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Egalitarian taxation: Equality of resources, market luck, and leisure

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Declaration

I, Douglas Bamford, declare that this thesis is my own work, and has not been submitted for a degree at another university.

The thesis contains no work published elsewhere. However, it does make reference to 'Comprehensive lifetime taxation of international citizens: A solution to tax avoidance, tax competition, and tax unfairness', in Jeremy Leaman and Attiya Waris (eds.), *Towards a New Political Economy of Tax Justice: Taxation and Economic Development in the Twenty-First Century* (Oxford: Berghahn Books, 2013).

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Introduction¹

All kingdoms, empires and governments have needed to raise taxes in order to function. However, as well as raising revenue for their survival and the good of their citizens, along with other—less noble—purposes, states can use taxes to achieve justice. Distributive justice is achieved by taking the correct amount of tax from the fortunate and providing the appropriate transfers to the less-fortunate. I believe that the government should show equal concern to all its citizens, and so the central question for this thesis is to ask; what taxation system will achieve distributive justice by treating all members of society as equals?

In order to motivate and answer the question above I will begin by presenting my methodological assumption, and the first of my starting assumptions. The methodological assumption is that taxation is a matter of political morality; that we need *moral* arguments to determine how benefits and burdens *should* be shared. I take this issue to be un-contentious. Of course, many people who write on taxation may not *think* they are approaching it with a conception of political morality, such as those who use economic methodologies. However, such methodologies rest on assumptions about what outcomes are important regarding taxation, and the way in which these good and bad outcomes should be maximised and minimized. Writing that makes judgments on taxation policy is therefore dependent upon a particular—if unstated—political morality.² Much work on taxation is economic, based on a purportedly dispassionate analysis of welfare or preference satisfaction.³ The prominent

¹ References in this thesis are of the Oxford footnote style, with the exception of internal references within the thesis, which will refer by section, page, or footnote number. Where *ibid.* appears this will refer to the previously listed *external* reference, and never to the thesis itself even if an internal reference occurs in between.

² The exception being descriptions as provided by *positive* economics, see Graham Bannock, R. E. Baxter, and Evan Davis, *The Penguin Dictionary of Economics* (London; New York: Penguin Books, 2003) at 302.

³ For examples, see pretty much any public economics, public finance or tax law journal. Economists make reference to Rawls in their work. However, when doing so they refer to a “Rawlsian” position in which a “social welfare function” is calculated which seeks to maximise the position of the worst-

approaches of this kind are optimal taxation,⁴ public economics,⁵ or tax constitutionalism.⁶ These approaches can either be seen as non-normative methodologies or as determining the normatively correct outcome. If the former then it is necessary to insert a normative theory into the methodology, in which case the normative aspect is external and needs to be provided. However, if the approaches are supposed to determine normative conclusions then they clearly fail since they do not provide any convincing motivations for their normative conclusions.⁷ This work can therefore be contrasted to the large bulk of academic writing on taxation.

off; Christopher Heady, 'Optimal Taxation as a Guide to Tax Policy: A Survey', *Fiscal Studies*, 14/1 (1993), 15-36 at 20. Phelps attempted to specify Rawls' view in economic terms, Edmund S. Phelps, 'Taxation of Wage Income for Economic Justice', *The Quarterly Journal of Economics*, 87/3 (1973), 331-54. However, as will become clear in section 1.5, Rawls is concerned with primary goods, not a social welfare measure based upon welfare.

⁴ Following James A. Mirrlees, 'An Exploration in the Theory of Optimum Income Taxation', *The Review of Economic Studies*, 38/2 (1971), 175-208. I will mention two problems with this approach at this stage. The first is that it is inherently welfare-based, which is problematic for reasons that I discuss in sections 2.1-2.6. The second is that it assumes that endowment taxation is an ideal, which is clearly an issue that needs to be determined from a normative perspective; see section 3.9 and Linda Sugin, 'A Philosophical Objection to the Optimal Tax Model', *Tax Law Review*, 64 (2011), 229-81.

⁵ This attempts to judge the *equity* of the tax system, with a distinction between *horizontal* and *vertical* equity; Richard A. Musgrave, *The Theory of Public Finance* (New York: McGraw-Hill, 1959) at 160. I conceive this as proposing that everyone in society should be positioned on an imaginary ladder, where each should be on the correct rung in relation to others. The problem with this view is that it is necessary to specify what relationship each person *should* have to others on the ladder, something that the approach has to assume rather than provide. For criticism of the equity approach, which is usually linked to the idea of 'ability to pay,' as well as many other economic approaches to taxation see Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford: OUP, 2002).

⁶ Geoffrey Brennan and James M. Buchanan, *The Power to Tax : Analytical Foundations of a Fiscal Constitution* (Cambridge: Cambridge University Press, 1980). These authors are concerned that governments do not turn into revenue and spending maximising "Leviathans," Brennan and Buchanan, *The Power to Tax* at Ch 2. They argue that it is necessary to create constitutional constraints on governments to stop this from happening, since other constraints—such as electoral choice—may not be sufficient to stop "over-taxation." This approach is normative in that it seeks to avoid exploitation of the taxpayer, and utilises the idea of a veil of ignorance taken from Rawls, but only applied to the constitution. I agree that governments need to be restricted by some form of constitution and independent judiciary, but I disagree that it is necessary to set such strict limits on tax policy in order to avoid the problem of government corruption.

⁷ The ideal outcomes are generally assumed, such as that the government should provide resources or welfare to the worst-off to a certain (unspecified) degree. The appropriate level of redistribution are then either assumed without argument or left to governments or electorates to decide. One point in favour of the optimal taxation approach and tax constitutionalism is that they may set *limits* on what policies are practically sensible, since exceeding the stated limits would be self-defeating. This is because there would be no additional revenue raised, or that the revenue would be

The first starting assumption⁸ is that the rules of society should be constituted so as to treat citizens as equals, the most common approach in political philosophy.⁹ Some political philosophers reject egalitarianism, for example because it is only important that people have *enough*,¹⁰ because there are pre-political rights,¹¹ or because it is more important to maximise.¹² However, I take it as foundational that government should show equal concern to all.¹³ I do not have space to discuss these non-egalitarian views in more detail as I need to leave room for discussion among the many views that follow from egalitarianism. The focus of this work is to determine the best institutional interpretation of my starting assumptions.

counterbalanced by larger losses to the worst-off elsewhere. To this extent, I would suggest that such considerations will be useful to normative approaches such as the one I present here.

⁸ I will add two others in section 1.1.

⁹ Kymlicka is a prominent proponent of the idea that *all* attractive political philosophies have an egalitarian basis; Will Kymlicka, *Contemporary Political Philosophy* (Oxford: OUP, 2002) at 3. Examples of theories regarding which there is argument about their egalitarian status include *prioritarianism*, *libertarianism* (footnote 11) and *utilitarianism* (footnote 12). Prioritarianism suggests that priority should be given to the worst-off, but not necessarily to ensure equality. It is therefore a view with structural similarities to the so-called “Rawlsian” economic approach described in footnote 3; see Derek Parfit, 'Equality or Priority?', in Matthew Clayton and Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: MacMillan, 2000), 81-125, Derek Parfit, 'Equality and Priority', *Ratio*, 10/3 (1997), 202-21, Derek Parfit, 'Another Defence of the Priority View', *Utilitas*, 24/Special Issue 03 (2012), 399-440. The prioritarian approach can be seen as a mixture of *ex post* equality and maximisation. I will discuss *ex post* equality in chapters three and four.

¹⁰ This view is referred to as *sufficientarianism*, which takes it that government needs only to ensure that its citizens have enough of the goods that are taken to matter; Harry Frankfurt, 'Equality as a Moral Ideal', *Ethics*, 98/1 (1987), 21-43, Liam Shields, 'The Prospects for Sufficientarianism', *Utilitas*, 24/01 (2012), 101-17. Shields' approach is pluralist, and so leaves space for a degree of egalitarianism, although this would not be foundational.

¹¹ Philosophical or Kantian libertarianism is the view that property rights are foundational to political morality, and should not be violated; Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974). For criticism of libertarianism see Ronald Dworkin, *Sovereign Virtue* (Cambridge, Mass: Harvard University Press, 2000) at 110-2, Ronald Dworkin, 'Comment on Narveson: In Defense of Equality', *Social Philosophy and Policy*, 1/01 (1983), 24-40, J. W. Harris, *Property and Justice* (Oxford: Clarendon, 1996), G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), Samuel Freeman, 'Illiberal Libertarians: Why Libertarianism Is Not a Liberal View', *Philosophy & Public Affairs*, 30/2 (2001), 105-51.

¹² *Utilitarianism* is the view that utility (or alternatively “happiness” or “felicity”) should be maximized; Jeremy Bentham, *Selected Writings on Utilitarianism* (Ware, Herts.: Wordsworth, 2000). For criticism of utilitarianism, the simplest expression of which would be to say that it does not respect the separateness of persons, see John Rawls, *A Theory of Justice: Revised Edition* (Oxford: Oxford University Press, 1999). See also footnote 179, Amartya Sen, 'Utilitarianism and Welfarism', *The Journal of Philosophy*, 76/9 (1979), 463-89.

¹³ Nor should the government focus its efforts on bringing about some particular good outcome, such as military, artistic or sporting excellence. This violates both the principle of equal concern and the additional starting assumption of anti-perfectionism that I will explain in section 1.1.

