A Conception of Equality of Opportunity

By

Hugh Lazenby

The Queen's College

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Abstract

This thesis defends a conception of equality of opportunity. It comes in two parts. The first part elaborates the conception. It begins by clarifying the concept of equality of opportunity, showing it to be made up of four basic elements: a distributive *pattern*, a set of *subjects*, an opportunity *obstacle* and a distributive *object*. The conception I build from these elements explains the value of the distributive pattern, equality, in terms of a concern for fairness, takes persons as its subject and takes well-being as its object. The conception presented is partial, rather than comprehensive, in that it does not include a detailed account of an opportunity obstacle. The conception of equality of opportunity that I present can also be characterised as a luck egalitarian principle. My aim in elaborating the conception is to show that it has intuitive appeal; it constitutes a *pro tanto* moral principle.

The second part of the thesis examines the implications of luck egalitarianism in two contexts. It begins by examining the context of gifts, arguing that although luck egalitarianism is highly restrictive with respect to the freedom to give this only confirms that it is a merely *pro tanto* moral principle. It continues by examining the context of markets, arguing that luck egalitarianism makes intuitively correct judgments in several specified cases. My aim in applying luck egalitarianism is to show that its implications do not give us reason to reject its initial intuitive appeal. I examine luck egalitarianism generally, rather then the partial conception I elaborate, to allow for the possibility that my earlier arguments are wrong in some respect. Overall, I hope the arguments presented provide reasons to accept the conception presented as morally valuable.

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Introduction

To say that one is in favour of equality of opportunity sounds like a platitude. To say that one is against it would be to mark oneself out as an outsider, beyond the mainstream. But although this concept is a staple of our moral and political diet, its precise meaning remains contested. For some, equality of opportunity means that careers should be open to talents. For others, equality of opportunity means that each person should have the same prospects of a good life. This fact presents a problem: when politicians or academics claim they are in favour of equality of opportunity it is unclear what they mean, and debate about equality of opportunity is hindered by mutual misunderstanding. Politicians of different stripes may claim allegiance to the same value but understand what is entailed by that commitment in opposing ways. In a democracy, this threatens the ability of the electorate to make informed decisions between competing parties. In the academic context, if it is not clear what a commitment to equality of opportunity entails, one will never be able to assess whether equality of opportunity, in some form or other, is instrumentally or intrinsically valuable. In light of this problem, meaningful discussion about equality of opportunity must begin by specifying precisely what is intended by one's commitment, as well as what reasons explain one's commitment.

The depth of the problem is clear in the case of luck egalitarianism. As I will explain, luck egalitarianism is a form of equality of opportunity.[1] Indeed, it is the form of equality of opportunity that I will be concerned with in this thesis. Yet, while luck egalitarianism has received a significant amount of academic attention over the last three decades, the rapid expansion of the literature has already led to much confusion. For one example, consider the objections that Elizabeth Anderson's famous piece, 'What is the Point of Equality?', raises against luck egalitarianism.[2] Many of those objections assume that luck egalitarians take luck egalitarianism to be the only morally relevant value, and not one value among many. Few, if any, luck egalitarians believe this.[3] Even literature that has been crucial to the development of luck egalitarianism often risks running together issues that are more fruitfully kept separate. The 'Equality of What?' debate is one example. In the exchanges between Cohen and Dworkin arguments about what persons may be held responsible for often appear side by side with arguments about what the relevant units of advantage are.[4] But considerations of what one may be held responsible for and considerations of what constitutes advantage are, as I will discuss later, properly separate. Discussing them simultaneously is potentially misleading.

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[1] I justify this claim, explaining why luck egalitarianism is properly conceived of as a variety of equality of opportunity, in Section 1.5.

[2] Elizabeth Anderson, 'What Is the Point of Equality?', *Ethics* 109, (1999): 287-337.

[3] For luck egalitarian responses to Anderson see Kristin Voigt, 'The Harshness Objection: Is Luck Egalitarianism Too Harsh on the Victims of Option Luck?', *Ethical Theory and Moral Practice* 10, (2007): 389-407. Alexander Kaufman, 'Choice, Responsibility and Equality', *Political Studies* 52, (2004): 819-836. Carl Knight, 'In Defence of Luck Egalitarianism', *Res Publica* 11, (2005): 55-73.

[4] G.A. Cohen, 'On the Currency of Egalitarian Justice'; 'Equality of What? On Welfare, Goods and Capabilities', in Martha Nussbaum and Amartya Sen (eds.), *The Quality of Life*, Oxford: Oxford University Press, (1993), pp. 9-28; 'Expensive Tastes Rides Again', in Justine Burley (ed.), *Dworkin and his Critics*, Oxford: Blackwell, (2004), pp. 3-29. Ronald Dworkin, *Sovereign Virtue*, Cambridge Mass.: Harvard University Press, (2002), esp. ch. 1, 2 and 7; 'Dworkin Replies', in Justine Burley (ed.), *Dworkin and his Critics*, Oxford: Blackwell, (2004), pp. 339-350.

My aim in this thesis is to elaborate and examine a conception of equality of opportunity or, more specifically, a partial conception of luck egalitarian equality of opportunity, and the reasons that support it. In other words, I will aim to show that a particular conception of equality of opportunity is morally valuable. The thesis has two parts, corresponding to two challenges that must be met when attempting to build a case for the value of some moral conception or principle.

The first challenge in making a case for a moral conception or principle is to show that when it is stated it has intuitive appeal. For example, the utilitarian principle of the greatest happiness for the greatest number has, when stated, considerable intuitive appeal, while the alternative principle of the least happiness for the greatest number does not. Further, particular versions of the greatest happiness principle will have greater appeal than others if they include compelling accounts of what happiness is and who the individuals referred to are. When making a case for a particular conception of equality of opportunity, then, displaying its intuitive appeal requires presenting and justifying the various elements that compose that conception. To this end, Part One of the thesis breaks down the concept of equality of opportunity into its component parts, before setting about building specific accounts of these parts in order to develop the desired conception.

A comprehensive moral conception of equality of opportunity requires accounts of why the pattern of equality is valuable, who is to have equality of opportunity, what constitutes an opportunity, and which objects should be used to measure opportunities. Time and space do not permit me to present a comprehensive conception. Instead, I present a partial conception. That is, I argue that equality is valuable when and because it is fair, that persons ought to have equality of opportunity, that we should conceive of opportunities in relation to responsibility and that well-being is the relevant object of opportunities, but I do not present a full account of responsibility and I only present a method for determining what constitutes well-being, not a complete account of what well-being is. While it would be better if a comprehensive conception were fleshed out, the partial conception I develop still serves to clarify a number of potential confusions about the nature of equality of opportunity and presents a case for why the particular kind of equality of opportunity I am concerned with is valuable.

The second challenge in making a case for a particular moral conception or principle is to show that, when it is applied, the judgments it makes conform with our intuitions about how one ought to respond to particular cases. For example, if a conception of equality of opportunity is said to be valued because it is fair, but labels as unfair particular instances of inequality that we do not believe are unfair, we will have reason to reject it. If the conception helps to explain intuitions that we already hold about the unfairness of particular cases, we will have reason to endorse it. And, if the principle recognises instances of unfairness that we agree are unfair but which we still feel, all things considered, are justified, then we will consider the principle to be a merely *pro tanto* moral principle. Accordingly, Part Two of the thesis examines the implications that luck egalitarian equality of opportunity (hereafter, 'luck egalitarianism') has in particular contexts. Specifically, it explores how certain everyday actions such as gift-giving and market-generated outcomes should be viewed from the luck egalitarian perspective. These investigations also represent small steps towards determining how far the world we live in achieves the luck egalitarian distributive ideal and what social adjustments could be made to better achieve it.

Before I outline the chapters of the thesis, I want to highlight two further points. First, although the chapters of the first part are intended to fit together as part of a conception of equality of opportunity, each chapter addresses questions of independent philosophical importance. Therefore, even if one does not subscribe to a particular element of the conception of equality of opportunity I seek to describe, one could still find use in the discussions given in the other chapters. For example, even if one rejected my account of which object ought to be the focus of equality or opportunity, one could still find useful my discussion of why equality is valuable. Part One of the thesis is, on the one hand, a rare attempt to construct and defend a conception of equality of opportunity whilst also, on the other hand, a series of independent essays that explore specific problems in egalitarian theory and distributive justice.

Second, in Part Two of the thesis I do not seek to apply the specific account of equality of opportunity developed in the first part of the thesis. Rather, I apply luck egalitarianism in general, leaving open, as far as is possible, questions regarding the exact nature of the different components of the luck egalitarian position, such as whether the correct object for opportunities is well-being or resources. I do this for two reasons. First, I want to make room for the possibility that the arguments I make in Part One might be wrong. If Part Two is too tightly linked to the account in Part One, mistakes in Part One will spill over and be reproduced in Part Two. Second, I believe the conclusions I draw in Part Two will be more interesting if they can be shown to apply to a wider variety of comprehensive conceptions of luck egalitarianism. And, since the specific conception of equality of opportunity I defend is a type of luck egalitarianism, if luck egalitarianism generally can be shown to provide the correct judgments when applied, this will speak in favour of my conception too; although, admittedly, it will not give us a reason for favouring it over competing conceptions of luck egalitarianism. With these introductory comments in place, I will now provide a chapter outline.

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Chapter 1 introduces the concept of equality of opportunity. I begin by describing the four elements that compose the concept. I continue to offer an account of how these elements fit together conceptually, before outlining the connection between equality of opportunity and luck egalitarianism. I conclude by making clear that the fact that the concept of equality of opportunity admits many different conceptions does not imply that all conceptions are without value, highlighting that different conceptions of equality of opportunity may be valuable for different reasons.

Chapter 2 presents a fairness-based account of why the distributive pattern of equality can be morally valuable. I begin by giving a brief overview of what I call the 'Egalitarian Argument'. This argument states that persons are equally valuable, that this value gives them a certain status, and that this status generates claims to advantage. I then present the idea that satisfying these claims fairly grounds a concern for equality of opportunity or, at least, the particular version of equality of opportunity I am developing. I argue that the satisfaction of claims requires their satisfaction in outcomes and, correspondingly, that weighing claims correctly or representing them in procedures or lotteries is not sufficient for their satisfaction. I explore John Broome's theory of fairness and contrast it with an alternative, arguing that we should reject Broome's view and accept the alternative.[5] I continue to consider how we should view the nature of the badness of unfairness, contrasting Broome's account with Temkin's.[6] I conclude the chapter by contrasting distributive equality with relational equality, defending distributive egalitarianism against the objection that it does not show adequate respect for persons.

Chapter 3 explores who the subjects of equality of opportunity are. I set out to defend the proposal that all persons have equal status and so equally strong claims, at least antecedently to any choice they make. I identify an objection to this proposal which argues that since there is no candidate attribute or set of attributes possessed equally by all creatures included within the group 'persons', persons cannot be thought of as having equal status. I label this the 'Differences Objection'. I then examine five accounts of the equality of persons, including the proposals that persons have equally important *interests*, that persons are *pre-socially* equal, that persons are equal in virtue of possessing a *transcendental property*, that persons are equal in virtue of possessing a *range property* and, finally, that persons are equal because they have the capacity for *responsible choice*. I endorse the last of these possibilities. I conclude the chapter by considering what is implied if persons are properly considered as unequal.

Chapter 4 explores the object of equality of opportunity. It comes in two parts. In the first part I give a general overview of important accounts within the 'Equality of What?' debate. I begin with the following two clarificatory comments. First, I argue that the object of equality of opportunity ought not to be considered as identical with the object used by public

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[5] John Broome, *Weighing Goods: Equality Uncertainty and Time*, Oxford: Blackwell, (1991); *Ethics Out of Economics*, Cambridge: Cambridge University Press, (1999).
[6] Larry Temkin, *Inequality*, Oxford: Oxford University Press, (1993). Broome, *Ethics Out of Economics*.

institutions for the purpose of interpersonal comparison. Second, I aim to distinguish further the relationship between obstacle and object. I argue that many arguments in the 'Equality of What?' debate have confused judgments about the appropriate opportunity obstacle (responsibility), with judgments about the appropriate object (well-being/resources). This rules out of hand some, but not all, of the arguments frequently presented by resource theorists. Having made those clarifications, I then set out the two main positions within the 'Equality of What?' debate - well-being views and resourcist views - presenting and evaluating the key arguments forwarded by each side.

In the second part I consider the 'Expensive Tastes Objection'. I argue that the strongest instance of the Expensive Tastes Objection is found in a version of Dworkin's 'Continuity Argument' that I label the 'Interpersonal Requirement'. I show that the debate hinges on the following question: is it ever plausible to compensate an individual, or offer compensation to an individual, for a disadvantage, even when the individual in question does not feel that that feature of their life for which they are to be compensated is a disadvantage? I then present three arguments to show that it *is* plausible that we should offer compensation in these cases. I consider whether Dworkin's appeal to authentic (rather than actual) preferences can allow him to accommodate this conclusion, before finally presenting an alternative account of how we should conceive of the object of equality of opportunity. This chapter completes Part One of the thesis.

Chapter 5 examines luck egalitarianism in the context of gift-giving. I begin by separating out cases of material and non-material giving, observing that existing treatments of gifts tend to focus exclusively on material giving. I then argue that many instances of material and non-material giving are not compatible with maintaining a fair luck egalitarian distribution. This presents a problem in so far as the maintenance of a luck egalitarian distribution appears too costly in terms of other values. I then consider a number of possible responses to this conclusion, accepting that the luck egalitarian may make a move to pluralism to save her position. The argument in this chapter is not, therefore, intended as a *reductio ad absurdum* argument against luck egalitarianism, but rather as a means of clarifying the implications of the conception presented, showing that luck egalitarianism can only be a *pro tanto* moral consideration.

Chapter 6 considers luck egalitarianism in the context of market transactions. I start by examining limited cases of market interaction in the form of a one-off trading situation that I label the 'Simple Case'. Having determined how this case is to be conceptualized from the luck egalitarian perspective, I then proceed to examine what I call the 'Complex Case', that is, a case where individuals make production decisions prior to any possible trading. I observe that market interactions in the Complex Case are equivalent to cases of partial insurance. This, I argue, implies that there will often be cases for redistribution following market interaction in the Complex Case, even when individuals have equal starting points and subsequently make only free un-coerced choices. This constitutes a response to a recent objection to luck egalitarianism presented by Matthew Seligman.[7] I conclude by suggesting that since labour markets typically involve unavoidable risk, there is a case for redistributing between persons in cases where this risk falls out unequally.

In the conclusion of the thesis, I outline some important questions that have been left unanswered. I select one of these questions - the question of what weight should be given to fairness relative to other considerations - and explore it further. Specifically, I ask whether it

[7] Matthew Seligman, 'Luck, Leverage and Equality: A Bargaining Problem for Luck Egalitarians', *Philosophy and Public Affairs* 35, (2007): 266-297.

is possible to weigh the value of fairness against other values through the Rawlsian method of the Original Position and, even more specifically, whether it is possible to be both a Rawlsian and a luck egalitarian. Overall, I hope the thesis gives us reasons to accept the conception of equality of opportunity presented as morally valuable.

Part 1

Chapter 1 The Concept of Equality of Opportunity

In this chapter I describe the concept of equality of opportunity. The chapter has seven sections. I begin in the first section by introducing the four elements that constitute the concept and making a couple of terminological clarifications. In the subsequent two sections, I consider the concept of equality and the concept of opportunity independently before, in the fourth section, elucidating how these elements fit together to constitute equality of opportunity. The fifth section discusses the connection between equality of opportunity and luck egalitarianism and the sixth section makes clear that the fact that the concept of equality of opportunity admits many different conceptions does not imply that all conceptions are without value, highlighting that different conceptions of equality of opportunity may be valuable for different reasons. The seventh section concludes by way of a summary.

1.1 The Structure of the Concept

Equality of opportunity may be employed as either a normative or descriptive concept. When we state that equality of opportunity does or does not obtain, we use it as a descriptive concept. When we state that equality of opportunity ought or ought not to obtain, we use it as a normative concept. I will be concerned with equality of opportunity as a normative concept.

There are four elements that make up the concept of equality of opportunity, irrespective of whether it is used normatively or descriptively. They are a commitment to:

(1) A distributive *pattern*, namely equality.

(2) A description of the *subjects* between whom the pattern is to exist.

(3) A distributive *object* around which the pattern is focused, such as for example, jobs, resources or welfare.

(4) An account of the *obstacle(s)* to achieving the object that ought to be absent or equalised as an obstacle(s), such as wealth, physical strength or skin colour.[1]

Each of the above elements is a *necessary* part of the concept of equality of opportunity; without any one element the described concept would no longer be the concept of equality of opportunity. If one hopes to move from an abstract *concept* of equality to a particular *conception* of equality of opportunity, one has to provide a particular account of the elements that compose the concept. In particular, if one hopes to develop a normative conception of equality of opportunity, one has to give an account of the value of the pattern, equality. For now, though, my aim is simply to make good my proposal that the concept of equality of opportunity has the suggested structure. I will provide support for this proposal by analysing the concepts of equality and opportunity independently, before showing how they fit together.

A couple of further clarificatory points are necessary. First, the terminology that I have provided differs from other popular characterisations of equality of opportunity in

[1] This delineation of the concept is drawn from Peter Westen's account in Peter Westen, 'The Concept of Equal Opportunity', *Ethics* 95, (1985): 837-850.

avoiding the term 'metric'.[2] That term refers to a space of measurement. Applied in relation to equality, it refers to the space in which (in)equalities are to be measured. So, if we endorse equality of bananas, bananas are being endorsed as the metric of equality. However, if we endorse equality of *opportunity* for bananas, the space in which we would be measuring inequalities would no longer be confined to the possession of bananas, it would also include the opportunities that individuals had for bananas; 'opportunity for bananas' would be the metric. We can, then, group together what I have called the 'obstacle' and 'object' elements of a conception of equality under the general heading 'metric', and no difference in content between my account and more traditional accounts is implied by my choice to examine questions of obstacle and object separately. Indeed, I will also use the term metric when necessary to refer specifically to both the obstacle and object elements together.

Second, it is worth reviewing the Rawlsian distinction between 'concept' and 'conception'. The term 'concept' refers to a general notion or idea. The term 'conception' refers to a specific interpretation of a notion or idea. Rawls illustrates this distinction in relation to justice in the following passage:

"*The concept of justice, applied to an institution, means, say, that the institution makes no arbitrary distinctions between persons in assigning basic rights and duties, and that its rules establish a proper balance between competing claims. Whereas a conception includes, beside this, principles and criteria for deciding which distinctions are arbitrary and when a balance between competing claims is proper. People can agree on the meaning*

[2] See, for example, G.A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics* 99, (1989): 906-944.

of the concept of justice and still be at odds, since they affirm different principles and standards for deciding those matters. To develop a concept of justice into a conception of it is to elaborate these requisite principles and standards."[3]

In the context of equality of opportunity, we may distinguish between the concept - the idea that some range of creatures face, or ought to face, the same obstacles to some set of objects - and particular conceptions of equality of opportunity - accounts that include precise descriptions of what the opportunities are for, which obstacles are absent, and who this equality holds, or ought to hold, between. I will now move to consider the concept of equality.

1.2 Equality

The concept of equality refers to two or more things being the same in some specified respect. Equality may also be used descriptively or normatively. Since I will be considering equality of opportunity from a normative perspective, I will also focus on normative conceptions of equality, which we can call 'statements of egalitarian principle'. Importantly, all conceptions of equality must be qualified on either side by, first, a description of the set of things that are addressed by the statement (the *subjects*) and second, a description of the respect in which those things either are, or ought to be, equal (the *metric*).

[3] John Rawls, *Political Liberalism*, Expanded Edition, New York: Columbia University Press, (2005), fn.15, p. 14.

To see that statements of egalitarian principle must include an account of a subject and a metric, consider the principle that 'All *persons* ought to have equal *welfare*'. Suppose that we remove the description of which features qualify some creature as a person, and so as the subject of egalitarian concern, making the statement simply 'All ought to be made equal with respect to welfare'. This principle implies not only that cats ought to have the same amount of welfare as persons, but also that rocks, tables, and water ought to. Without a subject egalitarian principles have no application. Now consider a statement where the object is not specified: 'All persons ought to be made equal'. To make things equal in one respect is to make them unequal in another. To equalise height, for example, we would have to unequalise treatment, since those who would have otherwise been shorter would have to be treated differently to those who would otherwise have been taller. Thus, the general demand to make persons equal faces the problem that different metrics of equality are competitive with one another. Without a metric, egalitarian principles are indeterminate.

To generalize, then, we might conclude that all statements of egalitarian principle must take the form 'All Xs ought to be equal with respect to some metric Z'. However, perhaps this definition threatens to include as being concerned with equality theories that are more traditionally thought of as anti-egalitarian. For example, the Nozickian theory of rights would appear to agree that all persons ought to be equal in their possession of rights, but this theory is not generally considered egalitarian.[4] Do we have a reason to reject the structure I have outlined, limiting further which principles may be described as concerned with equality? In fact, we do not. Nozick's favoured principle states that persons have

[4] Robert Nozick, *Anarchy, State and Utopia*, New York: Basic Books, (1974).

certain rights that may not be intentionally transgressed by other persons, or the state, for any purpose.[5] He intends these rights to be non-comparative rather than comparative.[6] The form of the principle invoked by Nozick is then simply, 'Any X [a person] is entitled to Z [a set of rights]'. This can be generalised to 'All Xs ought to be equal with respect to Z'. But it is clear that the demand for equality in this generalised statement has no independent normative force; the demand for equality is wholly derivative of the demand that each individual should have Z and could be stated without any reference to equality at all as 'All Xs ought to have Z'. On closer inspection, the superficially egalitarian generalised version of the Nozickian principle is not actually a *principle* at all, it is a *conclusion* derived from the foundational absolute principle of rights for persons that Nozick endorses. We can reject the proposition that the Nozickian position involves an egalitarian principle of the form 'All Xs ought to be equal with respect to some metric Z'.

The fact that the Nozickian principle invoked no comparative judgment was the first clue that it could not be an egalitarian principle; equality is a necessarily comparative notion. But while it is clear that all egalitarian principles must be comparative, we may not describe all comparative principles as egalitarian principles. The principle that 'greens ought to have less *Z* than blues' is a comparative principle, placing disvalue on cases where greens have more *Z* than, or the same amount of *Z* as, blues. But it is not egalitarian as it does not propose an equality between its subjects - greens and blues. This suggests there is room to distinguish egalitarian and non-egalitarian comparative principles, where only

[5] *Ibid*., p. 10.
[6] For important work on this distinction see Joel Feinberg, 'Noncomparative Justice', *The Philosophical Review* 83, (1974): 297-338.

principles that are comparative *and* demand equality in some metric between their subjects count as egalitarian.

To summarize, for a statement of egalitarian principle to be coherent it must include a description of both subject and metric. And a statement of principle will qualify as egalitarian if, and only if, a) it places value on the comparative standing of its subjects in terms of some metric, and b) the comparative standing it values is one of equality. Principles of the form 'All Xs ought to be equal with respect to some feature Z' satisfy these conditions.[7]

Of course, my claim that the above conditions are sufficient for a principle to qualify as egalitarian is controversial.[8] Some will argue that for a principle to be considered egalitarian it ought to refer specifically to the equal standing of persons, or that it must see equality as a particularly weighty normative consideration. This sort of objection mistakes concept for conception. My purpose here is simply to give the bare form of egalitarian principles, not to identify which are the most attractive.

1.3 Opportunity

[7] In a classic discussion, Joseph Raz identifies egalitarian principles as principles of which "it is their *purpose* to ensure equality within their sphere of application", continuing to describe the paradigmatic egalitarian principle as taking the form, "All Fs who do not have G have a right to G if some Fs have G." While I find Raz's general statement helpful, I avoid Raz's formal description because a) it is framed specifically in terms of rights and, more importantly, b) Raz's formulation does not admit the principle "all Fs that have G ought not to have G if some Fs do not have G" as an egalitarian principle. See Joseph Raz, *The Morality of Freedom*, Oxford: Oxford University Press, (1986), p. 225.

[8] Carl Knight presents a very different and much stronger definition of what constitutes a concern with equality. See Carl Knight, 'Describing Equality', *Law and Philosophy* 28, (2009): 327-365.

What constitutes an opportunity? Suppose you are at the 1936 Olympics. Jesse Owens, Ralph Metcalfe, Tinus Osendarp and another five competitors are lining up to take part in the final of the 100 metres. Would it make sense to say that each competitor has an opportunity, *any* opportunity, to win the race? They must all run the same distance, they are all wearing similar clothing and none, we can suppose, have been taking performance-enhancing drugs. The common sense answer would then be 'Yes'. But it is also true that some of the competitors, most notably Jesse, are much faster runners than the others and are much more likely to win. Indeed, some may be so much faster that the slower athletes will find it impossible to match them. No matter how hard Tinus tries, it might be, and probably was, impossible for him to catch Jesse. Is it still appropriate to say that all participants had an opportunity to win the race? The answer to the question is at least less clear than it first seemed.

The first thing to note is that just as the concept of equality implied an account of an agent and a metric, the concept of opportunity also implies these specifications. That is, an opportunity must be possessed by someone (a *subject*) and it must be an opportunity for something (a *metric*). And, again, like equality and equality of opportunity, opportunity may be used either normatively or descriptively. But none of this tells us what it is to have an opportunity. I will contend that the concept of an opportunity is relevantly similar to Gerald MacCallum's account of the concept of freedom.

MacCallum proposes that the concept of freedom can be represented in terms of a triadic formula; freedom is always "*of* something [a subject], *from* something [an obstacle], *to* do, not do, become, or not become something [an object]."[9] He represents the formal format of the concept as:

"*X is (is not) free from Y to do (not do, become, not become) Z', where X ranges over agents, Y ranges over such 'preventing conditions' as constraints, restrictions, interferences, and barriers, and Z ranges over actions or conditions of character or circumstance.*"[10]

I do not mean to take a position on whether MacCallum's account of freedom is correct. My claim is simply that this focus, whether or not it captures the concept of freedom, is relevantly similar to the concept of opportunity. It needs a slightly different linguistic construction, but statements of opportunity can be formalized in the following terms:

'*X has an opportunity for Z, when X may choose to pursue Z in the absence of some obstacle Y', where X ranges over agents, Y ranges over 'preventing conditions', or as I have called them 'obstacles', and Z ranges over the possible objects of the opportunity.*'

Accordingly, to say that an agent has an opportunity for an object is, at its most abstract, only to say that an agent may choose to pursue some object without the presence of some obstacle.

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[9] Gerald MacCallum, 'Negative and Positive Freedom', *The Philosophical Review* 76, (1967): 312-334, p. 314.
[10] *Ibid*., p. 314.

This account of the concept of opportunity is controversial. It allows that one may be said to have an opportunity for some object, just because some obstacle has been removed, even though it is practically impossible for one to actually achieve that object due to the presence of other obstacles. Yet it is commonly thought to be part of possessing an opportunity that one has some prospect of achieving the object. More precisely, possessing an opportunity is commonly thought to entail either that one can actually *do* something to achieve the object, or, more minimally, that there is a probabilistic *chance* one will achieve the object. In this vein, Peter Westen describes a defining component of having an opportunity as being that "there must be *no insurmountable* obstacles in the way of X's [the agent] achieving Y [the object]."[11] If Westen and the earlier cited common intuition are to be believed, my proposal may not adequately represent the concept of an opportunity.

Standard linguistic use of the concept of opportunity supports my position against the above objection. Consider a case where the goal in question is membership of the army and the barrier in question is open homosexuality. Open homosexuals are prohibited from entering the army. Now suppose that the ban on open homosexuals being admitted to the army is lifted. It would accord with standard linguistic use to describe homosexuals as having been given the opportunity to enter the army. Yet while the ideal of equal opportunity might even be invoked to justify the ban being lifted, it would be quite plainly false to say that after the ban had been lifted all homosexuals actually have the possibility, or even a probabilistic chance, of entering the army. There are other barriers to entry, such as certain physical tests, that it would be impossible for many people, homosexual and heterosexual, to overcome. Thus, to propose that someone has an opportunity for some

[11] Peter Westen, 'The Concept of Equal Opportunity', p. 842.

object does not always imply that there are no insurmountable obstacles preventing her from attaining that object.

The notion of a 'formal opportunity' also supports my claim. We describe a person as possessing a formal opportunity just in case there are no legal barriers that prevent a person or group from achieving some goal. It is a part of the definition of a formal opportunity that it does not require the agents who possess the opportunity actually to be able to achieve the goal in question; this is what distinguishes a formal opportunity from a substantive opportunity. And, in so far as it still makes sense to call a formal opportunity an opportunity of a sort, my point is supported.

These examples show that our use of the concept 'opportunity' does not always require that an agent actually be able to achieve some object for the attribution of an opportunity to be applicable. This is not to deny that it may be a feature of a particular *conception* of an opportunity that one should be able to achieve, or should have some chance of achieving, the object. But it cannot be a feature of the concept of opportunity. We should accept my definition of the concept of opportunity. In his definition of opportunity, Peter Westen confuses concept with conception.

1.4 Equality of Opportunity

We have briefly explored the concept of equality and the concept of opportunity. We have seen that either term must be flanked by descriptions of its subject and its metric, and we have a more precise idea about the nature of the concepts of equality and opportunity. But we have not asked how these concepts are to be drawn together within the concept of equality of opportunity. This leaves room for ambiguity between two ways the concepts might relate. In exposing this ambiguity I will construe responsibility as the opportunity obstacle as it is this conception that will be explored in the following sections. Of course, the bald claim that I will construe 'responsibility as the opportunity obstacle' is unclear so, before considering how equality and opportunity relate within the concept of equality of opportunity, I will explain my meaning.

In claiming that responsibility is the relevant opportunity obstacle, I am using the idea of an opportunity presented earlier in an inverted way. I earlier explained the concept of opportunity in terms of having a choice to pursue some object in the absence of one (set of) obstacle(s) or another. I am now saying that opportunity, on the specific conception that I intend, requires the absence of all obstacles except one: responsibility. That is, all obstacles, except those obstacles which the individual is responsible for, are required to be absent for someone to have an opportunity. This is only a different instance of the same general conceptual structure. Instead of saying obstacle 'X' must be absent, I am now saying that all obstacles '*Not* X' must be absent.

Now consider how equality and opportunity fit together. On one interpretation of the relation between equality and opportunity, conceived here in terms of responsibility, we have equality as a value and then suppose that supplementary judgments about responsibility can justify moves away from equality. The distinctive feature of this account is that equality and responsibility are taken to be separate values. There is a value, equality, that demands that people have equal amounts of some object, and there is another value, responsibility, that can be weighed against equality to justify deviations from equality in all things considered cases. This interpretation is *not* the one we are dealing with here. Indeed, I do not believe this idea is properly called a conception of equality *of* opportunity.

As I understand it, equality of opportunity involves an intimate connection between equality and opportunity. To take the case of opportunity as responsibility again, equality and responsibility should be thought of as non-competitive since the requirement *is* that individuals should fare equally with respect to that which they bear no responsibility for, at least in terms of the specified object, and except when they choose to forgo the specified object. To give one example, if we take the case of a race and assume the participants are responsible only for their natural endowments and that the object is winning the race, this would require that no factors other than their natural endowments obstructed the participants from winning the race, should they choose to participate. Factors such as upbringing and sportswear would have to be equalised. This understanding allows that putatively unequal outcomes, measured solely in terms of the object, may, when viewed in terms of the overall metric that includes both the object and the obstacle, be relevantly equal.[12] With this last piece in place we now have a rough picture of the intersection of the various elements that form the concept of equality of opportunity.

1.5 Equality of Opportunity and Luck Egalitarianism

The parents of those views now characterised as luck egalitarian took themselves to be presenting conceptions of equality of opportunity, yet the connection between luck

[12] One can also note that having *equal* opportunities does not require that any opportunity exists at all. See Section 2.2 for a further elaboration of this point.

egalitarianism and equality of opportunity is rarely made explicit in the most recent discussions.[13] Re-drawing this connection has importance for the clarity of what has become a rather blurred debate. Most importantly, it helps to illuminate what is implied by the luck egalitarian view. As I will show, there are at least a couple of senses in which luck egalitarianism is a weaker proposition than it is commonly taken to be; it is compatible with many alternative positions in political philosophy that it is thought to exclude; it allows that there ought to be inequalities in people's life prospects even before any choices have occurred.

Luck egalitarianism claims that it is morally bad, because unfair, when individuals fare differently in terms of brute luck. More precisely, framed in terms of equality, it claims that each individual ought to fare equally in the net quantity of brute luck they experience over a lifetime. To elaborate this claim one first needs to refine what constitutes brute luck. Many different things might be considered luck depending on what perspective is adopted.[14] Fortunately, luck egalitarians are in agreement that brute luck is to be measured in terms of inequalities in *advantage* for which individuals may not be held *responsible*.[15] Of course, while there is convergence on the fact that brute luck is a matter of the

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[13] For examples of authors who do not make this distinction see Nir Eyal, 'Egalitarian Justice and Innocent Choice', *Journal of Ethics and Social Philosophy* 2, (2007): 1-18. Carl Knight, 'The Metaphysical Case for Luck Egalitarianism', *Social Theory and Practice* 32, (2007): 173-188.
For the classic statements of equality of opportunity positions now regarded as luck egalitarian, see Richard Arneson, 'Equality and Equality of Opportunity', *Philosophical Studies* 56, (1989): 77-93. G.A Cohen, 'On the Currency of Egalitarian Justice'.

[14] For an elaboration of this thought see Susan Hurley, *Justice, Luck and Knowledge*, Cambridge Mass.: Harvard University Press, (2003), pp. 106-127.

[15] We do not have to think of advantage as a comparative notion. In this context it is catch-all term employed to include absolute gains and benefits.

advantages one holds that do not correspond to responsibility, there is substantial disagreement about what constitutes advantage and what one may be held responsible for.[16]

The important point here is that we may characterise the demand for equality in brute luck in terms of a principle of equality of opportunity. Specifically, the luck egalitarian proposal that individuals ought to fare equally in terms of brute luck translates to the proposal that individuals ought to have equal opportunity for advantage, where opportunity is measured in relation to responsibility. Both views, which are in fact one and the same, object to differences in advantage that do not track responsibility and choice. Thus, the general point is simple: inequalities in brute luck *are* inequalities in advantage for which individuals are not responsible for and luck egalitarianism constitutes an *interpretation of* equality of opportunity.

While the above is not controversial, the further claim that I will deduce from it is. Luck egalitarians typically take themselves to be committed to the view that individuals ought to have equally good prospects over a lifetime.[17] I dispute this. The grounds for this disputation relate to the notion of responsibility within luck egalitarianism. To illustrate the point, consider again Larry Temkin's canonical statement of the luck egalitarian principle that, "It is bad - unjust and unfair - for some to be worse-off than others [through no fault or choice of their own]."[18] Temkin's mention of 'fault or choice' is designed to track two possible responsibility considerations that might justify inequalities in well-being -

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[16] The main protagonists in this dispute have been G.A Cohen and Ronald Dworkin. I pursue these issues further in Chapter 4. For the last installment of the debate see G.A. Cohen, 'Expensive Taste Rides Again', in Justine Burley (ed.), *Dworkin and his Critics*, Oxford: Blackwell, (2004), pp. 3-29. Ronald Dworkin, 'Dworkin Replies', in Justine Burley (ed.), *Dworkin and his Critics*, Oxford: Blackwell, (2004), pp. 339-350. For Dworkin's claim that he is not a luck egalitarian see Ronald Dworkin, 'Equality, Luck and Hierarchy', *Philosophy and Public Affairs* 10, (2003): 283-345.
[17] See, for example, Carl Knight, 'The Metaphysical Case for Luck Egalitarianism'.
[18] Larry Temkin, *Inequality*, Oxford: Oxford University Press, (1993), p. 13.

Temkin's favoured object. Luck egalitarians have typically focused on the choice element of Temkin's statement and have proceeded to deduce that the demand to equalise brute luck requires that individuals either, first, if free will libertarianism or compatibilism is true, have equal prospects antecedent to any choices they make or, second, if hard determinism is true, have equally good lives irrespective of the choices they make.

However, it is not implausible that an ethical theory might assign to individuals responsibility for entirely unchosen elements of their character, hence Temkin's mention of *fault*. One might think it proper to hold an individual responsible for virtuous characteristics, such as intelligence or generosity, even though these characteristics were never chosen but were, rather, basic features of her nature. If this is so, one could proceed to argue that individuals with more perfect (less faulty) natures ought, when differences in brute luck where removed, to have greater prospects of advantage that they may choose to exploit. The logical extension of these reflections is that we could incorporate elements of other theories, such as virtue theory or desert theory, into the equality of opportunity/luck egalitarian framework if those theories could be shown to be theories of responsibility. Luck egalitarianism is compatible with more superficially rival theories than is generally acknowledged.

This argument does not trade on our accepting the particular phraseology of Temkin's statement. It only requires that luck egalitarianism truly demands that we equalise brute luck, conceived of in relation to responsibility. So long as this is true, if responsibility can be shown to extend to unchosen elements of character the inequalities in advantage that connect directly to those characteristics need not be objectionable from the luck egalitarian perspective. The best account of responsibility may well lead to a strict equality of prospects, but to show this we need an argument. The point becomes less controversial when we remember the identity between luck egalitarianism and equality of opportunity: views of equality of opportunity rarely require an equal attainment of, or prospect to attain, their object; they only require that individual's access to the object is (not) moderated by some obstacle(s). The same applies here.

1.6 Is Equality of Opportunity Empty?

Understanding the structure of the concept explains why individuals of different political stripes may all declare a commitment to equality of opportunity. As the concept allows different conceptions with different accounts of the four elements, all may claim allegiance to the same value while disagreeing on its content; one may believe in equality of opportunity for bananas, another for apples, but both can be said to believe in equality of opportunity. The worry this generates is that equality of opportunity is empty, always without normative content, invoked only as a rhetorical tool by political opportunists and misunderstood by egalitarian philosophers.[19] There is no reason to accept this conclusion. It is undoubtedly true that unqualified appeals to equality of opportunity are vacuous, just as unqualified appeals to liberty and other values are, but it does not follow from this that all appeals to equality of opportunity, or any other value, must be vacuous. What the threat of

[19] This claim is suggested by Peter Westen, in Peter Westen, 'The Empty Idea Of Equality', *Harvard Law Review* 95, (1982): 537-596. Indeed, Anatole France also observed rhetorically that, "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges". This can be constructed as a genuine statement of a belief in equality of opportunity where the obstacle is the law, the metric sleeping under bridges and the agents the people of revolutionary France. Anatole France**,** *Le Lys Rouge*, Paris: Calmann-Lévy, (1894), p. 204. The original French is "La loi, dans un grand souci d'égalité, interdit aux riches comme aux pauvres de coucher sous les ponts."

emptiness demands is that we specify which form of equality of opportunity we take to be morally attractive and why. To make sense of appeals to equality of opportunity, to be clear about what it is that we are arguing for, we need to give a clear account of our conception of that value and make explicit the reasons that support it. When this elucidation is performed we will have a value the importance of which may be meaningfully assessed.

Indeed, we should allow that different conceptions of equality of opportunity may be valuable for different reasons. The conception of equality of opportunity that requires careers to be open to talents may be valued because it serves to promote an efficient distribution of skills and not, or not only, because it is fair. The conception of equality of opportunity that requires athletes to compete without the aid of performance enhancing drugs may be valued because it helps us to identify human excellence and not, or not only, because it is fair. However, the conception of equality of opportunity I will attempt to elaborate in the next chapter is valued only because it is fair.

1.7 Conclusion

In this chapter I have elucidated the structure of the concept of equality of opportunity. This involved clarifying what it is for a principle to be egalitarian and elaborating the concept of opportunity. I have also sketched how equality and opportunity fit together as part of a conception of equality of opportunity, explaining the relationship between equality of opportunity and luck egalitarianism. In the forthcoming sections I will begin to sketch the constituent elements of a partial conception of equality of opportunity.

Chapter 2 The Value of Equality of Opportunity

In this chapter I present a fairness-based account of why my conception of equality of opportunity is morally valuable. The chapter has six sections. I begin by giving a brief overview of what I call the 'Egalitarian Argument'. This argument states that persons are equally valuable, that this value gives them a certain status, and that this status generates claims to advantage. It includes the idea that satisfying these claims fairly grounds a concern for equality of opportunity or, at least, the particular version of equality of opportunity I am developing. In the second section, I argue that the satisfaction of claims requires their satisfaction in outcomes and, correspondingly, that weighing claims correctly or representing them in procedures or lotteries is not sufficient for their satisfaction. In the third section, I present John Broome's theory of fairness and contrast it with an alternative. In the fourth section, I continue to consider the character of unfairness, discussing whether it constitutes a personal harm, if it is an institutional or pre-institutional notion and what weight should be given to unfairness as a value. In the fifth section, I contrast the arguments for distributive equality with the arguments for relational equality. The sixth section concludes by way of a summary.

2.1 The Egalitarian Argument

The egalitarian argument begins from the foundational proposition that *persons* possess a particular sort of *moral status*. This idea can be developed in a number of ways, including Kant's famous idea of persons as members of the kingdom of ends, but the crux of the idea is simply that the life of a person, in virtue of some property or properties of it - consciousness, rationality, autonomy and so forth - is intrinsically valuable. Personhood is most commonly thought of as a feature possessed only by humans, but the idea does not necessarily exclude the possibility of non-human animals qualifying as persons. It simply requires that the non-human animal, or indeed the human animal, possesses the relevant properties. This idea does not necessarily exclude the possibility of other animals, and even plants, being of moral value if they are not persons. What it does claim is a difference in moral value, either in *kind* or *strength*, between those creatures that qualify as persons and those that do not. Whether we think it is a difference of kind or strength may be informed by what features we characterise as morally relevant. For example, whether we endorse a capacity for suffering or a capacity for free choice as the relevant feature for personhood will bear on how we will conceive of the value of persons; construed as a capacity for suffering, personhood is more naturally seen as changing the strength of a person's value relative to non-persons, while linking personhood to a capacity for autonomy more naturally suggests value of a different kind between persons and non-persons.

The next step in the egalitarian argument states that persons not only possess moral status, they possess equal moral status. Persons possess status in virtue of having a certain property or set of properties, and possession of that property(s) is also sufficient to qualify them as having equal status. That is the idea. But a *prima facie* difficulty immediately arises because there seems no candidate property or set of properties that all creatures included within the group persons possess equally. Persons, even when construed narrowly as humans, are different. Some possess greater, or a greater capacity for, intelligence, strength, height - anything one cares to mention - than others. So it seems. Yet if there really are no property in which those creatures that qualify as persons can be said to be equal, then by extension they are also different in the degree to which they hold the property that is supposed to confer on them personhood and this will raise the objection that those who possess the feature to a greater degree should be seen as of higher moral status. Whether a defence of the equal status of persons can be made will be taken up in Chapter 3.

