in a society suitably regulated by the difference principle, where all citizens benefit from their participation in social cooperation, no one, including the least advantaged, can have a legitimate complaint.

But let me also note that Cohen might challenge Rawls's egalitarianism at this deeper level, and ask why an unequal distribution is always preferable to an appropriate benchmark of equality whenever it benefits everyone; that is, he might insistently ask whether the idea of reciprocity is appropriate to define the relation

<sup>29</sup> *Political Liberalism*, 16.

<sup>30</sup> *Theory*, 102–103. The passage is removed from the revised edition.

<sup>31</sup> *Political Liberalism*, 17.

between the better off and the worse off, especially when distributive fairness is taken into account. I will come back to this issue at the end of this chapter.

### 1.3. The Limits of Fair Equality of Opportunity

I have argued that the ideas of procedural fairness and reciprocity should be in the foreground of a plausible interpretation of Rawls's egalitarian conception of justice. In contrast with Cohen's reading, I have tried to motivate the view on which Rawls's acknowledgement of the problem of moral arbitrariness influences, which besieges a social scheme that only secures formal equality of opportunity, is not to be taken to imply that all arbitrary advantages are to be neutralized. In particular, I claimed that Rawls's endorsement of fair equality of opportunity is defended on the ground of procedural fairness, not distributive fairness.

But one might suspect that my interpretive claims contradict what is implied by Rawls's comment that a social system that guarantees fair opportunity 'still appears defective. For ... it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents.'<sup>32</sup> That is, it might appear to some that Rawls must be committed to the view that distributive unfairness persists unless all arbitrary advantages are eliminated.<sup>33</sup> They would think that this is the major lesson to be learned from Rawls's comment that it is unjust to permit 'distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.'<sup>34</sup>

But I think one can easily see that there is no inconsistency involved if Rawls holds that the distribution of income and wealth should not be *determined* by the distribution of natural talents, as well as that distributive shares can sometimes be

<sup>32</sup> *Theory*, 73–74/64 rev.

<sup>33</sup> See Cohen, *Rescuing Justice and Equality*, 166.

<sup>34</sup> *Theory*, 72/62–63 rev

*properly influenced* by arbitrary factors so long as they are not determined by them. As I shall explain in the following, Rawls consistently holds that a distribution is not strictly determined by arbitrary factors, and their influences upon it are not improper, when it results from a reasonably fair procedure; that is to say, he holds the view that inequalities influenced by morally arbitrary factors are justified when they are appropriately regulated by the principles of justice.

To begin with, Rawls's endorsement of procedural fairness is accompanied by a cautious note: whilst this idea can be nicely illustrated with the help of the original position as a device of representation, where it is assumed that the parties are not privileged by their social and natural endowments in the process of their reaching an agreement, in reality it is practically impossible to level the playing field. In line with his lack of enthusiasm about the principle of redress, which I mentioned in passing above, Rawls thinks that fair equality of opportunity can never be fully realized as a political ideal:

[T]he principle of fair opportunity can be only imperfectly carried out, at least as long as some form 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 which recognizes this fact and also mitigates the arbitrary effects of the natural lottery itself.<sup>35</sup>

Rawls's idea appears to be that the constitution of our selves is largely the product of our social and cultural circumstances, as they are epitomized by the institution of family, which inevitably bestow advantages to some over others, and

<sup>35</sup> Ibid., 74/64 rev.



that their existence thereby gives rise to insurmountable practical difficulties in realizing fair equality of opportunity.

But Cohen might point out that acknowledging this fact merely indicates the practical necessity of reconciling our commitment to fair opportunity with the need to maintain the institution of family. This observation would nonetheless be consistent with claiming that if Rawls were faithful to his own view about the moral arbitrariness of the natural lottery, he would have a *pro tanto* reason to reconsider the legitimacy of the family in the name of fair opportunity. In fact, Rawls himself is well aware of this challenge:

The consistent application of the principle of fair opportunity requires us to view persons independently from the influences of their social position. But how far should this tendency be carried? It seems that even when fair opportunity ... is satisfied, the family will lead to unequal chances between individuals. Is the family to be abolished then? Taken by itself and given a certain primacy, the idea of equal opportunity inclines in this direction.<sup>36</sup>

Rawls nonetheless maintains that the family is not to be abolished on the ground that it plays an indispensable role in the reproduction and cultivation of the cooperative members of society, which he suggests are 'necessities [that] limit all arrangements of the basic structure, including efforts to achieve fair equality of opportunity.'<sup>37</sup> Since the family is necessary for a political society to exist over time, insofar as there is no adequate replacement for it, the preservation of this institution implies constraints on how principles of justice are to be conceived, in that their implementation should never compromise its essential functionings.

Cohen might press his challenge further, however, and insist that Rawls's remarks with regard to the case of family still by no means undermine the point that we have *a* reason to abolish the family, but, again, only indicate that all things

<sup>36</sup> Ibid., 511/448 rev. See also *ibid.*, 299–301/264–265 rev.

<sup>37</sup> *Restatement*, 163.

considered we need to reconcile fair equality of opportunity with the family, and this is something that Cohen would have no objections to. Nonetheless, he would very much want Rawls to admit that the differential impact of the family on people's lives should still be condemned as morally arbitrary, and be neutralized if feasible. That is to say, notwithstanding the vital role the family plays in the sustenance of a political society, Cohen would maintain that the normative force of our concern for distributive fairness, which is said to motivate the principle of fair opportunity and a general commitment to distributive egalitarianism, should remain intact in the face of that fact. On Cohen's view, the distributive unfairness in arbitrary inequality persists unless the differential impact of luck on people's lives is wholly neutralized.

Now, one might respond to Cohen's challenge by suggesting that we are able to distinguish between two senses of a cause being morally arbitrary, and Cohen is therefore incorrect to say that all accidental inequalities are unfair and for that matter unjust. On the one hand, we might say there is an *invidious* sense of moral arbitrariness, according to which what is morally arbitrary is morally objectionable. For instance, if the tuition fee of a public university is set so high that only candidates who are from wealthy families can afford to pay, those who are not so may legitimately complain that they are in effect arbitrarily disadvantaged by an unwritten rule that draws upon irrelevant considerations.<sup>38</sup>

On the other hand, to cite T. M. Scanlon, we might allude to another sense of moral arbitrariness, according to which 'to say that a characteristic is arbitrary from a moral point of view is just to say that it does not, *in itself*, justify special rewards.'<sup>39</sup> As Nagel puts it, if inequalities 'were arbitrary only in the sense that there were no reasons for or against them, they would require no justification'.<sup>40</sup>

<sup>38</sup> See Williams, 'The Idea of Equality', 105–112.

<sup>39</sup> *Why Does Inequality Matter?*, 46; emphasis in original.

<sup>40</sup> 'Equality', 119.

But Nagel also notes, correctly in my view, that Rawls appears to hold that ‘undeserved inequalities are morally arbitrary in an invidious sense, unless otherwise justified.’<sup>41</sup> On this reading, Rawls assumes that arbitrary inequalities always need to be justified, and there is a presumption against them.

Now, one might want to challenge that assumption itself, and more generally the view that there is always a reason to neutralize any differential impact of luck, broadly understood as consisting of all factors for which those who are affected should not be held responsible.<sup>42</sup>

I shall discuss one such rebuttal put forward by Andrew Mason. Against ‘the neutralization approach’, Mason argues that if it is in all instances unfair when one has an arbitrary advantage, then we would have reason to regard it as unfair, and to neutralize its effects, when parents confer advantage on their children by reading stories to them, whilst other kids, no less deserving, do not benefit from their parents doing so. Mason claims that this implication of the neutralization approach ‘is so at odds with our ordinary moral experience’, for the reason that we do not consider the case of parents giving attention to their children by reading them stories as having anything to do with justice.<sup>43</sup> Since Mason thinks there is absolutely no reason of justice that counts against parents favouring their own children by reading stories to them, he rejects the neutralization approach because it entails such a reason. He instead favours what he calls ‘the mitigation approach’, which does not find fault with luck as a matter of principle, but only aims to limit its impact when there are context-dependent considerations that count in favour of doing so.

<sup>41</sup> Ibid.

<sup>42</sup> For this understanding of luck, see Hurley, *Justice, Luck, and Knowledge*, 107–109.

<sup>43</sup> Mason, *Levelling the Playing Field: The Idea of Equal Opportunity and its Place in Egalitarian Thought*, 99; see also Nozick, *Anarchy, State, and Utopia*, 237. Cf. Segall, *Equality and Opportunity*, 159.

But as someone who thinks it is obviously unfair that only some but not all children benefit from their parents' stories, I am unmoved by Mason's argument against the neutralization approach. It is of course true that many parents feel no moral unease when they benefit their children in minute ways, but it seems that the best explanation is simply that all things considered there are countervailing reasons that justify their doing so. Mason's claim that there is no reason to object to parents benefitting their children by reading stories to them implies that there are arbitrary inequalities which need no justification. I resist the conclusion of Mason's argument because I reject its premise.

#### 1.4. The Transformation Thesis

One may hold, however, that arbitrary inequalities always need to be justified, and also that they are justified when suitable conditions are satisfied, without denying that there always exists a reason of distributive fairness to object to any arbitrary inequalities. For it is consistent to hold that there is such a reason, and that the balance of reasons decisively favour an unequal distribution, which may or may not have arbitrary causes, over an equal distribution.

This, I believe, is Rawls's position. As I will now start to explain, Rawls's justification of the difference principle, which permits inequalities when they are most beneficial to the least fortunate, ultimately hinges on what I shall call *the transformation thesis*, according to which citizens in a democratic society will find arbitrary inequalities much less objectionable when (and perhaps only when) there is a relation of reciprocity between them.

To illustrate the transformation thesis, it may be helpful to return to Cohen's critique. As we have seen, Cohen would insistently press on the point that if the full realization of fair equality of opportunity requires the neutralization of all arbitrary inequalities, distributive unfairness should persist whenever the ideal of

equality of opportunity is compromised, notwithstanding the need to reconcile fair opportunity with the family.

For what it is worth, Rawls does not deny that it might seem regrettable that there are limits of the consistent application of the principle of fair opportunity. But he maintains that ‘within the context of [justice as fairness] as a whole, there is much less urgency’:

The acknowledgement of the difference principle *redefines the grounds for social inequalities* ... We are more ready to dwell upon our good fortune now that these differences are made to work to our advantage, rather than to be downcast by how much better off we might have been had we had an equal chance along with others if only all social barriers had been removed. [Justice as fairness], should it be truly effective and publicly recognized as such, seems more likely than its rivals to *transform our perspective* on the social world and to *reconcile us to the dispositions of the natural order and the conditions of human life*.<sup>44</sup>

In this important passage Rawls suggests that the reconciliation between the more and the less fortunate in a social world is realistically possible when we ‘transform our perspective’ towards the natural lottery, and this transformation is realistically possible because the difference principle ‘redefines the grounds of social inequalities’. Assuming that all members of society, including the least advantaged, benefit from inequalities permitted by the difference principle, Rawls indicates ‘that the difference principle represents an agreement to regard the distribution of native endowments as a common asset and to share in the benefits of this distribution whatever it turns out to be.’<sup>45</sup> As he goes on to elaborate:

We use the phrase ‘common asset’ to express a certain attitude, or point of view, toward the natural fact of the distribution of endowments. Consider the question: Is it possible for persons as free and equal not to view it a misfortune (though

<sup>44</sup> *Theory*, 511–512/448 rev. Emphases added.

<sup>45</sup> *Restatement*, 75.

not an injustice) that some are by nature better endowed than others? Is there any political principle mutually acceptable to citizens as free and equal to guide society in its use of the distribution of native endowments? Is it possible for the more and the less advantaged to be reconciled to a common principle? ...

Here it is crucial that the difference principle includes an idea of reciprocity: the better endowed ... are encouraged to acquire still further benefits ... on condition that they train their native endowments and use them in ways that contribute to the good of the less endowed.<sup>46</sup>

Reciprocity, as Rawls also puts it, is 'a tendency to answer in kind', and 'this tendency is a deep psychological fact. Without it our nature would be very different and fruitful social cooperation fragile if not impossible.'<sup>47</sup> According to the transformation thesis, justice as fairness is our best hope to transform our attitude towards the natural lottery and other contingencies, because it includes the difference principle, which expresses our natural tendency to cooperate with others in a reciprocal relationship.

But now one might object, as an internal critique, that Rawls could not consistently appeal to the idea of reciprocity, because that would contradict his other egalitarian commitments. To start with, it may be pointed out that justice as fairness strictly prescribes an equal distribution of the basic rights and liberties, as well as freedom of movement and choice of occupation, so that 'all the liberties of equal citizenship must be the same for each member of society.'<sup>48</sup> As I shall further explore this topic in the next chapter, Rawls appears to hold that a strong case can be made with regard to the equal distribution of the basic rights and liberties, because they are of a highest importance for free and equal citizens to plan, to revise, and rationally to pursue their good lives, and this fact also justifies their primacy. As Rawls puts it, 'free persons conceive of themselves as beings who

<sup>46</sup> Ibid., 76. See also *ibid.*, 124.

<sup>47</sup> *Theory*, 494–495/433 rev.

<sup>48</sup> Ibid., 204/178 rev.

can revise and alter their final ends and give first priority to preserving their liberty in these matters.<sup>49</sup>

One might take it that, by the same token, the priority of the principle of fair opportunity over the difference principle is also justified on the ground that the former is concerned with the distribution of goods which are of use to more important ends, and therefore the concern for distributive fairness in equality of opportunity cannot be mitigated by considerations of reciprocity, which appear to be primarily expressed by the difference principle. To support their conclusion, they might quote from Rawls himself:

[The principle of fair opportunity] expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them. They would be justified in their complaint not only because they were excluded from certain external rewards of office but because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties. They would be deprived of one of the main forms of human good.<sup>50</sup>

As the objection goes, the transformation thesis is indefensible for the reason that Rawls cannot appeal to reciprocity to make good on the loss in distributive fairness with respect to equality of opportunity, which is concerned to secure the important good of self-realization for all from an impartial point of view, even if those who are arbitrarily disadvantaged are compensated for by means of other less important goods.

I would however contend that this objection is misled by a superficial reading of Rawls's view. It is true that Rawls regards some goods as more important than others, and it also seems true that according to him the more important a good is

<sup>49</sup> Ibid., 131–132 rev. This sentence is added in the revised edition.

<sup>50</sup> Ibid., 84/73 rev.

the stronger requirement there is to distribute that good equally. But Rawls never implies the impossible view that a society must be condemned as unfair and therefore unjust if its citizens cannot enjoy any goods, however important they are, equally *in a substantive sense*. For it must be acknowledged that the worth of a good significantly depends on whether there exist appropriate conditions for its enjoyment, and this observation applies to the basic liberties as well as other goods. Indeed, Rawls effectively admits that it is the difference principle which regulates the inequalities in the enjoyment of the basic liberties:

In justice as fairness ... the equal basic liberties are the same for each citizen and the question of how to compensate for a lesser liberty does not arise. But the worth, or usefulness, of liberty is not the same for everyone. As the difference principle permits, some citizens have, for example, greater income and wealth and therefore greater means of achieving their ends. When this principle is satisfied, however, this lesser worth of liberty is compensated for in this sense: the all-purpose means available to the least advantaged members of society to achieve their ends would be even less were social and economic inequalities, as measured by the index of primary goods, different from what they are. The basic structure of society is arranged so that it maximizes the primary goods available to the least advantaged to make use of the equal basic liberties enjoyed by everyone.<sup>51</sup>

As Samuel Freeman explains, when Rawls distinguishes between the basic liberties and their worth, 'Generally Rawls sees liberty as a normative notion, mainly specified in legal and constitutional terms by a certain structure of institutions, or system of rules that define rights and duties.'<sup>52</sup> But even if the basic liberties are said to be distributed equally in an institutional sense according to the first principle of justice in justice as fairness, the fact remains that their worth

<sup>51</sup> *Political Liberalism*, 326. Cf. *Theory*, 204–205/179 rev.

<sup>52</sup> *Rawls*, 60.



is not so.<sup>53</sup> One may therefore suspect that not much distribution of values is done by that principle, and that what ultimately justifies the unequal distribution of the worth of these liberties is the claim that the difference principle secures their greatest value for the worst off members of society.

To be sure, Rawls does not contradict himself when he suggests, on the one hand, that the basic rights and liberties are to be given first priority, and on the other hand that in the case where an equal distribution of their value is practically impossible we should prefer a distribution that benefits the least advantaged most. It follows that the sensible claim that the strength of the requirement of equal distribution corresponds to the importance of the goods does not imply the falsity of the transformation thesis.

Indeed, Rawls consistently suggests that whenever it is infeasible to distribute the value of a primary good equally, that inequality can only be justified if it benefits all in an appropriate way, with special reference to the least advantaged.<sup>54</sup> In the case of fair equality of opportunity, although justice as fairness does forbid restrictions on fair opportunity in exchange for gains in income and wealth, Rawls implies that they can be justified if ‘a wider range of more desirable alternatives is open to [the disadvantaged] than otherwise would be the case.’<sup>55</sup> At any rate, the priority of the principle of fair opportunity does not imply that the difference principle is superfluous. On the contrary, Rawls says that ‘following the difference principle and the priority rules ... reduces the urgency to achieve perfect equality of opportunity.’<sup>56</sup> As is true of the case of the basic liberties, the priority of the

<sup>53</sup> See Daniels, ‘Equal Liberty and Unequal Worth of Liberty’.

<sup>54</sup> With the exception of the case of the political liberties, the ‘fair value’ of which according to Rawls must be guaranteed to all by the first principle of justice. See Rawls, *Political Liberalism*, 327–329.

<sup>55</sup> *Theory*, 301/265 rev.

<sup>56</sup> *Ibid.*

principle of fair opportunity over the difference principle does not threaten the unity of justice as fairness.

In this chapter my primary aim is to argue for the coherence of Rawls's distributive egalitarianism, which I suggest is defended by an argument which draws upon the ideas of procedural fairness reciprocity. As I have tried to show, it is these twin commitments to procedural fairness and reciprocity that shape the egalitarian character of justice as fairness at the deepest level. I acknowledge that Rawls's view is also motivated by a concern for distributive fairness, but on my interpretation he does not thereby draw the conclusion that all morally arbitrary inequalities are antithetical to the reciprocal relationship between citizens in a democratic society. Instead, Rawls suggests that these inequalities will be regarded as much less objectionable when the difference principle is taken into account, for then their attitude towards the natural lottery and other contingencies will be transformed in a way that makes the reconciliation between the better off and the worse off realistically possible.

Now, it may be worthwhile for us to return to Cohen's critique of the Pareto argument. As we know, Cohen argues that this reconstructed version of Rawls's argument is faulty on the ground that there is no satisfactory way to reconcile the following two claims:

- (2) Insofar as morally arbitrary factors have an impact on people's chances of obtaining advantaged social positions, their differential influences should be neutralized in the name of fair equality of opportunity.
- (5) It is irrational for the least advantaged to prefer an equal distribution to a strongly Pareto-superior distribution which is most beneficial to them.

Cohen argues that these two are incompatible, because (2) implies that all inequalities influenced by arbitrary causes are to be condemned as unfair and in that respect unjust, whereas (5) does not.

In response, the above discussion suggests that Rawls simply does not accept (2), because it goes beyond the extent to which the principle of fair opportunity can plausibly appeal to the idea of procedural fairness; and his appeal to the moral arbitrariness rationale is also more nuanced than one that would support (2). In contrast, I have also argued that Rawls does accept (5) in light of his commitment to the ideal of reciprocity, and hold that our concerns for fairness are appropriately instantiated by the principle of fair equality alongside the difference principle.

Despite my contention that Rawls's egalitarianism is coherent, it is now time to note that I am much less confident about its plausibility. For if we take the idea of distributive fairness seriously, as I think we have no reason not to, Cohen seems to be correct when he says that arbitrary inequality 'is unfair, and therefore, *pro tanto*, unjust, and that *nothing can remove that particular injustice*.'<sup>57</sup> By contrast, according to the transformation thesis, citizens will be able to live with that unfairness in a democratic society where the principles of justice, in particular the difference principle, are honoured; that is to say, if they were members of a society well-ordered by Rawls's two principles, none of them would be envious of others' superior holdings, or feel resentment or indignation, even when they recognized that nothing but luck caused the inequalities between them.<sup>58</sup>

I have to admit that the moral psychology suggested by the transformation thesis is beyond my imagination. Following Nagel, I believe that sometimes we have 'a reason to reject a Pareto-superior alternative because the inequality it permits is too great to be outweighed by other advantages. Such a criterion might imply that some socioeconomic inequalities are unfair even though they satisfy the difference principle.'<sup>59</sup> To make the point in terms of a revised version of the argument from the original position, where the parties are assumed to be sensitive

<sup>57</sup> *Rescuing Justice and Equality*, 7; emphasis added.

<sup>58</sup> Cf. Tomlin, 'Envy, Facts and Justice: A Critique of the Treatment of Envy in Justice as Fairness'.

<sup>59</sup> Nagel, *Equality and Partiality*, 107.

to interpersonal comparison of holdings, we might argue that those who benefit least may sometimes have a decisive reason of distributive fairness to veto against permitting inequalities that exceed a certain threshold.

But much may of course hinge on the magnitude of the inequalities that will be permitted by the difference principle, provided the principles of equal liberties and fair opportunity are also satisfied. In any case, we may want to remind ourselves of Rawls's passing remark that 'when the greater potential benefits to the more advantaged are significant, there will surely be some way to improve the situation of the less advantaged as well.'<sup>60</sup>

On that note, provided that the advantages not enjoyed by the better off must ultimately be converted into the benefit of the worse off, it could well be the case that there is not much practical difference between regulating the basic structure by the difference principle, and regulating it by that principle alongside a principle which further reduces inequalities between the better off and the worse off in the name of distributive fairness.

<sup>60</sup> *Theory*, 72 rev. This sentence is added in the revised edition.

## Chapter 2.

### If You're an Egalitarian, How Come You Want to be Free?

In the last chapter I argued that justice as fairness can plausibly be interpreted as being defended on the grounds of procedural fairness and reciprocity. In this chapter I cope with Cohen's another argument against justice as fairness. Cohen objects that Rawls's theory is too restrictive with respect to the subjects to which principles of justice apply. According to Rawls, the principles of justice in justice as fairness should primarily apply to the basic structure of society; Cohen suggests, however, that justice as fairness should further include principles which provide guidance for personal conduct, for justice will be furthered when individuals also see to justice themselves by making economic choices that help to achieve its goals.<sup>1</sup> After considering Scheffler's reply to Cohen, which is premised on a sharp distinction between the norms and values of personal life and political morality that I argue to be unhelpful, I go on to argue that Cohen's objection to justice as fairness can be successfully met, for the reason that Rawls's political conception of justice plausibly assumes the priority of liberty over equality.

#### 2.1. Cohen's Challenge to the Basic Structure Restriction

According to Rawls, the primary subject of the principles of justice in justice as fairness is the basic structure of society, the way in which the major social,

<sup>1</sup> See Cohen, *Rescuing Justice and Equality*, chs. 1, 3, 5. Apart from Scheffler's work that I discuss below, other illuminating responses to Cohen's argument include Estlund, 'Liberalism, Equality, and Fraternity in Cohen's Critique of Rawls'; Williams, 'Incentives, Inequality, and Publicity'; Pogge, 'On the Site of Distributive Justice: Reflections on Cohen and Murphy'; Cohen, 'Taking People as They Are?'; Tan, 'Justice and Personal Pursuits'; Titelbaum, 'What Would a Rawlsian Ethos of Justice Look Like?'

political, and economic institutions are arranged as a public system of rules for social cooperation between free and equal citizens. By maintaining that these principles primarily apply to the basic structure, Rawls means to suggest that they are not ones which directly 'apply to individuals and their actions in particular circumstances. These two kinds of principles apply to different subjects and must be discussed separately.'<sup>2</sup> According to Rawls, individuals do have the natural duty to support just institutions, and to create them if they do not exist, but otherwise individuals are not expected to follow the same set of principles that regulate the basic structure, which would be 'well-ordered' when it is suitably regulated by the principles of justice.

Now, Cohen puts forward a challenge to 'the basic structure restriction', namely Rawls's suggestion that the principles of justice should only be alluded to evaluate and regulate the basic structure, instead of also guiding the conduct of individuals. Cohen's worry appears to have some important implications, which would become more apparent if it is recalled that the difference principle requires that major institutions be arranged in a way that is most beneficial to the least advantaged. Cohen invites us to wonder why it is not similarly demanded that individuals should act to contribute to the advantage of the worst off. This may involve some self-sacrificing acts on the part of the better off, or at least they may be expected to refrain from taking advantage of the incentives so as to maximize their own income and wealth. It seems very plausible to assume that if they do so the worst off would be even better off than when the latter only benefits from institutional arrangements that comply with Rawls's principles. At any rate, there is an ethical question to be asked about the principles which are to be applied to individual conduct irrespective of the empirical assumptions.

<sup>2</sup> *A Theory of Justice*, 54–55/47 rev.

*If You're an Egalitarian, How Come You Want to be Free?*

Since Rawls never explicitly suggests that individuals should also pursue egalitarian justice through their personal conduct, Cohen infers that Rawls's view is unduly concessive to people's selfish maximizing behaviour. In particular, he objects that there is one very implausible implication of justice as fairness, namely that those who are 'talented'—in the sense that their abilities are favoured by the market—may have greater leverage to maximize their self-interest. Unlike those who do not have a wide range of options, the talented may for instance opt to refrain from working as productively as they can when they face with a policy that taxes a higher ratio of their income, even though they would still fare much better off than the untalented if they were to work just as hard under that policy.

Cohen therefore complains that justice as fairness is ludicrously permissive of the talented, for Rawls appears to suggest that there is nothing we can say, from the standpoint of institutional justice, about those who are talented and have no regard for the less fortunate, so long as they abide by the rules and procedures that regulate the basic structure.

Indeed, in a characteristic passage, Rawls writes: 'The function of unequal distributive shares is to cover the costs of training and education, to attract individuals to places and associations where they are most needed from a social point of view, and so on.'<sup>3</sup> Rawls's remark appears to imply not only that there is nothing unjust for individuals to benefit from inequalities, but that for a society to function properly it is necessary that they do so; and he seems more than willing to let market forces drive people to pursue their self-interest, as he goes on to suggest that 'Variations in wages and income and the prerequisites of position are simply to influence these choices so that the end result accords with efficiency and justice.'<sup>4</sup> As it seems, justice as fairness makes no attempt to induce people to see to justice themselves with appropriate principles for individuals, and they are

<sup>3</sup> *Ibid.*, 315/277 rev.

<sup>4</sup> *Ibid.*

*If You're an Egalitarian, How Come You Want to be Free?*

further encouraged to act from self-interest so long as they do not flout the publicly recognized rules and procedures.

As Cohen puts the charge plainly, he thinks it is 'absurd' to leave the task of realizing egalitarian justice solely to the institutions that constitute the basic structure, and to exempt individuals from relevant responsibilities.<sup>5</sup> On his view, the discontinuity between the difference principle's demands on institutions and the lack of any corresponding requirement on personal conduct is striking. He thereby concludes that justice as fairness is deeply defective, for it falsely assumes that justice is merely a virtue of institutions. A genuine egalitarian ideal of justice, according to Cohen, must go beyond the principles for institutional arrangements, and inform individual conduct as well. He proposes that individuals should also be guided by an 'egalitarian ethos', which should parallel the principles that apply to the basic structure of society in an appropriate way.

In sum, Cohen addresses the important question whether Rawls is correct to focus only on the principles that regulate the basic structure, without paying due regard to the norms of justice that should guide individual conduct. The charge that justice as fairness does not properly investigate the whole range of the subjects of justice is particularly acute under the sensible assumption that individuals can also contribute to the justice of society by motivating themselves to benefit the less advantaged maximally with self-sacrificing acts. In any case, apart from the principles which are used to evaluate and regulate the basic structure, it is not clear why justice as fairness does not articulate the corresponding ethos that specifies how people should act in order for justice to prevail.

Relatedly, there is a further question about the extent to which people's self-regarding behaviour may accord with the difference principle, which ties the justifiability of social and economic inequalities to the maximal expectations of

<sup>5</sup> *Rescuing Justice and Equality*, 10.



the worst off members of society. Indeed, Cohen worries that justice as fairness is not internally consistent, for it is too permissive towards individual conduct, and that makes the application of the difference principle subject to constraints that have nothing to do with egalitarian justice. According to Cohen, it is therefore urgent to ponder over the possibility of an egalitarian ethos, which will have the effect of motivating individuals to seek justice in their personal conduct.

## 2.2. Rawls on the Institutional Division of Labour

Before we try to answer the question whether Rawls is correct to say that the principles of justice primarily apply to the basic structure, and not to individuals, there is a prior question worth asking: namely, whether there is even a need to specify principles that particularly regulate the basic structure; or in other words whether we must try to identify some special principles which are appropriate for institutions, no matter whether they also apply to individuals.

Rawls gives two reasons why he focuses on principles for the basic structure. First, Rawls claims that the major institutions of a society have pervasive and profound influences on people who live under it. In particular, he emphasizes that they play a crucial role in the formation of citizens' characters: there is a dimension of education and cultivation, which are indispensable for citizens to recognise the fundamental ideas of justice themselves so as to act justly.

Second, Rawls suggests that 'background justice' can only be secured if the basic structure is regulated by the principles of justice. By contrast, seemingly free and fair transactions between individuals and associations are not by themselves sufficient to guarantee that over time the conditions under which they take place are fair and just. For however free and fair they may seem 'when viewed locally and apart from background institutions', Rawls maintains that 'the accumulated results' of these 'are likely over an extended period to undermine the background

*If You're an Egalitarian, How Come You Want to be Free?*

conditions required for free and fair agreements.<sup>6</sup> Indeed, Rawls claims that ‘The way in which we think about fairness in everyday life ill prepares us for the great shift in perspective required for considering the justice of the basic structure itself.’<sup>7</sup> Rawls’s point is that the case of background justice is significantly different from small-scale interpersonal interactions, so it is inadequate to appeal to an intuitive notion of fairness. Instead, background justice can only be secured by regulating the basic structure with principles which are identified independently of the rules and procedures that apply to individuals and associations.

In my view, these observations plausibly establish that we must try to identify the *sui generis* principles that specifically apply to the basic structure. Given that there also exist other norms appropriate for individuals and their personal relations—say, an ideal of friendship—and associations such as churches and universities, Rawls indicates that this conclusion amounts to an ‘institutional division of labour’ between principles that regulate the basic structure and other principles that apply to individuals and associations.<sup>8</sup> According to Rawls, this institutional division of labour suitably represents the special status of the principles for the regulation of the major institutions which are needed to secure background justice. In contrast, seemingly free and fair transactions become genuinely so only when background justice is established in a well-ordered society, and ‘individuals and associations are then left free to advance their (permissible) ends within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the regulations necessary to preserve background justice are in force.’<sup>9</sup>

Rawls further indicates that principles for ‘local justice’ that regulate the transactions between individuals and associations, and principles for international

<sup>6</sup> *Justice as Fairness: A Restatement*, 53.

<sup>7</sup> ‘Kantian Constructivism in Moral Theory’, 337.

<sup>8</sup> *Political Liberalism*, 268–269.

<sup>9</sup> *Ibid.*, 269.

justice, which are to be included in what he calls 'the law of peoples',<sup>10</sup> are only to be considered after the issues concerning the basic structure are settled. He argues that in justice as fairness there is an 'appropriate sequence of kinds of subjects', and the principles for other subjects are all constrained by and presuppose the principles of justice that apply to the basic structure of a domestic society.<sup>11</sup> As Freeman puts it, Rawls means to suggest 'that principles of justice for the basic structure have a kind of *methodological and regulative primacy* over other principles of justice.'<sup>12</sup> Among other things, this nicely explains why Rawls thinks there is a natural duty to support just institutions, since 'a person's obligations and duties presuppose a moral conception of institutions and therefore that the content of just institutions must be defined before the requirements for individuals can be set out.'<sup>13</sup>

But to establish the primacy of the basic structure is not enough to address Cohen's worry, which presses on the question why individuals are not required to do more than supporting just institutions. Why are they permitted to be driven only by self-interest in their personal pursuits, even though they are required to acknowledge and abide by the principles of justice that regulate the basic structure? To respond to Cohen's challenge, it is necessary to show that there is a rationale behind the basic structure restriction, or Rawls's exclusive focus on the principles for institutions. It is not enough to say that background justice can only be secured by applying special principles to the basic structure, which also happens to have pervasive impact on individuals. It needs to be shown that it is unreasonable to require other subjects to be also appropriately guided by these principles.

Indeed, it seems natural to suggest that the considerations that justify certain institutional arrangements should also inform our conduct in personal life. For

<sup>10</sup> See Rawls, *The Law of Peoples*.

<sup>11</sup> *Political Liberalism*, 261–262. See also *Theory*, 108–110/93–95 rev., and *Restatement*, 11–12.

<sup>12</sup> 'The Basic Structure of Society as the Primary Subject of Justice', 90; italics in original.

<sup>13</sup> *Theory*, 110/95 rev.

instance, if people think that the worth of their political liberty is lessened when there are political parties whose power dominates others in virtue of their financial advantage, then they might think, on the one hand, that there should be relevant regulations that limit the financial support a party may receive; and they might also think, on the other hand, that they should not themselves donate to a party whose financial advantage already exceeds an acceptable range. Similarly, one might argue that if people accept the difference principle on the grounds that the distribution of natural talents is arbitrary from a moral point of view, and that inequalities are only justified when they are most beneficial to the worst off, then they should also think that they are not to expect higher pay even if they happen to be talented, and that they are so entitled only when their asking for more is indispensable for the worst off's advantage.<sup>14</sup> This then implies that they should have reasons not to bargain for more simply out of self-interest unless the worst off would benefit from their doing so.

### 2.3. Scheffler on Moral Pluralism and Egalitarian Liberalism

It appears that the kind of answer to Cohen's challenge we are looking for should show that things look different from an institutional point of view and a personal point of view, despite the fact that institutional arrangements must also be justifiable from the perspective of those who live under them.<sup>15</sup> I will now start to reflect on a proposal from Scheffler, who aims to explicate 'the division of moral labour' between principles that specifically apply to the basic structure of society and those others that apply to individual conduct.

Scheffler starts with the observation that there is a genuine tension between 'the values of personal life' and 'the values of political morality'. This is manifest,

<sup>14</sup> See Shiffrin, 'Incentives, Motives, and Talents'.

<sup>15</sup> See Nagel, *Equality and Partiality*.

for example, when we are called upon to alleviate the plight of the poor. On the one hand, although some people may acknowledge that they have a responsibility to contribute, Scheffler suggests that many of 'the predominant values and norms of our culture do not in fact require them to do so.'<sup>16</sup> Instead, Scheffler indicates that there are what he calls 'limiting' norms and values, which advise us to focus on those with whom we have personal relationships and interactions; and their demands are often largely contingent on our own previous doings, abilities, and ideas of the good life. One notable implication of the prevalent norms of our culture is therefore that 'it is legitimate, at least within certain broad limits, to pass up opportunities to assist those who are suffering in order to pursue one's own aims and aspirations'.<sup>17</sup> As Scheffler elegantly summarizes his point, 'the world of individual responsibility is much smaller than the world as a whole.'<sup>18</sup>

On the other hand Scheffler thinks that there also exist values and norms of political morality, including justice, fairness, equality, and much else, 'which have, and are understood to have, implications that transcend the arena of small-scale interpersonal relations, and which reflect an expansive understanding of the proper scope of moral concern.'<sup>19</sup> Apparently, then, there is a problem: how could we reconcile the norms and values of personal life and political morality? Must we think that there is no principled way to do this, and that it is just a tragic fact of human life?