This thesis consists of seven chapters, but can be understood as tripartite. The first part presents further starting assumptions and argues that Ronald Dworkin's equality of resources is the most attractive approach to distributive justice given those assumptions. Equality of resources is the idea that people are treated as equals if they begin their lives in a community with equal resources, measured according to the valuation that each places on those resources. This is achieved through the idea of envy-freeness; that no-one should envy the initial resources available to another. Envy-freeness is taken to apply at an initial point in time, after which people are able to transact with their resources as they wish. It can therefore be acceptable for one person to envy the resources of another at a *later* point. Where resources are not initially available for redistribution, it is still possible to determine external resource transfers to achieve equality. However, rather than insisting upon *ex post* equality, Dworkin proposes a hypothetical insurance scheme to determine how much to transfer from the fortunate to the unfortunate. This is a scheme whereby transfers are made in accordance with an insurance deal that people would make from a hypothetically equal position where they do not know if they are fortunate or not. In order to justify my choice of resource egalitarianism, I consider and dismiss alternative theories.

In the second part I consider resource-based responses to bad market luck and defend the hypothetical insurance approach. This is the idea that to consider the justice of the tax system we should ask what sort of taxes people would favour if they were choosing an insurance scheme in a position of hypothetical equality where they do not know how fortunate they are in their social background or market talents. The final three chapters specify how to apply the hypothetical insurance approach and then elaborate and defend the practical implications on benefit and tax policies. I argue that a tax system which would calculate very progressive tax-rates¹⁴ on the basis of the *average-*

¹⁴ The definition of progressive taxation is that the average tax rate rises as the tax-base rises, which can also be explained as the marginal rate of tax being higher than the average rate of tax at any

hourly-lifetime-comprehensive-income of members of society would be most attractive to hypothetical insurers. This tax revenue would be used, in part, to fund a *negative-rated hourly income tax*—a form of earning subsidy—for those with low lifetime-average earnings, and a programme providing work to the unemployed.

I have mentioned that the approach I take here differs from the vast majority of the literature on taxation. In the first four chapters of the thesis I defend a Dworkinian, resource egalitarian, approach as the most attractive anti-perfectionist egalitarian approach. As I take an anti-perfectionist position, the view here differs from that of Dworkin, who bases resource egalitarianism on his view of the truth about the good life.¹⁵ Despite this difference, I show how resource egalitarianism is the most attractive interpretation of the assumptions I lay out at the start of Chapter One. Unfortunately, the advantages of resource egalitarianism have often been misunderstood, and I provide a comprehensive statement and defence of the position. In order to do this, I consider it against many rival positions and respond to numerous criticisms of the approach. Arguing for equality of resources from the starting assumptions set out here therefore provides a new extended defence of resource egalitarianism.

From his first presentation of the view, Dworkin made clear that resource egalitarianism had tax implications.¹⁶ He concluded that there should be a 'graduated income tax'¹⁷ with benefits paid to those who are involuntarily unemployed and those who are disabled.¹⁸ The degree of taxation on workers and payments to the unemployed are determined by the hypothetical insurance decisions that individuals would make from a position of equality. Dworkin also uses this approach to consider

given point on the tax-base, James A. Mirrlees and IFS, *Tax by Design : The Mirrlees Review* (Oxford: Oxford University Press, 2011) at 24.

¹⁵ Dworkin, *Sovereign Virtue* at Ch 6, Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2011).

¹⁶ Dworkin, *Sovereign Virtue* at 91-109. This is from the second chapter of *Sovereign Virtue*, which is a reproduction of Ronald Dworkin, 'What Is Equality? Part 2: Equality of Resources', *Philosophy & Public Affairs*, 10/4 (1981), 283-345.

¹⁷ Dworkin, *Sovereign Virtue* at 102.

¹⁸ Dworkin presented developments of his proposals in *Ibid.* at chs 8 and 9.

how much people would wish to transfer from those who inherit large amounts of resources to those who do not. Dworkin therefore treats employment and social luck as independent hypothetical insurance matters with separate—and hypothecated—tax implications. In chapter five I criticise Dworkin’s assumptions and conclusions regarding taxation and present a rival *holistic* and policy-focused interpretation of the hypothetical insurance approach. This combines all the hypothetical insurance decisions relating to taxation and benefits into one procedure, and I explain its superiority to Dworkin’s hypothecated, insurance-based, approach.

In the final two chapters I argue that a lifetime hourly-averaging form of tax calculation would be attractive to insurers both as a form of assistance to the less fortunate (Chapter Six) and as a tax on the more fortunate (Chapter Seven). The final two chapters therefore contain the first normative arguments for this novel form of tax calculation. In the final two chapters I also argue for specific types of unemployment policy (a guaranteed work programme) and a specific tax-base (acquired income). The thesis therefore draws much more detailed and explicit policy conclusions than have been drawn before from resource egalitarianism.

0.1 Methods and restrictions

As this is a work of political morality, I utilise the usual methods of political philosophy. This involves the development of theories and principles and their interpretation.¹⁹ These are developed as much as possible by testing them against moral intuitions in hypothetical situations. This is an exercise in *ideal theory*, about which some have expressed reservations.²⁰ I will therefore briefly defend the approach taken here against claims that this idealisation is problematic. The ideal/non-ideal distinction has

¹⁹ Rawls, *A Theory of Justice: Revised Edition* at 42-5, Norman Daniels, *Justice and Justification: Reflective Equilibrium in Theory and Practice* (Cambridge: Cambridge University Press, 1996) at Part I. Dworkin emphasises the importance of interpretation in Dworkin, *Justice for Hedgehogs* at Chs 7 & 8.

²⁰ Such as Amartya Sen, *The Idea of Justice* (London; New York: Allen Lane, 2009).

roots in Rawls' work, though Sen presents a different cut between ideal and non-ideal theorising. One common distinction is that ideal theory abstracts from the real world and rests on facts or assumptions that are not necessarily true, such as that people will comply with just rules. Non-ideal theory, by contrast, applies where it is not possible to reach the ideally just situation and the question for theory is therefore how to improve justice where this ideal is unattainable.

Before discussing the ideal/non-ideal approaches further I will distinguish the useful notion of a "theory of ideals." This is a theory that attempts to determine what matters normatively, independently of implementation. An example would be a discussion of the abstract values of equality and welfare and the ideal trade-offs between them. In these terms, equality of resources—as I have presented it—has its ideal that the government treats all members of society with equal concern when it allows them to choose what matters to them from a position of equality.

In contrast, the ideal/non-ideal debate proceeds on the assumption that the theory in question is considering how to instantiate social arrangements that will bring about justice in either an ideal or non-ideal setting. However, as I have indicated above, there are many interpretations of what counts as ideal and non-ideal. Indeed, writers have picked out several issues on which their theory is ideal or non-ideal. It is therefore useful to consider several dimensions, each of which contains a continuum of idealisation. To illustrate, take the issue of compliance with just rules and institutions. At one extreme, when theorising we could assume that people will not comply with even just rules, while at the other extreme we could assume that people would comply perfectly with a just scheme even if it would hurt their interests and they could costlessly get away with not doing so. Philosophers may follow Rawls and place a line on this continuum and suggest that one side of the line represents ideal theory and the other non-ideal theory. However, the issue remains on a continuum, and others could cut the issue differently. Given the several dimensions involved, and the different types of issue about which philosophers theorize, it is perfectly sensible to set different

idealising conditions depending upon the issue at hand. As such, what matters for this work is the appropriate level of idealisation for taxation and benefit policy.

Critics of ideal theory, then, are those who think that the inclusion of idealising assumptions renders such theories irrelevant. However, philosophers will disagree about which assumptions are realistic and which not. All parties, therefore, wish to show that they are in the sensible-middle-ground, while their opponents are impractically overly-idealising or pessimistically under-idealising. As will become clear, the theory I utilise here, equality of resources, does involve an initially idealised situation—Dworkin’s previously unpopulated island. However, it then moves quickly to more realistic ground. Furthermore, the hypothetical insurance approach internalises all practical concerns, allowing individuals to make their insurance choices with full knowledge of the practical limitations of redistributive schemes. As the approach is *realistic*,²¹ it is an unproblematic ideal theory for distributive justice policy.²²

Finally, it is worth noting two restrictions on the scope of the thesis. Firstly, it does not attempt to answer all questions relating to taxation and expenditure, as discussed in greater detail in Chapter 5. Many philosophical issues are bracketed, such as that of how to spend resources on health and education.²³ Furthermore, the just levels of

²¹ By this I mean that practical issues, including potential non-compliance by a statistical minority of other members of society, are accounted for and internalised into the approach I take.

²² Hamlin argues that taxation is a non-ideal issue in (a draft version of) Alan Hamlin, 'What Political Philosophy Should Learn from Economics About Taxation', in Martin O’Neill and Shepley Orr (eds.), *Taxation and Political Philosophy* (Oxford: OUP, forthcoming). He suggests that since taxation is *coercive* it has nothing to do with an ideal setting. However, if we view taxation as part of the institutional rules and laws of the society it seems to be clearly within the remit of ideal-theory justice. It is not clear whether he means that taxation is not part of a “theory of the ideals” (which might be true) here or ideal theory (about which it is not true), but as I have said I argue that my position is perfectly reasonable since it internalises the practical issues such as taxpayer responses to tax policies.