The third step in the Egalitarian Argument is the idea that the possession of 'personhood-type' moral status entails the possession of *claims to advantage*. Again, this proposition is properly foundational. The idea is that it simply follows from the fact that a person possesses this status that they hold a certain sort of claim. What is a claim? The term denotes either a) a relationship between some *agent* and some *object* or b) a relationship between some *agent* and some other *agent*. Claims are also *pro tanto* reasons. To say that an agent has a claim to an object is to say that there is a certain sort of *pro tanto* reason why they should have the object. To say that an agent has a claim on another agent is to say that something may be required of that other agent by the claimant. The assertion that the object of these claims is 'advantage' is vague, but deliberately so. What exactly these claims attach to is a matter for debate. It translates to the question 'equality of what?'. My discussion of this will be delayed until Chapter 4. Note here, though, that the term 'advantage', as I intend it, is not necessarily comparative. It simply denotes a gain or benefit or some sort.[1]

The fourth and final step of the argument is that these claims must be *fairly* satisfied.[2] Fairness requires that claims must be satisfied *in proportion to their strength*.[3] Thus, if two persons have claims to some good then what is important from the perspective of fairness is that each person receives a proportion of the good corresponding to the strength of his claim. If Alpha has the stronger claim she should receive more than Beta, but not everything. If claims are equal, each should receive an equal amount. Equally strong claims may be fairly satisfied even if no-one receives anything. Of course, claims may also be renounced, but if they are not, then, I will argue, the satisfaction of claims is a matter of outcomes; claims cannot be satisfied by being weighing claims against other reasons or by being represented within some sort of formal procedure like a lottery.[4]

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[1] One need not attach too much importance to the technical language of claims. The general idea is what is important and the structure of the idea is an old and familiar one. It is the same essential idea expressed by Dworkin through his proposal that people are due *concern* and by Temkin in his proposal that people may gain *complaints*. Larry Temkin, *Inequality*, Oxford: Oxford University Press, (1993), p.13.
We may think of the language of claims as acting as a placeholder, a bracket within which the correct expression of the idea that something important follows from the possession of moral status is to be formulated.

[2] The notion of (un)fairness refers to a specific category of badness relating to whether the treatment of individuals reflects their status. It is a badness that exists as additional to the badness of lost benefit and it is a badness that does not need to be hedonically experienced. I propose that fair distributions involve the absence of badness rather than the presence of goodness because, as Ingmar Persson has observed, it has some import regarding whether worlds in which every person's life is of zero value are still to be considered good overall or not. See Ingmar Persson, 'Equality, Priority and Person-affecting Value', *Ethical Theory and Moral Practice* 4, (2001): 31.

[3] This idea is borrowed from John Broome. However, Broome's use of the idea of claims is different from mine in a number of important ways that will be elaborated in the following section. For Broome's discussion of claims see John Broome, 'Fairness', *Proceedings of the Aristotelian Society* 91, (1990): 87-102; *Weighing Goods: Equality Uncertainty and Time*, Oxford: Blackwell, (1991); 'Fairness versus Doing the Most Good', *Hastings Center Report* 24, (1994): 36-39; 'Kamm on fairness', *Philosophy and Phenomenological Research* 58, (1998): 955-961; *Ethics Out of Economics*, Cambridge: Cambridge University Press, (1999).

[4] To clarify, I do not mean to imply that there are no sorts of claims that could be satisfied through the performance of a procedure or lottery. Clearly, if I buy a raffle ticket I have a claim to have my number entered into the raffle and to whatever gains that follow should my ticket be picked. Here, in buying the ticket, I am transforming the nature of my claim and provided the lottery is held and prizes distributed there will be fulfilment in outcomes in the relevant sense. My point is only that the claims arising from personhood-

Accordingly, then, we care about equality of opportunity, or at least the particular version I am concerned with, because we care about the value of persons and fairness. But it may yet be objected that the satisfaction of claims is not, or not only, a matter of outcomes. It is this point that I turn to next.

2.2 Fairness and the Satisfaction of Claims

My challenge now is to express why the satisfaction of claims is a matter of outcomes. To this end, I will contrast my view, first, with the idea that the satisfaction can be achieved by *weighing correctly* and, second, that the satisfaction can be achieved by the application of *procedures*.[5]

a. Fairness as Weighing Correctly

First, one might think it sufficient for the satisfaction of a claim that the claim is weighed in the correct way against other competing considerations. To make vivid the distinction between this proposal and my own, consider a case where there is some

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type moral status cannot be processed by some formal procedure in the first instance. I leave a full justification of this proposal to the following section of this chapter.

[5] I will not be examining David Estlund's discussion of fairness. Estlund's account of fair procedures is concerned with what is fair when we do not know what is to be aimed at (i.e. what is valuable). My account of fairness begins with an idea of (dis)value relating to the satisfaction of claims to advantage. The two positions are, I believe, compatible, since his conclusion that fairness is an 'occasional value' is compatible with my argument presented later that we should appeal to lotteries only in cases of tie-breaking between claims. We both agree that the fairness of tie-breaking is a (merely) occasional value, but I believe fairness also has a more general value, while his analysis does not address this question. See David Estlund, *Democratic Authority: A Philosophical Framework*, Princeton: Princeton University Press, (2008), esp. chs. 4-5.

indivisible good, an illustrated book, say, to be distributed between three individuals. Each of the individuals has, by hypothesis, antecedently equal claims to the book. However, while all three of the individuals would enjoy looking at the illustrations only one, Alpha, can read. Reading the book and looking at the pictures is a richer experience for Alpha than merely looking at the book would be for Beta or Gamma. We then have an additional non-claim-based reason from considerations of utility to give the book to Alpha rather than to the other two. Accordingly, if we are to act on the balance of reasons we should give the book to Alpha. This conclusion does not separate my view, that claims must be satisfied in outcomes, from the alternative view that the satisfaction of claims requires only that claims be weighed against each other and competing reasons in the correct way. What separates the two views is how they assess the state of affairs when the book is given to Alpha. On the alternative view, there is no unfairness in the state of affairs where Alpha has the book and Beta and Gamma do not, since all claims and other values have been weighed properly. On my view, while the decision to give the book to Alpha is still judged as the correct one, there is also considered to be some unfairness since claims can only be satisfied in outcome and although Beta's and Gamma's claims have been weighed they have received no actual good, while Alpha has.

How can it be that even when reasons are properly balanced all claims are not necessarily satisfied? Consider the case of claims arising from promises. Promises are acts that generate claims for the promisee on the promiser. Suppose I have made two promises. The first is a promise to a friend to meet him for coffee. The second is a promise to my child to pick him up from school. Since the coffee date is scheduled for the same time as the end of school I can only keep one promise. Assessing the balance of reasons it is clear I should pick up my child from school and abandon my friend to drink his coffee alone. This calculation includes consideration of the claims these individuals have on me and other considerations. However, it is equally clear that, even though my decision to pick up my child was the correct one in terms of the balance of reasons, I still owe some recompense to my friend. Of course, the friend might forgive me my peccadillo. We might even say that a good friend should forgive. But the very fact that we think there is *something* to forgive makes clear the intuition that the friend did have a claim on me; one from which he is now releasing me. This makes clear both that the notion of claims are part of our ordinary moral vocabulary and that at least some claims - claims derived from promises - cannot simply be weighed to be satisfied.[6]

One might still doubt whether, even if this is true of promise claims, the same is true of claims to advantage.[7] To illustrate how it is, consider again the case involving the book. Suppose that after the book has been distributed to Alpha a second indivisible good appears - a diamond. The question is whether Beta and Gamma previously not getting the book gives us an additional reason for them to get the diamond now. To isolate the intuition, let us suppose that each of the three would get an equal gain from the diamond. Precisely, the diamond would bring Alpha's current level of advantage from 10 to 15 and it would bring either Beta's or Gamma's from 5 to 10. There are then no considerations of general utility that favour any one individual receiving the good. It seems intuitively clear

[6] For a further elaboration of this strand of reasoning see W.D. Ross, *The Right and the Good*, Oxford: Clarendon, (1930), pp. 17-47.

[7] This worry is not without substance. If, as I have said, promises create claims from the promisee on to the promiser, then the correlative of that claim is an *obligation*; the promiser incurs an obligation to fulfil the claim when he makes the act that gives rise to the claim. It is an obligation rather than a *duty*, because it has been *incurred* by an act of the promiser. But claims to advantage do not arise through the actions of those that ought to observe them. Accordingly, the correlative of claims to advantage is a *duty* rather than an obligation. This technical distinction might be thought to bear some weight and so form the grounds for the imagined objection.

that we have an additional reason for giving the diamond to either Beta or Gamma given that they did not receive the book. Were we to give the diamond to Alpha, Beta and Gamma would have a complaint that their claims were stronger given that they had been overlooked previously.

A short examination of the structure of claim-type reasons helps to explain the above judgment. Following Broome, we may distinguish claims from other types of reasons in the following way.[8] Claims are held by individuals. The satisfaction of a claim is *owed* to the individual that holds it. Other reasons are *not owed* to particular individuals. For example, we might have reasons to acquire knowledge or create beautiful things, but our reasons for promoting these goods are general and need not be owed to particular individuals. If we accept this distinction it is again clear why claims are not satisfied simply by being weighed against other reasons; even if the right thing to do all things considered involves not satisfying the claim, it is clear that there still remains in the best available outcome a debt to the claim bearers that has not been met and which there remains a *pro tanto* reason to satisfy.

b. Fairness as Procedure

I now want to consider whether claims are satisfied when they are given account in some form of procedure or through the impartial application of rules. Since there might be a number of possible procedures, I will only consider the cases of lotteries and criminal trials.

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[8] See Broome, *Ethics out of Economics*, pp. 114-116.

Is it sufficient for the satisfaction of a claim that it is represented within a procedure where the chance of the claim being satisfied is proportional to the strength of the claim?[9] Suppose that there are five relevantly equal people all of whom have equally strong claims to some divisible good, some sweets, say. If we were in a position to distribute these goods, what would be the fairest thing to do? Should one hold a lottery, giving each an equal probability of receiving all of the sweets, or should one divide the sweets equally so that each received an equal quantity of the sweets. It is quite clear that were one to hold a lottery in this case, those claimants who received no sweets would have a complaint. They had the same claims to the sweets, and they could have received an equal quantity of sweets, but in holding the lottery we denied them this. If the claimants had authorized the lottery it would be a different matter. Then they would have transformed their initial claims. But this was not the case.

If the intuition is still in doubt, suppose that five relevantly equal people have undertaken a prescribed amount of work and each has put in an equal amount of work and effort to produce the sweets. The people have equal claims to the good. If we were then to distribute the sweets via a lottery that the agents had not agreed to, it is again clear that this would be unfair to those who do not receive any sweets as a result. The holding of lotteries is not sufficient for the satisfaction of claims.

Suppose it is objected that the argument that claims cannot be satisfied by being represented in some procedures does not, in looking specifically at lotteries, take the

[9] Of course, this is not the only possible representation of the idea that claims can be satisfied by being represented within a procedure. One might hold, more weakly, that it is sufficient for the satisfaction of a claim that it is given some representation, not necessarily proportional to strength, within the procedure. I choose the stronger proportional version of this view since it is less obviously flawed. It is also a part of Broome's view. For a more general discussion of fairness as the application of rules see Brad Hooker, 'Fairness', *Ethical Theory and Moral Practice* 8, (2005): 329-352.

strongest version of the procedural position. That is, it might be objected that while lotteries do not satisfy claims, other procedures that *aim* at achieving the satisfaction of claims in outcome do satisfy claims. Take a criminal trial as an example.[10] The aim of the trial is to determine whether the defendant is guilty or innocent. If the trial is carried out in an impartial manner, the defendant is adequately represented, the jury is not biased and so forth, is this sufficient to say that the defendant has had his claims satisfied? I think not.[11] If the trial reaches the wrong conclusion and finds an innocent defendant guilty, the defendant will legitimately be able to say that this judgment was unfair to him.[12] This is true even if the trial is undertaken in an impartial way so that we would call it in normal parlance a "fair trial". The fact that the trial is procedurally fair is not sufficient to satisfy the claims it undertakes to represent. Of course, if the trial is not procedurally fair we may have an additional reason to object to it, either because it is less likely to produce a fair outcome or, perhaps, for some other reason.

One interesting question is whether the fairness value of a trial is wholly derivative of the fairness value of a fair outcome. On the view I will describe shortly, it is. In support of this proposition consider the following example: suppose some special individuals, call them 'truth wizards', have an incredible capacity to determine the guilt or innocence of a person simply by looking at them briefly. They are literally *perfect* at determining whether

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[10] Of course, considerations of fairness are not the only ones that inform how a trial should be structured. Because trials cost money and time to undertake, when deciding on an optimal system of criminal justice we must balance the risk of reaching a wrong outcome against the cost of lavishing more resources on the investigation of innocence or guilt, and perhaps other considerations too.

[11] Note that there is an important qualification I need to make here. It may be appropriate to think the outcome is fair if the person has agreed to the trial, or to the general system of which the trial is a part, thus transforming his claim. I return to this point at the end of the section.

[12] If the trial finds a guilty defendant innocent I believe it would be unfair to the other members of society. But I do not intend to take a general position here on how closely retributive and distributive justice are related. I use the case of a criminal trial simply as an illustrative example.

someone is guilty or not and the exact severity and nature of their crime. They are also perfectly honest and always report their findings in an intelligible manner. In the presence of these individuals we would have no need for formal trials. If we were to hold trials instead of employing the truth wizards, those who were wrongly convicted would rightly claim that this was unfair and that the holding of trials, even ones with unbiased juries and judges, was an unfair practice.

2.3 A Theory of Fairness

I now want to consider John Broome's theory of fairness and contrast it with an alternative that I believe is superior. First, I will return to the case of lotteries and, specifically, whether there is any significant relationship between the satisfaction of claims and the holding of lotteries. Consider where the view that lotteries are relevant to fairness gains its plausibility from. Assume that lotteries are irrelevant to fairness. Take again the case of the book. Suppose now, however, that all the agents can read and each would gain equal advantage from receiving the book. If we ought always to act on the balance of reasons, if claims are equal, if lotteries are irrelevant to fairness and the distributor, Delta, favours Alpha, then the balance of reasons dictates that we should give the book to Alpha. That is, the balance of reasons favours giving the book to Alpha since the same unfairness to the two non-receiving agents would exist whoever receives the book, but in the case where Alpha receives the book Delta's preference is satisfied, and the satisfaction of a preference is (I will assume) a reason for action. All outcomes are equally unfair, but Alpha receiving the book is unfair plus Delta's satisfied preference, making this outcome unequivocally better. If lotteries are irrelevant to fairness this conclusion should not be troubling. It should be clear that the outcome where Alpha gets the book and Delta's preferences are satisfied is just as fair as the case where lottery is held and one of the three agents receives the book. Yet this conclusion is not obvious. It is not obvious that Delta simply choosing Alpha is as fair to the other two as it would have been had he held the lottery. Thus, in this case, it seems there are two competing values that must be weighed when considering how to distribute the book: fairness and utility. There is no need to make a judgment about whether fairness or utility ought to be considered the more weighty. All that matters is that the outcome where Alpha is selected by Delta does indeed appear worse in respect of fairness than the outcome where a lottery is held.

John Broome's theory of fairness gives weight to intuitions about the fairness of lotteries. Broome does not think lotteries are entirely sufficient for the satisfaction of claims - that requires satisfaction in outcomes - but he does believe that they can function as an outcome satisfaction surrogate. In outlining his view we can highlight two key propositions. Broome's first proposition is that fairness intuitively requires lotteries when a good is indivisible, must be distributed, and all claims are equal. The 'must be distributed' clause is important here because, on both Broome's view and my own, if the good can be destroyed this will satisfy all claims equally well in outcome. Of course, destroying the good will rarely, if ever, be the best thing to do in light of other reasons, but it is the fairest.[13]

Broome's second proposition is that when claims are of unequal strength, a good is indivisible, and must be distributed, it would sometimes be fair to hold a lottery weighted

[13] This point is discussed by Ben Saunders. See Ben Saunders, 'Fairness between Competing Claims', *Res Publica* 16, (2010): 41-55.

relative to the strength of individual's claims.[14] In essence, his proposition is that, from the perspective of fairness, in cases where claims are unequal and a good is indivisible, we must weigh the fairness of holding a lottery against the potential additional unfairness in outcome that would arise from those with weaker claims winning the lottery when we decide whether to hold a lottery. In some cases it will be fairer to hold a lottery even if this may result in more unfairness in outcome. In other cases it will be fairer to act directly to achieve the most fairness in outcome.[15]

In examining Broome's view let me begin by focussing on what Broome intends by the proposal that fairness requires lotteries when a good is indivisible, must be distributed, and all claims are equal. An example is the easiest way to illustrate his meaning. Suppose we have a case where we must choose between saving five persons and saving one person.[16] Each of the persons has equally strong claims. For Broome, in this case the fairest thing to do is to toss a coin to decide whether to save five or one.[17] Let me explain how Broome arrives at this judgment. Broome believes that lotteries are fair because he believes a) they provide a surrogate for fairness in outcome and b) they can represent claims in proportion to their strength. That is, for Broome, they represent claims in proportion to their strength when, and because, they give each person a chance, proportional to the strength of their claim, of having their claim satisfied in outcome. In the above case, even

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[14] Broome, *Ethics out of Economics*, pp. 116-122.

[15] As Broome himself puts it, "The result of a lottery will generally be that the good goes to candidates who do not have the strongest claims. This is less fair than the result of giving it directly to those who do. The likelihood of this less fair result will have to be weighed against the contribution to fairness of the lottery itself." Broome, 'Fairness', p. 99.

[16] For further discussion of this type of problem see John Broome, 'Kamm on Fairness', *Philosophy and Phenomenological Research* 58, (1998): 955-961. Frances Kamm, *Morality, Mortality, Volume I: Death and Whom to Save From It*, Oxford University Press, (1993). John Taurek, 'Should the Numbers Count', *Philosophy and Public Affairs* 6, (1977): 293-316.

[17] Broome, 'Kamm on Fairness', p. 956.

though tossing the coin does not totally satisfy claims, it does provide a surrogate satisfaction by providing each an equal chance. The one is given the same chance of having his claim satisfied in outcome as each of the five. Importantly, on Broome's view, when an equal division of goods is not available and a lottery is held, claims are proportionally satisfied, in a weak sense, even though there is an inequality in outcome; simply weighing claims against each other to determine which are the most weighty does not satisfy them proportionally in any sense.

Before considering the plausibility of Broome's view let me first lay out my position. I reject Broome's proposition that lotteries are meaningful surrogates for the satisfaction of claims in outcome. On my account, fairness in lotteries is lexically subsequent to fairness in outcomes.[18] Further, unfairness is a matter of having one's claim satisfied less well than proportionality demands. We should measure unfairness in terms of claims that are satisfied less well than proportionality demands.[19]

Let me explain what I mean by the above statements by returning to the case where we must save either five or one. I believe that the fairest thing to do is to save five. I believe that when we save five, this is unfair only to the single individual who is not saved. If we save one person there will be unfairness in outcome for five persons and if we save five persons there will be unfairness in outcome for one person. Fairness then speaks in favour of saving five. We should not consider the five who have been saved to have suffered any unfairness.[20] On my account, distribution by lottery is more fair than choosing someone to

[18] Broome explicitly rejects this proposition. Broome, 'Fairness', p. 89.
[19] For a tentative measurement of unfairness let me offer the following rule: unfairness is the mean of the sum of the difference between how well a person's claims are satisfied proportionally to all other better satisfied claims. For further discussion of the measurement of unfairness see Temkin, *Inequality*, esp. chs. 2-6.
[20] Broome does not think they have suffered unfairness either.

distribute to when a good is indivisible and must be distributed if, only if, distributing the good by choice could not satisfy the greatest weight of claims in outcome for certain.

To clarify my view further, let me state that I think we should use a lottery in cases similar to the following two: a) we should use a lottery in a case where the choice is between saving the same number on either side all of whom have equally strong claims, and b) we should use a lottery if we have a choice between saving one person with a claim of strength *2X* and saving two persons each with a claim of strength *X*. Of course, the outcome of the lottery would still result in unfairness. But holding a lottery would be, on my view, *marginally* more fair than distributing by choice. The above is a sketch of how my view and Broome's view diverge in cases of equal claims.

Let us now consider the case of unequal claims. Again, Broome's position is that we must weigh the fairness of holding a lottery against the potential additional unfairness in outcome that would arise from those with weaker claims winning the lottery when we decide whether to hold a lottery. In cases where claims are unequal, a good is indivisible, and it must be distributed, Broome believes the fairest thing to do is either to distribute directly to the person with the strongest claim or to hold a lottery weighted to the strength of the individuals claims, depending on how we intuitively balance the extra fairness of the lottery against the potential extra unfairness in outcome that may result if those with the weaker claims win. Indeed, Broome even says that when we have the above case, and we cannot hold a weighted lottery, but we can hold a lottery at odds that represent the strongest claims less well than they proportionately require, this may be fairer than distributing directly to the person with the strongest claim. I reject the proposition that holding a lottery, at any odds, is ever the fairest thing to do when we could distribute directly to satisfy the greatest weight of claims in outcomes.

The following example may help to further explain the difference between Broome's view of fairness and my own. Assume we have two individuals: Alpha and Beta. Alpha has a claim of strength 6 and Beta has a claim of strength 4. The value of the good to be divided between them is 100. Broome ranks the fairness of the alternatives as follows, from fairest to least fair:

1) Give 60 to Alpha and 40 to Beta

2/3) A weighted lottery - 60% chance of giving 100 to Alpha

2/3/4) Give 100 to Alpha

3/4) Toss a coin - 50% chance of giving 100 to either.

5) Give 100 to Beta

When one of the rankings has more than one number in it, I mean that, for Broome, whether the alternative is ranked in one place or another is a matter of judgment.

I rank the fairness of alternatives as follows:

1) Give 60 to Alpha and 40 to Beta

2) Give 100 to Alpha

3) A weighted lottery - 60% chance of giving 100 to Alpha

4) Toss a coin - 50% chance of giving 100 to Alpha

5) Give 100 to Beta

To clarify, I believe a weighted lottery is a fairer thing to do than tossing a coin because this gives the best chance of satisfying the greatest weight of claims. And I believe tossing a coin is better than distributing directly to Beta for the same reason. But I believe there is no difference in fairness value between 3), 4) and 5) when the lottery is held and Beta wins.

In trying to judge whether Broome's view or my own is more plausible, consider again the case of distributing the book. In this case, Beta and Gamma have more advantage than Alpha. More precisely, they are better-off than Alpha, but only by some small amount and, crucially, the difference between Alpha's position and the positions of the other two is less than the advantage the book would create, so that were Alpha to receive the book he would become better off than either Beta or Gamma. Alpha, then, has a stronger claim to the book, but since the book cannot be divided some unfairness is unavoidable. I will also assume that the book cannot be destroyed. Here Broome thinks we should weight the unfairness in outcome that might result from Beta or Gamma not getting the book against the fairness of holding a lottery. I think the fairest thing to do is to distribute the book directly to Alpha. It is impossible to split Broome's view and my own other than by intuition. To make the case as clear as we can let us apply some numerical values,

<u>Table 1</u>

Agents	**Init. Holding**	**No Lottery**	**Lottery Out. A**	**Lottery Out. B**

Alpha	10	20	20	10
Beta	11	11	11	21
Gamma	11	11	11	11

In the above table both Lottery Outcome A and Lottery Outcome B come about as the result of a lottery weighted relative to the strength of the persons' claims so that in both cases Alpha has a slightly better chance of winning the lottery. I am committed to the view that the No Lottery outcome where Alpha gets the additional good is superior in terms of fairness to Lottery Outcome B and equivalent to Lottery Outcome A. Broome believes Lottery Outcome A is superior to the No Lottery outcome and Lottery Outcome B, but his position on the relative fairness of the No Lottery outcome and Lottery Outcome B is uncertain since he would argue that it is a matter of judgment whether the fairness of holding a lottery outweighs the additional unfairness in outcome that may result. If one agrees with my judgment then we should reject Broome's view and *vice versa*. If one cannot distinguish which judgment is correct we may have come to an impasse.

However, we can go a little further. The above example is favourable to Broome's view in the following way: it involves very small differences in initial holding relative to the possible gains that result from gaining the good to be distributed. Suppose then we have the case of the book again but now Alpha is badly disabled,

<u>Table 2</u>

Agents	**Initial Holding**	**No Lottery**	**Lottery Out. A**	**Lottery Out. B**
Alpha	2	12	12	2
Beta	11	11	11	21
Gamma	11	11	11	11

Assume again that a lottery weighted relative to the strength of claims is available. Now, Broome is committed to the view that there is at least one dimension of fairness in which Lottery Outcome B is superior to the No Lottery outcome. I think, however, there is a strong intuitive judgment that there is *no sense* in which Lottery Outcome B is fairer to equally worthy Alpha, Beta and Gamma. If this is true we should reject Broome's proposal that weighted lotteries can provide a fairness surrogate for fairness outcomes, except in cases of tie-breaking.[21],[22]

Let me give one final example to show how this conception of fairness is superior to Broome's. Suppose it turns out that in fact, in the world we live in today, a massive baby swapping program has been undertaken unbeknownst to anyone. Magical creatures take embryos and place them into a lottery where the babies' claims are weighted proportional to their strength to decide where in the world they are born, with some birthplaces being, we

[21] This argument shares a similar form to an argument presented by Brad Hooker. Hooker shares my conclusion that lotteries are only for tie-breaking between claims. He states, "Suppose your claim on some indivisible good comes from desert, and so does mine, but you are four times more deserving than I am. Should a lottery be run where you have an 80% chance of winning and I have a 20% chance? Again your claim clearly outweighs mine. Letting the weaker claim win seems completely unfair." Hooker, 'Fairness', p. 349.

[22] For further discussions of fairness see James Griffin, *Value Judgment*, Oxford: Oxford University Press, (1995). Shelly Kagan, *Normative Ethics*, Boulder: Westview, (1998). Louise Kaplow and Steven Shavell, 'Fairness Versus Welfare', *Harvard Law Review* 114, (2001): 997-1388. Nicholas Rescher, *Fairness: Theory and Practice of Distributive Justice*, New Brunswick: Transaction, (2002).

can safely say, more advantageous destinations.[23] How should we consider the fairness of our world, the world we live in today where the baby swapping program has taken place, relative to some other world in which the baby swapping program has not taken place but in which there is slightly less unfairness in outcome? I think it is quite clear that we would properly judge the other world more fair.

This section has relied on appeals to intuition about particular cases. To the extent that intuitions are the foundations of ethics this is neither an embarrassment nor avoidable. But, in fact, there are two deeper arguments that support my view on what is required for the satisfaction of claims. The first is Rawls' famous argument about the separateness of persons. Against utilitarianism Rawls writes:

"This [utilitarian] *view of social cooperation is the consequence of extending to society the principle of choice for one man, and then, to make this extension work, conflating all persons into one through the imaginative acts of the impartial sympathetic spectator. Utilitarianism does not take seriously the separateness of person."*[24]

Rawls is observing that as persons are individuals, living only their own lives, the fact that aggregate utility is maximised will be scant compensation to those who must suffer in order to achieve it. The general point can be expressed as the thought that there is no comfort *for the slave* that his toil brings great advantage to others because, living only her own life, she

[23] This example is an adaptation of an example given by Brian Barry. Brian Barry, 'Equal Opportunity and Moral Arbitrariness', in Norman Bowie (ed.), *Equal Opportunity,* Boulder: Westview, (1988), pp. 23-44.
[24] John Rawls, *A Theory of Justice*, Cambridge, Mass.: Harvard University Press, (1971), p. 27.

does not experience any of the advantages that others gain.[25] As our lives are distinct, weighing cannot fairly satisfy claims. This argument does not speak for my view over Broome's, indeed, Broome recognises this argument. Rather, the argument speaks for either Broome's view or my own over a competing view that says claims can be satisfied by weighing.[26]

The second argument, which splits Broome's view from my own, relates to responsibility. One cannot be held responsible for the outcomes of a lottery one did not choose to accept. Thus, when a lottery is held in the case of unequal claims and the weakest claims win, it is the fact that persons are not responsible for how that lottery turns out that explains why the outcome is no fairer than had the weakest claims been distributed to directly. Again, it is no compensation for the slave that her claim was once weighted into a lottery, when she had no way of avoiding her fate. Of course, it is important to remember that lotteries may be fair when a person transforms their initial claim by exchanging it for a lottery claim. Then a person can be responsible for the outcome of the lottery. But that is a different case. In sum, the separateness of persons explains why weighing is not sufficient for the satisfaction of claims, and the relationship between claims and responsibility explains why lotteries are not a surrogate for satisfaction in outcome. Broome does not

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[25] A particularly beautiful (if dark) passage describing how persons are separate can be found in the writings of Aldous Huxley. He writes, "We live together, we act on, and react to, one another; but always and in all circumstances we are by ourselves. The martyrs go hand in hand into the arena; they are crucified alone. Embraced, the lovers desperately try to fuse their insulated ecstasies into a single self-transcendence; in vain. By its very nature every embodied spirit is doomed to suffer and enjoy in solitude. Sensations, feelings, insights, fancies - all these are private and, except through symbols and as second hand, incommunicable. We can pool information about experiences but never the experiences themselves. From family to nation, every human group is a society of island universes." Aldous Huxley, 'The Doors to Perception', in Robert Baker and James Sexton (eds.), *Aldous Huxley Complete Essays*, Vol. 5, Chicago: I.R. Dee, (2002), pp. 157-191, p. 162.
[26] Broome, *Ethics Out of Economics*, p. 116.

recognize the significance of responsibility to claims and so mistakenly believes that lotteries can provide a surrogate for the satisfaction of claims in outcome.

As it is my claim about the relevance of responsibility to claims that separates my view from Broome's, let me make one further comment to reinforce its relevance. Imagine again that we have a fair, because impartial, criminal trial. When the innocent man is convicted we think this is unfair to him. We think it is unfair because he was not *responsible* for the deed for which he is now being punished. If he had *agreed or consented* to the trial, knowing there was a possibility that the wrong outcome would be reached, and given other qualifying conditions about the situation from which he agreed or consented, our judgment might be different. But in so far as he never agrees or consents to the trial, it is clear that the outcome of the trial is unfair to him when it misrepresents his status and associated claims, even if it is perfectly impartial. The same general point applies to lotteries which are simply another form of procedure.

The above view of fairness, undergirds my account of equality of opportunity and, I believe, luck egalitarianism more generally. It also makes the connection between the egalitarian argument and responsibility, fixing the connection between equality and responsibility within my overall conception of equality of opportunity. However, the connection between responsibility and claims, and in particular the source of claims, will not yet be totally clear. It will become clearer at the end of Chapter 3.

2.4 The Character of Fairness

Proposing that unfairness is bad raises a number of questions regarding how it is bad. Is it bad in a person-affecting way or in a non-person-affecting way? At what level do fairness considerations arise, the institutional or the pre-institutional? How demanding are considerations of fairness? No doubt there are many more important questions, but I will consider these three.

The principle of person-affecting value states that all value must be possessed by persons. Expressing this principle Parfit writes, "One of two outcomes *cannot* be worse, we may claim, if it would be worse for no one."[27] The question of whether unfairness is bad in a person-affecting or non-person-affecting way is debated by Broome and Temkin, with Broome defending the former view.[28] Broome argues that it is an *individual harm* when one's claims are not satisfied as well as those of others. Being treated fairly with respect to one's claims then becomes, on Broome's view, one feature on an objective list of personal well-being. Temkin avoids talk of claims, arguing instead that the badness of unfairness resides in states of affairs but is not possessed by particular individuals. A state of affairs is simply better in respect of fairness if persons are rewarded in accordance with what they deserve, even though there is no one for whom it is better. If we accept Broome's idea that unfairness is an individual harm we may, as Broome hopes, hold on to the person-affecting principle. If we accept Temkin's view that unfair inequality is bad independently of its badness for person we must reject the person-affecting principle.

Temkin presents an example designed to test our intuitions as to whether non-person-affecting value exists. He writes,

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[27] Derek Parfit, 'Equality and Priority', *Ratio* 10, (1997): 202-221, p. 219.
[28] Larry Temkin, *Inequality*, Oxford: Oxford University Press, (1993). Broome, *Ethics Out of Economics*; *Weighing Goods: Equality, Uncertainty and Time.*

"*Consider a variation on my saints and sinners case, where there are no saints, only sinners. In New A the sinners get what they deserve. In New B the sinners fare even better than they would have deserved to had they been saints. Many would agree that in one respect* - *regarding justice* - *New B is worse than New A. Since there isn't anyone besides sinners, if there must be someone for whom New B's injustice is bad, it must be bad for the sinners themselves. This is implausible. I think New B's injustice is bad, but not because it is bad for the sinners to spend eternity at a saintly level, rather than at their vastly lower deserved level.*"[29]

If we agree that the sinners do not deserve to fare well given their sins, we are committed to the idea that distributions can be good or bad in certain respects, irrespective of whether they are good or bad for people. Broome's response is to deny that there is anything bad in Temkin's example. He grants that if considerations of justice or fairness determine what individuals should receive *absolutely* then Temkin is correct, but asserts that he believes that justice or fairness only determines what individuals should receive *relative* to one another.[30] In Broome's view there is not any badness arising from the fact that the sinners fare well in absolute terms.

We can, then, distinguish two important cleavages between Temkin's and Broome's views. Temkin believes unfairness is bad in a non-person-affecting way and is to be measured in terms of how people fare compared to what they deserve both *relatively* and

[29]Larry Temkin, 'Equality, Priority and the Levelling Down Objection', in Matthew Clayton and Andrew Williams (eds.), *The Ideal of Justice*, Basingstoke: Palgrave Macmillan, (2002), pp. 126-161, p. 149.
[30] Broome, *Weighing Goods: Equality, Uncertainty and Time*, pp. 168-169.

absolutely.[31] Broome believes unfairness is bad in a person-affecting way that corresponds only to how people fare *relatively*.[32] We can separate these aspects of their views. For example, we can borrow the idea of unfairness as bad in a non-person-affecting way from Temkin and combine it with the idea that unfairness is an exclusively relative concern, as argued for by Broome.

What should one believe? A concern for equality of opportunity must be a relative concern. After all, Temkin's variation on his saints and sinners case clearly *does* involve equality of opportunity between all agents - the sinners. The idea of absolute desert also suffers from a more general problem: it requires some index of treatment appropriate to absolute desert, but it is hard to imagine where one would even begin characterising such a position. The question, 'How much does a sinner deserve in absolute terms?' does not elicit an obvious answer. This is not true of the question 'Who deserves more, the sinner or the saint?', where we can comfortably reply 'The saint'. We could even make the additional suggestion that the relative amounts due to each could be determined by the individual's relative virtue. In any case, whether or not additional absolute concerns exist, the important point is that in so far as we care about equality of opportunity, we care about relative standing.

The question of whether unfairness is bad in a person-affecting or non-person-affecting way is harder to gain traction on. Nothing hangs on the distinction in terms of practical prescriptions since whether unfairness is suffered by persons or not implies

[31] It is impossible to be precise since neither Broome nor Temkin makes a case for exactly how much weight fairness considerations or claims ought to be given in particular circumstances.

[32] For an illuminating contrast of relative and absolute accounts see Larry Temkin, 'Justice, Equality, Fairness, Desert, Rights, Free Will, Responsibility, and Luck', in Carl Knight and Zofia Stemplowska (eds.), *Distributive Justice and Responsibility*, Unpublished.

nothing about the moral weightiness of unfairness. One point that speaks in favour of the non-person-affecting interpretation is that it will seem odd to many to describe something that is not experienced as harm. There is a pre-theoretical intuition that all harms must be experienced. Yet there are also numerous cases within the well-being literature that suggest that people may be harmed without ever experiencing it. Robert Nozick's example of the experience machine, or James Griffin's suggestion that Bertrand Russell's life would have gone better had world peace been achieved as a result of his work after he died, are classic presentations of this idea.[33] Still, as it has no practical implications, I will leave open the question of whether unfairness constitutes a personal harm or not.[34]

I will now move to the question of whether claims are pre-institutional or post-institutional. Note that this is actually a question about the source of claims. It is a question about whether the subjects of equality of opportunity are: a) persons who stand in particular institutional relationships with one another, or b) persons *simpliciter*. On my view, moral status exists in virtue of some possessed characteristic.[35] This means that considerations of fairness apply pre-institutionally. What Joel Feinberg said of desert considerations then applies equally well to my view, "It is a moral concept in the sense that it is logically prior to and independent of public institutions and their rules."[36] This says nothing about whether or not other institutionally-generated moral considerations also arise but it does suggest

[33] Robert Nozick, *Anarchy, State and Utopia*, New York: Basic Books, (1974); James Griffin, *Value Judgment*, Oxford: Oxford University Press, (1995).
[34] Brad Hooker provides an example against the idea that unfairness is a form of harm. He asks whether one would prefer to live a life with a slightly larger endowment of the goods that make up an objective list plus some unfairness, or a life with less of the goods that make up an objective list, minus some unfairness. If we favor the first life it seems to follow that unfairness is not an individual harm. See Hooker, 'Fairness', p. 336.
[35] See Chapter 3.
[36] Joel Feinberg, *Doing and Deserving: Essays in the Theory of Moral Responsibility*, Princeton: Princeton University Press, (1970), p. 87.

that, if they do, they will compete with pre-institutional considerations.[37] It is important to remember, though, and as I will again discuss in the conclusion, it is not a necessary part of a conception of equality of opportunity that one holds that claims are pre-institutional.

Finally, how demanding or weighty are fairness considerations? On the view I am describing fairness considerations represent only a *pro tanto* reason for action. This means that claims can be balanced against other *pro tanto* reasons to determine what course of action is the best all things considered. In characterising fairness considerations in this way, I am proposing that fairness considerations represent one element in a teleological account of how reasons determine what ought to be done.[38] This leads us to the question of the moral strength of these claims relative to other moral values, and how they are to be weighed. There is no consensus amongst the defenders of equality of opportunity about the strength of equality of opportunity relative to other values. Whether it is even possible to assign weights to particular moral values that would apply in *all contexts* may be disputed.[39] While the question of weighing is clearly of tremendous importance I cannot address them here. Again, I will return to this question in the conclusion of the thesis.

2.5 Fairness and Respect

I will now consider the proposition that the proper focus of egalitarian concern is not distributions but is instead the structure of social and economic relations. Let us call accounts that value egalitarian social and economic relations 'relational egalitarian'

[37] For more on this conflict see, Samuel Scheffler, *Boundaries and Allegiances*, Oxford: Oxford University Press, (2002), esp. ch.7.
[38] I follow John Broome in this assertion. See Broome *Ethics Out of Economics*, pp. 115-117.
[39] G. A. Cohen, *Rescuing Justice and Equality*, Cambridge Mass.: Harvard University Press, (2008).

accounts, and accounts that value equal distributions 'distributive egalitarian' accounts. While distributive egalitarians typically ground their position in the value of fairness, relational egalitarians typically ground their position in the value of respect. That is, while both varieties of egalitarianism begin from the premise that people are of equal moral status, relational egalitarianism argues that what follows from this status is not claims to advantage, but rather the demand that others engage with them in a respectful way, as an equal.[40] Elizabeth Anderson, Jonathan Wolff, Samuel Scheffler and Stuart White, have all given recent defences of relational views.[41] Distributive views have been proposed and defended by, amongst others, Richard Arneson, G.A. Cohen and Michael Otsuka.[42]

Before assessing the relational egalitarian position, it is helpful to distinguish a positive thesis and a negative thesis contained within it. The positive thesis, as I suggested a moment ago, is that egalitarian social relations are required to show respect for persons. Elizabeth Anderson characterises what these relations require as follows:

"*To stand as an equal before others in discussion means that one is entitled to participate, that others recognize an obligation to listen respectfully and respond to one's arguments, that no one need to bow or scrape before others or represent themselves as inferior to others as a condition of having their claim heard...democratic equality* [Anderson's version

[40] This proposition may be couched in terms of the Kantian idea that it is a person's innate *dignity* that demands respect. See Elizabeth Anderson, 'What Is the Point of Equality?', *Ethics* 109, (1999): 287–337, p. 319.

[41] Anderson, 'What Is the Point of Equality?'; Samuel Scheffler, 'What is Egalitarianism?', *Philosophy and Public Affairs* 31, (2003): 5-39; Stuart White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship*, Oxford: Oxford University Press, (2003); Jonathan Wolff, 'Fairness, Respect and the Egalitarian Ethos', *Philosophy and Public Affairs* 27, (1998): 97-122.

[42] Richard Arneson, 'Equality and Equality of Opportunity', *Philosophical Studies* 56, (1989): 77-93; G.A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics* 99, (1989): 906-944; Michael Otsuka, *Libertarianism Without Inequality*, Oxford: Clarendon, (2003).

of relational 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, reciprocation and recognition for granted*."[43]

While the positive thesis states that egalitarian relations are required for respect, the negative thesis states that attempts to achieve distributive equality will fail to show adequate respect for persons; attempts to pursue pure distributive equality, relational egalitarians argue, require a level of personal intrusion that would contravene respect.[44] For example, distributive equality may require people to provide evidence of disability or proof of efforts to gain employment in order to claim associated benefits. Yet requiring individuals to divulge this information may be demeaning and shameful. Expressing this type of worry, Wolff writes,

"*Although it is important not to exaggerate, being called to account for one's actions or claims - or at least being called too often, or in circumstances when others are not, or when the depth of investigation seems out of proportion - gives the impression that one is not trusted, that one is an object of suspicion and hence not being respected...what sort of message do we send the unemployed through excessive controls? Arguably that anyone who is making a claim for benefit is the object of suspicion: that we believe that they would cheat the system if only they could get away with it. It is too rarely noticed that real world policies of attempting to catch free-riders can be taken as highly insulting by people who*

[43] Anderson, 'What Is the Point of Equality?', p. 313-314.
[44] On the negative thesis see Wolff, 'Fairness, Respect and the Egalitarian Ethos'. See also Timothy Hinton, 'Must Egalitarians Choose Between Fairness and Respect?', *Philosophy and Public Affairs* 30, (2001): 72-87.

are not only not free-riders but who are already among the most disadvantaged member of society."[45]

If Wolff is correct, the levels of information gathering required to ensure strict distributive equality will often be in tension with the goal of respecting persons.

Should one be a relational or a distributive egalitarian? Before considering this question, note that the degree of divergence between the practical implications of the two views is an empirical question relating to how much distributive inequality is compatible with egalitarian relations and *vice versa*. It is arguable that substantial distributive inequalities will always lead to inegalitarian power relations. Similarly, nuanced distributive views may include the capacity to participate in politics or hold social positions with associated status as advantages that constitute the object of distributive equality. These points suggest that the two views' prescriptions may be close in practice.

If the views converge both in terms of assigning equal status to persons and in their practical implications, how can we argue for one or another? The answer is simply that, while there *may* be high degree of convergence, this convergence is not complete.[46] If some limited distributive inequalities need not be anathema to egalitarian social relations, then there is some range of distributive inequality that the relational view must say is not objectionable *at all* in egalitarian terms. Similarly, in so far as inequalities in social and economic relations may, on the distributive view, be compensated for by the provision of other advantages, the distributive view will consider *some* inequalities in social and

[45] Wolff, 'Fairness, Respect and the Egalitarian Ethos', p. 108.
[46] It is also possible that in practice there will not be a high degree of convergence.

economic relations compatible with a perfectly egalitarian distribution. There is, then, practical relevance to the question of which sort of equality is to be valued.