Now, Scheffler claims that we should not try to evade that problem, and take *value pluralism* seriously. According to a prominent version of this thesis, made familiar by Isaiah Berlin, 'Everything is what it is: Liberty is liberty, not equality

<sup>16</sup> 'The Division of Moral Labour: Egalitarian Liberalism as Moral Pluralism', 109.

<sup>17</sup> Ibid., 110.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., 111.

or fairness or justice or culture, or human happiness or a quiet conscience.<sup>20</sup> The existence of a plurality of values, according to Berlin, implies the impossibility of a perfect harmony between them and their joint realization.

But by value pluralism Scheffler appears to emphasize more specifically that, first, there exist two sets of values and norms, namely those of personal life and political morality; and second, each of these sets of values cannot be reduced to one another, and therefore 'it is a mistake to treat either set of values as having merely derivative significance', since that would be 'to understate the importance and mutual independence of these values.'<sup>21</sup>

Scheffler suggests that what we can aim for, perhaps optimistically, is a theory that does justice to both of the values of personal life and political morality. This would be a theory which accepts *moral pluralism* in Scheffler's sense, and he interprets *egalitarian liberalism* as such a theory: according to Scheffler, egalitarian liberalism 'supposes that we can design our social world in such a way as to accommodate the most important of those values and to reconcile the conflicting tendencies to which they give rise.'<sup>22</sup> This is to be done by finding both the right subjects which are suitable to promote or honour the relevant values, and the right principles which apply to them. Scheffler coins this manoeuvre as *the division of moral labour*.

Scheffler also proposes to understand Rawls as such an egalitarian liberal, for Rawls is explicit that different principles should apply to their own proper subjects, and 'The first principles of justice as fairness are plainly not suitable for a general theory.'<sup>23</sup> They are to be contrasted with the principle of utility, as is conceived by utilitarianism, which 'applies equally to all social forms and to the actions of

<sup>20</sup> 'Two Concepts of Liberty', 172. See also Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice*, 29–35.

<sup>21</sup> 'The Division of Moral Labour', 112–113.

<sup>22</sup> *Ibid.*, 128.

<sup>23</sup> *Political Liberalism*, 261.

individuals; in addition, the assessment of character and dispositional traits, as well as the social practice of praising and blaming, are to be guided by it.<sup>24</sup> Understanding Rawls as an egalitarian liberal who is deeply concerned by the need for a division of moral labour between different principles for respective subjects, Scheffler writes:

In effect, then, Rawls endorses a form of pluralism about moral values and principles. Social institutions should be regulated by his principles of justice, but other groups and individual agents should in general be guided by other principles and may legitimately aim to realize other values and ideals.<sup>25</sup>

Indeed, Scheffler interprets Rawls's view as actually employing *two* ideas of division of labour; and rather surprisingly, Scheffler claims that Rawls's idea of the institutional division of labour—defended on the grounds that the principles for the basic structure are indispensable in view of its pervasive and profound influence, and further play a special role in securing background justice—is in fact only of secondary importance to his theory. What really is crucial to justice as fairness, argues Scheffler, is the notion of the division of moral labour, motivated by the doctrine of value pluralism: the suggestion that justice should primarily be concerned with issues that arise out of large-scale societal contexts makes most sense, according to Scheffler, on the assumption that different values and norms, suitable for particular subjects, are paramount in different contexts. We may even think that the plausibility of the institutional division of labour in justice as fairness is premised on the fact that it properly expresses the idea of the division of moral labour. For it may be said that it is because justice is inherently a social and political virtue that it can only be secured by a system of major institutions.

<sup>24</sup> Ibid., 260.

<sup>25</sup> 'The Division of Moral Labour', 115.

*If You're an Egalitarian, How Come You Want to be Free?*

Now, in response to Cohen, Scheffler claims that it is a fundamental mistake to think of the division of moral labour in egalitarian liberalism as motivated by the need to deal with selfish behaviours. The crucial question, on Scheffler's view, is whether egalitarian liberalism can plausibly accommodate two heterogeneous sets of values, not whether there is a way to suppress the acquisitiveness manifested in our personal lives. For according to Scheffler's moral pluralism, we must not lose sight of the fact that there exist different norms and principles which apply to institutions and individuals respectively. In other words, he means to suggest that we must look at those limiting norms that guide personal life when we try to assess individual conduct, not principles of justice that apply to the basic structure. If we side with Scheffler in thinking that people should be primarily guided by the limiting norms and values in their daily life, then we should not be troubled by the fact that they have personal pursuits which have nothing to do with the values that inform political morality.

Our inquiry started with Rawls's claim that the principles of justice in justice as fairness apply primarily to the basic structure of society, not to individuals and associations. We then introduced Cohen's challenge, which makes the point that individual conduct may also have significant impact on the justice of a society; as this line of thought goes, it is not clear why justice as fairness is not also concerned with the norms that regulate individual behaviour, and Cohen thereby claims that this feature of Rawls's conception of justice makes it deeply implausible. We now see that Scheffler answers to Cohen's query by foregrounding the alleged truth of value pluralism and the accompanying idea of the division of moral labour in egalitarian liberalism, which Scheffler suggests is epitomized by justice as fairness. On Scheffler's view, the truth of moral pluralism implies that individual conduct, whether or not driven by maximizing incentives, should only be directly guided by the limiting norms, which are appropriate to be appealed to in small-scale



interpersonal contexts, and which leave much leeway for a diversity of personal pursuits. I believe, however, that Scheffler's response to Cohen is unsuccessful.

Now, the first thing to note is that Cohen need not, and does not, reject value pluralism. Indeed, he labels himself as a 'radical pluralist', who thinks that there are a multitude of fundamental moral principles, and that there is no principled way to resolve their conflicts should they arise. The best thing to do, according to Cohen, is simply to test our intuitions in various real or hypothesized scenarios.<sup>26</sup>

Secondly, Cohen would also agree with Scheffler that there are norms which permit us to pursue our own personal goals. As Cohen puts it, he wants to make room for what Scheffler elsewhere calls 'agent-centred prerogatives'.<sup>27</sup> That is, Cohen does not want to deny that 'every person has a right to pursue self-interest to some reasonable extent (even when that makes things worse than they need be for badly off people).'<sup>28</sup> In response to his critics,<sup>29</sup> Cohen further concedes that the personal prerogatives should not be narrowly understood as only including a right to pursue self-interest, but also extend to, for example, the priority a person may confer to other-regarding concerns.<sup>30</sup> Presumably, the prerogatives people enjoy help them to realize values other than those central to political morality.

In light of these two observations, it is clear that Cohen does not deny the plurality of values and the existence of the limiting norms, as Scheffler calls them, and he thinks it involves some intuitive weighing of norms and values to obtain the right verdict about individual responsibility in specific circumstances. He would also agree with Scheffler that whether one is justified to act out of self-interest significantly depends on whether one has a prerogative acknowledged by the limiting norms.

<sup>26</sup> *Rescuing Justice and Equality*, 4–5.

<sup>27</sup> See Scheffler, *The Rejection of Consequentialism*.

<sup>28</sup> *Rescuing Justice and Equality*, 61; italics omitted.

<sup>29</sup> See Estlund, 'Liberalism, Equality, and Fraternity in Cohen's Critique of Rawls'.

<sup>30</sup> Cohen, *Rescuing Justice and Equality*, 390.

But now it is worth commenting on a puzzling feature of Scheffler's view, namely that it is entailed by his moral pluralism that principles which directly apply to individuals are indifferent to the norms and values of political morality, such as justice and equality; for the limiting norms should *not* be concerned about whether individuals contribute to the goals and purposes of egalitarian justice as far as they comply with the demands of justice. It also follows from Schefflerian moral pluralism that norms of justice should *not* be concerned with individuals' personal pursuits either, insofar as they do not offend against them, for these norms are supposed to be primarily honoured in large-scale societal contexts. As we have seen, these commitments follow from Scheffler's claim that norms and values of personal life and political morality are mutually independent. It is not only that individuals cannot do what institutions do, or that institutions can fulfil relevant tasks all by themselves.<sup>31</sup> What Scheffler suggests is that even when they do the same things, or when their acts have similar effects, these acts must be interpreted in different lights by the respective sets of norms that suit them; for according to Scheffler we must do justice to the fact that the basic structure and individuals are essentially governed by different sets of norms and values.

Now, it is true that an act can be variously described, and it is also true that even when acts have same effect they can still be distinguished from one another, but it is unclear why norms of justice should be indifferent to individual conduct in the way Scheffler suggests. Suppose justice has the demand that institutions should alleviate serious domestic poverty, and apart from paying my taxes to support these institutions, I want to further contribute to the cause by giving away part of my after-tax income. Scheffler's view seems to imply that my contribution is essentially irrelevant to whether justice prevails in my society, for whether it does so only depends on whether the basic structure is well-ordered—and it would

<sup>31</sup> Cf. Porter, 'The Division of Moral Labour and the Basic Structure Restriction'.

be the case even if the majority of the members of our society willingly see to justice themselves. It might be said that what I do is only charity, not justice; or that what I do is to pursue 'personal justice', not 'social justice'. The point is, of course, not about the terms we use to describe my act. What should puzzle us is why egalitarian liberals have to commit to such a sharp discontinuity between norms and values of personal life and political morality.

Cohen may therefore plausibly reject Schefflerian moral pluralism. To begin with, Cohen should object to Scheffler's idea of the division of moral labour, which according to Scheffler gives shape to egalitarian liberalism. For there is no good reason to think that political values should be exclusively promoted or honoured by a certain subject, especially when there are other candidates who are also perfectly capable of doing so; and Cohen should insist that considerations that count in favour of a principle for the basic structure should also count in favour of a similar principle that guides individual conduct. Indeed, Cohen's objection to justice as fairness is premised on the idea that individuals can and should also be guided by an egalitarian ethos, which appropriately correspond to the principles of justice that regulate the basic structure.

Relatedly, Cohen should also object to the idea that a political morality is indifferent to whether or not individuals are properly moved by the values and norms of justice and equality in their personal lives. For it seems plain that a society is more just if its members are willing to honour political values themselves directly in their personal conduct, as compared to a society in which people only respect the limiting norms. Given that individuals can also in their own way help to further justice and equality—for example, the talented may choose to work as hard as they can simply for the sake of improving the circumstances of the worse off—in contrast to Schefflerian moral pluralism, which is implausible because it implies that only the limiting norms apply to individuals, a reasonable conception

of justice should not imply that their deeds have no bearing on whether their society is just.

In my view, Schefflerian moral pluralism is worthy of consideration because it promises to show why individuals need not see to justice themselves, and can justifiably leave that task to the basic structure of society. The heart of Scheffler's view is the assumption that there are two sets of mutually independent values and norms. This assumption helps him to motivate a response to Cohen's objection to justice as fairness, which suggests that it is appropriate for individuals to be subject only to the limiting norms. I have argued, however, that Cohen's charge against justice as fairness holds in the face of Scheffler's argument from moral pluralism, for it appears that there is no clear motivation for a sharp distinction between the principles and norms of personal life and those of political morality.

In the next section I will explore another response to Cohen's objection. But before I proceed to explicate the argument that I find persuasive, I want to briefly consider some remarks Cohen makes regarding the relation between the personal prerogatives and the difference principle.

#### 2.4. The Argument from Freedom and Reasonable Pluralism

On Cohen's view, prerogatives may justify some inequalities. Suppose I want to make a decent amount of money, that is, much more than what the worst off members of my society have, because I want to save money for my son's good but expensive education. Cohen would agree that I am entitled to bargain for a higher pay with my employer, even though that leads to an increase in inequality between members of my society if I succeed.

However, Cohen also writes: 'The prerogative justification is a quite different justification of inequality from the difference-principle one, and the inequalities that it justifies will coincide only by accident with those that the difference

principle would license'.<sup>32</sup> After reflecting upon the justification of inequality that alludes to the personal prerogatives, which he accepts, Cohen maintains: 'The important point ... is that the prerogative justification of inequality is *different* from the Rawlsian.'<sup>33</sup>

Cohen is correct. According to the difference principle, social and economic inequalities are justified when they result from institutional arrangements which are expected to be most beneficial to the worst off members of society. It is clear that the notion of prerogatives plays no explicit role in Rawls's argument for the difference principle. Instead, as we discussed in the last chapter, inequalities are permitted by the difference principle under the assumption that they are both ineliminable and practically necessary from a social point of view—'Society should take into account economic efficiency and the requirements of organization and technology.'<sup>34</sup> At any rate, the difference principle itself by no means suggests that inequalities are justified only when, say, the talented, who are also very likely to be the better off members of a society, have immunity from the demands of egalitarian justice. That is to say, the difference principle itself does not imply that people are justified in pursuing their ends, whether or not they are motivated by self-interest, only when these personal pursuits are permitted by what Scheffler calls the limiting norms.

In a sense, this is no surprise, for Rawls makes it very clear that his principles of justice do not apply to individuals and associations. However, given Cohen's claim that individuals can also see to justice themselves, there is a pressure on Rawls to explicate the principles which are to guide them. If these principles are available, one might have a clue to explain why Cohen is incorrect to expect that principles for individuals should be largely congruent with those applying to

<sup>32</sup> *Rescuing Justice and Equality*, 10.

<sup>33</sup> *Ibid.*, 389; emphasis in original.

<sup>34</sup> Rawls, *Theory*, 130 rev. This sentence is added in the revised edition.

institutions. But what seems puzzling is the fact that Rawls appears to hold that his theory of justice need not offer such an explication.

Now, is there a credible explanation of this lack? As we have seen, Scheffler interprets Rawls's view as implicitly endorsing the claim that people have a right to freely pursue their own ways of living so long as they are allowed by the limiting norms. Cohen, on the contrary, argues that although considerations deriving from the limiting norms have some weight, they are not decisive. In fact, it is perfectly conceivable that there may be individuals who do not appeal to their prerogatives, and accept the self-sacrifice needed to further egalitarian justice. According to what Cohen calls 'the ethical solution', individuals may freely follow the guidance appropriately drawn from the principles that apply to the basic structure.<sup>35</sup> There is apparently nothing contradictory for an individual, guided by an egalitarian ethos, freely sacrifices her interests for the just cause. Again, assuming that justice would be furthered when individuals freely follow the guidance of an egalitarian ethos, a feasible ethical solution may well be what is needed for the creation and maintenance of a just society.

This is, however, not Rawls's view. For him a society is not necessarily more just when its members imitate what the institutions aim at, and anyway he does not expect them to do so. I believe that his main reason for holding this view lies in his account of *freedom*.

According to Rawls, citizens in a well-ordered society are free and equal. They are equal in that they have the sufficient minimum degree of two moral powers—the capacity for a sense of justice and the capacity for a conception of the good—to participate in social cooperation over a complete life. They are free because, first, they view themselves as having the moral power to have a conception of the good: to form, revise, and rationally to pursue a good life. 'As free persons, citizens

<sup>35</sup> See Cohen, *Rescuing Justice and Equality*, ch. 5.

claim the right to view their persons as independent from and not identified with any particular such conception with its scheme of final ends.<sup>36</sup> Second, they consider themselves to be 'self-authenticating sources of valid claims'. This means that 'they regard themselves as being entitled to make claims on their institutions so as to advance their conceptions of the good'.<sup>37</sup> Most importantly, the claims made by citizens are regarded 'as having weight of their own apart from being derived from duties and obligations owed to society'.<sup>38</sup> Lastly, citizens are free in that they are regarded as capable of taking responsibility for their final ends.

The claim that citizens are free in a liberal democratic society appropriately regulated by the principles of justice is crucial if we want to understand why Rawls is not worried about the question that troubles Cohen. According to Rawls, the freedom of citizens in a well-ordered society implies that within the confines of the basic structure they are entitled to lead their lives in their own ways. As Jon Mandle puts it, since they conceive of themselves as self-authenticating sources of valid claims, citizens 'need not offer public justifications for the value that they attach to their ends ... their simple assertion that they value them is sufficient'.<sup>39</sup> Alternatively put, Rawls's point is that, from the viewpoint of justice, the question about whether a citizen's way of life is worth living *does not even arise* so long as they fully understand and abide by the principles of justice that regulate the basic structure. It is simply not the role of a conception of justice to pass judgements on how people should lead their lives. This is essential to justice as fairness as a *liberal* conception of justice. It is to be contrasted with other conceptions 'in which people are not viewed as self-authenticating sources of valid claims'.<sup>40</sup> According to those illiberal views, the claims of members of a society would 'have

<sup>36</sup> Rawls, *Political Liberalism*, 30.

<sup>37</sup> *Ibid.*, 32.

<sup>38</sup> *Ibid.*

<sup>39</sup> 'Freedom', 297.

<sup>40</sup> *Political Liberalism*, 33.

*If You're an Egalitarian, How Come You Want to be Free?*

no weight except insofar as they can be derived from the duties and obligations owed to society, or from their ascribed roles in a social hierarchy justified by religious or aristocratic values.<sup>41</sup>

According to Rawls, people have different conceptions of the good life, and citizens have the vital interests to exercise their moral powers, and to advance the determinate ways the life they find amenable.<sup>42</sup> Indeed, the case of freedom is no different if one wants to be a monk who feels obliged to renounce worldly living, a political activist who fights for the insulted and injured, or an entrepreneur whose life pursuits are propelled by a passion for wealth.

However, it is not obvious that the argument I just stated is sufficient to answer Cohen's question, namely: why, from the viewpoint of justice, it is not even more desirable if citizens in a well-ordered society affirm a conception of the good life which is most congruent with the principles of justice that regulate the basic structure? Surely, it may be said, this argument does not render Cohen's ethical solution implausible in any way? Why do we not try to cultivate the citizens of a liberal society with an appropriate ethos, so they would be motivated to further egalitarian justice by their personal conduct?

This is a powerful question. Indeed, as I hinted above, the consideration of freedom does appear to be but a part of the answer to be drawn from justice as fairness. Now, I think the other part of the argument could be retrieved from the following passage, the importance of which I believe cannot be overstated:

A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be

<sup>41</sup> Ibid.

<sup>42</sup> Ibid., 74.



*If You're an Egalitarian, How Come You Want to be Free?*

affirmed by all, or nearly all, citizens. Political liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime.<sup>43</sup>

The first point Rawls makes here is that in a well-ordered liberal democratic society citizens affirm, and will go on to affirm reasonable yet incompatible world views. That is to say, there is 'a fact of reasonable pluralism', which Rawls assumes 'to be a permanent condition of a democratic society.'<sup>44</sup> Indeed, he thinks that 'a continuing adherence to one comprehensive doctrine can be maintained only by the oppressive use of state power'.<sup>45</sup>

Moreover, it is essential to Rawls's view, and this is the second point, that the fact of reasonable pluralism is 'the normal result of the exercise of human reason'. This means that so long as citizens in a political society are free to reason for themselves, they will inevitably end up holding a variety of not fully compatible views about what a good life consists in, even if these views are all reasonable.

The other part of Rawls's argument we are looking for is therefore the further claim that if citizens freely plan, revise, and rationally pursue their conceptions of the good, as they must have the right to do so, it is impossible that they would invariably agree on one such conception as preferable to all others. That is to say, reasonable pluralism must be recognised as a permanent condition of a democratic society that cannot be eliminated or expected to disappear, so long as citizens are free to live their lives in their own ways.

Accordingly, justice as fairness cannot regard itself as having the aim of inducing the citizens of a liberal democracy to converge on a view about how they should lead their lives. What it can aim for is instead only to accommodate these

<sup>43</sup> Ibid., xviii.

<sup>44</sup> *Restatement*, 33

<sup>45</sup> Ibid., 34

*If You're an Egalitarian, How Come You Want to be Free?*

diverse views about the good life appropriately. This, I shall argue, amounts to an answer to Cohen's question. To repeat, the question is: why does justice as fairness not seek to cultivate the personal virtues that further egalitarian justice, rather than focusing exclusively on the basic structure of society? The answer we draw from Rawls's remarks is: justice as fairness acknowledges its limits, not only, or even primarily on the grounds that it is incapable to change the recalcitrant nature of human reason, but that it prepares to accept, within a reasonable boundary, the result which the free exercise of human reason gives rise to, namely reasonable pluralism. In other words, Rawls need not, and perhaps would not deny that some people may find Cohen's ethical solution attractive, but he would argue that it is neither practical nor reasonable to demand all democratic citizens in a liberal society to pursue any particular way of living a satisfactory life.

I need to elaborate further on this point. It may seem like Rawls is just being concessive to people's diverse world views. The fact that there is a plurality of reasonable conceptions of the good does not seem to imply that they are equally attractive or acceptable. So, even if it is admitted that it may be impractical to require everyone to be an egalitarian, one could still object that Rawls does not show that it is unjust to do so. Cohen, for example, might charge Rawls with making unnecessary concessions to those who wrongly intend to withstand the demands of justice. This, Cohen might say, shows that Rawls is not being faithful to his own egalitarian view about justice.

I would argue, however, that Rawls is not really conceding to anything by saying that reasonable pluralism is an enduring fact of a liberal democratic society. He is not saying that we must stop trying if we cannot change people. What Rawls suggests is rather that, to the extent that they are reasonable outcomes of the free exercise of reason, the claims of free and equal citizens must be acknowledged by a political conception of justice as self-vindicating; and it cannot be denied that not every reasonable person believes in equality.

*If You're an Egalitarian, How Come You Want to be Free?*

The upshot of the reply to Cohen's challenge I draw from Rawls is that citizens have a most important interest, and a legitimate claim, to act in a way that is guided by their own conceptions of the good in light of their freedom, among which one informed by an egalitarian ethos should not enjoy any special status. Now, Cohen might still want to dispute this implication of Rawls's view, that a conception of the good which is more in aligned with the egalitarian character of justice as fairness is not any more preferable to others from the standpoint of justice. He might claim that what is implied by the Rawlsian answer is absurd: for surely a life freely devoted to justice and equality is more praiseworthy than a life freely indulged in self-interest, just like a society consisting of virtuous citizens who strive for truth, goodness, and beauty is more just than a society of wantons?

It is right that a society is more admirable when its citizens are virtuous, but this objection misses the target. The relevant question to ask here is whether a conception of justice is faulty if it does not ask citizens to do more than support just institutions; or, in other words, the question is whether a conception of justice is preferable if it contains guidance for individual conduct. It is *not* whether you and I should be one or another kind of good citizens if we long for a just society. To the latter question, Rawls's answer might be, yes, it is of course plausible and desirable that some people may want to lead a life that is guided by worthy ends, such as the pursuit of an equal society.<sup>46</sup> What he denies is that justice as fairness should incorporate, say, a principle for individuals which says that they have a natural duty to promote the well-being of the worst off as much as they can unless they have prerogatives not to do so. A proposal like this would be rejected on the ground that, again, it must be left for individuals themselves to freely decide which kind of life they want to live.

<sup>46</sup> Cf. Rawls, *Political Liberalism*, 206.

*If You're an Egalitarian, How Come You Want to be Free?*

To lay down the point in another way, consider the following. Cohen asks, 'Why should we not seek a theory of justice that is more egalitarian than justice as fairness by including some egalitarian principles for individuals?' To respond, it may be said that Rawls acknowledges that the freedom people have implies that its realization may compromise equality, but he maintains that freedom has a priority over equality in justice as fairness.

In fact, this way of articulating Rawls's answer to Cohen's challenge amounts to both an endorsement of and a response to value pluralism. On the one hand, following Berlin, Rawls acknowledges that it is impossible to avoid the clash of values.<sup>47</sup> On the other hand, however, Rawls accommodates the values of freedom and equality in justice as fairness by a lexical ordering of its two principles of justice which respectively honour both these values—that is, the principle which guarantees equal basic liberties has an absolute priority over the principle that regulate social and economic inequalities. Justice as fairness represents an attempt to achieve unity of principles, from the viewpoint of justice, that pays due regard to each of the values of freedom and equality.

I shall make one more comment, namely that we may want to be careful not to misunderstand the primacy given to the idea of freedom in justice as fairness. We already see that justice as fairness assumes that freedom is indispensable for the cultivation and realization of our plans of the good life. Now, a conception of the good is a system of final ends. When the conflict of values is present in a person's conception of the good, from the perspective of justice that person is entitled to adjudicate between them in order to achieve unity of the self, provided the resolution is constrained by the public conception of justice. It should be noted, however, that justice as fairness does not suggest that anything that follows from a reasonable conception of the good must be licenced by a theory of justice.

<sup>47</sup> See *ibid.*, 197–198.

*If You're an Egalitarian, How Come You Want to be Free?*

That is, although justice as fairness recognizes the reasonable final ends as self-authenticating, it need not commit to the view that all ends and purposes included in a reasonable conception of the good are immune to the scrutiny of justice. As I understand the Rawlsian view, for a claim of freedom to trump equality, it must be shown that it is indispensable for the realization of a reasonable conception of the good (and, of course, that it is also compatible with the principles of justice that regulate the basic structure of society). In other words, as I interpret it, justice as fairness may reserve the right to regulate individual conduct when the latter does not play an indispensable role in the pursuits of one's vital interests—although it may of course be very difficult to make sure which plans and acts of an individual fulfil that role.

So although Rawls does not articulate the principles for individuals, there is a logical space for justice as fairness to occupy, so that it may suggest that a range of individual acts are only permitted when they are indispensable for the fulfilment of citizens' final ends. As far as I can see, this would not contradict Rawls's view that people's claims of final ends are self-authenticating and need no justification from the standpoint of justice. It is consistent for justice as fairness to uphold freedom whilst incorporating egalitarian principles for certain personal conduct when it cannot have any necessary connection with people's reasonable final ends. The appeal of this position would be apparent especially when, in a rather fanciful situation, considerations of economic incentives and occupational choice play lesser roles in people's fundamental plans of their good life. I shall not pursue this utopian possibility any further.

Now, it should be no surprise that between Rawls's sympathizers and critics there is much agreement that individuals do not get a free pass simply by claiming that something is what they want to do. For instance, to the question, 'To what extent should individuals in [a society with a just basic structure] be motivated by economic self-interest?', Scheffler's answer is that 'individual conduct should be

guided by the full range of applicable norms and values, and should not consist solely or primarily in the pursuit of economic self-interest.<sup>48</sup> As a general remark about how individual conduct is to be guided, Scheffler's answer seems perfectly appropriate—although I maintain that it is so only if 'the full range of applicable norms and values' includes not only the limiting norms, but all that would be relevant within the purview of justice. Similarly, I think Rawlsians need not resist Cohen's claim that 'both the state ... and the individual ... must, in appropriately different fashions, show regard in economic matters both to impersonal justice and to the legitimate demands of the individual.'<sup>49</sup> What must not be denied, I believe, is that it is reasonable to expect individuals to respond to all relevant norms and principles. What I have intended to show in the above discussion is effectively that 'the legitimate demands of the individual' in the sentence I cite from Cohen should be interpreted, by the Rawlsian light, as determined both by the principles of justice that regulate the basic structure, some open-ended principles for individual conduct, and citizens' own reasonable conceptions of final ends, which are to be regarded as self-authenticating in a well-ordered society.

Now, one might suspect that I agree, after all, with what Scheffler says about moral pluralism, the division of moral labour, and egalitarian liberalism. It may be asked, 'Does it not seem that what have been said in the preceding discussion amounts to an endorsement of the claim that value pluralism motivates a division of moral labour between the values and norms of personal morality and political morality?' Have I not been, in spite of many detours, rehearsing Scheffler's view?

The answer, I think, is no. To start with, there is a crucial difference between Scheffler's response to Cohen's challenge and the one I draw from Rawls: whereas Schefflerian moral pluralism responds to value pluralism by sharply separating two discontinuous domains of morality respectively concerning personal life and

<sup>48</sup> 'The Division of Moral Labour', 127.

<sup>49</sup> *Rescuing Justice and Equality*, 10.

*If You're an Egalitarian, How Come You Want to be Free?*

political sphere, justice as fairness endorses and accommodates the fact of value pluralism from the standpoint of justice itself.

To elaborate, let me first summarize Scheffler's response to Cohen again. The first premise of Scheffler's argument is the claim that when we are to consider the justifiability of individual conduct, we should *only* refer to the limiting norms, as he calls them, in light of the division of moral labour between personal and political morality. The second premise of Scheffler's argument is that to a considerable extent the limiting norms permit people to pursue their self-interest. He therefore concludes that most of the time individuals are entitled to lead their lives without regard to the demands of egalitarian justice, for these demands, as a part of political morality, are not supposed to be made on individuals in the first place. But as I already said, I think Scheffler overstates the case of the division of moral labour, which has the consequence that in a well-ordered society the permissibility of individual conduct *solely* depends on the limiting norms that regulate personal life. As I suggested above, this should be counted as a *reductio* of Schefflerian moral pluralism.

With respect to what I understand as the defensible Rawlsian position, I have argued that the argument from freedom and reasonable pluralism draws upon the idea that under realistic assumptions it is no business of a theory of justice to define personal morality by including egalitarian principles for individual conduct. Such an inclusion is rejected mainly on the ground that the free exercise of reason, which is an interest of utmost importance of free and equal citizens, may lead one to regard the pursuit of egalitarian justice as having less weight in their reasonable systems of final ends of life, and this is implied by the fact of reasonable pluralism which justice as fairness aims to accommodate. Alternatively put, I believe that justice as fairness is silent about egalitarian principles for individuals not because, as opposed to the norms of justice, the limiting norms has a sovereignty over our

personal life. It is because an individual is herself a small-scale sovereign, so to speak, from the viewpoint of justice.<sup>50</sup>

As an aside, although I do think it is credible to interpret justice as fairness as a view that endorses value pluralism, I have also argued that it incorporates value pluralism within the purview of justice. In contrast with Scheffler's reading, it is not an implication of my interpretation that justice and equality belong to one set of values to be assigned to political morality, and correspondingly there is another set of principles and norms that regulate personal life. In other words, I claim that what is visible in justice as fairness is an ordering of values and principles strictly restricted within a theory of justice, not a division of moral labour for principles that respectively apply to sharply separated spheres of the moral world.

Furthermore, my interpretation of the Rawlsian position allows, plausibly in my view, that one value may have bearings on both personal life and political morality. For instance, it is clear that freedom is a value the realization of which necessitates both of the principles that regulate the basic structure and individual conduct. The principle that major institutions should secure equal basic liberties and the verdict that I may not violate another citizen's basic liberties may typically be two sides of the same coin, and it must be emphasized that there appears to be no sharp discontinuity between these norms. So, for example, if a person illegally imprisons another person against the latter's will, it is of course true that what the former does is wrong by the light of the legal system on the ground that it violates the latter's freedom, but it is also true that the act is wrong for the same reason according to any reasonable view about personal morality.

Scheffler may be correct that 'it is legitimate, at least with certain broad limits, to pass up opportunities to assist those who are suffering in order to pursue one's own aims and aspirations';<sup>51</sup> but I would argue that the truth of this claim does

<sup>50</sup> I borrow the phrase that an individual is a 'small-scale sovereign' from Hart, 'Legal Rights', 183.

<sup>51</sup> 'The Division of Moral Labour', 110.



*If You're an Egalitarian, How Come You Want to be Free?*

not depend on the truth of Schefflerian moral pluralism. What makes the former true is the all things considered judgement that many of our personal pursuits are legitimate in view of our freedom, which is not only affirmed by what Scheffler coins as the limiting norms, but also by the principles of justice. Conversely, when a principle for institutions that guarantees basic equal liberties is justified, it is also justified in light of their values to individuals, whose realization of these values in a sense instantiates the principle itself. I believe that the same can be said about justice, equality, and many other values.

To see the point more clearly, notice that value pluralism does not entail the division of moral labour. The latter, as it is construed by Scheffler, is the thesis that the best way to accommodate the plurality of values is to apply specific norms and principles to different subjects. But value pluralism, as introduced above, only rejects the claim that all genuine values are compatible with one another—or, according to another version of this view, that they can be reduced to one master value, hence all but that one are merely of derivative significance. In any case, value pluralism as such does not imply that any of these values cannot be honoured by both institutions and individuals.

Nor does value pluralism entail the fact of reasonable pluralism. According to Rawls, reasonable pluralism is the fact that people would disagree with one another on many issues due to their respective religious, philosophical, and moral doctrines. Nowhere does Rawls imply that reasonable pluralism is an implication of the fact that there is a plurality of values in an objective moral world. In fact, he is perfectly aware that there may be reasonable doctrines which reject value pluralism, and he by no means thinks that a doctrine becomes unreasonable simply because it is committed to that view. What Rawls maintains is only that it is our best hope that all reasonable doctrines in a liberal democracy may converge on a set of principles of justice which regulate the basic structure of society; namely,

that they arrive at an 'overlapping consensus'.<sup>52</sup> The claim I have made about Rawls's acceptance of value pluralism does not contradict any of this. For the claim is not that reasonable pluralism is premised on value pluralism, but that the principles of justice in justice as fairness can be seen as incorporating a plurality of values with a proper ordering of their priorities.

Scheffler is duly cautious when he writes that 'the egalitarian liberal proposes what *amounts to* a division of moral labour', as well as that '*In effect* ... Rawls endorses a form of pluralism about moral values and principles.'<sup>53</sup> What Scheffler offers are a reappraisal of egalitarian liberalism, along with an interpretation of Rawls's theory of justice. Both of these can be contested—I have said nothing about egalitarian liberalism as such in this chapter, but I have argued that there is an alternative understanding of justice as fairness which does not rely on the idea of the division of moral labour, but which nonetheless has a satisfactory reply to Cohen's forceful challenge to the basic structure restriction.

<sup>52</sup> See Rawls, *Political Liberalism*, lect. IV.

<sup>53</sup> 'The Division of Moral Labour', 113, 115; emphases added.

## Chapter 3.

### Fairness, Luck, and Equality: Reflections on Dworkin and Luck Egalitarianism

Earlier in Chapter 1 I distinguished between two senses of fairness, and I argued that although Rawls apparently appeals to distributive fairness when he objects to social systems that fail to regulate the influences of arbitrary factors properly, he is not concerned to condemn all inequalities which are influenced by arbitrary factors; and I also argued that it is the notion of procedural fairness which plays a foundational justificatory role in justice as fairness. But someone might suggest that Rawls underestimates the weight of our considered judgements about distributive fairness. She will then want to argue that it is unfair and in that respect unjust to permit distributive shares to be influenced by morally arbitrary factors, and that all arbitrary advantages should be neutralized in order to correct that injustice. My primary goal in this chapter is to reflect upon this suggestion from various viewpoints. In particular, I consider the ways in which the ideas of procedural and distributive fairness are represented in Dworkin's theory, equality of resources, as well as luck egalitarianism, a theory often seen as inheriting and developing some of Rawls's and Dworkin's important insights.

The chapter is structured as follows. First, I argue that our concern for distributive fairness favours a presumption of equality on the condition that inequalities are caused by arbitrary factors, but does not do so when that condition fails to hold. Second, I argue that Dworkin's famous 'equal concern and respect' slogan should also be understood as a roundabout way to explore the implications of procedural and distributive fairness. Third, in contrast with my endorsement

of the claim that arbitrary inequalities are unfair in the distributive sense, I explain why I have reservations about the claim that inequalities can be justified whenever they are caused by factors for which people are responsible. I conclude that the prospects for luck egalitarianism ultimately depend on whether there is a plausible way to incorporate its principles in a pluralistic account of justice.

### 3.1. Distributive Fairness, Luck, and Equality

According to the moral arbitrariness rationale, which I introduced in Chapter 1, it is intuitively unfair, and therefore unjust, to treat members of a society in a way that allows some people to be worse off than others for no good reason. As the thought goes, one might suggest that equality should be preferred as a default on the ground of distributive fairness unless there are countervailing reasons that justify inequality. In my view, this is a straightforward and powerful argument from distributive fairness for a presumption of equality.