²³ For a sample of literature on health care costs see Norman Daniels, *Just Health Care* (Cambridge: Cambridge University Press, 1985), Norman Daniels, *Just Health : Meeting Health Needs Fairly* (Cambridge: Cambridge University Press, 2008), Allen E. Buchanan et al., *From Chance to Choice : Genetics and Justice* (Cambridge, U.K.; New York: Cambridge University Press, 2000), Dworkin, *Sovereign Virtue* at Ch 8, Ronald Dworkin, 'Justice in the Distribution of Health Care', in Matthew Clayton and Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: Macmillan Press, 2000). For a sample of literature on the costs of childhood and education see Paula England and Nancy Folbre,

some specific types of taxation, such as environmental and sin taxes, are not covered by this thesis, for the sake of simplicity and brevity. I follow Rawls in assuming a single-country world, focusing on what is required for *domestic* justice.²⁴ This enables me to focus on the issue of what justice demands and not its scope, enabling me to bracket the important but sizable debates regarding global and international justice.²⁵

0.2 Thesis structure

I will now describe the thesis structure in more detail. The first chapter presents the starting assumptions, where I add the principles of anti-perfectionism and special responsibility to the egalitarian assumption described above. I then explain how Dworkin's equality of resources is an attractive attempt to apply these assumptions to distributive justice. In the remainder of the chapter, I compare equality of resources favourably to the rival resource-based approach to justice taken by Rawls. I also consider criticisms of the use of the market in resource egalitarianism by Samuel Freeman and Joseph Heath.

'Who Should Pay for the Kids?', *Annals of the American Academy of Political and Social Science*, 563 (1999), 194-207, Paula Casal and Andrew Williams, 'Equality of Resources and Procreative Justice', *Dworkin and His Critics* (Blackwell Publishing Ltd, 2004), 150-69, Matthew Clayton, *Justice and Legitimacy in Upbringing* (Oxford; New York: Oxford University Press, 2006) at Ch 2. I discuss Dworkin's approach to health care briefly on pages 30-1 and 88.

²⁴ Rawls, *A Theory of Justice: Revised Edition* at 7, John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001) at 12. For my own international institutional proposal, compatible with the domestic policies set out here, see Douglas Bamford, 'Comprehensive Lifetime Taxation of International Citizens: A Solution to Tax Avoidance, Tax Competition, and Tax Unfairness', in Jeremy Leaman and Attiya Waris (eds.), *Towards a New Political Economy of Tax Justice: Taxation and Economic Development in the Twenty-First Century* (Oxford: Berghahn Books, 2013).

²⁵ For a sample of the literature on global justice see John Rawls, *The Law of Peoples: With "The Idea of Public Reason Revisited"* (Cambridge, Mass.: Harvard University Press, 1999), Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2006), Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), Thomas Nagel, 'The Problem of Global Justice', *Philosophy & Public Affairs*, 33/2 (2005), 113-47, Alexander Brown, *Ronald Dworkin's Theory of Equality: Domestic and Global Perspectives* (Basingstoke: Palgrave Macmillan, 2009). Despite assuming an economically closed society, I will however at a few points indicate (in footnotes 753 and 756) my views on the implications of international interaction. While unnecessary for the overall argument of the thesis, I provide these additions for the sake of completeness.

In the second chapter I consider two prominent rival views in which the *currency* of justice is *not resource-based*. The first alternative currency is that of responsibility-sensitive *welfare* or a welfare-and-resource hybrid, which its proponents argue to offer the advantages of equality of resources without the need to ignore welfare inequality. In response to this, I emphasise that by taking the first-person perspective on inequality, equality of resources avoids the need to impose any costs on individuals on the basis of values they do not hold, including values about welfare. The second alternative currency is that of *capabilities*. As with the previous alternative, the capability approach is presented as providing the benefits of equality of resources while offering more in addition. I argue that, with regard to taxation policy at least, the capability approach is indeterminate if it is specified in such a way as to avoid the problem that plagues the welfarist approach.

Chapter three considers the nature of bad market luck and possible responses to it that rival the hypothetical insurance approach. I explain the nature of bad market luck and how it can result in reduced income, reduced leisure, or both. I then consider and reject seven resource-based schemes that would compensate people for bad market luck. These are an equal-income scheme, a no-job-envy scheme, mimicking a talent-equal world, labour-forcing, talent-auctioning, endowment-taxing, and an Egalitarian Subsidy Scheme. In Chapter four I present Dworkin's *ex ante* hypothetical insurance solution to compensation for bad market luck, and explain how it differs from *ex post* schemes. I then consider various challenges to the *ex ante* approach, beginning with the challenge from Michael Otsuka. Next, I consider and reject outcome-based *ex post* views, and the actual-envy-freeness approach. Finally, I clarify the *ex ante* position with regard to two challenges. The first is the extent to which the approach is personalised or universal. I show that the position is personalised but that it is justifiable to impose an average-based policy on everyone. The second challenge is that hypothetical insurance will replicate equality of welfare, which may be true but only if welfare is understood in an unusual and unobjectionable way.

Having defended the *ex ante* resource egalitarian approach to distributive justice, I apply the hypothetical insurance approach in the remaining chapters. In Chapter five I present and defend a holistic interpretation of the hypothetical insurance approach, challenging Dworkin's application of the hypothetical insurance approach to taxation. I then answer several possible challenges to my interpretation of the approach, some of which also serve to explain my conception further. In Chapter six I consider the choices that hypothetical insurers would make regarding institutions designed to assist those with bad market luck. I present a set of policies to assist the unemployed and those with low-pay, and then defend these against prominent alternative policies. The alternative policies for the unemployed are to impose greater or fewer conditions on the receipt of unemployment benefits, while the alternative policies for the low-paid are the minimum wage and alternative forms of wage subsidy. The preferred policy for improving the position of the low-paid is an original proposal, and is therefore explained in this chapter.²⁶

In the final chapter I consider the types and rates of taxation that would be chosen by hypothetical insurers. It begins with a discussion of tax-bases, concluding that hypothetical insurers would choose a comprehensive "acquired-income" tax-base. I then consider the most attractive form of tax calculation, and find that a lifetime hourly-averaging approach with highly progressive tax-rates would be the most attractive for insurers. Finally I anticipate some possible objections to this policy, such as that it enslaves the talented or those I refer to as leisure-lovers.

²⁶ This will be explained in more detail in Douglas Bamford, *Rethinking Tax: An Introduction to Hourly Averaging* (London: Searching Finance, forthcoming).

Chapter 1 Resource Equality

There is much disagreement regarding what form of taxation is the most just. Many people—including political philosophers—think that there should be some form or forms of taxation. But how should the form and degree of taxation be determined? Are those who lack marketable talents or wealthy families entitled to some form of compensation, and if so, how much? These questions appear to be separate but in fact they are intrinsically linked, since tax revenues would fund the compensation for the less fortunate. In this thesis I will attempt to answer these questions by considering what regime of taxation and spending will treat people as equals.

In this chapter and the next I will argue that equality of resources provides the best approach to distributive justice—and therefore the design of tax systems—as it specifies the appropriate form and levels of taxation and spending by government. After elaborating the main features of resource egalitarianism,²⁷ I will consider two types of rival view, which can be distinguished according to their preferred *metric* for distributive justice. The metric of justice is the focus of judgments about the justice and injustice of the distribution of resources; for example in accordance to the material goods or positive mental states of the members of society. This first chapter responds to criticisms that agree that resources are the correct metric for judgments about justice, but disagree that Dworkin's conception of equality of resources is the most attractive resourcist approach. The second type of criticism is that resources are *not* the correct metric of distributive justice. In chapter two I respond to rival views that propose *welfare* or *capabilities* as the focus of distributive considerations.

A government that fails to treat its members with equal concern is unjust and might be illegitimate. I will focus in this work on the issue of justice, since a just government is

²⁷ I will use this term interchangeably with equality of resources. However, I will consider other resource-focused forms of egalitarianism in this chapter and chapter three.

also a legitimate one.²⁸ I will begin this chapter by presenting the starting assumptions for the argument (section 1.1). These are that the state should show equal concern for all members, that the state should be anti-perfectionist, and that it should acknowledge the responsibilities of individuals. In sections 1.2-1.4 I will present equality of resources as the theory of justice that best fits these starting assumptions. The remainder of the first chapter and the second will consider resourcist challenges to this position—resourcist in Chapter One and non-resourcist challenges in Chapter Two.

The first resourcist rival is John Rawls' theory of justice (section 1.5), which I will argue in section 1.6 is unnecessarily insensitive to the ambitions that people have. In section 1.7 I will consider the Rawlsian criticism of Dworkin's use of the market articulated by Samuel Freeman. Sticking to the issue of the role of the market in equality of resources, I will argue in section 1.8 against Joseph Heath's anti-market resource egalitarian proposal. Freeman and Heath both overlook the importance of the role of true opportunity costs in equality of resources in their discussions, and fail to produce a more plausible alternative.

1.1 Starting assumptions

I will begin by stating the principles that underlie the arguments that follow. These are the principles of *equal concern*, *anti-perfectionism*, and *special responsibility*.²⁹ While I assume that equal concern is the primary principle, I think it is possible to meet all principles simultaneously and that there is no conflict between them.

²⁸ A legitimate government is one that aims at the ideal of justice, to treat its citizens as equals and with dignity, but that falls short. This could be due to a mistaken conception of equal concern, or mistakes about the implications of policies. Dworkin is happy to say that naked tyrannies such as Nazi Germany are illegitimate, but suggests that many troubling regimes may be legitimate based upon the views of citizens about monarchs or spiritual leaders. Particular policies may damage a state's legitimacy, which might justify civil disobedience on the part of citizens in order to change the policies. However, since we have no obligation to illegitimate governments, citizens are justified in revolting against those who continually act illegitimately. On the other hand, we have an obligation to unjust but legitimate governments; Dworkin, *Justice for Hedgehogs* at 321-2. For further description of legitimacy in relation to distributive justice and taxation see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996) at 135-6, Ronald Dworkin, *Is Democracy Possible Here?* (Princeton, N.J.: Princeton University Press, 2006) at 94-8, 118.

²⁹ The first and third principles underlie Dworkin, *Sovereign Virtue* at 5.

Equal concern: The first starting assumption is the principle that the basic institutions of society should treat all members with equal concern.³⁰ That is to say that the institutions should be designed with the ideal that the lives of all individuals matter and should go well. Furthermore, the institutions should show no prejudice to any particular individual or group of individuals within the society. All members of a society should have their interests respected by the institutions of the government and the rules of society, and to an equal degree.