In examining which form of equality if valuable, I want to begin by considering again the idea of respect. I said earlier that relational egalitarians typically locate the value of equality in the notion of respect and that they believe egalitarian social relations are required to show respect for persons. I want to propose now that the demand for distributive equality can be understood as expressing a certain understanding of the proper relations between people and that it is itself a conception of respect.

According to the distributive conception of respect, when I relate to my fellow human beings, fellow citizens, or whoever is the subject of my egalitarian concern, in an egalitarian way and recognizing their equal status, I do so by paying attention to whether they have been unfairly advantaged or disadvantaged relative to myself over the course of their lifetime. When I recognize that their claims are equally as strong as mine but that mine are better satisfied, respect for their equal status demands that I make available some transfer that could rectify this situation. The goods their claims attach to, we can say, are owed to them as a matter of respect for their status and their claims. To give another example, if I undertook some act of great heroism or tremendous effort, respect demands that this is acknowledged and, perhaps, some distributive action taken.[47] Again, there may be considerations that count against this. If I am a spy it may not be best, all things considered, that my achievements are recognized, but it is still clear that showing me proper respect speaks in favour of recognizing my achievement. The idea is not that

[47] Of course, monetary redistribution is not always appropriate. In some contexts, the acknowledgement of one's achievement can be considered its own reward. Exactly what distributive object(s) equality of opportunity should have is a matter to be discussed in Chapter 4.

fairness and respect are two independent reasons for favouring distributive equality, rather the idea is that the demand to treat people fairly can be expressed in the language of, and as a requirement of, respect.

The above makes the connection between fair distributions and a kind of respect. However, it does not disprove the positive thesis of relational egalitarianism since it may be that respect has two faces: it may require both egalitarian relations and egalitarian distributions.[48] Indeed, I do not intend to argue against the positive thesis of the relational view. Rather, I only want to argue first that the relational view cannot by itself capture all of our intuition about respect and fairness and also, second, that the negative thesis of relational egalitarianism is unpersuasive and, at times, rides on distributive concerns.

The first point can be made clear with the following intuition pump. Suppose one comes across a bag of sweets. One meets a number of strangers who one stands in no relationship to, all of whom are equally well-off and who would enjoy the sweets equally well. Suppose further that the advantage a sweet confers on any stranger is solely related to hedonic pleasure. They are hedonic sweets, not normal ones. The point of this restriction is to make clear that possession of the sweets has no impact on social or economic relations. Now, the supporter of the non-pluralist relational view - the supporter who says relational equality is all that matters - must say that there is *no reason* to distribute the sweets equally.

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[48] The relational and distributive conceptions of respect can be seen as tracking Darwall's distinction between *recognition respect* and *appraisal respect*. Showing appraisal respect requires that we make correct judgements about a person including, for example, their moral character, strength of will, ability to reason, and the kinds and degrees of moral virtue she exemplifies. Recognition respect, on the other hand, is owed to persons as such and does not aim to make these more precise evaluations. Relational egalitarians typically want to avoid making judgments of appraisal respect but may not be prepared to offer recognition respect. Distributive egalitarians typically want to make judgments of appraisal respect but may not be prepared to offer recognition respect. For more on this distinction see Stephen Darwall, *The Second-person Standpoint*, Cambridge Mass.: Harvard University Press, (2006), esp. ch. 6; 'Two Kinds of Respect', *Ethics* 88, (1977), pp. 36-49. Joseph Raz, *Value, Respect and Attachment*, New York: Cambridge University Press, (2001).

The distributive view says that there is, as only this treats the individuals fairly and respects their claims. If when faced with the sweet example one believes it is fairer and more respectful to distribute equally, one should accept the distributive view. It is quite clear, I think, that one should distribute the sweets equally. In so far as the non-pluralist relational view does not recognise this it cannot adequately capture important intuitions that exist about both respect and fairness.

What, then, of the negative thesis and the objection that aiming to achieve distributive equality will imply disrespecting persons either by stigmatizing them or forcing them to reveal shameful things about themselves? When we apply the proposal that all evaluative judgments and corresponding redistributive efforts imply stigmatization, or shameful revelation, to extreme cases of disadvantage it is obviously implausible. It is obviously implausible, for example, that a scheme which identified individuals with severe mental or physical handicaps at birth and then made extra provision for them to ameliorate this disadvantage would necessarily be disrespectful to the handicapped. The granting of free wheel chairs or additional schooling does not imply a lack of respect for recipients. In any case, what is the alternative? Either one would have to give all disability allowances on request or remove them entirely. Both of these solutions are ridiculous. It is ridiculous to think that we respect the disabled by removing the means to a good life from them, or by granting additional privileges to the able-bodied. Further, in offering a person compensation no judgment is being made about their *character*. It is precisely because disabled individuals are *not responsible* for their disadvantage that compensation is appropriate and it is precisely because disabled individuals are *not responsible* for their disadvantage that it is not disrespectful to determine the degree of their disadvantage.

Where the relational egalitarian view appears to have more traction is in less clear cut cases of disadvantage. Often we are unsure which of two individuals is more seriously disadvantaged. To discover who is actually worse-off will require extensive investigation. This will be costly in terms of the resources needed to carry out the investigation and perhaps even arduous for the potential recipients. In such cases it seems that there are strong reasons for not investigating a person's circumstances so closely. Importantly, though, the source of these reasons is not the demand to respect persons. If the investigation is very costly, the reason for not investigating is that it would consume too many resources that might be better spent elsewhere. It is out of a concern for the other values those resources might realize, such as general utility, that we do not investigate. Similarly, if the investigation is very arduous for the recipient this will also be a reason against undertaking it. But here too the reason that counts against undertaking the investigation does not come from the value of respect. Rather, the concern will be that, because undertaking the investigation is arduous for the individual, the process will disadvantage her still further. It will be counter-productive to undertake the investigation and so we should not undertake it for *that* reason.

What of the idea that revealing certain facts about oneself can be shameful? A first point is to note that sometimes shame is appropriate. If I admit to being greedy, it may be appropriate that I feel shame. It may even be appropriate that there is a prevailing social ethos that encourages that feeling. The more difficult cases are those where shame may be felt but is not appropriate, such as the case of the unemployed person who wants to find work but cannot through no fault or choice of her own.[49] No doubt blameless people often

[49] See Wolff, 'Fairness, Respect and the Egalitarian Ethos'.

do feel this sort of shame. Yet to make this an argument against pursuing distributive equality generally, and not just in our current non-ideal circumstances, relational egalitarians need some argument for why signing up to find work or gain unemployment benefit is *necessarily* shameful. Those who favour the relational view must argue not only that people currently find it shameful to reveal that they are looking for work given prevailing stereotypes and attitudes, but also that they will always find such revelation shameful under any feasible set of prevailing stereotypes and attitudes. If revelation is not necessarily shameful, the shameful revelation objection only calls for a restructuring of stereotypes and attitudes. Further, as I will show in Chapter 6, market systems, including labour markets, expose individuals to unavoidable risk. If people are not responsible for risk they could not have avoided, many people who are unemployed will be in no way responsible for their position and, correspondingly, have no reason to feel shame. The logic of equality of opportunity serves to explain why unemployment is not shameful.

However, there is another aspect to the relational egalitarian objection. Their point may not be that the simple act of evaluation is disrespectful. Their point may be that what is disrespectful is the *imposition of a judgment* about what counts as an advantage. Specifically, what is disrespectful is judging an individual to be disadvantaged when they themselves do not acknowledge some particular feature as a disadvantage. This argument is more powerful. Still, it is undermined when we recognise that individuals make mistakes in evaluation. That is, individuals, because of their own epistemically limited position, will not always be in the best position to judge whether some feature counts as a disadvantage. This is true of all individuals, not only the disadvantaged. Each person has only limited access to knowledge of what constitutes an advantage.

Why is this fact important? It is important because when determining what constitutes an advantage, and so what individuals have claims to, one wants to approximate as closely as possible to what advantage actually is. One wants the most correct account of advantage. In determining such an account it is possible to draw on *collective experience* and not, or not only, individuals' own opinions. Specifically, we may draw on a variety of different persons' experience and on the knowledge of those best placed to judge because they have the most experience. To say that some feature is a disadvantage even when it is not accepted as such by the person possessing it is, then, only to say that we have greater confidence in this collective experience than we have in the individual's own assessment. This risks sounding paternalistic. But the general point is simply that if individuals have equal claims to advantage, and it is unclear exactly what constitutes advantage, then, given that individuals will often be mistaken about what is to their advantage, we ought to establish some account of advantage based on the best knowledge we have. It is true that this does not give persons the final say in what their claims are attached to. But we do this precisely because, as persons should be able to accept, they are mere persons, epistemically limited, and not gods with perfect knowledge of what is beneficial. It is no sign of disrespect to recognise that persons, all persons, are epistemically limited.[50] Further, while persons may not have the final say in what their claims attach to, this does not imply that the objects their claims attach to should be forced upon them. Claims may be renounced.

Finally, Richard Arneson rightly recognises that a key worry that relational egalitarians have about aiming at distributive equality, particularly a distributive equality that rewards good character or effort, is that it will imply bad moralizing. Bad moralism is

[50] I do not elaborate further on this line of argument here because it is related to the argument I present in Chapter 4. See Section 4B.5 and 4B.6.

the vice of “being excessively concerned with making and enforcing moral judgments and assigning them a greater role in conduct and policy than they ought to have.”[51] But, as Arneson also recognises, it is too easy to discredit distributive egalitarians for bad moralism unless moralism is necessarily bad. The pertinent question is whether it is *ever* appropriate to make judgments about a person’s character or effort and reward her accordingly. So long as good moralism is possible, the distributive egalitarian position is saved. For example, so long as it is *sometimes* appropriate to make evaluative judgements about the level of effort a person has shown and reward her for that, then we have reason to tailor the distribution of advantages accordingly.

The above points aim to deflect the objection that evaluating a person’s level of comparative advantage will imply disrespecting them. They aim to make clear that the making of evaluative judgments about comparative advantage, and seeking the best grounds from which to make these judgments through investigation, does not have to imply a disrespectful attitude. Indeed, they aim to show that the opposite is the case. It is because we respect persons, and consider them to have innate moral worth, that we are aim to give them what they are due. However, these comments do not deny that a relational equality might also be valuable as a requirement of respect. If respect does require relational equality as well, then respect has two faces, but assessing that claim is beyond the scope of this thesis.

[51] For a further discussion of this sort of argument see Richard Arneson, 'Luck Egalitarianism: Interpreted and Defended', *Philosophical Topics* 32, (2004): 1-20, p. 14.

2.6 Conclusion

In this chapter I have presented an account of why and how distributive equality can be morally valuable. I have argued against two competing conceptions of how claims may be satisfied on the grounds that they are intuitively unsatisfactory. I have explained claims to be of a pre-institutional variety, as representing pro tanto moral reasons and as fitting as one part of a more general teleological account of normative reasons. Finally, I have argued that the demand for distributive equality can be expressed in terms of the demand to respect the equal moral status of persons: only equal distributions fairly respect equal status. However, I have not yet provided any argument for why it is persons who possess claims, nor have I argued for why all people have equal status. In the next chapter I will move to argue for these points.

Chapter 3 The Subjects of Equality of Opportunity

In this chapter, I set out to defend the proposal that persons possess claims to advantage in virtue of their status and that all persons have equal status and so equally strong claims to advantage (hereafter, simply claims), at least antecedently to any choice they make. The chapter has nine sections. In the first, I set up an objection to the idea that all persons have equal status and label this the 'Differences Objection' to moral equality. In the second, third and fourth sections I consider, respectively, whether people could be considered equal because they have equally strong interests, were equal before they were influenced by social factors, or possess equally some transcendental property. In the fifth section I examine the Rawlsian idea of personhood as a range property. The idea of a range property has been subject to criticism on the basis that it is *ad hoc*, with no independent justification. Accordingly, in Section 6, I show that there is an independent justification for personhood as a range property within the Rawlsian theory, but that the interest-based justification offered threatens to exclude groups such as the disabled, who intuitively have claims. Section 7 offers a foundationalist justification of the Rawlsian range property. Section 8 considers what is implied for how we should treat persons if the Differences Objection succeeds and people have fundamentally unequal status. Section 9 concludes by way of a summary.

3.1 The Differences Objection

Between whom is equality of opportunity to hold? The obvious answer is that equality of opportunity is to hold between *persons*. But two problems immediately arise with this proposal. First, it is unclear what it is to be a person. What empirical or transcendental fact distinguishes a person from a non-person? Second, even if persons do possess claims in virtue of their status, why should we think that persons possess equal status and so equally strong claims? In what follows I hope to investigate these two questions simultaneously, examining whether any candidate account of personhood also provides a plausible account of the equal status of persons.[1]

To frame the investigation, I will first formalise the second concern described above in terms of an objection that I will label the 'Differences Objection' to moral equality. It runs as follows:

1) Possession of a certain attribute or set of attributes confers personhood - a particular kind or strength of moral status - on a creature.

2) There is no respect in which all persons are equal that is both:

   a) morally relevant

   and

   b) distinguishes persons from non-persons

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[1] Louis Pojman presses this objection. Louis Pojman, 'On Equal Human Worth: A Critique of Contemporary Egalitarianism', in Louis Pojman and Robert Westmoreland (eds.), *Equality: Selected Readings*, Oxford: Oxford University Press, (1996), pp. 282-298.

3) Not all persons are equal with respect to the degree that they possess the attribute relevant for personhood.

4) If an attribute conveys moral status, the greater the possession of that attribute the greater the moral status.

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5) Not all persons are of equal moral status.

The two clauses in condition 2) are required because there are some respects in which all creatures that we typically describe as persons are equal: each person lives in the Milky Way, each person is a carbon-based life form, and so forth. But these candidate groundings of moral equality face two difficulties in that, first, they do not identify features that could plausibly be thought to be of sufficient moral relevance to ground equality and, second, they fail to differentiate those creatures we commonly think of as persons from creatures we commonly think of as non-persons. A successful account of equality between persons must find a common feature of persons that identifies them as the source of claims *and* accords with our intuitions about what is of moral relevance about persons.

If the Differences Objection succeeds, people are of unequal moral status and so have unequal claims. I will now consider whether there are any responses to the Objection.[2]

[2] I want to comment briefly on the possibility, raised first by Parfit, that individuals might not be the same persons over time. If persons are the subjects of equality, and personal identity shifts so that the same individual is a different person at different points in their lifespan, then the subject of equality of opportunity would no longer be any individual's life taken as a whole, but would rather be the different particular persons within any life. If different persons overlap within the same life then presumably the strength of their claims overlap also. However, I do not want to comment on this interesting problem further here. I will assume for the sake of this chapter that individuals are the same person throughout the course of their lives. For more on this topic see Derek Parfit, *Reasons and Persons,* Oxford: Oxford University Press, (1984), pp. 199-345.

3.2 Interests

I want to ask now whether the possession of interests might ground the equal status of persons. In the account under consideration, the possession of interests forms the grounds of moral status and so, for each creature with equally strong interests, their interests generate equal claims. If each person can be thought of as having equally strong interests, they can be thought of as having equal claims.

A strength of the interest-based view is that the possession of interests is already widely accepted as a morally relevant attribute of a creature. That is, it is thought morally important that the interests of a creature should be satisfied, and greater attention is usually paid to those creatures with more, or more complex, interests. Interests, then, could potentially satisfy the first clause of the second premise of the Differences Objection. The interest-based view might also be able to satisfy the second clause; proponents of the interest-based view may seek to employ a distinction between the interests possessed by persons and by non-person sentient creatures. Peter Singer invokes Locke's description of a person as "a thinking intelligent being that has reason and reflection and can consider itself as itself, the same thinking thing, in different times and places", to show how persons can be thought of as having greater interests than non-persons.[3] Possessing high-order mental capacities allows individuals to have both forward-looking interests and more complex interests, and these additional interests, Singer believes, gives persons greater overall

[3] John Locke, *An Essay Concerning Human Understanding*, (1690), Peter Nidditch (ed.), Oxford: Clarendon, (1979), p. 335. Peter Singer does not, of course, believe in the importance of fairness as I use that term here. For Singer, unfairness is simply a matter of not having one's interests taken into account in utility-maximizing calculations. It has no badness independent of the badness of the lost utility when some interests are not taken into account in the utility maximizing calculation.

weight than non-persons.[4] Locke's definition of personhood allows non-human animals to qualify as persons, just so long as they have the relevant mental capacities. It also implies that humans lacking the necessary mental capacities count as non-persons.

However, while interests fit our intuitions about what is a morally relevant attribute of creatures, and persons may be distinguished from non-persons according to the strength of their interests, interests cannot ground the *equal* status of persons. This is because although all people can be said to have some interests, different people may still possess interests to different degrees. Some persons may have varied and complex interests while others will have fewer and less varied interests. As the interest account accepts moral status to be proportional to the possession of interests, it must give persons with more interests greater status and stronger claims than those persons with fewer. This is devastating to the proposal that possession of interests might ground the equal moral status of persons; such an account must see persons with different strengths of interests as fundamentally unequal. Of course, this does not imply that the possession of interests, or the capacity for the possession of interests, is not the source of an individual's claims - it may be that the Differences Objection is correct - but it shows that the interest-based account affirms rather than undermines the worry present in the Differences Objection.

Although the interest-based view cannot ground the equal status of persons, we may still draw a useful clue as to what the proper grounds of equality between persons might be from Locke's proposal that a morally distinctive feature of persons is their "capacity for reason and reflection". Locke's proposal suggests that what sets persons apart from non-persons is their possession of particular mental capacities. This accords with

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[4] For Singer's overall theory see Peter Singer, *Practical Ethics*, Cambridge: Cambridge University Press, (1993).

certain pre-theoretical intuitions about what sets persons apart from non-persons, such as the belief that a quadriplegic human is just as much a person as a fully able bodied human, while an entirely brain dead human is not. So, while an interest-based account may not be able to justify the equal status of persons, we might still take forward the idea that the grounds of equality between persons are connected to some mental capacities held exclusively by persons.

3.3 Pre-social Equality

Even when we confine personhood to humans, the difficulty of identifying some empirical properties that all persons share, let alone share uniquely, is clear. But what reason is there for thinking that to ground equality we must look to facts about people as we *currently* find them? For any existent individual there is a complex history of causal events that has led to their present situation. Many of these events will have been entirely outside their control. But why should social contingencies, like the wealth of one’s parents or the quality of one's schooling, be a contributing factor to one’s eventual moral status? If we want to compare like with like, should we not try to lift the cloak of social contingency and ask what a creature’s nature is independently of the arbitrary influences that have shaped it? Might there not be some form of pre-social equality between persons?

A recent argument presented by Thomas Christiano echoes this thought. He writes,

"*The inequalities in abilities we see in the world around us are often the result of difference not in capacity but in external circumstances. The development of these capacities can be* *suppressed in particular persons as a result of poor education and other highly adverse circumstances, but this speaks not to the worth of the capacity but of the external circumstances*."[5]

Christiano offers this argument in favour of the proposition that people are fundamentally equal. This suggests we might hope to argue backwards from the fact that many of the differences we see between people do not reflect differences in their fundamental nature or responsible choices, but rather differences in circumstance. This leads to the idea that people, or at least a large number of people, are pre-socially equal.

A superficially similar argument is put forward by Mill in his essay on 'The Subjection of Women'.[6] There, Mill aims to cast doubt on the supposedly natural differences between men and women by suggesting that these differences might be explained as a consequence of the cumulative effects of historical injustice.[7] The important difference between the two proposals is that the first aims to show that individuals are *as a matter of fact* pre-socially equal, while Mill aims to show only that we *cannot be sure* what the comparative status of different persons is given the differentially favourable circumstances that have shaped them. I will look at each proposal in turn.

To explore the argument that people are *as a matter of fact* pre-socially equal, one must first take a particular position on the nature versus nurture debate. In its strongest version, the argument posits that individuals are wholly determined by their external

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[5] Thomas Christiano, 'A Foundation for Egalitarianism', in Nils Holtug and Kasper Lippert-Rasmussen (eds.), *Egalitarianism: Essays on the Nature and Value of Equality*, Oxford: Clarendon, (2007), pp. 42-82, p. 55.

[6] John Stuart Mill, *The Subjection of Women*, Susan Moller Okin (ed.), Cambridge: Hackett, (1988).

[7] Some argument from the arbitrariness of contingent effects is also often seen as underlying Rawls' arguments for equality. See John Rawls, *A Theory of Justice*, Cambridge Mass.: Harvard University Press, (1971), pp. 311-315.

circumstances and denies that each person has a pre-social nature that is in any way distinct from that of any other person. Persons are, or more accurately were - before they were socialised - *tabula*e *rasae*.[8] If this account of the nature versus nurture debate is correct then the pre-social argument is successful. Pre-social equality is established by default, for we have individuals that are pre-socially indistinguishable and so equal in every way possible. There could be no possible grounds for doubting their pre-social equality. However, this view is highly implausible. It contradicts the evidence we have from the sciences, and in particular genetics, about how far people are determined by external influences. From the moment of a person's origin there are limits on the different ways she can develop written into her genetic code. The idea that a person might be wholly determined by their social experiences ignores this basic fact.[9] But, as soon as we abandon the wholly socially determined position and accept that pre-social individuals are distinct, with different genetic predispositions and potentials, it is no longer clear why these different pre-social individuals should be considered as equals. Rather than proving pre-social equality, the argument that many (rather than all) differences between persons are attributable to external circumstances only succeeds in moving the question of what feature might make persons equal back to an earlier level. It places the question at the level of 'potential capacity', rather than 'actual capacity', leaving unanswered the question of

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[8] While this proposal is in one way similar to Locke's view - both assume that there are no fixed natural human potentialities - an important difference is that Locke takes the originally blank individual to have a role in authoring the shape of their character. Thus, on Locke's account, the social individual is not merely the sum of their external circumstances. Locke, *An Essay Concerning Human Understanding*, pp. 104-402.

[9] Of course, there are occasions when we assume people to be equal. When we think of policies regarding future generations we place values on the lives of non-existent individuals, and there we may consider the value of these future persons equally as we have no means to distinguish the future people from one another. But that is not what is required for the 'wholly determined' view to be correct. For it to be correct, we have to accept the view that pre-social people, or rather pre-social potential people (i.e. those potential people that are no more than the combination of a pair of cells) are indistinguishable from one another and could, were their experiences to be the same, become the same people in the required sense.

whether pre-social individuals are equal in their potentials. Accordingly, the first proposal appears stuck on the horns of a dilemma: either it must embrace the wholly socially determined account and so commit itself to an implausible position within the nature versus nature debate, or it must allow that persons have different pre-social natures and so cannot provide an argument for why individuals ought to be considered pre-socially equal.

What, then, of the second version of the pre-social equality argument - the version that emphasises the epistemological difficulty of proving unequal status? In defence of the equal rights and status of women, and in opposition to the naturalistic argument that women were inferior to men as evidenced by the fact that women appeared less mentally able or morally capable, Mill writes,

"*Standing on the ground of common sense and the constitution of the human mind, I deny that anyone knows, or can know, the nature of the two sexes, as long as they have only been seen in their present relation to one another. If men had ever been found in society without women, or women without men, or if there had been a society of men and women in which the women were not under the control of the men, something might have been positively known about the mental and moral differences which may be inherent in the nature of each. What is now called the nature of women is an eminently artificial thing — the result of forced repression in some directions, unnatural stimulation in others*." [10]

As the differences in capacity between men and women that were supposed to have been natural have now been shown to be largely socialised, Mill's argument has been vindicated

[10] Mill, *The Subjection of Women*, p. 20.

by history. Further, the expansion from the area of gender inequalities to inequalities more generally appears straightforward: if we could have mischaracterised as natural so many of the superficial differences between men and women, surely we could be equally wrong about differences we see manifest in everyday life between people generally. How could one ever be sure that a particular trait was natural?[11]

Even if this application of Mill's argument is successful, it does not make an argument *for* equality but rather disproves an argument against equality; it proves that we cannot accept inequalities as we find them in the world as evidence against natural equality. To cite Mill's argument as an argument for equality is, then, to beg the question. It is to presume equality in the absence of an argument for either inequality of status or equality of status. To convert Mill's argument into an argument for equality one would need a supplementary argument to show that under uncertainty about moral status we still have a reason to presume moral equality. In the absence of such an argument, Mill's argument is indeterminate.[12] Further, to make a judgement that some category of pre-social individuals are to be considered equals, we would first need some account of which latent potentials are relevant to personhood. Some such account is assumed by Mill, but is never explicitly presented.[13] Since our philosophical task is in part to determine such an account and since both versions of the pre-social argument that I have presented above lack such an account, each could only ever be half of the story. We still need some account of which capacities or

[11] I can think of one further interesting version of the pre-social argument. Suppose that the argument does not aim to show equality but aims only to show that differences between people are lesser *in scale* than they superficially appear. The argument would be that any pre-social differences are magnified through socialisation, at least as we currently experience it, and so what appear to be great differences are actually very small differences. This argument would accept that there was pre-social inequality but it would seek to downplay its size. Hence, this argument could not be used to ground equality between persons, even if it could be used to argue for less inequality.

[12] In the eighth section of this Chapter I highlight one such argument.

[13] Presumably Mill simply assumed the relevant category was humans rather than persons.

potentials might be held equally by pre-social persons in order to determine whether different candidate persons are properly considered equals.

If it had succeeded, the pre-social equality argument would have undermined the second premise of the Difference Objection. I have argued that the pre-social argument for equality only manages to move the focus of the search for relevant features to an earlier pre-social level. We may accept that the affects of arbitrary external factors on a person's development ought not to influence their fundamental moral status. We may then also accept that what matters ultimately is potential rather than the realisation of that potential, but this still will not give us an argument for equality between persons unless we can identify some equality in potential between persons.

3.4 The Transcendental View

Given the difficulty of finding an empirical property held equally by each person, one alternative move may be to posit a transcendental property that persons hold equally. Such a view is famously defended by Kant.[14]

On the Kantian view, all humans possess the capacity to apply practical reason to determine what they ought to do and so are not simply moved by their instincts and desires, as animals are taken to be. This capacity to reason and be motivated by something other than one's instincts allows room for free will since individuals can choose to act on their instincts or on the moral law. Of course, Kant does not mean to claim that human choice is

[14] Immanuel Kant, 'Metaphysics of Morals', (1797), in Mary Gregor (trans. and ed.), *The Cambridge Edition of the Works of Immanuel Kant, Practical Philosophy*, with an introduction by Allen W. Wood, Cambridge: Cambridge University Press, (1996), pp. 353-605.

never influenced by more base impulses and stimuli. Rather, as he says in the *Metaphysics of Morals*, "Human choice … is a choice that can indeed be affected but not determined by impulses, and is therefore of itself (apart from an acquired proficiency of reason) not pure but can still be determined to actions by pure will."[15] The important idea is that, although a person may experience particular stimuli and possess certain desires, these influences can be overcome by exercising one's will, as when, for example, I am tempted to keep some money I find, but also recognize that there are reasons I should return it, and choose to act on those reasons. In so far as I can recognize both my own narrowly self-interested reasons for keeping the money and the broader demands of practical reason, which we are supposing demand that I return the money, I am free to act on either reason no matter how strongly my instincts pull me in a particular direction.

It is an important part of Kant's view, then, that each individual may exercise his will to determine how to act. But, crucially, this capacity to exercise one's will and so choose freely does not depend on empirical features of the individual human; for example, more intelligent humans do not have a greater capacity to exercise their will and a freer choice than less intelligent people. Instead, Kant explains human freedom through the existence of a 'noumenal self', a choosing agent not subject to the laws of causality and detached from empirical reality. As Ian Carter summarises the view, "For Kant, we are all *equally* rational and *equally* moral agents, given that our nature as rational and moral agents depends not on our natural capacities but on the free will we each possess as a noumenal being".[16]

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[15] *Ibid*., p. 375.
[16] Ian Carter, 'Respect and the Basis of Equality', forthcoming in *Ethics*.

While Kant's view may allow us a way out of the Differences Objection by rejecting its second premise, the cost is high in terms of plausibility because we must accept the metaphysics underlying the Kantian view.[17] The idea of a free-floating noumenal self seems to the modern eye a mysterious one, too peculiar to ground an ethical theory. As a grounding for equal status it has little power to convince those who do not already accept these sorts of metaphysical commitments. Indeed, perhaps there is also a deeper problem. Even if we accept that one may legitimately posit the metaphysical entity of a noumenal self, Kant must still make the additional claim that *all and only persons* possess a noumenal self. But this claim seems impossible to defend if noumenal properties do not supervene on empirical properties. To frame the problem in terms of a question: how are we to distinguish which creatures are persons and which are not without referring to some possessed empirical property upon which the transcendental property supervenes?[18] That is, if we cannot identify some empirical property on which the transcendental property supervenes, how are we to know who has the transcendental property? And, if we can identify the relevant empirical property, what is added by the positing of the transcendental property that could not already be gained by stating simply that the empirical property was the relevant one?

If the best expression of equality as grounded in a transcendental property is Kant's view, and that view is either too metaphysically demanding or is without adequate means of explaining who possesses the relevant transcendental property, then we must, absent an

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[17] Bernard Williams, 'The Idea of Equality', in Bernard Williams, *Problems of the Self*, Cambridge: Cambridge University Press, (1973), pp. 230-249, reprinted in Robert Goodin and Philip Pettit (eds.), *Contemporary Political Philosophy: An Anthology*, 2nd Edition, Oxford: Blackwell, (2006), pp. 451-461, p. 454.

[18] My thanks to Peter Chau for this objection.

alternative, hold on to the idea that the morally relevant feature of persons is indeed an empirically identifiable one.

3.5 Range Properties

If the transcendental move is unsatisfactory, we face again the basic problem manifest in the Differences Objection: there are no empirical capacities or potentialities in which all persons are equal, so why ought persons be thought to have equal status and claims? What, then, of the idea that all persons are at least equally *persons*? In so far as there is something that it is to be a person - possessing some set of realized or potential attributes and so forth - all creatures that possess those attributes to a *sufficient degree* qualify as persons and do so equally. Some persons will possess the attributes that underlie personhood to a greater degree than others, but none is any more a person than any other, just as the weakest member of a rowing boat is no less a rower than the strongest. On such a view, personhood may be said to exist as a *range property*: a property possessed in virtue of possessing some other attribute to an absolute degree within a certain range.

The idea of personhood as a range property (and as the grounds for equality) receives its clearest expression from Rawls.[19] Rawls elucidates the idea of a personhood as a range property via an analogy with the range property of being a point interior to a circle. He writes, “All points inside this circle have this property although their coordinates vary within a certain range. And they equally have this property, since no point interior to a

[19] Bernard Williams' suggestion that all men are at least equally men was in essence an appeal to the same idea, although Williams did not employ the language of range properties. Williams, 'The Idea of Equality', p. 451.

circle is more or less interior to it than any other interior point".[20] For Rawls, the corresponding range property of personhood is set by the possession of the two moral powers: these are a capacity for (1) a conception of one's own good, as expressed by the ability to form and revise a rational plan of life, and (2) a sense of justice, as expressed by a normally effective desire to apply and to act upon the 'Principles of Justice'.[21] The property of personhood, or as Rawls puts it *moral* personhood, supervenes on the possession of these two fundamental moral powers and, while possession of each of the moral powers is scalar, the possession of the range property of personhood is non-scalar and binary; so long as one possesses the potential to develop these capacities *to some degree*, one qualifies as a moral person.

If personhood exists as a range property and presents a plausible ground for the equal moral status of persons, we can avoid the Differences Objection by rejecting its second, third and fourth premises; each person is equally a person and qualifying as a person only requires that one holds the fundamental property to a sufficient degree to fall on the right side of the binary cut. Before moving to examine objections to this idea it is important to emphasize that Rawls is concerned with capacities and not whether these capacities are realized, allowing the idea of a range property to avoid the objection that one's possession of the relevant scalar attributes will be too much a matter of social contingency.

Even with the above qualifications, two general worries about the notion of a range property linger. First, why should a range property be relevant to status rather than the possession of the underlying scalar property? Why should we not, in other words, attribute

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[20] Rawls, *A Theory of Justice*, p. 508.
[21] *Ibid*., p. 505.

greater status to those with greater capacity to develop the moral powers? Second, given that the notion of a range property appeals to some sufficiency threshold above which a creature qualifies as person and that this threshold must bear a very great moral significance since particular claims arise only after a creature crosses it, can any threshold plausibly be thought to hold such fundamental importance? These objections, raised by Geoffrey Cupit and Richard Arneson, are interrelated.[22] Our doubts about whether a threshold can bear such great moral weight flow from the thought that moral status must be connected to the degree to which one holds the underlying capacity. If the idea of a range property as the foundation of equality is to be defended, it needs to be shown that there is a non-arbitrary way of drawing the range. In the next section I will argue that, *pace* his critics, Rawls does provide a justification for employing the range property of personhood as the basis of equality.

3.6 Justifying Personhood as a Range Property

In *A Theory of Justice* Rawls states that he is concerned with a range property because “Those who can give justice are owed justice”, elaborating that, "Equal justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation [i.e. the Original Position]."[23] Understanding what Rawls intends here is crucial to understanding his justification of personhood as a range

[22] Richard Arneson, 'What, If Anything, Renders All Humans Morally Equal', in Dale Jamieson (ed.), *Singer and His Critics*, Oxford: Blackwell, (1999), pp. 103-129, pp. 108-109. Geoffrey Cupit, 'The Basis of Equality', *Philosophy* 75, (2000): 105-120, p. 110.

[23] Rawls, *A Theory of Justice*, p. 510, 505.

property fixed by possession of the two moral powers. Presenting his thought requires some elaboration of his overall theory.

When describing his project in *Theory*, Rawls states that his "aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of *social contract* as found, say, in Locke, Rousseau, and Kant."[24] Elaborating on this statement, he writes that the principles his theory yields are "the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association."[25] In these and the related passages, Rawls makes clear that one important justification for the principles of justice he affirms is that they would be agreed to in his hypothetical initial contract situation, the Original Position, and that they would be agreed to precisely because they serve to advance the *interests* of the parties who are subject to them. For Rawls, society is "a co-operative venture for mutual advantage", and each individual has an interest in joining this venture in so far as "social co-operation makes possible a better life for all than any would have if each were to live solely by his own efforts."[26]

I emphasise that Rawls relies on the claim that the interests of the contracting parties are furthered by their union because this move also acts to limit which individuals may be included as party to the contract. That is, it is a feature of the Rawlsian theory that only those individuals who can *co-operate* and *reciprocate* for the purpose of *mutual advantage* are represented by the hypothetical parties to the Original Position, since it is

[24] *Ibid*., p. 11, emphasis added.
[25] *Ibid*., p. 11.
[26] *Ibid*., p. 4.

only these individuals with whom the other parties have an interest in contracting. This requirement - that the parties to the Original Position must be able to co-operate and reciprocate to produce mutual advantage - restricts participation in the Original Position in one important way relating directly to the two moral powers. For Rawls, it is *only* people who possess the two moral powers that can be relied upon to co-operate and reciprocate.[27] Crucially, this fact serves as an independent justification of the relevance of the two moral powers. However, to explain this point we must elaborate Rawls' account of the role and significance of the two moral powers further, and this changes between *Theory* and *Political Liberalism*.

In both *Theory* and *Political Liberalism* the Original Position is designed to model the contracting parties and their possession of the two moral powers: their capacity for a sense of justice is modelled through features such as the veil of ignorance and the five formal conditions of right, while their capacity for a conception of their good is modelled by the facts that they are said to reason according to principles of rational choice, have a rational plan of life, and a desire for an adequate share of the primary social goods as an all-purpose means for promoting their plan of life.[28] Now, although the two moral powers feature in both *Theory* and *Political Liberalism,* their precise role is different. In *Theory*, the possession of the two moral powers is taken as a statement about the *true nature of persons*. Specifically, it is a particular description of the nature of persons developed first by Rousseau, adapted by Kant and now employed by Rawls, that states that people actually

[27] As I will make clear later in this section, the restriction also limits participation in another important way, excluding the mentally and physically disabled.

[28] Part, then, of what sets Rawls theory apart from other social contract theories, such as the theories of Hobbes and Gauthier, is that he states that people have, and have an interest in developing, a sense of justice. People are not conceived of as exclusively self-seeking maximisers with no regard for justice for its own sake. Rather, they have interests in both their own good and justice. Or, more accurately, developing their sense of justice by living with others on just terms is itself a constituent of the good for persons.

have, as a matter of fact, the two moral powers. In *Political Liberalism*, the description of persons as possessing the two moral powers does not rely on the claim that all persons are actually Kantian persons with the two moral powers. Instead, it relies on the claim that in liberal democratic societies people *conceive of themselves* and each other, at least for political purposes, as free and equal, reasonable and rational, each in possession of the two moral powers. To put it another way, possession of the two moral powers is a shared ideal about democratic citizens implicit in the public culture of liberal democratic societies. Why does Rawls make this change and what is its significance? The answer is connected to Rawls' congruence argument in *Theory* and, consequently, his concern for stability in both *Theory* and *Political Liberalism*.

In *Theory*, Rawls claims that individuals have a higher-order interest in realising their true nature as Kantian persons. They have an interest, that is, in developing each of their two moral powers, and the individuals' achievement of self-realisation through this development is what it is to be *morally autonomous*. Now, since the Principles of Justice are chosen by the contracting parties within a procedure that reflects their moral nature, to act in accordance with those principles is, in the Rousseauian sense, to act in accordance with a law one has given oneself and so also, importantly, to be morally autonomous. In other words, just as individuals have a higher-order interest in being morally autonomous, so they also, by the same token, have a higher-order interest in acting in accordance with the Principles of Justice. If they were to act against the principles, say because they pursued only their narrowly self-interested rational good, with no attention to what justice required, they would be also be acting to prevent the exercise and development of their sense of justice. As the development of sense of justice is among their higher-order interests they would at the same time be acting to stifle their true nature, and so against their own interest. They would, to use the Rawlsian parlance, be *rationally* but not *fully* or *morally* autonomous. That acting in accordance with the Principles of Justice is also to act autonomously, and so in one's own interests, is the conclusion of the congruence argument Rawls provides in *Theory*. It is because each individual has a higher-order interest in acting in accordance with the Principles of Justice that the right is congruent with the good and each individual can be relied upon to act on the Principles of Justice and reciprocate and co-operate.[29] This, Rawls supposes, ensures stability in a well-ordered society organised around the Principles of Justice.[30]

Rawls' development of *Political Liberalism* is a reaction to the worry that the congruence argument fails. He is concerned that, given the fact of reasonable disagreement, too many people will disavow the Kantian conception of the person at the root of *Theory* and so will not be moved by the accompanying congruence argument, creating instability. As I have intimated before, Rawls then replaces the comprehensive Kantian conception of the person that appears in *Theory*, with the political conception of the person that he believes is held, as a matter of fact, in democratic societies which appears in *Political Liberalism*. He still claims, however, that citizens in a liberal democratic society will find reason to co-operate, flowing from the fact that people conceive of themselves as having the two moral powers in political contexts. Samuel Freeman explains Rawls' justification of this claim in the following passage,

[29] For an elaboration of the Kantian aspects of Rawls' argument here see Rawls, *A Theory of Justice*, pp. 251-257.
[30] For an elaboration of the overall congruence argument see Rawls, *A Theory of Justice*, pp. 567-577. Rawls seems to recognize that the congruence argument is hard to accept. He writes, “however improbable the congruence of the right and the good in justice as fairness, it is surely more probable than on the utilitarian view.” Rawls, *A Theory of Justice*, p. 573.

"*Because of the fact of reasonable pluralism, for a conception of justice to be generally accepted in a well-ordered society, it must "bracket" disputed issues such as the most basic moral values [including the Kantian conception of the person]. Rawls, however, assumes that, in a modern democratic society our conception of ourselves as free and equal is of great importance to any reasonable person's self-image and self-respect; it also occupies a significant position within any reasonable comprehensive moral, philosophical, or religious views, whatever they may be. All of us, then, assuming we are reasonable and rational, should have sufficient reason to want to live according to a conception of justice that affirms our self-respect and status as equal citizens, and so that also enables us to pursue our conception of the good and the fundamental values of our comprehensive views. We should have, then, Rawls contends, a 'higher-order interest' in preserving our equal status and self-respect as free citizens, and in maintaining the moral powers that enable us to take part in social co-operation*."[31]

In effect, Freeman argues, Rawls drops the previous stability argument with its reliance on the Kantian conception of the person, and replaces it with the idea that all reasonable people, in so far as they accept the political ideal of the person implicit in the public culture of liberal democratic societies, will still find reasons to endorse the Principles of Justice. This time, though, they will not, or not necessarily, be prepared to act on the Principles of Justice for Kantian reasons; they will also be prepared to act on them for reasons internal to their own reasonable comprehensive doctrines and because they accept the political

[31] Samuel Freeman, *Rawls*, Oxford: Routledge, (2007), p. 330.

conception of the person. Indeed, this political conception of the person will be affirmed from *within* each reasonable person's comprehensive doctrine. There will be, Rawls supposes, an overlapping consensus on the Principles of Justice between all reasonable comprehensive conceptions of the good. Rawls also invokes the idea of autonomy in defence of his assertion, but now the terminology is changed from *moral autonomy* to *political autonomy*.[32] Importantly, although the Kantian foundation is no longer relied upon, individuals still have a higher-order interest in complying with the Principles of Justice; now that higher-order interest is not, or not necessarily, in the realisation of their true Kantian selves, it is in "preserving their equal status and self-respect as free citizens, and in maintaining the moral powers that enable us [them] to take part in social co-operation", as Freeman puts it. This is an interest that is grounded in their own particular comprehensive doctrine.

No doubt, much more could be said to elaborate the Rawlsian position. However, the important point I want to extract is simply that, in both *Theory* and *Political Liberalism*, the two moral powers play a crucial role in explaining why persons can be relied upon to co-operate in society. It is only persons who hold these powers, or who accept the shared ideal that they hold these powers in political contexts, that will have a higher-order interest in co-operating with others in society. Individuals who fail to meet these conditions will renege on the Principles of Justice and it would not be in the interests of individuals to co-operate with those who could not be relied upon to reciprocate. In a sense the idea of range property appears again here at a different level. Each person, equally, has an overriding

[32] For Rawls' account of political autonomy and his account of the contrast between his political and moral constructivism see John Rawls, *Political Liberalism*, Expanded Edition, New York: Columbia University Press, (2005), p. 98-110.

interest in conforming with the Principles of Justice, despite the fact that some individuals will have more interest-based reasons in favour of their reneging on the Principles of Justice than others.