I assume this is the argument that Cohen has in mind when he writes: ‘I take for granted that there is something which justice requires people to have equal amounts of, not no matter what, but to whatever extent is allowed by values which compete with distributive equality’.<sup>1</sup> This presumption of distributive equality is endorsed by those who are now commonly called ‘luck egalitarians’—among whom Cohen is a prominent advocate—whose core commitments are, first, that unchosen inequalities are unjust; and second, that inequalities are justified only when they can be traced to people’s genuine choices, the consequences for which they are to be held responsible accordingly.

Indeed, according to Larry Temkin’s well-known formulation of this view, ‘it is bad—unjust and unfair—for some to be worse off than others through no

<sup>1</sup> ‘On the Currency of Egalitarian Justice’, 3.

fault [or choice] of their own.<sup>2</sup> Temkin's statement appears to hint that it is not unfair and unjust for some to be worse off than others through some fault or choice or their own, and it seems plausible to say so. It does not appear unfair or unjust if a lazy person ends up being worse off than a diligent person because the former has chosen to work less hard and enjoyed more of his leisure time. What this simple and familiar example shows is that the pursuit of distributive fairness can be consistent with inequality in outcome; and according to a major variant of luck egalitarianism, inequalities can be justified on the ground that people should bear personal responsibility for their choices. That is to say, although the idea of distributive fairness does lend support to a presumption of equality, it does so only under the assumption that no consideration of personal responsibility is involved. By contrast, if the grounds on which an equality obtains are only partly constituted by factors for which people are not responsible, namely luck, but also partly constituted by what they should be held responsible, then it is not true that our concern for distributive fairness dictates that we should leave things as they are. In other words, a consistent application of the principle of distributive fairness should on this view be sensitive to considerations of personal responsibility whether or not equality obtains.

To illustrate, suppose that the diligent, who has been better off than the lazy in virtue of what was earned by her hard work, now contracts an illness and suddenly becomes as badly off as the lazy is. Insofar as distributive fairness is concerned, it seems that the diligent should be compensated for her misfortune, and the inequality between the diligent and the lazy should be restored. Indeed, I hold that equality can also be morally arbitrary in an invidious way that offends against distributive fairness. In my view, the presumption of equality does not have a privileged status as compared to inequality on this matter: the former is

<sup>2</sup> *Inequality*, 13.

presumed to be fair and just only in the sense that it is fair and just to distribute all arbitrary advantages equally. As Susan Hurley convincingly argues, if justice has this demand to neutralize all effects of luck—which is understood as the inverse correlate of responsibility—then equality can also be objectionable when it is brought about by luck.<sup>3</sup>

Shlomi Segall disagrees. He claims that ‘egalitarians should not be bothered by equality’, or more specifically that ‘egalitarians *qua* egalitarians should not be bothered by’ equality, which ‘can never be unjust for reasons of egalitarian *distributive* justice.’<sup>4</sup> He tries to motivate his view by introducing an account of interpersonal justification. On this account, a person has a duty to justify her holdings when she has more than another does, but it is never the case that she has to justify her holdings when what she has is equal to another’s. Segall writes:

The reason equality does *not*, after all, require justification, is that since no one is better-off than anyone else, there is nobody who is under a duty to justify herself. Nor, perhaps more importantly, is there anyone who is in a position to demand a justification: everyone, after all, is equal.<sup>5</sup>

I do not find Segall’s account persuasive at all. Again, consider a case where there are two students, one diligent and another lazy, both of whom submitted an essay for their assignment. Suppose that their instructor gave the two essays the same marks out of whim. This would be an arbitrary equality, and I believe that in this case the diligent student, who presumably submitted a better essay, has a legitimate complaint. Her hard work produced a better essay, and the marks she get should reflect her performance.<sup>6</sup> Segall may well be correct that ‘In the case of

<sup>3</sup> See Hurley, *Justice, Luck, and Knowledge*, ch. 6.

<sup>4</sup> *Equality and Opportunity*, 34–35; italics in original.

<sup>5</sup> *Ibid.*, 26; emphasis in original.

<sup>6</sup> I assume that this is a pertinent example, not least because both the process of working on their essays and the experience of getting appropriate or inappropriate feedback have an impact on the students’ well-being; but I acknowledge that there may exist better examples.

equality it seems right that the burden of proof should lie with the person laying the charge.<sup>7</sup> But this remark does not really help, for we do not have good reason to hold on to a presumption of equality when there is a weighty consideration that counts against it.<sup>8</sup>

Curiously, Segall does seem to acknowledge that we sometimes have reasons to object to equality. What he maintains, after scrutiny, appears to be only that when we object to equality, we do not do so for ‘egalitarian reasons’. He writes: ‘Unchosen (or unmerited) equalities ... might be bad for non-egalitarian reasons (such as efficiency, proportional justice, and desert, for example). But as far as egalitarianism is concerned, an equal outcome is never bad.’<sup>9</sup> What Segall says is however extremely puzzling, for I think there exists no ‘egalitarian reason’ of the kind that Segall purports to elucidate. What we have are only reasons that count for or against a distribution. It is a non-starter to assume that *qua* egalitarians we have or must seek special access to ‘egalitarian reasons’. We are egalitarians only because most of the time there are decisive reasons for us to prefer equality to inequality, and we must be candid when the balance of reasons suggests otherwise.

### 3.2. Fairness, Equal Concern, and Respect for Persons

I now turn to Dworkin’s theory of equality. My aim is not to examine it in any detail, but to show that equality of resources, like Rawls’s justice as fairness, may also be plausibly understood in terms of our twin concerns for distributive and procedural fairness.

Dworkin begins to explicate the idea of distributive equality with the help of a thought experiment.<sup>10</sup> Among a number of people who are on a desert island,

<sup>7</sup> Ibid., 26–27.

<sup>8</sup> Cf. Arneson, ‘Justice is Not Equality’, 384.

<sup>9</sup> *Why Inequality Matters: Luck Egalitarianism, Its Meaning and Value*, 65.

<sup>10</sup> See Dworkin, *Sovereign Virtue*, ch. 2.

with no pre-established claims in respect of available resources which are valued as means for achieving whatever ends they have, Dworkin suggests giving each of them an equal amount of clamshells. These islanders then use them to bid for any combinations of a variety of resources in a retraceable and repeatable auction, until they are all content with what they have, in the sense that they do not prefer anyone's bundle of resources to their own. This would be a result that satisfies what Dworkin calls the 'envy test'. Dworkin's idea is that distributive equality should be understood in terms of an equal satisfaction of people's preferences over combinations of relevant resources. It is therefore not the case that distributive equality must require all relevant goods to be sorted and divided equally before they are distributed, so that everyone has an identical share. Instead, what counts as an equal distribution is in the first place defined by the result of an auction that successfully passes the envy test.

Dworkin also imagines a second auction, in which people can choose among a comprehensive set of insurance policies, the premiums of which are established by market mechanisms. The hypothetical insurance scheme on the one hand helps people to mitigate the consequences of luck that they may be unwilling to bear, and on the other hand make them responsible for their own risk management. So it is not an affront to distributive equality if, say, one has less discretionary income than others do because he chooses to buy more insurance policies.

Dworkin's auctions nicely illustrate the point that the idea of distributive equality can accommodate a multiplicity of considerations, so it need not imply an identical distribution of relevant goods. As he puts it alternatively, we may distinguish between 'equal treatment' and 'treating as equals'.<sup>11</sup> With regard to distribution, to provide equal treatment merely means to distribute an identical bundle of resources equally to all, without considering what the recipients need

<sup>11</sup> See Dworkin, 'Justice and Rights', 180–183; 'Liberalism', 190–198; *Sovereign Virtue*, 1–3, 11–12; *Justice for Hedgehogs*, 2–4, 351–363.



or prefer to have. By contrast, to treat people as equals is to acknowledge, among other things, that they differ in their personalities, talents, and ambitions; and whether a distribution of a particular good treats them as equals depends on their circumstances and preferences, the nature of the good, as well as the overall distributive scheme and its regulatory mechanisms.

As I understand it, although what comes out of the first auction is not an equal distribution of literally identical resources for the participants, Dworkin's thought experiment ingeniously illustrates the idea of distributive equality, for the reason that it depicts a procedure for distribution in which everyone's claim to resources is treated fairly. As I said at the outset, we may plausibly understand equality of resources as involving the reference to the notion of procedural fairness in its explication of distributive equality.

But I want to further stress that equality of resources also appears to commit itself to distributive fairness even before the auction begins, for the pre-auction equal distribution of the clamshells is itself an instantiation of that idea. As far as I can see, the assumption that an equal distribution is distributively fair is essential to Dworkin's argument. Indeed, it seems to make sense to say that all bundles of resources are 'equal' to one another when the auction passes the envy test only because the clamshells are equally distributed in the first place. According to my reading, equality of resources is also committed to the twin ideas of distributive fairness and procedural fairness at the deepest level.

Now, Dworkin further suggests that to treat people as equals is to treat them with 'equal concern and respect'. He writes: 'Equal concern is the sovereign virtue of political community'.<sup>12</sup> As Dworkin indicates, this right to equal concern and respect 'is a highly abstract right', and in his analysis of justice as fairness Dworkin

<sup>12</sup> *Sovereign Virtue*, 1. It is not entirely clear whether 'equal concern' here is a shorthand for 'equal concern and respect', or only a part of it—Dworkin's choice of terms has not been consistent over the years. I leave the exegetical questions aside.

claims that ‘the abstract right to equal concern and respect ... must be understood to be the fundamental concept of Rawls’s deep theory.’<sup>13</sup> In fact, Dworkin is of the view that all theories of equality (or justice) can be understood as explicitly or implicitly endorsing the following *abstract egalitarian thesis*, which can ‘be thought to provide a kind of plateau in political argument’:<sup>14</sup>

From the standpoint of politics, the interests of the members of the community matter, and matter equally. I suggest that this proposition captures the concept of equality, taken to be at least an element in a theory of social justice, in such a way as to embrace various competing conceptions of equality.<sup>15</sup>

According to Dworkin’s own conception or interpretation<sup>16</sup> of the egalitarian thesis, equal concern and respect amounts to two basic principles, namely the principle that everyone’s life matters equally, and the principle that people should bear special responsibility for their own choices.<sup>17</sup>

Now, for my purposes it is important to note that the idea of equal concern and respect is posited by Dworkin to be conceptualized or interpreted by theories of equality or justice. That is to say, Dworkin not only acknowledges that there exist various competing conceptions or interpretations of the abstract egalitarian thesis, with their different theoretical and practical implications; but also that all alternative theories can be understood as offering such interpretations.

One might think, however, that it is unclear how to decide what counts as a most plausible interpretation of Dworkin’s egalitarian thesis, and wonder whether

<sup>13</sup> ‘Justice and Rights’, 180–181. Cf. Rawls, ‘Justice as Fairness: Political not Metaphysical’, 400–401, n. 19; Rawls himself resists this analysis of his view.

<sup>14</sup> ‘Comment on Narveson: In Defense of Equality’, 25. See also Kymlicka, *Contemporary Political Philosophy*, 3–5.

<sup>15</sup> Dworkin, ‘In Defense of Equality’, 24.

<sup>16</sup> Here I follow Dworkin himself, who appears to use the terms ‘interpretation’ and ‘conception’ interchangeably because they have the same function in this context. See *ibid.*, 25. For Dworkin’s account of interpretation, see his *Law’s Empire*, ch. 2; *Justice for Hedgehogs*, pt. 2.

<sup>17</sup> See Dworkin, *Sovereign Virtue*, 5–7; *Justice for Hedgehogs*, 2.

the idea of equal concern and respect itself implies how it is to be conceptualized or suitably interpreted. Some people might think that it has to. George Sher writes: ‘When Dworkin advances his theory of equality of resources as part of the best interpretation of equal concern, he implies that there is something about the idea of equal concern that makes the theory part of the best interpretation’.<sup>18</sup>

But I wonder whether that is true—I am in fact inclined to think, on the contrary, that idea of equal concern itself does not help us to decide which theory best interprets it. I want to argue instead that this decision should be made on the ground that a candidate theory coheres best with our considered convictions, including most importantly our concerns for procedural and distributive fairness.

Consider Dworkin’s remark that any conception of equality ‘must say what people’s interests are, viewed most comprehensively, and then what follows from supposing that these interests matter equally.’<sup>19</sup> This amounts to an inquiry into the ‘equality of what?’ question, and it seems true that it is very important to inquire into the notion of people’s interests in order to understand what an equal distribution relative to those interests implies. I maintain, however, that answering the metric question does not help us to completely resolve Dworkin’s abstract egalitarian thesis, for we are in need of a further explanation of what makes a conception of interests part of the best interpretation of the idea of *equal* concern. Alternatively put, however the notion of people’s interests is explicated, there is a further question why *equal* concern for these interests implies one or another distributive principle; and this is exactly the question supposed to be answered by various interpretations of that thesis.

I maintain, in other words, that Dworkin’s remark should be understood as suggesting that whether an interpretation of equal concern is adequate ultimately depends on whether it offers a most plausible set of distributive principles. So, to

<sup>18</sup> *Equality for Inegalitarians*, 72, n. 21.

<sup>19</sup> ‘In Defense of Equality’, 25.

follow Dworkin's lead, we will first formulate a conception of people's ultimate interests, and then see whether any particular set of distributive principles best expresses the thesis that these interests matter equally. In order to fulfil this latter task, we will test the candidate conceptions or interpretations of equal concern by considering whether our considered judgements favour any of them. But I hold that to consider whether any particular theory best interprets the notion of equal concern just *is* to consider whether it contains the most plausible principles of distribution. That is to say, I hold that any defence of an interpretation of equal concern simply amounts to an argument for any particular conception of equality.

Indeed, it seems that what ultimately do the work are further arguments, utilising one or another moral or political ideal, which will show that a candidate theory is a most plausible interpretation of the idea of equal concern. In particular, my suggestion is that these arguments will have to be informed by our considered judgements concerning distributive and procedural fairness.

To begin with, consider what Dworkin says in the following passage:

Any defensible interpretation of equal concern supposes that no one in a political community is initially entitled to more resource than anyone else; it asks whether any reason consistent with that assumption justifies an economic system in which some prosper more than others. Utilitarians, Rawlsians, and other theorists offer such reasons: that treating people with equal concern requires maximizing their average welfare, or protecting the situation of the worst-off group, or something of the sort.<sup>20</sup>

Dworkin makes two claims here. First, he indicates that the idea of equal concern implies at least one thing, namely that there is a presumption of equal distribution of resources. Second, as I already said, Dworkin suggests that this idea

<sup>20</sup> *Justice for Hedgehogs*, 479, n. 10; see also Dworkin, 'Justice and Rights', 180.

can be variously interpreted by different distributive conceptions, and it need not contradict an argument that purports to justify inequalities.

Dworkin of course argues that his two principles of equal importance and special responsibility together offer the best interpretation of his egalitarian thesis. But as far as I can see, the intuitive appeal of these principles by no means derives from their being capable of offering an interpretation of that thesis. Instead of saying that these principles are justified *qua* an interpretation of equal concern, it seems more accurate to simply suggest that they are credible because there are considerations that count in favour of them.

More specifically, why does the idea of equal concern assume that ‘no one in a political community is initially entitled to more resource than anyone else’? Surely, this assumption cannot be premised on the idea of interests: it does not follow from that everyone has a most important interest to lead a good life that we must show equal concern for that interest in a particular way. So it might be said that the answer to our question must lie in the idea of equality. But then it appears that the only way to defend this assumption is simply to claim that it is unfair—that is, intuitively unfair according to our considered judgements—to distribute resources unequally among those who are initially no more entitled to anything than one another. This seems to be what the assumption in question, allegedly implied by the idea of equal concern, amounts to, and I can think of no other way to defend it.

For another illustration, consider Dworkin’s following remarks:

A *laissez-faire* political economy leaves unchanged the consequences of a free market in which people buy and sell their product and labor as they wish and can. That does not show equal concern for everyone. Anyone impoverished through that system is entitled to ask: ‘There are other, more regulatory and

redistributive, sets of laws that would put me in a better position. How can government claim that this system shows equal concern for me?’<sup>21</sup>

Dworkin’s complaint against laissez-faire seems perfectly reasonable, but my question is why it is so. If it is asked, ‘What exactly makes a laissez-faire political economy fail to show *equal* concern?’, I think Dworkin’s answer must be that it has this tendency to condone inequalities that we simply cannot accept. For what Dworkin seems to find objectionable is clearly not the free market *per se*, but the institutional settlement which does not ever attempt to correct undesirable distributive outcomes. If what Dworkin found unacceptable was the market itself, he would have never proposed to explicate his theory of equality by an imagined auction of initially unowned resources, as well as a hypothetical insurance scheme that people may use to prevent themselves from being affected by risks that they are not willing to take. Indeed, he writes: ‘A free market is not equality’s enemy, as is often supposed, but indispensable to genuine equality.’<sup>22</sup>

According to my reading, then, Dworkin effectively argues that a distribution can be unfair even though it results from seemingly fair market procedures, and his claim that a laissez-faire political economy fails to show equal concern can only be defended on the ground that there exist alternative arrangements which can be reasonably expected to give rise to preferable distributions, which are fairer in the sense that they are states of affairs in which the lives of the worse off fare better. Dworkin’s antagonism towards laissez-faire is therefore not in contradiction to his endorsement of the free market, which he appears to embrace because it is ideally a system of fair procedures. Instead, it is plausible to understand his objection to laissez-faire as premised on a commitment to distributive fairness: a government that upholds a laissez-faire political economy is unfair to its citizens in the sense

<sup>21</sup> *Justice for Hedgehogs*, 3.

<sup>22</sup> *Justice for Hedgehogs*, 357.

that it lets some of them perish without help. This, I believe, is the proposition that undergirds Dworkin's swift rejection of the laissez-faire political economy.

Now, let us consider one last case. On Dworkin's view, there is a distinction to be made between *brute luck* and *option luck*. As Dworkin explains, option luck 'is a matter of how deliberate and calculated gambles turn out—whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined', whilst the instances of brute luck are understood as the contrary, in which 'risks fall out that are not in that sense deliberate gambles.'<sup>23</sup> According to Dworkin, people should be compensated for their bad brute luck, and they should take responsibility for the consequences of their deliberate choices that involve option luck.

Now, one might be tempted to associate the distinction between brute luck and option luck with the idea of treating people as equals in the following way: in order for people to be treated as equals, they should be compensated for their bad brute luck, and be asked to bear responsibility for their choices even if they involve bad option luck. For if those who suffer from bad brute luck are not compensated, they are effectively treated as if having a lesser standing; and if those who make their own choices do not need to take relevant responsibility for them and bear the consequences when they do not turn out well, they are on the contrary treated as if they are of a privileged status. According to the proposal under consideration, the ways we cope with brute luck and option luck are informed by the idea that people are equals in a basic sense and have the right to equal concern and respect.

This appears to be Kok-Chor Tan's view. According to his luck egalitarian interpretation of the basic equality of moral agents, a presumption of distributive equality is justified on the ground that no one should be responsible for the effects of brute luck, and departures from equality are justified if and only if they are the

<sup>23</sup> *Sovereign Virtue*, 73.

results of agential choices. Tan suggests that ‘This distinction between luck and choice is basic to the luck egalitarian position’,<sup>24</sup> and it would appear that on Tan’s account the notion of basic moral equality is to be understood as entailing a presumption of equality, as well as a principle according to which inequalities are justified when and only when they are the results of the exercise of moral agency.

But there is a basic problem for Tan’s account, namely that it is hardly clear why the idea of basic equality of moral persons is supposed to *entail* the luck egalitarian interpretation. For what it is worth, Nagel already observes that other distributive doctrines may also be understood as offering interpretations of the notion of basic moral equality.<sup>25</sup> So, a utilitarian might suggest that Bentham’s dictum, that everybody is to count for one and nobody for more than one, should also be understood as an interpretation of that notion; and a libertarian might suggest that basic equality is best interpreted as bestowing moral agents a right to make their own choices without being interfered with, which in turn implies constraints on the actions of others. In light of the fact that these theories may also be seen as respectively offering their interpretations of the idea of basic moral equality, it is not reasonable to prefer the luck egalitarian account without further argument, and Tan should show why his luck egalitarian interpretation of basic moral equality is more plausible than its alternatives.

Strikingly, Tan shirks this task—he plainly admits that he has ‘not provided any argument for’ his proposal—and instead he simply takes ‘this ideal of moral agency and its egalitarian entailment to be a basic and starting *intuition* common to most accounts of luck egalitarianism.’<sup>26</sup> I do not want to challenge the assertion that many luck egalitarians share that intuition; what I want to point out is, again, that the fact that Tan presents his luck egalitarian principles as constituting an

<sup>24</sup> *Justice, Institutions, and Luck: The Site, Ground, and Scope of Equality*, 89. See also Stemplowska, ‘Responsibility and Respect: Reconciling Two Egalitarian Visions’, 130–131.

<sup>25</sup> See Nagel, ‘Equality’.

<sup>26</sup> *Justice, Institutions, and Luck*, 89–90; emphasis in original.



interpretation of the ideal of basic equality does not show that the plausibility of these principles derives from that ideal. As Tan himself writes: “The idea is not to defend luck egalitarianism from first principles, so to speak, but to begin with its basic assumptions and ideas, and to try to develop a persuasive account of equality from there.”<sup>27</sup> According to the view submitted here, although it may well be true that luck egalitarians share Tan’s basic assumptions, since he gives no argument for the claim that luck egalitarianism as a distributive doctrine offers the best interpretation of the ideal of basic equality of moral agents, the reference to that ideal simply plays no substantive role in Tan’s defence of luck egalitarianism. In my view, such a defence will have to involve arguments which lend support to the conclusion that people are treated fairly if and only if the luck egalitarian principles are honoured.

Indeed, I think these arguments are available to us. For example, with respect to our considered judgement that people should be compensated for brute bad luck, there exists a simple and convincing explanation, namely that we have the intuition that distributive unfairness is manifested in a distribution where some people are worse off than others for no good reason. By contrast, in explaining why we do not usually think that people should be compensated for bad option luck, it seems reasonable to say, on the one hand, that whatever proceeds from a fair procedure is also in that respect fair; and, on the other hand, that we do not have the intuition whatsoever that the outcome of a deliberate gamble is unfair in the distributive sense—unless one thinks, implausibly in my view, that even under normal circumstances an inequality that results from a fair procedure should still be considered as an unfair state of affairs.<sup>28</sup>

In fact, I doubt not only that the idea of equal concern itself helps us to decide which theory best interprets it. I also doubt that egalitarians should appeal to the

<sup>27</sup> *Ibid.*, 90.

<sup>28</sup> Cf. Cohen, ‘Fairness and Legitimacy in Justice, And: Does Option Luck Ever Preserve Justice?’.

notion of respect for persons in order to defend any conceptions of egalitarian justice. Indeed, I am inclined to agree with Richard Arneson, who writes:

More generally, I doubt that invocation of an ideal of respect for persons can do any work in selecting principles of justice or in determining that some candidate principles are driven by unseemly motives. If one wants to be fair and do what is just, and after full reflection one is convinced that some version of luck egalitarianism is the correct theory of justice, then one's adoption of luck egalitarianism reflects one's belief that this doctrine picks out what justice requires coupled with one's desire to conform to the requirements of justice. One expresses due respect for persons and treats them respectfully by acting toward persons in accordance with the moral principles that are best supported by reasons. In this sense respect for persons looks to be an unobjectionable but purely formal idea, neither a clue to what principles are best supported by moral reasons nor a constraint on what principles might be chosen.<sup>29</sup>

The idea is, again, that the notion of respect for persons does not itself determine which candidate principles are justified, and this can be only done by our reflection upon what is favoured by the balance of reasons.

In response to Arneson, Mason claims that 'in ordinary discourse "respect for persons" also has a narrower usage which does not presuppose that each and every failure to comply with the moral principles automatically counts as a failure of respect.'<sup>30</sup> As I understand his view, Mason means to suggest that in our ordinary discourse the reference to the idea of respect for person only picks out a narrower category of considerations, rather than all principles which bear upon the ways we should regard and treat people. I am not sure whether that is true, but I shall let that pass.

The real pressing question, however, is whether our ordinary parlance reflects something distinctive about the idea of respect for persons that helps us to decide

<sup>29</sup> 'Luck Egalitarianism and Prioritarianism', 344.

<sup>30</sup> *Levelling the Playing Field*, 64.

which relevant principles are justified. Curiously, Mason himself appears to think that it can do no such work. Arguing for the view that it is usually justified to select the best-qualified candidates when it comes to the realization of equality of opportunity, Mason writes:

We should not understand it as appealing to some *independent* idea of respect for persons from which moral demands are derived. Rather we should see the relevant demands as expressing, in a constitutive way, what it is to respect persons.<sup>31</sup>

I do not see why Mason thinks this is enough to deflect the charge that the idea of respect for persons is uninformative when we want to know which relevant demands are justified. The problem is that we need to know what counts as expressing that idea in a constitutive way, and if we should not seek help from it, then where? Mason's disclaimer shows exactly that the idea of respect for persons is purely formal in the sense that what determines whether an interpretation of that idea is plausible is the balance of relevant reasons.

### 3.3. The Prospects for Luck Egalitarianism

I now go on to reflect on luck egalitarianism, with which Dworkin's equality of resources is often associated as a forerunner. In a nutshell, luck egalitarianism can be understood as coupling a presumption of distributive equality with *luckism*, which has both a negative component and a positive component, respectively concerned with the conditions on which it is justified to restore or to depart from equality.<sup>32</sup> On the one hand, developing Dworkin's insights, luck egalitarians hold the view that brute luck's differential impact on people's lives, for which they are not responsible, should be redressed. They suggest, for example, that those

<sup>31</sup> Ibid., emphasis in original.

<sup>32</sup> See Arneson, 'Luck Egalitarianism Interpreted and Defended'.

who are disabled by birth or accident should be compensated as victims of bad brute luck.

On the other hand, luck egalitarians also follow Dworkin in holding that a departure from equality is permissible—or, many of them would say, required—in light of their view about personal responsibility. As Dworkin puts it, ‘[any legitimate government] must respect fully the responsibility and right of each person to decide for himself how to make something valuable of his life.’<sup>33</sup> Dworkin and luck egalitarians hold that it does not offend egalitarian justice if inequalities are caused by people’s own choices, for which they are to be held responsible, and it is not a requirement of egalitarian justice to compensate for disadvantages which result from them. Indeed, Dworkin holds that the relevant considerations should be ‘ambition-sensitive’ and ‘endowment-insensitive’:

On the one hand we must ... allow the distribution of resources at any particular moment to be ... *ambition-sensitive*[,] so that, for example, those who choose to invest rather than consume, or to consume less expensively rather than more, or to work in more rather than less profitable ways must be permitted to retain the gains that flow from these decisions ... But on the other hand, we must not allow the distribution of resources at any moment to be *endowment-sensitive*, that is, to be affected by differences in ability ... among people with the same ambitions.<sup>34</sup>

Now, I find the negative component of luckism tremendously appealing. For it seems that we have a very strong intuition about distributive fairness, according to which it is unfair and therefore *pro tanto* unjust if a distribution obtains for no good reason. So if an inequality exists simply because of luck, there is no reason why we should leave it as it is. It follows from the luckist negative principle that it is unfair and for that matter unjust if inequalities brought about by luck are not

<sup>33</sup> *Justice for Hedgehogs*, 2.

<sup>34</sup> *Sovereign Virtue*, 89; emphases added.

corrected. Setting aside the situations in which equalities may also be found to be unfair, luck egalitarians seem well motivated to condemn inequalities in the name of distributive fairness.

In contrast to my endorsement luckism's negative component, however, I believe that it is much harder for us to accept its *positive* principle. For I think we do not have a firm conviction that people must always bear the full consequences of their choices even when they are responsible for their occurrence. As Scheffler rightly points out, our intuitions about the luckist's positive component are at best unclear.<sup>35</sup>

Now, one might reason as follows, and think that these luckist principles are really two sides of the same coin: with respect to any badly off person, it may be asked, 'Whether the badly off person is responsible for the disadvantage she is affected by?', and the answer can only be either negative or affirmative. If she is not responsible for the disadvantage, then the luckist negative principle suggests that her burden should be compensated for. If she is to be held responsible, then the luckist positive principle should prescribe no compensation.

But this appearance is misleading. For one thing, it is not true that in most of the familiar cases we can easily distinguish between factors for which individuals are and are not responsible—for all we know, luck and choice are intricately intertwined. Suppose I grew up in a very poor neighbourhood, having no proper education and opportunities for livelihood. I have been selling drugs on the street and as it happened I got caught one day. Does the fact that I have chosen to break the law in order to survive show that any degree of punishment is justified? It surely does not. And if I had chosen not to engage in criminal activities and stayed unemployed and lived in squalor, it would also not follow that I have no complaint whatsoever.

<sup>35</sup> See Scheffler, 'What is Egalitarianism?'; 'Choice, Circumstance, and the Value of Equality'.

Now, someone might say that we should treat my unsatisfactory upbringing as an instance of bad brute luck, thus eligible for compensation on the luckist grounds. He might go on to say, however, that this does not vitiate the point that people should bear full responsibility for the consequences of their acts when they do not suffer from brute luck disadvantages. Indeed, he might argue that this rebuttal is well supported by a concern for procedural fairness. As the thought goes, as far as it is reasonable to assume that brute luck has no impact on our decisions, what falls out from a deliberate choice is the choice-maker's own business, because it should be seen as the result arising from a fair procedure; and as I said earlier, it seems quite implausible if one says that what comes out of a procedurally fair gamble could still be an unfair and unjust outcome.

I concede that there is some truth in this rebuttal: it is indeed plausible to think that an outcome should be assumed to be fair when it results from a fair procedure. But the reply under consideration is not entirely effective, for the imagined case also shows that the cut between brute luck and option luck is not as obvious as it seems: the fact that I made a deliberate choice out of several options does not always make it reasonable to think that my choice only involves option luck.<sup>36</sup> At any rate, we should maintain that the principle of procedural fairness only applies when appropriate conditions obtain. But again, for all we know, life is rarely, if ever, like a fair gamble. As we saw in Chapter 1, it is this line of thought that leads Rawls to indicate that a social system that merely secures formal equality of opportunity cannot be just, because it still permits distributive shares to be influenced by morally arbitrary factors, even though we might think that it does partially instantiate the idea of procedure fairness in its guarantee of equality before the law.

<sup>36</sup> See Lippert-Rasmussen, 'Egalitarianism, Option Luck, and Responsibility'; Otsuka, 'Luck, Insurance, and Equality'.

Suffice it to say that unlike the negative luckist principle, which is concerned to compensate for what people cannot be held responsible, the positive luckist principle, supposedly grounded in a variety of considerations regarding choice and personal responsibility, needs to be defended separately.<sup>37</sup> For instance, someone might plausibly argue that the attribution of personal responsibility has no bearing on how disadvantaged I should be, even if I am accountable for the actions that make myself badly off. She might then suggest that an appropriate defence of the positive luckist principle would at least involve, on the one hand, a determination of the scope of the things for which people should be held responsible, and on the other hand a theory of the burdens it is reasonable to ask them to bear when they are to take responsibility for their deliberate choices.<sup>38</sup>

I shall not delve into these matters. Instead, I want to return to the general problem that option luck and brute luck are most commonly intertwined. Now, a striking instance of this problem is that people's deliberative choices have consequences not only for themselves, but also others.<sup>39</sup> So, if you choose to study harder than I do, and score better in the exam accordingly, can I complain that your choice constitutes a brute luck disadvantage for me? That does not seem right. But if you perform better than I do simply because our teacher enjoys spending some time reviewing the curriculum with you, can it also be said that I suffer from brute luck? Can I complain that it is unfair for her to do so and ask for compensation? In this case I think I can. It might be said that luck egalitarianism appears absurd if it implies that whenever someone is benefitted there is another who suffers from bad brute luck, but there do exist cases where we think it is cogent to make this judgement.

<sup>37</sup> See Stemplowska, 'Luck Egalitarianism'. Cf. Sher, *Equality for Inegalitarians*, ch. 1.

<sup>38</sup> See Olsaretti, 'Responsibility and the Consequences of Choice'; Stemplowska, 'Making Justice Sensitive to Responsibility'. Cf. Elford, 'When Is Inequality Fair?'

<sup>39</sup> See Lazenby, 'One Kiss Too Many?'; Miller, 'The Incoherence of Luck Egalitarianism'; Lang, 'How Interesting is the "Boring Problem" for Luck Egalitarianism?'

This problem goes deep. It not only challenges the positive luckist principle, but also makes one wonder, for example, whether Dworkin has a credible view about distributive equality at all.<sup>40</sup> For as he proposes the thought experiment of the auction involving the distribution of resources, what one can bid for with one's clamshells is in one sense determined by others' preferences. One is in effect only able to bid for a smaller bundle of resources if one happens to want what others also want, since the price of a certain kind of resource will be higher if many people are willing to bid for them. Indeed, as Dworkin emphasizes, it is essential to his theory that the allocation of goods should be regulated by a market:

The market character of the auction is not simply a convenient or ad hoc device for resolving technical problems that arise for equality of resources in very simple exercises like our desert island case. It is an institutional form of the process of discovery and adaptation that is at the center of the ethics of that ideal. Equality of resources supposes that the resources devoted to each person's life should be equal. That goal needs a metric. The auction proposes what the envy test in fact assumes, that the true measure of the social resources devoted to the life of one person is fixed by asking how important, in fact, that resource is for others. It insists that the cost, measured in that way, figures in each person's sense of what is rightly his and in each person's judgment of what life he should lead, given that command of justice.<sup>41</sup>

But I think we should have some reservations about the view that egalitarian justice should require that people's holdings be decided by markets, even in their ideal forms. It is true that they are most impressively efficient with regard to the exchanges of supply and demand, but the fact that the free market is able to allocate goods efficiently, by minimizing the opportunity costs for all involved, does not show that it should be tasked with fixing the demands of justice.<sup>42</sup> In my

<sup>40</sup> See Freeman, 'Rawls and Luck Egalitarianism', 128–132.

<sup>41</sup> *Sovereign Virtue*, 70.

<sup>42</sup> Cf. Rawls, *A Theory of Justice*, 276–280/244–247 rev.



view, we should not take Dworkin's proposal to characterize distributive equality by market mechanisms without reservation, mainly on the ground that most of people's tastes and preferences are arbitrary from a moral point of view, and should therefore have no authority with respect to the distribution of our entitlements.<sup>43</sup> Whether one could possibly have the kind of talent like what Wilt Chamberlain has, so highly valued by basketball fans, is purely a contingent matter; and I hold the view that there is nothing fair about the state of affairs in which some people are very wealthy merely because they are fortunate enough to have highly marketable skills.<sup>44</sup> What we therefore need to do is to substantiate the idea of distributive equality in a way that is to a great extent not held hostage to people's tastes and preferences, for the reason that egalitarian justice should be largely immune to the vicissitudes of luck.

In view of the above, one may be attracted to what is sometimes called the *all-luck* view.<sup>45</sup> As Iwao Hirose puts it, this view holds that 'almost all inequalities reflect the differential effects of brute luck, and hence that very few people can be held responsible for bad outcomes.'<sup>46</sup> The all-luck view appears well motivated by the thought which I already rehearsed above, namely that it is harder to justify inequalities when we realize that there are immense complexities involved in all choices, and what appear to be deliberative choices may also be commonly tainted by brute luck. One should also immediately notice, however, that the all-luck view implies that the positive luckist principle hardly has any application; as Hirose also comments, this view 'gets closer, or extensionally almost equivalent, to simple egalitarianism in outcome'.<sup>47</sup>

<sup>43</sup> Cf. Dworkin, *Justice for Hedgehogs*, 479, n. 10.

<sup>44</sup> The well-known Wilt Chamberlain case is from Nozick, *Anarchy, State, and Utopia*, 160–164.