It is possible that several different institutional arrangements could meet this principle. However, the principle would clearly exclude many social structures and political philosophies. For example, feudal institutions are unacceptable to the extent that they give priority to the first born males of monarchs and lords and therefore do not show equal concern to all members of society. It excludes political philosophies that rest upon the assumption that government should consist of, or exist to benefit, a particular ethnic group or economic class. The interpretation of *concern* is obviously crucial here, and I clarify this with the second principle.

Anti-perfectionism:³¹ This is the view that the government should not attempt to impose any particular interpretation of the good life on its members, or to stop its members from pursuing their own interpretation of the good life.³² In Rawlsian terms, this can be described as the freedom to pursue a *theory of the good*,³³ or a comprehensive conception of the good.³⁴ Society should allow for pluralism with

³⁰ This starting position was also described in the introduction. I will make further reference to the foundation assumption regarding political morality set out there, since that is interpreted in the same way in this work as it is by all writers on the subject I interrogate in this work.

³¹ The earliest description of this of which I am aware is found in Rawls, *A Theory of Justice: Revised Edition* at §50. Rawls later developed his political philosophy in a more explicitly anti-perfectionist way, resting it on political rather than Kantian foundations; John Rawls, 'Justice as Fairness: Political Not Metaphysical', *Philosophy & Public Affairs*, 14/3 (1985), 223-51, Rawls, *Political Liberalism*.

³² Within the confines of a just constitution and legal system.

³³ Rawls, *A Theory of Justice: Revised Edition* at 347-55.

³⁴ Rawls, *Political Liberalism* at 12-4.

regard to the good,³⁵ and so the tax system should not rest on, or be designed to achieve, a particular interpretation of the good life. That is to say, the state should only act on political reasons that are acceptable to all citizens with reasonable conceptions of the good.³⁶ This rules out religious doctrine or philosophical ideals of society as the source of legitimate tax policy. Examples of this would be the imposition of clerical law, or policies based upon the truth of *Aristotelian* Republicanism.³⁷

It is worth describing the nature of justification on this anti-perfectionist approach. Following Rawls, we can say that the justification of the constitution of society should be ‘political, not metaphysical.’³⁸ This means that it should be justified to all reasonable members of society in accordance with their comprehensive conception of the good life.³⁹ Social Institutions should still show respect to those who do not agree that public justification should be “political”—the unreasonable—by allowing them to follow their own view of the good within that constitution.⁴⁰

Special responsibility: The third starting assumption also has an anti-perfectionist slant. The principle insists that the members of society are each to have responsibility for developing their view of what matters in life, following the first principle above, and also for achieving whatever goals they have set themselves. This means that where an individual fails to achieve her goals, this would not in itself give her a right to receive additional assistance.

³⁵ Ibid. at 36-7.

³⁶ Ibid. at 58-66, Rawls, *The Law of Peoples : With "The Idea of Public Reason Revisited"* at 131-80.

³⁷ Aristotelian republicanism is the ideal of a society driven by the desire to collectively determine and live in accordance with a common interpretation of the good life. This appears to motivate communitarian thinkers such as Sandel and MacIntyre; Michael J. Sandel, *Justice : What's the Right Thing to Do?* (New York: Farrar, Straus and Giroux, 2009) at Ch 10, Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), Alasdair C. Macintyre, *After Virtue : A Study in Moral Theory* (Notre Dame, Ind.: University of Notre Dame Press, 1984).

³⁸ Rawls, 'Justice as Fairness: Political Not Metaphysical'.

³⁹ Rawls, *Political Liberalism* at 61, Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford University Press, 2011) at Ch 6.

⁴⁰ Quong, *Liberalism without Perfection* at Ch 10.

The idea of responsibility is complicated, since it is a concept that can be used in so many different ways. We might describe someone as showing the virtue of responsibility through her generally responsible conduct.⁴¹ Dworkin distinguishes virtue responsibility from relationship responsibility, which denotes a relationship between persons and events.⁴² One possibility here is to focus on a particular situation and then to attempt to determine who is responsible for doing something about it. This view assumes that a situation—for example someone drowning—may impose a moral obligation upon persons—such as the nearest person who can swim—to help, and we may say that this obligation makes the situation the responsibility of that individual.⁴³ However, it is not clear that responsibility does any real work in such cases, since these cases of *assignment* responsibility seem to just be moral obligations or straight answers to the important questions we are considering. Rather than focusing on bad situations, therefore, it is better to follow Dworkin's account of *relational* responsibility and to focus on events and individuals and in order to develop the theory that best links individuals with events.

⁴¹ Dworkin, *Justice for Hedgehogs* at 102. Dworkin distinguishes the virtues of intellectual, practical, ethical and moral responsibility.

⁴² Much writing on moral responsibility appears to be related to virtue responsibility, or our relationships with others through their expression of this virtue with regard to us, see the discussions of attributability and blame in T. M. Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1998) at Ch 6, T. M. Scanlon, *Moral Dimensions : Permissibility, Meaning, Blame* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2008) at Ch 4, David Shoemaker, 'Attributability, Answerability, and Accountability: Toward a Wider Theory of Moral Responsibility', *Ethics*, 121/3 (2011), 602-32.

⁴³ This seems to be the idea in mind in the unhelpful approach to responsibility presented in David Miller, 'Distributing Responsibilities', *Journal of Political Philosophy*, 9/4 (2001), 453-71. Miller takes examples of several different types of responsibility and attempts to determine a pluralist approach that could be used as a heuristic to determine who is responsible and to what degree in any given case. This assumes that in every case there has to be a person, persons or institutions which are responsible, and that it might not be case that there is a surplus of people who are responsible. The paper also seems to assume that where a situation is 'bad' it is clear that *someone other than the sufferer of the 'bad' should take responsibility* and that it is acceptable to ascribe such responsibility. Perhaps the approach does allow the sufferer to take responsibility. In this case, the Dworkinian approach—since it does not begin from the idea of something bad—allows us to answer such cases in a more parsimonious way.

Dworkin distinguishes causal, assignment, liability and judgmental responsibility.⁴⁴ People are *causally* responsible for an event if they have had some role in a causal chain that has led to it. However, playing a causal role does not necessarily imply any moral failure on their part—for example if someone is knocked off his bicycle by a car and onto a pedestrian. *Assignment* responsibility holds that person x has had some responsibility assigned to her by some institution for a particular event, such as to ensure that the Olympic Games run smoothly. *Liability* responsibility arises where person y is liable to pay or bear some form of cost. This could be to compensate others for specified harms or burdens, such as polluting the local river or damaging someone else’s property. Alternatively, the liability could be to bear certain costs rather than to pass them on to others, such as bearing the cost of weather damage to one’s own property. This may arise where some damage occurs in an event, such as carelessly driving into a cyclist. A final form of responsibility that Dworkin distinguishes is that of *judgmental* responsibility, which is to praise or criticise an act performed by an individual. We may judge the irresponsibility of the careless driver above, but not the blameless pedestrian-injuring cyclist.

The question of responsibility relevant to distributive justice—and therefore taxation—is that of liability responsibility.⁴⁵ What benefits and burdens of society is it appropriate to hold people liable for, and how should we determine these liabilities? One obvious option is to link liability to agency. However, there are clear cases where causal responsibility does not imply liability responsibility, such as in the actions of animals, children, and those with a mental deficiency.⁴⁶ In these cases, those who are causally responsible are not considered responsible agents, and are not therefore considered to be in control of their actions. As a result, they can never be liability-responsible. This

⁴⁴ Dworkin, *Justice for Hedgehogs* at 103.

⁴⁵ This is an updated and renamed version of Dworkin’s notion of “consequential responsibility,” see Dworkin, *Sovereign Virtue* at 287-8, 94. Dworkin highlighted that this notion is the same as Scanlon’s “substantive responsibility,” Scanlon, *What We Owe to Each Other* at 21-2; 248, 72, 78.

⁴⁶ Whether this be a permanent issue such as a learning deficiency, or a temporary bout of insanity.

has led thinkers to pessimistic conclusions regarding the possibility of free will and therefore responsible action,⁴⁷ since it is clear that *no* individual human has complete control over their actions; our bodies contain physical processes and our mental processes have been influenced by others. This metaphysical challenge to responsibility comes from the assumption that control is linked to causality and control is required for responsibility. Since no-one has complete control over their actions all-the-way-down, it is concluded that free-will, and therefore responsibility, is impossible.⁴⁸

The above challenge to responsibility is focused on physical or metaphysical facts. However, responsibility is a *moral* issue, as thinkers such as Scanlon and Dworkin have emphasised.⁴⁹ It would undermine our sense of ourselves as moral beings if we accept that we have no physical control over our activities. If we have no control over our lives, our conscious selves would merely be passengers in our bodies, watching a documentary of our lives. The fact that some people are excused responsibility on the grounds that they do not have the capacity to act responsibly should not lead us to assume that responsibility requires people to have complete-control over everything they do all-the-way-down. Indeed, as Dworkin argues,⁵⁰ such complete control is impossible, since we are all influenced by our surroundings—no man is an island. Therefore we should not take complete-control as the basis for responsibility, but rather consider whether each individual has adequate *capacities to exercise*

⁴⁷ Galen Strawson, 'The Impossibility of Moral Responsibility', *Philosophical Studies*, 75/1-2 (1994), 5-24.