The point all this aims to make clear is that Rawls' choice to employ the two moral powers as a range property that demarcates when individuals can be thought of as persons, political or moral persons, is not arbitrary. To summarize, for Rawls, "justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation [i.e. the Original Position]."[33] Only an individual that has, or conceives of himself as having in political contexts, *some* capacity for the two moral powers can be relied upon to give justice by co-operating and reciprocating, as it is only this type of individual that will have a higher-order interest in giving justice. So, only this type of individual, a person, can partake in and act in accordance with the public understanding of the Original Position. Therefore, only persons are owed justice. Thus personhood represents a morally significant range property since it is only persons who are owed justice, and all persons are owed justice equally.[34]

The above argument gives a reason why personhood may be thought of as a non-arbitrary range property, one that may plausibly ground the claim that all persons ought to be considered as equals, having equal claims to justice. To the extent that Rawls' critics have failed to engage with these arguments, their objections are unpersuasive. However, even if the above arguments have force in the Rawlsian context, there are also many

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[33] Rawls, *A Theory of Justice*, p. 510, 505.

[34] We should not worry that this is an argument about justice rather than fairness. Fairness, in the sense I mean fairness, can plausibly be thought to be a desiderata of justice, in the sense Rawls means justice. So, if personhood gives rise to claims of justice it may, by the same token, give rise to the kind of claims I described in the last chapter. I explain this more fully in the Conclusion of the thesis.

important differences between Rawls' constructivist vision and the naked ideal of equality of opportunity I am concerned with here. It is not obvious that these arguments can be relied upon to ground equality without the Rawlsian apparatus. It might be contended, for instance, that the basis of Rawlsian equality is only sufficient to justify the equal status for agents as the participants in some constructivist or contractualist procedure, but does not constitute any deeper equality of status; if Rawls' argument for why moral personhood represents a range property rests on the idea that possession of moral personhood is necessary for co-operation and performance of contract, this suggests that equality only applies between contractors and citizens, not persons *simpliciter*.

Indeed, there is also another way in which the Rawlsian account is intuitively unsatisfactory. The requirement that participants in the Original Position have the capacity to co-operate and reciprocate for mutual advantage not only rules out those without the two moral powers, it also rules out the disabled. Rawls makes this fact explicit, stating that he assumes that the various endowments of the contracting parties, such as strength and intelligence, all lie "within the normal range".[35] Justifying this move in *Political Liberalism*, Rawls writes,

"*Since we begin from the idea of society as a fair system of cooperation, we assume that persons as citizens have all the capacities that enable them to be co-operating members of society. This is done to achieve a clear and uncluttered view of what, for us, is the fundamental question of political justice: namely, what is the most appropriate conception of justice for specifying the terms of social cooperation between citizens regarded as free*

[35] John Rawls, *A Theory of Justice*, Revised Edition, Cambridge Mass.: Belknap, (1999), p. 82.

and equal, and as normal and fully co-operating members of society over a complete life? By taking this as the fundamental question we do not mean to say, of course, that no one ever suffers from illness and accident; such misfortunes are to be expected in the ordinary course of life, and provision for these contingencies must be made. But given our aim, I put aside for the time being these temporary disabilities and also permanent disabilities or mental disorders so severe as to prevent people from being co-operating members of society in the usual sense."[36]

Although Rawls supposes that the problems of disability can be met at some later stage once the central problem of specifying the terms of social co-operation has been resolved, it is clear that a deep tension exists between, on the one hand, the idea that an interest-based justification of the Principles of Justice can be provided and, on the other hand, the idea that those who are disabled should be included within the purview of distributive justice. Indeed, Rawls himself admits, despite his assertions to the contrary in the above paragraph, that his theory may not be able to deal with the problem of disability. He writes, "While we would like eventually to answer all these questions [including questions of disability], I very much doubt whether that is possible within the scope of justice as fairness as a political conception."[37] As Nussbaum and Barry have argued, this is an unpalatable conclusion.[38] Those unfortunate individuals who are fully endowed with the two moral powers but who cannot, because of their disabilities, co-operate and reciprocate

[36] Rawls, *Political Liberalism*, p. 20.
[37] *Ibid*., p. 21.
[38] For Nussbaum's and Barry's objections to the fact that Rawls excludes the disabled see, Brian Barry, *Justice as Impartiality*, Oxford: Oxford University Press, (1995), p. 60. Martha Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge Mass.: Belknap, (2006), esp. chs. 1-3.

for mutual advantage, are as much persons, and so must possess the same claims, as the able-bodied. Accordingly, although Rawls may provide independent grounds for the significance of the range property, those grounds will not allow us to endorse the claim that all persons, *qua* persons, have equal status and so equal claims.

The challenge we face now, then, is explaining *why* the range property of possessing the two moral powers is relevant to ground equal status and equal claims without the surrounding Rawlsian apparatus. Whether, in other words, personhood may still be justified as a relevant range property for some reason other than that only persons can co-operate and reciprocate for mutual advantage in society. The next section will examine this question.

3.7 A Foundational Justification

Suppose, then, that we abandon the ideas of reciprocity and co-operation expressed in Rawls and try instead to ground the relevance of the range property of personhood, and so equality, in some other independent normative foundation.[39] For example, consider the claim that the moral significance of personhood rests, foundationally, on the fact that persons have, and have equally, the capacity for responsible choice.

On such a view, possession of either moral power constitutes a necessary condition for responsible choice and possession of both of the two moral powers constitutes a sufficient condition for responsible choice. Responsible choice is itself considered a range

[39] In fact, this proposal can also be thought of as an alternative interpretation of the Rawlsian position. See Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, Oxford: Clarendon Press, (1990), pp. 50-93.

property that supervenes on the possession of the two moral powers. The capacity for the possession of the two moral powers simply *is* what is required for responsible choice, and that responsible choice simply *is* the relevant range property for personhood and so equal status.

In considering this proposal, consider first the claim that the possession of each of the two moral powers together represents a sufficient condition for considering an individual as a responsible agent. First, note that when making attributions of responsibility, distinction is rarely made between individuals on the basis of how elaborate a conception of the good each individual can form above a certain threshold. For example, while some brilliant philosopher may be able to form much more complex conceptions of the good than I can, this does not qualify them as more of a responsible agent than I am and each of us would be expected to bear comparable responsibility for a comparable act, say a crime, arising in comparable circumstances; the notion of a range property seems properly to apply here. Second, note that as long as someone has some sense of justice, and so some sense of what they are doing, attributions of responsibility apply. For example, suppose I have a weak capacity for a sense of justice - I know what is right and wrong, but I do not find that judgments of right and wrong weigh heavily in my deliberations - and I am faced with the possibility of killing another person for my own gain. So long as I have some sense that I know I ought not to kill the person, it would make sense to say that I am responsible for killing them; again, the idea of a range property seems properly to apply here. Third, it is important to be clear that in claiming that the possession of the two moral powers constitutes a sufficient condition for an individual being a responsible agent I am not also claiming that the degree of responsibility an individual bears for the particular outcomes of their choices must be insensitive to the conditions under which those choices were made. What is at stake is whether individuals who possess the moral powers are the sorts of individuals for whom it is proper to make judgments of responsibility. This is consistent with thinking that particular individuals who have faced unfavorable option sets or who have faced choices with unavoidable risk ought not to be held wholly responsible for the outcomes they reach. There is a relevant distinction to be made between the conditions for being a responsible agent - the sort of creature that may make responsible choices - and the conditions for such an agent being responsible for the outcomes of particular choices. To bring in a distinction within the literature, one can distinguish between causal and consequential responsibility. Consequential responsibility refers to when it is appropriate for an individual to bear the consequences of certain choices. Causal responsibility refers only to the items that played a causal role in bringing about some outcome.[40] The proposition here would be that possessing the two moral powers are a necessary (but not sufficient) condition for being held responsible for the consequences of some choice.

This connection of the two moral powers and moral responsibility already attracts some endorsement. As Samuel Freeman notes, the capacity to form and revise a conception of one's own good is required if one is to determine what is in one's own interests.[41] People who lack this capacity will normally be judged legally incompetent and unable to take care of themselves or their affairs. Children and the mentally handicapped fit into this category in so far as they lack the capacity to be rational to the degree necessary to manage their own lives. In short, people who lack a capacity to form and revise a conception of their

[40] For an illustration of this distinction see Dworkin, *Sovereign Virtue*, p. 287.
[41] Freeman, *Rawls*, p. 286.

own good will not normally be considered as responsible agents; the fact that they cannot tell what is in their interests absolves them of responsibility for their actions. The capacity for a conception of the good is, we generally think, a necessary condition for morally responsible choice. Similarly, since the capacity for a sense of justice is required for an individual to be able to distinguish right from wrong, we generally think that individuals lacking this capacity should not be held morally responsible for their actions. To illustrate this point further, consider a case where I am faced with a choice between pushing either of two buttons, one of which would lead to a disaster and the other of which would have no consequence, but where I have no way of knowing which button is which. It would be absurd to hold me responsible for the consequences of the disaster were I to pick the wrong button. This case shows that knowledge of what one is doing, including whether it is right or wrong, is a necessary condition for responsible choice. The comparison with animals is also illustrative. I do not hold a cat responsible for torturing and killing the bird it catches even when it is already sufficiently well-fed. The cat is acting on its plan of life, in so far as it has such a plan, but it has no sense of justice, no sense of right and wrong and no sense of the value it destroys in killing the bird. As the cat does not know what it does, morally speaking, it does not qualify as a culpable moral person.[42] Thus, as I conjectured, these two powers are commonly thought to constitute necessary conditions for an individual being responsible for the outcomes of their actions.

I highlight this proposal because it represents one way one might try to make a foundational argument that explains the relevance of personhood and so basic equality between persons. It is open to objections. One could simply deny that being a responsible

[42] Very few humans, if any, lack entirely a sense of justice but for those individuals that do it would be appropriate not to consider them as full moral persons with associated claims.

agent can plausibly be thought of as a range property. Those with greater capacities, one might argue, bear a greater responsibility for the outcomes they arrive at than those with lesser capacities. Further, one might wonder whether this view really escapes the metaphysical commitments of the Kantian view. If we posit that all people equally possess the capacity for responsible choice are we not sneaking in some metaphysical idea about the capacity of persons to make free choices? Against these points it could be argued that if we view personhood as a relevant moral property, one that grounds claims, then we do not have to make any further moral or metaphysical commitments. If we *believe* personhood is morally important, and we *believe* it is important because only persons can make choices for which they may be held responsible, then that simply *is* the nature of our moral beliefs. Personhood and choice are relevant because we intuit that they are and, on this view, there is no further justification or argument available or required. The objection that this move is *ad hoc* does not apply because the move could be explained by appeal to an overall moral theory beginning in our intuitions, combined with the fact that we do happen to believe that persons are morally responsible for their choice. This seems to me the most plausible of the positions so far examined. Indeed, I endorse this view. When we accept it, one is able to better understand the importance of choice within the overall conception of equality of opportunity I am trying to elaborate. One is also able to see the deep connection I alluded to in Chapter 2 between responsibility and claims.

I will not elaborate this position or the possible objections to it further. To do so would require too much space in what is already a long chapter. In the next section I want to consider, finally, what is implied if all of the above arguments for the equal status of persons fail.

3.8 Equality and Revelation

Suppose now that all of the above arguments fail so that there are no grounds for the proposal that people are fundamentally equal. People are not fundamentally equal and some have stronger claims than others; the Differences Objection succeeds. What distributive implications does this have? More specifically, does it entail that we ought to give those with stronger claims greater amounts of advantage?

In one sense, the answer to the last question is clearly “Yes”. Those with greater claims ought to be given a greater amount of advantage in proportion to their greater claims. However, there remain two difficulties with this proposal. The first is theoretical: in order to determine whose claims are the greatest we need some account of which features of a creature constitute the source of its status and associated claims. The second is epistemological: once we have an account of which features constitute the source of status we need to identify which individuals have this status.

With respect to the first problem, we might specify a range of candidate features that confer status on an individual. These features could include the possession of interests, the possession of virtue and so forth. Presumably the Spartans would have been likely to connect an individual's status to their physical prowess and warrior abilities. A more common view nowadays might be to connect it to an individual's intellectual capacities. Still, there is clearly no universally accepted account of which capacities are relevant and this presents a problem: if we are unsure over what the relevant attribute is, how ought we to respond to this uncertainty? To begin with, suppose for the sake of argument that we have no plausible account of the source of claims, even though we accept that some such account exists.

A first point to note is that when one has a group of individuals and one is uncertain over the strength of the claims of the individuals, the fairest response to this uncertainty is an equal distribution, not a random one. To illustrate this problem, suppose there are five miners who have undertaken a prescribed amount of work collectively. The work is the digging of a hole and the goods gained are the gold nuggets at the bottom. Armed only with the knowledge that the work has been completed by the group, and so with no knowledge of the individual workers, their circumstances, or how the work has been distributed amongst them, how should one distribute the nuggets? It is fairer, by which I mean it has a better *ex ante* expectation of satisfying claims most proportionately, to distribute the product of their labour equally rather than randomly. This proposition - that under conditions of uncertainty about the strength of claims, equal distributions will minimize expected unfairness - is made by David Miller.[43]

If, then, we are entirely uncertain what is the source of claims, and who has the strongest claims, the fairest thing to do will be to distribute advantage equally across all creatures. This is a peculiar result. It suggests not only that all humans should be given equal advantage, but also that all other animals ought to be given that same level of advantage. The result can be made less peculiar if we relax the assumption that we have no idea *at all* which features constitutes the source of claims and posit instead, as seems plausible, that it is only between certain categories of individuals that we are uncertain of the strength of their claims. In other words, although we are not sure what the source of

[43] David Miller, 'Equality and Justice', *Ratio* 10, (2002): 222-237, p. 227-230. I have a mathematical proof of this conjecture and the assumptions under which it holds, which is nearly all of them, currently unpublished.

claims is, we have strong pre-theoretical intuitions that certain categories of individuals, say humans, have stronger claims than other categories, say oysters. If we refine the proposal in this way, our now limited uncertainty over the source of claims yields equality within particular groups. This type of proposal is not necessarily speciesist, for we might think that certain species had equally strong claims. Indeed, persons could be proposed as the category in which we are unsure about whose claims are strongest. We recognise that persons have stronger claims than non-person animals, but do not know why persons have, *ex ante*, the strongest claims.

Of course, I am not proposing that we cannot arrive at a plausible account of the source of claims, let alone that oysters ought to have the same level of advantage as persons. The only point I want to draw from this analysis is simply that from the fact that we accept the Differences Objection, it does not follow automatically that we should treat people unequally.

Suppose next that we have identified some candidate feature that grounds status such as, for example, virtue. The second problem of identifying which individuals possess that feature still exists. The problem exists even if we limit virtue to being a property of humans or persons. Courage, for example, must be tested in order to be displayed. The same is generally true of moral character: we do not know, antecedently, whether particular individuals will make moral or immoral choices. How should we respond to this problem? Here Mill's earlier argument, combined with the earlier point about fairness under uncertainty, gives us the correct result.[44] Given that we do not know who has the strongest claims, we treat individuals equally until they display their status and give us reason to

[44] See Section 3.3 for Mill's point.

believe that their claims are stronger or weaker than others. Here, initial equality is both fair - it minimizes expected unfairness - and it is a means to discovering who has the highest status and so the strongest claim. By saying initial equality is a means to discovering who has the highest status, I mean that it is only by giving people equal advantages to begin with that we will be able to recognize which are of the highest status. This was Mill's point, or at least part of it, in his defence of equality between sexes. If we start from a position of inequality it is not possible, or at least it is much more difficult, to determine whether any subsequent inequality in outcome is attributable to differences in the qualities of the individuals or differences in their circumstances. Initial equality is then a means for the revelation of status. Individuals in the relevant group are given initial equal advantage in order that we may correctly judge their comparative worth from a fair starting point. As individuals continue to display virtue against this equal background it will then be appropriate to grant them extra advantage in proportion to their virtue. To be sure, it is still true that if we knew antecedently who possessed the strongest claims, we would distribute unequally from the start. But it is in the absence of this information that, for reasons of fairness, we ensure initially equal advantage until we have reason to do otherwise; until, that is, individuals reveal their respective status perhaps, for example, through the choices they make.

Again, the general point that we may draw from the argumentation in this section is that we cannot infer from the failure to find a dimension in which some set of individuals ought to be considered equals that we should not treat them as such. Even when we know that individuals are not in fact equals and that perfect fairness would require an unequal distribution, it can still be fairest to treat them as equals given uncertainty about who has the strongest claim. Perhaps persons are not equals, but if we do not know who has greater status we should treat them as such, at least until we have reason to suppose otherwise.

I will make one additional point. The practical implications of the view I have expressed in the above section on equality of revelation and the view I have expressed in the previous section on a foundational justification for the range property may collapse into one another. Suppose that we agree that persons are the subjects of equality of opportunity, either because we do not know which persons are the most virtuous or because we believe that only persons have the capacity for responsible choice. In either case, then, fairness requires equality until individuals begin acting by making choices, or at least appearing to make choices – on the revelation view they may not in fact be making choices, they may simply be revealing their nature. But, then, we could not distinguish empirically whether individuals were in fact really making ‘free’ responsible choices or whether they were actually simply displaying their nature. From the practical perspective, therefore, the implications of the two perspectives may be the same, although this depends on the position one takes on the free will debate and, in particular, the falsity of hard determinism. If hard determinism is true then the foundational justification requires strict equality, and not equality of opportunity. Yet, in addition, if hard determinism is true the foundational justification looks undermotivated: why should one care about the capacity for responsible choice if people do not in fact make responsible choices? Therefore, I think that on the most plausible accounts of either view the two positions collapse.

3.9 Conclusion

In this chapter I have examined the most promising accounts of the equal status of persons. In presenting these accounts I have also considered what might ground the status of persons. Of the competing accounts of the equal status of persons, the Rawlsian idea of a range property has been the most promising. However, in its Rawlsian contractualist form, that account is unsatisfactory in that it cannot satisfy the intuition that persons who lack the physical or intellectual capacity to co-operate and reciprocate still have claims. I have offered an alternative foundationalist justification of the Rawlsian range property. Given the possibility that this defence also fails, I have considered what conclusion we should draw if no satisfactory defence of equality between persons exists, so that persons, and creatures generally, are fundamentally unequal. I have argued that we reason from fairness to treat persons as equals when we are uncertain which of those persons have the stronger claims. Even accepting the fact of inequality, equality might still be the fairest way to satisfy claims when and because we face the problem of uncertainty regarding who possesses the strongest claims.

Chapter 4 The Object of Equality of Opportunity

In this chapter I aim to establish the object of the conception of equality of opportunity I am trying to elaborate. That is, I aim to identify what goods we are to assess individuals' opportunities in terms of. This topic already has a well-developed literature. For this reason, I develop the chapter in two parts. In the first part, I survey the key positions within the debate and summarize the most prominent arguments in their favour. In the second part, I examine one particularly contentious point of disagreement within the debate, the Expensive Tastes Objection. I argue that this objection fails, showing that well-being is the appropriate object of equality of opportunity. I offer a method for how we should determine what constitutes well-being.

The Object of Equality of Opportunity: Part A

In this part of the chapter I survey different candidate objects of equality of opportunity and the arguments in their favour. The part has six sections. In the first section, I aim to clarify the task in hand, distinguishing my current topic - the object of equality of opportunity - from, first, the wider question of the metric of equality and, second, the different question of the correct institutional object or metric. In the second and third sections, I present accounts of well-being that might constitute the object of equality of opportunity and the arguments in their favour. In the fourth and fifth sections, I present resourcist accounts that might constitute the object of equality of opportunity and the arguments in their favour. The sixth section concludes by way of a summary.

4A.1 Introduction and Clarifications

How should we measure the comparative advantage of different persons? If people have equal pre-institutional claims to advantage what are these claims to? Should we conceive of advantage in terms of material benefits, or in terms of the goods that one can derive from material benefits? Further, do claims attach to advantage itself, or to the opportunity for advantage? These questions have animated the philosophical debate over 'Equality of What?'. Answers to these questions have developed into two broad families: well-being views and resourcist views.

Well-being views argue that it is a person's well-being, or their opportunity for well-being, that is relevant when calculating their comparative advantage. The wide variety of different accounts of human well-being yields a correspondingly diverse set of well-being views. For example, just as well-being may be defined in terms of pleasure, preference satisfaction, informed preference satisfaction, the attainment of functionings, the holding of capabilities, or the achievement of perfection, so equality may be valued in any one of these dimensions. Versions of well-being views have been proposed by Richard Arneson, G.A Cohen and Amartya Sen.[1]

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[1] Richard Arneson, 'Equality and Equal Opportunity for Welfare', *Philosophical Studies* 56, (1989): 77-93; 'Welfare Should Be the Currency of Justice', *Canadian Journal of Philosophy* 30, (2000): 497-524. G.A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics* 99, (1989): 906-944; 'Equality of What? On Welfare, Goods and Capabilities', in Martha Nussbaum and Amartya Sen (eds.), *The Quality of Life*, Oxford: Oxford University Press, (1993), pp. 9-28; 'Expensive Tastes Rides Again', in Justine Burley (ed.), *Dworkin and his Critics*,

Resourcist views are harder to summarize. Prominent resourcist views take income and wealth, primary goods, positions of advantage and even talents and skills, as the goods in terms of which advantage, or opportunity for advantage, should be measured. Of course, these goods often have impacts on human well-being but, importantly, resourcist views will not select them *because* they are related to particular conceptions of well-being. Resourcist accounts have been proposed by Ronald Dworkin, Eric Rakowski and John Rawls.[2] Before continuing to examine these competing accounts I need to make some preliminary comments about the question I am addressing.

a. *Obstacle and Object Distinguished*

I do not hope to give a complete answer to the question 'Equality of What?'. Instead, I hope to answer only half of that question. What do I mean by the statement that I hope to answer only half of the question? Remember that, in Chapter 1, I divided the concept of equality of opportunity into four elements: pattern, subject, obstacle and object. When one asks the general question 'What is the *metric* of equality?', that question refers to both the obstacle and object elements of the concept of equality of opportunity. That is, one is asking both 'What

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Oxford: Blackwell, (2004), pp. 3-29. Amartya Sen, 'Equality of What?', in Sterling McMurrin (ed.), *The Tanner Lectures on Human Values*, Salt Lake City: University of Utah and Cambridge University Press, (1980), pp. 196-220; 'Justice: Means versus Freedoms', *Philosophy and Public Affairs* 19, (1990): 111-21; *Inequality Reexamined*, Oxford: Clarendon, (1992); *Development as Freedom*, New York: Knopf, (1999); *The Idea of Justice*, London: Penguin, (2009).

[2] Ronald Dworkin, *Sovereign Virtue*, Cambridge Mass.: Harvard University Press, (2002); 'Dworkin Replies', in Justine Burley (ed.), *Dworkin and his Critics*, Oxford: Blackwell, (2004), pp. 339-350. Erik Rakowski, *Equal Justice*, Oxford: Clarendon, (1993). John Rawls, *A Theory of Justice*, Cambridge Mass.: Belknap, (1971); 'Social Unity and Primary Goods', in Amartya Sen and Bernard Williams (eds.), *Utilitarianism and beyond*, Cambridge: Cambridge University Press, (1982), pp. 159-187; 'The Priority of Right and Ideas of the Good', *Philosophy and Public Affairs* 17, (1988): 251-279; *Political Liberalism*, Expanded Edition, New York: Columbia University Press, (2005); *Justice as Fairness: A Restatement*, Erin Kelly (ed.), Cambridge Mass.: Belknap, (2001).

goods are inequalities to be measured in terms of?' and "'Is it important simply that people have equal quantities of these goods or is it important that they have equal *opportunities* for these goods?'. In this chapter, I bracket off questions relating to opportunity. I assume that what matters is equality of opportunity for some goods, not straightforward equality in terms of those goods.[3] I also assume that we should conceive of an opportunity in terms of responsibility. Accordingly, then, when I claim that I aim to answer only half of the question, I mean that I hope to answer only 'What is the object of equality of opportunity?', or, in other words, 'In terms of what goods should inequalities be measured?'.

b. A Benefit of the Distinction Strategy

My strategy of dividing the question of metric into two parts has at least one key benefit: it provides a clear delineation between topics, allowing one to assess arguments relating to obstacle and arguments relating to the object on their own terms. When these topics are run together confusion follows.

An example will illustrate the danger. One argument that has appeared in the 'Equality of What?' debate is the argument that individuals bear responsibility for their preferences and, consequently, how expensive they are to satisfy. Indeed, both Rawls and Dworkin explicitly employ this argument against their preference satisfaction theorist opponents.[4] However, as considerations of responsibility relate to the obstacle and not the object, it can be no argument against taking preferences as the object of equality of

[3] For a further discussion of this point see Sections 1.3-1.5.

[4] See Rawls, *A Theory of Justice*, pp. 168-169; *Political Liberalism*, p. 290. Dworkin, *Sovereign Virtue*, pp. 287-291.

opportunity that people bear responsibility for their preferences. Even if, implausibly, individuals had perfect control over their own preferences, and so were uncontroversially and entirely responsible for them, this would still not prove that preference satisfaction was not the object of equality of opportunity. It would only show that, overall, any inequalities in how well preferences were satisfied would not speak in favour of redistribution. This is a fundamentally different point. Indeed, to make the responsibility argument at all, one must already tacitly assume that preference satisfaction *is* the appropriate object of equality of opportunity, for to make the argument implies that differences in preference satisfaction *would* demand compensation were there no differences in responsibility. Therefore, not only are responsibility arguments orthogonal to questions about the object of equality of opportunity, in so far as responsibility arguments presuppose the conclusion that, were it not appropriate to hold individuals responsible for their preferences then inequalities in preference satisfaction would be deserving of compensation, theorists who make the responsibility argument reveal a tacit endorsement of preference satisfaction, measured in some way, as the object of equality of opportunity. Note that this is true independently of whether one endorses equality of opportunity. All that needs to be agreed is that considerations of responsibility and considerations of advantage are separate.

Now, of course, I do not mean to claim that all resourcists are simply preference satisfaction theorists who have made a terminological mistake - there are important arguments that split the two camps - but the example shows why it is important to separate the categories of object and obstacle; it prevents this sort of confusion.

c. A Superficial Cost of the Distinction Strategy

Although prominent well-being views are happy to employ the language of equality of *opportunity for* well-being, at least one prominent resourcist view, that of Ronald Dworkin, is characterized simply as 'equality of resources'. Still others, such as Rawls, do not care about equality in distribution at all. This raises the question as to whether all the views I am investigating fit within the delineation of the concept of equality of opportunity with which I am working.

In response to this worry, note that in trying to identify the object of equality of opportunity we are engaged with the question of what constitutes advantage. Accordingly, although different theorists endorse different distributive patterns, and may or may not believe in the significance of responsibility (although Dworkin, in fact, does believe in the significance of responsibility), we can still ask whether the objects they identify to accompany those patterns adequately describe advantage.[5] It is not important whether particular theorists endorse equality, sufficiency or some other pattern. It is not even important that the authors intend the object they describe to capture advantage. All that matters, for my purposes, is whether particular objects *actually do* succeed in capturing advantage. So long as any candidate object gives a plausible account of what constitutes advantage it can be considered in this study.[6]

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[5] See Dworkin, *Sovereign Virtue*, esp. chs. 1, 2 and 7.

[6] Of course, this is not to make the stronger claim that Dworkin's general theory employs the same ideas about responsibility that I will employ later in the thesis. For some of Dworkin's own comments on whether his view is properly considered luck egalitarian see Ronald Dworkin, 'Equality, Luck and Hierarchy', *Philosophy and Public Affairs* 30, (2005): 190-198.

d. The Object of Equality of Opportunity and the Object of Institutional Interpersonal Comparison

I want to consider briefly whether or not the object of equality of opportunity ought to be considered as identical with the object used by political institutions for the purpose of interpersonal comparison.

In developing a conception of equality of opportunity I am building a conception of a *moral* value and my account of the object of equality of opportunity is one part of the description of that value. The question, 'What ought the institutional object to be?' is, by contrast, an explicitly *political* question. It is not a question about what matters ultimately with respect to the condition of individual persons, rather it is a question specifically about how states should make assessments of persons' condition. States may have to consider values other than fairness when selecting which institutional object would be best, all things considered. For example, when selecting an institutional object one must consider, first, whether the candidate object accurately reflects advantage but also, second, whether the candidate object is costly to measure and gather information about. The answers to the two questions 'What is the object of equality of opportunity?' and 'What is the institutional object?' may then come apart if the correct object of equality of opportunity is too costly to be the best tool for use by states, all things considered.[7] This shows that the object of equality of opportunity is not trivially the same as the institutional object. An important point that follows from this observation is that it cannot be an argument against an account of the object of equality of opportunity that it would be a poor institutional object. For example, it cannot

[7] The example juxtaposes considerations of efficiency and equality, but one could equally well juxtapose a concern for equality with a concern for stability.

be an argument against taking a particular conception of well-being as the object of equality of opportunity that it would be difficult or expensive to implement politically.

Now, I said in the previous section that one could fruitfully compare resourcist and well-being accounts of the object within the equality of opportunity framework. If there is a difficulty in doing this it relates to the fact that resourcists are often concerned with political and not moral judgments. Further, some justifications for using resources rather than well-being relate to the fact that it would be unjustifiable for *states* to impose a conception of well-being on their citizens. It may be, then, that part of the disagreement between well-being theorists and resourcists is simply a result of the two parties talking past one another, with resourcists concerned with the political and institutional, and well-being theorists concerned with the moral. If this is the case, framing the arguments in favour of well-being views and resourcist views as opposed may, in some instances, constitute a false opposition. However, while this may be true with respect to some arguments, it is undoubtedly true that at least two of the key interlocutors, Cohen and Dworkin, do consider the accounts they present to be opposed, and the literature that has developed around this debate frequently presents the accounts as addressing a common question.[8] This suggests that it is unlikely that the opposition is entirely false. In any case, I will continue in this chapter to address the question of what is the correct way to assess comparative advantage at a moral level, exploring the various arguments in terms of how they affect this question and this question only. With these clarifications complete, I will now turn to examine the case for taking a well-being account as the object of equality of opportunity.

[8] For examples of authors that take the various positions as opposed see Arneson, 'Welfare Should be the Currency of Justice'; Sen, 'Equality of What?'. For an expression of the worry that the two camps may be talking past each other see Norman Daniels, 'Equality of What: Welfare, Resources, or Capabilities?', *Philosophy and Phenomenological Research* 1, supplement, (1990): 273-296.

4A.2 Well-being Views: What is Well-being?

Words such as 'welfare', 'utility' or 'happiness' are, or are at least often used as, synonyms for well-being. I avoid these alternatives either because they have attachments to more narrow definitions of a person's condition, as in the case of 'happiness' which refers to a specific state of mind, or because, like 'utility', they have specific connections within related disciplines such as economics. I use well-being with the intention of providing an expansive and non-specific term to capture the different ways a person's life might be said to go well *for them*.[9] I will now distinguish some different accounts of well-being, but first a caveat: the sheer volume of literature on each topic is so great as to make controversy in classification unavoidable. The contrasts I present are intended only to serve as the briefest of introductions to the most prominent positions within contemporary debates about well-being and as a rough guide to some of the most important contrasts.

Different views about well-being are often classified according to whether they are *subjective* or *objective*. While the precise definitional cut between the subjective and objective is contested, I will say that a view of well-being is subjective if it takes an individual's well-being to be dependent on the hypothetical or actual *attitudes* of that

[9] Note that judgments about how well a life goes are not necessarily equivalent to judgments about how morally virtuous a life is. It is at least compatible with the ordinary use and understanding of well-being to say that a murderer or a thief has a high level of well-being if they gain great pleasure from their murderous activities or have been extremely successful in their thievery. But one could also deny this. One could say, as a Christian might, that a life goes well for the individual in question if that life conforms with what God requires, no matter how miserable the individual feels in living that life. Other virtue ethicists, such as Plato, who argued that living justly was a precondition for well-being, would also deny that the thief or the murder gained well-being from their activities. The possibility of a connection between a morally virtuous life and well-being is, then, as this distinction shows, a substantial matter of moral theory, not something that can be assumed in advance.

individual.[10] To wit, a view is subjective if it considers some feature of a person's condition good for him because he has, or would have given the right conditions, a ‘pro-attitude’ towards that feature. A view is objective if whether some feature of an individual’s condition is good for them is taken to be independent of that person’s attitude to that feature.[11]

A second cut between theories of well-being splits those that consider well-being to consist exclusively in *states of mind* from those that suppose it can also be affected by *states of the world*. On states of mind views, what counts for one's well-being is simply the mental experiences one has. There is no requirement that one's mental experiences match reality. On states of the world views, a person can be made better or worse-off by distant events of which they are never aware. States of the world views do not claim that states of mind do not matter at all for well-being, they claim that states of the world matter in addition to states of mind.

States of mind views can be objective or subjective. States of the world views can also be objective or subjective. In light of these two cuts we can make the following division of theories of well-being.

Table 3

[10] For two discussions of the cut between objective and subjective see David Sobel, 'Subjectivism and Idealisation', *Ethics* 119, (2009): 336-352. Wayne Sumner, *Welfare, Happiness and Ethics*, New York: Oxford University Press, (1996), p. 38.

[11] In debates about the subjective or objective nature of well-being, the concept of *subject-relativity* is also important. When well-being is said to be subject-relative, it is proposed that what is constitutive of well-being for that person is dependent on some characteristic of that person. However, a commitment to the subject-relative nature of well-being does not commit us to either a subject or an objective view of well-being. All subjective views are subject relative; they all suppose that a person's well-being is connected to their particular attitudes and preferences. Only some objective views are subject-relative; some objective views state that the same goods are valuable irrespective of who possesses them, and so deny subject-relativity, other objective views allow that different people have different perfect manifestations and so accept subject-relativity.

	States of mind	States of the world
Subjective	Experienced Preference Satisfaction / Externalist Mental States (e.g. Sidgwick)	Actual Preference Satisfaction (e.g. Hare)
Objective	Internalist Mental States (e.g. Bentham)	Capability/Perfectionism (e.g. Sen)

Internalist mental states views claim that certain mental states, such as experiences of sensory pleasure or calm reflection, are always constitutive of well-being.[12] That is, a view is labelled 'internalist' when it claims that what makes a particular mental state count as contributory to well-being is a quality internal to that mental state; in other words, an intrinsic property of that mental state. Bentham's utilitarianism, which takes the experience of pleasure as the unique constituent of well-being, represents the classic enlightenment expression of the internalist view. While Bentham allowed that pleasure and pains might have different sources, what unites the various experiences as constitutive of either pleasure or pain is their *feeling tone*. Thus, all pleasures are identifiable because they share an intrinsic and unanalysable quality of pleasantness - they have a positive feeling tone - and all pains are

[12] The distinction between 'internalist' and 'externalist' is borrowed from Wayne Sumner. Sumner, *Welfare, Happiness and Ethics*, pp. 89-91.

identifiable because they have an intrinsic and unanalysable quality of painfulness - they have a negative feeling tone. Since these views describe particular types of states of mind as being contributory to well-being independently of the individual's attitude to their states of mind, these views can be considered as objective.

Externalist mental state views deny that there is any common quality that unites all pleasures beyond the fact that they are approved of or preferred by the individual. On the externalist view, it is not the intrinsic properties of a particular mental state that make it contributory to well-being, it is the attitude one has to that mental state. To illustrate the distinction, suppose that I take erotic pleasure in the naked human body, but also feel that lust is sinful and consider my aforementioned appreciation an indication of my predilection to sinning. I prefer that I did not receive my lustful pleasures. I even consider my life to go worse because of the pleasure; not just because I feel the pain of shame afterwards, but because I consider sinful pleasures bad for me. The internalist view considers the feelings I experience from the naked human body to count as well-being despite the fact that I do not welcome them. As the externalist makes what counts as well-being dependent on my attitudes, it will not count my experience of the naked body as contributory to my well-being but rather as damaging to it. The paradigmatic statement of the externalist view comes from Henry Sidgwick. Reacting to Bentham, Sidgwick argued that well-being should be,

"*defined as feeling which the sentient individual at the time of feeling it implicitly or explicitly apprehends to be desirable; desirable, that is, when considered merely as a feeling* *and not in respect of its objective conditions or consequences, or any facts that come directly within the cognizance and judgment of others besides the sentient individual*."[13]

Since the externalist view claims that which particular states of mind are contributory to well-being is dependent on the individual's attitude to their states of mind, these views can be considered as subjective.

The two views just described are both states of mind views. Robert Nozick's experience machine example provides the classic objection to states of mind views. Nozick asks, "[If] neuropsychologists could stimulate your brain so that you would think and feel you were writing a great novel, or making a friend or reading an interesting book...should you plug into this machine for life pre-programming your life's experiences?"[14] Many people would choose not to plug themselves into the machine. Nozick thinks this response is explainable because "We want to do certain things … we want to be a certain way … [and] plugging into an experience machine limits us to a man-made reality."[15] This shows, Nozick claims, that experiences do not exhaust well-being; it also matters that our experiences connect to reality and states of the world.

Preference satisfaction views claim that a person's well-being is determined by how well their preferences are satisfied. When they claim that a person's well-being is determined solely by whether they *believe* their preferences are satisfied, preference satisfaction views, or experienced preference satisfaction views as I call them, coincide with externalist mental states views. However, certain varieties of preference satisfaction views connect well-being

[13] Henry Sidgwick, *The Methods of Ethics*, 7th Edition, London: Macmillan, (1962), p. 131.
[14] Robert Nozick, *Anarchy, State and Utopia*, New York: Basic books, (1974), p. 42.
[15] *Ibid*., p. 43.

to states of the world. They attach to states of the world when, and because, they claim that the satisfaction of a preference depends not, or not only, on the belief that the preference is satisfied, but on whether they *actually* have been satisfied. For example, in the case of the experience machine, an actual preference satisfaction view would claim that someone who was unknowingly in the machine, but would prefer their experiences were real, was worse-off than someone with exactly similar experiences and preferences who was not in the machine.[16] As preference satisfaction views connect well-being to the attitudes of individuals, they are subjective.

The Capability approach can also be classified as a states of the world view.[17] In developing his Capability approach, Sen states that what matters for the purpose of interpersonal comparison are the different 'doings and beings' or 'functions' that individuals have the opportunity to achieve. The different sets of opportunity for functionings are called 'capabilities'.[18] For Sen, it is important not only that a person believes he may perform certain functionings, but also that he actually can perform those functionings. Although Sen has not been willing to provide a list of valuable functionings, Nussbaum's interpretation of the

[16] A further important division within preference satisfaction views is whether all preferences are to count or whether only the satisfaction of rational or informed preferences count. If we take the former view, we face, first, the objection that preferences may be *prospective*, meaning that the experienced reality of their satisfaction may not correspond to what is expected and, second, the objection that people's preferences may be *adapted* due to coercion, abuse and poor circumstances leading to meager but easily satisfied preferences. If we take the latter view, we must find a criterion for which preferences count as appropriately laundered. But this may require some account of what is actually good for people, thus removing a key attraction of preference satisfaction views: their aspiration to be neutral between different people's conception of the good. For more on these points see Sumner, *Welfare, Happiness and Ethics*, p. 124.

[17] G.E. Moore's private ownership theory is best seen as an internal mental states view. See George Edward Moore, *Principia Ethica*, Cambridge: Cambridge University Press, (1903).

[18] As Sen puts it, "A person's achieved living can be seen as a combination of 'functionings' or 'doings and beings'. Given *n* different types of functionings, an '*n*-tuple' of functionings represents the focal features of a person's living, with each of its *n* components reflecting the extent of the achievement of a particular functioning. A person's 'capability' is represented by the set of *n*-tuples of functionings from which the person can choose any one *n*-tuple. The 'capability set' thus stands for the actual freedom of choice a person has over alternate lives that he or she can lead." Sen, 'Justice: Means versus Freedoms', p. 114.

capability approach presents a list that includes being able to: live a complete human life, have good health, engage in critical reflection, use the five senses, have attachments to other persons, live with others, laugh and play, have concern for animals and nature, avoid pain and gain pleasure and, finally, live only one's own life. Since all these features are considered good for an individual independently of their attitude towards them, the capability approach is objectivist.[19]

4A.3 Well-being Views: Arguments for Well-being

What speaks in favour of well-being, somehow construed, as the object of equality of opportunity? The key point is visible in Sen's claim that it is *fetishistic* to focus on "good things rather than what these good things *do* to human beings."[20] When we focus on income rather than the benefits different people can derive from income, for instance, we miss the fact that people want income because of what it can do for them. This makes us vulnerable to the objection that in our selection of the object we have mistaken means for ends. Were people relevantly similar this need not be a problem. But, because people have different capacities for converting means to ends, choosing an object that focuses on something merely instrumentally valuable risks unfairness to those who are inefficient at converting instrumentally valuable goods into what actually matters for them intrinsically. We then have an argument for focusing directly on well-being as the object of equality of opportunity given that well-being is, by definition, what is constitutive of a life going well and so of intrinsic

[19] It is also worth noting, however, that Sen does not consider his view as straightforwardly a view about well-being. Rather, he believes it may incorporate some other considerations. See Sen, *The idea of Justice*, pp. 269-290.

[20] Sen, 'Equality of What?', p. 218.

importance. Well-being also appears to be the only object that intimately connects the source of claims - persons - with the object - the flourishing of a person’s life. How, one might ask, could any component of a fundamental moral value be something that was not also morally fundamental?

A second point in favour of well-being appears when we consider how to value resources. Suppose that someone put forward the proposition that the object of equality of opportunity should be resources, stating that 'Each person has a *prima facie* claim to an equal share of the world’s resources, irrespective of how efficient they might be at converting resources into good lives'. Suppose also that they propose that this statement has more intuitive force than any possible corresponding well-being statement. Faced with such an objection one must ask: along what dimension should we measure an equal share of resources? Is it the weight of resources, the size of geographical territory, or something different? The difficulty for the resourcist is to provide a morally compelling account of the appropriate dimension of resources *without reference to the impact those resources have on the well-being of individuals somehow defined*. This challenge is difficult to meet. Material resources - clay, oil, gold and so forth - are not valuable intrinsically. They gain value because of the uses we can make of them to improve our lives and pursue our goals. There is, then, no obvious scale of value that can be appealed to by the resourcist to make the required division that does not ultimately rely on at least some judgments about well-being. If resourcists cannot give independent grounds to explain their use of judgments about well-being in determining how resources are to be distributed, it could be objected that they cannot help but tacitly endorse some well-being theory.[21]

The above point becomes clearer when one considers that different measures of well-being would value resources differently. Take Dworkin's 'Envy Auction', where individuals have equal bidding power and must purchase the world's resources, to leave an envy-free distribution of resources. While Dworkin commands his deliberators to divide resources according to what they prefer (preference satisfaction), one could also suppose that the deliberators should be commanded to purchase resources according to whether those resources will give them positive mental experiences (hedonism) or according to whether those resources will help them achieve the goods on some objective list. The same general point helps to explain part of the slipperiness of the Lockean Proviso - Locke's claim that individuals may acquire what resources they want from the earth so long as they leave "enough and as good...for others."[22] One reason that proviso is slippery is that deciding what makes one resource 'as good' as another resource requires a value judgment, one that is linked to the uses that resource can serve for people. Thus, a piece of timber is thought of 'as good' as another if it burns as well, or is equally sturdy and so apt for house building, but not because it comes from the same forest or because both trees began as seeds of a common parent. Again, this implies that some account of the use people can get from the resource must be given to value the resource at all.