<sup>45</sup> See, for example, Segall, *Health, Luck, and Justice*, ch. 3.

<sup>46</sup> *Egalitarianism*, 51.

<sup>47</sup> *Ibid.*

As some of my remarks may have already shown, I have much sympathy with the all-luck view, although I must acknowledge that it seems to contradict our common sense immensely. For one thing, we do not treat people as if they never make genuine choices. But I should note that the all-luck view does resonate well with some of our intuitions about fairness in light of the fact that barely any choice is immune to brute luck. I am therefore inclined to think that something very close to the all-luck view—which suggests that equality is to be preserved unless relevant inequalities result from genuine choices which somehow carry the weight that justifies them—is the most consistent formulation of luck egalitarianism.

Before I leave this topic, I want to mention one last thing that Arneson and others have already noticed; namely that luck egalitarianism, as it is usually understood, seems to be concerned with two types of conditions, not one, that justify inequalities.<sup>48</sup>

Consider again Temkin's formulation of the luckist negative principle, on which inequalities are unjustified when some are worse off than others through *no fault or choice* of their own. One should then see that the clause 'no fault or choice' actually involves two kinds of considerations, one involving the thought that people do not deserve to be worse off, as a matter of *morality*, when they are not at fault; and the other that they should not be made worse off than others when they make no choice that brings about themselves being worse off as a matter of *prudence*.

Now, it is obvious that, although morality and prudence both give guidance on how people should live their lives, they do not always coincide. We know that sometimes people act virtuously but imprudently—when they act altruistically, for instance—and therefore become worse off themselves. There are people who want to live their lives in, say, the model of Mother Teresa, and choose to give up

<sup>48</sup> See Arneson, 'Luck and Equality'.

many valuable things for themselves in order to serve others. Although we are very familiar with this type of cases, one side of the problem is that it actually seems unclear what luck egalitarians should think about them. So, if those nice people end up being very badly off themselves, should the luck egalitarian avow to compensate for their choices? To sharpen our intuition, suppose that Adina is such a person, who has devoted her life to others, and she ends up as worse off as David, who has gambled away his fortune frivolously. I imagine luck egalitarians would say that if there are available resources to save only one of them from being very badly off, they should be given to Adina; but I think it is not entirely clear on what luck egalitarian ground this judgement can be made.

At any rate, luck egalitarianism seems caught in a dilemma when morality and prudence conflict with each other. Since the idea of moral desert has some intuitive appeal, they would want to help the virtuous even if they should be held responsible for their supererogatory sacrifices. But this suggestion does not really accord with their luckist commitment to personal responsibility, according to which people should bear the consequences of their choices if they are made under appropriate conditions.

Luck egalitarians may therefore want to reconsider the assumption that both morality and prudence bear on the conditions which make one forfeit the claim to compensation. On the one hand, some of them may suggest that people should be held responsible for whatever choices they make, irrespective of their moral credentials. But I believe that luck egalitarianism will lose much of its intuitive appeal if it is thus reformulated. For it seems that a major reason why we care about how people make their choices is that we want them to be justifiable from a moral point of view; and it would be at best unclear why an egalitarian theory of justice need put such emphasis on choice if it were entirely devoid of a moral character. On the other hand, if luck egalitarians think that people should only be responsible for their choices when they are morally questionable, their theory

will appear to collapse into some sort of desertist view, according to which, roughly, a distribution of goods and ills is just if and only if it appropriately tracks the virtues and vices of their holders.<sup>49</sup> Now, there is of course nothing outright implausible if an egalitarian conception of justice also pays heed to the idea of moral desert, but it cannot be denied that considerations of equality and desert are by their nature distinct; and I shall not further inquire into the prospects for such a mixed conception.

The problems we have discussed in this section suggest that it may not be an easy task to articulate luck egalitarianism as a coherent view. But I am inclined to think that one need not be too impressed by the fact that luck egalitarianism has a variety of commitments which do not always resonate well with one another. For a natural way to incorporate a plurality of components into a conception of justice is to devise a method for their reconciliation. This might be done, say, by assigning weights to each of them, or formulating priority rules in cases where they conflict. One may recall that Rawls's conception of justice, consisting of a number of principles of justice and priority rules that order principles of justice lexically, is also pluralist in this sense. In my view, it is very sensible to articulate luck egalitarianism as a pluralist conception of justice.<sup>50</sup> I, for one, do not find luck egalitarianism in any respect more problematic than its pluralist alternatives *qua* a pluralist view. For all that has been argued here, the prospects for luck egalitarianism as a pluralist conception of justice are an undecided matter.

<sup>49</sup> See Temkin, 'Equality as Comparative Fairness'. Cf. Kagan, 'Equality and Desert'; Olsaretti, 'Unmasking Equality? Kagan on Equality and Desert'.

<sup>50</sup> See Segall, *Health, Luck, and Justice*, ch. 3; Lippert-Rasmussen, *Relational Egalitarianism: Living as Equals*, ch. 7. Cf. Daniels, 'Democratic Equality: Rawls's Complex Egalitarianism', 255.

## Chapter 4.

### The Relationalist Critique of Luck Egalitarianism

My primary aim in this chapter is to show that a number of recent objections to luck egalitarianism, put forward by those who are now commonly called relational egalitarians, do not show that it is implausible in virtue of its concerns for procedural and distributive fairness. I argue as follows. First, I defend luck egalitarianism against a couple of objections, according to which its commitments to procedural and distributive fairness have severely undesirable implications, on the ground that luck egalitarians may plausibly suggest that their concerns for procedural and distributive fairness are only two among other commitments of theirs with respect to distributive justice. Second, I argue, for reasons already hinted at in the last chapter, that it does not make sense for the relationalist to claim that luck egalitarianism fails the Dworkinian injunction of equal concern and respect. Third, I argue that it is implausible for the relationalist to object to luck egalitarianism by claiming that it presupposes an allegedly dubious account of justification, for the reason that luck egalitarians are not forbidden from adopting whichever conception of justification that one may find appealing.

#### 4.1. The Harshness Objection and the Disrespect Objection

When contemporary relational egalitarians put forward their challenges to the distributive conception of equality, they usually focus on luck egalitarianism as a paradigmatic distributive theory. Many relational egalitarians appear to believe that there are fatal objections to luck egalitarianism. In this section I discuss two of these, namely the *harshness* objection and the *disrespect* objection.

These are articulated, among other relationalists, by Anderson, who writes that luck egalitarianism ‘offers no aid to those it labels irresponsible, and humiliating aid to those it labels innately inferior.’<sup>1</sup> I argue that these two objections fail.

According to the *harshness* objection, luck egalitarianism is too harsh to the imprudent, and hence implausible, since it holds that those who make imprudent choices should themselves bear full responsibility of the consequences of these choices. A paradigmatic case suggested by Anderson involves a car accident, in which both a negligent driver and an innocent passer-by are severely injured. As the objection goes, luck egalitarianism appears to imply that the innocent victim should be treated with all available care, for the accident is just bad brute luck for her. But the driver, for it is his own imprudent driving which gives rise to his injury, must be left ‘to die by the side of the road.’<sup>2</sup> Since the accident supposedly only involves bad option luck, not brute luck, for the reckless driver, there is no reason to rescue him according to luck egalitarianism. But surely, the objection continues, the fact that it has such implication, namely abandoning someone to die, counts as a *reductio* of that view.

More specifically, Anderson claims that the reckless driver case shows why luck egalitarianism should be rejected from an *egalitarian* point of view. For according to Anderson, there is one thing that any egalitarian conception of justice should be committed to, namely to secure the conditions for people to be related as equals; and abandoning the reckless driver is exactly to deprive him of the access to resources that he may need so as to recover, which in turn is necessary for him to live again as an equal citizen among others. Anderson therefore charges luck egalitarianism with failing to express equal concern and respect for those who make imprudent choices. That is, she objects that the harsh attitude expressed by the abandonment is incompatible with the principle of basic human equality.

<sup>1</sup> ‘What Is the Point of Equality?’, 308.

<sup>2</sup> *Ibid.*, 295.

How should luck egalitarians respond to the harness objection? To begin with, they should maintain that luck egalitarianism is plausible insofar as it implies that in the imagined scenario the blameless pedestrian has a stronger claim to be taken care of. For it is clear that if there are only limited medical resources which cannot be provided for both the culpable driver and the innocent passer-by, it is fair to treat the latter first, and unfair not so. Assuming that basic equality between these two patients implies that fair treatment should be given, luck egalitarianism does not contradict that principle insofar as it indicates that rescuing the innocent pedestrian has a priority over saving the culpable driver.

But it may be said that this reply is not sufficient to deflect the harshness objection, for this objection condemns luck egalitarianism as a theory which not only gives higher priority to the victim of bad brute luck, but is also committed to letting the negligent driver bear the terrible consequences. That is, it charges luck egalitarianism with holding too stringent a view about personal responsibility, which allegedly grounds the verdict that it is just to leave the driver unattended even if there are resources to rescue both two patients.

Now, I think luck egalitarians should simply reply that apart from luckism they also have other commitments, which suggest to them reasons to rescue the negligent driver as well as the innocent pedestrian. As I said at the end of the last chapter, luck egalitarians can endorse pluralism about values and principles, and it therefore makes sense for them to allude to, for example, humanitarian concerns or the value of solidarity, so as to mitigate the criticized harsh implication of their view about personal responsibility.<sup>3</sup> That is, luck egalitarians need not deny, say, that there is a requirement to cater for anybody's urgent needs, as well as that it is good that members of a community display mutual concern unconditionally; and

<sup>3</sup> See Segall, *Health, Luck, and Justice*, 64–66; Cohen, 'Luck and Equality', 120; Cohen, *Why Not Socialism?*.

they should suggest that after taking all of the relevant considerations into account it is most likely that it is justified to rescue the reckless driver.

In fact, they may add that complicated weighing seems unavoidable if the plurality of considerations is duly acknowledged, and that there might even exist situations in which not rescuing is entirely acceptable. Imagine a convicted serial killer who accidentally traps himself in a burning building whilst attempting to commit just another murder. A pluralist luck egalitarian may claim that all things considered it is not harsh and violates no requirement of basic equality to refuse to rescue him. For even if it is granted that the criminal does not deserve to die in a particularly miserable way, he is also unworthy of anyone else trying to mitigate the consequences of his mistake by putting themselves into jeopardy.

Now, is the pluralist reply credible? Hirose challenges it on several grounds. First, he claims that the very idea of pluralism is unclear, and it invites the question how to reconcile values and principles which are supposed to exist simultaneously but conflict with each other. Second, Hirose suggests that the pluralist response does not appropriately engage with the harshness objection, for whether or not luck egalitarians also endorse other values is beside the point:

[Luck egalitarians] are free to support as many principles as they wish. But the bottom line is that luck egalitarianism abandons the reckless driver. The abandonment objection is not aimed at people who support luck egalitarianism, but at luck egalitarianism itself. Thus, the force of the abandonment objection to luck egalitarianism remains intact. The appeal to non-luck-egalitarian principles does not rescue luck egalitarianism.<sup>4</sup>

Third, Hirose emphasizes that when luck egalitarianism is accused of being implausible for its implication on the rescue case, it is said to fail as a theory of justice or a part therein. This means that tempering luck egalitarianism with other

<sup>4</sup> *Egalitarianism*, 60.



considerations would not make luck egalitarianism itself any more plausible as an either complete or partial theory of justice. He writes:

The reckless driver case is a case of distributive justice. The question is whether we should allocate scarce resources to rescue the reckless driver even if he or she should be held responsible. This question is nothing if not one of distributive justice. However, luck egalitarianism itself cannot provide a justification for saving the reckless driver.<sup>5</sup>

Hirose concludes that the pluralist reply does not save luck egalitarianism. At best it suggests that it is not incoherent for luck egalitarians to endorse some other principles. But luck egalitarianism itself still fails in face of the reckless driver case. As he puts it, 'If other parts of a comprehensive theory of justice can serve to answer questions of distributive justice, then we should probably let them solve those questions and assign more marginal tasks to luck egalitarianism.'<sup>6</sup>

In my view, Hirose's rebuttals are unconvincing. To begin with, although the question regarding the reconciliation between a plurality of values and principles should be acknowledged as taxing by any pluralist, the commitment to pluralism hardly makes luck egalitarianism any more problematic than any alternative conceptions of justice which concede that there is an exception to every rule. Moreover, it also seems acceptable if luck egalitarians suggest that there is more than one principle of justice, and to acknowledge that other principles may be more suitable to tackle the reckless driver case. In other words, a pluralist luck-egalitarian conception of justice can be understood as not only coupling egalitarianism with luckism, but also with other principles of justice, such as those of need and desert.<sup>7</sup> As it seems, nothing forbids luck egalitarians from suggesting

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> For a proposal to conceive of social justice as consisting in principles of need, desert, and equality, see Miller, *Principles of Social Justice*, ch. 2.

that luck egalitarianism only identifies one important dimension of a pluralist conception of justice, so long as it has an explanation concerning how disparate principles are related. It is unfair to attribute to luck egalitarians the view that their commitment to luckism must range over all sorts of cases in which questions about distribution arise. It seems reasonable for luck egalitarians to confine themselves to a narrower focus, and they may sensibly think that when a case involves satisfying people's urgent needs the luckist principles no longer applies.

I hasten to add that this move would hardly vindicate Hirose's claim that it should make luck egalitarianism a *marginal* part of a conception of justice. Indeed, I find it hard to accept the implication of Hirose's remark that whether or not the negligent driver should be rescued constitutes a *central* sort of case of distributive justice. It is unclear why Hirose thinks the question whether we should use scarce resources to rescue the reckless driver is 'nothing if not one of distributive justice'. The nub of Hirose's critique appears to be that luck egalitarianism is inappropriate even as a partial theory of distributive justice if it does not give the right verdict for the right reasons. That is to say, Hirose suggests that luck egalitarianism should be rejected if it does not dictate that the negligent driver has a claim of justice to be rescued. But the force of this charge is by no means unquestionable. It does make sense to think that it is a question of distributive justice whether the reckless driver's claim on scarce resources partly or wholly depends on considerations about his responsibility. But this thought does not imply that our judgement about whether to rescue the reckless driver only depends on norms of distributive justice. In short, I find it implausible to assume that it must be a matter of justice when allocation of scarce resources is involved, and I have suggested that there are other norms which provide guidance on our judgement of the negligent driver case. It is therefore unclear why Hirose maintains that we must use the negligent driver rescue case to test luck egalitarianism. I am myself inclined to the view that

if we do judge that all things considered it is justified to rescue the reckless driver, it is not because this is what justice requires. There are other plausible explanations.

At any rate, one may further respond with a ‘companions in guilt’ argument, that it is also unclear whether Rawls’s principles of justice have any definite implications for the neglectful driver case. But I imagine no one would question whether Rawls’s theory addresses to a central case of justice. I conclude that it is premature to reject luck egalitarianism in light of the harshness objection.

I shall now turn to address a second familiar objection to luck egalitarianism, namely the *disrespect* objection, and argue that it also fails. According to this objection, luck egalitarianism fails to express equal respect even when it aims to stand by those who are worse off.

How come? Jonathan Wolff argues that over-emphasizing concerns about fairness in a political community may be incongruous with an ‘egalitarian ethos’ constituted by norms of respect and equal standing. Of the shortcomings he suggests an implementation of luck egalitarianism may incur, what Wolff calls ‘shameful revelation’ is illuminating for our discussion. It is the problem that even when luck egalitarianism purports to compensate people for their bad brute luck in the name of fairness, the fact that people are compensated for what they lack may be interpreted as implying that they are not as respected as others are:

There can be cases where people are required to demean themselves: to behave in a way, or reveal things about themselves, which can rationally be expected to reduce their respect-standing. To put this another way, sometimes people are required, for whatever reason, to do things, or reveal things about themselves, that they find shameful. ... In general, where a particular trait is valued within an agent’s culture, to admit that one does not have it can lead one to believe that one will, as a consequence, acquire a lower respect-standing.<sup>8</sup>

<sup>8</sup> Wolff, ‘Fairness, Respect, and the Egalitarian Ethos’, 109–110.

## *The Relationalist Critique of Luck Egalitarianism*

In other words, Wolff worries that there may be undesirable consequences that follow from luck egalitarianism's undue fixation with luck and compensation. For this emphasis of the impact of luck may well be a reflection of people's disrespectful attitudes towards those who suffer from bad brute luck, or even strengthen them.

According to Wolff, the real-world welfare policies provide us a litmus test. In the process of claiming that welfare deficits do not result from their own fault, welfare claimants often need to reveal their weaknesses. But Wolff suggests that when a welfare state makes claims of subsidies conditional upon those who are in dire need being able to prove both their deficiencies and non-culpability, the alleged pursuit of fairness brings about disrespect. The crux of Wolff's critique of luck egalitarianism is that its single-minded focus on considerations of fairness may not be consistent with other egalitarian commitments of ours. Alternatively put, luck egalitarianism might fail to express equal respect even when it purports to alleviate those who are burdened by bad brute luck.

As Wolff acknowledges, luck egalitarians might want to retort that what they hold is an 'ideal' theory, whose main goal is to identify the values and norms that should be upheld in a well-ordered society. According to a version of the ideal theory approach, what is considered as having first priority in theorization of, say, justice, is to conceive of an ideal situation in which publicly recognized principles of justice are most commonly if not unanimously followed by members of society. This approach to political philosophy is influentially proposed by Rawls, although it has also been seriously contested in recent years.<sup>9</sup> Luck egalitarians, among whom this approach appears well-received, are very likely to claim that, in a well-

<sup>9</sup> See Rawls, *A Theory of Justice*, 8–9/8 rev. See also Simmons, 'Ideal and Nonideal Theory'; Stemplowska and Swift, 'Rawls on Ideal and Nonideal Theory'. Cf. Williams, 'Realism and Moralism in Political Theory'; Sen, *The Idea of Justice*.

ordered society governed by their favoured principles, the kind of psychological and sociological problems that concern Wolff would not be serious.

They might suggest, for instance, that the problem of shameful revelation should not arise where there is a more congenial moral or cultural code which holds that it is perfectly fine to reveal our traits, no matter whether they are highly valued. They might also suggest that in such a society people's psychological profile would be very different, such that their self-respect should not be impaired even when they need to reveal something about themselves in order to claim compensation.<sup>10</sup> It is conceivable that in an ideal society these claimants could well have an open attitude towards revealing themselves. One might add that there are numerous real-world instances where we do not necessarily find revealing ourselves shameful. Before I get a tax refund, I may need to file a report about some of my financial details. If I were falsely accused of murdering someone, it would be urgent for me to provide information of my whereabouts as an alibi to prove my innocence. These procedures seem perfectly acceptable, and I suppose that these should normally not to be seen as threatening to impair our self-respect.

The reply just considered is premised on the possibility of envisioning an ideal situation where revelation does not necessitate shame and lowering of self-respect. If that postulation is sensible, as I think it is, then luck egalitarians are justified to think that their commitments to fairness is not necessarily at variance with Wolff's egalitarian ethos. Accordingly, it would be premature for their critics to claim that norms of fairness and equal respect are never reconcilable.

Since the problem of shameful revelation is contingent on several 'real-world' assumptions, it is not surprising that many who find the disrespect objection powerful are 'non-ideal' theorists.<sup>11</sup> Without engaging with the debate between

<sup>10</sup> See Firth, 'What's So Shameful about Shameful Revelations?'

<sup>11</sup> See Wolff, 'Political Philosophy and the Real World of the Welfare State'; Anderson, 'Toward a Non-Ideal, Relational Methodology for Political Philosophy: Comments on Schwartzman's *Challenging Liberalism*'.

ideal and non-ideal theorists, which would take us too far afield, suffice it to say that one worry people like Wolff have is whether it is feasible to transform our current society into the ideal society conceived by luck egalitarians, and that appears to be a sensible concern. So, Wolff maintains that even if luck egalitarians consider themselves as only trying to do ideal theory, they still need to show how their views are practically relevant and action-guiding for people who live in the real world. For ‘although they consider themselves engaged on a largely theoretical exercise, they do not conceive it to be a *purely* theoretical exercise either. They do hope to have some influence on political and economic policy.’<sup>12</sup> But Wolff worries that endorsing and implementing luck egalitarianism in the real world is likely to amount to ratifying something quite the opposite of its ideal, and therefore that luck egalitarians would end up being the mentors of the anti-egalitarian policies:

If policy makers were to read Dworkin and others, what message might they come away with? That egalitarians, like conservatives, now favor highly conditional welfare benefits. But in the real world this does not give us egalitarianism. Rather, it gives us Thatcherism, in which the poor are singled out for insulting levels of scrutiny.<sup>13</sup>

We might of course be on board with Wolff’s worries if his argument is ‘taken as a plea that ideal thinkers who want to have some impact on reality should pay more attention to issues of transition.’<sup>14</sup> But so long as there is a distinction to be made between issues of transition and ideal theorization, in my view there is nothing to be frowned upon if luck egalitarians claim that how their theory is to be implemented is a separate matter that must await further treatment.

<sup>12</sup> Wolff, ‘Fairness, Respect, and the Egalitarian Ethos’, 112; emphasis in original.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid., 113.

The disrespect objection is also voiced by Anderson, who writes, rhetorically: ‘If much recent academic work defending equality had been secretly penned by conservatives, could the results be any more embarrassing for egalitarians?’<sup>15</sup> Anderson caricatures a Dworkin-style-luck-egalitarianism-inspired letter from ‘State Equality Board’, which is written in a discriminatory tone that indicates a wrong kind of attitude towards those who are disabled:

To the disabled: Your defective native endowments or current disabilities, alas, make your life less worth living than the lives of normal people. To compensate for this misfortune, we, the able ones, will give you extra resources, enough to make the worth of living your life good enough that at least one person out there thinks it is comparable to someone else’s life.<sup>16</sup>

According to Anderson, similar letters could be written and sent to the ‘stupid and untalented’ and the ‘ugly and socially awkward’. The lesson Anderson wants us to learn is that the kind of compensation demanded by luck egalitarians is motivated by a condescending attitude, namely *pity*. This is to be contrasted with *compassion*, which is alleged to be a genuinely egalitarian disposition:

Compassion is based on an awareness of suffering, an intrinsic condition of a person. Pity, by contrast, is aroused by a comparison of the observer’s condition with the condition of the object of pity. Its characteristic judgment is not ‘she is badly off’ but ‘she is worse off than me.’ When the conditions being compared are internal states in which people take pride, pity’s thought is ‘she is sadly inferior to me.’ Compassion and pity can both move a person to act benevolently, but only pity is condescending.<sup>17</sup>

<sup>15</sup> ‘What Is the Point of Equality?’, 287.

<sup>16</sup> *Ibid.*, 305.

<sup>17</sup> *Ibid.*, 306–307.

*The Relationalist Critique of Luck Egalitarianism*

In line with what she infers from the harshness objection, Anderson claims that the disrespect objection shows that luck egalitarianism fails to express equal respect and concern for whom it purports to compensate for their lack.

It is hardly clear, however, why we need to take Anderson's speculative diagnosis of luck egalitarianism seriously. Is there any reason to think that the endorsement of luck egalitarianism must go hand in hand with a condescending attitude towards those who have a claim to be compensated for their bad brute luck? I think not. It seems perfectly legitimate for luck egalitarians to say that they are motivated to compensate for those deficiencies exactly *because* in their view people are of equal moral worth whether or not they suffer from bad brute luck. Since I see no merit in the charge that luck egalitarianism must be motivated by pity in Anderson's derogatory sense, I believe that her version of the disrespect objection also fails to defeat luck egalitarianism.

It is worth noting one implication Anderson draws from her favoured view, which is supposedly not plagued by a vicious sense of pity—Anderson suggests that a compassion-motivated conception of relational equality would not include egalitarian principles of distribution:

In virtue of their distinct cognitive bases, humanitarian compassion and pity motivate action on different principles. Compassion does not yield egalitarian principles of distribution: it aims to relieve suffering, not to equalize it. Once people have been relieved of suffering and neediness, compassion generates no further impetus toward equality of condition.<sup>18</sup>

As I shall discuss further in the next chapter, Anderson's remarks illustrate her rejection of distributive egalitarianism. According to her, when an egalitarian is motivated by compassion rather than pity towards the worse off, she would not seek an equal distribution of anything, but only aim to relieve people's suffering

<sup>18</sup> Ibid., 307.



and satisfy their urgent needs. There is no further commitment to egalitarian distributive principles.

#### 4.2. Rethinking the Relationalist Argument from Equal Respect

There is, I believe, one important lesson to be learned from our reflection upon the two objections we visited in the last section. As Anderson construes them, both the harshness objection and the disrespect objection aim to show that luck egalitarianism fails to express equal concern and respect. On her view, the harshness objection illustrates this by highlighting the allegedly implausible distributive implications of the luck egalitarian account of personal responsibility, and the disrespect objection does this by indicating that luck egalitarianism expresses the wrong kind of attitudes even when it correctly prescribes that people who suffer from bad brute luck should be thereby compensated.

As I argued above, there is a natural way for luck egalitarians to get around the harshness objection, namely to identify their other commitments that mitigate the alleged harsh implications of luck egalitarianism. One might think that this is not enough to rebut Anderson's claim that luck egalitarianism fails to meet the requirement of equal concern and respect. However, for two reasons I think luck egalitarianism does not fail to show equal concern and respect even if it does have harsh implications.

First, people are still regarded and treated *as equals* if luck egalitarianism holds that not only those who happen to make imprudent choices, but *everyone*, should take full responsibility for their own choices. In my view, if a rule is severe but applies *equally* to everyone, it does not violate the injunction of *equal* concern and respect, unless Anderson means to suggest that the injunction is violated whenever a rule is too stringent, such that *not enough* concern and respect is shown to anyone. One can easily see, however, that the phrase 'equal' in this interpretation of the

injunction is redundant, and the charge of harshness at any rate does not imply failure of *equal* concern and respect.

A second and more important reason to resist the argument that luck egalitarianism fails to express the idea of equal concern and respect is, to put it bluntly, that the idea does not itself set any substantive constraints on how distributive principles of justice are to be conceived—as I already made plain in Section 3.2., I am inclined to endorse Arneson’s claim that the notion of respect for persons ‘looks to be an unobjectionable but purely formal idea’,<sup>19</sup> and I hold that this judgement should also apply to the Dworkinian notion of equal concern and respect. True, luck egalitarianism’s commitment to choice and responsibility may be seen as an interpretation of the idea of equal concern and respect, and that interpretation may well have distributive implications that some people find unacceptable. Nevertheless, I see no reason to think that the question whether these distributive implications are acceptable needs to be answered by reference to the idea of equal concern and respect. As I also discussed earlier in that section, Dworkin—who proposes to identify equal concern as the sovereign virtue of political community—himself admits that this idea is seemingly consistent with a variety of interpretations and conceptions of justice; and as far as I can see, this idea only entails that distributive principles must be applied indiscriminately, but not much else.

On my view, luck egalitarians need not object to Anderson’s endorsement of the spirit of the ‘egalitarian political movements’, which ‘assert the equal moral worth of persons’.<sup>20</sup> But they should claim that this assertion has no determinate bearing on whether or not their view about choice and responsibility is plausible. They should maintain that the idea of equal moral worth is substantiated in the domain of distributive justice by principles that specify just distributions of

<sup>19</sup> ‘Luck Egalitarianism and Prioritarianism’, 344.

<sup>20</sup> Anderson, ‘What Is the Point of Equality?’, 312.

benefits and burdens, and a principle of basic equality is justified when and only when distributive principles that offer interpretations of that idea are justified. So, for example, they might say that the idea of equal moral worth or basic human equality simply *means* three things according to their theory: that there is a presumption of equal distribution, that people should be compensated for bad brute luck, and that they should bear responsibility for their genuine choices.

Now, luck egalitarians should of course admit that whether or not their luckist commitments are defensible is a debatable matter. Nonetheless, I think they should also insist that, when Anderson asserts that luck egalitarianism fails to express equal concern and respect, she just *is* claiming that luck egalitarianism is indefensible in view of its distributive implications. In my view, this rebuttal at least implies that Anderson misleads when she argues that luck egalitarianism *fails* to honour the injunction of equal concern and respect, because that assertion adds nothing over and above to her claim that luckism is indefensible.

In fact, as I shall further elaborate in Chapter 6, it is Rawls who makes it very clear that introducing the idea of equal moral worth adds nothing substantive to a conception of egalitarian justice:

The essential point is that the concept of moral worth does not provide a first principle of distributive justice. This is because it cannot be introduced until after the principles of justice and of natural duty and obligation have been acknowledged. Once these principles are on hand, moral worth can be defined as having a sense of justice; and ... the virtues can be characterized as desires or tendencies to act upon the corresponding principles. Thus the concept of moral worth is secondary to those of right and justice, and it plays no role in the substantive definition of distributive shares.<sup>21</sup>

I think we should say that whether luck egalitarianism includes justified egalitarian distributive principles is a question that is also to be primarily decided

<sup>21</sup> *Theory*, 312–3/275 rev.

by whether these can be plausibly seen as part of a coherent conception of justice. Luck egalitarians should therefore respond to Anderson by saying that her remark concerning equal moral worth is simply beside the point.

What I just said should also apply to the disrespect objection. Again, luck egalitarians need not demur when Anderson suggests that ‘Egalitarians base claims to social and political equality on the fact of universal moral equality.’<sup>22</sup> But they should maintain that it makes no clear sense when one asserts that one or another egalitarian conception of justice fails in the light of ‘the fact of universal moral equality’. For how to understand that fact is a moot point, and luck egalitarianism does offer one interpretation of what that fact involves, which is seemingly no less egalitarian than any alternatives. Instead of saying that luck egalitarianism ‘fails the most fundamental test any egalitarian theory must meet: that its principles express equal respect and concern for all citizens’,<sup>23</sup> Anderson should acknowledge that what she really means is that luck egalitarianism fails this ‘most fundamental test’ *according to* the way her relational conception of equality interprets that test.

I am here not only claiming, as I already argued above, that Anderson’s objections against luck egalitarianism fail. I am making the further point that when Anderson charges luck egalitarianism with failing to express equal respect and concern, she merely points out that it is inconsistent with her own conception of equality, nothing more, nothing less.

Now it should be plain that what I am driving at is I think the rarely defended and unpopular view—albeit, as I said, I take it to be Rawls’s view—that the principle of basic human equality itself is incapable of determining whether or not one egalitarian theory is preferable to another. In so far as I can see, the principle of basic equality only entails that egalitarian distributive principles should be impartially applied. That is, it only rules out principles that selectively benefit or

<sup>22</sup> ‘What Is the Point of Equality?’, 313.

<sup>23</sup> *Ibid.*, 289.

burden people on arbitrary grounds—but is it not true that different theories have different standards of arbitrariness, according to what each of them deems relevant and irrelevant?

According my Rawlsian view, the correct explanation of why the principle of basic equality rules out principles which imply arbitrary treatment is not that the former itself robustly arbitrate between alternative distributive principles; it is that no distributive principle which has the said feature can ever be justified. On my view, the principle that citizens in a democratic society are one another's equals does not operate as a substantive criterion, as opposed to a merely formal one, for adjudicating one or another conception of equality, and so the very idea of 'the most fundamental test' that Anderson alludes to is misleading.

### 4.3. Justifying Claims of Justice

Anderson further argues, however, that as a paradigmatic distributive theory luck egalitarianism cannot even be construed as an appropriate conception of justice, because it is prone to an inappropriate view about justification for claims of justice. According to Anderson, luck egalitarianism is a theory that focuses 'on correcting a supposed cosmic injustice'.<sup>24</sup> She claims, on the contrary, that there is no such thing as a cosmic injustice, for it is a necessary truth that claims of justice can only be made against individual and institutional agents.<sup>25</sup> That is to say, justice only makes demands on those who are able to take responsibility for their deeds.

For example, Anderson suggests that when a massive natural disaster occurs, no claim of injustice can be made when all reasonable things are said and done: 'The world could be such that everyone is complying with all reasonable demands,

<sup>24</sup> *Ibid.*, 288.

<sup>25</sup> 'The Fundamental Disagreement between Luck Egalitarians and Relational Egalitarians', 2.

but people are miserable due to natural catastrophes that overcome their rescue capacity. Such a world would be deplorable, but not unjust.<sup>26</sup> Provided that all relevant agents do comply with the demands of justice, the harm done by natural catastrophes cannot be an injustice. Another example: what is also not a matter of justice, on Anderson's view, is the distribution of talents, a natural fact which is neither just nor unjust. That is, Anderson appears to think that there is nothing unjust if the talented benefit from their places in the natural distribution of talents, for no one should be held accountable for the vicissitudes of luck. Mozart thereby had nothing to be sorry about for his success if Salieri was less talented than he is, and Salieri could not justifiably complain about Mozart's success.<sup>27</sup>

It might appear that luck egalitarians should dissent from Anderson's judgements on these cases, since on their view natural catastrophes and the lack of natural talents both count for some people as caprices of bad brute luck, the effect of which should on their account be compensated for. Anderson's claim that luck egalitarianism aims to correct cosmic injustice may therefore seem fair—I would, however, dispute this diagnosis below.

By contrast, Anderson's relational conception of equality, which she calls 'democratic equality', is said to ground the justification of claims of justice in the obligations citizens owe to each other. According to Anderson, as an articulation of the idea of basic moral equality, 'democratic equality regards two people as equal when each accepts the obligation to justify their actions by principles acceptable to the other, and in which they take mutual consultation, reciprocity, and recognition for granted.'<sup>28</sup> This appears to contrast with what luck egalitarians hold, that there is no inherent connection between interpersonal relationships and the justification of distributive principles.

<sup>26</sup> *Ibid.*, 6.

<sup>27</sup> *Ibid.*, 8–10.

<sup>28</sup> 'What Is the Point of Equality?', 313.

Anderson therefore claims that there exists a ‘fundamental disagreement’ between luck egalitarians and relational egalitarians with regard to ‘the standpoint from which principles of justice are justified.’<sup>29</sup> On her view, relational egalitarians endorse a *second-person* conception justification, whilst luck egalitarians follow a *third-person* conception of justification.

With respect to the latter, Anderson writes:

In a third-person justification, someone presents a body of normative and factual premises as grounds for a policy conclusion. If the argument is valid and the premises are true, then the conclusion is justified. The identity of the person making the argument and the identity of her audience are irrelevant to the justification.<sup>30</sup>

On the face of it, it is unclear why the third-person approach to justification is unacceptable. If it is unfair and so *pro tanto* unjust for one to be worse off than others for no choice or fault of her own, why does the identity of the person who is entitled to make a legitimate complaint, or the identity of the agent against whom the claimant makes the complaint, matter? I am not sure why it does.<sup>31</sup> But apart from her comment that it is indifferent to the identities of the addresser and addressee when a justification is given, insofar as I can see, Anderson never says exactly why the third-person account of justification should be rejected. Although I find her rejection of the third-person approach unmotivated, I take it that this indifference is exactly what Anderson finds inappropriate in it. The idea may be that claims of justice can be justified if and only if they are made within a certain kind of relationship; for according to the relational view there is no obligation of egalitarian justice that is not grounded in the relationships people share with one another. This may be why according to the second-person account of justification

<sup>29</sup> ‘The Fundamental Disagreement’, 2; see also Anderson, ‘Equality’, 44–45.

<sup>30</sup> ‘The Fundamental Disagreement’, 2–3.

<sup>31</sup> Cf. Segall, *Equality and Opportunity*, 18–23.

requirements of justice only apply to those who are situated in these relationships: they are the speaker and the audience who make demands on one another.