⁴⁸ One response to the metaphysical challenge is to deny physical determinism—that everything has a physical cause. However, this would present either the problem of unpredictability or of the ghost-in-the-machine. The problem of unpredictability is that if there are not assumed to be fixed physical laws throughout our universe then it is not possible for any agent to know what will happen as a result of their actions. This would make responsible action impossible, as there would be no reliable method to anticipate consequences. One response to this would be to say that humans have a *non-physical element* which interacts with the—determined—physical world. However, this then leads to ghost-in-the-machine problem (Gilbert Ryle, *The Concept of Mind* (London: Hutchinson's University Library, 1949) at 22.) This is the thought that if our “true” selves are non-physical then it is not clear how that non-physical entity can interact with the physical world. The case for physical determinism is therefore strong, meaning that this response to the challenge does not work.

⁴⁹ Scanlon, *What We Owe to Each Other* at Ch 6, Scanlon, *Moral Dimensions* at Ch 4, Dworkin, *Justice for Hedgehogs* at 238.

⁵⁰ Dworkin, *Justice for Hedgehogs* at 236.

responsibility. Someone who has the ‘capacity to form true and pertinent beliefs, or to match his decisions to his normative personality,’⁵¹ can be held morally responsible for his life, choices and actions. A critic who would deny this would thereby deny that he is a choosing being at all, meaning he cannot think he has chosen to believe that there is no such thing as responsibility. It is acceptable to hold someone responsible, therefore, if they are a sufficiently capable agent.

It is worth noting the interplay between these starting assumptions. The anti-perfectionist principle that the state should not interfere with the theory of the good held by its members implies that people should have assignment responsibility to set their own aims and values and to go about achieving them. Anti-perfectionism and assignment responsibility in turn link to the principle of equal concern in that society should respect the concerns of actual persons as they express them, without taking any official position on what those concerns or values should be. To understand concern in any other way would be to impose on people a particular view of what should matter in life, which would not show concern for that person.

Liability responsibility also links to equal concern and assignment responsibility. Allowing each person to assign themselves a plan of life, and applying this equally to all, implies that everyone can be assigned some liability responsibility to bear the—appropriately determined—cost of their self-chosen plan. Furthermore, since assignment responsibility is applied to each individual, the liability costs of the choices that each individual makes should be borne by that person and not others. Not holding people responsible for the costs of their choices would mean that others will bear the cost of these choices. If this were the case then some would receive special treatment to achieve their goals over and above that given to others, violating the requirement of equal concern for all. Many approaches to distributive justice would claim to meet the principles I have set out in this section, and I will consider which of these presents the

⁵¹ Ibid. at 244.

best interpretation and instantiation of the starting position in this and the following chapter. I will start by explaining what I take to be the best approach, which I will then defend against the most plausible alternative views.

1.2 Dworkin's equality of resources

In 1981 Dworkin proposed a form of responsibility-sensitive, resource-based, egalitarianism.⁵² In explaining and justifying his approach, Dworkin utilises the device of an auction and a hypothetical insurance scheme held in an idealised position of equality in order to specify distributive outcomes that treat all individuals as equals. I will now explain equality of resources and show how it meets the starting assumptions of equal concern, anti-perfectionism and special responsibility. To do so I will explain the essential features of the theory. I will then set out some preliminary reasons to begin the search for the right resourcist approach to distributive justice. I will then explain the baseline conditions from which the auction is presumed to proceed.

In order to illustrate his theory, Dworkin asks us to imagine the formation of a society by shipwreck victims landing on an uninhabited island. These immigrants have to decide how to apportion the resources available to them. By "resource" here is meant, provisionally,⁵³ any item that can be delineated, controlled by humans, and that is considered valuable to at least one party.⁵⁴ Dworkin suggests they should run an auction whereby all have equal counters; the island and its resources will be divided up and trial auctions run until everyone is satisfied with the result. The process will end when no-one envies the resources purchased by any other and all can accept the form that the auction has taken,⁵⁵ a distribution we can describe as *envy-free*. This very

⁵² Dworkin, 'What Is Equality? Part 2: Equality of Resources'. Reprinted in Dworkin, *Sovereign Virtue* at ch 2.

⁵³ I will refine this definition of a resource in chapters three and four when considering several responses to talent inequality that would delimit resources differently.

⁵⁴ This would appear to prohibit the provision of public goods, but I will explain that there is place for public goods in resource egalitarianism as part of the principle of correction shortly—in section 1.3.

⁵⁵ Dworkin, *Sovereign Virtue* at 66-9.

simple situation, according to Dworkin, is one that we can happily call equal because no one would prefer to have the resources of another.

The notion of envy-freeness presented here is of the kind imagined by economists,⁵⁶ whereby an individual does not envy the resources that others hold. It does not stretch to other aspects of life such as envy that another person has a particular spouse. This also excludes envy understood as the vice of coveting what others have out of jealousy,⁵⁷ and also envy for those who made decisions that one wishes one had made.

From the initial position of envy-freeness, people will be able to live their lives as they see fit, trading with one another where desired. If Adrian works hard on his land and grows lots of produce, while Bruce spends most of his time playing tennis, there is no inequality if Adrian has much greater resources than Bruce later on as a result of their choices and actions. The envy test will continue to be met over time; no one will envy the resources of another because they all had the same resource opportunities. Any difference in resources at a later date reflects different choices from an equal starting position. This means that everyone is treated equally under such a system; there is no prejudice towards the life-choices of any type or individual over another.⁵⁸

What the Dworkinian approach captures is the ideal that people pay for the *opportunity costs* of their resource ownership and usage. When considering investments, opportunity costs represent the costs of forgoing alternative uses of a

⁵⁶ Hal Varian, 'Equity, Envy, and Efficiency', *Journal of Economic Theory*, 9/1 (1974), 63–91, Hal Varian, 'Distributive Justice, Welfare Economics, and the Theory of Fairness', *Philosophy and Public Affairs*, 4 (1975), 223-47, William J. Baumol and Dietrich Fischer, *Superfairness : Applications and Theory* (Cambridge, Mass.: MIT Press, 1986) at ch 2. Similar concepts of envy freeness have appeared in economic and philosophical work at various points, and have been traced back to a suggestion by Dutch physicist Ehrenfest to Jan Tilbergen in the early 1950s. For more on this see John E. Roemer, *Theories of Distributive Justice* (Cambridge, Mass: Harvard University Press, 1998) at Appendix, Duncan K Foley, 'Resource Allocation and the Public Sector', *Yale Economic Essays*, 7/1 (1967), 45-98, Serge-Christophe Kolm, *Justice and Equity* (Cambridge, MA; London: MIT Press, 1997), Christian Arnsperger, 'Envy-Freeness and Distributive Justice', *Journal of Economic Surveys*, 8/2 (1994), 155-86, Serge-Christophe Kolm, 'Playing Fair with Fairness (a Comment on Arnsperger's 'Envy-Freeness and Distributive Justice')', *Journal of Economic Surveys*, 10/2 (1996), 199-215.

⁵⁷ It is this understanding of envy that exercises Rawls, *A Theory of Justice: Revised Edition* at §80-1.

⁵⁸ Dworkin, *Justice for Hedgehogs* at 324.

given set of resources, when the resources are not sufficient to make all the investments. So, if I were to spend my disposable income rather than invest it, the true cost to me of that expenditure is not just the money, but also the returns I could have obtained by investing it in a way that others will pay for in the future. Equality of resources therefore attempts to capture the value of the opportunity costs to others of what each individual secures for herself from a position of initial equality.

It may be clear at this point that equality of resources shares certain similarities with Nozick's entitlement theory of justice.⁵⁹ This theory holds—on the basis of certain fundamental rights—that all should be free to work and transact as they see fit, and that justice is determined by transactions made across time. For Nozick, this process of ownership begins with the acquisition of land, followed by the use of this land to create other forms of property which can be exchanged or given away. Items of property are then passed from one person to another through freely made transactions, and any interference with this historical process is unjust to those who lose out. Equality of resources is also a historical entitlement theory. However, instead of starting with acquisition of unowned or communally-owned land, equality of resources begins with a hypothetical equal starting position. Furthermore, it allows that transfers from the fortunate to the less fortunate should be allowed in order to correct the inequalities that markets cause, as I will now explain.⁶⁰

It may strike some as unfair to utilise the market when some people have handicaps that render them unable to work, or work very effectively, in a market setting. Furthermore, unlike the island—where everyone starts with an equal amount of counters—people start their lives with differing amounts of wealth and support from their family. It is important to be clear that Dworkin does not propose a libertarian or

⁵⁹ Nozick, *Anarchy, State, and Utopia* at 150-1.

⁶⁰ Dworkin discusses the similarities and differences between equality of resources and the entitlement theory of justice in Dworkin, *Sovereign Virtue* at 110-2.

laissez-faire theory.⁶¹ In order to deal with handicaps and a poor start in life, Dworkin proposes a *hypothetical insurance market*, in which people would consider what insurance they would buy behind a *veil of ignorance*⁶² under which they do not know their initial family background or physical characteristics. This procedure would be used to determine levels of taxation in order to provide goods, services and compensatory payments to people based upon their presumed insurance levels against handicaps or poor parents.⁶³ This *ex ante* insurance would cover people if they are unfortunate, as the insurance is in their interests as they conceive them prior to their knowledge of their morally arbitrary misfortune.

The advantage of the *ex ante* approach is that people decide for themselves how much each particular form of disadvantage is one against which they would have deemed it worthwhile to insure. This means that the compensation will match the seriousness of the disadvantage to their disadvantaged self against the costs to their fortunate self. This justifies a precise amount that people should transfer for the benefit of the less fortunate if they do not suffer from the disadvantage. Apparent inequalities are therefore judged on the basis of how much they matter to actual people themselves; if people would not have insured to protect fully against the cause of the inequality then they cannot claim to have been shown a lack of concern if they do not receive the equivalent of a fully compensatory pay-out.