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[21] John Roemer has presented a similar conclusion to this but with different argumentation. Roemer begins from a set of axioms he believes are required by some scheme of equality of resources. He continues to argue that if the resource egalitarian also wants to take account of internal talents then, given these axioms, he has actually to endorse equality of welfare. See John Roemer, 'Equality of Resources Implies Equality of Welfare', *The Quarterly Journal of Economics* 4, (1986): 751-784.

[22] John Locke, *Two Treatises of Government*, (1689), Peter Laslett (ed.), Cambridge: Cambridge University Press, (1960), p. 288.

These preliminary arguments are not intended to be decisive in favour of well-being. They merely provide some initial reasons for suspecting that well-being is the appropriate object of equality of opportunity. In the following sections I will examine resourcist accounts of the object of equality of opportunity and the arguments that have been put in their favour.

4A.4 Resourcist Views: What is Resourcism?

The term 'resources' is most naturally interpreted as material items, such as food and timber, or more fungible resources such as income and wealth. This natural reading of resources paints resourcist views in too narrow a light. Like well-being views, resourcist views are heterogeneous, and several, including Dworkin's and Rakowski's, construe resources in a broad sense to include the physical and mental capacities of individuals. At the limit, one may say that a resource is anything that is external to the person, where a person is defined in Kantian terms, wholly distinct from their physical body.

Rawls' resourcist metric is constituted by a list of primary goods that includes rights and liberties, opportunities and powers, income and wealth and the bases of self-respect.[23] These are the goods the distribution of which the justice of the basic structure of society is to be assessed in terms of. For Rawls, primary social goods represent "necessary conditions for realizing the powers of moral personality and are all-purpose means for a sufficiently wide range of final ends."[24] They are also, for this reason, goods "that it is rational to want

[23] Rawls, *A Theory of Justice*, p. 92.
[24] Rawls, 'Social Unity and Primary Goods', p. 166.

whatever else one wants."[25] Rawls selects the primary goods on the list because they have this property.[26] To give just one example of why Rawls believes the goods listed above have this property, consider the case of liberties. Given that Rawls supposes all persons have a higher-order interest in "developing and exercising" their conception of the good, each should prefer a system in which they have greater liberty to one in which they have less, since their conception of the good may change over time.[27]

Rawls is explicit about the scope of application he intends for his primary goods account and it is important to be clear about the ways in which Rawls' purposes differ from my own. First, Rawls states that, "Primary goods are not to be used in making comparisons in all situations but only in questions of justice which arise in regard to the basic structure."[28] Primary goods, then, are intended for interpersonal comparisons at an institutional level, while I am concerned with interpersonal comparison at a *moral* level. Second, Rawls presents primary goods as a *metric* not as an *object*. Rawls is doubtful of the practicability of determining comparative responsibility, at least at the political level at which he aims his theory, and does not suppose that one's attainment of primary goods should be responsibility-sensitive for this reason. I will not consider whether Rawls' account is the best interpersonal metric for political purposes. What matters for my purposes is only whether primary goods may also serve as the object of equality of opportunity at a more foundational moral level,

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[25] Rawls, *A Theory of Justice*, p. 253

[26] In addition to this Rawls claims that primary goods will be recognized as a suitable metric because they provide a measurable public standard for comparing the relative advantage of individuals (or, for Rawls, *groups* of individuals), and having a public standard is a necessary condition ensuring political stability. He also argues, further, that primary goods are more appropriate than particular well-being views because it is appropriate to hold individuals responsible for their ends, given that it is assumed they can regulate and revise them. I want to set these considerations aside since the first applies particularly to primary goods considered as a political metric, and the second is a responsibility-based argument.

[27] John Rawls, *A Theory of Justice*, Revised Edition, Cambridge Mass.: Belknap, (1999), p. xiii.

[28] Rawls, 'Social Unity and Primary Goods', p. 163.

and the argument Rawls presents in favour of his account give us reason to suppose that they might. Specifically, Rawls' argument that primary goods are all-purpose means suggests they have a special sort of importance. I will examine this further when we look at the general arguments for resourcism.

In presenting his alternative resourcist theory, 'equality of resources', Ronald Dworkin states that he will assume that "equality of resources is a matter of equality in whatever resources are privately owned by individuals."[29] At the heart of Dworkin's account is an 'Envy Test' that elicits the following condition: "No division of resources is an equal division of resources if, once the division is complete, any immigrant would prefer someone else's bundle of resources to his own."[30] While we might satisfy this condition with a division of resources made by some impartial spectator, Dworkin proposes that it is better that the test be satisfied by undertaking an auction in which individuals (the 'immigrants' in the story he tells in *Sovereign Virtue*) are endowed with equal bidding power and allowed to bid over all the world's resources.[31] At the end of the Auction, the Envy Test may be applied and the individuals asked whether they would prefer any other individual’s bundle of resources. If they do prefer another bundle the Envy Test is not satisfied and the Auction is re-run until each individual prefers his own bundle. This yields an equality of what he calls 'impersonal' resources.

Dworkin recognizes, though, that although the Envy Test will be satisfied immediately after the Auction, the fact that some individuals' physical and mental capacities

[29] Dworkin, *Sovereign Virtue*, p. 65.
[30] Dworkin, *Sovereign Virtue*, p. 67. Dworkin's mention of an 'immigrant' comes from the fact that the hypothetical choice situation he is describing is supposed to occur between a group of immigrants arriving simultaneously on an island. There is no loss of substance if one simply substitutes 'person' for 'immigrant'.
[31] The process of an auction is favoured over some division of resources given by an impartial distributor on the grounds that, even though the impartial spectator division may satisfy the Envy Test, the particular division may be seen to 'favour some tastes over others' and so be unfair.

are of greater market value than others and the fact that some may suffer unchosen luck that affects their resource holding means that the Envy Test will quickly fail when the market begins to operate. To mitigate these inequalities, he proposes a hypothetical insurance process prior to the Envy Test in which individuals, who are assumed not to know their particular circumstances but do know their own conceptions of the good, use some proportion of their future bidding power to insure against future misfortune or physical and mental handicaps. When these risks fall out some will still end up worse-off than others, but any inequality is justifiable by reference to the previous hypothetical choice to accept the risk in the insurance market. By adding this second layer to his theory, Dworkin extends his account of resources from the impersonal - income and wealth - to the personal - talent and health.

Erik Rakowski's theory of 'equality of fortune' follows Dworkin in arguing for an Envy Auction of impersonal resources. Rakowski departs from Dworkin's theory in his rejection of the hypothetical insurance device against which he levels a number of challenges, including a criticism of the binding quality of hypothetical choice and several subtle objections to the precise formulation of Dworkin's model.[32] The overall thrust of Rakowski's objection is that, because it is assumed people will not insure against the possibility of not having very high earning potential, Dworkin's model will countenance more inequalities than is just; there will be inequalities in resources that do not correspond to differences in the responsible choice of particular agents. Thus, Rakowski writes,

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[32] Rakowski, *Equal Justice*, esp. chs. 1, 6 and 8.

"*Unlike hypothetical insurance schemes, equality of fortune would then ask, I think, not what insurance people would buy against an inability to obtain various amounts of money for their services, but how production and distribution should be arranged so as to mimic as closely as possible the economic system that would exist if people's [personal] endowments were in fact equal*."[33]

This would, Rakowski believes, lead to slightly more compensation for the naturally unfortunate and fewer inequalities in favour of the talented. Interestingly, then, it is not the types of resources that are in principle worthy of compensation that is contested by Rakowski. It is whether instances of inequality of resources may be justified on the grounds of the hypothetical choices of agents and whether individuals can be held responsible for hypothetical choices they did not actually make. It is, at least in large part, a controversy about the obstacle of equality.

4A.5 Resourcist Views: Arguments for Resourcism

a. Incommensurability and Justification

Addressing the problem of interpersonal comparison Rawls notes that within a well-ordered society, there will exist "different and opposing, and even incommensurable, conceptions of the good."[34] A question then arises about how to adjudicate between these

[33] *Ibid*., p.139.
[34] Rawls, 'Social Unity and Primary Goods', p. 161.

competing conceptions. As I discussed briefly above, Rawls continues to answer this question by observing that, although citizens' particular conceptions of the good may be incommensurable, primary goods have the property of being all-purpose means, useful for advancing whatever particular conception of the good one has. In the context of Rawls' later work, then, one argument for using primary goods as the Institutional Object is that given their status as all-purpose means, they can be justified to all reasonable citizens in terms of their own comprehensive conceptions of the good. That is, since each reasonable comprehensive doctrine affirms the need for more primary goods rather than less, each can accept, and could not reasonably reject, primary goods as a tool of interpersonal comparison. Primary goods can then serve as the focus of an overlapping consensus between competing conceptions. If one were to impose some alternative well-being account as the Institutional Object this would be controversial, relying on a particular comprehensive conception, and so could be reasonably rejected by some other comprehensive conceptions. There are, then, two central premises of this Rawlsian argument for primary goods: first, that different conceptions of the good are often incommensurable and, second, that the state cannot legitimately enforce on its citizens a comprehensive conception of the good. From these two premises we can derive a reason to take resources, construed as all-purpose means, as the Institutional Object (more precisely, for Rawls, metric); no other object could be justified to citizens as a tool of interpersonal comparison for political purposes.[35]

Could this argument be converted to provide support for taking primary goods as the object of my conception of equality of opportunity? I think not. It is an argument about what

[35] This line of argument is most clearly present in Rawls' *Political Liberalism*. See Rawls, *Political Liberalism*, pp. 178-190. For his justification of primary goods in *A Theory of Justice*, see Rawls, *A Theory of Justice*, Original Edition, pp. 90-95.

can be *justified* to persons, but that is a different issue than the issue of what goods persons have antecedently equal claims to. Indeed, if we think, not implausibly, that what actually *is* in a person's interest can be justified to her, then this type of argument will beg the question, at least when applied at the moral level.

Now, although I have said that the above argument is an explicitly political argument, and so one that does not apply directly to this investigation, I want to comment upon it a little further. It is important to be clear that the Rawlsian argument sketched above does not rely on moral scepticism or epistemological scepticism regarding the possibility of identifying the correct conception of the good. Rawls is not suggesting that we cannot know what is good or advantageous. Again, he is making an argument about what is justifiable at the political level. I restate this point to separate it from the argument that follows, which is not in fact the Rawlsian argument, but is easily mistaken for being so.[36]

b. Incommensurability and Epistemological Scepticism

The idea of the burdens of judgment features as an important part of the Rawlsian theory. The burdens of judgment are the facts that lead people to have conflicting judgments on philosophical, moral and other issues. They include complex information, limited time and experience, and all other issues that make it difficult for agents to come to the correct decision on some matter. In essence, the fact that we are each epistemically limited creatures

[36] For an exposition of the Rawlsian argument, his ideas about democratic toleration and political legitimacy, and a critique of them, see Steven Wall, *Liberalism Perfectionism and Restraint*, Cambridge: Cambridge University Press, (1998), esp. ch. 2-3. For related discussions of justification see Joseph Raz, *The Morality of Freedom*, Oxford: Oxford University Press, (1988), pp. 412-20. Robert George, *Making Men Moral*, Oxford: Clarendon, (1993).

generates the fact of the burdens of judgment and gives us reason to suppose that even our most deeply held convictions might be incorrect for reasons of which we are as yet unaware. If we accept the burdens of judgment, we may become doubtful about whether one can *ever* know that one's particular view is correct and, correspondingly, we will find reason to be cautious about imposing our particular conception of the good on others.[37] From this argument one might try to build a case for primary goods as the object of equality of opportunity. The fact of the burdens of judgment is, in my view, extremely important to the question of what persons have foundational claims to. However, I do not believe this fact brings us to an account of resources or primary goods as the object of equality of opportunity. The reasons why I believe this will become clear in the later sections of Part B.

b. External Preferences

A third argument for resourcism, offered by Ronald Dworkin, takes the form of an objection. The objection seeks to undermine the key argument given earlier in favour of well-being: that it is well-being that matters to people ultimately. In his discussion of preference satisfaction theories, Dworkin sets a dilemma. He observes, first, that if all preferences are counted we will have to compensate those people who have ill-satisfied political or impersonal preferences. For example, this might imply compensating those whose side does not win within a democratic process, or who have preferences regarding distant persons or things that they may never come into contact with, such as whether or not their is life on

[37] For one elaboration of this type of argument see Brian Barry, *Justice as Impartiality*, Oxford: Clarendon, (1995). For a rejection of this type of argument see Stephen Wall, *Liberalism Perfectionism and Restraint*, pp. 91-100.

Mars. If this is unpalatable, preference satisfaction theorists must restrict which preferences count in the satisfaction calculation to self-regarding preferences.[38] But then, Dworkin continues, since people care to different degrees about their own well-being relative to their other non-self-regarding concerns, this will leave us with a conception of equality where "money is given to one rather than another, or taken from one for another, in order to achieve equality in a respect some value more than others and some value very little indeed, at the cost of inequality in what some value more."[39] The preference satisfaction theorist will no longer be able to claim that his theory attends to what matters to people ultimately.

In sum, the dilemma presented is this: either a) we count the satisfaction of all preferences as relevant, but then we must accept that we ought to compensate those whose political and impersonal preferences are not satisfied, or b) we count only self-regarding preferences as relevant and preference satisfaction theories can no longer claim to attend to what matters to people ultimately.[40] Further, while Dworkin's critique addresses preference satisfaction theories of well-being in particular, it also generalizes to other theories of well-being. At the bottom of the problem is the fact that people value many things that appear to be distinct from their own well-being, including the well-being of others, the survival of species, the accumulation of knowledge and so forth. All equality of well-being accounts

[38] Indeed, this move is accepted by some preference satisfaction theorists. See James Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance*, Oxford: Clarendon, (1986), p. 16-23.
[39] Dworkin, *Sovereign Virtue*, p. 31.
[40] One response would be to embrace the first horn of Dworkin's dilemma and count all preferences, including impersonal and political ones, as relevant to well-being. In support of this one could point out that in democratic politics the problem of the permanent minority is often thought to be a *problem* and so the idea of compensation, *in some form*, for perpetually unsatisfied political aims, which Dworkin is quick to scorn, is not perhaps entirely absurd. If this proposition is plausible, the first horn might be thought less troubling than Dworkin suggests. Perhaps, if one considers only impersonal and political preferences that are appropriately laundered, Dworkin's objection will seem less powerful and its force will be shown to draw only from the intuition that we ought not to compensate irrational preferences. For a presentation of some arguments along these lines see Cohen, 'Expensive Taste Rides Again', p. 13-14.

face the challenge of why persons' claims are limited to their own well-being, even when they would forgo that well-being for other goods.

A promising strategy for the well-being theorist may be to consider whether Dworkin's own theory provides a satisfactory solution to the problem of external preferences. Consider the following: Dworkin's theory escapes this dilemma by allowing each individual an equal possession of resources, construed in as broad a way as is appropriate, to gain well-being or influence the success or failure of their projects within a market setting. If individuals' projects were exclusively self-affecting this would be an attractive answer. Each individual would pursue their own good and this would not have additional effects on the opportunities of others or their prospective well-being. However, it is the fact that projects are rarely exclusively self-affecting that throws the resourcist solution into jeopardy. The choices certain individuals make, including the projects they pursue, have effects on the success of other individuals' projects and on other individuals' well-being. In choosing to spend their resources in certain ways, some will confer benefits and costs on others. It could then be objected that the resourcist solution proposed by Dworkin puts the well-being of some at the mercy of others. For example, if a particular individual, or group of individuals, decided to use their resources to obstruct the success of one other individual's projects, we would have an outcome that was unfair to the thwarted individual. Interestingly, the problem of external preferences, traditionally seen as an objection to theories of well-being, reappears as a problem for resourcist theories. In its first anti-well-being incarnation it was objected by Dworkin that if we were to satisfy external preferences we might have to compensate those with impersonal and political preferences. In the context of resourcism the problem is that people may be able to satisfy their impersonal and political preferences, affecting the well-being of others. To be clear, I do not mean to suggest that the dilemma set by Dworkin is not a genuine one. I only mean to show that a similar problem is generated for his own theory by the fact that giving people equal resources allows them to influence how the lives and projects of others go. The external preferences problem is a problem for both resourcist theories and well-being theories.[41]

d. Continuity

One final argument for resourcism, also presented by Dworkin, begins from the premise that good ethical theory must be continuous with the everyday ethical lives of those it ranges over. From this premise, Dworkin continues to observe that if we impose a particular conception of well-being, and this conception of well-being is not held by some persons, we will then be compelled to compensate those people whom the favoured conception judges worse-off even though those same people may consider themselves better-off. A theory that required this sort of redistribution would be *discontinuous* with our everyday ethical practice; it would compensate those who felt they warranted no compensation. Thus, Dworkin supposes that it is an argument against well-being accounts that when a particular conception of well-being is employed as the object of equality of opportunity, any corresponding egalitarian distribution will fail the test of continuity.[42] I will

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[41] For Dworkin's own discussion of this type of problem see Dworkin, *Sovereign Virtue*, p. 162. For Cohen's responses see Cohen, 'Expensive Taste Rides Again', pp. 13-15.

[42] For Dworkin's presentation of the continuity argument see Dworkin, *Sovereign Virtue*, pp. 291-296. He does not use the term continuity explicitly. The term 'continuity test' is used by Andrew Williams, 'Dworkin on Capability', *Ethics* 113, (2002): 23-39, p. 34.

present a more detailed discussion of this 'Continuity Argument' in the discussion of expensive tastes in following chapter.

4A.6 Conclusion

In this part of the chapter I have laid out key well-being and resourcist positions and arguments in their favour. I have shown that resourcist arguments, or at least a significant number of them, begin from the fact of disagreement between individuals about what is valuable or what constitutes well-being. They take the fact of disagreement seriously and, rather than trying to weigh the merits of competing objects and impose the one that is most likely to be correct, they seek to find an object that is acceptable to all people even when those people's own preferred objects are opposed. Well-being theories take a different approach. They begin from the idea that we can get knowledge of what well-being is and then try building theories out of that knowledge that may be imposed on people. For well-being theorists disagreement is a problem but, rather than dealing with that disagreement through a search for a mutually acceptable object, they look for that object which they have strongest reason to believe is the correct object.

It is not my intention in this chapter to assess critically the various arguments that have been presented. No doubt, a full treatment of the question "What is the object of equality of opportunity?" requires this. Indeed, there are more arguments and objections that could be mentioned - the Offensive Tastes Objection to certain well-being theories is one - but a full treatment is too great a challenge to be undertaken here. Instead, having distinguished these arguments, I want to leave them aside. In the remainder of this chapter I will turn to what is perhaps the most contested problem within the Equality of What? debate - the problem of expensive tastes.

The Object of Equality of Opportunity: Part B

In the previous part of this chapter I surveyed some arguments for employing either well-being or resources as the object of equality of opportunity. In this part I focus on one significant point of disagreement within this debate, the Expensive Tastes Objection. The part has six sections. In the first section, I present a brief history of how the debate over expensive tastes has unfolded between its two key interlocutors Ronald Dworkin (resources) and G. A. Cohen (well-being). I locate the Continuity Argument, and in particular what I call the 'Interpersonal Requirement', as being at the centre of the disagreement.[43] In the second section, I discuss the distinction between inter-end and inter-individual variation. I argue that when we interpret the Expensive Tastes Objection in terms of the Interpersonal Requirement the resourcist position can allow compensation for cases of inter-individual variation and that this makes the resourcist position more plausible. In section three, I argue that even though the Interpersonal Requirement interpretation of the Expensive Tastes Objection is powerful, there are three responses available to well-being theorists. In the fourth section, I consider and reject a Dworkinian riposte to the arguments made in section three. The fifth section sketches an alternative type of well-being theory that is, in essence, an objective list theory with the items on the list weighted relative to our confidence in their goodness. This account, I argue, explains our intuitions about particular cases better than the resourcist alternatives. The sixth section concludes by way of a summary.

[43] Ronald Dworkin, *Sovereign Virtue*, Cambridge Mass.: Harvard University Press, (2002), p. 294.

4B.1 A Brief History

In his influential essay, 'What is Equality?: Part 1 Equality of Welfare', Ronald Dworkin develops the Expensive Tastes Objection (hereafter, the Objection) to using well-being as the object of equality of opportunity.[44] What is it to have an expensive taste? We can define an expensive taste as follows: *person A's tastes are expensive relative to person B's if, and only if, it is more costly in terms of X for person A to achieve the same level of Y as person B*. The important point is that any statement about expensive tastes has to describe what *end* it is that is expensive, and what *means* it is that the *end* is expensive in terms of. For example, one could say that Alpha's tastes were expensive relative to Beta's, if it was more costly, in terms of effort (*X*), for Alpha than for Beta to achieve the same level of academic excellence (*Y*). But one could not say, without specifying effort as the relevant means, or academic excellence as the relevant end, that Alpha tastes were more expensive *simpliciter*. In the specific context of the 'Equality of what?' debate, the means is fleshed out in terms of some description of resources and the end is some description of well-being. Thus, for instance, if Alpha requires more resources to achieve the same level of hedonic pleasure as Beta, Alpha's tastes could be judged expensive relative to Beta's, in those terms.

The language of expensive tastes employed here is detached from ordinary usage. Suppose I say that your taste for champagne is expensive relative to my taste for beer. In the technical sense of expensive tastes, what I would mean is simply that it will cost you more resources to achieve the same level of well-being (somehow construed) as me given the way our tastes are structured. I do not need to mean, as I might in ordinary usage, that champagne

[44] Ronald Dworkin, 'What is Equality? Part 1: Equality of Welfare', *Philosophy and Public Affairs* 10, (1981): 185-246.

has a higher price per milliliter. Similarly, I am not attributing snobbery, aspirations to grandeur or other such motivation in your part. Describing someone as having expensive tastes does not, in this context, imply a taste for particularly fine goods. Note also that when claiming that someone has an expensive taste in the technical sense, it does not have to be the case that the person with the expensive taste likes or aims at the end that is deemed an expensive one. It may well be that you do not want the champagne for the pleasure it brings you. You may want it because you think you ought to like it or for some other reason. Still, it would make sense for me to describe your taste as expensive relative to mine in terms of the resources it requires to achieve the same level of well-being, provided I specified in advance that these were the terms in which your tastes were expensive.

With the meaning of expensive tastes clarified, let us move to the Objection. Let us begin with the following formulation of the Objection: '*the fact that someone has expensive tastes - i.e. requires more resources to achieve the same level of well-being - is not itself a reason to give that person extra resources*'. In so far as well-being theorists see the fact that someone has expensive tastes as a reason for giving them extra resources, they are open to the Objection.

The Objection is given a colourful presentation in Dworkin's discussion of an imaginary individual, Louis.[45] We are to suppose that a society has achieved equality of well-being. Louis, who is at this equal level, then decides to deliberately cultivate expensive tastes for plover's eggs and pre-phylloxera Claret. As a result, he now requires more resources to achieve the same level of well-being; if we measured well-being in terms of preference satisfaction, Louis now has less easily satisfied preferences; if we measure it in terms of

[45] *Ibid*., pp. 229-240.

positive mental experiences or some objective list including positive mental experiences, Louis now has fewer of these goods due to the unhappiness he feels at not being able to acquire much Claret or plover's egg. Since it would clearly be unfair to give Louis extra resources we must, Dworkin argues, reject strict equality of well-being.

The standard response to the Louis case is to agree with the judgment that Louis does not deserve compensation but argue that this is because Louis chose to cultivate those tastes and so bears responsibility for them. In short, if we replace equality of well-being with equality of *opportunity* for well-being, we can avoid the Objection. Anticipating this response, Dworkin calls on Jude. Jude also has an equal level of well-being but has very cheap tastes by nature and so he gets his equal level of well-being from a very low level of resources. Jude then, like Louis, chooses to develop expensive tastes. By the logic of the well-being theorist's response to Louis he must deny the additional resources to Jude but, Dworkin claims, surely it would be unfair not to give Jude the additional resources.[46]

Responding to Dworkin, G.A Cohen presents an example that avoids the cultivation concerns present in Dworkin's cases. Cohen supposes that we have two individuals, Paul and Fred, who have brute (uncultivated) tastes for photography and fishing respectively. Cohen writes,

"*Prices are such that Fred pursues his pastime with ease, while Paul cannot afford to. Paul's life is a lot less pleasant as a result: it might even be true that it has less meaning than Fred's*

[46] Note that Cohen concedes that there may be some grounds for giving Jude additional resources. G.A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics* 99, (1989): 906-944, p. 918.

does. I think the egalitarian thing to do is to subsidize Paul's photography. But Dworkin cannot think that."[47]

There are no differences in responsibility between Paul and Fred but, Cohen claims, there is an intuitive case for redistribution based on the fact that Paul finds it less easy to fulfill his leisure needs.

Dworkin accepts that this case splits the implications of his view and Cohen's, but counters with two further responses. First, Dworkin asserts a responsibility-based version of the Continuity Argument identified in Part A of this chapter.[48] He argues that people typically take responsibility for their tastes and their expensiveness, and so they could not, continuous with their everyday ethical life, make claims to compensation for these tastes.[49] Second, Dworkin responds that equality of opportunity for well-being collapses into equality of well-being. Here he revisits the Louis example. We have supposed that Louis chooses to cultivate his expensive tastes but surely, Dworkin argues, his decision to do this was governed by still further higher-order convictions about what was best for him to do. As no one chooses their tastes all the way down, Louis' higher-order convictions must, if we go back far enough, be unchosen. Accordingly, if all apparent choice is ultimately traceable to some unchosen higher order conviction, we will have to conclude that all inequalities in well-

[47] *Ibid*., p. 923.
[48] See Section 4A.5.
[49] This response has been discussed in the subsequent debate over whether the relevant cut between disadvantages that one is responsible for and ones that one is not falls between what is *choice and chance* or between the *person and their circumstances*. If, like Dworkin, we make the cut between a person and his circumstances, viewing a person's tastes as coming under the category of personality, we will take any inequalities resulting from tastes as being unworthy of compensation. If, like Cohen, we make the cut between choice and chance, we will take inequalities in well-being that result from unchosen tastes as worthy of compensation. See Cohen, 'On the Currency of Egalitarian Justice', pp. 916-935.

being are ultimately unchosen and that equality of opportunity for well-being requires equality of well-being.

Both of the two arguments Dworkin presents here are responsibility-based. The first appeals to the idea that people should be held responsible for their tastes. The second appeals to a particular view of responsibility within the free will debate. As I noted in my clarifications in Part A, responsibility-based arguments are not relevant to the question of what the object of equality of opportunity ought to be.[50] Since both of these responses concentrate on matters of obstacle rather than matters of object, Cohen and well-being appear to have won this part of the expensive tastes exchange.

However, while these two responses fail to show that the Objection gives us a compelling reason to favour resources rather than well-being as the object of equality of opportunity, there is a third and final response open to Dworkin made explicit by Andrew Williams and Matthew Clayton in their discussion of Dworkin's position.[51] They note that a key part of Dworkin's argument for resources is the thought that we may, "cite as *disadvantages* or *handicaps*, only what we treat in the same way in our ethical lives."[52] This is a version of Dworkin’s Continuity Argument: it would be discontinuous with an individual's ethical life to claim compensation for features that he actually sees as advantages. Unlike the responsibility-based version of the Continuity Argument identified above, this version applies specifically to the question of what sorts of attributes and

[50] See Section 4A.1.
[51] Williams refers to this argument as the 'Continuity Test'. I avoid this language in favour of the language of the 'Interpersonal Requirement', only because, as I have mentioned above, Dworkin also employs continuity arguments in the context of responsibility and I want to avoid confusion between the continuity argument as applied to well-being and as applied to responsibility. See Andrew Williams, 'Review: Equality for the Ambitious', *The Philosophical Quarterly* 52, (2002): 377-389; Matthew Clayton, 'The Resources of Liberal Equality', *Imprints* 5, (2000): 63-84.
[52] Dworkin, *Sovereign Virtue*, p. 294.

endowments count as advantageous. To distinguish the two versions of the Continuity Argument, I will call this version of the Continuity Argument, the 'Interpersonal Requirement'.

Accepting the Interpersonal Requirement as central to Dworkin's view allows a more nuanced view of the Objection. That Objection still states that '*the fact that someone has expensive tastes - i.e. requires more resources to achieve the same level of well-being - is not itself a reason to give that person extra resources*', but it is now clear that there is a deeper justification for the Objection. The justification is that if we were to compensate people simply for having expensive tastes this would require compensating individuals for features that they do not consider disadvantages, giving extra resources to individuals who already consider themselves better-off than those the resources are coming from, and so breaking the Interpersonal Requirement. What should now be becoming clear is that the Objection does not state that one should *never* give someone who has expensive tastes extra resources. It states that the fact of having expensive tastes is *never by itself* a reason to give a person extra resources and that, in accordance with the Interpersonal Requirement, one should only give people with expensive tastes extra resources if they see their expensive tastes as a disadvantage or handicap.

The Interpersonal Requirement offers Dworkin a response to Cohen's Paul and Fred case in the following way: if we accept the Interpersonal Requirement Paul is owed no compensation for his expensive tastes *because* Paul does not view his tastes as a handicap and would not, if he were able, and given existing prices, swap his tastes for Fred's. We do not deny compensation to Paul because he is responsible for his tastes, we deny it to him because he does not *believe* they are a disadvantage.[53] Let me be very clear, then, that the Interpersonal Requirement interpretation of the Objection is not merely an objection; it also specifies a conception of what constitutes advantage. If the Interpersonal Requirement is the correct reading, what constitutes advantage, for Dworkin, is determined by how particular individuals view particular features of their lives. Whether a feature counts as an advantage or a disadvantage is dependent on whether an individual views that feature as a disadvantage or an advantage, not whether some conception of well-being judges that feature as an advantage or a disadvantage. More specifically, whether a feature is in principle due compensation, responsibility considerations aside, depends on whether that person would swap that feature for a feature possessed by some other person; if they would it deserves compensation; if they would not it does not.

In sum, the Interpersonal Requirement gives us an interpretation of the Objection that does not rely on considerations of responsibility and, at the same time, offers an alternative account of what constitutes an advantage and so, for the purposes of this study, the object of equality of opportunity. In the following section I will explore how successful Dworkin's account of advantage is in capturing our intuitions about what constitutes advantage.

4B.2 Inter-end and Inter-individual Variation

In a discussion of primary goods Amartya Sen makes the following distinction,

[53] This point needs qualifying. On Dworkin's view, there are some restrictions on when a belief that one is not disadvantaged by some feature is sufficient for qualifying that feature as non-disadvantageous. I elaborate this further in Section 4B.4.

"*There are in fact two sources of variation in the relation between a person's means in the form of primary goods (or resources) and achievement of ends. One is inter-end variation - different conceptions of the good that different people may have. The other is inter-individual variation in the relationship between resources (such as primary goods) and the freedom to pursue ends*."[54]

An example of inter-end variation would be two persons valuing different things. For example, one person values playing hockey, while another values playing the bassoon. An example of inter-individual variation would be two people valuing the same end, say adequate nourishment, but having different capacities to achieve that end, perhaps, to use Sen's example, because one is bigger than the other and so needs more food in order to be nourished.

I want to show now how the Interpersonal Requirement interpretation of the Objection is successful in dealing with our intuitions regarding cases of inter-end and inter-individual variation. Suppose we have a case of inter-individual variation. That is, we have a case where one individual, Alpha, is especially large and so requires more food to be as nourished as another individual, Beta, and where both individuals' only preference is to be nourished. Here it seems unfair that the larger individual should be worse-off simply because of his physical constitution. However, the Interpersonal Requirement version of the Objection can agree that this is unfair. If initially Alpha and Beta have the same set of preferences but Alpha is less able to realize those preferences because of his physical constitution, then a distribution in which impersonal resources, such as income and wealth,

[54] Amartya Sen, *Inequality Re-examined*, Oxford: Clarendon, (1992), p. 85.

are equalized will fail the Interpersonal Requirement. Alpha may legitimately cite his inability to gain adequate nourishment from the same amount of food as a handicap because he treats it as such in his everyday life. So, the Interpersonal Requirement interpretation of the Objection does provide the intuitively correct response these cases.

Suppose next that we take a case of inter-end variation. That is, we have a case where Alpha and Beta have identical endowments, prices are such that one can either play 10 hours of hockey a week or 5 hours of bassoon and, given these prices, Alpha prefers to play hockey while Beta prefers to play bassoon. Given existing prices, neither would swap their preferences for the others if they could. Each values their particular ends more highly than the alternative and, correspondingly, each considers themselves better-off than the other. This is pure inter-end variation. If there were to be redistribution from one to the other on grounds of equality, this would have to be made in spite of the fact that the individual who is to benefit already believes he is better-off. In such a case, it is far from clear that any redistribution is due. For example, we would have to give Beta some of Alpha's resources in order that he could achieve the same level of well-being through his bassoon playing. Yet this seems to rely on the judgment that hours of particular activities should be taken as equivalent. That is obviously false. One week of tiddlywinks might not be as advantageous as two hours of tennis. I think, then, that we should not find Cohen's earlier Paul and Fred case compelling either.[55] In sum, the Interpersonal Requirement version of the Objection satisfies our intuitions with respect to cases of inter-individual and, at least, does not obviously contradict them in cases of inter-end variation.

[55] There is a subtlety that needs noting here: Cohen does not say that leisure needs are satisfied in terms of hours of leisure, although his example suggests that conclusion. Indeed, I do not think that Cohen is actually committed to this implausible view. I do think that his argument fails to be persuasive but, as I will explain in a moment, I think it is implausible for different reasons to the ones Dworkin suggests.

When we view the Objection in terms of the Interpersonal Requirement, one is also able to get a better handle on Dworkin's objections to well-being accounts and his arguments for resourcism. For example, consider Dworkin's objection to overall success preference satisfaction accounts. These accounts see equality as a matter of ensuring that each person would offer the same assessment of how well-off they are. When asked how well-off they are, each would have to reply 'Very well-off' for equality to be achieved, for instance. Yet, as Dworkin points out, different people may apply different judgments about what would qualify as a good life overall. Some may believe they could, if they had all the resources in the world, solve the "riddle of the origin of the universe", and so would think that they were not well-off when compared to how well-off they might be.[56] But others might believe that a simple life is best and so judge themselves well-off compared to how well-off they might be. The standards of comparison employed by the two groups are different.[57] If each group has initially equal resources and we compensate the first group on account of the fact that they judge their lives to be going poorly, we do so despite the fact that neither group thinks the other group better-off than they are. Dworkin believes we should reject relative success preference satisfaction accounts for the same type of reason. This type of account "requires that distribution be arranged so that people are as nearly equal as distribution can make them in the degree to which each person's preferences about his own life and circumstances are fulfilled."[58] But people do not care about relative success *per se*. People, or at least most people, value what they do and not only how relatively successful they are at it. Some may

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[56] Dworkin, *Sovereign Virtue*, p. 37

[57] Note a similarity between Dworkin's position here and Broome's objection to Harsanyi's preference satisfaction account. See John Broome, 'Can There Be a Preference-Based Utilitarianism?', in Marc Fleurbaey, Maurice Salles and John Weymark (eds.), *Justice, Political Liberalism and Utilitarianism*, Cambridge: Cambridge University Press, (2008): 221-239.

[58] Dworkin, *Sovereign Virtue*, p. 28.

prefer the life of a failing artist to that of a successful accountant, others the opposite. If we redistribute to some on account of the fact that they are less relatively successful, we do so in spite of the fact that they would not swap their situation with those they are receiving from.[59] Finally, Dworkin's objection to enjoyment theories is focused on the idea that people are not what he terms 'buzz addicts'; they care about more than simply the mental states they experience.[60] If we take enjoyment as the object of equality of opportunity, to achieve it we will have to redistribute to those who have less hedonic pleasure, but value their situation for other reasons, taking from those with more hedonic pleasure, even when neither party would prefer to be in the other's circumstances. Each of these accounts of well-being, then, fails the Interpersonal Requirement. They will compensate persons for features of their lives that are judged disadvantages by the lights of the conception of well-being, even though those persons do not themselves consider those features disadvantages.[61]

Given the role Dworkin gives to individuals' own assessment of their situations within his account, note also that one interesting way of reading Dworkin's account is as a preference satisfaction account, but one which employs resources to compare levels of preference satisfaction. Remember that in the previous chapter I mentioned that a key problem for resourcist theories was how to value resources without appealing to some more

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[59] As Dworkin puts it, "One person might think that the fact that he is likely to be very successful at a particular career counts strongly in favour of his choosing or pursuing it. If he is uncertain whether to be a good artist or lawyer, but believes he would be a brilliant lawyer and only a good artist, he might regard that consideration as decisive for the law. Someone else might weight relative success much less. He might, in the same circumstances, prefer to be a good artist to a brilliant lawyer, because he thinks art so much more important." Dworkin, *Sovereign Virtue*, p. 30.

[60] See Dworkin, *Sovereign Virtue*, ch. 6.

[61] As Matthew Clayton puts it, "The first person test [endorsement constraint] requires individuals to assess whether they are disadvantaged in light of their own distinctive comprehensive convictions. It is, therefore, capable of wider public acceptance as a test of equality compared to metrics [objects] that require individuals to express their claims for social funds on the basis of lacking particular goods, e.g. welfare, even when they do not value these goods." Clayton, 'The Resources of Liberal Equality', p.79.

foundational well-being concern.[62] Dworkin values resources according to people's preference for them as displayed through a market processes: his Envy Auction.[63] Preferences are to that extent at the bottom of his theory. On the reading I am proposing, Dworkin uses resources as the measure of preference satisfaction given the failure of other measurements of preference satisfaction such as relative success and overall success to satisfy the Interpersonal Requirement. While this interpretation casts Dworkin's resourcism as a well-being account of a sort, and so is controversial, there is textual evidence that suggests Dworkin himself considers his account a type of well-being account. In his final exchange with Cohen, Dworkin writes that, "equality of resources is to be preferred to other theories of distributive justice because it better fits a more attractive account of what well-being really is."[64] If my conjecture is correct, then, and Dworkin's theory of resources is indeed a theory of well-being, the correct opposition may not be between resources and well-being, but rather between objective accounts of well-being - by which I mean accounts of well-being that do not rely on individuals' own assessments of their situations - and subjective accounts of well-being, of which Dworkin's view is a variety in so far as it proposes that well-being is related to individuals' own assessments.[65] Many of the objections and counter-objections that appear within the context of the expensive tastes debate will then be replicas of some of the objections and counter-objections that appear within the debate over whether well-being should be construed in subjective or objective terms.

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[62] See Section 4A.3.

[63] See Dworkin, *Sovereign Virtue*, pp. 65-119.

[64] Dworkin, *Dworkin Replies*, p. 349.

[65] Of course, this is controversial since Dworkin calls his account objective, but what he means by this must be different from my technical meaning since, on Dworkin's view, whether someone is considered better or worse off than another clearly depends on that individual's own attitudes towards their circumstances. Dworkin, *Sovereign Virtue*, pp .45-47.

In any case, the pertinent question is now: given that it appears to satisfy our intuitions well with respect to cases of inter-end and inter-individual variation, is the Interpersonal Requirement interpretation of the Objection decisive against opposing accounts that describe well-being as the object of equality of opportunity? In the next section, I will show that there are a number of responses to Dworkin's position.

4B.3 A Response to the Interpersonal Requirement

In assessing the plausibility of the Interpersonal Requirement the following question is central: is it ever appropriate to compensate an individual, or offer compensation to an individual, for a disadvantage, even when the individual in question does not feel that that feature of their life is a disadvantage? Dworkin is committed to saying, or at least I will assume that Dworkin is committed to saying, for the sake of this section, that it is not plausible to make such compensations.[66] Well-being theorists, or at least well-being theorists of an objectivist bent, are committed to saying that it can be appropriate. In what follows I will give some arguments for why we should reject the Interpersonal Requirement and so favour some objectivist well-being theory as constitutive of advantage, and so as the object of equality of opportunity.

[66] In the next section I will offer a response Dworkin may make which allows that in certain circumstances he will be prepared to compensate an individual for a feature they do not consider a disadvantage or handicap. The response relates to the fact that the Dworkinian Envy Auction procedure requires all individuals tastes to be authentic.

The arguments I will give draw on similar arguments developed by Martin Wilkinson against Dworkin's 'Endorsement Constraint'.[67] In developing and applying the arguments Wilkinson makes against the Endorsement Constraint to the Interpersonal Requirement, I want to focus on three areas: first, that people can make mistakes about what is valuable, second, that people can make mistakes about facts and, third, that people's values change over time. The way I develop these points is my own.[68]

a. The Epistemic Problem - Mistakes About Value

Consider the following proposition: one may wrongly consider oneself better-off than someone else because one does not *know* what it is like to be the other person. If this proposition is true, the Interpersonal Requirement is hostage to an epistemic problem; the fact that some people consider themselves better or worse off than others will often be a result of their lack of knowledge and their subsequent failure to properly appreciate the condition of others. If it is implausible that the object of equality of opportunity should depend on the epistemic positions of individuals, the Interpersonal Requirement is also implausible.

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[67] The Endorsement Constraint has a role as part of Dworkin's more general case for his ethical Challenge Model. It holds that for a good to improve a person's life that person must endorse its value. For example, for me to gain the good of a trip to the theatre, I must endorse the value of theatre. The Endorsement Constraint is, then, not exactly equivalent to the Interpersonal Requirement; the Endorsement Constraint is an account of what can add value to someone's life, the Interpersonal Requirement is an account of when people can be considered equal. Still, the two arguments are clearly related; if one does not believe that one can add value to someone's life by giving them goods they do not value, one will be wary of imposing conceptions of well-being on people, and giving them the goods associated with that conception, if they do not endorse that conception. For Wilkinson's arguments see Martin Wilkinson, 'Against Dworkin's Endorsement Constraint', *Utilitas* 15, (2003):175-193.

[68] In fact, Wilkinson distinguishes four ways in which people might make mistakes: mistakes in basic value judgments, mistakes about facts, mistakes in reasoning and mistakes in the application of judgments. It suffices for my purposes to focus only on the first two types of mistake. See Wilkinson, 'Against Dworkin's Endorsement Constraint', pp.179-181.

There are two ways to develop this objection. The first is to point out that because persons' assessments of their comparative advantage are often severely under-informed, the Interpersonal Requirement yields a good deal of indeterminacy. By this I mean that the most truthful response to the question 'Are you better-off than her?' is often, 'I don't know', rather than 'Yes' or 'No'. For example, I often wonder whether my friends who work as lawyers or bankers are better-off than I am. They have much more money, but I wonder if they value their work or get the (occasional) enjoyment out of it that I do. My difficulty with the question is not generated by the worry that they are different from me. I would express the same doubt if someone asked me whether *I* would be better-off either as a Lawyer or a Philosopher. Having tried only the latter, and knowing little about the former, the proper answer seems to be that I do not know which job would make me better-off.

The second way to develop this objection is to point out that, often, the fact that some people have less privileged epistemic positions gives us good reasons for doubting their self-assessments. Consider the case of Dan and Ella cited by Williams in defence of Dworkin's position.