Indeed, Anderson indicates that if ‘there is no one who can be held responsible for correcting inequalities between’ those who ‘have no social or causal relation to each other’, then ‘It follows that this kind of equality cannot be cast as a second-person claim and so cannot be a demand of justice.’<sup>32</sup> It appears that Anderson’s view on justification is typical among relational egalitarians. So, for instance, when Scanlon contrasts his view with luck egalitarianism, he also states that his objections to inequality ‘all presuppose some form of relationship or interaction between the unequal parties. ... Once inequality is considered separately from all such relational and institutional factors, it is not clear that it is objectionable.’<sup>33</sup>

I am not convinced, however, that claims of justice must be made within the context of social and political relationships. As I shall explain further in the next chapter, I hold that our distributive concerns do not always originate from considerations about how people should relate to one another. More specifically, I am inclined to think that claims of justice can be made whenever and wherever a *moral* relation obtains between individual beings. Since I also think that moral relations are universal and ubiquitous, what I want to suggest is effectively that any two individual beings have a moral relation, within which it makes sense to talk about duties and obligations they owe to each other. For example, it seems very reasonable to think that we have duties of justice to the global poor, even if they live half a world away and have no previous interaction with us.<sup>34</sup>

What these reflections suggest to me is that luck egalitarianism is not defeated even if Anderson is correct that we should adopt the second-person conception of

<sup>32</sup> ‘Equality’, 54–55.

<sup>33</sup> *Why Does Inequality Matter?*, 9.

<sup>34</sup> See Singer, ‘Famine, Affluence, and Morality’.



justification. For luck egalitarians may suggest that there is a moral context—the world—out of which individuals who are arbitrarily disadvantaged can make claims of justice against those who benefit from brute good luck.

We may of course follow Rawls, whose inquiry about justice begins by restricting itself to a domestic context, within which individuals are related as democratic citizens, before it further probes into principles of justice appropriate for other contexts.<sup>35</sup> But Rawls's account, which involves stipulations about the site and scope of his inquiry, is essentially different from the view voiced by Anderson and Scanlon. According to the latter view, justification of claims of justice makes sense *only if* they are made within a social relationship.

Now, Anderson cites Stephen Darwall's work as articulating the second-person conception of justification 'in definitive form'.<sup>36</sup> As Anderson interprets Darwall's account, second-person justification is appropriate to the domain of moral rightness, and it is concerned with 'claims that people make on each other's "conduct and will"'.<sup>37</sup> Anderson suggests that most relational egalitarians endorse the second-person conception of justification in virtue of their commitment to contractualism, which according to her 'is the view that the principles of justice are whatever principles free, equal, and reasonable people would adopt to regulate the claims they make on one another'.<sup>38</sup>

Importantly, Anderson claims that 'Justice comprises that *subset* of the moral right tied to individual *claim rights*, which ground duties of others to pay due regard to individuals' interests'.<sup>39</sup> She outlines four constraints on judgments of injustice, which she indicates as entailed by the idea of interpersonal justification:

<sup>35</sup> See Rawls, *Restatement*, 11.

<sup>36</sup> 'The Fundamental Disagreement', 4.

<sup>37</sup> *Ibid.*, italics in original; citing Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability*, 3.

<sup>38</sup> 'The Fundamental Disagreement', 3.

<sup>39</sup> *Ibid.*, 4; italics in original.

First, there can be no injustice without an injury to someone's interests. Second, there can be no injustice without an agent who is (or was) substantively responsible for it—someone obligated to avoid, correct, or bear the costs of the injustice or of its correction or amelioration. Third, there can be no injustice without an agent who is (or was) entitled to complain to the responsible agent, to hold that agent to account and exact compliance with the demand. Fourth, there can be no injustice where all agents continuously and successfully comply with all the demands that everyone can reasonably make of them.<sup>40</sup>

From these constraints Anderson derives the claim that justice is ultimately concerned with what is reasonable to demand on the conduct of agents:

It follows that justice as an evaluation applied to states of affairs is entirely derivative of justice as an appraisal of the conduct of agents. Where all agents conduct themselves justly—where they successfully comply with all reasonable demands—the state of affairs resulting from their conduct is just. There is no other route to defining a just state of affairs except through the concept of agents' compliance with reasonable claims people may make on each other.<sup>41</sup>

Now, with regard to Anderson remarks, I want to make two observations. First, it is by no means clear why luck egalitarians—or distributive egalitarians in general—need to dispute the second-person idea of justification. Second, it seems that neither contractualism nor the second-person conception of justification motivates Anderson's substantive characterization of justice. These observations lead me to think, *pace* Anderson, that there is no 'fundamental disagreement' between luck and relational egalitarians about justification.

First, one should be doubtful about the alleged fundamental disagreement, because it does not seem fair to suggest that luck egalitarians must endorse the third-person conception of justification, no matter whether it is implausible. To begin with, there is the curious fact that when Anderson first introduced the idea

<sup>40</sup> 'The Fundamental Disagreement', 5.

<sup>41</sup> *Ibid.*, italics omitted.

of interpersonal justification in order to explain the implications of her relational-egalitarian view, she cited and endorsed the account put forward by Cohen, who is arguably the luck egalitarian *par excellence*.<sup>42</sup> Moreover, even in the piece where Anderson argues for the existence of the fundamental disagreement, she also effectively admits that one of Cohen's objections against Rawls could be put in second-person terms, despite her thinking that the objection fails.<sup>43</sup> According to Anderson, Cohen claims that those who are disadvantaged in the distribution of natural talents have legitimate complaints to the advantaged, as a matter of justice, that the latter are unfairly advantaged. Understood as an internal critique of Rawls's theory, the objection is that the legitimate complaint of the untalented would not be nullified, even if what is required by Rawls's difference principle is satisfied, and so the untalented are as well off as they could possibly be.

In response to Cohen, Anderson interprets Cohen's objection as premised on 'the luck egalitarian principle', on which 'accidental inequality is unjust'.<sup>44</sup> She then argues that 'Cohen's internal critique fails because the luck egalitarian principle has no interpersonal rationale'.<sup>45</sup> In line with the suggestion that justice is not about correcting cosmic injustice, Anderson rejects Cohen's argument as incompatible with the interpersonal account of justification, as she claims that the distribution of natural endowments is neither just nor unjust, but merely a natural fact. According to her, it follows that the untalented do not have a legitimate complaint against the talented. This is supposed to be illustrated by the relation between Salieri and Mozart—it is not true that Mozart owes Salieri anything simply because he is better endowed.

<sup>42</sup> See 'What Is the Point of Equality?', 322, where Anderson cites Cohen, 'Incentives, Inequality, and Community'.

<sup>43</sup> 'The Fundamental Disagreement', 7.

<sup>44</sup> *Ibid.*, 8; citing Cohen, *Rescuing Justice and Equality*, 8.

<sup>45</sup> 'The Fundamental Disagreement', 8.

But I fail to see why Anderson's characterization of Cohen's objection is fair or accurate. For if the objection is understood as an immanent critique of justice as fairness, especially the difference principle, then what Cohen would claim is not that the talented owe anything particular to the untalented. His claim would instead be that the major institutions of the basic structure of society should be arranged in a way that mitigates, if not eliminates, accidental inequalities, for that is what these institutions 'owe' to the untalented. Alternatively put, in spite of the earlier discussion in Chapter 2, since Rawls is explicit that his principles of justice are devised to apply to the basic structure of society, it is reasonable to think that Cohen's internal critique of Rawls's theory *could* retain the institutional focus without losing its luck egalitarian character. Thus construed, Cohen's major claim would then be that the untalented are entitled to complain against the major institutions of society—rather than the talented—which arbitrarily permit them to be worse off from a moral point of view. Anderson therefore does not establish the case that luck egalitarians must cast their arguments in third-person terms. Indeed, it appears that nothing should forbid luck egalitarians like Cohen from casting their arguments in second-person terms.<sup>46</sup>

Moreover, there is also no principled explanation as to why luck egalitarians cannot develop their own versions of contractualist accounts.<sup>47</sup> They may argue, for example, that on a contractualist construal of their view, those who are worse off can reasonably object to a principle that permits the basic structure of society to be arranged in a way that does not eliminate the advantages resulting from talents which are arbitrary from a moral point of view. To support their view, they may cite Scanlon, a prominent contractualist, who writes: 'We have reason to object to principles simply because they arbitrarily favor the claims of some over

<sup>46</sup> See also Lippert-Rasmussen, *Relational Egalitarianism*, 110–116, 230–235.

<sup>47</sup> Cf. Vallentyne, 'Justice, Interpersonal Morality, and Luck Egalitarianism'.

the identical claims of others: that is to say, because they are unfair.<sup>48</sup> According to luck egalitarianism, a principle that permits some to be favoured by luck amounts to arbitrarily favour their claims to benefits over those of others. I need not suggest that the contractualist formulation of luck egalitarianism makes it more plausible than alternative conceptions of justice; the intelligibility of this position already implies the falsity of Anderson's claim.

In short, it appears that nothing really hinges on the question of justification in the dispute between Anderson and Cohen. The real disagreement between them is not about whether luck egalitarians must cast their arguments in third-person terms. What is involved is instead a substantive issue, not a justificatory one, about what legitimate claims or complaints people are entitled to make against the major institutions of their society. Anderson may well think that the untalented do not have a legitimate complaint against these institutions even if the latter make no attempt to neutralize the influences of morally arbitrary causes. This, however, involves a claim about how institutions should be arranged, and does not vindicate the existence of a disagreement between luck egalitarians and relational egalitarians about how claims of justice are to be justified.

My second observation on Anderson's account is that even if those who adopt the second-person account of justification do so in virtue of their contractualism, neither contractualism nor the second-person account of justification motivates a view about justice that is inconsistent with luck egalitarianism.

The crux of Anderson's account of justification about claims of justice is that justice is tied to individual claim rights of the wronged against the wrongdoer:

Justice is a subset of the morally right. The right specifies our moral obligations or duties. Justice specifies what duties are owed to particular persons. The concept of injustice involves not simply the idea of 'a wrong done' (and hence a

<sup>48</sup> *What We Owe to Each Other*, 216; see also Tomlin, 'What is the Point of Egalitarian Social Relationships?', 177–179. Cf. James, 'The Significance of Distribution'.

duty to avoid wrongdoing), but ‘some assignable person who is wronged.’ That involves ‘the idea of a personal right—a claim on the part of the wronged person against the wrongdoer that he stop and redress the wrong. The concept of ‘a person’s due’ thus belongs to the second-person standpoint. It essentially concerns what claims people are entitled to make on others’ conduct, with respect to how they treat claimants and their interests.<sup>49</sup>

As Anderson characterizes them, moral rightness is concerned with general moral obligations, and justice is more specifically concerned with those owed by one to another particular person. It appears, however, that Anderson’s account does not capture one important aspect of the way contractualists such as Rawls characterize *justice*, namely that ‘the primary subject of justice is the basic structure of society’.<sup>50</sup> I am therefore doubtful about whether Anderson is entitled to derive her view about justice from contractualism. Moreover, although she cites and endorses Darwall’s account of the second-person conception of justification, it seems that Darwall is also not committed to the view that justice is solely, or even primarily, concerned with individual claim rights.<sup>51</sup> In fact, in line with what I just said, Darwall also appears to suggest that the major difference between moral rightness and justice, as contractualists characterize these ideas, has to do with their respective subjects, one individual conduct, and another the basic structure of society:

Common to all contractualist theories is the idea that the content of the moral obligations we owe to one another as equal moral persons is to be explained as the result of a (hypothetical) agreement, choice, or ‘contract’ from some perspective that situates individuals equally as moral persons (and so expresses respect for persons as such). . . . Justice as fairness, as Rawls presents it in *A Theory of Justice*, is a contractualist theory of justice. And Rawls there suggests a theory of moral right, ‘rightness as fairness’, which can be developed along similar lines.

<sup>49</sup> ‘The Fundamental Disagreement’, 19.

<sup>50</sup> Rawls, *Theory*, 716 rev; see also Scanlon, *What We Owe to Each Other*, 6.

<sup>51</sup> For a discussion of rights by Darwall, see *The Second-Person Standpoint*, 18–20.

Principles of right apply to individual conduct rather than to the basic structure of society, but otherwise rightness as fairness attempts to explicate such principles in a manner similar to the more familiar ‘derivation’ of principles of justice.<sup>52</sup>

In this passage, Darwall first indicates that what the contractualist accounts of justice and moral rightness have in common is that they both make use of the idea of a hypothetical contract. But then Darwall appears to also endorse Rawls’s view that principles of right apply to individual conduct rather than to the basic structure of society, whereas principles of justice apply to the basic structure rather than to individual conduct.<sup>53</sup> Now, it is true that Darwall would agree with Anderson that a contractualist theory of justice purports to explain a subset of our moral obligations and duties. As far as I can see, however, nowhere in his work on second-person conception of justification does Darwall indicate that justice is primarily concerned with individual claim rights, and we must therefore conclude that Anderson’s appropriation of Darwall is unwarranted. There is simply no sign that Darwall (or Rawls) holds a contractualist account of justification according to which justice is tied to individual claim rights.

Taking her argument at its face value, Anderson invalidly infers from justice consisting in a subset of moral rightness that it being concerned with a particular kind of rightness, namely compliance with individual claim rights. As we have seen, contractualists themselves typically think that contractualism about justice is distinctive in being concerned with identifying principles which are to apply to the basic structure of society. Since contractualists need not hold the view that justice is primarily concerned to define the claim rights of the wronged against the wrongdoer, there is no reason to think that contractualism as such motivates an objection to luck egalitarianism.

<sup>52</sup> *Ibid.*, 303.

<sup>53</sup> For Rawls’s own explication, see *Theory*, 108–111/93–96 rev. See also Weithman, ‘Relational Equality, Inherent Instability, and the Reach of Contractualism’.

What is more important is that luck egalitarianism is not defeated even if Anderson is able to justify the claim that justice is essentially concerned with individual claim rights. As we have also seen, luck egalitarians may well argue that individuals have a right to make claims on the major institutions of society that these should not permit people to be disadvantaged by morally arbitrary factors.

I conclude that Anderson is incorrect in her suggestion that there is a basic disagreement between luck egalitarians and relational egalitarians with regard to the justification of claims of justice. In my view, Anderson's objection against luck egalitarianism has nothing to do with either contractualism, the second-person conception of justification, or even the view that justice is primarily concerned with individual claim rights. It is instead motivated by her conviction that those who are arbitrarily disadvantaged do not in light of this very fact have a legitimate complaint of unfairness.

One last note. Although some luck egalitarians may insist that there is such a thing as cosmic injustice, I see no reason why they are at a disadvantage if they want to adopt an institutional view about justice—the view that institutions are the primary subject of justice.<sup>54</sup> Some of them may even adopt a hybrid view, according to which different subjects can be unjust in different ways. In any case, I shall not dwell on the question whether it is appropriate to *call* something a cosmic injustice if it is not brought about by any agent.<sup>55</sup> For it seems clear that what matters more is the substantive question whether inequalities which are influenced by natural contingencies can and should be appropriately addressed in

<sup>54</sup> The institutional luck egalitarian view is defended in Tan, *Justice, Institutions, and Luck*.

<sup>55</sup> For example, I see no conflict between Rawls's comment that '[t]he natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts' (*Theory*, 102/87 rev.); and Derek Parfit's remark that '[a]n objection to natural inequality is ... one of the foundations of Rawls's theory' (*Equality or Partiality?*, 121).



virtue of our concern for distributive fairness. *Pace* Anderson, who appears to answer in the negative, I think the answer to this latter question is clearly ‘Yes’.

As far as I can see, it makes perfect sense for luck egalitarians who adopt the institutional approach to claim that an individual is wronged by an institution if the latter is able but fails to compensate the former for an arbitrary disadvantage it does not itself cause. Aside from the numerous objections against luckism, any reservation about this claim should be dispelled when we remind ourselves that principles for institutions are very different from those apply to individuals. For instance, it is reasonable to expect institutions to bear not only ‘positive’ but also ‘negative’ responsibility. As Nagel comments,

we do not have to feel responsible for everything that happens which we could have prevented. ... But I believe that such restrictions on what is usually called negative responsibility do not apply in the same way to our relations to one another through our common social institutions, especially an involuntary institution such as the state, together with its economic structure. We are responsible, through the institutions which require our support, for the things they could have prevented as well as for the things they actively cause.<sup>56</sup>

Nagel’s remarks indicate that in one sense individuals are to some extent responsible for one another’s situations through their shared institutions—as Rawls once puts it, they ‘share one another’s fate’.<sup>57</sup> This implies that when a badly off individual is wronged by an institution because it fails to take responsibility for her plight, she is also wronged by, say, her fellow citizens. I believe that there is every reason for luck egalitarians to hold the view that their favoured principles of justice should apply first and foremost to the major institutions of society, whether or not they also apply to other subjects. For one thing, this would nicely bring out a relational dimension of their view.

<sup>56</sup> *Equality and Partiality*, 84. Cf. Nagel, ‘The Problem of Global Justice’.

<sup>57</sup> *Theory*, 102. This memorable phrase is removed from the revised edition.

## Chapter 5.

### The Relationalist Critique of Distributive Equality

Relational egalitarians not only criticize luck egalitarianism as a paradigmatic distributive theory of equality, but also challenge the very idea of distributive equality. On their view, it is a big mistake to understand equality as a self-standing distributive ideal. Indeed, they often make one or more of the following claims: that distributive egalitarian principles must be grounded in a relational ideal of equality; that these principles cannot fully capture the concerns for egalitarian social relations; and that there is no need for them when equality as a relational ideal is appropriately realized.

In this chapter I defend the distributive view against the challenges suggested by relational egalitarians. First, I argue that it is justified to be concerned with distributive equality alongside relational equality with respect to egalitarian justice. Second, I argue that distributive egalitarians can appropriately accommodate the relationalist's concerns within a distributivist framework by distributing some 'relational goods' equally. Third, I argue that it is implausible for the relational egalitarians to side with distributive sufficientarianism, for there is no reason why they should be entirely indifferent to the distributive fairness or unfairness in distribution. Fourth, I argue that it is no refutation of the distributive view that equality may also be understood as a deliberative practice.

#### 5.1. What is the Point of Relational Equality?

According to Anderson, egalitarians should be primarily concerned with egalitarian social relations. She suggests that her relational conception of equality,

democratic equality, ‘views equality as a social relationship.’<sup>1</sup> As she puts it, the point of egalitarian justice is, construed negatively, ‘to end oppression, which by definition is socially imposed’; and positively, ‘to create a community in which people stand in relations of equality to others.’<sup>2</sup> What unites the negative and positive aims of Anderson’s relational conception of equality is the opposition to all forms of *social hierarchies*—the ‘relations between superior and inferior persons’—which constitute the essence of inegalitarianism:

Those of superior rank were thought entitled to inflict violence on inferiors, to exclude or segregate them from social life, to treat them with contempt, to force them to obey, work without reciprocation, and abandon their own cultures. These are what Iris Young has identified as the faces of oppression: marginalization, status hierarchy, domination, exploitation, and cultural imperialism. Such unequal social relations generate, and were thought to justify, inequalities in the distribution of freedoms, resources, and welfare. This is the core of inegalitarian ideologies of racism, sexism, nationalism, caste, class, and eugenics.<sup>3</sup>

For relational egalitarians such as Anderson, it is very disappointing that distributive egalitarians—and in particular those who are committed to the luck egalitarian view—show no concern for the task of combating social hierarchies. Their discontent was voiced in Iris Marion Young’s influential critique of ‘the distributive paradigm’, which allegedly ‘defines social justice as the morally proper distribution of social benefits and burdens among society’s members.’<sup>4</sup> Although Young concedes that those who endorse the distributive paradigm may also be concerned with ‘nonmaterial social goods such as rights, opportunity, power, and self-respect’, she holds that ‘What marks the distributive paradigm is a tendency

<sup>1</sup> ‘What Is the Point of Equality?’, 313.

<sup>2</sup> *Ibid.*, 288–289.

<sup>3</sup> *Ibid.*, 312; citing Young, *Justice and the Politics of Difference*.

<sup>4</sup> Young, *Justice and the Politics of Difference*, 16.

to conceive social justice and distribution as coextensive concepts.<sup>5</sup> The problem of the distributive paradigm, which Young thinks is deep and symptomatic, is that it tends to neglect and obscure the real issues that pertain to social and political structures and processes, upon which questions concerning distribution supervene. According to Young, the distributivist loses focus on the true enemies of social justice, namely institutionalized oppression and domination.

As the above long quote from Anderson indicates, Young's critique of the distributive paradigm is an important source for relational egalitarians when they put forward their challenges to the distributive conception of equality, and they characteristically argue that distributive egalitarians are misguided in their way of accounting for the ideal of equality. For one thing, they object that rather than exploring the ways in which people are to be related as equals, and paying heed to problems of oppression and domination in inegalitarian social relations, for a long while distributive egalitarians have been mostly concerned to search for the right metric of egalitarian justice—that is, they have spent too much energy on trying to find the right way to specify the goods that should be distributed equally.

Now, it does seem fair to say, as Scheffler suggests, that many contemporary egalitarians, and especially luck egalitarians, 'conceive of equality as an essentially distributive ideal. They begin from the premise that there is some currency that should be distributed equally and then proceed to investigate what that currency might be.'<sup>6</sup> It should be noted, however, that it is one thing to say that there is something regrettably absent from the distributivist agenda, namely an articulated consideration of relational equality; and it is another thing to say that distributive egalitarians have no way to make up for this lack. I believe that the distributivist can appropriately address the relationalist's concerns, even though it might to some extent depend on how the very idea of relational equality is understood.

<sup>5</sup> Ibid.

<sup>6</sup> 'What is Egalitarianism?', 200.

## *The Relationalist Critique of Distributive Equality*

As it seems, relational egalitarians have two ways to make the point that relational equality matters. On the one hand, a relationalist may claim, plausibly in my view, that there is a dimension of social relations that egalitarians should be concerned with, no matter whether they also intend to argue for other distributive principles. It is of course true that a concern for relational equality has distributive implications according to this view, but that would not imply that no egalitarian should ever be concerned with distributions in their own right. On the other hand, however, some other relationalists may hold a stronger view which does have that implication. In contrast with the first view, which acknowledges that there is a number of diverse but interrelated elements of equality, this second view holds that equality *is* a relational ideal, and that any distributive principles must be grounded in that ideal.

I do not see the appeal of this second view, which I believe is in fact held by prominent relationalists such as Anderson and Scheffler; for, as I shall explain below, it seems pretty obvious to me that equality is at least as much a distributive ideal as a relational one. That is to say, I see no reason why egalitarians have to subsume their concerns for distribution entirely under the relational ideal. That said, I also want to argue that it is no refutation of distributive egalitarianism *even if* this view represents the right way to articulate the value of equality.

I shall illustrate this last point with a brief discussion of Scheffler's view. In his earlier writings on egalitarianism, Scheffler often contrasts Rawls's theory of justice with Dworkin's theory of equality and luck egalitarianism.<sup>7</sup> Although he does not explicitly endorse it, it appears that Scheffler's sympathy lies with justice as fairness. Apart from arguing that Rawls is not a half-hearted luck egalitarian, Scheffler is concerned to show that justice as fairness, despite the fact that it includes several distributive principles, can be plausibly interpreted as a relational

<sup>7</sup> See Scheffler, 'What is Egalitarianism?'; 'Choice, Circumstance, and the Value of Equality'.

conception of justice. Indeed, Scheffler suggests that any egalitarian distributive principles are plausible if and only if they can be grounded in a relational ideal of equality, and he alludes to justice as fairness ‘to illustrate how a plausible form of distributive egalitarianism can be anchored in a more general conception of equality as a social and political ideal.’<sup>8</sup> As he goes on to elaborate:

For Rawls, people are conceived of as free and equal citizens, and the aim is to determine which principles of distributive justice are most appropriate for a modern democratic society whose members are so understood. ... Equality is understood as a social and political ideal that governs the relations in which people stand to one another. The core of the value of equality does not, according to this understanding, consist in the idea that there is something that must be distributed or allocated equally, and so the interpretation of the value does not consist primarily in seeking to ascertain what that *something* is. Instead, the core of the value is a normative conception of human relations, and the relevant question, when interpreting the value, is what social, political, and economic arrangements are compatible with that conception.<sup>9</sup>

In short, as Scheffler interprets it, justice as fairness is motivated by a vision of an egalitarian society between free and equal persons. It seems fair to say that this is an interpretation that fits well with some consensus view among Rawls’s several capable readers. For instance, Nagel also writes that justice as fairness should be understood ‘as a moral theory of interpersonal *relations*—specifically, a theory of the acceptable forms of interdependence among the lives and fates of persons engaged in a cooperative social enterprise.’<sup>10</sup> As Rawls himself emphasizes, his theory of justice is foremost concerned to illustrate how democratic citizens can be related as fair and equal in a just society: ‘The most fundamental idea in this conception of justice is the idea of society as a fair system of social cooperation

<sup>8</sup> ‘What is Egalitarianism?’, 199.

<sup>9</sup> *Ibid.*, 199–200; italics in original.

<sup>10</sup> This is quoted from Nagel’s afterword to his ‘Rawls on Justice’, 122; emphasis in original. See also Cohen, ‘Democratic Equality’.

over time from one generation to the next.<sup>11</sup> On the relationalist interpretation, the primary role of Rawls's principles of justice is to arrange the basic structure in a way that helps to create and maintain a society of equals, who cooperate with one another on fair terms; and that is why these principles, which determine how benefits and burdens are to be distributed among them, are justified.

But it seems that many other distributive theories of equality can also be construed as motivated by a relational ideal of equality between members of a society. In my view, the truth is that most if not all distributive egalitarians are entitled to claim their right to anchor their principles of distribution in an ideal of how people are to be related as equals.

For example, in a response to Scheffler's critique, Dworkin also indicates that he meant by his theory to address 'the question of what relationships among equals are like and goes on from there to consider what kinds of social and political institutions are appropriate to a society of equals.'<sup>12</sup> He intends to do so 'through an interpretive method that emphasizes interrelations and interdependencies among all the political values, supposing them to come together in an overall account of a society of equals.'<sup>13</sup>

Similarly, alongside his endorsement of the luck egalitarian principle with regard to distributive issues, Cohen also upholds a 'principle of community', one central requirement of which is that 'people care about, and, where necessary and possible, care for, one another, and, too, care that they care about one another.'<sup>14</sup> Despite the fact that Cohen does not elaborate on how these principles fit together in his vision of an egalitarian community, there is no doubt that he does intend to reconcile them appropriately. To meet Scheffler's challenge, and explain how

<sup>11</sup> *Justice as Fairness: A Restatement*, 5.

<sup>12</sup> See Dworkin, 'Equality, Luck, and Hierarchy', 196. This is Dworkin's quote from Scheffler, 'What is Egalitarianism?', 205.

<sup>13</sup> 'Equality, Luck, and Hierarchy', 196–197.

<sup>14</sup> *Why Not Socialism?*, 34–35.

principles of distribution can be anchored in a relational ideal of equality, I think it is natural for Cohen and other luck egalitarians to emphasize that the fairness or unfairness of distribution of goods has an impact on the social and political relationships in which people are situated.<sup>15</sup> Thus understood, their view is also consistent with Scheffler's relational thesis, namely that 'the core of the value [of equality] is a normative conception of human relations'.<sup>16</sup>

I therefore conclude that it is no objection to a distributive conception of equality by suggesting that it should be further anchored in a relational ideal of equality. Indeed, as I characterize the distributive view, it is primarily concerned with the concerns that count in favour of a presumption of equal distribution, and those which justify departures from equality, and I see no reason to think that these twin commitments of distributive egalitarianism must be incompatible with Scheffler's relational thesis. Moreover, distributive egalitarians also need not hold that considerations with regard to interpersonal relationships have no bearing on the justification of egalitarian distributive principles, or that an equal distribution is a state of affairs that is in itself valuable, or that the primary task of a distributive conception of equality is to specify one thing that must be distributed equally. None of these commitments are definitive of the distributive view.

But as I already said, I do find the suggestion that all of the distributivist's concerns must be grounded in a relational ideal of equality implausible. For although it is apparently very desirable and liberating for people to live in a society of equals where there is no oppression and domination, it is far from clear that this is the only thing that egalitarians should aim for. What I want to do presently is to argue that it is not misguided for egalitarians to be concerned with questions with respect to the distribution of goods that contribute to individuals' well-being

<sup>15</sup> See Markovits, 'Luck Egalitarianism and political solidarity'. Cf. Schemmel, 'Luck Egalitarianism as Democratic Reciprocity? A Response to Tan'.

<sup>16</sup> 'What is Egalitarianism?', 200.



## *The Relationalist Critique of Distributive Equality*

in their own right; and then I shall go on to argue that it does not seem plausible to understand equality as a relational value that arouses our concerns over and above those which have a bearing on what are good for individuals

Imagine a community occupying a large area, in which villagers have fairly low level of interaction. Suppose they live dispersedly, so that oppression and domination do not arise among the villagers, but the distribution of resources is rather unequal. Now, even assuming that this community fulfils the relational requirements of equality, the distributivist should claim that there still appears to be something troubling about the inequalities in the villagers' distributive shares. For I think when we notice that some of the villagers are substantially worse off than others, a concern for distributive fairness naturally suggests itself, regardless of how the villagers are related to each other. This observation indicates that the task of articulating the idea of distributive equality should itself be of our concern, independent of the relational ideal of equality. That is to say, it appears that we have distributive concerns which do not seem to be ones entailed by the relational ideal of equality. Our distributive concerns need not always refer to the relational ideal of equality because we also care about other things, and it is neither necessary nor sufficient for all of our distributive concerns to be grounded in the aims of eliminating domination and creating an egalitarian community.

Let us also consider the contrary scenario, where there is a community in which all villagers are fairly well off, but where oppression and domination do occur. Suppose that despite the inegalitarian relations that exist, the villagers still find their lives much worth living, not least because their material conditions are quite satisfying. Now, it must be conceded that the imagined state of affairs is not entirely satisfactory in light of the inegalitarian relations between the villagers; but I think one may still sensibly maintain that the realization of the relational ideal of equality is less pressing so long as people are living pretty decent lives.

Why is it so? One straightforward explanation is that we care about the quality of people's lives, and their well-being is only partly constituted by the social relations they share with one another. As the thought goes, the question then arises whether a deficit with respect to people's interpersonal relationships can sometimes be outweighed by other gains.

Indeed, it may even be claimed that considerations about the non-relational dimensions of our well-being are far more important than those which are covered by the relational ideal of equality.<sup>17</sup> Now, consider a case where you have to choose between the offers from two university departments. Suppose there is a first new and developing department, in which the environment is of an egalitarian and congenial character. However, the pay from this first department is much less than a second more prestigious department, in which there is an unwelcome hierarchy of status among faculty members. This means that you will be considered as a 'junior' researcher and not be given much respect and concern if you choose to be there. I take it that it is not entirely unreasonable for you to accept the offer from the second department, as you may think that you want the money and the plus on your resume.

I myself do not know how to compare the importance of the relational and non-relational dimensions of our well-being, but for our purposes the important point is this: insofar as the aim is for people to maintain a decent level of well-being, our distributive concerns are not necessarily misguided, nor should they be wholly subsumed under the relational ideal of equality.

There is however an even more serious question for relational egalitarians to consider, namely whether we have reasons to care about social relations only because they are partly constitutive of people's well-being. This does seem to be a natural thought, but I suppose the relationalist might be inclined to articulate the

<sup>17</sup> See Sher, 'How Bad is it to be Dominated?'

significance of egalitarian relationships in a way that does not refer to the idea of well-being, for it might be said that the value of egalitarian social relations is to be found over and above our concerns for people's well-being. I shall on the contrary argue that this way of articulating the value of relational equality is puzzling.

Now, it is indeed often desirable for people to have egalitarian relationships with one another, since they are typically *good for* them. We may follow Patrick Tomlin and say that these relationships are of *personal value*.<sup>18</sup> Relationships such as marriage and friendship based on equal standing are cases in point, and we can plausibly assume that it is good for us to enter such relationships when they are of an egalitarian character. Similarly, relational egalitarians may reasonably suggest that living in an egalitarian political community, where there is no oppression and domination, is good for its citizens. So far, so good.

However, some might further claim that an egalitarian society, where citizens stand on an equal footing, is also *impersonally valuable*. To articulate this idea, the relationalist might suggest that apart from the personal value it has for its members, the very existence of such a society is valuable in itself. On the contrary, just as marriages and friendships which lack an egalitarian character should immediately elicit our disapproval, an inegalitarian society is similarly repellent regardless of its impact on individuals who are related within.

Indeed, Gideon Elford argues that 'relational equality has a value that goes beyond its contribution to persons' own good.'<sup>19</sup> On Elford's view, 'what makes relational equality distinctively, and in that sense non-distributively, valuable is precisely that equal social relations have an impersonal value, even if it typically arises alongside things that are good for persons.'<sup>20</sup> That is to say, equality as a relational value is not solely concerned with goods that contribute to individuals'

<sup>18</sup> 'What is the Point of Egalitarian Social Relationships?'

<sup>19</sup> 'Relational Equality and Distribution', 4.

<sup>20</sup> *Ibid.*, 5.

well-being; it is moreover in itself impersonally valuable. Elford writes: ‘The point is that distributive equality is an equality of things which are good for persons, whereas (an important aspect of) relational equality is an equality within things which are valuable for other reasons.’<sup>21</sup> It follows from this view that when individuals are situated within an inegalitarian relationship, aside from its impact on their well-being, there ‘is a further, impersonal badness that would obtain even if all other negative effects on their wellbeing could be compensated in a way that would satisfy distributive equality.’<sup>22</sup> In other words, Elford argues that relational equality has an impersonal value which is distinct from other personal goods that can be accommodated within a distributivist framework. To illustrate his point, Elford suggests that it is bad that someone is regarded as having an inferior standing by others, even if he is not himself aware of that fact, which presumably thereby has no bearing on his well-being. Elford notes: ‘There would be a residual badness, from a distinctively egalitarian perspective’, that someone is not being respected *as an equal*, ‘even where a wider distributive equality was realised’.<sup>23</sup>

Now, Elford rightly foresees that there is an immediate objection to this argument, according to which the badness of someone not having egalitarian relations with others, or alternatively put not being respected as an equal, ‘need not be explained in terms of the *impersonal badness* of this lack of respect.’<sup>24</sup> Instead, to explain the residual badness which arouses our concern, one might argue that ‘being respected as an equal is a personal good, but one which cannot be compensated for by other goods.’<sup>25</sup> In reply, Elford writes:

I wonder, though, whether this view can make good sense of the putative distinctively egalitarian character of this badness. If there are a number of goods

<sup>21</sup> Ibid.

<sup>22</sup> Ibid., 7.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

other than 'being respected as an equal' which are similarly non-substitutable, then in the instances in which we cannot compensate for their loss, there are in principle any number of different dimensions in which people will be distributively better or worse off than one another in this very same way. So not being respected as an equal will not in this regard be *of special egalitarian concern* as a dimension of personal disadvantage.<sup>26</sup>

As Elford lays down the challenge, his opponent purports to make sense of the good of being respected as an equal by suggesting that it is a non-substitutable personal good which has a distinctively egalitarian character. He then argues that his opponent cannot claim that this good is distinctively egalitarian *qua* a non-substitutable personal good, for there may exist other personal goods which also share the property of being non-substitutable.

On my view, Elford's response is implausible. For one thing, it is hard to see why the fact that there may exist numerous other non-substitutable personal goods undermines his opponent's thesis. Given the diversity of human goods, it is just how it is. We certainly do not from this fact infer that having intimate personal relationships or a successful career is to be less of our concern simply because there are other things which are good for us in their unique ways.