On this view, then, a functioning market is essential to equality, which rules out centrally planned economic systems.⁶⁴ However, I will re-emphasise that this does not imply *laissez-faire*; markets would need to be regulated in order to correct distortions

⁶¹ Ibid. at 87-90, Dworkin, *Is Democracy Possible Here?* at 98-100, Dworkin, *Justice for Hedgehogs* at 352-4.

⁶² Dworkin's veil of ignorance is thinner than that presented by Rawls, which I will discuss in sections 1.5 and 1.6. Rawls presents a thicker veil of ignorance in Rawls, *A Theory of Justice: Revised Edition* at 11, 16-17, 118-9.

⁶³ Dworkin, *Sovereign Virtue* at 73-83, 340-50, Dworkin, *Justice for Hedgehogs* at 360-1, Dworkin, 'Justice in the Distribution of Health Care'.

⁶⁴ Dworkin, *Justice for Hedgehogs* at 324. Joseph Heath challenges this point, which I will discuss in section 1.8 below.

and unfairness due to monopolies, externalities, or information asymmetries. This is done in order that *true opportunity costs* will be upheld.⁶⁵ Furthermore, as I have mentioned, *laissez-faire* would be most beneficial to the fortunate, something that equality of resources would seek to remedy. Some people may find it easier to live their ideal life than others do, as this will depend on their plans, the availability of different natural resources and the desires of others. However, comparisons are limited to the cost of the resources people purchase given the resources desired and produced by others, an approach I will now describe in more detail.⁶⁶

1.3 True Opportunity Costs

One way to value the resources of society would be for one person to work out what everything is worth and for all to get an equal share according to that valuation. However, this would not do. The divider could value the resources such that she would get the best possible outcome for herself. Furthermore, the approach would not be acceptable even if she attempted to value the resources in an altruistic fashion. The problem would be that one person would have placed a value on the resources on the basis of what she takes the important things in life to be.⁶⁷ So if she felt that all people should have a particular notion of welfare, or a certain set of capabilities, she would organise resources accordingly. I will discuss such views—those of G.A. Cohen and Amartya Sen—in chapter two. The resource egalitarian ideal is for each person to value resources based upon her *own* notion of what matters in life, of what her ambitions

⁶⁵ Dworkin, *Sovereign Virtue* at 148, Dworkin, *Justice for Hedgehogs* at 357. I will describe this in more detail in the following section.

⁶⁶ Matthew Clayton and Andrew Williams, 'Egalitarian Justice and Interpersonal Comparison', *European Journal of Political Research*, 35 (1999), 445-64. There is clearly a particular concern about the differing abilities that people have at producing what others want, which is the subject of much of this thesis, particularly chapters three, six and seven.

⁶⁷ One response here is to say that if the divider were to anticipate the exact value that all would place on all resources in an equal and abstract auction then since the outcome would be the same it would appear the valuation was justified. In this case, the correct outcome would be reached by mimicking the correct process, which can only be proven by undertaking the process itself. If the process is undertaken, what advantage would there be to add the further step that the auctioneer is now going to apply the valuations determined by that process?

are. The aim, then, is to construct a position in which each person values resources in a way that is continuous with her own authentically held values.⁶⁸

Dworkin introduces the auction and market as a way to manage all of these competing requirements. Each member of society would value resources according to his ambitions in life, while all other members do the same from a position of equality. The market thus enables everyone to value resources *at the same time*, each according to her own ambitions.⁶⁹ The process of resource division is equally in the interests of all, as each defines his own interests. We can refer to this in terms of opportunity costs because each has to match her ambitions to her share of resources, and consider the ambitions that she will forgo due to her choices. Simultaneously, each has to pay the costs of those resource decisions in terms of the opportunities that *others* forgo. Market processes will act to push resources into the directions that fit best with the ambitions that people have, and away from those that no-one has.

Dworkin describes this fair approach to valuing resources as the attempt to construct a position in which it is possible to determine *true opportunity costs*. This is the search for baseline conditions under which the costs of resources are determined in a market-based procedure in which all members have a suitably equal role. The first aspect of this search is that it is necessary to value resources in accordance with the desires people have for their lives, where each person will need to tailor his choices to his equal share of resources. People need to value these resources themselves, based on their interests, and so it is necessary to take account of these interests. For this reason,

⁶⁸ The importance of this form of continuity within equality of resources was first emphasised in Andrew Williams, 'Equality for the Ambitious', *Philosophical Quarterly*, 52 (2002), 377-89 at 387-9. A similar point is made in different terms—that of a 'first-person test'—in Matthew Clayton, 'The Resources of Liberal Equality', *Imprints*, 5 (2000), 63-82.

⁶⁹ This raises the question of the extent to which people's judgments are *authentically held*. In order to deal with this, Dworkin introduces a principle of authenticity, Dworkin, *Sovereign Virtue* at 159-60. This would require certain background institutions of culture and education, and freedom of information and discussion. Dworkin's suggestion that maximal authenticity is required appears very strong, and perhaps impossible to meet. However, he perhaps means that as-near-as-feasible-to-ideal conditions should be provided in society, whether or not individuals in fact make enough use of those provisions in order to ensure that they are maximally authentic.

liberty plays a crucial role in determining equality.⁷⁰ In order to have concern for individuals, equal opportunity costs respects their valuation of resources, and in order for this to work, people have to be free to value resources as they see fit. To do the opposite, to impose valuation on the resources or to restrict people's freedom to value, would over-ride their assignment responsibility for their life and show a lack of concern for that individual.⁷¹

Another aspect of resource egalitarianism to emphasise is the link to a freely operating market, whereby people are free to value resources with as few restrictions as possible. Dworkin refers to this as the principle of abstraction, which 'establishes a strong presumption in favo[u]r of freedom of choice.'⁷² Dworkin illustrates this principle with the example of the size of lots in his auction, since the choice of lot size will influence the outcome of the auction. Some will prefer larger lots, for example because they wish to build and use a stadium, while others will desire smallholdings and would not like such large lots. There is no baseline which is clearly in the interests of everyone, and resourcists cannot appeal to differences in welfare that will obtain based upon the baseline.⁷³ However, Dworkin argues that the lots should be auctioned at the smallest requested size. This is because it is 'more sensitive to the discrete preferences and plans that people in fact have,'⁷⁴ and will enable people to tailor their purchases as they desire. This may make those who wish to own or visit the stadium worse-off, as it will be more expensive for them, but stadium lovers are of course still able to buy the required land by purchasing several smaller plots. In contrast, if the lots were large and inflexible this would fail to show regard for the ambitions of the smallholder by forcing him to bid for something that he does not want. By limiting him in this way, the smallholder would have fewer of his resource allocation available to

⁷⁰ Ibid. at 145.

⁷¹ Ibid. at 182.

⁷² Ibid. at 148.

⁷³ Ibid. at 150.

⁷⁴ Ibid. at 151.

purchase other things, not as a result of a reduction in his share of resources, but as a result of the restriction in his freedom to purchase what he values.

One challenge here might be to point out that if people were forced to buy a larger lot than they wish they could always sell-off the excess after the auction stage.⁷⁵ Indeed, the auction participants would not be materially disadvantaged by being forced to hold on to an unwanted amount of land (or other resource) if it was costless for them to sell the excess.⁷⁶ If such sales are costless, then the case for a market is made anyway, since everyone has resources of equal value. However, if such restrictions do affect prices, then the prices calculated in such an auction favour those who desire a *particular* size lot (corresponding to the size chosen). The abstract approach does not show any such favour. Either way, then, the importance of the market in determining equal shares still holds. The auction prices that clear the market with the required degree of flexibility thereby show equal concern for all the participants. This flexibility in valuation enables the baseline valuation of resources to follow as closely as possible the desires that people have to live the life they choose. It also supports the provision of public roads and rights of way in order to enable greater ability to make use of and divide land.⁷⁷

A further implication of the principle of abstraction is that people should have a *pro tanto* freedom to do what they wish with their resources, commensurate with a similar freedom for all.⁷⁸ If there were a restriction on the availability of philosophical books, for example, this would show a lack of concern for those who might wish to read those books. Similarly, if people wish to give their resources to another person, there is a strong reason that they be entitled to do so; to restrict this activity would render them less able to act in accordance with their ambitions. This emphasises why it is necessary to have property rights and entitlements. These examples illustrate the point that the

⁷⁵ Thanks to Andy Reeve for this point.

⁷⁶ That is, if there were no transaction costs in doing so. Thanks to Matthew Clayton for this thought.

⁷⁷ Dworkin, *Sovereign Virtue* at 152.

⁷⁸ This point thus mirrors an element of the first of Rawls' two principles of justice, which I will discuss below Rawls, *A Theory of Justice: Revised Edition* at 53, Rawls, *Justice as Fairness* at 42.

presumption should be for people to be as free as possible to use their resources as they deem fit.

This freedom and flexibility over resources is only a presumption as it might be overridden in some cases. Firstly, society will have a set of rules defining what liberties there are and what constraints there are on those liberties. These will be borne out in the legal system of the society. Those engaging in the auction also need to know the nature of this liberty and constraint system, and it is therefore necessary to specify these rules as part of the baseline conditions for the auction. Equality of resources takes certain rights to be necessary in order to determine distributive justice, including rights to use one's property.⁷⁹ One element of this is the principle of security, which would 'mandate constraints on liberty necessary to provide people with enough physical security and enough control over their own property to allow them to make and carry out plans and projects.'⁸⁰ The positive side to this is the *power of control* over our bodies necessary to exercise our assignment liability.⁸¹ The familiar legal rights structure follows from this need for individuals to have true power over their lives. This will require governments to prohibit—and attempt to undermine where possible—assault, rape, and murder. Property rights are also necessary in order for people to be free to use their resources, as insecure property rights would make it difficult for people to use their power since otherwise people would not have sufficiently stable expectations to be able to make and carry out plans.