"*Dan and Ella, both of whom are deaf, live in a society where most people can hear and prefer to use that capacity in everyday communication. Though each lacks the same personal resource, Dan and Ella have very different beliefs about the losses involved. Dan is convinced that the value of being of being able to hear is overrated and that the benefits of membership in the community of the deaf are vastly underrated. Despite his reduced capability to communicate with those who can hear, he firmly denies that deafness constitutes a disadvantage or makes him less well-equipped to lead a successful life than* *them. Like Dan, Ella recognizes that deaf people enjoy certain goods that are unavailable, or less easily accessible, to those that can hear. Nevertheless, on balance, she regrets being deaf and would gladly forgo those goods if it were possible to remedy her deafness*."[69]

Williams cites this example as a case where Dworkin's Interpersonal Requirement separates Dworkin's view from Sen's Capability account; on the Capability account Dan lacks a capacity which is due compensation; on Dworkin's resourcist account, since Dan considers himself better off being without hearing, Dan is not due compensation, or at least so Williams contends.[70] Williams does not take a stand on whether this divergence gives us reason to favour either a resourcist or Capability account.

My contention is that the plausibility of the Interpersonal Requirement in this case depends heavily on our assessment of their epistemic positions. To illustrate this, suppose that Ella was previously able to hear and only lost her hearing in late adolescence, while Dan was born deaf. Having lived in both the hearing world and the world of the deaf Ella is well placed, relative to Dan, to make an assessment of which life is better. In this case, it seems to me, we have more reason to trust Ella's judgment of whether one is better-off with hearing or not because she has experienced both ways of living.[71] However, at the moment, our confidence that deafness represents a handicap for Dan too may be weak; this is after all a limited sample.

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[69] Andrew Williams, 'Dworkin on Capability', *Ethics* 113, (2002): 23-39, p. 37.
[70] Dworkin responds to Williams argument see Ronald Dworkin, 'Sovereign Virtue Revisited', *Ethics* 113, (2002): 105-143, pp. 136-140.
[71] It may be objected that Ella has not experienced both ways of living as she was not born deaf and makes her case relevantly different. In response, we need only suppose that Ella was born deaf but recently briefly regained her hearing only to lose it again.

What could give us stronger reasons for believing that Dan's deafness represents a handicap despite his judgment to the contrary? Suppose that we know as a matter of empirical fact that all deaf people (including people like Dan who were born deaf) that have had hearing operations and subsequently gained hearing preferred their life with hearing. All newly hearing individuals consider themselves to have previously been at a disadvantage, even though they did not make this assessment at the time when they were deaf, just like Dan. In this case we would have very strong reasons for supposing that Dan's deafness was in fact a handicap for him. It would surely, then, be appropriate to offer Dan (and Ella) compensation despite his continued denial that he is due any.[72] If this is plausible, the Interpersonal Requirement is implausible.[73]

b. The Epistemic Problem - Mistakes About Facts

The previous example dealt with cases where people's assessments of their own condition and the condition of others were under-informed. It dealt in particular with peoples' convictions about which lives were valuable, and how we should view these convictions in light of the fact that their knowledge of different lives may be limited. A similar but equally devastating argument can be made with respect to mistakes about facts.

Consider the following example. Suppose Sam is a smoker and Nigel is a non-smoker. Both Sam and Nigel value their health above all things. The important difference

[72] Note, that this need not imply forcing Dan to take the compensation. It may be quite proper that if he is offered it and rejects it then equality is not harmed as Dan can be judged responsible, on account of his choice, for the subsequent putative inequalities between himself and the others.

[73] There is an interesting similarity between the arguments I give here against Dworkin and the argument Parfit gives against Preference Hedonism. See Derek Parfit, *Reasons and Persons*, Oxford, Oxford University Press, (1984), p. 496.

between this and the last case is that now both Sam and Nigel value the same thing - good health - whereas Dan and Ella valued different things. Now, Sam falsely believes that smoking is good for his health. Each then maintains their beliefs that they are in fact better-off than the other. If we stick to the Interpersonal Requirement, we will not be able to provide Sam with any additional resources that might help either him revise his attitudes or be rid of his addiction. This conclusion is too harsh.

If, stubbornly, Sam refuses to accept the truth about what is good for him, it may well be appropriate to hold him responsible for the resulting inequality. But it surely is not plausible that, absent responsibility, the fact that Sam has a false belief is sufficient to justify the inequality in life-prospects that separates him and Nigel. In combination with the argument given in a), this thought leads to a more general conclusion: the Interpersonal Requirement is only plausible in cases where we suppose people do not have false beliefs either about facts or values. If we suppose that people have false beliefs, the Interpersonal Requirement is no longer plausible.[74] If this is correct, the resourcist position is weakened in so far as it relies upon the plausibility of the Interpersonal Requirement.

c. Which Values Count?

[74] Before continuing notice that the above argument does not necessarily imply the stronger conclusion that equality demands people should be forced to do what is in their interests, it may only suggest more minimally that people be given the option to do what is in their interest if people may be held responsible for not doing what is known to be in their interests.

A further problem for Dworkin's Interpersonal Requirement is this: given that peoples' values change over time, which particular set of values are we to take as appropriate when applying the Interpersonal Requirement.[75]

In my discussion of mistakes about value I suggested that later convictions may be superior to earlier convictions because they have been formed through more experience. But it is far from clear that later values should always be preferred for the purposes of the Interpersonal Requirement. Consider the case of Adam who lives as an atheist until he suffers some trauma, the death of his parents, say. Following this he becomes firmly religious, perhaps because he is overwhelmed by the fact that life can be so fickle and needs the comfort of believing life is fated, with all superficially bad things in fact being purposive, part of a divine plan. In accordance with his new found belief Adam renounces claims to material items and seeks a monastic life. Which set of values and associated preferences should we take as appropriate for the purposes of the Interpersonal Requirement? It is no longer obvious that Adam's later preferences are the ones we should accept when applying the Interpersonal Requirement. Although they are developed through experience, the fact that the experience was a trauma gives us reason to doubt that his subsequent preferences should be read as the best assessment of value available. The Interpersonal Requirement needs some account of which set of values is appropriate if it is to yield any determinate conclusions. If Dworkin cannot present an account of which values are appropriate, his theory is incomplete and, one might suspect, trades on the indeterminacy this absence creates.

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[75]. For further criticism of Dworkin's Endorsement Constraint see Richard Arneson, 'Human Flourishing and Desire Satisfaction', *Social Philosophy and Policy* 16, (1999): 113-142, pp. 135 -142; 'Liberal Neutrality on the Good: an Autopsy', in George Klosko and Steven Wall (eds.), *Perfectionism and Neutrality: Essays in Liberal Theory*, Oxford: Rowman and Littlefield, (2003), pp. 191-219, pp. 191-208.

4B.4 The Procedural Response

At this point a supporter of Dworkin's view may be frustrated. They may say that my critique rests on the claim that Dworkin's view is blind to all mistakes one might make, irrespective of their origin. But Dworkin's view, they may assert, is proceduralist; there are conditions placed on which beliefs may be entered into his theory when determining an equitable division of resources, relating to the circumstances under which those beliefs came about. This may rule out certain false beliefs, like the false belief Dan had regarding his deafness, or the false belief Sam had regarding the health benefits of smoking. It may also serve to remove any problems coming from the fact that people's values change over time.

Let me expand. In developing his account of Equality of Resources, Dworkin outlines two principles that limit the preferences individuals enter his Envy Auction with: the Principle of Authenticity and the Principle of Independence.[76] In discussing the Principle of Authenticity, Dworkin states,

"*Personality is not fixed: people's convictions and preferences change and can be influenced or manipulated. A complete account of equality of resources must therefore include, as a baseline feature, some description of the circumstances in which people's personalities will be taken as properly developed so that auction calculations can proceed. The baseline needs, that is, some Principle of Authenticity*."[77]

[76] Dworkin, *Sovereign Virtue*, pp.158-162.
[77] *Ibid*., p. 159.

Dworkin's claim that "a complete account of equality of resources" must include "some description of the *circumstances* in which people's personalities will be taken to be properly developed" is instructive. It suggests that only preferences that have been acquired in the appropriate set of circumstances qualify as authentic and are to be entered into the Envy Auction. Dworkin does not describe which circumstances are appropriate, but the fact that he claims only certain circumstances will be appropriate is enough to locate the type of account Dworkin's holds. That is, it is clear that Dworkin's account, first, does not permit all preferences, whatever their genesis, to be included within the procedure and, second, he does not restrict his account of which preferences are acceptable to include only those preferences which, whatever their genesis, contribute to an individual's good.

It is the fact that Dworkin's view is restricted in the first way that allays the worry that preferences like that Deaf Dan or Sam the Smoker could be fed into the Envy Auction. It might just be, we can assume, that the right set of circumstances for Dan to choose from are ones in which he has had some knowledge of the hearing world. Similarly, it might be impossible given the appropriate circumstances for Sam to form these beliefs about the health benefits of smoking. A proper upbringing would include education about which drugs were known to be seriously harmful and so forth. The procedural restriction could also allay the worry about preferences that change over lifetime. In the example I gave, Adam suffered a trauma which led to his later religious conviction. This may be the kind of circumstance that Dworkin will want to rule out as inappropriate for the proper formation of preferences. Dworkin could then respond that, indeed, we should take Adam's earlier atheist preferences as the ones that are authentic to him.

However, while the presence of the procedural restriction on preference formation appears to allay the objections I presented earlier, it does not entirely remove them, at least when presented in a revised form. Although placing procedural restrictions on which preferences may be included in the Envy Auction serves to remove the more obvious cases of malformed preference, it does not prevent an individual entering the auction with preferences that are in fact contrary to their own well-being. This is because it is still possible, even when restrictions are placed on the genesis of preferences, for individuals to make mistakes in their assessments of what is contributory to their well-being. To put the point another way, limiting which preferences may be included according to their genesis doesn't rule out that a person might make mistakes in her assessments, and so enter the Auction with preferences that the balance of reasons suggest are in fact contrary to her well-being.

Let me give an example. Suppose I grew up in a moderately wealthy middle class family, was educated at a good school, had loving and attentive parents and so forth. These circumstances are, we can suppose for the sake of the argument, the sorts of circumstances Dworkin has in mind as appropriate. Even with all these ample benefits, it is entirely possible that I could acquire a number of preferences that are still contrary to my well-being. To cite just one example of such a preference, consider again the case of smoking. It is possible that when growing up in my pleasant suburban surroundings I am influenced by film and music. I notice that many of the stars of film and music smoke, and I develop the belief that smoking is glamorous and an appropriate sign of rebellion. I am informed of its harmful effects on health, but I reject this knowledge thinking, perhaps not carefully, that if it was good enough for James Dean or Damon Albarn, then it must have some benefits that make these costs worth paying. I continue with this slightly romantic belief until, sometime in my thirties, I discover on further reflection that smoking is almost entirely without benefit. It strikes me that my smoking idols fell into the same trap that I did, believing it to be glamorous, but, unlike me, perhaps not knowing of its harmful health effects. The same cycle has presumably been repeated by generation after generation, fuelled by careful advertising from the tobacco industry. By this point I am hopelessly addicted. The important point, however, is simply that we now have a case where I grew up in appropriate circumstances and yet I have held preferences that are contrary to my well-being well into my adulthood. Moreover, we have a case where preferences, and perhaps values, have changed during the course of a life, allowing the problem of which set of preferences are to count to re-emerge.

Clearly, one might think, we want my later preferences to count. They are the ones that reflect what is genuinely constitutive of my well-being. Yet this argument is not open to Dworkin. As Dworkin's account is proceduralist, he cannot argue that some preferences are superior to others because they reflect one’s true well-being better than alternatives. For Dworkin, all preferences that have the appropriate genesis must have an equal standing. Indeed, perhaps the smoking example described earlier is slightly superfluous. The crux of the issue is simply this: if one thinks that we should take advantage to be constituted by the satisfaction of preferences that the balance of reasons suggests are not contributory to a person's well-being, simply because they have the correct genesis, then one can support Dworkin's view. If one believes that we should take advantage to be constituted by what the balance of reasons suggests is contributory to a person's well-being, then we should not. In taking the procedural view we risk opening up advantage, and the object of equality of opportunity, to the contingencies of preference formation. Although the proceduralist device removes some element of contingency from preference formation, it commits us to not removing all of it, *even if this were possible*. We should, Dworkin must claim, allow our account of the object to be influenced by the contingencies of preference formation despite the fact that this will take us further from giving each an equal opportunity for what is actually in their best interest. This is an unpalatable conclusion.

4B.5 An Alternative Proposition

The above considerations give us reason to reject the Interpersonal Requirement when considering the object of equality of opportunity. But, then, without the Interpersonal Requirement, how can we deal with cases like the Bassoon vs. Hockey case, or the Photography vs. Fishing case? I believe we can explain our judgments in these cases with reference to the fact that we are uncertain about what is advantageous. The fact that we do not know for certain who is better off explains why we do not redistribute, not the Interpersonal Requirement.

In the case of Fred and Paul, it is intuitively unclear, at least to me, whether Paul really is worse-off than Fred simply in virtue of his preference for photography rather than fishing. The proper answer to the question of who is better-off seems to be "We do not know", and so no compensation is due. Dworkin's account gets the practical prescription right, but for the wrong reason. This is clear when we consider again the Dan and Ella case. To isolate the intuition we need to modify the case a little. Assume that Ella and Dan live in a society with a third individual, Frank, who has hearing and considers himself better-off with hearing than either Dan or Ella without hearing. Let us also assume there are no other relevant differences between the three. Dworkin believes that whether we offer compensation to Dan and Ella or not depends on how they view their own deafness. This leads to a situation in which Ella receives some compensation from Frank for her deafness, while Dan does not. But suppose that we did know *for certain* that Dan was wrong and that his deafness did count as a disability. Would the fact that he falsely believed he was as well or better-off than Frank count as a reason for not offering him compensation? Clearly not. A false belief, or at least a false belief one is not responsible for, cannot plausibly justify an inequality, even if the belief arose in specified circumstances. Indeed, it follows from the reading I have presented that even if Dan, Ella and Frank all believed Dan was better off, but we had overwhelming reason to believe they were all wrong, fairness would require that compensation was offered to both Dan and Ella from Frank. In sum, my view hinges on how we should interpret the meaning of the question 'Who, if anyone, has a claim to compensation?', should we interpret that question as being equivalent to asking 'Who *is* worse-off?' or 'Who *thinks* they are worse-off?'. Dworkin believes the second question is the most pertinent. I believe the first is.

The pertinent question now is: how do we respond to the fact that we are often uncertain of who is better off? I believe the best response to this question, and so also the best account of object of equality of opportunity, is to build a type of objective list theory. I can only provide a sketch of my account. The account I will propose differs from standard objective list theories in how it aims to take account of the fact that there is uncertainty about which goods ought to be on the objective list. One strategy for taking account of uncertainty is simply to make the objective list limited, with only those items that we have extremely strong confidence in being represented.[78] An alternative possibility is that in building an objective list we weight various goods according to the confidence we have in them. This is my proposal: we create a list where certain goods or functionings, like being free from excruciating pain, or having a primary education, have a very high weighting reflecting our very high confidence in their respective badness or goodness. Others, like the functioning of receiving a tertiary education, have a much lower weighting reflecting our lower confidence in their badness or goodness.

The next question is: how should we build this weighted objective list? To answer this question, one must identify the different ways of gaining knowledge about what is valuable and, more specifically, what constitutes well-being. A full account of how this could be done is beyond the scope of the thesis. However, two routes to this sort of moral knowledge are, first, the opinions of the wise and experienced and, second, the results of public discourse.

The first route to moral knowledge is described by John Stuart Mill in his discussion of Socrates and the Fool. Both Socrates and the Fool believe they are better-off than one another but, Mill claims, Socrates is the one we should judge better-off because only he knows both what it is like to be Socrates *and* what it is like to be the Fool. The Fool knows only what it is like to be the Fool. Leaving aside the objection that Socrates cannot really know what it is like to be the Fool, if we agree with the general proposition that having tried both possibilities makes one better placed to judge what is good, we will find reasons to agree that the wise and experienced are well-placed to judge what is good or again, more specifically, what is contributory to well-being.

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[78] This is Martha Nussbaum's strategy. See Martha Nussbaum, *Women and Human Development*, Cambridge: Cambridge University Press, (2000).

With respect to public discourse, it is plain that by exposing ideas to discussion and criticism we refine and clarify them, getting closer to the possibility of their truth or falsity. By discussing with others one gains new ideas and insights, exposing what is parochial in one's own thought. Through discussion, we can compare and contrast our experiences, discovering the probable outcomes of particular ways of life and how others who have lived them now conceive of them, good or bad. It is a means to the pooling of experience and knowledge.

Having identified these two routes to knowledge about what is good, and so what is of advantage, the question now is how they can be combined to get the account of advantage that is most likely to be correct. My proposal is this: a list of goods is drawn from debate in some public forum, with the goods on that list weighted relative to the strength of preference individuals have for those goods and the number of different individuals who favour them. That list is then moderated by some form of committee of suitably experienced and wise individuals. This process gives rise to an index of goods, weighted relative to our confidence in their value. To make the list more manageable certain types of activities could be grouped together; for example, one could group together different sports or different musical activities. Whether this would be appropriate, however, is itself a matter for debate. Another way the list could be made less extensive would be to remove certain outlying results, say, all those that fell below a certain threshold of support. But, again, whether this would be appropriate is itself a matter of debate. The list generated would not be fixed. Rather, it would be under constant revision as our understanding of what sorts of lives are valuable progressed and evolved.

The proposal I offer is practical. Indeed, it is close to, but not exactly the same as, the way we do go about determining what goods are valuable for people currently. In the case of health care in the UK, for example, the relative benefits of different treatments are weighed by a committee, NICE. Implicitly or explicitly, this process relies on some account of which functionings are valuable. Further, although NICE is an independent body, pressure is exerted on it through public debate, the activities of pressure groups, the media and the government itself. Perhaps we have reason to worry about some of these influences; maybe pressure groups will often only serve the interests of pharmaceutical companies. But my point is only that at a general level, the sort of two-stage process I am advocating is not so far removed from practical reality as to be fantastical.

A second key advantage of the approach I have described is that it gives us a means for generating an index of different goods and functionings. It is a well-known problem of the Capability approach, and indeed the Rawlsian primary goods account, that they do not present a method for weighing the various functionings or goods against one another.[79] The method I have described gives us a route to providing an index for the various goods, according to how valuable they are for persons.

No doubt there are many possible objections to my proposal. I will consider only two here. First, I want to consider the objection that my proposal, in so far as it relies on public debate, and preferences expressed within that forum is in fact open to many of the same objections that I have leveled against Dworkin. That is, it may be said that since my account relies on preferences expressed in the public forum to determine what is advantageous it is

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[79] For example, see Richard Arneson, 'Two Cheers for Capabilities', in Harry Brighouse and Ingrid Robeyns (eds.), *Primary Goods and Capability*, Cambridge: Cambridge University Press, (2009), pp. 101-129.

either no different from Dworkin's or, worse, since it takes preferences from the public, it may include preferences that are severely malformed.

In response to the first objection, it is important to be clear that the justification for the method I propose is different from Dworkin's. The value of the method proposed is instrumental. If it is discovered that relying on the public or asking the opinions of wise persons were poor tools for identifying the correct account of well-being, these methods should be modified and a better method implemented. Accordingly, then, although the method I have proposed does rely on the expression of preferences in both the public forum and at the level of the wise moderators, the role these preferences play in selecting the objective goods is quite different in justification to the role preferences play in Dworkin's Envy Auction; expressions of preference give us a means to discovering what is contributory to well-being, but preferences themselves are not taken to be the stuff that constitutes well-being. They are, on my account, the means of identifying what advantage is.

With respect to the problem that my view may be affected by malformed preferences expressed at each of the different stages, one can only say that the point of having a two-stage system is precisely to adjust for the possibility of malformed preferences. Each stage acts as a balance on the other, ensuring, as best we can, the absence of parochialism and malformation. No doubt this result will not be achieved perfectly, but some failure is unavoidable. It reflects the difficulty of moral questions. Dworkin's route of escape is to assume that people have preferences that have arisen in the correct circumstances. What would person’s preferences look like under such conditions? What are the conditions that would be appropriate? Dworkin answers neither of these questions. He avoids the problem of malformed preferences, in large part, simply by ignoring it.

Finally, I want to consider a further objection. This states that my view is in fact no different from other Objective List views. To highlight some distinctive features of my view, let me take Amartya Sen's Capability account for contrast. Describing his view, Sen writes,

"*The connection between public reasoning and the choice and weighting of capabilities in social assessment is important to emphasize. It also points to the absurdity of the argument that is sometimes presented, which claims that the Capability approach would be usable - and 'operational' - only if it comes with a set of 'given' weights on the distinct functionings in some fixed list of relevant capabilities. The search for given, pre-determined weights is not only conceptually ungrounded, but it also overlooks the fact that the valuations and weights to be used may reasonably be influenced by our own continued scrutiny and by the reach of public discussion. It would be hard to accommodate this understanding with inflexible use of some pre-determined weights in a non-contingent form.*

It can, of course, be the case that the agreement that emerges on the weights to be used may be far from total, and we shall then have good reason to use ranges of weights on which we may find some agreement...The approach of Capability is entirely consistent with a reliance on partial rankings and on limited agreements, the importance of which has been emphasised throughout this work. The main task is to get things right on the comparative judgements that can be reached through personal and public reasoning, rather than to feel compelled to opine on every possible comparison that could be considered."[80]

[80] Amartya Sen, *The Idea of Justice*, London: Penguin, (2009), p. 242

From this text we can draw both similarities and contrasts between the two views. First, like Sen's view, the view I have advocated does not require a "fixed list of relevant capabilities". The list given by the two-stage process is constantly up for revision and modification. Second, both views are consistent with partial rankings and limited agreements. If the two-stage process does not achieve definite results, this simply reflects the difficulty of moral questions and the fact that the selection of a list can be expected to improve with moral knowledge.

However, unlike Sen's view, my view has a second stage and so does not rely exclusively on public discussion. Rather, it combines the outputs of public discussion with the judgments of those who are wisest and so best placed to judge. There is, then, an important difference in method. Further, while my view does not necessarily offer a complete ranking or indexing of goods, it can at least present a ranking or indexing if required. That is, if for any practical purpose one needs a complete ranking and index, this could be provided by the committee following their judgments on the outcomes of the public discourse. Finally, a third way my approach differs from Sen's is that it employs a different explanation of why complete rankings are not always readily available. Sen supposes that different goods and sources of well-being may be incommensurable. My view does not deny this but, in addition, it states that the primary reason complete rankings are not available is an epistemic one. It is not necessarily that the nature of different elements of well-being is such that they cannot be compared, it is that all too often we are unsure of what the various elements of well-being are.

Before closing this chapter, let me consider one final Dworkinian objection to my argument. Suppose that Dworkin's view is not proceduralist in the way I have described it.

Specifically, Dworkin's actual proposition is that to determine an equal distribution the individuals must enter the auction with perfectly idealized preferences. By this I mean that the agents know all the relevant facts about the goods they are bartering for with their clam shells, make no mistakes in reasoning and so forth. Then, with these perfect preferences, the individuals would want what was actually advantageous for them, and the distribution yielded by the auction would be an equal distribution of advantage (assuming for the moment that there is no inter-individual variation). But, then, Dworkin's account of the object of equality of opportunity and my own seem to collapse because they both consider the object of equality of opportunity to be what is actually advantageous.[81] Even if this is the case, I still believe my proposal is more practical than Dworkin's.[82] The practical question we face is how to determine what constitutes actual advantage. I endorse the above method because it constitutes the best practical way of determining what constitutes advantage, for the reasons laid out above.

4B.6 Conclusion

In this part of the chapter I have argued that the Expensive Tastes Objection is not decisive against using well-being as the object of equality of opportunity. While the Interpersonal

[81] A relevantly similar point is made by Derek Parfit. Parfit writes, "An objective list theorist might claim that his theory coincides with the global version of the Success Theory. On this theory, what would make my life go best depends on what I would prefer, now and in the various alternatives, if I knew all the relevant facts about these alternatives. An objective list theorist might say that the most relevant facts are those just mentioned – the facts about what would be good or bad for me. And he might claim that anyone who knew these facts would want what is good for him, and want to avoid what would be bad for him." Parfit continues to point out that the objective list theory and the preference satisfaction theory would still be distinct, at least at the level of theory. Derek Parfit, *Reasons and Persons*, Oxford: Clarendon, (1984), p. 499.

[82] There are interesting complications when one considers the possibility that good is subject –relative. I do not have space to get into those complications here.

Requirement is more successful at capturing our intuitions about when compensation is due than supporters of well-being give it credit for, it does not provide the correct explanation of our intuitions. Reluctance to compensate in cases of expensive tastes, in the technical meaning of expensive tastes, is best explained by uncertainty about what is of value and who is better-off, not by the fact that one individual believes they are better-off than the other. We should endorse a weighted objective list account of well-being as the object of the equality. Further, that list should be weighted relative to the confidence we have in particular items. While I have gone some way in suggesting how a weighted objective list could be developed, I do not suppose I have proposed a fully worked out method, let alone suggested what goods should be included on such a list. These tasks will have to be taken up in later work.

This concludes the first part of the thesis. We now have a rough sketch of three important elements of a conception of equality of opportunity. In the next section I will move to consider what the type of conception of equality of opportunity I have described prescribes in particular contexts. That is, I will now be concerned with luck egalitarianism generally, rather than the specific conception I have laid out.

Part 2

Chapter 5 Giving and Other-affecting Choice[1]

In this chapter I assess how restrictive a commitment to luck egalitarianism is with respect to the freedom to give. The chapter has seven sections. The first provides a brief characterisation of luck egalitarianism and the distinction between brute and option luck. The second section defines what I mean by a gift. The third considers the contexts in which material gifts might conflict with the luck egalitarian doctrine, while the fourth extends this analysis to cases involving non-material gifts. The fifth section considers some important objections and the sixth section contextualizes gifts as part of the problem of other-affecting choice. The seventh section concludes by way of a summary.[2]

5.1 Luck Egalitarianism

Luck egalitarianism holds that for some group of creatures (usually persons) brute luck should be equalized. Brute luck is constituted by individual advantage (well-being, resources and so forth) that one is not responsible for. While luck egalitarians wish to eliminate inequalities in advantage that individuals are not responsible for, they do not

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[1] This chapter of the thesis is a revised version of an existing article: Hugh Lazenby, 'One Kiss Too Many? Giving, Luck Egalitarianism and Other-affecting choice', *Journal of Political Philosophy* 18, (2010): 271-286. It is reprinted with the kind permission of Wiley-Blackwell.

[2] I want to add the caveat that my investigations do not apply to the Dworkinian account of equality of resources. Dworkin's account, with its hypothetical insurance scheme, will make different judgements about both cases of gift-giving and market interaction. For Dworkin's treatment of these problems see Ronald Dworkin, *Sovereign Virtue*, Cambridge MA.: Harvard University Press, (2002), esp. ch. 9.

object to inequalities in advantage that individuals are responsible for. In their discussions of what individuals may be held responsible for, luck egalitarians have focused on *choice* and *effort* and, in particular when individuals may be held responsible for choices to accept risk.[3] I will also follow the existing luck egalitarian literature in connecting responsibility to choice, including choices to accept risk, and effort. The label 'option luck' is given to advantages and disadvantages resulting from choices to accept risk. However, in what follows, I will use the term option luck in a broader way to include any advantage or disadvantage that one may be held responsible for.

The ultimate aim of the luck egalitarian project, then, is to delineate which elements of an individual's situation they can be said to have responsibility for and which elements they cannot, allowing relative advantage to be a function only of the former. Hard determinism suggests this might not be possible -because all of our actions are causally determined in a way that prevents morally relevant choice and so also responsibility - but, if it is possible, once these elements have been drawn apart we can begin trying to adjust the effects of brute luck between individuals through taxation of the brute lucky and compensation of the brute unlucky. As the aim is to treat only differences in brute luck it follows that, when using taxation for redistributive purposes, only the brute luck element of a person's situation is liable for taxation.[4]

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[3] See, for example, G.A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics* 99, (1989): 906-944. Kasper Lippert-Rasmussen, 'Egalitarianism, Option Luck, and Responsibility', *Ethics* 111, (2001): 548-579. Michael Otsuka, 'Luck, Insurance, and Equality', *Ethics* 113, (2002): 40-54. Martin Sandbu, 'On Dworkin's Brute Luck–Option Luck Distinction and the Consistency of Brute-Luck Egalitarianism', *Politics, Philosophy & Economics* 3, (2004): 283-312. Peter Vallentyne, 'Brute Luck, Option Luck, and Equality of Initial Opportunities', *Ethics* 112, (2002): 529-557.

[4] Of course, this should not be taken to mean that the luck egalitarian would use taxation only for redistributive purposes. Some police force and redistributive agency would be needed to make and maintain the necessary redistributions and these would have to be funded. These taxes would have to come from individuals, but the appropriate tax could not be characterised as an attempt to extinguish the differential

For the purpose of testing the luck egalitarian position it will be helpful to have a formal characterisation of it. This I will draw from Temkin and his canonical statement that, "It is morally bad—because unjust and unfair—if someone is made worse-off than others through no choice of their own."[5] Of course, this short statement is not intended to encapsulate a comprehensive conception of a luck egalitarian position. That would require, amongst other things, a full account of the conditions for morally responsible choice. I employ Temkin's characterisation here only for the limited purpose of identifying instances of brute luck, employing the assumption that all prior conditions have been met.[6] I will also assume that the category of individuals to whom luck egalitarianism is to apply is persons.

5.2 Gifts

In everyday thought we tend to conceive of gifts in material terms. For my purposes, however, what can count as a gift is not limited to the material; it includes other non-material transactions that might more commonly be characterised as favours or even simply kindness. The three main forms of non-material giving examined are gifts of labour, gifts of non-material capital in either its intellectual, social or cultural varieties, and gifts of affection.

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effects of brute luck. Two methods of taxation might be appropriate. First, luck egalitarians might attempt to reduce the value of everyone's endowments in a way that maintained the required distribution. Alternatively, they might place taxes on particular activities that had negative externalities or tax those who had experienced good option luck; this latter option would upset the luck egalitarian distribution.

[5] Larry Temkin, *Inequality*, Oxford: Oxford University Press, (1993), p. 13.

[6] For an elaboration of some conditions for identifying brute luck see Lippert-Rasmussen, 'Egalitarianism, Option Luck, and Responsibility'. Sandbu, 'On Dworkin's Brute Luck–Option Luck Distinction and the Consistency of Brute-Luck Egalitarianism'. Vallentyne, 'Brute Luck, Option luck, and Equality of Initial Opportunities'.

It would be best if I could construct some universally applicable necessary and sufficient condition(s) that define what makes an action a gift as opposed to an exchange or purchase. Unfortunately, no such condition(s) will be forthcoming. One might suppose that for an act to qualify as a gift it should be a transfer of resources that comes without corresponding reciprocal demands. But many actions that we commonly call gifts do have reciprocal demands attached to them. For instance, a mother might offer to 'give' her daughter some amount of money on the condition that she quits smoking, stops biting her fingernails or some other such thing. While some might argue that this example blurs the distinction between gift and reward, it illustrates that the concept of a gift is not a technical one. Notions of what a gift *is* are embedded in everyday language in a way similar to the notion of a 'game' or the notion of 'knowledge' and, doubtless, any rudimentary attempt to fit what should qualify as a gift into a set of necessary and sufficient conditions could be rejected by an astute philosopher.[7] To avoid this sort of objection I will settle for a merely 'working' condition. I will say that an action counts as a gift if, and only if,

'*(i) it consists in the bestowing of an advantage upon an individual or group of individuals where, if there are conditions placed upon the bestowing of this advantage, the advantage is greater in value than the disadvantage following from the conditions imposed for the recipient(s), and (ii) it is undertaken with the intention of conferring an overall advantage on the recipient(s), and (iii) it does not constitute the repayment of a debt or the fulfilment of some other type of obligation.*'

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[7] For a fuller account of why everyday concepts may not be straightforwardly analysable in terms of necessary and sufficient conditions see Timothy Williamson, *Knowledge and its Limits*, Oxford: Oxford University Press (2000), esp. ch. 1.

Again a disclaimer is required: this is an approximation of a necessary and sufficient condition for what qualifies as a gift. It attempts only to capture our intuitions about what paradigm cases of giving might look like and one should accept from the start that there will be fringe cases where the condition will be violated. One point in the phraseology also needs further explication. I have characterised a gift as the 'bestowing of an advantage'. I will interpret advantage in a broad way, including both material goods, such as wealth, and non-material goods, such as pleasure. But I believe that many of the claims and points developed are neutral between all different candidate objects, including narrow definitions of advantage as resources, applying equally well to each.

5.3 The Problem of Gifts: Contexts and Remedies

In examining the potential conflict between giving and luck egalitarianism I will begin by considering the contexts in which *material* gifts might upset a fair luck egalitarian background distribution.[8] Further, in order to outline the nature and implications of the principle, I will be content with interpreting luck egalitarianism in a strict non-pluralist way. [9]

[8] For thoroughness, in a world where unfair inequalities exist (i.e. a non-luck egalitarian distribution) luck egalitarians will make judgments about the justness of gifts dependent on whether those gifts serve to ameliorate or heighten the existing unjust inequalities. To clarify, if a gift serves to make it less the case that some are worse-off than others through no fault or choice of their own it will be just, while if a gift serves to make it more the case, it will be unjust. This fact should be remembered to guard against the mistaken view that luck egalitarians will make negative judgments against all cases of giving in the context of the modern world where a luck egalitarian distribution is not in place.

[9] By non-pluralist I mean that I will suppose that luck egalitarianism is the only relevant moral value.

Imagine a situation where the requirements of luck egalitarianism are satisfied: a three person society in which the agents Alpha, Beta and Gamma all possess equally valuable genetic endowments, equally expensive tastes, equal status and each holds 100 units of resources. As no individual is worse-off than any other and no relevant choices have occurred, the ideal just distribution is in place. Now imagine that on the second day of their lives agent Alpha decides to make an act of generosity and gives 10 units of resources to agent Beta. Beta has not done Alpha any particular service on day one and Alpha demands nothing in return for the gift. Let's also suppose, for now, that Alpha chooses Beta at random. On Alpha's new distribution the luck egalitarian appears to have nothing to say; Alpha has made his choice and must now live with it. However, a considerable unfairness does seem to have arisen between Beta and the third member of society, Gamma. As Beta in no way chose the opportunity for the extra wealth, her newly elevated position seems unfair relative to Gamma's; Gamma appears to have a claim that he is now, through no choice of his own and not because of some relevant choice on Beta's part, situated with less advantage available to him than Beta. Accordingly, the transfer has generated a difference between Beta and Gamma with respect to how they have fared in terms of brute luck.

Interestingly, though, a little more reflection will make us wonder if the gift only treats Beta and Gamma differentially with respect to brute luck. Beta receiving a gift was a matter of pure good brute luck for her. Neither Alpha nor Gamma experience any luck except comparatively with Beta. Does this mean, then, that Alpha and Gamma, neither of whom receives a gift, *both* fare worse than Beta with respect to brute luck? If the extra gift resources did not come from Alpha, but instead fell from the skies onto Beta as manna from heaven, the luck egalitarian would argue that the extra goods should be distributed equally. What, therefore, is the conceptual difference between the manna case and the gift case? We need to distinguish two considerations. On the one hand, in so far as brute luck is measured comparatively, and Beta experiences 10 units of good luck in both cases, it seems Alpha must also have a claim to his share of this good luck in both cases. On the other hand, in the gift case, Alpha has *chosen* to give away his share of the resources and so both Alpha's outcome of 90 and Beta's gaining an extra 10 units appear as a matter of option luck for him, making the cases appear importantly different. Ought we to consider that Alpha has a claim to a share of Beta's extra resources, or does Alpha's having chosen the distribution negate any possible claim? I endorse the view that because Alpha has chosen the brute luck for Beta, the resulting distribution cannot appear *for Alpha* as a matter of brute luck and, consequently, Alpha does *not* have a claim to a share of Beta's gain.[10] In any case, the alternative reading would imply forcing Alpha to take back part of the gift and so has no interesting practical consequence in the cases examined here: Alpha would simply factor in this consideration when choosing how large a gift to give in the first instance. Let us put this aside and focus on the apparent inequity between Beta and Gamma created by the gift.

We must start by considering what features of the first example made it an instance of what I will call 'brute luck giving', that is, giving that disturbs the luck egalitarian distribution. Two aspects seem particularly important. First, Alpha chose Beta at random and had no reason to favour Beta in particular. If we remove the element of randomness from Alpha's distributive choice one might suspect that this will affect the luck present in

[10] In the language of Part 1, we can say that Alpha chosen to give up her claim to that brute luck advantage.

the outcome. Second, Beta did not act to bring about the gift. If Beta had somehow chosen to induce the gift, perhaps this could make the gift a result of option luck.

Does it make any difference if we alter the first condition, while keeping the second constant, to show that Alpha might have a *reason* to favour Beta particularly? Let's imagine, for example, that Alpha gives his resources to Beta because Alpha especially likes Beta and believes that giving her the resources will help him achieve his end of taking their relationship further. Suppose also that neither Beta nor Gamma does anything to encourage a relationship with Alpha. To make the example more plausible we can suppose that the resources for transfer are a large bunch of red roses. The question now is: does Alpha's having a reason to give exclusively to Beta, namely that he likes her, prevent the resulting distribution from being unfair in terms of brute luck? It does not. The fact remains that neither Beta nor Gamma have made choices to encourage the gift and so the gift still appears for them a matter of brute luck, even if in Alpha's eye's it is no accident that Beta is chosen as the recipient of the gift.[11] As the fundamental issue is the comparative levels of opportunity for advantage held by the three agents, the donor's motivation is not relevant. The gift will create a difference in brute luck between Beta and Gamma, upsetting the distribution, irrespective of whether Alpha has a reason for giving.

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[11] One might object that the example has in some way distorted the facts. The example claimed that Alpha had a reason to favour Beta, but also that Beta and Gamma were equal in all relevant respects and that neither did anything to encourage the advances of Alpha. If this is true, why would Alpha give to Beta at all? Alpha must have some reason to choose Beta in particular or the example collapses back into the previous case. If the reason is that Alpha is predisposed to liking Beta over Gamma, isn't this extra 'likeability' something that Gamma should be compensated for? Indeed, we can accept that being 'less likeable' is something that Gamma should be compensated for as this concession will not change the example at all. To compensate Gamma for Beta's extra likeability, which is itself taken to be a matter of brute luck, we would have to compensate for the effects this likeability had on the distribution of well-being. As the result of the extra likeability is a gift of ten units of resources Gamma's compensation in either case would be the same.

While such examples may still seem excessively abstract, practical instances of 'brute luck giving' are not limited to strange random donors or love-hungry suitors. Its greatest instance occurs between parents and children: it is simply a matter of luck from the child's perspective whether they happen to be born to parents who are wealthy or poor, miserly or generous. Charitable giving also possesses similar conceptual characteristics: to give to an agent who had gambled or consumed their opportunities, would be to allow that agent, but not others, to eat their cake and have it, as it were.

Before moving to consider what happens when we alter the second condition - when the recipient has acted to bring about the gift - let us first consider how the strict non-pluralist luck egalitarian could try to rectify the inequalities caused by brute luck gifts. One solution would be to forbid giving altogether, thus preventing the inequity from ever arising. The alternative would be redistributing the resources through a system of taxation. As this seems the less controversial of the two approaches, and has less obvious implications, I will examine it a little further. To take the roses example, the luck egalitarian must argue that either Alpha or Beta, as donor and recipient, should pay some tax that can later be redistributed to Gamma. This tax would have to equalize the brute luck experienced by Gamma and Beta. We can suggest a general formula the luck egalitarian might use to redistribute gifts of this sort that applies independently of whether the tax falls upon the donor or the recipient. A state with a population of N would have to tax resource transfers at a rate of (N-2/N-1).[12] After redistribution this would leave the recipient and everyone else (except the donor) with a 1/N-1 share of the additional resources, restoring

[12] If the donor was included as a candidate for compensation the rate of taxation would be N/N-1. The N-1/N-2 rule takes the amount necessary to provide everyone except the donor with a share equal to what the recipient gains after tax.

the luck egalitarian distribution as both recipients and non-recipients would have benefited equally from the gift. In the above example, with a population of three, the formula would prescribe a tax on the gift of 3-2/3-1 = ½. Half of the roses would have to be redistributed to Gamma. Beta and Gamma would then have fared exactly the same with respect to brute luck *ceteris paribus*.

Let us turn to consider the implications of the tax rule in practice. In the three-person case it was possible to redistribute a part of the gift while still allowing Beta to gain a significant amount of it, and so the redistributive method seemed more desirable than complete prohibition. This was true independently of whether the tax fell upon donor or recipient. At this point, however, we need to consider these cases separately. We will consider the case of a tax on the donor first. Interestingly, when we begin to increase the number of agents in society it quickly becomes practically impossible for any agent to give gifts. For example, in a society with a population of 100 the rate of taxation on gifts would become, using N-2/N-1, 98/99 = 0.99 (approx.). To give a gift of one unit the donor would have to pay a tax of nearly 99 units. Further, as we increase the population towards those of currently existing states the quantity of gifts that could be transferred will tend to zero. Therefore, although we originally identified forbidding 'brute luck giving' and placing a redistributive donor-based tax on 'brute luck giving' as different, when we consider it more closely, their implications are very similar in practice: it would be so expensive as to be practically impossible to give even very small gifts.

We might expect the recipient tax to be subtly different. When the tax fell upon the donor it was prohibitively expensive to give gifts. If, however, the tax were to fall upon the recipient, the recipient might be able to at least receive the gift, if she paid a tax nearly equivalent to its full market value. This recipient-based tax might be deemed more desirable because it could allow the giving of items with sentimental value. This is true so long as we conceive of luck egalitarianism as having a resourcist or well-being metric that does not count sentimental value as a constituent of advantage. If we include sentimental value as part of advantage then the extra sentimental value that the gift holds for the recipient would also be taken as objectionable and the corresponding gain taxed away.[13] As the value of the advantages would be effectively equal to the costs imposed the action would then fail to qualify as a gift and, if we concede that no system of taxation could capture sentimental value, the only way of maintaining the luck egalitarian distribution in practice would be prohibiting the gift in the first place. Under either scheme gifts would still be effectively prohibited.

Finally, we can consider what happens when we alter the second condition. Now the recipient does act to bring about the gift. Changing this condition has one obvious implication from the luck egalitarian perspective: if an individual acts to bring about a gift it could make the gift appear as a result of that individual's own 'calculated gambles' to invest time with others, and so appear as a matter of option luck. However, while this suggests that there will be more instances of giving that luck egalitarians can permit, determining when these instances might occur is complicated by a number of factors.