But more importantly, Elford's argument appears to rely on an unwarranted assumption. He may of course plausibly claim that if the good of being respected as an equal is to be explained as a non-substitutable personal good, it must be so in virtue of its distinctively egalitarian character, which helps egalitarians to specify the dimension in which it is non-substitutable. This, however, is a requirement that his opponent can comply with. She would claim that what is distinctively egalitarian about the putative non-substitutable personal good of someone being respected as an equal is exactly that he is himself respected *as an equal*. The crucial assumption of Elford's rebuttal is not that the good of being respected as an equal

<sup>26</sup> Ibid., italics added.

must be non-substitutable in view of its distinctively egalitarian character, but that it must be non-substitutable in a way that arouses *special egalitarian concern*.

But that assumption is a non-starter. It is simply mistaken to presuppose that egalitarians *qua* egalitarians must find anything ‘of special egalitarian concern’. It is true that egalitarians believe that it is good that people are respected as equals, but there is no reason to think that they believe so just because they are egalitarians. For what it is worth, they should be concerned with all values there are, just like everybody else should.

I therefore conclude that Elford’s proposal is implausible. At any rate, I think the claim that an egalitarian society is impersonally valuable appears susceptible to some fatal challenges. For one thing, Tomlin notes that the impersonal value of egalitarian society appears ‘mysterious’—it is hard to pin down what this impersonal value amounts to.<sup>27</sup> It does appear that we have an intuition that it is desirable to have an egalitarian society established among its citizens, but I doubt whether one can say anything more informative than that.

For another, the claim that egalitarian social relations have an impersonal value does not really help us to answer our earlier question: if there are situations where other valuable things can only be procured by sacrificing the benefit we gain from having egalitarian relationships, why can it not be the case that we have to make a trade-off between them? It may first appear that a natural way to justify relational egalitarianism is to show how valuable egalitarian relationships are, but that seems to be a moot point in light of the present discussion.

So instead of focusing on the impact of these relationships on people’s well-being, I think it is much more plausible to understand the relationalist’s project as primarily involving an attempt to identify the grounds of egalitarian justice, which is of a deontological character. Thus understood, the relational conception

<sup>27</sup> ‘What is the Point of Egalitarian Social Relationships?’, 166, 173–174. Tomlin credits Christian Schemmel for voicing this worry.

of equality is concerned with how people *ought* to be related as a matter of justice, and the relationalist need not refer to the goodness of egalitarian social relations in her justification of the relational view, let alone try to maximize its value. For instance, valuable or not for other purposes, a relational conception of equality must under no condition indicate that slavery is tolerable, for it is one of the most unjust forms of social hierarchy. In my view, rather than articulating the relational ideal of equality in a way that is open to the possibility of trade-offs of values, which are in this case difficult to articulate anyway, it is far more appropriate to put it as a view about justice.<sup>28</sup> In a word, egalitarians should emphasize not that it is valuable, but that it is *just* for people to have egalitarian social relations.

I argued above not only that it is no refutation of distributive egalitarianism if one argues that it must be grounded in the relational ideal of equality, but also that it is in any case unclear why distributive equality should be subsumed under the relational ideal; and I have now argued that, like the distributivist, relational egalitarians should also appeal to justice in order to motivate their view. If these claims are sound, what is effectively established is that both distributive and relational egalitarians should be concerned to specify the norms and principles of egalitarian justice. Note that I do not want to suggest that egalitarians cannot have concerns that go beyond the purview of justice. Indeed, I acknowledge that some relationalists might think that considerations of justice do not capture everything that is relevant to the relational egalitarian ideal.<sup>29</sup> That being said, my comments on Elford's argument should already make it clear that I am not enthusiastic about the prospects for such a view; and since I believe that justice should be the central concern of egalitarians, I shall leave aside dimensions of equality that supposedly have nothing to do with egalitarian justice.

<sup>28</sup> See Schemmel, 'Social Equality—Or Just Justice?.'

<sup>29</sup> See Fourie, 'What is Social Equality?.'

## 5.2. Distributing Relational Goods

I shall now start to engage with a general objection to the distributive view put forward by Anderson. Recall that, according to Anderson's relational view, the distributivist characteristically fails to engage with problems of oppression and domination that should trouble egalitarians. Holding that equality is to be understood as a social relation, as opposed to hierarchies which supervene upon differences of race, sex, and class, and which give rise to deep and pervasive issues that need to be addressed, Anderson complains that the task of combating forms of social and political hierarchy is conspicuously absent on the distributivist agenda. The distributive view is said to be very unsatisfactory in light of the fact that it simply has nothing relevant to say about these inegalitarian social relations. Anderson suggests, by contrast, that the relational conception of equality 'aims to recover the rich insights of the history of egalitarian thought and contemporary egalitarian social movements.'<sup>30</sup>

Now, Anderson further suggests that the realization of the relational ideal of equality has nothing to do with the idea of an equal distribution of a good:

Feminists seek reproductive autonomy for women. There is no good that is being distributed equally when this egalitarian demand is met. In other cases, the equal distribution of a good does not satisfy the demand for equality. 'Separate but equal' bathroom facilities for members of different racial groups would still be unequal even if the quality of facilities were equal, because their function is to constitute despised racial groups as untouchables—as an inferior caste.<sup>31</sup>

According to Anderson, the correct analysis of, say, why women do not enjoy reproductive autonomy is not that there is no proper distribution of a good called reproductive autonomy, but that there they are dominated in relationships that

<sup>30</sup> 'Equality', 40.

<sup>31</sup> *Ibid.*, 41.



involve a variety of practices entrenched by the hierarchical structures of society, which fact results in their loss of reproductive autonomy. As the objection goes, since it is not at all obvious why distributing some stuff equally contributes to the creation and maintenance of a society of equals, the distributive conception of equality is to be discredited accordingly.

Anderson rightly foresees a response that might be put forward by distributive egalitarians, namely that they can redescribe the aims and goals that she approves in distributive terms. That is to say, they might suggest that the distributive view can accommodate her concerns all right by reformulating the relational ideal of equality in terms of the equal distribution of ‘relational goods’. For example, when Zofia Stemplowska compares some variants of relational egalitarianism and luck egalitarianism (she calls them ‘social egalitarianism’ and ‘responsibility-sensitive egalitarianism’ respectively), she makes this comment: ‘Crudely speaking, social egalitarianism concerns itself exclusively with the distribution of relational goods and, specifically, the relational good of social status, while responsibility-sensitive egalitarianism insists that the distribution of (access to) non-relational goods is important in its own right.’<sup>32</sup> Since the language of relational goods makes sense, the key to the distributivist proposal is then the articulation of an idea of ‘equal distribution’ of reproductive autonomy, or that of social status, and so forth, to the effect that distributive egalitarians may plausibly object to discriminatory treatment in a hierarchical social relationship on the ground that it fails to distribute one or more relational goods equally.

We may follow Kasper Lippert-Rasmussen in saying that such an attempt to redescribe the concerns of relational equality in terms of egalitarian distributive principles constitutes a ‘reductionist’ proposal, according to which ‘whenever people do not relate as equals, there is some good that is unequally distributed,

<sup>32</sup> ‘Responsibility and Respect: Reconciling Two Egalitarian Visions’, 116.

and whatever is unjust about the former can be expressed in terms of a claim about what is unjust about the latter.<sup>33</sup> It seems clear that distributive egalitarians would find it natural to accommodate the relational concerns of equality within the reductionist framework, for it helps them to engage with the problems that concern relational egalitarians without giving up their focus on the distributive principles. The suggestion then is that distributive egalitarians should care about both of the relational and non-relational goods, and there is no reason for them to forsake each of these concerns.

Take the good of basic social status for example, the distributivist may want to say that ‘equality of status’ should be understood as constituted by a complex distribution of various dimensions.<sup>34</sup> Such an ‘equal distribution’ of the good of status may consist of, say, a scheme of basic rights and liberties, along with an arrangement of various institutions that fairly distribute powers, responsibilities and opportunities, as well as other goods which help to secure people’s social standing.<sup>35</sup> As shown in this brief exposition, in order to make sense of the reductionist proposal, it is crucial to acknowledge its complex character: a definitive feature of this proposal is that it characterizes an equal distribution of a relational good as involving distributions of a multiplicity of other goods.

Distributive egalitarians who adopt the reductionist schema would of course acknowledge that for an equal distribution of a relational good to obtain, it is often very difficult to identify the appropriate distributive configurations, and they might also admit that the answer varies from society to society. But our central concern is whether Anderson can plausibly reject the reductionist proposal.

<sup>33</sup> *Relational Egalitarianism: Living as Equals*, 192.

<sup>34</sup> Cf. Miller, ‘Equality and Justice’.

<sup>35</sup> Indeed, one may find it helpful to conceive of the conditions for equality of status in terms of Rawls’s list of primary goods, among which self-respect, a primary good that can only be secured with appropriate social bases, is said to be ‘perhaps the most important primary good’ (*A Theory of Justice*, 440/386 rev.). For Rawls’s treatment of the problem of status, see *ibid.*, 544–546/477–479 rev. See also Cordelli, ‘Justice as Fairness and Relational Resources’.

## *The Relationalist Critique of Distributive Equality*

Anderson appears to acknowledge that proposal when she imagines someone saying that ‘To be sure, we can describe relational egalitarian goals in terms that suggest such a picture: We can say that egalitarians seek a society in which people enjoy equal authority, status, or standing.’<sup>36</sup> But she protests that the reductionist does not really address the concerns that motivate the relational view in an appropriate way. According to Anderson, the reductionist schema is redundant, because it only makes sense to talk about equality of standing, esteem, or authority when social relations themselves are put into perspective:

It would be artificial and unilluminating to translate such issues into a distributive framework because, as noted above, the goods being ‘distributed’ in such cases are *social relations* of equal authority, esteem, and standing. They are not such that the ‘amount’ that one person ‘has’ is logically independent of what others ‘have’ or of the social relations in which each stands to the others. To put it another way, the goods of equal social relations are not ‘distributed’ separately to individuals because they are essentially *shared* by those who stand in such relations.<sup>37</sup>

The key premise of Anderson’s rejection of the reductionist view then appears to be the claim that it is more *straightforward* and *informative* to foreground the social relations themselves, rather than talking about the distribution of relational goods. Since when people are socially related what one has is *not* logically independent of what others have, on Anderson’s view the real pressing question just is whether the relations people ‘share’ are praiseworthy or objectionable. This thought leads her to argue that it is ‘artificial and unilluminating’ to talk about ‘distributions’ of relational goods, for these goods ‘essentially refer to types of interpersonal relations. To enjoy these goods is precisely to stand in certain social relations to others.’<sup>38</sup> In other words, Anderson suggests that the reductionist

<sup>36</sup> ‘Equality’, 41.

<sup>37</sup> *Ibid.*, 53; emphases in original.

<sup>38</sup> *Ibid.*, 41.

schema does not make sense if we do not have the relevant social relations in view, and we had better simply enquire into them directly.

Moreover, as Anderson understands the distributive conception of equality, it ultimately fails to capture the relational nature of these goods: 'Equality in the distributive conception consists in the mere coincidence of what one person has with what others in the comparison class independently have'.<sup>39</sup> Anderson's characterization of the distributive view purports to strengthen the claim that something important is missing in the distributivist agenda, namely an attention to social relations, which according to Anderson is the real subject matter of egalitarian justice.

I shall argue, however, that the way Anderson contrasts the relational and distributive conceptions of equality is, despite its seeming appeal, ultimately misleading. For distributive egalitarians need neither deny that relational goods are inherently relational, nor suggest that what a person has is 'typically logically independent of' what others have; and it is certainly not regarded as a 'mere coincidence' when the distributivist claims that there are decisive reasons to distribute something equally. So the nub of the following discussion is that, *pace* Anderson, it is neither *artificial* nor *unilluminating* to look into social relations in distributive terms.

As an example, let us reconsider the case of reproductive autonomy. Recall that, on Anderson's view, in a state of affairs in which the conditions for women's reproductive autonomy are secured, 'There is no good that is being distributed equally when this egalitarian demand is met.'<sup>40</sup> In order to respond to Anderson, what distributive egalitarians need to show is then that they can informatively talk about an equal distribution of reproductive autonomy. This would consist in exhibiting how the reductionist proposal is to be applied in the case of women's

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

reproductive autonomy, to the effect that there is a good that is being distributed equally. In particular, they need to show that the reductionist schema can be substantiated in a way that duly registers the relational nature of women's exercise of their reproductive autonomy—they are tasked to show that the reductionist framework is able to accommodate the concerns about, say, hierarchical social relations that contribute to women's lack of reproductive autonomy, and that it is no 'mere coincidence' that whether this good is distributed equally between people has a bearing on their social relations.

In my view, distributive egalitarians can fulfil these tasks. As hinted above, they would aim to empower women for their exercise of reproductive autonomy in the following way. To begin with, they must be guaranteed a set of basic rights and liberties, including the basic right to bodily integrity and its accompanying liberties such as associational freedom. These rights and liberties plainly have a 'negative' character, for they indicate the impermissibility of the infringement of reproductive autonomy. Moreover, since the vices that compromise women's exercise of reproductive autonomy can take many subtle forms, there must also exist institutions that secure several 'positive' entitlements, including, say, an educational programme that informs people about the nature and consequences of sexual conduct, a medical care system which helps women to postpone or terminate pregnancy, and law enforcement to combat domestic violence when it occurs. Furthermore, women must also have access to obtain their economic independence, for otherwise they might have to enter marital relationship only in order to be provided for, and that seriously reduce their chance of maintaining substantive control of their body. These appear to be the goods, to name a few, that would have to be appropriately distributed so as to undergird women's right to reproductive autonomy.

The distributivist should further claim that these goods are to be properly distributed so that everyone's reproductive autonomy is guaranteed both *formally*

and *substantively*. To put their aim in Rawls's terms, it is necessary not only to institute a scheme of equal basic rights and liberties that include the right to reproductive autonomy, but also the conditions that guarantee the worth of these freedoms.<sup>41</sup> Alternatively put, distributive egalitarians should claim that everyone is equally entitled to the right of reproductive autonomy, and that an adequate if not equal worth of this liberty must also be secured for all. To fulfil these aims, there needs to be in place a system of equal basic rights and liberties, as well as other institutions that work to guarantee that they can be effectively exercised.

As it seems to me, it is not at all misleading to conceive of the protection of reproductive autonomy in distributive terms. For one thing, it makes perfect sense to talk about *distributions* of rights and liberties. Moreover, to say that in an adequate scheme of basic rights and liberties the right to reproductive autonomy is equally distributed is to say, negatively, that no one has the right to enforce another to reproduce, and positively that right-holders are free to reproduce in any way they prefer so long as they respect the rights and liberties of others. These observations, in my view, suggest an effective response to Anderson's charge that distributive egalitarians cannot do justice to the relational nature of reproductive autonomy. For by the well-received correlativity thesis of rights and duties,<sup>42</sup> when one has a right to reproductive autonomy, others have the corresponding duties to refrain from infringing that right. Since there is no reason for distributive egalitarians to neglect the relation between rights and duties, they can say that the relational nature of the right of reproductive autonomy is duly acknowledged in their distributive framework.

Finally, there is an advantage in considering the relational goods in the way I recommend. It is that the proposal of a distributive scheme of equal basic rights

<sup>41</sup> See Rawls, *Theory*, 204–205/179 rev.

<sup>42</sup> See Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays*.

and liberties, together with institutions that guarantee their fulfilment, helps egalitarians to articulate the way in which a variety of their commitments are integrated in a unifying system. It is a virtue of distributive principles that, in spite of their seeming simplicity, they can be applied to a diversity of cases. For instance, a principle of equal basic liberties may serve to secure not only an equal protection of reproductive autonomy, but also that of freedom of thought, of expression, of association, of privacy, and so on. This is of course not to suggest that there are no significant differences between the interests these rights and liberties are to protect. It is absolutely true that we should not over-simplify things by applying an egalitarian distributive principle indiscriminately. That said, it is congenial to an egalitarian view if basic rights and liberties are incorporated in a unified scheme, so that principles can be devised in a way that apply to them generally.

In short, I have argued that it makes sense for the distributivist to analyse the conditions under which relational goods can be secured in terms of a variety of institutional arrangements. Indeed, as shown in the above discussion of the case of reproductive autonomy, this proposal stands in the face of Anderson's objection, for it is not true that the intent to distribute liberties and their worth equally imparts no information about how the right to reproductive autonomy is to be secured in a liberal democratic society. In my view, it is not at all artificial to talk about an equal *distribution* of rights and liberties with respect to reproductive autonomy, and it is not unilluminating to say that this good should be distributed *equally*. For what it is worth, it means that everyone has this right. In light of the doctrine of correlativity between rights and duties, there is also nothing coincidental about a person's right to reproduce autonomously and other people's duties to refrain from infringing that right. Notwithstanding Anderson's charge, the distributivist need not think that what one person has is typically independent of what others have.

## *The Relationalist Critique of Distributive Equality*

As I would like to emphasize again, the crux of the preceding discussion is to show that egalitarian distributive principles are not artificial or unilluminating in tackling, say, the case of reproductive autonomy, and I believe that what I said about this case should also apply to other important issues that concern relational egalitarians. For in a distributivist framework, these principles have the function of determining how goods are to be distributed in a way that, among other things, helps to promote and honour egalitarian relationships of the sorts enjoined by the relational ideal of equality.

I should also note that these distributive principles are unified within a distributivist framework that not only accommodates our concerns for egalitarian social relations, but also for those goods which are not strictly speaking of a relational nature, but the distribution of which nevertheless needs to be sensitive to what one has compared to what others have. For an illustration, we may think of the good of education, which is a characteristic ‘positional good’. As Harry Brighouse and Adam Swift explain:

[Positional goods] are goods with the property that one’s relative place in the distribution of the good affects one’s absolute position with respect to its value. The very fact that one is worse off than others with respect to a positional good means that one is worse off, in some respect, than one would be if that good were distributed equally.<sup>43</sup>

To make the point in Anderson’s terms, since the value of the education a person has significantly depends on what others comparatively have, there is a ‘social relation’ between them in view of that fact. This simple observation implies that the competitive advantage of one’s education, say, in the job market, is *not* logically independent of how other job seekers are educated. In a word, the idea

<sup>43</sup> ‘Equality, Priority, and Positional Goods’, 472.



## *The Relationalist Critique of Distributive Equality*

of positional goods also specifies an important sense in which people's social relations are affected by the comparative amounts of goods they have.

Now, the distributivist may plausibly argue that the idea of positional goods helps her to express her egalitarian commitments. For according to the principle of distributive fairness, it is unfair and therefore *pro tanto* unjust if, for example, the primary education a child receives is less good than what other children receive for no good reason, and it is so precisely because they are related as recipients in an educational system. So if some children are worse off than others in respect of their education simply because they enter schools that lack resources to equip them with abilities to compete with others on an equal footing, this state of affairs should be deemed as unfair and in that respect unjust. In the name of distributive fairness, the distributivist says that other things equal it is preferable to distribute *equally* good education for all children, and she might also say that this is why it appears to exist no other proposal that better expresses *equal* concern for them than a presumption of equal distribution of the good of education.

What the distributivist is keen to point out is that we are perfectly familiar with these concerns for distributive fairness, or 'comparative justice' if one prefers the term.<sup>44</sup> I would say that most of us have such intuitions when we are making judgements about distributions, and in fact I see no reason why distributive and relational egalitarians should disagree on this point. Indeed, what the distributivist holds on to appear to be what Scanlon, who considers himself a relationalist, calls 'egalitarian reasons', which 'are reasons for objecting to the difference between what some have and what others have, and for reducing this difference.'<sup>45</sup> At any rate, the distributivist suggests that in the distribution of positional goods like education, political power, and health, it is typically the case that what one has is

<sup>44</sup> Cf. Feinberg, 'Noncomparative Justice'.

<sup>45</sup> *Why Does Inequality Matter*, 1.

*The Relationalist Critique of Distributive Equality*

not independent of what others have, and that it is not a coincidence that egalitarians have reasons to be concerned about unequal distribution of holdings.

I have argued that distributive principles can be themselves informative and appropriately sensitive to our concerns for social relations. Now, to sustain her charge that the reductionist schema is redundant, Anderson might insist that it is unhelpful for egalitarians to cope with, for example, problems of sexual and racial oppression and domination in such an indirect manner. She may well concede that it is possible to identify the distributive mechanisms for achieving the aims and goals which she approves, but she might still maintain that they are not given their due emphasis in the reductionist proposal, or that they cannot be recovered from the distributivist's reductionist apparatus. To repeat, the heart of Anderson's complaint against the distributive principles is that they are too abstract and indirect. She objects that these features confer on them the tendency to go off the mark, and what we should be concerned with are concrete problems of oppression and domination embedded within diverse forms of hierarchical social relations.

But one should really wonder whether relational egalitarians can plausibly complain that something is still missing in the distributive conception of equality, and whether they have a more straightforward and informative proposal to deal with problems they identify as urgent. For one thing, it is question-begging if one assumes that only the relationalist, but not the distributivist, is able to detect the problems of inequalitarian social relations. So we should instead assume that the relevant information is available to both the distributivist and the relationalist when we try to decide whether any of their views has an edge over another in dealing with these problems. Indeed, the distributive egalitarians should point out that the relationalist also need to face the difficulty of identifying the methods to address the problems that concern them, and they should argue that there is no reason to assume that their reductionist proposal is by default more suspicious than other solutions.

## *The Relationalist Critique of Distributive Equality*

That is, we are led to ask, ‘How are relational egalitarians supposed to remedy the alleged deficiency of the distributive view? If they are so dissatisfied with the distributivist reductionist apparatus, what is their alternative?’ It might seem that the most effective, if not the only way of easing the relationalist’s discontent is to inscribe the concerns for egalitarian social relations directly and concretely on the principles of justice. For instance, one of these principles should perhaps read as ‘we should combat and eliminate sexual domination and oppression’, and not just demand, in an allegedly abstract manner, that ‘every citizen should equally enjoy bodily integrity and reproductive autonomy’. The relationalist may claim that the injunction against, say, racial discrimination within inegalitarian social relations should also be similarly specified in a principle of justice, for otherwise there is no warrant that racial justice can be secured properly.<sup>46</sup>

I see no force in the relationalist’s rebuttal if her alternative is presented in this way, for it does not point to a more straightforward and informative *solution* to the issues for which she claims to be of our concern. Distributive egalitarians may of course concede that they do not always clearly articulate the contexts in which problems of inequality arise; and they may also concede that if we reflect on, say, the basic liberties, they should be listed separately rather than subsumed under one broad category, so that each of the important interests that people should enjoy can be more clearly illustrated. But these observations do not show that distributive egalitarianism cannot be articulated appropriately to pinpoint the extent to which a citizen is entitled to be treated as an equal. They merely suggest that it is often the case that egalitarians should make it clear as to which goods are to be distributed equally, and on what grounds it is just to do so.

One might think that the real objection against the distributive view is that it is not sensitive enough to the question regarding which types of goods call for

<sup>46</sup> Cf. Hinton, ‘Liberals, Radicals, and the Original Position’.

equal distributions in order to create and maintain egalitarian social relations. As Anderson expresses the worry, distributive egalitarians appear to be obsessed with the equal distribution of *proxies* of goods—‘resources, welfare, capabilities, and so on’—that have no bearing on how people are related.<sup>47</sup> Thus understood, what is involved in this charge against the distributive conception of equality is not that egalitarian distributive principles have no proper application with respect to issues that concern the relationalist. It is that distributive egalitarians are misled by an assumption they make, namely that distributive justice consists in ‘one single good that, were it to be distributed equally, would comprehend the distributive goals of egalitarianism.’<sup>48</sup>

I agree that it is not always helpful to talk about the distribution of resources, welfare, capabilities, or even primary goods. As Anderson rightly notes, one should worry that these metrics of distribution may sometimes be unhelpful for us to identify the problems that need to be addressed, or that the discussion may be conducted on a level that is too abstract and indirect, and off the track accordingly. This is exactly why, as shown in the above discussion of the case of reproductive autonomy, I recommend that distributive egalitarians engage with Anderson’s objection not by focusing on the distribution of resources or welfare, but primarily on the good of reproductive autonomy itself, and see whether they can come up with a schema that makes sense of an equal distribution of this good. What I want to emphasize again, however, is that the quest for a single metric is in my view not definitive of the distributive view—what distributivists must hold is that, for whatever goods that concern them, there is a presumption to distribute them equally, and justifications for their unequal distributions must be given.

To conclude, our discussion in this section shows that although egalitarian distributive principles may sometimes seem abstract and indirect regarding the

<sup>47</sup> ‘Equality’, 41.

<sup>48</sup> *Ibid.*, 54.

goods they apply to, as well as suffer from misinterpretation or misapplication, nothing decisive hinges on these charges. It also shows that the distributivist need not be seen as neglectful of the underlying concerns that may be relational in nature when she inquire into egalitarian principles of distribution.

### 5.3. Relational Equality and Distribution

Earlier in Section 4.1. I mentioned a distinction Anderson makes between pity and compassion. She characterizes pity as a condescending attitude, and indicates that according to her relational view one should instead feel compassion for those who are in need. Anderson maintains that the distributive concerns motivated by compassion towards the needy do not lend support to distributive egalitarianism: ‘Compassion does not yield egalitarian principles of distribution: it aims to relieve suffering, not to equalize it. Once people have been relieved of suffering and neediness, compassion generates no further impetus toward equality of condition.’<sup>49</sup> In fact, Anderson’s rejection of *distributive egalitarianism* appears to go hand in hand with her endorsement of *distributive sufficientarianism*, as shown in the following comment: ‘Democratic equality is egalitarian in its conception of just relationships among citizens, but sufficientarian in its conception of justice in the distribution of resources and opportunities.’<sup>50</sup>

For our purposes, it may be helpful to start with a distinction between two basic variants of distributive sufficientarianism. On the one hand, according to a modest account of the sufficiency view, as a necessary requirement, justice partly consists in satisfying people’s essential needs.<sup>51</sup> On the other hand, a strongest construal of the sufficiency view would suggest that this is the only requirement

<sup>49</sup> ‘What Is the Point of Equality?’, 307.

<sup>50</sup> Anderson, ‘Rethinking Equality of Opportunity: Comment on Adam Swift’s *How Not to be a Hypocrite*’, 106.

<sup>51</sup> See Shields, *Just Enough: Sufficiency as a Demand of Justice*, ch. 2.

of justice.<sup>52</sup> Both the modest and the uncompromising formulations of the doctrine of distributive sufficiency emphasize the primacy of catering to people's basic needs, but they differ about whether there are other demands of justice that go beyond this requirement.

When someone reflects on the sufficiency view, a question about threshold naturally suggests itself. Essentially, it concerns what counts as an adequate level of satisfaction of a person's essential needs. Now, one might think that it is almost impossible to pinpoint such an exact threshold,<sup>53</sup> but I do not find it to be a pressing problem, for I think we do have a rough and ready idea of what these needs consist of, and so we may simply assume that there is a list of essential goods, such as nutrition, education, and opportunities which are indispensable for a decent life.

Anderson's incorporation of the sufficiency view in democratic equality is understandable. As Gillian Brock explains, 'Relational egalitarianism ... provides at least one coherent way to embed our concern with sufficiency within an egalitarian framework.'<sup>54</sup> According to Anderson-style sufficientarianism, justice in the domestic domain first and foremost requires the provision of these goods for all citizens in a democratic society. So, with regard to 'the distribution of divisible resources', democratic equality 'requires that everyone have effective access to enough resources to avoid being oppressed by others and to function as an equal in civil society. What counts as "enough" varies with cultural norms, the natural environment, and individual circumstance.'<sup>55</sup> Moreover, as Anderson grounds distributive sufficientarianism in her relational conception of equality,

<sup>52</sup> See Frankfurt, 'Equality as a Moral Ideal'.

<sup>53</sup> See Arneson, 'Why Justice Requires Transfers to Offset Income and Wealth Inequalities'; 'Distributive Justice and Basic Capability Equality'. See also Casal, 'Why Sufficiency is Not Enough'.

<sup>54</sup> 'Sufficiency and Needs-Based Approaches', 96.

<sup>55</sup> Anderson, 'What Is the Point of Equality?', 320.

‘democratic equality guarantees effective access to a package of capabilities sufficient for standing as an equal over the course of an entire life.’<sup>56</sup>

The last remark I just quoted from Anderson also illustrates her sympathy with the capabilities approach, which has been influentially advanced by Amartya Sen, Martha Nussbaum, and others.<sup>57</sup> By her endorsement of the capabilities approach, Anderson means to suggest that the ‘freedom’ or ‘freedoms’ citizens enjoy should be understood as a set of capabilities, the ‘functionings’ of which enable them to lead their lives satisfactorily.

It seems natural for Anderson to couple her distributive sufficientarianism with the capabilities approach. To begin with, it helps Anderson to explain how her view about distribution is grounded in her relational conception of equality. Anderson holds that distributions matter to relational egalitarians when and only when they provide people with effective access to an adequate level of functionings. Moreover, the question about the sufficiency threshold, which I mentioned in passing above, can also be regarded as settled by an articulation of an adequate set of capabilities which are necessary for people to function as democratic citizens.

Another merit of the capabilities approach is that it pays proper attention to citizens’ *access* to the satisfaction of their needs. Compared to an approach that short-sightedly focuses on the distribution of material resources, Anderson rightly emphasizes that ‘One’s capabilities are a function not just of one’s fixed personal traits and divisible resources, but of one’s mutable traits, social relations and norms, and the structure of opportunities, public goods, and public spaces.’<sup>58</sup> Thus understood, deficiencies in capabilities often point to the problems that the relational conception of equality is most concerned to address. It therefore appears

<sup>56</sup> Ibid., 319.

<sup>57</sup> See, for example, Sen, ‘Equality of What?’; Sen, *Inequality Reexamined*; Nussbaum, *Women and Human Development*; Nussbaum, *Creating Capabilities*. See also Anderson, ‘Justifying the Capabilities Approach to Justice’.

<sup>58</sup> ‘What Is the Point of Equality?’, 319.

that Anderson's account is able to explain how questions about distribution are to be answered by reference to the relational ideal of equality, and it is also suitably sensitive to people's essential needs, which are to be appropriately satisfied by the guarantee of an adequate set of relevant capabilities.

But I am not convinced that what Anderson says is enough to undercut distributive egalitarianism. For one thing, as I already explained in the last section, distributive egalitarians may plausibly accommodate her relational concerns in a distributivist framework. For another, distributive egalitarians need not deny that the idea of capabilities is in certain respects illuminating; but they should also maintain that nothing forbids them from giving that idea due weight in a distributivist framework.<sup>59</sup>

In my view, the real question is whether Anderson rejects distributive equality and subscribes to the sufficiency view on solid grounds. For it appears sensible to hold that we have distributive concerns over and above sufficiency, and that they may be characterized by the demands of distributive equality. That is to say, it seems that one may plausibly think that egalitarian distributive principles should still apply in cases where what people have is already enough.<sup>60</sup> This challenge, presented most sharply, is not premised on the very debatable claim that when principles of sufficiency and equality conflict with each other the latter must prevail. Instead, it is motivated by the thought that even when what people have is enough for them to lead a decent life, social and economic inequalities that exist between them do not entirely cease to be vexing. For I think an egalitarian may reasonably insist that to permit them to exist for no good reason is just unfair. Of course, what I just said should not worry one who holds the uncompromising version of the sufficiency view. But I for one believe that view is simply untenable,

<sup>59</sup> See Rawls, *Restatement*, 168–176; *The Law of Peoples*, 13. See also Dworkin, *Sovereign Virtue*, ch. 7.

<sup>60</sup> See Vandamme, 'Why not More Equality? Sufficiency and Inequalities above the Threshold'. Cf. Crisp, 'Equality, Priority, and Compassion', 755.



for it is hard to see why absolutely no weight should be given to the concern for distributive fairness or comparative justice.

A much more reasonable account is proposed by Nussbaum, who is clearly open to the suggestion that there may be further demands of justice that go beyond the satisfaction of sufficiency for capabilities. As she puts it, the version of the capabilities approach she defends 'is a partial theory of social justice':

[I]t does not purport to solve all distributional problems; it just specifies a rather ample social minimum. Delivering ... capabilities to all citizens is a necessary condition of social justice. Justice may well require more: for example, the approach as developed thus far does not make any commitment about how inequalities above the minimum ought to be handled. Many approaches to social justice hold that an ample threshold is not sufficient. John Rawls insists that inequalities can be justified only where they raise the level of the worst-off. The Capabilities Approach does not claim to have answered these questions, although it might tackle them in the future.<sup>61</sup>

As acknowledged by Nussbaum, it should be an open question among moderate distributive sufficientarians with respect to what distributive principles are to apply when the requirement of sufficiency, which presupposes the idea of a threshold, is appropriately met. Roger Crisp, for example, indicates that 'the threshold is tied to the notion of a *lack*. Where the individual in question has *enough*, special concern seems to give out'.<sup>62</sup> According to Crisp, besides the requirement of sufficiency, an 'act-utilitarian account of distribution' should be the default view, 'so above the threshold goods and bads should be distributed so as to maximize well-being impartially'.<sup>63</sup>

Now, in order to pin down Anderson's position on this matter, let us have a look at a passage where she compares her relational account with the difference

<sup>61</sup> *Creating Capabilities*, 40.

<sup>62</sup> *Reasons and the Good*, 160; italics in original.

<sup>63</sup> *Ibid.*, 158.

principle with regard to their dealings with economic inequality. Uncharitably in my view, Anderson describes Rawls's principle as being 'wage-squeezing', because its implementation 'would forbid all income inequalities that do not improve the incomes of the worst off.'<sup>64</sup> By contrast, Anderson recommends her own view as being both consistent and flexible:

Once all citizens enjoy a decent set of freedoms, sufficient for functioning as an equal in society, income inequalities beyond that point do not seem so troubling in themselves. The degree of acceptable income inequality would depend in part on how easy it was to convert income into status inequality—differences in the social bases of self-respect, influence over elections, and the like. The stronger the barriers against commodifying social status, political influence, and the like, the more acceptable are significant income inequalities. The moral status of free market allocations is strengthened the more carefully defined is the domain in which these allocations have free rein.<sup>65</sup>

With respect to this passage, I want to note two things. First, aside from maintaining that the questions concerning distributive matters depend on how economic inequalities bear on relational equality, Anderson appears to think that the allocations of goods should by default be decided by free markets, so long as they are consistent with the maintenance of egalitarian relationships. Provided the demands imposed by relational equality are satisfied, she is happy to claim that the market, which presumably is the most efficient mechanism for interpersonal exchanges, has a 'moral status'.<sup>66</sup> Moreover, Anderson's remark appears to imply that, apart from the distributive implications that can be drawn from the relational ideal of equality, other egalitarian distributive principles are excluded from having any application.

<sup>64</sup> 'What Is the Point of Equality?', 326.

<sup>65</sup> Ibid.

<sup>66</sup> See also Anderson, 'How Should Egalitarians Cope with Market Risks?'

A second point, even more important for our purposes, is that Anderson's comment—that income inequalities 'do not seem so troubling in themselves' when all citizens enjoy a sufficient level of capabilities—does not really explain why relational egalitarians should reject distributive egalitarianism. It may well be true that inequalities appear much less troubling when principles of sufficiency, grounded in the relational ideal of equality, is satisfied. But this is not a sufficient reason to reject distributive egalitarianism; for as far as there is *anything* troubling about social and economic inequalities, it is appropriate for one to ponder over whether one or another distributive principle should also apply. It is unclear why distributive egalitarians are at a disadvantage if they argue that their favoured distributive principles are suitable for dealing with inequalities beyond sufficiency of capabilities. Our question is whether Anderson indicates any good reason for thinking that, as a matter of justice, it does not make sense to be concerned with distributive equality when sufficiency of capabilities is secured for all democratic citizens on the ground of relational equality. That is, we want from Anderson an explanation of why there is no such thing as *egalitarian* justice beyond sufficiency.