As I mentioned above, equality of resources imposes another set of restrictions on abstract freedom in order to ensure that markets show equal concern for all. Dworkin refers to this desire to deal with market externalities as his *principle of correction*,

⁷⁹ Other rights also come into play as part of the requirement of the political morality of democracy: Dworkin, *Sovereign Virtue* at ch 4. Interference with the free use of resources might also be justified for the sake of democracy, in order to ensure that the democratic process is not undermined by inequalities in wealth. Dworkin discusses this in the United States context in Dworkin, *Sovereign Virtue* at ch 10.

⁸⁰ Dworkin, *Sovereign Virtue* at 149.

⁸¹ Dworkin, *Justice for Hedgehogs* at 288.

which justifies the imposition of public goods.⁸² One set of market imperfections comes about through the power of monopoly and due to information asymmetry, and steps should be taken to arrest these.⁸³

Another issue is that of market externalities whereby interactions affect others who are not directly involved in the interactions. This could include aesthetic issues, such as the erection of unsightly buildings, or environmental pollution which would also affect health and climate. To deal with these, Dworkin proposes a “superimaginary pre-auction,” in which all motives are transparent, all transactions are predictable, and organisational costs are absent.⁸⁴ This pre-auction suggests cases in which market outcomes should be constrained. Constraints on resource-uses are acceptable where the windfall that supporters of constraints would gain from them would be sufficient to compensate those who would be restricted. For example, in this pre-auction people would work together to buy lots in order to block unsightly and “out-of-context” developments, something which would not be possible in the real world.⁸⁵ Similarly, in the case of pollution, people would pay to preserve their environment if they could, and this justifies regulation, taxation on polluting industries and activities, as well as the provision for litigation against those whose activities thwart people’s ambitions.⁸⁶

We can now review the role of true opportunity costs in equality of resources. I explained the notion of opportunity costs above, and it should be clear that it is only possible to work out opportunity costs from some baseline. One possibility would be to calculate opportunity costs from a baseline whereby all could achieve equal amounts of

⁸² Dworkin, *Sovereign Virtue* at 155-8.

⁸³ Dworkin, *Justice for Hedgehogs* at 357. Most economics textbooks will include a discussion of externalities, see for example Hal Varian, *Intermediate Microeconomics: A Modern Approach* (New York: W.W. Norton & Co., 1996) at ch 31.

⁸⁴ Dworkin, *Sovereign Virtue* at 157.

⁸⁵ This justifies planning rules which give people the right to object to developments, and for local governments to regulate development.

⁸⁶ Taxation of this sort is usually referred to as Pigovian (after economist Pigou) or sin taxes; Varian, *Intermediate Microeconomics: A Modern Approach* at 568, 76. The case for environmental taxes to be progressive is explained in Paula Casal, 'Progressive Environmental Taxation: A Defence', *Political Studies*, 60/2 (2012), 419-33 at 424, 28.

welfare—a view I will consider in chapter two. Another possibility would be to work out opportunity costs based upon historical entitlement principles, without attempting to interfere in the market. This would be the preferred approach for libertarians, though they would not feel the need to make any reference to opportunity costs to justify their view.⁸⁷ Dworkin's notion of *true opportunity costs* is an attempt to specify an ideal egalitarian baseline for market prices and liabilities. By focusing on envy-freeness from an initially equal situation, equality of resources harnesses the market to find a way to allow individuals to bring their own ambitions and commitments into the joint valuation of resources, and for each to bear the costs of the resources they receive to the lives of others. Restrictions on the purchase and use of resources are justified only on the basis of reasons that conform to the desire for equal true opportunity costs. Property rights are necessary as they enable people to use their resources as they see fit, though they should be restricted where this will enable markets to overcome problems such as externalities, informational asymmetries, and monopoly. Only public reasons relating to the use of resources are taken to be valid when considering restrictions on the freedom that individuals have to utilise those resources as they see fit; such reasons cannot come from a comprehensive view of what is good in life such as a religious doctrine or notion of welfare. This explains why equality of resources requires an entitlement approach to justice, albeit not a *laissez-faire* one. The only aspect of the person that is used to judge her relative position for the purpose of distributive justice is her purchase and use of resources from a position of equality under conditions in which her purchase of resources proceeds from a position where the true opportunity costs of those resources are calculated.

1.4 Equality of resources and the starting assumptions

I will now explain how equality of resources meets the starting assumptions of equal concern, anti-perfectionism, and special responsibility. Determining equal resources

⁸⁷ See footnote 11.

shows concern for all members of society, since all members of society are participants in the equal auction. The auction is equal as all participants have the same opportunity to obtain the resources they desire as others, since they all have the same bidding position.⁸⁸ The approach is anti-perfectionist as it focuses solely on the resources that people purchase in order to live the life they choose to live.⁸⁹ As Matthew Clayton puts it, equality of resources is *judgmentally continuous* with the ethical commitments of all reasonable persons in society. This means that the distribution will be 'justifiable to everyone because no one can make a claim in good faith that they have less than others in light of what matters to her.'⁹⁰

Equality of resources also respects the principle of responsibility. This can be expressed in terms of the types of relational responsibility described by Dworkin.⁹¹ Each individual has assignment responsibility to determine her aims and goals in life,⁹² to secure the most appropriate resources in order to carry out her plans, and then to see her plans to fruition. This relates to the anti-perfectionist point above that the community or

⁸⁸ Dworkin, *Justice for Hedgehogs* at 357.

⁸⁹ It should be noted that Dworkin does not arrive at his conclusions based upon a political liberal view of the type described above. Quong categorises Dworkin as a 'comprehensive anti-perfectionist,' someone who supports anti-perfectionism on the basis that autonomy is the good of life—or in Dworkin's case, the ideal of living according to the challenge model of life and the dignity enabled by living autonomously; Quong, *Liberalism without Perfection* at 19. The challenge model of life is that we should see ourselves as setting ourselves various challenges, described in Ronald Dworkin, 'Foundations of Liberal Equality', in Stephen L. Darwall (ed.), *Equal Freedom* (Ann Arbor, Mich.: University of Michigan Press, 1995), Dworkin, *Sovereign Virtue* at Ch 6. Dworkin describes how dignity fits in with living well in his discussion of ethics, Dworkin, *Justice for Hedgehogs* at Ch 9, see in particular 198, 205-9. He re-describes his political philosophy with emphasis on dignity in Dworkin, *Justice for Hedgehogs* at Part four, see in particular 320-1, 30, 35-8, 67-8.

While I find Dworkin's views the most attractive way of looking at one's life, I would be reluctant to ground a theory of justice upon a view of the good in life. Indeed, there seems something contradictory in a theory that seeks to justify anti-perfectionism on the grounds that autonomy is of ultimate value, for criticism of the comprehensive anti-perfectionist position see Quong, *Liberalism without Perfection* at 22-26. For a discussion of the possibility, and advantages, of taking a political liberal route to liberal equality, see Matthew Clayton, 'Liberal Equality: Political Not Erinacous', *Critical Review of International Social and Political Philosophy*, (forthcoming).

⁹⁰ Clayton, 'Liberal Equality: Political Not Erinacous', at section 3 (ii).

⁹¹ Explained above, page 24-5.

⁹² Dworkin, *Justice for Hedgehogs* at 356.

government should not determine the ends of its members,⁹³ but rather that citizens should set them for themselves. The assignment responsibility that people have leads to the freedom implied in the principle of abstraction—people need be to be able to use their resources in order to carry out their plans. Correlative to this freedom, people should carry out their plans themselves.⁹⁴ This is attractive to all parties; third parties do not want to be forced to carry out the plans of others, and we as individuals usually wish to carry out *our* plans—it is our performance that we value. For example, if my aim is to produce a thesis on anti-perfectionist egalitarian taxation then I wish to produce this myself, but I do not will for someone else who does not value it to produce one *because* I wish it.

The assignment responsibility to set and obtain one's ends relates to the attractiveness of the resource egalitarian interpretation of *liability responsibility*. People are held *liable* to bear the true opportunity costs of the use of their resources. The liability comes about through the interaction of equality and assignment responsibility. Each has the liability responsibility for the cost of his resources to others as he has assignment responsibility for his own values and the achievement of his own ends. Imagine someone, Mark, who claims at a later stage that he should receive additional resources from society because he regrets his choices or due to a change in circumstances. Mark is held liability responsible for his past resource uses whatever his later regrets. If his circumstances change then he will be held responsible unless he would have hypothetically insured against it. He was assigned responsibility to determine his plan of life in relation to the choices of others, and if he later has less valuable resources than others then he has no grounds to complain. Mark had liability over his resources because he had assignment responsibility over his life; no-one else is

⁹³ Though it is necessary for the government to involve itself in people's ends where necessary to ensure that they are chosen authentically, in accordance with the principle of authenticity described in footnote 69.

⁹⁴ Subject to the fact that they will subcontract to—and have market interactions with—others where this is advantageous to them, of course.

held liable for the disadvantage Mark now feels as others were not assigned responsibility for his life.