First, one would also have to make room for considerations of fairness to the donor. It would still disturb the distribution if in acting to bring about the gift the recipient

[13] This raises the question of what luck egalitarians should prescribe in cases where forbidding the transfer of certain goods would actually put the prospective recipient below the ideal distribution. In some cases, resources, like family heirlooms, might have particular significance for the recipient and forbidding the transfer might threaten to disconnect the recipient from their past in a way that would make them worse-off relative to others. These cases are particularly interesting because they suggest that either prescription, allowing or forbidding the gift, would upset the distribution.

disadvantaged the donor relative to others; for example, if the inducement took the form of a confidence trick that diminished the responsibility of the donor. Second, it is unclear exactly when one should consider a recipient's actions sufficient to make a gift the result of option luck rather than brute luck. The pertinent question will be: how close a relationship must there be between an action on the part of a recipient and some corresponding gift to make that gift the result of option luck? Is any causal connection sufficient or does the conversion from brute to option luck require some stricter condition such as intentionality on the part of recipients, or reasonable avoidability of relative disadvantage for non-recipients?[14] Third, even if we suppose one could distinguish what *sort of action* was morally relevant, this would still not be sufficient to transform corresponding gifts into being the result of option luck, as this must also be determined by the value of the opportunity set of givers to which one had access. As Rakowski argues, "close relationships are usually bound up with shared experiences. Those experiences depend on physical proximity and thus are invariably influenced by where and when someone happened to be born and live at a particular time."[15] If this is true, it is to some extent a matter of brute luck which potential givers make up one's opportunity set. In short, while we could expect that some will actively search out these generous givers, there will always be an element of brute luck involved in who we meet during the course of our lives and whether or not they are generous. The immense practical difficulties involved in determining how far a recipient was responsible for a gift and, relatedly, how generous a

[14] For a fuller discussion see again Vallentyne, 'Brute Luck, Option Luck, and Equality of Initial Opportunities'.
[15] Erik Rakowski, *Equal Justice*, Oxford: Clarendon, (1993), p. 60.

set of givers they had had access to, makes the case for prohibiting all gifts. Again, this would be the only way to maintain the ideal distribution.

That concludes my discussion of the contexts in which material giving will upset a luck egalitarian distribution. It has been observed that to maintain the desired distribution the luck egalitarian must deny many instances of material giving. Yet many luck egalitarians are happy to take their intuitions this far by endorsing the prohibition or heavy taxation of material gifts. As Otsuka, for one, states, “should we allow a prerogative to depart from equality to acquire a greater-than-equal share of resources when we introduce the non-market giving of resources by those who are not mutually disinterested but rather moved by a concern for others? I think not.”[16] Luck egalitarians may assert that, while allowing the freedom to give gifts to children, strangers and spouses seems intuitively desirable, our intuitions about its desirability are muddied by how giving occurs in the world as it currently exists. In the modern world giving can often serve to ameliorate unfair inequality. In a luck egalitarian world, because equality is instantiated from the outset, gift giving will always create objectionable unfairness, and so, were we to cleanse our intuition, it would become clear that gift-giving ought to be heavily taxed or prohibited. As will be shown now, however, the serious difficulty for luck egalitarians comes when we extend their prescriptions for the treatment of gifts from the material to the non-material.

[16] Michael Otsuka, 'Prerogatives to Depart from Equality', in Anthony O’Hear (ed.), *Political Philosophy*, Cambridge, Cambridge University Press, (2006), pp. 95-113, p. 101. Otsuka’s defence of a strict equality of opportunity is far from compelling. Otsuka argues that prerogatives to depart from equality in the case of gifts are unjustified as gifts are equivalent in their *effects* to unequal endowments of natural talents. In either case, he argues, some individual is advantaged over others through no choice of his own, and so, if egalitarians are prepared to deny prerogatives to depart from equality in the case of talent, they should also be prepared to deny them in the case of gifts. But pointing to a similarity in *effect* between natural endowments and gifts does not provide sufficient reason to suppose that there is no prerogative to depart from equality through the giving of gifts. The contention that we should allow giving of some sort is premised on the fact that giving may allow us to achieve goods other than equality, such as friendship and love. Those who argue for allowing giving take these goods to be independently valuable, and it is precisely this value that is taken to justify the prerogative to depart from equality. The question of their effects is not in dispute.

5.4 The Problem of Gifts: From the Material to the Non-material

Labour provides an interesting starting point. Few, if any, political doctrines deny that people should be able to use their labour to transform their own resources. To deny the capacity to labour would be to deny not only self-ownership but also very minimal amounts of personal autonomy.[17] Indeed, the idea that individuals should be able to improve their situation through their own effort and labour is foundational to many existing accounts of luck egalitarianism. However, it is also possible that if people choose to labour for others they may be upsetting the luck egalitarian distribution.

We can see this by substituting the material gift in the original Alpha, Beta and Gamma example with a labour gift; the re-roofing of Beta's house by Alpha. The effect of the labour would be to improve both the value of Beta's house and the advantage that Beta derives from living in the house. Does this situation differ in any relevant respects from the earlier material transfer? Once again, Gamma is made worse-off relative to Beta, the only difference might be that in the labour case Alpha continues to hold the same amount of resources even after the gift. But this makes no difference at all. Worrying about how the gift affects Alpha's situation, or whether time spent helping a friend is properly considered a spent resource, only obscures the fundamental issue - the gain in overall advantage of Beta relative to Gamma. It is specifically this gain and the unfairness arising from it that upsets the distribution and, as this unfairness is the same for instances of labour giving and

[17] For more on whether the central concern should be the value of self-ownership or the value of personal autonomy, see G.A. Cohen, *Self-Ownership, Freedom and Equality*, Cambridge, Cambridge University Press, (1995).

material giving, both are equivalent from the luck egalitarian perspective. This conclusion has significant implications for the luck egalitarian project: in order to maintain a luck egalitarian distribution, brute luck labour gifts must be forbidden. Helping old ladies across the street, editing a novel for a friend or fixing their car might all be instances of brute luck giving that are objectionable from a luck egalitarian perspective.[18]

Further, when one bears in mind that the fundamental issue from the luck egalitarian perspective is the unfair gain in advantage of the recipient relative to non-recipients the expansion of the foregoing analysis to gifts of non-material capital is straightforward. That is, in so far as providing an individual with technical knowledge (intellectual capital), teaching them important rules of etiquette (cultural capital) or giving them valuable contacts (social capital), all result in the recipient having a greater opportunity for advantage than non-recipients, they must also be objectionable from the luck egalitarian perspective. Now, some luck egalitarians will object that there are other good reasons - independent non-luck egalitarian moral concerns - that speak for allowing at least some gifts of labour or capital. But I am not concerned with the pluralistic position yet and the important point to be gleaned from this part of the investigation is that the strict non-pluralist luck egalitarian position will imply severely restricting, or even forbidding, brute luck gifts including labour, capital and, as I will now show, affection.

There might be two objections to extending the analysis to affection. First, one might argue that affection is not properly considered a gift. Second, one might argue that affection does not bestow advantage in the relevant sense. The first objection is overly technical. What is of primary importance is whether the freedom to undertake acts of

[18] Again, one should be mindful of the caveat that this will only be true in cases where the gift takes the recipient beyond their fair share.

affection is compatible with maintaining a luck egalitarian distribution, not whether the definition of gifts I have given counts acts of affection as gifts. Nevertheless, it can be answered. Remember that the definition of a gift employed here describes any action that bestows on the recipient an advantage greater than the disadvantage it imposes, and is undertaken with that intention, as qualifying as a gift. It may be that some acts of affection are not undertaken with the intention of bestowing an advantage on the recipient but the majority are, at least at some level. When we show affection we do it with the hope that the recipient will find it *nice*. If we feel affection for another but believe that the recipient will not find it nice we will try to avoid displaying it. Hugs are a good example of this. Whether the first objection can succeed, then, depends in large part on the success of the second objection and it is plain that affective giving does confer advantage on the recipient in (at least) two distinct and important ways. On the one hand, agents gain advantage (measured now specifically in terms of well-being) directly from the affection itself. It just is nice when people show they love us, either by giving us hugs and kisses or proposing a relationship. On the other, the advantages of affection 'spill over' into other areas of life. Just as health care confers advantage on one absolutely by making one feel well, but also relatively when better health makes one a more attractive candidate for valuable social positions, affection gives one both the advantage of the direct experience and the more general advantages that accrue to having a well-defined sense of self-worth that affection can foster. Few individuals have such a robust constitution that they simply know they are valuable, and if one does not feel one's own self-worth it is highly unlikely that one will prosper in seeking out valuable social positions. In any case, all that matters for the argument here is that *some* advantages are gained through affective giving. If this is accepted, then one must also accept that people can be made relatively worse-off according to the amounts of affection other's receive and, consequently, that many gifts of affection will also disturb the luck egalitarian distribution.

When we consider this conclusion in conjunction with our earlier diagnoses - that luck egalitarianism in effect demands the forbidding of many other material and non-material forms of giving - we arrive at a stark and dystopian picture of social life. If we could not give presents, hugs and kisses, useful pieces of information or physical assistance to each other, except when they were the result of the others calculated choices or ‘deliberate gambles’, it seems difficult to imagine how any sort of human relationship could be maintained or instigated. Indeed, the aim of ensuring no person is worse-off than any other through no choice of their own seems to require the complete isolation of individuals. Only if agents had no contact with each other could the aim be realized, as human interaction, and the diverse forms of giving and partiality that accompany it, will inevitably disturb the luck egalitarian distribution. Luck egalitarianism appears to ignore the fact that people do not exist in isolation, like so many bars on a graphical equalizer with advantage rising and falling, but are in truth enmeshed in complex networks of relationships that necessarily involve the transferring of equality-disturbing advantages for their instigation and maintenance.

5.5 Objections and Clarifications

That it requires forbidding these fundamental interactions may seem like a *reductio ad absurdum* argument against luck egalitarianism. There are, however, a number of important responses that need to be considered to qualify that result.

The term ‘luck egalitarian’ has been applied to a very divergent group of theorists. Further, the large amount of critical attention these theorists have attracted has led to numerous alternative offerings from scholars trying to solve the intuitively objectionable consequences that arise from endorsing one of these ‘luck egalitarian’ positions. Consequently, although my preferred definition draws on a canonical version of luck egalitarianism as equality of opportunity for advantage with its heritage in the work of Arneson and Cohen, it is likely that some will object that an alternative luck egalitarianism is superior and avoids the problem outlined.

a. Equality of Opportunity for Resources[19]

It could be objected that my critique trades on the large number of actions that affect opportunity for well-being and, as far fewer actions affect opportunity for resources, a resourcist luck egalitarianism could avoid the bulk of the critique by resisting the extension to non-material gifts. As was made clear through the discussion of affective giving, however, the vast majority of non-material gifts also have very significant direct and indirect impacts on opportunity for resources. While there might be some small subset of non-material transfers that only affect opportunity for well-being, and so would not need to

[19] Note that by referring to Equality of Opportunity for Resources, I am not referring to Dworkin's Equality of Resources, but rather to a particular interpretation of the luck egalitarian value which takes resources as its object.

be prohibited to maintain equal opportunity for resources, this subset would be far too small to avoid the bulk of the *reductio*.

b. Starting-Gate Luck Egalitarianism

Peter Vallentyne has suggested that a starting-gate luck egalitarianism - where a luck egalitarian distribution is instantiated only at an early stage of individuals' lives - might hold some advantages over temporally extended versions. One such advantage is that a strictly starting-gate theory would avoid the difficulties regarding gifts as giving could take place after the initial point.

It is puzzling, however, why anyone who holds the intuition that inspires luck egalitarianism would favour the starting-gate theory. To substantiate his or her position the starting-gate theorist must show that there is reason to believe equality is special as a moral demand - applying only up until some point within a life – and that it is possible to actually identify this morally relevant cut-off point. Yet the prospects of success for such a project are dim given a) the overwhelming intuition that arbitrary inequality, if objectionable, is objectionable *whenever* it occurs: to an egalitarian conscience it makes little difference whether I receive my billion dollar gift on my 18^{th} or 21^{st} birthday, but this is the sort of judgment the starting gate theory must deny, and b) the conspicuous absence of any candidate point in life at which such a hugely morally significant change could plausibly be said to take place.[20] While starting-gate luck egalitarianism avoids the problems identified, it fails to capture foundational intuitions about the nature of equality as a moral value. [21]

c. Summing the Inequalities

A second objection claims that my critique fails because it focuses on every single instance of giving rather than the total inequalities that are created after all instances of giving have taken place. In doing so, my critique may overstate the severity of the luck egalitarian position's implications. To take an example, suppose that each of our three agents, Alpha, Beta and Gamma, gives the other two gifts of 10 units each, but that Alpha also gives Beta an additional 5 units, making Beta's total gift receipt 5 units greater than either Alpha or Gamma. In this case, maintaining the luck egalitarian distribution would not require that all of the gifts are prohibited, or the gains taxed away, as the original 10 unit gifts neutralise each other in terms of the brute luck they confer on agents. The only gift that is equality-disturbing is the extra gift from Alpha to Beta and so that is the only gift that needs treatment. Therefore, the objection runs, when we focus on the total *ex post* inequalities rather than on each individual action that contributes to an agent's total level of opportunity for advantage, the number of problematic gifts becomes smaller.

In response, it is quite right to point out, as I have already made explicit, that some gifts may in the right conditions be either non-damaging to equality or even equality

[20] A technical point: a supporter of the starting gate theory may counter this example by claiming that the prospect of a future gift would be considered relevant to the recipient's initial opportunities. To counter this objection, and reinstate the example, one need only suppose the gift came from a benefactor giving randomly.
[21] For a far more eloquent argument against starting-gate theories of equality, see Brian Barry's celebrated baby swapping example. Brian Barry, 'Equal Opportunity and Moral Arbitrariness', in Norman Bowie (ed.), *Equal Opportunity*, Boulder: Westview, (1988), pp. 23-44.

promoting.[22] In my analysis I examined gifts taking place against the ideal luck egalitarian background distribution, and so assumed that all brute luck (including brute luck resulting from prior gifts) was equalised. Even when we accept that gifts which neutralise each other are acceptable, we are still faced with the same essential problematic, namely, which kiss of a loved one is one too many? At best, the objection suggests that the background level of equality may not need to be as low as some critics might fear.

However, one should also be wary not to overstate the success of the objection. If one is to take the strict luck egalitarian position seriously one has to consider how such a distribution could be maintained in practice. But, given the practical difficulty of determining precisely when a gift was equality disturbing, the only way to ensure that giving does not upset the luck egalitarian distribution would be to forbid it *ex ante*. Further, in so far as the strict luck egalitarianism under consideration is concerned *only* with the luck egalitarian value and so is concerned *only* with maintaining the ideal distribution, it cannot provide a luck egalitarian reason - a reason from *fairness* - for why gift giving should not be forbidden in the first instance. To clarify, there may be many reasons why we want to allow gift giving: the point is that these reasons are not founded in the luck egalitarian value but rather in the other values that gift-giving can promote. As the levelling down objection teaches us, the value of equality, taken by itself, is neutral between the different ways that equality comes about.

d. Pluralism

[22] See Section 5.3.

The most promising response is for the luck egalitarian to endorse a pluralist position; luck egalitarians can claim that the value that inspires their position should not be taken as the only, or even lexically prior, moral value, but rather as one value to be weighed against others. Each intuitively objectionable case can then be explained as an instance where other values would trump the luck egalitarian one. When this move is accepted, the problems identified suggest a simple answer, namely, to set about David Estlund's challenge to "do the moral philosophy required to determine just what the relative strengths of the various values and prerogatives [to depart from equality] are."[23] Luck egalitarians need only to find some principled means to distinguish what types or quantities of gifts should be allowed despite their disruptive effects on equality.

One might respond that the pluralist counter is 'too easy'. It acts as a magic bullet, explaining away each objectionable implication of the strict luck egalitarian position as a conflict with another value, without offering a method to weigh values, and so never submitting a concrete all things considered judgment as a candidate for analysis. I will not employ this response. A pluralist stance is congruent with the most commonly adopted meta-ethical foundations of the luck egalitarian position (such as intuitionism) and, although it may be hard to identify how conflicting values can be weighed, pointing to this difficulty is insufficient to undermine the possible validity of that project. Instead my contention is that, even with the pluralist qualifier, the analysis of gifts makes four important contributions to our understanding of luck egalitarianism.

First, the analysis of gifts makes clear the sheer range of activities that conflict with the luck egalitarian value, highlighting the depth of the tension between the luck egalitarian

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[23] David Estlund, 'Liberalism, Equality and Fraternity in Cohen's Critique of Rawls', *The Journal of Political Philosophy* 6, (1998): 99-112, p. 107.

value and others. Second, it shows that the strict luck egalitarian position is absurd, thereby refuting Otsuka's claim that there should not be a prerogative to depart from equality. Third, by recognising the number of valuable activities that conflict with the luck egalitarian value, my analysis suggests that this prerogative must be more substantial, or at least more nuanced, than commonly argued for, even by Estlund. Fourth, and most importantly, it closes the gap between the practical implications of luck egalitarianism and more straightforward egalitarianisms, putting the case against luck egalitarianism critics who claim it is too permissive with respect to inequalities – the truth is quite the opposite.

Those four points make up the central conclusions of this chapter. In closing, I want to suggest a possible expansion of my analysis. My proposal is that the problem identified in the case of gifts is symptomatic of a much general problem for luck egalitarianism, the problem of other-affecting choice.

5.6 Other-affecting Choice

In the preceding analysis an implicit distinction has been operating between two sources of brute luck: brute luck that is not chosen by any person and brute luck that is chosen by some external person.

The former completely unchosen form of luck occurs when individuals are made worse-off than others through no choice of their own due to the *simple happenings of chance*. It is the sort of luck occurring when one is born with fewer talents than others, when one is struck by random meteors or when one happens upon pots of manna. Compensating this form of brute luck is unproblematic in as much as it does not require limiting any specific choices. Of course, to compensate for this luck we must still take resources from 'lucky' individuals, but this taxation can take a general form, and need not single out any one choice, or category of choices, for taxation or prohibition.

However, as we saw in the case of gifts, certain choices actually cause brute luck, good or bad, for others. Let us call these choices *other-affecting choices*. When other-affecting choice occurs, luck egalitarians will find reasons, even if those reasons are not always overwhelming, to restrict it, either through prohibition or the imposition of taxes. While choices to give have been outlined as paradigm cases of other-affecting choices, I have nowhere supposed that such choices are limited to cases involving gifts. My claim now is that there are many instances of other-affecting choices occurring in other contexts including market choices and perhaps even procreative choices. One upshot of this expansion of the realm of other-affecting choice would be to provide more reasons to revise downwards our view of how 'choice friendly' luck egalitarianism really is. Even more interestingly, though, when one accepts the premise that people have specific *other-regarding preferences*, so that their level of advantage (again now measured specifically in terms of some conception of well-being) is dependent upon the advantage held by particular others, one may find new dimensions of interrelation and accompanying problems; an important part of the story I have not explored is how decisions to prohibit gift-giving might limit the opportunity of those who like to give. All this suggests a new challenge for luck egalitarians; to map the different dimensions of other-affecting choice and preference. Until it is clear which choices disturb the equality value, and why, it will not be possible discern what value ought to be attached to particular prerogatives and, correspondingly, how the luck egalitarian value can be accommodated within a general political theory.

5.7 Conclusion

I have argued that the luck egalitarian principle will prohibit the giving of both material and non-material gifts, at least when these gifts do not ameliorate existing unfair inequalities. This does not constitute a *reductio ad absurdum* argument the luck egalitarian principle, but it does show that the principle can only plausibly be a *pro tanto* moral principle. I have also argued that the problem of gifts is symptomatic of a more general problem, the problem of other-affecting choice. In the next chapter I will move to examine another realm of other-affecting choice, choices in markets contexts.

Chapter 6 Markets and Prices

In this chapter I consider how market transactions should be viewed from the luck egalitarian perspective.[1] The chapter has eight sections. The first provides three conditions that allow us to distinguish whether some inequality is the result of brute or option luck. The second presents a definition of a market transaction. The third considers market interactions where two individuals make offers to one another, and neither has made any decisions prior to this interaction. The fourth considers market interactions where individuals have made independent production decisions prior to their interaction. The fifth presents two objections to the analysis provided in the fourth section. The sixth examines the notion of 'price luck'. The seventh examines the practical implications of the previous analysis and the eighth section concludes by way of a summary.

6.1 Responsibility Conditions

In the previous chapter, I stated that some outcome could be said to be option luck for an individual if it had resulted from a choice to accept risk. However, while that simple statement was adequate for my purposes in the last chapter, I now need to refine it. Specifically, in order to analyze market transactions from the luck egalitarian perspective, I need a more precise account of when risk can be said to have been accepted and,

[1] For other discussions of this questions see Matthew Seligman, 'Luck, Leverage and Equality: A Bargaining Problem for Luck Egalitarians', *Philosophy and Public Affairs* 35, (2007): 266-297. Elizabeth Anderson, 'How Should Egalitarians Cope with Market Risks?', *Theoretical Inquiries in Law* 9, (2008): 239-270.

correspondingly, when a particular outcome can count as brute or option luck. To this end I want to fix the following necessary conditions that must be satisfied for choice generated inequalities between persons to be attributable to option luck.

1. Initial prospects must have been equal.

2. There must have been an opportunity for each individual to insure fully (that is, to eliminate risks fully).

3. The full insurance option must have been a reasonable option.[2]

These conditions are borrowed from Martin Sandbu. They require some elaboration.[3]

To see why Condition 1 - that initial prospects must be equal - is appropriate, imagine a case where we have two individuals, one of whom has a more valuable set of opportunities than the other. Even if the privileged individual *chooses* to exploit his opportunities fully, the resulting inequalities between him and the other individual are not justified as option luck. The fact that the privileged individual began with greater prospects, that were themselves a matter of brute luck, makes the resulting inequality unfair.

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[2] Martin Sandbu, 'On Dworkin's Brute Luck–Option Luck Distinction and the Consistency of Brute-Luck Egalitarianism', *Politics, Philosophy & Economics* 3, (2004): 283-312, p. 300.

[3] Condition 1 states that initial prospects must be equal, but Sandbu does not elaborate on the exact respect in which they must be equal. Must they, for example, be equal in their expected value? Or must they be equal in both their expected value and their structure (i.e. must the decision trees faced by different individuals be identically structured)? Richard Arneson affirms the second version of the condition writing that "equal opportunity for welfare obtains among persons when all of them face equivalent decision trees - the expected value of each person's best (most prudent) choice of options, second best ...nth-best is the same." In what follows, and in accordance with Arneson, I will assume the second stronger interpretation of what Sandbu intends by 'equal'. However, I believe this has no effect on the forthcoming analysis, the examples I investigate would be interpreted in the same way were I to adopt the first weaker reading. See Richard Arneson, 'Equality and Equality of Opportunity for Welfare', *Philosophical Studies* 56, (1989); 77-93, pp. 85-86.

However, there are also more difficult cases that suggest satisfying condition 1 is not strictly necessary for differences in outcomes between individuals to be a matter of option luck. For example, if one individual has greater opportunities than another, but then fails to employ them, it may seem unfair to say to the person who had less valuable prospects but made the most of them that her superior outcome is not a matter of option luck. Condition 1 threatens to be too strong, potentially labelling option luck inequalities as brute luck inequalities. I cannot offer a complete revised condition here. Instead, I will employ examples that begin with initially equal prospects.

Condition 2 - that there must be an opportunity to insure fully - relates to the idea that risk must have been *avoidable* in order to be accepted. Thus, for example, if we suppose that a person must choose one of two equally risky gambles, the mere fact that that person happens to opt for one rather than the other does not indicate a willingness on his part to accept the associated risk. The fact that there was no way to avoid the risk means that the risk is not accepted in a relevant responsibility conferring sense. By contrast, if the person had a choice between a no-risk/full insurance option and a risky option, choosing the risky option would represent a choice to accept risk.[4] A person can, then, only be said to have accepted *all* of the risk attached to a particular option when there is a no-risk/full option available.

This raises the question of whether option luck can be separated from brute luck in cases where there is no full-insurance option but some of the available options are less risky than others. Let us call these cases of partial insurance. Sandbu suggests that it is possible to distinguish between brute and option luck in cases of partial insurance. He

[4] This is true only when we add the caveat about the relative value of the options as expressed in condition 3.

identifies the least risky prospect view, according to which, "*the difference between the outcomes in the least risky prospect is a matter of brute luck* [because] *it is impossible, through one's choices to reduce the spread further*."[5] Brute luck is, then, always to be measured in relation to the spread of risk involved in the least risky option. The following chart gives a practical example of how outcomes are to be delineated into brute and option luck in a case of partial insurance:

Table 4[6]

Choice	Prob.	Consequence	Pay-off	Brute luck	Option luck
Insure (least risky choice)	0.5 0.5	Not Blinded Blinded	6 5	6 5	0 0
Do not insure	0.5 0.5	Not Blinded Blinded	10 1	6 5	+4 -4

The chart shows that on the least risky prospect view, and in a case with two agents, there will be objectionable brute luck just in the case where one is blinded and the other is not, independently of the agents' choices to insure. To wit, if either agent is not blinded their brute luck will have been 6, while if either agent is blinded their brute luck will have been 5. To equalise their experience of brute luck when one is blinded and the other is not, 0.5 units of resources would have to be transferred, again irrespective of whether either agent has chosen to insure or not. Importantly, Sandbu's insight shows us that where full

[5] Sandbu, 'On Dworkin’s Brute Luck–Option Luck Distinction and the Consistency of Brute-Luck Egalitarianism', p. 292.
[6] This table is used by Martin Sandbu. See *Ibid*., p. 293.

insurance is not available, choosing a risky option may not entitle the winner or loser to all of the changes in their subsequent holdings since some proportion of that outcome may still be due to brute luck. Specifically, that part of their holding which corresponds to the unavoidable risk and not the additional risk accepted relative to the least risky prospect will be due to brute luck.

Condition 3 - that the insurance option must be a *reasonable option* - applies to cases of both partial and full insurance options. Why does Sandbu include condition 3 and what does 'reasonable' mean in this context? Sandbu construes the reasonableness condition in two ways. The first is that the insurance option must not be so bad, in *absolute value*, that the agent has no reasonable choice but to take the gamble. For example, suppose Alpha is in constant agony and is offered a miracle cure that has a 50% chance of removing the agony entirely and a 50% chance of increasing the agony. In this case, because Alpha's life in agony is so bad, taking the miracle cure may be the only reasonable thing to do. In short, on this idea of reasonableness, we should not consider a putative gamble as responsibility conferring if the risk-free option, in this case remaining in agony, falls below some minimum sufficient level.

The second construal of 'reasonable' presented by Sandbu is that the insurance option must not be so much worse, in *relative value*, that the agent has no reasonable choice but to take the gamble. The following table may help make this intuition clear.

<u>Table 5</u>

Choice	**Prob.**	**Consequence**	**Pay-off**
Apply	0.5 0.5	Employment Unemployment	100 49
Not Apply	1	Unemployment	50

This decision tree displays a case in which some individual has a choice between applying for a job and not applying for a job. The application takes some time that could otherwise be spent having fun and so the outcome where an individual applies and fails to get the job is slightly worse than the outcome where no application is made at all. Not applying for the job is the no risk option in this case. However, because not applying is an option of such low value compared to the expected value of the risky option, one might think that the choice to apply for the job was not an expression of a genuine desire for risk and so was not responsibility conferring in the relevant sense. If two equally worthy agents both choose to apply for the job and one failed and one succeeded it might well seem that the resulting difference in their outcomes was not a matter of pure option luck.[7] Indeed, without some condition of 'reasonableness' nearly all choices would end up appearing as option luck as

[7] One point Sandbu does not consider is how we should treat cases where one person chooses the unreasonable option and the other the reasonable option. Thus, for example, if I stay at home and you leave the house, would I have any claim for compensation if your choice pays off? In this case it is much less clear that there is any ground for redistribution between the two agents. This suggests that further refinements of Sandbu's conditions are necessary.

there would almost always be some way an individual could act to ensure a full insurance option even though this option might be of very low relative or absolute value.

Now, even if the judgment that the expected value of the insurance option must be *reasonable* in one of the aforementioned ways, it remains unclear what the precise conditions of reasonableness are. There is no obvious level below which one is so badly off that not to gamble would be unreasonable, and no obvious ratio of expected value after which the choice not to gamble would be unreasonable. Further, Sandbu does not present any candidate possibilities. We have a case where intuition outstrips understanding. What is required is further research on the conditions of agent responsibility, but I do not have time to undertake that task here. Instead, I will ensure that in the examples that follow I will make the expected values of risky and non-risky options identical, or as near to identical as possible.

6.2 Market Transactions

In the previous chapter I stated an actions counts as an instance of giving if, and only if,

"*(i) it consists in the bestowing of an advantage upon an individual or group of individuals where, if there are conditions placed upon the bestowing of this advantage, the advantage is greater in value than the disadvantage following from the conditions imposed for the recipient(s), and (ii) it is undertaken with the intention of conferring an overall advantage on the recipient(s), and (iii) it does not constitute the repayment of a debt or the fulfilment of some other type of obligation.*'

"

I will now say that an action counts as a market transaction if, and only if,

'(i) *it consists in the exchange of good or services, where this exchange makes each party better-off, or no worse-off, and (ii) each party engages in the exchange for the reason that it is to their own advantage or, at least, not contrary to their advantage.*'

Again, there will be instances where this condition for what qualifies as a market transaction does not fit with ordinary usage. First, note that not all interactions that would normally be called market transactions are undertaken by individuals aiming to gain an advantage for themselves. For example, suppose I exchange some of my gold for some food that I intend to then give away to the homeless. In this case, I am not engaging in the transaction for the reason that it will be to my advantage, but it remains clearly an example of a market transaction. I have formulated the condition in this way in order to limit the subject of the investigation, restricting it to market interactions that are self-interested.

Note, second, that the condition assumes each party will *actually* be made better-off as a result of the exchange, rather than that they merely *believe* they will be made better-off. Often market transactions do not have this outcome. Suppose I purchase a car part, believing it will fit into the engine of my car and make it run. It turns out that the car part does not fit into the engine. I have not been made better-off by the transaction, but we would still recognize it as a market transaction in ordinary language. I include the clause that individuals are made better-off, or at least not worse-off, because this clause casts market transactions in a particularly favourable light. In the forthcoming analysis I will show that even when we assume that market transactions make everyone better-off their consequences may still be objectionable from the luck egalitarian perspective. If this point can be proved then there will be no reason to expect that the same is not true of market transactions that, perhaps because one party lacks certain knowledge or is manipulated by another party, result in one or more the parties becoming absolutely worse-off.

While I have offered separate conditions for which actions constitute gifts and which market transactions, attempting to classify actions as exclusively either gifts or market transactions may be a mistake. To see this, suppose I come to your shop to buy a sandwich. You know me and give me a discount. In this case it appears that the subsequent transaction is both a gift and a market transaction; the gift part relates to that proportion of the normal price that is discounted. For the purposes of this chapter, however, I will put these clarificatory problems aside and simply accept that all those actions that fulfil the above necessary and sufficient condition are exclusively market transactions.

6.3 The Simple Case

In assessing what luck egalitarianism prescribes in cases of market interaction, I will begin by considering a case in which two individuals make offers of trade to one another simultaneously. We can think of these offers as being made either with or without prior negotiation. The two individuals, call them Alpha and Beta, have not made any decisions prior to entering their trading situation. I will also assume that Alpha and Beta are the only members of their society and that they are in all relevant ways similar, except that they hold different resources: Alpha holds vegetables and Beta holds meat. Each individual is *indifferent* between holding the bundle of vegetables or meat, however they both experience diminishing marginal returns from the consumption of either. Were trading to occur, then, both individuals could be made better-off.

Standard economic theory would provide a number of possible trades along the contract curve, each of which would make one or both of the individuals better-off and neither worse-off. The following 5 possible trades represent all such Pareto superior trades between the two, where the numbers represent the additional gain in advantage for either individual following the trade.

1) Alpha 10 - Beta 0
2) Alpha 8 - Beta 3
3) Alpha 7 - Beta 7
4) Alpha 3 - Beta 8
5) Alpha 0 - Beta 10

Economics is silent on which of these possible trades would be chosen in practice; the outcome is simply a matter of the bargaining choices of the individuals.

In analysing how we should construe the Simple Case in terms of brute luck, let us start from the premise that each agent chooses what trades they will offer independently of the other agent. This is to say that neither agent has any control over what offers they receive or whether the offers they make are accepted; even if the agents negotiate, neither is powerful enough to manipulate the other. Note, second, that what offers an agent receives, or will be accepted by the other agent, impacts on their available advantage. For example, if Alpha chooses a hard bargaining position and refuses all trades less favourable than 2), while Beta chooses a soft bargaining position and is prepared to accept all trades more favourable than 1), then the levels of advantage available to Alpha and Beta are different. Alpha has option of trading at 2) and gaining 8, while Beta only has the option of trading at 2) and gaining 3. Now, given that Alpha has made no choices prior to the trade offers, it must be a matter of brute luck for Alpha that he happens to live in a world with the soft trading Beta, just as it is simply a matter of brute luck for Beta that she happens to live in a world with the hard trading Alpha. The gains of both Alpha and Beta are brute luck.

This point becomes clear when we imagine that a third person, Gamma, also equally situated with some other equally valuable tradable good. Gamma receives no offers from the other two; there are no terms on which they will trade with Gamma even though he is prepared to trade. Gamma has received nothing while Alpha has received 8 and, *ex hypothesi*, this difference does not correspond to any prior risks or gambles accepted by the agents. Alpha's and Beta's additional gain cannot be converted to option luck simply because they accept one another's offers.

Indeed, it is clearer still that the gains available from trade in the type of case examined above, where the individual who receives the offer has made no prior choices, are good brute luck, if we imagine that the offer is not made by another individual but is instead made by aliens. Suppose aliens offer Alpha the option to exchange some of his vegetables for meat at a rate that would increase Alpha's overall advantage by 8. The aliens make no such offer to Beta. In such a case Alpha's gain following the trade is simply a matter of good brute luck. It is simply a matter of good brute luck that he has been chosen by the aliens over Beta.

Having established that the trade gains of each individual in the Simple Case are good brute luck, this brings us to the question of whether the *differences* in brute luck between Alpha and Beta demand redistribution in the strictly two-person case. It has been stipulated that each agent is equally talented, and so neither is in a position to manipulate the other through discussion into accepting less favourable terms. There is, then, no obvious reason why any *ex post* redistribution from the agreed trade would be required given that each accepts the terms of the trade. The case might be different if we suppose that one party had particularly weak bargaining skills or was in some other respect less talented, but such considerations will take us further into difficult issues of responsibility and are not relevant to the Simple Case. The caused brute luck caveat discussed in the case of gifts applies in the Simple Case also.[8]

Interestingly, then, in the Simple Case offers of trade appear conceptually similar to a gift. The motivation of the agents who confer the benefit *might* be different between cases of gifts and the market transaction, but the question of motivation is irrelevant from the luck egalitarian perspective, what matters is simply the effect on the advantage available to the agents. Indeed, it is because there is no redistribution due in the Simple Case, that our intuition about whether the individuals' gains are brute or option luck is clouded.

Having seen how gains from market interaction can appear as brute luck in the Simple Case, it is tempting to generalise and claim that any trade gain *always* represents

[8] See Section 5.3 for a discussion of the caused brute luck caveat.

good brute luck for each party. However, one needs to be mindful of the fact that the case examined so far is special. Specifically, as I have presented it, the agents had no choices to make prior to the trade. Yet often agents will have made choices prior to a trade. Such choices might make the possibility of future trading possibilities more or less likely and, therefore, might act to convert what would otherwise be a brute luck outcome into an option luck outcome.[9]

6.4 The Complex Case

In this section I will examine cases where individuals make choices to accept additional risk with respect to future gains from trade through their prior production decisions. Before doing this, it is important to clear some ground with some observations about how opportunities for advantage are to be conceived and measured.

In the luck egalitarian literature, the various opportunities for advantage available to agents are typically characterized in terms of options over material items (non-agents): one has an option between sowing a seed in a flood plain or normal grassland, where the former represents a risky but potentially more profitable option and so forth. Note, first, that when we think about markets, trading and the interaction of individuals, we have to expand our conception of what advantage is available to a person beyond options over material objects. We have to include in our assessment the possible gains and losses that may arise from interaction with other persons. In effect, each person and their choices represent a potential

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[9] This type of relationship between risk, insurance and responsibility is also first discussed by Ronald Dworkin. See Ronald Dworkin, *Sovereign Virtue*, Cambridge Mass.: Harvard University Press, (2002), pp.73-83.

source of advantage and disadvantage for every other person, and there is no difference in luck status between the (dis)advantages one receives as the result of another person's choices, and the (dis)advantages one receives as a result of mere happenings of chance. To bring back an example from the last chapter, having parents who choose to be generous is good brute luck for an individual in the same way that manna falling from heaven is.

Second, just as one can accept risk with respect to how nature may behave, say gambling on whether there will be a white Christmas this year, so one may also gamble on how persons will behave, say gambling on which song persons will choose to be the Christmas music Number One this year. In the context of market transactions, then, although an agent receiving offers to trade may be a matter of good brute luck if that agent has made no relevant choice beforehand, if he has chosen to position himself in a particular way that affects the *probability* he will receive an offer, that prior choice may act to convert what would otherwise be brute luck into option luck.

Third, we must remember to characterize the opportunity decision trees faced by agents in the present as including the possible gains and losses that will result in the future. When calculating the value of any option in the context of production and market transactions, we must include *both* the direct benefits one might get from consuming the goods one produces *and* the possible trading gains one might make from exchanging those goods in the future with other persons. To illustrate my point consider the following example: a particular production choice offers me a 50% chance of a gain of 10 and a 50 % chance of a gain of 1 at T1, however, should I in fact gain 10, then another gamble will be available to me at T2 with a 90% chance of gaining 100 and a 10% chance of gaining 1. In this case it would a mistake to assess the value of the gamble available to me merely by the outcomes I would receive at T1. Our assessments of the value of the options open to an agent must include the pay-offs that option may have over a *whole life-time*. With these preliminary comments about how to conceive of opportunities complete, I will now move to model the Complex Case.

My aim is to model a situation where different individuals make choices to produce different goods at some earlier time, and those decisions involve accepting a greater or lesser amount of risk with respect to later gains from trade. Suppose, then, that we have ten farmers, equal in all relevant respects and with equally productive plots of land. These individuals have a choice between producing herbs and potatoes. If no trading was permitted, producing herbs or potatoes would have the following pay-offs.

Table 6

Choice	**Prob.**	**Units**	**Total pay-off**
Herbs	100	50	2
Potatoes	100	5	10

Suppose in addition that the agents much prefer a varied diet. Precisely, each unit of potato can be combined with a unit of herb to give a total pay-off of 3 (independently a unit of potatoes had a value of 2 and unit of herbs a value of 0.04). This implies that if trading were allowed it could improve the position of the agents.[10]

What, then, are the relevant pay-offs and associated probabilities for either production choice when trading is allowed after production? Let us begin with the pay-offs.

[10] For simplicity I will assume that the marginal utility of consumption is constant for all goods.

The pay-offs relating to either choice depend on both the production and trading decisions of the other agents. The worst possible outcomes are already fixed for either choice by what the agents would gain from producing without any trade: 2 for herb growers and 10 for potato growers. The best possible outcome for herb growers would arise if only one agent chose to grow herbs and, subsequently, each of the 9 potato growers accepted a trade of 1 potato in exchange for 2 herbs. After nine such trades, this would give the herb grower a total balance of 9 potatoes, 32 herbs and a total welfare of 27.92. The best result for a potato grower would be that a herb grower was prepared to exchange all of his herbs for one potato. This would leave the potato grower with 4 potatoes, 50 herbs and a total welfare of 13.84, and the herb grower with 1 potato and total welfare of 2. In summary, choosing to produce potatoes will yield a minimum possible outcome of 10 with a maximum possible outcome of 13.84, while choosing to produce herbs offers a minimum possible outcome of 2 and a maximum possible outcome of 27.92. But there are also a variety of other possible distributions in between these values that would depend on (1) the production decisions of the agents and (2) what terms of trade where offered by the various agents at the time of trading.

Table 7[11]

Choice	**Prob.**	**Units**	**Production Pay-off**	**Maximum Trade Gain**	**Outcome Range**
Herbs	100	50	2	25.92	27.92 - 2
Potatoes	100	5	10	3.84	13.84 - 2

[11] This table only represents the upper and lower possible outcomes and we should remember that there are many other possible outcomes in-between each with its own probability.

While we can be relatively precise about the possible pay-offs, it is much harder to be precise about the probabilities that attach to those pay-offs. We would need to know more about 1) the agent's disposition to risk (in order to estimate the probabilities of different production patterns) and 2) what trading offers were usually offered for any particular production pattern. This would require a more detailed profile of our hypothetical individuals. For simplicity, let us accept that we cannot represent the probabilities with any accuracy. With this rough model in place we can now ask what luck egalitarianism has to say about particular outcomes that might arise after trading. Specifically, I want to determine whether there will *ever* be any case for redistribution in cases of market transactions arising out of the Complex Case.

Matthew Seligman and Elizabeth Anderson have recently argued that since all outcomes in markets must result from the choices of individuals - first their production choices then their trading choices - then, so long as individuals enter the market with initially equal holdings, any inequalities that follow must be option luck.[12] I believe this is incorrect for the following reason.[13] Individuals can only be held responsible for the

[12] See Seligman, 'Luck, Leverage and Equality: A Bargaining Problem for Luck Egalitarians'. Anderson, 'How Should Egalitarians Cope with Market Risks?'.
[13] It may also be incorrect for another reason. In the example I have supposed the agents do not know the probabilities of the different possible outcomes. Yet we might think that it was a condition of responsible choice that an individual had full, or at least sufficient, information about the options between which she was choosing. Perhaps the fact that the individuals do not know the probabilities of the possible pay-offs for each option implies that their choices are not responsibility-conferring in the relevant sense, making all outcomes brute luck rather than option luck. This argument is open to the objection that the suggested lack of information is only a characteristic of my crude model rather than a feature of actual markets. This objection is partly correct. On the one hand, individuals in actual markets will *not* know the precise probability of various possible prices. For example, it is true that a farmer will not be exactly certain of the probabilities of the various prices that a particular crop may fetch when it comes time to bring it to market. On the other hand, the farmer will have some information about what prices crops have fetched in the past, including which crops are the most volatile, and which prices are most common for particular crops. In reality, then,

outcomes of risk that they could have avoided. For a risk to be avoidable there must be a full insurance option of reasonable value.[14] Even if we assume that individuals have knowledge of the probabilities and that potato growing has the same expected value as herb growing, it is plain that potato growing is not a full insurance option; the potato grower's possible final outcome varies between 10 and 13.84. There is not, then, a full insurance option available to the farmers. However, as the variation in the possible outcomes for growing potatoes is smaller than the variation in possible outcome for growing herbs, we can identify the potato and herb example as a case where *partial insurance* is available. The choice to produce potatoes is a partial, but not a full, insurance option. This confirms that Seligman and Anderson are incorrect in their supposition that luck egalitarianism will sanction all market outcomes as unadulterated option luck; since the there is no full insurance option available to them, the farmers will be exposed to unavoidable risk and the outcome of this risk will be brute luck. [15]

If the potato and herb case is a case of partial insurance we may try to apply Sandbu's least risky prospect analysis to it. We can represent the option and brute luck in the potato and herb case according to the risky prospect view as follows.