I think Anderson does have an argument in mind, which can be recovered by reflecting upon her following claim: 'In general, a distribution is objectionable from an egalitarian point of view if it causes, embodies, or is a specific consequence of unjust social hierarchy.'<sup>67</sup> Now, in light of the fact that relational equality has different distributive implications in different contexts, depending on the forms of hierarchy to be challenged, it follows that no single distributive principle can accommodate its various distributive demands:

Where distributions are causally connected to social relations, one should not expect any simple distributive formula focused on a single core good to encapsulate the demands of relational equality. This is because the causes of

<sup>67</sup> 'Equality', 53.

## *The Relationalist Critique of Distributive Equality*

different types of social hierarchy are various, and various distributive strategies can be employed to undermine or remedy the effect of any given cause.<sup>68</sup>

According to Anderson, whether a distribution is appropriate depends upon the social relations it gives rise to, results from, or is constitutive of; and since different distributive goals and requirements are appropriate to combat different forms of social hierarchy, it is futile to seek one distributive principle that best realizes the relational ideal of equality. In short, a distributive formula is neither necessary nor sufficient to solve all problems resulting from social hierarchies.

Relatedly, as I mentioned earlier, Anderson makes the further claim that it is not worthwhile to search for a single currency of egalitarian justice. The fact that there are various types of hierarchy implies that there exists no single rule which by itself represent all of the demands of relational equality. It is therefore fruitless for the distributivist to dispute whether egalitarian justice should be conceived as requiring an equal distribution of this or that dimension. For it all depends on which social relation is under scrutiny, and the standard that determines how a good should be distributed 'also varies with the problem to be solved.'<sup>69</sup>

The key to Anderson's argument against distributive equality is therefore the claim that the way a good should be distributed is *solely* determined by the relation between the nature of that good and the relational ideal of equality. She writes: 'Within the relational view, distributive concerns appear as but one part of the egalitarian agenda.'<sup>70</sup> It is this claim which has the implication that distributive principles proposed by the distributivist are excluded from having any application if they are disconnected from the demands of relational equality. In contrast with distributive egalitarians, whose justification of distributive principles often appeals

<sup>68</sup> Ibid., 53–54.

<sup>69</sup> Ibid., 54.

<sup>70</sup> Ibid., 53.

to, say, the idea of distributive fairness, on Anderson's view no such principles can be justified if they do not refer to the idea of relational equality.

As I argued in Section 5.1., I believe that distributive egalitarians should dispute the claim that distributions matter only when they bear on the sustenance of egalitarian social relations, and should argue that distributive equality matters in its own right. I also argued there, however, that it would be no refutation of distributive egalitarianism even if one were able to establish that it must be grounded in the relational ideal of equality.

So what distributive egalitarians want to argue is either that Anderson's account is implausible because distributive equality matters independently of our concerns for relational equality; or that it is implausible as an interpretation of relational equality because one should be concerned with distributive equality even within a relationalist framework. That is to say, what distributive egalitarians must challenge is either Anderson's claim that distributive principles must be grounded in relational equality, or her claim that relational equality only entails principles of distributive sufficiency but not those of distributive equality.

But we can simplify the matter, and focus on an assumption that Anderson makes—which, I believe is commonly shared by sufficientarians—namely that we only have reasons to care about the distribution of things as a means for the realization of ends which are indifferent to the interpersonal comparisons of holdings. According to Anderson, the end to be realized is the relational ideal of equality, which allegedly does not have a commitment to distributive equality.

It may be helpful to compare Anderson's account with that of Joseph Raz's, who also powerfully expresses the assumption under scrutiny. According to Raz, 'we only have reason to care about inequalities in the distributions of *goods* and *ills*, that is of what is of value or disvalue for independent reasons.'<sup>71</sup> The main

<sup>71</sup> *The Morality of Freedom*, 235; italics in original.

difference between Anderson's and Raz's views is that, whilst the former indicates that distributions only matter when they bear on the relational ideal of equality, the latter appears to suggest that they only matter when they are concerned with things which are good or bad for individuals.

As Raz's argument goes, an analysis of the nature of the relevant goods and ills should deliver all of their essentially non-comparative distributive implications, which are to be built into principles of entitlement. Raz's account is sufficientarian because he thinks that our needs are all satiable, and the notion of well-being itself already contains all of the criteria of their satisfaction. This is why he denies the relevance of any principles of distribution which take interpersonal comparisons to be informative in their application. In light of the assumption that Anderson's account also shares, the conclusion of Raz's argument is that the principle of distributive equality has no relevance at all to what we should care about in the distribution of values:

[W]hat makes us care about various inequalities is not the inequality but the concern identified by the underlying principle. It is the hunger of the hungry, the need of the needy, the suffering of the ill, and so on. The fact that they are worse off in the relevant respect than their neighbours is relevant. But it is relevant not as an independent evil of inequality. Its relevance is in showing that their hunger is greater, their need more pressing, their suffering more hurtful, and therefore our concern for the hungry, the needy, the suffering, and not our concern for equality, makes us give them the priority.<sup>72</sup>

I maintain that Raz's and Anderson's sufficientarian arguments both fail for the same reason, namely that they implausibly assume that distributions can only matter as means to ends which have no regard for comparative justice. In one case, what is forcefully articulated by Raz is the view that we are concerned with the distributions of good and ills because they contribute to our well-being. But that

<sup>72</sup> Ibid., 240.

view is not entirely correct, or so I claim. For we are not only concerned with what is good for us, but also other things, such as distributive fairness.<sup>73</sup> In another case, Anderson is clearly correct to say that we should be concerned with social relations that we share, and that these concerns have distributive implications. But her account is implausible insofar as it suggests that egalitarians have no reason to care about distributive fairness, which I believe usually favours the application of egalitarian distributive principles.

To be sure, Anderson rightly considers herself as an opponent of distributive egalitarianism even when she indicates that there are cases in which it is justified to distribute a good equally:

In some cases, social hierarchy is directly embodied in the unequal distribution of a good—for example, if some groups but not others have the right to vote, or some groups enjoy privileges and exemptions from general laws due to their superior standing or esteem. ... In such cases an equal distribution of benefits and burdens is required. All adult citizens are entitled to vote and to have their vote count equally with all others. All should be equally subject to the criminal laws.<sup>74</sup>

As we have seen, on Anderson's view the equal distribution of a good is justified only because it is required by relational equality. But in cases where comparative advantage and disadvantage do not constitute hierarchical social relations, Anderson is happy to stand by her version of the sufficiency view. She suggests, for instance, that an unequal distribution of the good of education is acceptable insofar as it is consistent with the relational ideal of equality.<sup>75</sup> Again, she holds this view because she thinks that receiving an adequate education—even if it is arbitrarily inferior to what others receive—is sufficient for someone to stand

<sup>73</sup> See Temkin, 'Equality, Priority, and the Levelling Down Objection'.

<sup>74</sup> 'Equality', 53.

<sup>75</sup> See Anderson, 'Rethinking Equality of Opportunity'; Anderson, 'Fair Opportunity in Education: A Democratic Equality Perspective'.

in relations of equality to others. But since there is no reason to think that nothing about distribution matters from a moral point of view unless it has something to do with the relational ideal of equality, and more generally it is unwarranted to assume that distributions only matter as means for ends which have no regard for distributive fairness or comparative justice, it is a mistake for egalitarians to side with Anderson and endorse distributive sufficientarianism. Among many other things, egalitarians should care about distributive equality.

#### 5.4. Equality as a Deliberative Practice

In a recent contribution, Scheffler explores the thesis that egalitarian public and private relationships are ongoing practices among participants who are related on an equal footing. According to this practice-focused view, for individuals to be situated in an egalitarian relationship is for them to have reciprocal attitudes, motives, and dispositions to participate in interpersonal practices, to the effect that each of them is regarded and treated as an equal. According to Scheffler, understanding equality as a practice between those who are related as equals means that it is an open question how practical tasks with regard to distribution are to be addressed and resolved by participants themselves. Since it is not sensible to deny that it is those who are related as equals are to regard and treat one another as equals, Scheffler's account importantly implies that there is no need for the practice of equality to be guided by any simple distributive formula. Scheffler's new way to articulate relational equality therefore presents another challenge to distributive egalitarianism, in that it is now incumbent upon the distributivist to explain the relevance of egalitarian distributive principles. I shall argue that the distributivist can fulfil this task even if they are to a large extent sympathetic with Scheffler's practice-focused account.



*The Relationalist Critique of Distributive Equality*

We should again start with Scheffler's basic contrast between the distributive and relational conceptions of equality. On the one hand, continuous with his earlier characterization, Scheffler suggests that the 'most important task' of the distributivist 'is to identify the proper "currency" of "egalitarian justice." That is, the task is to identify the thing that justice requires us to equalize'.<sup>76</sup> On the other hand, Scheffler characterizes the relational view as holding that 'equality is an ideal governing certain kinds of interpersonal relationships.'<sup>77</sup>

Now, in contrast to the distributivist's single-minded attention to the task of identifying the currency of egalitarian justice, which Scheffler suggests is the definitive feature of the distributive view, he emphasizes that his practice-focused account conceives of relational equality as a complex ideal, which is sensitive to a multiplicity of considerations other than itself. For instance, he indicates that an egalitarian practice 'draws on values such as reciprocity and mutual respect, and on a conception of the rights and responsibilities of agents.'<sup>78</sup> Scheffler also suggests, however, that the fact that relational equality is now characterized as a complex ideal that draws upon other values does not make it fall short of having an egalitarian character. Scheffler attempts to make good his claim by arguing that there still exist distinctively egalitarian elements in his understanding of relational equality, among which he highlights what he calls the 'egalitarian deliberative constraint'. The basic idea is that in an egalitarian relationship each person should have an effective disposition to treat one another's interests as having an equally important role in influencing the decisions made within that relationship. So, the egalitarian deliberative constraint is one of the conditions the satisfaction of which make a decision arrived at within an interpersonal relationship qualify as a practice of equality that Scheffler purports to elucidate:

<sup>76</sup> 'The Practice of Equality', 21.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid., 24–25.

## *The Relationalist Critique of Distributive Equality*

In a relationship that is conducted on a footing of equality, each person accepts that the other person's equally important interests—understood broadly to include the person's needs, values, and preferences—should play an equally significant role in influencing decisions made within the context of the relationship. Moreover, each person has a normally effective disposition to treat the other's interests accordingly ... This means that each of our equally important interests constrains our joint decisions to the same extent. We can call this the egalitarian deliberative constraint. It is a distinctively egalitarian element in the complex ideal of an egalitarian relationship.<sup>79</sup>

Now, I see no reason for the distributivist to resist the idea of the egalitarian deliberative constraint if it is understood as a necessary condition for a decision about distribution to be justified. For she would surely have no qualms about the requirement that each person's interests should be regarded as equally important. She might suggest, for example, that this requirement coheres very well with the Dworkinian injunction of equal concern and respect, and she might think that an equal distribution of some good is implied by a principle of equal consideration of interests. She would also have no problem in accepting the requirement that people who are situated in an egalitarian relationship should have a certain kind of effective disposition towards others in order for a reciprocal egalitarian practice to be possible. It may well be true that the requirement of this disposition is not well-articulated by the distributivist, but that hardly shows that the distributive view is incompatible with a relational ideal of equality which articulates a demand on people's attitudes and dispositions when joint decisions are to be made. What it seems to show is only that distributive principles and constraints on dispositions are complementary elements that should be incorporated into an egalitarian conception of justice.<sup>80</sup>

<sup>79</sup> Ibid., 25.

<sup>80</sup> Cf. Lippert-Rasmussen, *Relational Egalitarianism*, 201–205.

But I believe that Scheffler's practice-focused account does imply a genuine challenge for distributive egalitarianism. For it appears to suggest that there is to be no role for a principle of distribution to determine whether decisions resulting from practical deliberations within egalitarian relationships are just. Scheffler's view seems to be that if a decision is made by participants who deliberate on an equal footing, draw upon the right kinds of considerations, and abide by the egalitarian deliberative constraint, it should automatically be considered as just. Otherwise put in Scheffler's terms, he seems to think that it makes no sense to seek one or another 'external' distributive criterion for the egalitarian deliberative practice. Instead, it only makes sense to ask questions about distribution from an 'internal' point of view within the practice by participants themselves.<sup>81</sup> The challenge faced by the distributivist, as I mentioned at the outset, is to articulate the sense in which egalitarian distributive principles are relevant to the relational practice of equality.

Importantly, Scheffler argues that 'the egalitarian deliberative constraint does not, in general, require the parties to make decisions that will leave them equally well-off either in respect of their immediately affected interests or overall.'<sup>82</sup> That is, although people sometimes jointly decide to aim for an equal satisfaction of interests, 'there is no general reason to expect that the egalitarian constraint will require decisions that leave the parties equally well-off with respect to preference-satisfaction or anything else.'<sup>83</sup> Scheffler's observation appears to strengthen the point that it is unclear why a distributive principle is able to provide any guidance for an egalitarian deliberative practice. For we might then think that whatever decision that results from an appropriately conducted deliberative practice—that is, one that results from a fair procedure—should be considered as just even if it

<sup>81</sup> Scheffler, 'The Practice of Equality', 31–32, 38.

<sup>82</sup> *Ibid.*, 29.

<sup>83</sup> *Ibid.*, 30.

involves an unequal distribution of well-being, and there is no need to refer to any external distributive criteria for that matter.

Scheffler rightly reminds us that in an egalitarian deliberation there may exist a variety of equally acceptable options to be chosen. For instance, if my partner Wendy and I have different wishes for our vacation, we could settle the plan in many ways. We may spend half of the holidays at the place I prefer, and the other half at the place Wendy wants to go; we may take turns in the decisions about whose wishes are to be satisfied in this and future vacations; and we may decide, since our interests are irreconcilable at the moment, to give up going abroad this time, saving our money for another occasion; and so on.<sup>84</sup> We may therefore want to take Scheffler's suggestion seriously, namely that it should not be assumed that there exists only one correct result for a deliberative practice that honours the egalitarian deliberative constraint and other values.

Now, Scheffler's illustration of the practice-focused account appears to imply that, for an egalitarian practice to be just, it is not only necessary but also *sufficient* for the participants to comply with the egalitarian deliberative constraint as well as draw on any number of relevant considerations. What is rejected by Scheffler's account is then the possibility that there is any indispensable role for an egalitarian distributive principle to play in the practice of equality. In Scheffler's words, 'There is no general formula or algorithm for determining how best to engage in the practice.'<sup>85</sup> This does not mean that nothing can go wrong in an egalitarian deliberation, as Scheffler duly notes that 'even the sincere efforts of the parties are no guarantee of success'.<sup>86</sup> It is easy to see that the actual decisions people make together after joint deliberation can very often be less than ideal. Scheffler also appears to hold, however, that the fact that a deliberative practice is conducted by

<sup>84</sup> Ibid., 24–25.

<sup>85</sup> Ibid., 30.

<sup>86</sup> Ibid., 30–31.

participants who have the right attitudes, dispositions and commitments, and draw upon the appropriate sorts of values and considerations, is ideally speaking sufficient to guarantee the justice of their joint decision. For otherwise it is no longer clear why he thinks that there is no role for distributive principles as an external criteria to determine whether a decision is just.

Scheffler himself concludes with the suggestion that there are deep differences between his practice-focused relational account of equality and the distributive conception of equality. According to his relational account, equality as a value is neither *normatively autonomous* nor *distributively self-sufficient*. To say that the relational conception of equality is not normatively autonomous is to say that it 'is a complex ideal whose distinctively egalitarian aspects cannot be identified, nor their appeal appreciated, independently of their connections with the other values such as reciprocity and respect, that also help to define the ideal.'<sup>87</sup> To say that equality is not distributively self-sufficient is to say that it 'need not by itself yield any fully determinate principle for regulating the distribution of resources, not even a presumptive or prima facie one.'<sup>88</sup> By contrast, the distributive view is rejected by Scheffler because it is said to conceive of equality as a normatively autonomous and distributively self-sufficient value. That is to say, according to Scheffler's interpretation it takes 'the normative content of the concept of equality to be exhausted by the idea of a division of some "currency" into equal amounts', and 'equality is capable all on its own of generating a presumptively authoritative principle of distribution'.<sup>89</sup>

In my view, distributive egalitarians may adopt two strategies in response to Scheffler's challenge.<sup>90</sup> According to the first strategy, they could argue that we have an independent interest in principles of distribution because deliberative

<sup>87</sup> Ibid., 41.

<sup>88</sup> Ibid., 42.

<sup>89</sup> Ibid., 41–42.

<sup>90</sup> Cf. Elford, 'Relational Equality and Distribution', 11–13.

practices with respect to distributive questions may not always deliver acceptable answers; according to the second, they could argue that egalitarian distributive principles may also be seen as one among other considerations that should be drawn upon in the egalitarian practice. What these options share is the view that we have an interest in looking for distributive principles so as to inform our deliberative practices, but they understand that role differently. As an external challenge, distributive egalitarians who adopt the first strategy will attempt to show that we need to have distributive principles at hand as criteria which are to be used to judge whether the results of egalitarian deliberative practices are indeed acceptable. For one thing, they might argue that it cannot be guaranteed that the outcomes of these practices must be just. Distributive egalitarians who adopt the second strategy will want to show, instead, that it is congenial to a deliberative practice if its participants have the option to allude to distributive principles as internal resources for their joint deliberation. It can be seen as motivated by the thought that participants in an egalitarian practice may also draw upon an egalitarian distributive principle to help them to make decisions in a way that satisfy the egalitarian deliberative constraint. Of course, these two strategies are compatible with each other.

Now, an analogy may be helpful for us to see how the first of these strategies work. Suppose that a number of supreme court judges are to deliberate about whether the equal protection clause of their constitution is compatible with an affirmative action programme that gives some citizens preferential treatment if they belong to a hitherto neglected minority group. The two things I want to note are, first, that so long as the law has no explicit directive on the case under their consideration, it needs interpretation, which in turn requires the joint deliberative practice of the judges; and second, that it also seems plausible to say that the judges are still constrained by the letter of the law. In my view, this imagined case hence illustrates the point that the existence of external criteria is not incompatible with

the exercise of deliberative practices. As I depicts the case, what the law does is among other things to determine the scope of the judges' interpretative options, but the fact that it has this function does not imply that no substantive work is to be done by their joint deliberation.

I would suggest that an egalitarian principle of distribution may be seen to have a similar function. As I said, the first strategy I allude to might be motivated by the idea that there is no guarantee that the decision made after a deliberative practice is necessarily just or legitimate, for one might think that it is implausible to say that all possible decisions resulting from an egalitarian deliberative practice are equally acceptable. As the thought goes, as the deliberative practice of the judges with respect to affirmative action is constrained by the pre-established law, distributive egalitarians might similarly suggest that deliberative practices with respect to distributive issues should be constrained by an independently justified distributive principle as well.

One might reply that the law is also the product of an ongoing practice by the legislature, legal officers, judges, and scholars who offer various interpretations. This is correct, but this does not invalidate my point. It only shows that different kinds and levels of practices are often intertwined in a complex system. Scheffler is therefore correct when he indicates that 'one important task is to consider what kinds of institutions and practices a society must put in place if it is to count as a society of equals.'<sup>91</sup> But what I argue is exactly that the endeavour to search for appropriate egalitarian distributive principles is consistent with the practice within egalitarian relationships that Scheffler purports to articulate. At any rate, in the case of the judges' deliberative practice, it is usually the case that there exists a range of options open to them. I think the distributivist may plausibly suggest that egalitarian distributive principles can also be similarly flexible, but maintain

<sup>91</sup> 'The Practice of Equality', 21.

in the meanwhile that these principles are needed when it is reasonable to further probe into the results of deliberative practices.

We may remind ourselves that Rawls's difference principle also leaves it as an open question concerning which institutional arrangement is most appropriate to benefit all members of society. Indeed, one lesson distributive egalitarians should draw from Rawls is that distributive principles need not and should not be seen as normatively autonomous and distributively self-sufficient in a derogatory sense. For, on the one hand, the justification of the difference principle does involve a variety of considerations, not least those of fairness, reciprocity, and efficiency. Distributive egalitarians should maintain that they also want to take proper notice of all the relevant considerations in their justification of distributive principles. On the other hand, as Rawls writes, 'the difference principle not only assumes the operation of other principles, but it presupposes as well a certain theory of social institutions.'<sup>92</sup> Again, distributive egalitarians should similarly maintain that their favoured distributive principles also presuppose an account of the institutions which are suitable for their implementation.

In a word, the distributivist should regard her preferred set of egalitarian distributive principles as a summary conception of the general directives with respect to distributive issues. Thus understood, principles of distribution have the function of guiding our institutional design, especially when deliberate practices go astray. They are in this way apt to be seen as, say, constitutional essentials for a democratic society, and the distributivist may plausibly suggest that they are in this sense normatively autonomous, as well as distributively self-sufficient in the sense that they should give us suitably determinate instructions.

My alternative understanding of egalitarian distributive principles does not contradict Scheffler's suggestion that equality can also be understood as a practice

<sup>92</sup> *Theory*, 158/137 rev.



within the context of egalitarian relationships, as the attempt to derive distributive principles from a diversity of considerations is consistent with Scheffler's practice-focused account. It is so because distributive egalitarians can and should agree that distributive principles also have a complex character, which make them sensitive to a variety of values, norms, and principles. But drawing on the analogy of the law, distributive egalitarians may further maintain that distributive principles have a priority over practices, and this priority is what is at stake when these principles are claimed to be normatively autonomous and distributively self-sufficient.

Now, let me try to make the point in another way. Earlier I suggested that distributive egalitarians need not take any issue with the distinctively egalitarian element Scheffler indicates, namely the egalitarian deliberative constraint. There is no problem for the distributivist in accepting that it is important for participants in an egalitarian practice to have the right kind of attitudes and dispositions, as well as that each person's interests should play an equally important role in influencing the outcome of the practice. But I also voiced a reservation about the practice-focused view which arises from the worry that the outcomes of egalitarian deliberative practices may not always be entirely satisfactory. For the distributivist, this worry points to a rationale for seeking independently justified principles of distribution—insofar as we acknowledge that we sometimes have reasons to double-check the result of a deliberative practice with respect to distributive issues, egalitarian distributive principles should play the role of guiding our practices.

Again, this is not to deny that egalitarian deliberative practices can and even should often take place in the way Scheffler indicates. But one should immediately notice that it is hard to think of any large-scale joint deliberative practice that is ever done in that manner. As Scheffler himself concedes, face-to-face relationships are rare in the public domain, and conditions such as anonymity make it the case that public deliberations in a modern society are very unlikely to abide by adequate constraints. He hence suggests that, in articulating his practice-focused

account, ‘a crucial task will be to determine how the participatory requirement should be modified to apply to the large-scale deliberative processes that are needed in a society whose members are largely anonymous to one another.’<sup>93</sup> But if that is the issue, distributive egalitarians may plausibly argue that principles of distribution are most likely needed, and some practical roles should at least be assigned to them.

Now, facing the difficulties in explaining how large-scale practices are to be conceived in an equal society, Scheffler appears to acknowledge that distributive principles may be assigned to play some pragmatic roles:

[F]or the members of a society of equals, who lack the kind of direct deliberative access that the participants in an egalitarian personal relationship have, an ‘output measure’ like a distributive formula, indirect though it is, may be the best way of judging whether the egalitarian deliberative constraint has been satisfied.<sup>94</sup>

Moreover, because of ‘the anonymity of the relations among the members of society’, they ‘need a clear public standard governing distribution: a standard they can all accept as an appropriate basis for judging whether ... their shared egalitarian aspirations have been satisfied.’<sup>95</sup> As it seems, Scheffler ultimately concedes what the distributivist ever needs, namely that in a society of equals distributive principles may still have to play certain parametric roles over and above their deliberative practices.

I shall now turn to the second strategy that distributive egalitarians may adopt so as to respond to Scheffler’s challenge. According to this proposal, distributive egalitarians should recommend one or another distributive principle as one of the considerations that participants in an egalitarian practice may allude to.

<sup>93</sup> ‘The Practice of Equality’, 37.

<sup>94</sup> *Ibid.*, 39.

<sup>95</sup> *Ibid.*

The analogy between the law and distributive principles should help us again here. In my imagined case, the judges should remind themselves what the equal protection clause actually says when they deliberate. Now, what the law says is informative, for it at least reminds them that other similar cases should also be decided in accordance with it. But then again, the fact that the letter of the law should be taken into account does not make the judges' deliberative practice pointless. For it is consistent to think, on the one hand, that the law itself sheds light on how the case is to be decided, and on the other hand that the deliberative practice of the jurors is also indispensable for their joint decision to be legitimate.

How does this work in the case of distributive principles? I shall again allude to Rawls's theory as a point of reference. On my view, distributive egalitarians should want to follow Rawls, to begin with, in thinking that a presumption of equal distribution helps people to deliberate about distributive matters, for it is a benchmark of comparison that is fair among conflicting claims. Notwithstanding Scheffler's observation that an egalitarian practice need not always lead to an equal satisfaction of interests, the distributivist should maintain that it counts against an inequality if it does not in any sense represent an improvement compared to a benchmark of equality.

Distributive egalitarians should further argue that their favoured distributive principles can be seen as interpretations of the clause in the egalitarian deliberative constraint that 'equally important interests should play an equally significant role in influencing decisions made within the context of the relationship'.<sup>96</sup> The idea is that by further articulating this clause as a principle of equal distribution, the requirements of the egalitarian deliberative constraint can be made more specific in order to select one among other distributions.

<sup>96</sup> *Ibid.*, 25.

Now, Scheffler seems to foresee the replies I have suggested when he states that ‘the egalitarian deliberative constraint seems to underdetermine the choice among candidate distributive principles.’<sup>97</sup> In any case, if we probe into matters of distribution within a larger societal context, ‘it is not clear that the deliberative constraint provides a basis for selecting among the different egalitarian distributive principles that have been proposed.’<sup>98</sup> Of the two replies I suggest in support of the distributive view, the first points out that, in Scheffler’s words, a society of equals ‘needs a principled public standard to regulate distribution and provide a shared basis for the justification of decisions made on behalf of the society as a whole.’<sup>99</sup> Moreover, the second strategy further recommends that we identify a suitable egalitarian distributive principle as one of the resources that participants in an egalitarian practice may draw upon. Both of these strategies suggest that it is congenial and legitimate to inquire into egalitarian distributive principles, even if equality, as Scheffler suggests, can also be understood as a relational ideal that involves a variety of public and private practices.

Scheffler, however, appears to resist my contention:

I draw a different conclusion from the fact that the deliberative constraint underdetermines the choice among candidate distributive principles. Recall that the deliberative constraint is only one dimension of the broader relational ideal, the ideal of a relationship among equals. If it is unclear whether a given principle is compatible with the deliberative constraint, then the next question is whether the principle is consistent with the broader ideal. And if two different distributive principles both seem compatible with the deliberative constraint, then the question is whether either of them coheres better than the other with the idea of living together as equals. These are practical questions in the sense that, in order

<sup>97</sup> Ibid., 39.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid. 40.

*The Relationalist Critique of Distributive Equality*

to answer them, we must consider what it would actually be like to carry on human relationships on the terms specified in the proposed principles.<sup>100</sup>

On Scheffler's view, then, to make the choice between distributive principles more determinate, we have to consider which of them best coheres with the relational ideal of equality. This is the core thesis of relational egalitarianism, which is endorsed by Scheffler along with other relational egalitarians. As I have already argued, however, the appeal of this thesis does not conversely undermine the distributive conception of equality. For one thing, I hold that distributive egalitarianism is preferable to alternative distributive views for the creation and maintenance of a society of equals—this is what distributive egalitarians believed all along.

<sup>100</sup> Ibid.

## Chapter 6.

### Justice and Basic Equality

My aim in this last chapter is to make sense of the idea that democratic citizens are one another's equals in a liberal democratic society. As I understand it, we have an interest to inquire into the principle of basic political equality primarily because we want to know to whom principles of justice apply; and in the following I argue that they at least apply to all potential and actual participants in a fair system of social cooperation. More specifically, I defend a Rawlsian account of basic equality, the central theses of which are, first, that principles of justice apply to all who have a potential to develop the capacity for a sense of justice, namely the capacity to fully understand and act in accordance with the fair terms of social cooperation; and second, that justice has no interest in assigning differential degrees of basic status among those who have a sense of justice.

#### 6.1. The Problem of Variation

Although most of us may be sympathetic to the idea of basic equality, namely the idea that each of us is an equal to others, it is not obvious why and in what basic sense citizens in a political society are justified in conceiving of themselves as equals. An account of basic political equality appears indispensable for theories which go beyond understanding equality in the merely formal sense in which similar cases are to be treated similarly. That is, insofar as a theory holds that some sort of substantive equal treatment, such as the vindication of equal basic rights, is owed to all democratic citizen, it has to specify, on the one hand, the grounds

on which egalitarian principles are justified, and on the other hand the essential features shared by these citizens, which make it the case that those principles should apply to them equitably.

It might seem natural for one to endorse the principle of basic equality on the ground that we all possess to the same degree some morally significant and empirically verifiable set of base properties. The requirement that the basis of equality should be morally significant immediately rules out the relevance of species memberships, as well as attributes such as gender and race. To suggest otherwise is to at least implicitly commit to discrimination which could have no rational justification. In thinking about this matter, what strikes us as plainly more plausible candidates are several capacities, some of which distinctly human, such as sentience, intelligence, reflective self-awareness, and reason.

It is however all too apparent that there are variations among people with respect to the realization of any of these dimensions; that is to say, the natural capacities which presumably ground the basic standing of individual beings are most likely constituted by scalar properties that vary in degrees.<sup>1</sup> As it is widely acknowledged, any account of basic equality must have a satisfactory response to this problem of variation.

For my purposes, a distinction needs to be made between two kinds of cases which manifest this central problem concerning basic equality. There is, to begin with, a question concerning how to regard and treat a range of individual beings who have no potential to possess the relevant capacities; but I shall be silent about this topic. In fact, given the intricacies involved and their very controversial nature,

<sup>1</sup> For discussions on this issue, see Feinberg, *Social Philosophy*, 88–94; Arneson, ‘What, if Anything, Renders All Humans Morally Equal?’; Carter, ‘Respect and the Basis of Equality’; Sher, *Equality for Inegalitarians*, ch. 5; Husi, ‘Why We (Almost Certainly) are Not Moral Equals’; Waldron, *One Another’s Equals: The Basis of Human Equality*, ch.1; Parr and Slavny, ‘Rescuing Basic Equality’. For more general discussions, see Arneson, ‘Basic Equality: Neither Acceptable nor Rejectable’; Sangiovanni, *Humanity Without Dignity: Moral Equality, Respect, and Human Rights*, pt. 1; Rozeboom, ‘The Anti-Inflammatory Basis of Equality’.

I shall remain agnostic, as Rawls himself does, about whether possessing the base property favoured by the Rawlsian account is a *necessary* condition for one to be regarded and treated as an equal in a political society. Instead, I am only concerned to argue for a *sufficient* condition for basic equality with regard to another range of cases, in which the relevant variations are less extreme, but still troubling—I have in mind the cases where a relevant property, supposedly identified as the basis of equality, is unmistakably instantiated by a multitude of human beings, but in different degrees.

Based on a reappraisal of Rawls's account of basic equality, the potential of which to my mind has been largely underestimated, I shall submit, among other things, an answer to the question why it is not a problem for their basic equality that people instantiate their various properties in different degrees. According to this proposal, the justification for the principle of basic political equality appeals to our considered convictions about *justice*, and it identifies a non-scalar property which most of us possess, namely *the capacity for a sense of justice*, as the basis of equality. Briefly, this is the capacity to fully understand, abide by, and act from publicly recognized principles of justice.

My defence of the Rawlsian account of basic equality involves the following two theses. First, I argue that justice requires that human beings with the potential to develop a sense of justice have their potential realized. Second, I further argue that justice has no interest in assigning differential degrees of basic status among those who have a sense of justice. I shall call them *the enhancement thesis* and *the non-differentiation thesis* respectively.

## 6.2. The Enhancement Thesis

To repeat what I just said, according to the enhancement thesis, we have the considered judgement that justice requires that human beings with the potential



to develop a sense of justice have their potential realised. This thesis is, I think, quite uncontroversial.<sup>2</sup> Since the capacity for a sense of justice is a basic capacity that enables human beings to participate in social cooperation, which in turn helps them to lead decent lives, the truth of the enhancement thesis follows from the claim that justice has this minimal commitment to secure a range of basic capacities for those whose possession falls below a satisfactory level.<sup>3</sup>

To illustrate, imagine a person whose mental disability makes it the case that he needs considerable medical treatment to function properly in workplace. His condition implies that without treatment he cannot work as others normally do; but there would be no relevant difference between him and others who have no such need if he has adequate access to medication. According to the enhancement thesis, justice demands that treatment be given.

This thesis is further motivated by the thought that to an indeterminate but significant extent the distribution of our mental and physical capacities is strongly influenced by factors for which people cannot be held responsible, but whose existence makes it evident that much of their burdens are avoidable or remediable. The truth is that people are in part products of their social environment, and many of them suffer from deep-rooted wrongs such as oppression, domination,

<sup>2</sup> Some might demur that there are many cases in which those who realize elementary capacities to a lesser degree are themselves responsible for their deficiencies. But let us simplify the matter and suppose that we are thinking about a relatively early stage of people's lives, in which nobody deserves to be very badly off. In any case, the enhancement thesis at least suggests that all human beings are to be secured an adequate range of basic capacities, including the capacity for a sense of justice, on the condition that the relevant considerations of people's own responsibilities with respect to their well-being do not make it unreasonable to be exercised by the demands of justice.

<sup>3</sup> Cf. Nagel, 'The Problem of Global Justice', 118–119. Nagel reserves the name 'justice', as he thinks it is 'ordinarily understood', to the concerns about 'the relations between the conditions of different classes of people and the causes of inequality between them.' However, Nagel also assumes that 'there is some minimal concern we owe to fellow human beings threatened with starvation or severe malnutrition and early death from easily preventable diseases', which he links to the duties of 'humanitarian assistance'. Although I agree with Nagel that there is a distinction to be drawn, I am also inclined to think that the duties of humanitarian assistance can be seen as a subset of the duties of justice.

and discrimination. They can not only deprive their victims of the opportunities to exercise their capacities, but can even stifle their will, and prevent them from having the sense that they have a claim of justice to cultivate and exercise their essential abilities.<sup>4</sup> Again, think of a school child who comes from a marginalized group which is burdened with poverty and discrimination. Due to unfavourable circumstances the child is devoid of adequate resources, her learning abilities are under-developed, and she lacks a sense of self-esteem, which, if present, would have effectively motivated her to refine and exercise her various capacities. I doubt that anyone would deny that the plight of the child needs to be redressed and her relevant potentialities be realised.

I have been arguing that justice demands that anyone's basic needs be satisfied, and I have suggested that this thesis is well supported by the commonplace that those who are deficient are very often not responsible for their lack. Now, it is important to see that the enhancement thesis involves a shift of attitude, or a new look, at the problem of variation: from the viewpoint of justice, what appears relevant and urgent about interpersonal variations is in the first place that they point to needs and deficiencies which should be regarded as practical tasks to be addressed in the name of justice. Indeed, the first impression that the justifiability of basic equality is held hostage to the problem of variation is very questionable, for I believe that our considered judgements suggest that justice itself tends to advance the conditions for the realization of basic human equality.

We can go further. It appears to betray a sign of schizophrenia if one who says that 'people who are relatively deficient in their basic capacities *have a claim of justice* in virtue of their deficiencies', also says that 'people who are relatively deficient in their basic capacities *are of an inferior basic standing* in virtue of their deficiencies'. For it is deeply implausible, if not incoherent, to think that the very

<sup>4</sup> See Williams, 'The Idea of Equality', 103.

same statement about a correctable or at least remediable deficiency entails both a claim of justice and the claimant's inferior basic standing. According to the enhancement thesis, basic deficiencies are to be seen, from the viewpoint of justice, as burdens that call for rectification or mitigation; as shown by my two examples, they should not be seen as evidence that vindicates their bearer's lesser basic status. The fact about interpersonal variations, if it ever hints at a problem, would be one to be resolved first and foremost *within* the purview of justice.

I am of course not arguing for the impossible claim that justice demands all deficiencies be corrected or neutralized, but only that it is required by justice that they are to some considerable extent be addressed and mitigated; or, in other words, that a wide range of human beings who are deficient in essential capacities are owed substantial support to achieve their proper functionings and to maintain them. It should be observed, however, that it makes no clear sense to conjecture how people would vary if the demands of justice were completely fulfilled. As Bernard Williams aptly points out, 'to an indeterminate degree' people have the capacity to live a fully human life, and the fact that they are partly the product of their circumstances suggests that their capacity 'may be enhanced or diminished by their social condition.'<sup>5</sup>

As this thought goes, we have no determinate answer about the distribution of relevant abilities if our circumstances are ideal. Again, I am not saying that there could possibly be no scalar differences among people if perfect justice were to prevail; it is reasonable to think the contrary. However, the idea that our fate is underdetermined and in good part dependent upon the demands of justice being satisfied is important. It rebuts any suggestions of natural hierarchies supposedly basing on the fact that in the current state of affairs people are not equally capable of anything.

<sup>5</sup> *Ibid.*, 104.

### 6.3. The Non-Differentiation Thesis

According to the second thesis I want to defend in this chapter, justice has no interest in assigning differential degrees of basic status among those who have a sense of justice. That is to say, for all who have a sense of justice, there are no relevant differences that impinge upon their basic status as far as our considered judgements of justice are concerned, and basic political equality holds among members of society who have a sense of justice, even if their possession of that capacity varies in degrees. To defend this non-differentiation thesis, what I want to do in this section is to delineate an interpretation of Rawls's account of basic equality, which is embedded within his conception of justice, justice as fairness; and I shall explain in the next section how the Rawlsian account of basic equality is supported by the principles of justice included in justice as fairness.

As Rawls sees it, justice as fairness aims to articulate systematically a body of fundamental ideas latent in a liberal democratic society. His crucial assumption, or what he calls the 'most fundamental idea' in justice as fairness, is about the way we are to conceive of a society: it is a 'system of social cooperation', the fair terms of which are to be specified by the principles of justice.<sup>6</sup> These principles are the publicly recognized background rules and procedures which should be reasonably acceptable by all participants in social cooperation. As I explained in Chapter 1, Rawls suggests that they specify an idea of *reciprocity*, according to which all who abide by the fair terms of social cooperation are to benefit from their participation. On Rawls's view, justice is primarily a virtue of the cooperative venture between free and equal members of society.

By Rawls's assumption, a conception of social justice must determine who those free and equal participants in social cooperation are. In justice as fairness *this* is the basic sense in which democratic citizens are one another's equals. More

<sup>6</sup> See Rawls, *Justice as Fairness: A Restatement*, 5–8.

specifically, they are *equal* in the sense that they are equally governed by the principles of justice. In Rawls words, ‘they are to be treated in accordance with the principles of justice’ and ‘entitled to equal justice’.<sup>7</sup> Moreover, this equality of standing—that is, equality before the principles of justice—is *basic* in the sense that democratic citizens are related as equals in one most important reciprocal practice, namely social cooperation, that the principles of justice are to govern.

According to Rawls himself, basic political equality holds among free and equal citizens, who are to be regarded as ‘moral persons’ in virtue of their ‘two moral powers’. These include the capacity for a conception of their good, ‘the capacity to form, to revise, and rationally to pursue a conception of one’s rational advantage or good’; as well as a sense of justice, ‘the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation.’<sup>8</sup> As Rawls puts it, these citizens ‘are regarded as equal in that they are all regarded as having to the essential minimum degree the moral powers necessary to engage in social cooperation over a complete life and to take part in society as equal citizens.’<sup>9</sup>

My reconstruction of Rawls’s account of the basis of equality only hinges on the assumption that individual beings who are of equal basic status possess the capacity for a sense of justice. One main reason that motivates this simplification is that, on the Rawlsian view, it does not really make sense to talk about variations in people’s capacities for the realization of their own good. On the one hand, it is reasonable to expect that citizens in a liberal democracy may acquire a wide variety of conceptions of the good, and justice as fairness alleges no authority to pass judgements on them insofar as they do not seriously and unreasonably contradict the public conception of justice. Indeed, there is no sense in which justice as

<sup>7</sup> *A Theory of Justice*, 504–505/441–442 rev.

<sup>8</sup> *Political Liberalism*, 19.

<sup>9</sup> *Restatement*, 20.

fairness could measure their diverse conceptions of the good on the same scale, as if it could appropriately measure scalar variations of people's capacities in terms of *the* good; instead, it only makes sense to talk about people's abilities in respect of *their* conceptions of the good.

On the other hand, justice as fairness does not regard variations in people's abilities in terms of their respective plans of the good life, for it rejects the view that people's claims of justice should be relative to their own conceptions of the good. As Rawls understands that proposal, 'equal justice means that society is to make the same proportionate contribution to each person's realizing the best life which he is capable of.'<sup>10</sup> This idea is rejected by Rawls mainly on the ground of fairness. As he explains, under this conception of justice, 'the greater abilities of some may give them a stronger claim on social resources', since it 'must assume that variations in natural assets will affect what is necessary to provide equal proportionate assistance to those with different plans of life.'<sup>11</sup> This assumption, according to Rawls, is unacceptable, for it effectively 'means that the strength of men's claims is directly influenced by the distribution of natural abilities, and therefore by contingencies that are arbitrary from a moral point of view.'<sup>12</sup>

In emphasizing that people's claims of justice should not be contingent upon their greater or lesser abilities to realize the best lives they are capable of, Rawls emphasizes that in justice as fairness, 'The only contingency which is decisive is that of having or not having the capacity for a sense of justice.'<sup>13</sup> Rawls's remark appears to affirm my interpretation, which identifies the capacity for a sense of justice as the crucial base property in his account of basic equality; for this is the

<sup>10</sup> *Theory*, 510/446 rev.

<sup>11</sup> *Ibid.*, 510/447 rev.

<sup>12</sup> *Ibid.*, 510–511/447 rev.

<sup>13</sup> *Ibid.*, 511/447 rev.

property the equal possession of which secures the sufficient condition on which a fair system of social cooperation is realistically possible.<sup>14</sup>

Now, focusing on the capacity for a sense of justice also shows why it is natural for the Rawlsian account to identify a threshold, above which variations in that capacity have no troubling implication for basic political equality among democratic citizens. Although it is perfectly reasonable to assume that members of a society possess that power in different degrees, what is important for justice as fairness, and hence for an account of basic equality embedded within, is only to determine an essential level of that power sufficient for a fair system of social cooperation to exist over time. In Rawls's terms, we search only for a minimum degree of a sense of justice which secures *strict compliance* of the participants; and insofar as 'Everyone is presumed to act justly and to do his part in upholding just institutions',<sup>15</sup> justice has no further interest in assigning differential degrees of basic status.

This importantly explains how the problem of variation is resolved in justice as fairness; for on the Rawlsian view, when members of a society do have the minimum degree of a sense of justice, there is no further question concerning basic equality within the purview of social justice. Instead, according to justice as fairness, all sorts of residual variations are assigned to be governed by the principles of justice that specify the fair terms of cooperation.<sup>16</sup> As I interpret it, the Rawlsian account of basic equality indicates that all who have a sense of justice, namely the capacity to fully understand, comply with, and act from the principles of justice,

<sup>14</sup> For other suggestive remarks, see *ibid.*, 510, 512/446, 448 rev., and Rawls, *Political Liberalism*, 80. For similar interpretations, see Singer, *Practical Ethics*, 17–19; Daniels, 'Democratic Equality', 246–247; Waldron, *One Another's Equals*, 103–105.

<sup>15</sup> *Theory*, 8/8 rev.

<sup>16</sup> See Lang, 'Book Review: *One Another's Equals*, by Jeremy Waldron', 251–254.

are entitled to equal justice. Indeed, as Rawls himself puts it pithily: ‘Those who can give justice are owed justice.’<sup>17</sup>

What we have gone through so far equips us to cope with two prevalent objections to the Rawlsian account of basic equality. According to Ian Carter, who puts forward a version of the first line of objection recently, the Rawlsian account is to be rejected on two related grounds. To begin with, Carter objects that it is unclear why we should focus on moral personality as the basis of equality, instead of the base properties upon which it supervenes.<sup>18</sup> Carter argues that Rawls offers no good explanation of why moral personality is what is relevant to the search for the basis of equality, whilst it is not the case of the base properties that constitute it. Moreover, Carter argues that even if Rawls is correct that moral personality is relevant to the question of the basis of equality, this still does not demonstrate the irrelevance of the base properties upon which that property supervenes. On the contrary, Carter argues that they should appear relevant, and need to be taken into account, exactly when the supervening property is, *ex hypothesi*, relevant. Since Rawls himself identifies moral personality as the basis of equality, Carter challenges him to explain away the relevance of whatever scalar properties which are supposed to constitute or ground moral personality. He maintains that Rawls fails in this task.<sup>19</sup>

According to my interpretation, the Rawlsian account does have a principled way to meet Carter’s challenges. On the one hand, it suggests that the property of moral personality is crucial to the basic equality between democratic citizens, for the reason that one of its main constituents, namely a minimum degree of a sense of justice, is essential to the fair social cooperation between them. On the other hand, it considers the scalar properties upon which moral personality supervenes

<sup>17</sup> *Theory*, 510/446 rev.

<sup>18</sup> Carter, ‘Respect and the Basis of Equality’, 549.

<sup>19</sup> *Ibid.*, 550.



as irrelevant on the ground that it is appropriate to regulate all residual variations among free and equal citizens by the principles of justice.

According to the second common objection, when Rawls tries to justify his account of basic equality, he already presupposes that it is to be embedded within his favoured conception of justice, which includes certain principles of justice. This, according to his critics, is unacceptable. As D. A. Lloyd Thomas expresses the worry, 'it is assumed from the start that variations in degree of rational nature above this minimum are irrelevant to the choice and application of the principles of justice.'<sup>20</sup> Alternatively put, the feature of the Rawlsian account that is alleged to be implausible is that its justification is supposed to appeal to our considered convictions about justice. Rawls's critics suggest, by contrast, that the justification of basic equality should precede the justification of the principles of justice, and Rawls simply gets the order of justification wrong. Indeed, Jeremy Waldron also appears to worry that Rawls's argument for his account of the basis of equality, if there is any, is circular, since it is specified by his own conception of justice, the justification of which already assumes it all along. Waldron instead suggests that

a sense of justice need not be identified with any particular conception or set of principles (like Rawls own two principles of justice as fairness). The relevant sense of justice must mean something like a desire to apply and act on principles of justice, whatever these turn out to be.<sup>21</sup>

In short, Rawls's critics assume that we should in the first place look for an account of basic equality which alone explains why a range of individual beings are to be regarded and treated as equals, and is therefore supposed to be credible independent of our considered judgements about the principles that govern those who are to be regarded and related as equals; and some of them may therefore

<sup>20</sup> Lloyd Thomas, 'Equality Within the Limits of Reason Alone', 550. See also Waldron, *One Another's Equals*, 104–105.

<sup>21</sup> Waldron, *One Another's Equals*, 163.

further suppose that it should be capable of determining, at least partly, the selection of these principles.<sup>22</sup>

But the Rawlsian view rejects that assumption. On the one hand, Rawls's method of justification is of course of a holist character, and there is no sign that he accepts the view that the principle of basic equality should by itself constrain principles of justice. What Rawls is most concerned to show is instead that his account of basic equality coheres well with any number of other considerations that count in favour of his conception of justice. Indeed, he suggests that 'A conception of justice cannot be deduced from self-evident premises or conditions on principles; instead, its justification is a matter of mutual support of many considerations, of everything fitting together into one coherent view.'<sup>23</sup>

On the other hand, it is unclear why one should assume that the question 'Who are to be regarded and treated as equals?' should be answered independent of and prior to our answer to the question 'How to regard and treat those who are equals?', and that our answer to the former question should constrain our answer to the latter question. In fact, there is no clear reason to suppose that our understanding of the idea of basic equality cannot be informed by our substantive beliefs. So, for instance, it also seems to make a lot of sense if one suggests that we should not discriminate against anybody in light of our basic moral commitments, and that everyone is to be regarded and treated as an equal exactly in that sense—namely, insofar as the principle against discrimination is concerned, everyone is equal.<sup>24</sup> On the Rawlsian view, the sense in which democratic citizens are regarded and treated as equals is informed by their very important interest in upholding a fair system of social cooperation, namely a society well-ordered by the principles of justice; and, as we have already seen, these principles are tasked to deal with

<sup>22</sup> For an illustration of this view, see Carter, 'Respect and the Basis of Equality'.

<sup>23</sup> *Theory*, 21/19 rev.

<sup>24</sup> See Sangiovanni, *Humanity Without Dignity*, ch. 2, for an argument that adopts this strategy.

interpersonal variations without ever implying that any of these citizens are of a higher or lower basic standing when they have a sense of justice to participate in a fair system of social cooperation. This is why Rawls indicates that ‘the respect in which human beings are to be counted equal is settled by the conception of justice ... and the principles of justice assure that any variations in ability are to be regarded as any other natural asset.’<sup>25</sup>

All in all, we may say that justice as fairness assigns different and mutually supportive functions to his account of basic equality and the principles of justice: the former indicates the sense in which members of a society are regarded and treated as equals; and the latter specify the fair terms on which they relate and live as equals. This schema, for one thing, helps us to make sense of the idea that there is really no deep problem about interpersonal variations insofar as basic equality among democratic citizens is concerned; for according to justice as fairness, variations in people’s sense of justice, as well as abilities to realize their conceptions of the good, are all assigned to be governed by the principles of justice.

The idea that Rawls’s account of basic equality and his principles of justice are mutually supportive is worth emphasizing, not least because, as quoted above, Rawls himself invites us to inquire whether a variety of components fit together well in his conception of justice. The feature of mutual support is a virtue of *coherence*. It means that one component of a theory is made more plausible by another, and vice versa. When integral parts of a theory are mutually supportive, each of them appears more plausible when others are taken into account. Now, I would suggest that Rawls’s account of basic equality is strengthened by his characterization of the principles of justice in justice as fairness for the following reason: since variations besides the essential capacity for a sense of justice are all governed by these principles, Rawls’s account of basic equality acquires the virtue

<sup>25</sup> *Theory*, 508/444–445 rev.

of *simplicity* by being concerned only with the conditions that make fair social cooperation realistically possible.<sup>26</sup> Conversely, his minimalist conception of basic equality implicates the widest range of applicability for the principles of justice in justice as fairness, hence the virtue of *utmost practical relevance*—irrespective of the variations among free and equal citizens, benefits and burdens accompanying social cooperation between them are to the greatest extent assigned to be regulated by these principles.

#### 6.4. Equal Opportunity, Equal Respect, and Reciprocity

Now, it should be clear that my defence of the Rawlsian account of basic equality ultimately hinges on the claim that the principles of justice in justice as fairness have an appropriate way to cope with interpersonal variations. We are therefore led back to several topics that I already dealt with in Chapter 1; but I shall now approach them from a different angle, by tracing a line of thought that brings Williams and Rawls together.<sup>27</sup>

It starts with Williams's observation that equality is referred to not only as a matter of fact, but also as an ideal to be realized:

The idea of equality is used in political discussion both in statements of fact, or what purport to be statements of fact—that people *are* equal—and in statements of political principles or aims: that people *should be* equal, as at present they are not. The two can be, and often are, combined: the aim is then described as that

<sup>26</sup> See also *ibid.*, 510/446 rev.

<sup>27</sup> There is a curious exegetical question which I am unable to explore here, namely to what extent Rawls's thoughts should be considered as deriving from Williams. Rawls cited Williams's 'The Idea of Equality', first published in 1962, seven times in *A Theory of Justice*, originally published in 1971 (only five of them are registered in the index of *Theory*), and to my knowledge not in his other published works. The discussion in this section will illustrate the strong affinity between Williams's and Rawls's views on several topics; but given the well-known fact that *A Theory of Justice* went through a long period of preparation, it would be premature for me to suggest more than that Rawls agreed with much of what Williams wrote in his classic essay.

of securing a state of affairs in which people are treated as the equal beings which they in fact already are, but are not already treated as being.<sup>28</sup>

One of the egalitarian's tasks is to specify the conditions on which equality obtains. On this score, Williams and Rawls both think that it is helpful to reflect on the idea of equality of opportunity.<sup>29</sup>

To begin with, they both think that equality of opportunity should not be interpreted merely as a formal requirement of institutional impartiality, as in equality before the law. The idea is that to distribute opportunities according to people's *de facto* merits is also questionable, for the obvious but very important reason that, with no exception, their mental and physical abilities are all strongly influenced by their social backgrounds. In light of the fact that they typically cannot justify their greater opportunities simply by referring to the advantage for which they could ultimately claim no credit, it follows that formal equality of opportunity falls short of the egalitarian ideal. A superior interpretation of the idea of equal opportunity is what Rawls calls fair equality of opportunity, according to which members of a society should get hold of the access to necessary enabling resources, such as nutrition, education and training; so that despite their different social backgrounds, all who have the same natural talents and willingness to pursue certain careers, positions, or offices should have equal chances to fulfil their ambitions.<sup>30</sup>

However, as Williams and Rawls both emphasize, the thought that one's social condition is strongly influenced by factors for which one is not responsible and can claim no credit also suggests that the distribution of natural talents is equally problematic upon reflection: it is similarly a contingent fact that people are endowed with different natural assets which are valued variously in a society.

<sup>28</sup> 'The Idea of Equality', 97; emphases in original.

<sup>29</sup> See *ibid.*, 105–114; *Theory*, 65–75, 511–512/57–65, 447–448 rev.

<sup>30</sup> *Theory*, 73/63 rev.

As Williams asks, rhetorically: ‘But does not the criterion of ability excludes a priori a certain section of people—viz. those that are not able—just as the [criterion of wealth] excludes a priori those who are not wealthy?’<sup>31</sup> Echoing Williams, Rawls suggests that

once we are troubled by the influence of either social contingencies or natural chance on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other. From a moral standpoint the two seem equally arbitrary.<sup>32</sup>

Williams and Rawls’s point is that the ideal of equality, interpreted as equality of opportunity, is threatened by factors which are arbitrary from a moral point of view; and they both appear to endorse what I call the *moral arbitrariness rationale*, according to which it is unfair, and therefore unjust, to permit distributive shares to be *improperly* influenced by morally arbitrary factors. They therefore suggest, in the name of equality, that the influences of morally arbitrary factors should be regulated in a reasonable way. But how? To see their answers, we need to look closer at Williams’s and Rawls’s critiques of equality of opportunity.

Now, Williams points out that there could be a serious problem involved in the attempt to push the idea of equal opportunity to its extreme—that is, to eliminate all unfair advantages in opportunities. The worry is that one might be led to think that many attributes of ours, such as sensibility, intelligence and physical characteristics, are no longer in an appropriate sense constitutive parts of *ourselves*, but those of the *circumstances* which are corrigible, and should be changed by all means if equal opportunity is to be honoured. Suppose, however unrealistically that may be, that this goal could be perfectly realized. But according

<sup>31</sup> Williams, ‘The Idea of Equality’, 109.

<sup>32</sup> *Theory*, 74–75/64–65 rev.

to Williams, this state of affairs would show exactly why the realization of equality of opportunity has a tendency to involve a worrisome attitude towards individuals:

[They] would be regarded as in all respects equal in themselves—for in themselves they would be, as it were, pure subjects or bearers of predicates, everything else about them, including their genetic inheritance, being regarded as a fortuitous and changeable characteristics.<sup>33</sup>

As Williams himself emphasizes, his concern is of a moral rather than metaphysical nature: he fears that ‘far too much emphasis was being placed on achieving high ability’, and that persons are ‘just being regarded as locations of abilities.’<sup>34</sup> The recognition of moral agents is wanting in this gloomy picture of equality of opportunity, since it implies that people’s attributes are no longer strictly speaking considered to be theirs, but instead are parts of the circumstances contingently bestowed upon them. At any rate, Williams supposes that ‘those very concerned with producing the ability would probably also be over-concerned with success.’<sup>35</sup> Indeed, if the only way to realize the ideal of equality is to achieve this state of affairs, then we may be required to change people’s ‘circumstances’, in a highly revisionist sense of this term, at all costs by every distributive measure within our power.

Williams worries about this over-emphasis of equality of opportunity, for it appears at odds with a *humanistic attitude* towards people, which he appeals to as a naturalistic interpretation of the Kantian idea of equality of respect for persons.<sup>36</sup> According to Williams, to respect persons is partly to regard and treat them, from a ‘human point of view’, as self-reflective beings who are conscious of themselves and their circumstances—this human viewpoint ‘is concerned primarily with

<sup>33</sup> ‘The Idea of Equality’, 112.

<sup>34</sup> Ibid. 113.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid., 113–114.

what it is *for that person* to live that life and do those actions in that character.<sup>37</sup> From this perspective, what is distinctive of the beings who have the capacity for reflective self-awareness is that they are able to intend to do something meaningful, to make something happen in their lives; and this is why they are worthy of respect.

Williams imagines an inventor, who has spent his whole career trying to come up with an impossible machine, and so to no avail; but Williams suggests that this person, although ends up as a failed inventor, is still worthy of respect. According to Williams's interpretation of the Kantian view, people should not be subsumed wholly under the 'aesthetic or technical' viewpoint, from which they are regarded as solely falling under their professional, social, or technical 'titles' that presuppose a structure of distinctions—from the technical point of view, that person would be reckoned as a failure whose efforts were useless and irrelevant. Indeed, Williams claims that these titles 'are the conspicuous bearers of social, political, and technical *inequality*, whether they refer to achievement ... or to social roles'.<sup>38</sup> For this reason, the idea of respect for persons, interpreted as a humanistic attitude, has something very important to do with the idea of basic equality: it enjoins us *not* to regard people from a viewpoint that takes a structure of inequality as given.

Williams's worry, to repeat, is that the austere attitude expressed by the idea of equal opportunity is too much concerned with success and distinction, and it therefore appears to be in conflict with our commitment to equality of respect. But he offers no clear solution. Williams thinks that these two ideas both represent important aspects of the ideal of equality, and his final note is just that a salutary and invigorating political conception of equality must reconcile our concerns for both of these: we should treasure the idea of equal respect for persons, and ward off the inhumane tendencies when we pursue equality of opportunity; but it is also unwise to hang on to the idea of equal respect at the cost of being indifferent

<sup>37</sup> Ibid. 103; emphasis in original.

<sup>38</sup> Ibid., 104; emphasis in original.



to the distribution of natural and social conditions, which must be of our concern if equal opportunity is to be realized.

Now, Rawls takes Williams's concerns on board. To begin with, he endorses Williams's interpretation and diagnosis of equality of opportunity.<sup>39</sup> Moreover, Rawls also suggests that we have a natural duty of mutual respect, as the notion is interpreted by Williams's humanistic approach.<sup>40</sup>

But going beyond Williams's view, Rawls further suggests that justice as fairness represents a reconciliation of the two ideas of equality which Williams finds both important. According to Rawls's theory, the notion of equality that is concerned with the distribution of opportunities is defined by the second principle of justice that regulates social and economic inequalities, whilst the notion of equality of respect for persons 'is defined by the first principle of justice and by such natural duties as that of equal respect; it is owed to human beings as moral persons.'<sup>41</sup> Thus understood, each of the two principles of justice in justice as fairness expresses an aspect of the ideal of equality, and the priority of the first principle over the second further substantiates the idea that our concern for the realization of equal opportunity should never threaten to undermine our equal respect for persons.

Indeed, Rawls is less troubled by the fact that 'the consistent application of the principle of fair opportunity requires us to view persons independently from the influences of their social position.'<sup>42</sup> For he thinks that 'within the context of [justice as fairness] as a whole, there is much less urgency to take this course.'<sup>43</sup> At any rate, Rawls claims that however important that principle is, 'It is impossible

<sup>39</sup> See *Theory*, 73, 511–512/63, 447–448 rev.

<sup>40</sup> *Ibid.*, 337/297 rev. Rawls also agrees with Williams that doctrines which presuppose arbitrary distinctions between people, such as racism, are not only unjust but irrational; see *ibid.*, 149–150/129–130 rev.

<sup>41</sup> *Ibid.*, 511/447 rev.

<sup>42</sup> *Ibid.*, 511/447–448 rev.

<sup>43</sup> *Ibid.*, 511/448 rev.

in practice' to neutralize all arbitrary advantages resulting from people's natural talents and dispositions cultivated by 'happy family and social circumstances.'<sup>44</sup> He therefore suggests that our understanding of egalitarian justice should reach beyond the idea of equality of opportunity. According to Rawls, our task is to

try to find a rendering of [the principles of justice] which treats everyone equally as a moral person, and which does not weight men's share in the benefits and burdens of social cooperation according to their social fortune or their luck in the natural lottery.<sup>45</sup>

We should therefore see that Rawls is clearly aware of the inhumane tendency of the idea of equality of opportunity, but his humanistic attitude towards the vicissitudes of fortune is expressed quite differently. On the one hand, the notion of equal respect for persons is substantiated in justice as fairness primarily as the principle of justice that guarantees equal basic rights and liberties for every citizen who has the two moral powers, namely the capacity for a sense of justice and the capacity for a conception of the good. On the other hand, Rawls does not regard the strokes of luck cast upon free and equal citizens as necessarily inimical to a just human society. Instead, he suggests that 'we may reject the contention that the ordering of institutions is always defective because the distribution of natural talents and the contingencies of social circumstances are unjust, and this injustice must inevitably carry over to human arrangements.'<sup>46</sup> For it is an open question whether there is an appropriate way for a human society, consisting of free and equal members, to tackle the influences of natural and social contingencies:

<sup>44</sup> Ibid., 74/64 rev.

<sup>45</sup> Ibid., 75/65 rev.

<sup>46</sup> Ibid., 102/87 rev.

The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts.<sup>47</sup>

Rawls believes that what we seek is an egalitarian conception of justice which is able 'to identify the idea of equality most appropriate to citizens viewed as free and equal, and as normally and fully cooperating members of society over a complete life.'<sup>48</sup> He holds that justice as fairness is capable of fulfilling this task because it includes the difference principle.

To defend his view, Rawls constantly appeals to the idea of reciprocity, which is said to be 'a relation between citizens expressed by principles of justice that regulate a social world in which everyone benefits'.<sup>49</sup> As I explained in Section 1.4., Rawls argues that the idea of reciprocity is most appropriate to define the relation between free and equal citizens, and that this idea finds its natural expression in the difference principle; for assuming that when the least advantaged members of society benefit from inequalities, others benefit even more,<sup>50</sup> it 'represents an agreement to regard the distribution of native endowments as a common asset and to share in the benefits of this distribution whatever it turns out to be.'<sup>51</sup>

In sum, justice as fairness represents an ideal of equality that includes an account of basic equality. The Rawlsian account of basic equality ensures that having the capacity for a sense of justice suffices for an individual being to be entitled to equal justice; and the principles of justice in justice as fairness are charged with the task to distribute the benefits and burdens in a way that honours the relation of reciprocity between free and equal citizens in a democratic society. According to justice as fairness, when the benefits and burdens due to differences

<sup>47</sup> Ibid.

<sup>48</sup> *Restatement*, 49.

<sup>49</sup> *Political Liberalism*, 17. See also *Theory*, 102–105, 510–511/88–90, 446–447 rev.; *Political Liberalism*, 49–50, 54; *Restatement*, 6, 59, 64, 76–77, 123–124, 126, 130, 133.

<sup>50</sup> For this assumption of 'chain connection', see *Theory*, 80–82/69–72 rev.

<sup>51</sup> *Restatement*, 75.

in people's natural and social endowments and other fortuitous influences are all assigned to be governed by the principles of justice, 'reciprocity is fulfilled at the highest level'.<sup>52</sup> I submit that these are some most important considerations that lend support to both the Rawlsian account of basic equality and the principles of justice in justice as fairness, unify them in Rawls's egalitarian conception of justice, and further vindicate the non-differentiation thesis about basic equality.

### 6.5. A Defence of the Relational Conception of Basic Equality

According to the two theses I defend in this chapter, justice demands, on the one hand, that the capacity for a sense of justice be possessed by a most inclusive set of democratic citizens, so that they are capable of fully understanding and acting in accordance with the fair terms of social cooperation; and on the other hand that basic political equality holds among the widest range of free and equal citizens who possess that power.

Now, one might worry that the Rawlsian argument for basic political equality begs an important question: namely, why should the reciprocal practice of social cooperation be taken as the circumstance of basic equality? Indeed, one may insist on knowing why the idea of basic equality needs to be articulated by reference to the idea of social cooperation.

There are several ways to respond to this perfectly sensible query, among which I think the most straightforward is to claim that the reciprocal practice of social cooperation does appear to be one basic and important context where it matters whether individual beings are regarded and treated as equals. It is no

<sup>52</sup> *Theory*, 511/447 rev.

accident that Rawls assumes that the primary role of the principles of justice is to specify the fair terms of social cooperation between free and equal citizens.<sup>53</sup>

To be sure, I need not and do not mean to suggest that individuals can make claims of justice on one another only when there is a certain kind of reciprocal relationship between them; indeed, that suggestion contradicts the enhancement thesis. Suppose it has been recently discovered that there is a previously unknown political community, currently besieged with civil strife that has led to serious plight of its members. On my view, although *ex hypothesi* other peoples have no previous contact with them, as a matter of justice they have no right to disregard the basic interests of the members of this political community. If there are agents capable of securing these interests, they have *prima facie* duties to do so, even if there is no previous or even present interaction between them and those who are in dire need. Thus illustrated, my view about justice is not, to say the least, directly prejudiced against so-called non-relational conceptions of justice.<sup>54</sup>

In any case, my defence of the Rawlsian account of basic political equality does not assume that there can exist no other justification for basic equality, nor does it assume that we may never be concerned with other types of basic equality. In this chapter I argue only that by appealing to our considered judgments about justice we are justified in holding on to basic political equality among all who have a sense of justice. This political conception of basic equality may be compatible with other senses of basic equality on offer.<sup>55</sup>

<sup>53</sup> As witnessed by the still fast-growing literature on global justice, the idea of social cooperation as a reciprocal practice may even be understood in an extended sense to cover not only the domestic but also the international domain. If so, the notion of basic political equality would be global in its scope.

<sup>54</sup> That being said, I also agree that the demands of justice should be more stringent when they are made between those who are related as citizens in a political society. See above n. 3.

<sup>55</sup> Cf. Waldron, *One Another's Equals*, ch. 3.

For instance, one may think of a structurally similar account of basic equality that appeals to *morality*.<sup>56</sup> According to a version of this view, basic *moral* equality holds among all who have a sense of morality, however that capacity is articulated. Under the assumption that the political is part of the moral, this account would include an even more basic sense of equal standing between all who are capable of being a moral agent. Now, it is not my intention to argue for or against such a possibility, but I do want to note that there is a question whether it can plausibly draw upon and vindicate some enhancement and non-differentiation theses parallel to what I defend in this chapter. I suspect that the answer is negative: it is much less straightforward what the path would be. To start with, it is unclear whether there is a ‘minimal morality’ which itself demands all who have the potential to acquire a sense of morality to be thus empowered. Is it true that morality requires anyone and everyone who has such potential to become a moral agent? If so, who is responsible for fulfilling that task? As we know, there is apparently no corresponding problem for an account of basic political equality that appeals to justice: it is reasonable to assume that there always exist some institutional agents, such as states, which are responsible for fulfilling the minimal requirements of justice. The nature of morality seems much more controversial in this regard than that of justice. If this worry makes sense, then the enhancement thesis of the parallel account would be questionable. In addition, it is also not very clear whether a robust interplay between this basic moral equality and a suitable set of moral principles is conceivable. Although I do not claim that one form or another of the two theses I elucidate in this chapter are necessary for any defences of basic equality, it appears that the Rawlsian argument I put forward in this chapter may not always be available to other proposals.

<sup>56</sup> See, for example, Wallace, *The Moral Nexus*, ch. 5.

But I want to emphasise that even if the hypothesized account of basic moral equality were coherent, it would still be a *relational* view. Its critical idea would be that people are basic moral equals in that they possess the capacity which makes their reciprocal moral practice realistically possible; and *that* would be the context out of which such a conception of basic moral equality is articulated.

Now, I suspect that this relational account of basic moral equality, even if its details could be appropriately fleshed out, would still not seem satisfactory to all. More specifically, I think a general worry about my exposition may be that it fails to deliver an explication of a belief, held by some people deeply, that every human being is one another's equal, in a most fundamental sense, no matter whether there is a system of social cooperation, or a web of moral interaction, or whatever. As I construe it, the Rawlsian conception of basic political equality is informed by the context out of which the relevant ideas are articulated; but some people might find it unilluminating, and accuse it of effectively abandoning the aspiration for a categorical recognition of equal human worth. I think this is what is often meant when people say they hang on to an idea of 'basic moral equality', full stop.

For example, one might think that the Kantian ideal of respect for persons, suitably interpreted, grounds this most basic sense of moral equality; indeed, this may be one natural way to read Williams's proposal, which I outlined above.<sup>57</sup> At a most fundamental level, it would be an account of basic moral equality the justification of which does not refer to any interpersonal context. Individual beings are respected as equals simply in virtue of their one or more features which make them, say, moral agents whom it is fitting to respect. The question is then whether we can make sense of this *non-relational* idea of basic moral equality—and if so, one may surely add that much of a relational conception of morality can be built upon it.

<sup>57</sup> See also Carter, 'Respect and the Basis of Equality'.

Again, for all I have said in this chapter there is no attempt to exclude this possibility, but I shall not explore it further. For it remains the case that there are reasons to focus on the justification of basic equality in relational contexts. As Williams reflects on the idea of respect for persons as a humanistic attitude, ‘while it has a good deal to do with politics, and a certain amount to do with equality, has nothing specially to do with political equality.’<sup>58</sup> Similarly, Rawls insists that ‘the notion of respect or of the inherent worth of persons is not a suitable basis for arriving at [the principles of justice].’<sup>59</sup> As I understand his view, Rawls thinks that in the circumstances of justice the notion of respect lacks definite content if it is construed as a practice-independent ideal, and we can make full sense of the idea of basic political equality only if we make reference to the reciprocal practice that involves considerations of justice. For what it is worth, this reference helps us to specify the fair terms which are to be reasonably acceptable to all who are involved in social cooperation as equals. Then, we may of course offer a suitable interpretation of the idea of respect for persons in those terms. As Rawls writes:

Once the conception of justice is on hand ... the ideas of respect and of human dignity can be given a more definite meaning. Among other things, respect for persons is shown by treating them in ways that they can see to be justified.<sup>60</sup>

The fact that we are by our nature social creatures lends considerable support to the thought that a relational account of basic political equality is indispensable for a specification of our identities when we interact and cooperate in a shared common world.

<sup>58</sup> Williams, ‘The Idea of Equality’, 104.

<sup>59</sup> *Theory*, 513.

<sup>60</sup> *Ibid.*



## Conclusion

In the Introduction I mentioned that there was a time when Rawls's theory was seen as a paradigmatic distributive conception of justice. This assessment is, I believe, fair, for justice as fairness does include a number of egalitarian distributive principles; but I also believe that it is inappropriate to criticize it in virtue of this feature. For the possession of it is, on my view, essential to any plausible egalitarian theories, which must include elements of distributive equality, relational equality, and basic equality. According to the main thesis of this work, we should think that distributive principles help an egalitarian conception of justice to articulate a vision of an egalitarian society, in which citizens are related, regarded, and treated as equals.

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