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production choices like the one modeled above are usually *partially informed*. Accordingly, if it is a condition of responsible choice that an individual has full, or at least sufficient, information about the probabilities of the possible outcomes, the potato and herb case may be some degree of both option and brute luck, rather exclusively one or the other, with the brute luck element corresponding to the unknown risks and the option luck element corresponding to the known risks.

[14] 'Reasonable' here may be cached out in either an absolute or relative sense. But the relative sense seems most appropriate to the case in hand.

[15] The example I have given is relevantly similar to Seligman's of Gates and the villagers. Their decisions to either go whaling or fishing can be conceived of as production decisions with future trading opportunities attached. See Matthew Seligman, 'Luck, Leverage and Equality: A Bargaining Problem for Luck Egalitarians'.

Table 8

Choice	Units	Prob.	Outcome	Brute Luck	Option luck
Herbs	50	A B	27.92 2	13.84 10	+14.08 -8
Potatoes	5	C D	13.84 10	13.84 10	0 0

This table shows that the outcomes from the production and trading decisions of the individuals will not necessarily be unadulterated option luck. If, for example, we suppose that Alpha had been the only one to produce herbs and had gained the best possible terms of trade from each of the potato growers, he would have been on 27.92 with the other 9 potato growers on 10: in terms of brute luck this translates to 13.84 for Alpha and 10 for the potato growers. This would require that Alpha redistributed 0.384 units to each of the potato growers, meaning that he would lose a total of 3.456, leaving him on 24.544 and the potato growers on 10.384.[16]

6.5 Objections

a. Technical Difficulties

[16] This may not appear a huge redistribution, but we must remember that Alpha made a risky choice; he could have ended up considerably worse-off than the potato growers. Further, we should remember that we are assuming the expected value of the two options is equal, the only difference is the attached risk, and it just happened that Alpha's gamble to accept the risk of herb producing paid off in the best way possible.

There are three difficulties with applying Sandbu's model. First, Sandbu's risky prospect view proposes to distinguish brute from option luck at the extremes - when the herb or potato farmers end up as well off as possible - but it remains unclear what it would prescribe in the in-between cases. If, for example, two herb growers gained 4 potatoes each in a series of 1 potato/4 herb trades with potato farmers, leaving the herb growers with 4 potatoes 34 herbs 13.2 welfare, and the potato farmers with 4 potatoes 4 herbs 12 welfare, it is unclear what the least risky prospect view prescribes. At the least, there is need for more technical work to be done to determine how brute and option luck can be untwined in such cases.

A second problem arises in relation to how the possible outcomes are specified. I have said that the possible outcome range for herbs is 2 to 27.92, and for potatoes 10 to 13.84. However, I have also said that were the outcome of 27.92 to arise for some herb grower, some portion of that outcome would be brute luck and would have to be redistributed to the potato grower. In fact, then, 27.92 is not a gain available to herb growers. The true maximum gain available to herb growers is the amount left after redistribution for brute luck - 24.544. But, if that is correct then we should also adjust our description of the outcomes and the accepted and unaccepted risk. If we do that, we once again shift what proportion of the outcome is brute luck and we are threatened with a regress: each time we adjust the outcome range downwards to reflect the fact that some of the outcome is brute luck that would have to be redistributed, we arrive at a different picture of what the real outcome range is and so we must also reduce our description of how much risk is actually accepted. This will result in even more of the outcome appearing as brute luck and a further shift in the outcome range. This problem did not appear in

Sandbu's initial case because the outcomes for the individuals were not competitive in the same way. In his blindness case it was possible that no one would be blinded, and so achieving the maximum outcome was possible for both agents simultaneously.[17] In the market case, because an additional gain from trade for one implies that another person is not receiving that gain, it is not possible for all individuals to arrive at their maximum possible outcomes simultaneously. Again, further technical work needs to be done to develop a theory for how brute luck and option luck can be separated in cases where outcomes are competitive.

In addition to this regress problem, there is also a third problem regarding whether or not the farmers knew beforehand that there would be compensatory redistribution. If the farmers do not know that there will be compensatory redistribution, their choices will be premised on the expectation of outcomes that they cannot in fact receive. This will generate a number of difficult cases. For example, a potato farmer might complain that they would not have chosen to farm potatoes if they had known that this option was less risky than it appeared to be because there would be some compensatory redistribution *ex post*. It may then seem unfair to redistribute to or away from the farmer given that he had wanted, in his earlier choice, to accept the risk present in the partial insurance option. We face a problem as to how to assess the responsibility they bear for their outcomes given that their previous choices were premised on a particular set of expectations.

Indeed, this third type of problem also extends to Sandbu's own earlier blindness example.[18] Suppose that two individuals both chose the partial insurance option but do not know in advance that any redistributive scheme is in place. One is blinded and left on 5

[17] See Section 6.1.
[18] See again Section 6.1.

while the other is not blinded and left on 6. As it happens, however, had there been an additional entirely risk free option available, with a certain pay-off of 5.5, the individual who was not blinded would still have chosen to accept the one unit of risk, gambling on a 50% chance of 6 and a 50% chance of 5, while the blinded individual would have chosen the entirely risk free option. How should one respond to such a case? Is any redistribution due from the not blinded person to the blinded person? Two positions are available. One is to say straightforwardly, as Sandbu does and as I have assumed up until now, that if a risk is unavoidable then one cannot be responsible for how that risk falls out, even if one actually wanted that amount of risk. An alternative position would be to say that if an individual wanted the risk he putatively accepted, but could not have avoided, then the pay-off of that risk should be considered option luck, and if an individual did not want the risk he putatively accepted, but could not have avoided, the pay-off of that risk should be considered brute luck. In the blindness case just described, this alternative position would imply that the not blinded individual gain was indeed option luck and blinded individual's outcome was indeed brute luck. More precisely, the total brute luck experienced by the blinded individual would be 0.5 bad brute luck: this is the difference between the 5.5 full insurance choice he would have preferred and the pay-off of the risk he in fact chose but could not avoid. This would require, then, a 0.25 redistribution from the not blinded individual to the blinded individual to equalize their experience of brute luck, leaving the not blinded gamble preferer on 5.75 and the blinded insurance preferer on 5.25.[19]

The general point is that, in cases where individuals make choices without being aware of the existence of a compensatory distributive scheme, we may need to be sensitive

[19] Of course, this analysis ignores the extra difficulties that arise when we consider that individuals may lie about their previous attitudes to risk.

to the expectations upon which their choices were premised, and their attitudes to the risk their option sets presented them with, when calculating whether some outcome is properly considered brute or option luck. We do not have to make the strong conclusion that if individuals are unaware a compensatory distributive scheme exists then their choices are not responsibility conferring *at all*. We can at least say they are responsible for additional risk that they chose to accept. But, again, a more comprehensive theory is required to determine how these sorts of difficult cases ought to be treated.

Despite these technical problems regarding the measurement of brute and option luck, there are still important points to be drawn from the general observation that in market contexts persons will face unavoidable risks. Often persons would not wish to accept this risk. On any reading, then, the outcome of that undesired unavoidable risk will constitute brute luck for the affected party and will give us reasons for undertaking compensatory redistribution. As long as this point is secure we may rebut critics such as Anderson and Seligman who claim that so long as prospects are *ex ante* equal, luck egalitarianism will legitimate all subsequent outcomes from free trade. Indeed, by recognizing that the luck egalitarian principle can condemn certain market-generated outcomes of the sort Seligman and Anderson believe are objectionable, we have found extra reason to favour the luck egalitarian principle. Specifically, in showing that it can criticize market-generated outcomes, we have also shown that it can satisfy at least some of the pre-theoretical intuitions about fairness in market contexts that Anderson and Seligman had tried to harness against luck egalitarianism. What we cannot do yet is determine how much of market outcomes are properly considered option luck and how much brute luck. This difficulty is a technical problem that calls for a more sophisticated theory of how risks, and the acceptance of risks, are to be measured, not a rejection of the luck egalitarian principle.

b. The Compound Inequality Objection

Let us suppose that the technical problems have been resolved. In the examples I have considered the interactions undertaken by the individuals were temporally restricted. In the Simple Case, the players had one opportunity to trade and no prior production choice. In the Complex Case, the players had a production choice and then one opportunity to trade. Suppose that we add further stages to the Complex Case so that, after producing and trading the first time, the individuals had the opportunity to re-invest in further production with more trades happening a later point. We can imagine the same procedure iterated indefinitely. One effect of such iteration might be the following: those who have good option luck at earlier points would have more to invest relative to those with less option luck at later points. In turn, this could result in the extra option lucky being able to make more re-investments in production later and more trades. The effect of some small gain in the first round of the procedure might lead to indefinitely vast inequalities by the *n*th game. The potential for such enormous inequalities animates a recent critique given by Clare Chambers.[20]

Before responding to the objection it is worth noting in advance that luck egalitarianism does not place restrictions on the levels of inequality of advantage that may

[20] Chambers' critique is levelled against those who employ a starting gate conception of equality of equality of opportunity. However, the worry Chambers points to may also motivate some of Seligman's objection. See Clare Chambers, 'Each Outcome is Another Opportunity: Problems with the Moment of Equality of Opportunity', *Politics, Philosophy and Economics* 8, (2009): 374-400.

exist. All it demands is that, in order for a distribution to be fair, any differences in advantage can be explained in the appropriate way with reference to the responsible choices of the agents. Therefore, it is compatible with maintaining a luck egalitarian distribution that one person wins a million pounds on the lottery and subsequently reinvests each pound in the lottery, later winning a further million times. If one insists that some levels of inequality in advantage are so great as to be intuitively unfair even when those inequalities are justified by differences in responsibility, the luck egalitarian position cannot accommodate this insistence.[21]

However, if we accept that what matters is justifying inequalities with reference to responsibility, then the compound inequality objection to market-generated inequalities can be rebutted. The crucial point, noted earlier, is that we must always measure opportunities in the present with reference to their pay-offs in the future, no matter how far in the future those pay-offs may appear. To re-illustrate the point, we might have in the present (T1) two options, A or B, of equal expected value when viewed with reference to their outcomes at some point in the future (T2). But, if choosing either A or B would also lead to additional opportunities at some even later time (T3), it will be a mistake to measure the value and risk associated to those choices only with reference to their pay-offs at T2. Any analysis of risk and opportunity must be temporally extended to include the potential pay-offs of a choice measured over whole lives. While the potential inequalities in outcome are unlimited, we should not worry that those making mildly risky decisions will end up

[21] Note that a pluralist luck egalitarian does not have to recognise the lottery outcome cited above as an outcome that should be allowed all things considered. There might be good efficiency based reasons for preventing such large disparities in wealth. Indeed, whether lotteries should be allowed at all is a matter of indifference to the luck egalitarian. A fair luck egalitarian distribution might exist with or without the possibility of lotteries.

making profits, or losses, beyond the risk they have accepted. Inequalities must always be tied to responsibility.

6.6 Price Luck

In this section I will expand the previous analysis to examine the notion of 'price luck'. The term price luck refers to the luck one experiences when changing commodity prices make it more or less expensive in terms of resources to achieve the same level of advantage given one's tastes. So, for example, if I have a taste for bananas, so that eating bananas is a source of advantage for me, then an increase in the price of bananas will represent bad price luck and a decrease will represent good price luck.

The term has its root in Cohen and Dworkin's Expensive Tastes debate.[22] One point of contention within this debate has been whether it is a necessary condition of one’s being responsible for how expensive some taste is to satisfy that one has willed its acquisition. My claim will be that, irrespective of whether or not one having willed the cultivation of a taste is a *necessary* condition of being responsible for the expensiveness of that taste, willing a tastes acquisition is not a *sufficient* condition of being responsible for the expensiveness of that taste. Even when one cultivates a taste deliberately, one ought not necessarily to bear the disadvantage, or gain the advantage, when that taste later becomes more or less expensive.

[22] For the latest installment of this debate see, G.A. Cohen, 'Expensive Taste Rides Again', in Justine Burley (ed.), *Dworkin and His Critics*, Oxford: Blackwell, (2004), pp. 3-29. Ronald Dworkin, 'Dworkin Replies', in Justine Burley (ed.), *Dworkin and His Critics*, Oxford: Blackwell, (2004), pp. 339-350.

Suppose that the possession of a taste can be more or less a matter of the will. Some tastes we have as a matter of genetic disposition or as a result of upbringing, others we do not possess until we choose to school ourselves into them. The price of satisfying one's tastes, cultivated or uncultivated, may change over time. Should I bear the disadvantages or gain the advantages resulting from these price changes under the different causal processes? With respect to tastes that I have not chosen to cultivate we might expect the answer to be 'No'; if I have an expensive taste forced upon me it will seem unfair that I bear the additional cost, relative to those who have been more fortunate and had developed for them a less expensive taste. By contrast, where I have voluntarily cultivated a taste, the more common judgment is that one should bear the cost. If I have chosen to develop a particular taste, then it is only fair that I bear the additional burden, or gain the additional benefit, that results from this prior choice. So the reasoning goes.

I believe this construal of responsibility is flawed. To see why, suppose that I have a choice between cultivating a taste for apples and cultivating a taste for oranges.[23] Let us also suppose that I can only develop a taste for one particular type of fruit. I choose to develop my taste for apples. There was, we can suppose, no particular reason why I chose apples over oranges. I simply knew that to consume enough to stay healthy I had to develop a taste for one or the other, and their prices, and prospects of future prices, were the same. I had to choose *something*. Now, if the price of apples rises relative to the price of oranges my tastes will become more expensive to satisfy than some other individual, Beta, who had cultivated a taste for oranges. It seems, then, that when making my original choice - to cultivate a taste for either apples or oranges - I was in fact making a choice under risk. In

[23] While this may seem an odd assumption, it aims to model the fact that some tastes must be developed at the expense of other tastes. The purpose of the assumption will become clear later.

choosing either apples or oranges I faced a risk that the price of either would rise or fall and this would affect how well I could satisfy my tastes. However, since both options were risky and, we are assuming, equally so, all of the risk relating to changes in the price of oranges or apples was unavoidable, and all pay-offs relating to that risk were a matter of brute luck.[24] That one happened to select apples or oranges is irrelevant from the perspective of responsibility.[25]

Now, the apple example may seem overly artificial, but it underlines an important more general point: in order to achieve a variety of goods we must develop preferences and cultivate tastes in advance. It is an important part of life, for example, that one has hobbies, activities and pastimes, but to get the goods associated with these undertakings one must cultivate an interest in them. In making these investments of time and energy we must pay the opportunity cost of other forgone possibilities, fixing ourselves, at least to some extent, on a particular path. Of course, some tastes may incur more risk or be more expensive to fulfil than others, and here it may be appropriate, other conditions satisfied, to hold the individual responsible for accepting the additional risk. But, the point that should now be

[24] My apple/orange example has structural similarities to Colin Macleod's tennis player/golfer example: they both involve the choice of a preference at an earlier time (T1) that later becomes more or less expensive. Macleod argues that Dworkin's theory is unable to explain the apparent unfairness to those for fare badly through this unacceptable risk. If Macleod is correct that Dworkin's theory does not allow compensation for exposure to such risk, his example represents a powerful counter-example to Dworkin's theory. By contrast, I aim to show that luck egalitarianism as I define it does have something specific to say about the fairness of ex post distributions arising from market actions, and so is not susceptible to Macleod's objection. See Colin Macleod, *Liberalism, Justice and Markets*, Oxford: Clarendon, (1998), p. 57-66.

[25] Otsuka illustrates the same point when he writes "To illustrate, assume first that each person’s worldly possessions consist of a single seeded hill which he has inherited at birth. Assume further that each person’s hill bears a 50–50 per cent chance of yielding subsistence or abundance and no pooling of risk is possible. Now this is a case in which people literally have no choice but to be exposed to a given 50–50 per cent chance of subsistence versus abundance. So this is a case in which any differences in resource holdings are unfair because purely a matter of brute luck. It doesn’t make things any better if one transforms this case into one which differs only insofar as everyone is now free to trade his hill in for another which also bears a 50–50 per cent chance of subsistence or abundance. Such a choice among equally risky alternatives does not transform brute luck into option luck in a manner which eliminates the unfairness of differential outcomes." Michael Otsuka, 'Equality, Ambition and Insurance', *Proceedings of the Aristotelian Society* 79, (2004): 155-166.

clear is that each of us faces some degree of unavoidable risk with respect to the future prices of tastes we must cultivate in the present. As every available choice to cultivate a taste entails some degree of risk with respect to future prices, the presence of will in choosing to develop a taste is not sufficient to justify attributions of responsibility for the subsequent price of one's tastes. If individuals did not want to accept that unavoidable risk, they ought not to be held responsible for how it falls out.

Yet perhaps any apparent unfairness in particular tastes becoming more or less expensive is overstated. If apples were the only taste one had, then changes in the price of apples would have dramatic effects on one's welfare but, more normally, people have diverse sets of preferences and, should the price of apples rise, they can move to a substitute. This argument has strength in cases involving goods with many substitutes and that require relatively little investment or cultivation. Consider, by contrast, educational training. Choices to develop particular talents, skills and to invest resources in enterprises are the real world analogues of the potato and herb production decisions. Here any choice involves a significant investment of time and perhaps money, yet, whatever job one chooses to train for, one cannot avoid the possibility that changes in tastes or the development of new technology will make those once valuable skills redundant. The person who learns to spin with a wheel on the day the spinning jenny is invented, or takes up mining in the 1950s, could probably not have predicted or avoided their subsequent disadvantage. No doubt history is strewn with other vocations and professions that have vanished or significantly diminished in value. There is a tangible unfair inequality in the fact that people, even with the best intentions, cannot avoid these risks. What luck egalitarianism prescribes in such cases is compensation in some form.[26]

Note the connection between my argument for why luck egalitarianism will object to the outcomes generated by markets and C.B. Macpherson's objection to Milton Friedman's account of capitalist freedom. Friedman argues that "co-operation is strictly individual and voluntary provided: a) that enterprises are private, so that the ultimate contracting parties are individuals and b) that individuals are effectively free to enter or not to enter into any particular exchange, so that every transaction is strictly voluntary."[27] Macpherson objects to proviso b), saying that, "the proviso required to make every transaction strictly voluntary is *not* freedom not to enter into any *particular* exchange, but freedom not to enter into any exchange at all."[28] Macpherson's objection, then, is that since the individual has no choice but to engage with the capitalist system of exchange *as a whole* his choice to partake in any *particular* exchange is not truly voluntary. I have argued that since individuals are effectively compelled to engage in market activity, and each of the choices available to them within the market context involve risk, agents ought not to be held responsible for the risk that they putatively chose to expose themselves to.

One could object that an individual can refuse to engage in markets altogether. In so far as individuals can remove themselves from the market and its associated risks, surely their choice to enter the market *as a whole* means they may properly be held responsible for their particular choices, and the outcomes they experience, in the market. Viewed this way,

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[26] This compensation need not be presented as monetary handouts. Free re-training could also be conceived of as a form of compensation.
[27] Milton Friedman, *Capitalism and Freedom*, Chicago: Chicago University Press, (1962), p. 14.
[28] C.B. Macpherson, 'Elegant Tombstones: A Note on Friedman's Freedom', *Canadian Journal of Political Science* 1, (1968): 95-106, p. 98.

the choice not to enter the market represents a full insurance option and the choice to enter the market, either as a producer or consumer, a risky choice. Following this reasoning we could say that all inequalities in the above example were option luck. This response fails because the option not to participate in markets will almost never, if ever, represent a full insurance option of *reasonable relative value*. Trade, and the specialisation it allows, provides access for all individuals to be better-off than they would be without trade. This is clear in the potato and herb example where the option to engage in trade is always weakly pareto-superior to the option to abstain from trade. The same is true for markets generally. Indeed, this point echoes G.A. Cohen's reflections on what it means to say that one is forced to sell one's labour power.[29] Cohen states

"*When I am forced to do something I have no reasonable or acceptable alternative. It need not be true that I have no alternative whatsoever. At least usually, when a person says, 'I was forced to do it. I had no other choice'. The second part of the statement is elliptical for something like 'I had no other choice worth considering.' For in the most familiar sense of 'X is forced to do A', it is entailed that X is forced to choose to do A, and the claim that the worker is forced to sell his labour power is intended in that familiar sense*."[30]

Just as one is forced to enter the labour market because one has no reasonable or acceptable alternative, one is also forced to enter other markets when one has no reasonable or acceptable alternative.

[29] G.A. Cohen, 'The Structure of Proletarian Unfreedom', *Philosophy and Public Affairs* 12, (1983): 3-33.
[30] G.A. Cohen, 'The Structure of Proletarian Unfreedom', p. 4.

One might try to push a different objection here: it may be objected that an individual does have a reasonable alternative to engaging in market systems in so far as they could organise with others as part of a risk sharing co-operative. But the 'in so far as' in the above objection is an important qualification. There are a number of practical barriers that prevent people from forming these sorts of co-operative. Suppose, for example, that I would like to form a risk sharing co-operative with fellow junior academics. My ability to do so would be contingent on whether I could find others who would be prepared to form the co-operative with me. Even if it was possible to find them, such a search would require a significant cost in time and effort. I would have to be prepared to suffer this large cost in order to avoid the risk, and it is not at all implausible that the cost may be so large as to make the co-operative option, when it does not already exist, an unreasonable one.[31]

Indeed, having accepted that, at least often, one is effectively forced not to leave the market, note now that the general assertion that market outcomes will not track responsibility or desert is not new. F.A. Hayek makes the same observations. When considering how an efficient economic system might be achieved, Hayek writes

"*The peculiar character of the problem of a rational economic order is determined precisely by the fact that the knowledge of the circumstances of which we must make use never exists in concentrated or integrated form, but solely as dispersed bits of incomplete and frequently contradictory knowledge which all the separate individuals possess...Or to*

[31] This argument parallels another offered by Cohen. See G.A. Cohen, 'The Structure of Proletarian Unfreedom', p. 24.

put it briefly, it is a problem of the utilization of knowledge not given to anyone in its totality."[32]

Hayek continues to observe that only market systems can, through price signals, utilize knowledge that is distributed throughout society to determine efficient allocations; command systems could not hope to accumulate all the knowledge possessed by disparate individuals, including what their wants and needs are and how resources could best be employed to serve these wants and needs. Equally, however, just as the state cannot gain access to this dispersed knowledge, any particular individual also cannot know how other individuals will choose to make use of their resources. Yet since future prices will be determined by the future choices of others, and any one individual cannot know how others will choose in the future, each individual faces future risks that are both unforseeable and uncontrollable. In other work, Hayek goes on to recognise explicitly that each occupational choice open to the individual involves risk, although some may involve more risk than others. He writes, "what is so obviously true about those undertakings which we commonly regard as risky is scarcely less true of any chosen object we decide to pursue. Any such decision is beset with uncertainty."[33]

Now, of course, Hayek suggests that the fact that efficient allocations are not compatible with a luck egalitarian type principle is a reason to abandon that principle.[34] I do not. Like Hayek, I think that the conflict between efficient allocations and fairness is

[32] F.A. Hayek, 'The Use of Knowledge in Society', *The American Economic Review* 35, (1945): 519-530, pp. 519-520.
[33] F.A. Hayek, *The Constitution of Liberty*, London: Routledge & Kegan Paul, (1960), p. 94.
[34] When Hayek was undertaking these writing luck egalitarianism, as a term, had not been coined, but the position he attacks is recognizably a luck egalitarian one, presented in a different vocabulary.

real. But, unlike Hayek, I do not believe the fact that a conflict between values exists means we should abandon one of the values; we must balance them. In any case, the important points should now be abundantly clear. First, given the phenomenon of price luck it is not a *sufficient* condition of being responsible for the expensiveness of a taste that one has willed its acquisition. Second, market-generated outcomes, even when they are produced from the choices of equally situated individuals, will not track responsibility and willingness to accept risk.

6.7 Implications

The examples given in the above analysis employed a number of highly artificial assumptions: it was assumed that individuals were in all relevant ways equal, with equally expensive tastes, equal quantities of resources and equally productive talents. In practice none of these conditions hold. In practice, the market will place different values on native endowments of talent and those with high initial endowments of resources will find greater opportunities within the market for investment and capitalisation of those initial resources. Can we still draw any meaningful conclusions from the attractiveness of the luck egalitarian principle or its implications in real world markets? I believe so.

First, the analysis has shown, *pace* Seligman and Anderson, that luck egalitarianism would not permit the unrestricted operation of free markets were people to have equal starting points. Seligman and Anderson took their objections to represent a *reductio ad absurdum* of the luck egalitarian principle. That *reductio* has now been disarmed. It has been shown that luck egalitarianism will often find market-generated outcomes objectionable even where agents begin from equal starting points. But, equally, it has also been shown that luck egalitarianism does not require the *ex post* equalisation of outcomes from market interactions. Instead, luck egalitarianism allows putatively unequal outcomes from market interactions provided that any inequalities track responsibility, rather than choice *simpliciter*.

Second, not only does the luck egalitarian principle avoid having absurd implications, its prescriptions actually accord with our pre-theoretical intuitions about what is fair and unfair in market contexts. A pertinent example is presented by the current banking crises. We can contrast those who have made investments in the stock market with those who have placed their money in retail banks. The choice to place money in a retail bank is the real world least-risky prospect.[35] By contrast, one invests in stock markets with knowledge of their volatility and one chooses to accept additional risk for the sake of additional potential gains. Luck egalitarianism can explain why we feel it is so much more unfair when people lose money through the collapse of a retail bank, than when they lose it through gambles on the stock market.

Third, although the analysis is abstracted from many features of real world markets, there is no reason that future work could not build upon the foundation provided to determine more exactly what the luck egalitarian principle says about the more complex market situations witnessed in the real world. This might require, for example, answering questions about how responsibility can be assigned in cases where people have unequal starting points, determining more exactly how risk is to be measured, or by providing a

[35] Of course, one might hide one's money under the bed, but there is an equally good chance that it might be stolen or burnt in a house fire.

conception of reasonable value. These additional challenges simply represent opportunities for additional work.

Fourth, and finally, even without a more realistic model of markets or a more precise account of the luck egalitarian principle, we can still draw implications for the real world from the above analysis. For example, recognizing that all choices to train for employment involve some element of risk presents a case for some social security scheme to compensate those who try to gain work but fail. If this is the case even when it is assumed that people have equal starting points, then the case for social security is made *a fortiori* when that assumption is relaxed and we recognize that some have less favourable opportunities within the market. Thus, even though luck egalitarianism has not yet been refined to a point where it can deliver precise prescriptions in all cases, we can still draw important normative conclusions from it.

6.8 Conclusion

In this chapter I have taken some small steps towards determining how we should consider market-generated distributions, and even simple one-off trades, from the luck egalitarian perspective. I have argued that in so far as luck egalitarianism does not count as legitimate all market-generated inequality, it accords with pre-theoretical intuitions that such outcomes are unfair. Of course, I cannot make the stronger claim that I have shown that luck egalitarianism perfectly satisfies all such intuitions, because I have not provided a precise way of delineating what part of a given market-generated outcome is brute or option luck. An argument against luck egalitarianism has been rebuffed, and a better understanding of it has been achieved, whether or not the principle will always get the intuitively correct result in market cases is a question that can only be answered with further research.

Conclusion

I began this thesis with a challenge: to elaborate a partial conception of equality of opportunity and apply that type of conception, luck egalitarian equality of opportunity, or more simply luck egalitarianism, to particular contexts. That challenge is now complete. I have sketched a conception of equality of opportunity that is rooted in value of fairness, that applies between persons and that takes as its object an objective list conception of well-being. In applying that type of conception, I have shown that luck egalitarianism is highly restrictive with respect to the freedom to give gifts and that this confirms that it is a *pro tanto* principle. I have also shown that luck egalitarianism makes intuitively correct judgments about instances of unfairness in market contexts. Together these arguments have, I hope, strengthened the case for accepting my partial conception of equality of opportunity as morally valuable.

The investigation has opened many further questions and challenges. One is how a theory of responsibility could be developed and incorporated within the framework of equality of opportunity. It seems to me that academic work on this topic still has some way to go. The conditions outlined by Martin Sandbu, Kasper Lippert-Rasmussen and others are important contributions but suffer from obvious inadequacies.[1] Sandbu's use of the

[1] Kasper Lippert-Rasmussen, 'Egalitarianism, Option Luck, and Responsibility', *Ethics* 111, (2001): 548 -579. Michael Otsuka, 'Luck, Insurance, and Equality', *Ethics* 113, (2002): 40-54. Martin Sandbu, 'On Dworkin’s Brute Luck–Option Luck Distinction and the Consistency of Brute-Luck Egalitarianism', *Politics, Philosophy & Economics* 3, (2004): 283-312. Peter Vallentyne, 'Brute Luck, Option luck, and Equality of Initial Opportunities', *Ethics* 112, (2002): 529-557.

condition of reasonable value, for example, tracks an intuition we have about when it is appropriate to hold an agent responsible for choosing a risky option but remains troublingly vague. Until further work is produced on when it is appropriate to hold an individual responsible for some choice, the luck egalitarian position will remain underspecified. This represents an open challenge to those who seek to defend luck egalitarianism.

A second issue that has been raised is which goods ought to be on an objective list. I have defended a method by which this might be determined, using a two-stage system of public debate and expert moderation, but I have not speculated in any depth on what goods might be on that list. Indeed, I am not in a position to do so. I am not a public body, and the experts in my proposed system are those who have lived full and varied lives and so have knowledge of what is valuable. An objective list of the sort I envision cannot be produced solely from the philosopher's armchair. That is not to say that one cannot gain insights from careful reflection. It is only to say that given the limited epistemic situation each of us finds ourselves in, we cannot expect to produce by ourselves a full and appropriately weighted list. To create such a list requires the sharing of experiences, public discourse and good judgment. It is a public enterprise that must be on-going and has no clear end-point. Indeed, it is the type of list that we already construct in certain contexts, such as health, to determine how well-off individuals are and what actions are most urgent. Going forward we must expand and develop these existing accounts to achieve a more comprehensive conception of what constitutes well-being.

Of all the issues raised by the thesis, perhaps the most pressing is the question of how the luck egalitarian principle is to be weighed against other values in order to make ‘all things considered’ judgments at both moral and political levels. Without some account of how this can be done, the previous work, while not without philosophical value, lacks practical bite. Before closing this thesis, then, I want to reflect on this problem and, specifically, whether or not we can consider the Rawlsian theory of justice as offering a method through which to balance the luck egalitarian principle against competing *pro tanto* principles. That is, could one believe in the moral importance of the luck egalitarian principle but also think that the Original Position procedure and the method of reflective equilibrium give us tools to balance competing principles? Could one be both a Rawlsian and a luck egalitarian? I believe so. Indeed, I believe there is evidence that when Rawls talks about the 'principle of redress' he is talking about a principle that is at least a very close relative of the luck egalitarian principle with which we have been dealing so that, in fact, it may very well be that Rawls himself is a luck egalitarian and that there is nothing inconsistent in this dual commitment.[2] Consider the following passage:

"*First, we may observe that the difference principle gives some weight to the considerations singled out by the principle of redress. This is the principle that undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for. Thus the principle holds that in order to treat persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born in less favourable social positions. In pursuit of this principle greater resources might be spent on the education of the less rather than the more intelligent...Now the principle of redress has not to my knowledge been proposed as the sole criterion of justice, as the single aim of the*

[2] John Rawls, *A Theory of Justice*, Cambridge Mass.: Belknap, (1971), p. 100.

social order. It is plausible as most such principles are only as a prima facie principle, one that is to be weighed against the principle to improve the average standard of life or to advance the common good. But whatever other principles we hold, the claims of redress are to be taken into account."[3]

Here Rawls describes the principle of redress as arising out of a demand to provide "genuine equality of opportunity". His description of what that principle requires coincides with luck egalitarian statements about what luck egalitarianism requires: both Rawls and luck egalitarians agree that there is a moral demand to give more attention to those who are blamelessly worse-off than others as the result of the circumstances of their birth, for example. Further, although Rawls does not talk about responsibility *per se*, he does talk about ‘undeserved inequalities’ as being the types of inequalities that are objectionable. Deservingness, as I suggested in Chapter 1, is a concept that can be tied directly to responsibility.[4] We should not be confused, either, that Rawls talks about *prima facie* principles rather than *pro tanto* ones. Rawls is, I suspect, using *prima facie* in a similar way to W.D. Ross, who intends it in a bifurcated manner as, on the hand, an epistemological term used to describe the fact that these principles are known through perception or intuition and, on the other hand, a term to reflect the fact that it is a principle that speaks in favour of a certain action but is not necessarily decisive in determining whether it should be undertaken.[5] When Rawls says the principle of redress is a *prima facie* principle he means

[3] *Ibid*., pp. 100-101.
[4] See Section 1.5.
[5] Ross himself does not make this explicit, but the dual meaning is clear from what he says when discussing *prima facie* principles. That Ross intends *prima facie* to have an epistemological connection is clear from the following, "We find by experience that this couple of matches and that couple make four matches, this couple of balls on a wire and that couple make four balls; and by reflection on these and similar discoveries we come

the same things that I mean when I say that the luck egalitarian equality of opportunity principle is a *pro tanto* principle.

If all this is correct, and the Rawlsian principle of redress really is an embryonic description of the luck egalitarian principle, there seems no reason to suppose that the Rawlsian position and the luck egalitarian position are necessarily incompatible. Indeed, Rawls himself believes the principles of justice he endorses must, and do, give sufficient weight to the luck egalitarian principle, as suggested in the above quote. The luck egalitarian principle is simply one pro tanto principle that exists in reflective equilibrium with our other pro tanto principles, under the meta-principles of justice Rawls endorses.[6]

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to see that it is of the nature of two and two to make four. In a precisely similar way, we see the *prima facie* rightness of an act which would be the fulfilment of a particular promise, and of another which would be the fulfilment of another promise, and when we have reached sufficient maturity to think in general terms, we apprehend *prima facie* rightness to belong to the nature of any fulfilment of promise. What comes first in time is the apprehension of the self-evident *prima facie* rightness of an individual act of a particular type." That Ross takes *prima facie* to also mean "count in favour of" is clear from the following, "Every act therefore, viewed in some aspects, will be *prima facie* right, and viewed in others will be *prima facie* wrong, and right acts can be distinguished from wrong acts only as being those which, of all possible for the agent in the circumstances, have the greatest balance of *prima facie* rightness, in those respects in which they are *prima facie* right, over their *prima facie* wrongness, in those respects in which they are *prima facie* wrong...". W.D. Ross, *The Right and the Good*, Oxford: Clarendon, (1930), pp. 32-33, p. 41.

[6] My claim is further supported if one examines Rawls' discussion of intuitionism. Luck egalitarianism is most commonly thought of as an intuitionist position. Rawls describes intuitionism as follows: "Intuitionist theories have two features: first they consist of a plurality of first principles which may conflict to give contrary directives in particular types of cases; and second, they include no explicit method, no priority rules, for weighing these intuitions against one another: we are simply to strike a balance by intuition, by what seems to us most nearly right." He continues to argue that "the only way therefore to dispute intuitionism is to set forth the recognizable ethical criteria that account for the weights which, in our considered judgments, we think appropriate to give to a plurality of principles. A refutation of intuitionism consists in presenting the sort of constructive criteria that are said not to exist [for the purpose of weighing principles]." Rawls' theory can be conceived of as presenting these constructive criteria. A central part of his disagreement with them is, then, over whether these constructive criteria are available, not whether intuitions about which principles are morally valuable play an important role in a conception of justice. He states, "No doubt any conception of justice will have to rely on intuition to some degree...[but] the assignment of weight is an essential and not a minor part of a conception of justice. If we cannot explain how these weights are to be determined by reasonable ethical criteria, the means of rational discussion have come to an end. An intuitionist conception of justice is, one might say, but half a conception. We should do what we can to formulate explicit principles for the priority problem, even though the dependence on intuition cannot be eliminated entirely." Rawls, *A Theory of Justice*, p. 34, 39, 41.

These conclusions may seem implausible given the large volume of work from luck egalitarians attacking the Rawlsian position.[7] To make the claim less implausible note that I am not suggesting that all luck egalitarians must also be Rawlsians. I am claiming that it is possible to hold *a version* of the luck egalitarian principle and be a Rawlsian, and that Rawls himself does this. We can note some of the ways in which luck egalitarians may still reject the Rawlsian position. First, since it is possible to attach different weights to the luck egalitarian principle, luck egalitarians may disagree with Rawls about the weight the principle should be given relative to others when determining which meta-principles should govern the basic structure. Second, luck egalitarians may reject the proposition that *pro tanto* principles can be weighed against one another to give final ‘all things considered’ judgments. Third, luck egalitarians and Rawlsians may disagree about the meta-ethical status of their commitments. For example, luck egalitarians may believe that moral beliefs can reflect external moral facts that Rawlsians may deny exist. Fourth, luck egalitarians may agree that the principles can be balanced, but deny that the Rawlsian procedure is the correct procedure for determining how they ought to be balance them. Fifth, a luck egalitarian may believe that the Rawlsian procedure is the correct procedure, that Rawls attributes luck egalitarianism the correct weight, but that for some other reason, such as a mistake in his reasoning, Rawls draws the wrong conclusions in one or more aspects of his general theory.

What of Kok-Chor Tan's objection that Rawls cannot be conceived of as a luck egalitarian because, for Rawls,

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[7] See G. A. Cohen, *Rescuing Justice and Equality*, Cambridge Mass.: Harvard University Press, (2008). Kok-Chor Tan, 'A Defense of Luck Egalitarianism', *Journal of Philosophy* 105, (2008): 665-690.

"*distributive equality matters [only] because of the underlying commitment to democratic reciprocity among member of a democratic order. The motivating aim of a distributive principle is to ensure that the gap between rich and poor does not exceed that permitted by the ideal of democratic reciprocity*."[8]

Although it is true that the ideal of democratic reciprocity has a very important role to play in Rawls' account (see section 3.6), I believe Tan is wrong to suggest that Rawls, or at least early Rawls, cannot be a luck egalitarian because his political theory is so grounded. My point will be clearest if we re-affirm what a commitment to the luck egalitarian principle entails: it entails a commitment to a particular moral value. It is, in the Rawlsian parlance, a considered conviction about what is morally valuable. Rawls' challenge in *A Theory of Justice* is to provide principles of justice to govern the basic structure of society that can be the subject of agreement by members of a democratic society. If the principles are to be acceptable to all they must conform with the ideal of democratic reciprocity. This is the starting point of Rawls' account: for Rawls it is because we must find mutually acceptable terms of co-operation that questions of justice arise. The Original Position then specifies a method for how we should reason to select principles for this purpose. But it is entirely consistent to believe in luck egalitarianism as a moral principle, and also to believe, simultaneously, that *for the purpose of determining which meta-principles should govern the basic structure* we employ a Rawlsian process. Indeed, the hypothetical individuals Rawls describes actually do believe both of those things if they both accept the Rawlsian method and also endorse the principle of redress, accepting that the difference principle

[8] Kok-Chor Tan, 'A Defense of Luck Egalitarianism', p. 666.

gives it sufficient weight, as Rawls suggests. Even when we emphasize the contractualist aspects of Rawls' view, it is still consistent to believe, on the one hand, that moral values derive their content from agreement and to believe, on the other hand, that one of considerations that any agreement pay adequate attention to in order to be judged satisfactory is the luck egalitarian principle. Again, this is not to deny that particular comprehensive conceptions of luck egalitarian equality of opportunity may affirm positions, like those points stated in the previous paragraph, which make them incompatible with Rawlsian theory. My argument is only that some comprehensive conceptions of luck egalitarianism may be compatible with the Rawlsian position, provided they accept certain Rawlsian premises.[9]

In sum, although there is plenty of room for disagreement between Rawlsians and luck egalitarians, there is also room for agreement. Importantly, this shows that there are existing methods for determining how the luck egalitarian principle ought to be balanced against others, at least in political contexts, provided one is prepared to accept them. Further, the fact that it is possible to be both a luck egalitarian and a Rawlsian does not in any way undermine the importance of further study on luck egalitarianism. This is so for at least two reasons. First, developing a more precise idea of what is required by luck egalitarianism can act to inform our future judgments about what principles should govern

[9] Perhaps the subtleties and details of the Rawlsian position are not important. The relevant question for my purposes may simply be this: given the that we have certain first-order moral beliefs and convictions that conflict, is there a method for assigning weights to these convictions for moral or political purposes other than by our intuitions in particular cases? If the answer to that general question is "yes", and more specifically, "yes, by imagining ourselves in the original position behind a veil of ignorance", then we have a method for weighing values, at least in the political context. The question of whether Rawls entire theory is compatible with luck egalitarianism is secondary, for my purposes, to the question of whether principles such as luck egalitarianism can be weighed.

the basic structure of society. As Rawls makes clear the principles of justice are not fixed.[10] As we gain moral knowledge or at least, as our moral beliefs change, we may have reason to revise the principles that govern the basic structure. Determining more precisely what luck egalitarianism demands is the type of activity that can inform our moral beliefs, and altering our moral beliefs may also alter which meta-principles achieve reflective equilibrium with those beliefs. Second, since the luck egalitarian principle is a foundational moral principle, not a purely political one, it has implications not only for how the basic structure of society should be configured, but also for how individuals ought to act. While luck egalitarianism may not constitute a complete theory of what individuals ought to do, it does elaborate one set of reasons for action that apply to individuals, which they should hold in their deliberations about what they ought, morally speaking, to do. Elaborating what is required by the luck egalitarian principle gives one a clearer understanding of the moral principles one must respond to in every day life.

Having provided a more complete conception of the luck egalitarian principle, an ambitious future project might be to determine how individuals ought to balance that principle against competing principles at a moral level. This would be to undertake a project similar to, if not necessarily the same as, the one Rawls suggests under the label "rightness as fairness".[11] One would have to propose a method for how conflicting moral principles ought to be weighed in order to achieve some meta-principles that ought to govern individual action. This might be inappropriate if the intuitionist objection that first-order moral principles cannot be given definite priority weights is correct. But, if the intuitionist objection fails, then some such project could be immensely fruitful.

[10] Rawls, *A Theory of Justice*, p. 47-52.
[11] *Ibid*., p. 17.

That concludes my reflections on equality of opportunity and luck egalitarianism. I hope to have made a case for the proposition that luck egalitarianism is valuable and, more specifically, that my particular luck egalitarian equality of opportunity principle is valuable. I have also outlined a number of areas where future investigation is necessary. What is essential, I believe, is that any future investigation of luck egalitarianism, or indeed equality of opportunity more generally, begins by recognising the overall structure of the concept and makes explicit which element of it is being addressed; it is only by specifying what one intends by one's commitment that a meaningful discussion is possible. When politicians or academics endorse equality of opportunity, or for that matter fairness, but do not make explicit which conception they are endorsing, they must be held to account. By presenting the structure of the concept and showing how a conception can be developed, I hope to have made that challenge a little easier.

List of Tables

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