If additional resources were transferred from everyone else to Mark, then this would make him better-off than them. This would violate the egalitarian principle.⁹⁵ Equality is therefore determined on the basis that the individual has received *equal resources* to others *given the resource choices of others*. This is achieved through the idea of true opportunity costs, whereby each person should take into account the opportunity costs to others in determining and carrying out his plans. Developing the above points, the *ex-ante* hypothetical insurance scheme is designed to guide redistribution from the fortunate to the less-fortunate where the less-fortunate person *does not* have liability responsibility for his relative resource disadvantage. This compensation is based upon the valuation that the parties themselves place on the resources being redistributed.⁹⁶

1.5 Rawls' theory of justice

An approach that clearly rivals equality of resources is John Rawls' theory of justice as fairness. Rawls' theory is avowedly anti-perfectionist and egalitarian, meaning that it has a strong claim to meeting the starting principles set out above. I will now set out Rawls' theory and argue in section 1.6 that it does a less good job at meeting the starting assumptions. In the book *A Theory of Justice*,⁹⁷ Rawls' primary target was the utilitarian theory which dominated political philosophy up until that point, proposing an alternative social contract determination of justice.⁹⁸ To construct principles for a just society, Rawls suggests that we imagine what agreements free and equal persons

⁹⁵ An alternative form of egalitarianism, referred to as *social* or *democratic* egalitarianism fails in this regard. I discuss this further in footnotes 251 and 302.

⁹⁶ Dworkin, *Justice for Hedgehogs* at 360.

⁹⁷ Rawls, *A Theory of Justice: Revised Edition*, this was an attempt to develop and defend the views put forward earlier in John Rawls, 'Justice as Fairness', *The Philosophical Review*, 67/2 (1958), 164-94. The main advantage of Rawls' position over utilitarianism is that it respects the separateness of persons, and therefore each individual. Utilitarianism, by contrast, could generate the outcome that it is right to sacrifice or enslave one person if this would benefit many others.

⁹⁸ For restatements of his position that focus less on its opposition to utilitarianism see John Rawls, 'Reply to Alexander and Musgrave', *The Quarterly Journal of Economics*, 88/4 (1974), 633-55, Rawls, *Justice as Fairness*.

in an original position would make, with the conclusion that the outcome of this decision would indicate what is just. The original position is a hypothetical situation behind a 'veil of ignorance' in which the contractors do not know their personal features, social class and natural assets.⁹⁹ This is designed to ensure that people cannot benefit from morally arbitrary features when making the social contract.

Rawls argues that people would choose the following principles in the original position:

- a) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).¹⁰⁰

People would choose these principles in order to ensure that they would be as well-off as possible even if they turn out to be part of the least favoured group in society. The basic liberties and freedoms would be guaranteed because, behind the veil of ignorance, the parties would not know if they were part of a minority upon which a majority could impose its comprehensive doctrine. The second principle of justice concerns the distribution of the benefits and burdens of social cooperation within society, i.e. the rules of production and distribution. Rawls in his later work¹⁰¹ makes clear that he is not concerned with allocative—or patterned—justice, as some of his critics have made out.¹⁰² Rather, he takes distributive justice to be concerned with the way that the 'institutions of the basic structure [are] to be regulated as one unified

⁹⁹ Rawls, *A Theory of Justice: Revised Edition* at 118-23.

¹⁰⁰ Rawls, *Justice as Fairness* at 42-3. This is a revised statement of the principles as expressed in Rawls, *A Theory of Justice: Revised Edition* at 53.

¹⁰¹ Rawls, *Justice as Fairness*.

¹⁰² Nozick, *Anarchy, State, and Utopia*. Whether or not this claim applies to Rawls, it certainly does not apply to Dworkin's equality of resources, which shares a property-entitlement structure with Nozick's libertarianism.

scheme of institutions so that a fair, efficient, and productive system of social cooperation can be maintained over time, from one generation to the next.¹⁰³

Those in the original position are presumed to be concerned that they will be in the worst-off group, and will seek to maximise the position of that worst-off group (to “maximin”, or rather to “leximin”¹⁰⁴). However, that leaves the question as to how the worst-off group is to be defined. For Rawls, people would be concerned with *primary goods*; by which he means all-purpose goods such as liberties and opportunities, income and wealth.¹⁰⁵ Everyone can be assumed to want these goods, as they would be required in order for someone to go about living her life according to whatever conception of the good she turns out to have. The worst-off are taken to be the group who possess the smallest share of primary goods, though not those with disabilities and other special needs.¹⁰⁶

Rawls thinks that distributive justice, and therefore taxation, should be governed according to the second principle, and most importantly the difference principle. He remained ecumenical on the need for a market economy, suggesting that a socialist economy could be compatible with the difference principle.¹⁰⁷ However, Rawls’ views on taxation are somewhat surprising as they seem to be focused on starting inequalities rather than on-going ones.¹⁰⁸ As such, his treatment of taxation involves a split between what we might consider “unearned” and “earned” income. Regarding

¹⁰³ Rawls, *Justice as Fairness* at 50.

¹⁰⁴ The former is to maximise the position of the worst-off, whereas the latter is to maximise the position of the worst-off, and then—subject to that—the next worst-off group, and so on. Rawls, *A Theory of Justice: Revised Edition* at 36-9.

¹⁰⁵ Ibid. at 79, Rawls, *Justice as Fairness* at 58-9, Rawls, *Political Liberalism* at 178-90.

¹⁰⁶ Rawls, *A Theory of Justice: Revised Edition* at 84, Rawls, *Justice as Fairness* at 57-70. The choice of a group as the worst-off is a very contentious issue. For a recent attempt to resolve this issue see Bertil Tungodden and Peter Vallentyne, 'Who Are the Least Advantaged?', in Nils Holtug and Kasper Lippert-Rasmussen (eds.), *Egalitarianism : New Essays on the Nature and Value of Equality* (Oxford: Clarendon Press, 2007).

¹⁰⁷ Rawls, *A Theory of Justice: Revised Edition* at 235, 39-42, 47-9, Rawls, *Justice as Fairness* at 136-8. Rawls stresses that a command economy would be incompatible with justice as fairness due to its restrictions on liberty, but that a liberal or democratic form of socialism may be compatible.

¹⁰⁸ Rawls, *Justice as Fairness* at 130-1.

bequests and gifts, Rawls follows Mill in proposing to tax the recipients of these at a progressive rate.¹⁰⁹

Regarding 'earned' income, Rawls suggests a proportionate consumption tax.¹¹⁰ This is surprising as a progressive income tax would be likely to generate more resources for the benefit of the worst-off, thus better meeting the difference principle.¹¹¹ However, Rawls thinks it would be better to create a "property owning democracy" in which all citizens have an ownership share in the means of production.¹¹² A society without a small elite with a grip on the economic levers will be one in which people can "manage their own affairs on a footing of a suitable degree of social and economic equality."¹¹³ As a result, the least advantaged would not receive aid on the basis of their misfortune, but rather in order to ensure they are equal participants in society. For Rawls, the welfare state, by contrast, encourages division within society.¹¹⁴

1.6 Criticisms of Rawls' difference principle

I will now explain why—borrowing terms from Clayton¹¹⁵—Dworkin's *ambition-sensitive* approach is preferable to Rawls' *interest-based* approach as the best interpretation of the starting assumptions set out above. An initial question to consider

¹⁰⁹ Rawls, *A Theory of Justice: Revised Edition* at 145-7, Rawls, *Justice as Fairness* at 161, John Stuart Mill, *Principles of Political Economy: Books IV and V* (London: Penguin, 1970).

¹¹⁰ Rawls advocates Phelps' mathematical attempt to derive an optimally just and efficient tax-rate at Rawls, *Justice as Fairness* at 123 fn44, Phelps, 'Taxation of Wage Income for Economic Justice', Reprinted in Edmund S. Phelps, *Economic Justice: Selected Readings* (Harmondsworth, Angleterre: Penguin, 1973) at ch 18.

¹¹¹ Barbara H. Fried, 'Why Proportionate Taxation?', in Joseph J. Thorndike and Dennis J. Jr. Ventry (eds.), *Tax Justice: The Ongoing Debate* (Washington, D.C.: Urban Institute Press, 2002), 149-92 at 174-6. I will discuss issues of tax policy in greater detail in chapters Five and Seven, and the tax-base in particular in sections 7.1-7.6.

¹¹² Rawls refers to the proposal as presented in J. E. Meade, *Efficiency, Equality, and the Ownership of Property* (London: G. Allen & Unwin, 1964) at 52-9. The idea of a property owning democracy, including its historical roots and possible non-Rawlsian bases is discussed in Thad Williamson, 'Realizing Property-Owning Democracy: A Twenty Year Strategy to Create an Egalitarian Distribution of Assets in the United States', in Martin O'Neill and Thad Williamson (eds.), *Property-Owning Democracy: Rawls and Beyond* (Malden, MA: Wiley-Blackwell, 2012), 225-48.

¹¹³ Rawls, *Justice as Fairness* at 139.

¹¹⁴ Rawls, *A Theory of Justice: Revised Edition* at 242, 45, Rawls, *Justice as Fairness* at 132-40.

¹¹⁵ Clayton, *Justice and Legitimacy in Upbringing* at 28.

is what role the original position plays in determining the just outcome. One possibility is that the original position device *produces the just outcome because it is the correct procedure*, while alternatively it could be the *procedure that best interprets the underlying requirements*.¹¹⁶ Since I have begun from specific starting assumptions, and because any procedure would need to follow from these anyway, I will focus on the latter question; whether the original position is superior to the resource-equal approach at meeting the starting assumptions.

Rawls' difference principle insists that inequalities are justified to the extent that they benefit the worst-off. This is because those in the original position would not know their attitude to risk. In such a situation, the rational action is to act conservatively and to ensure that they are as well-off as possible if they are in the worst situation. However, determining who is worst-off is a difficult undertaking. Once the worst-off *individual* has been helped they will no longer be the worst-off individual, and the ensuing policies would not target the broad sources of inequality—such as economic class division within a market society. Rawls therefore focuses on the idea of the worst-off *group*,¹¹⁷ but while this helps in some respects it creates alternative problems. For one thing, the advantage of a group is difficult to calculate; it could be the position of the median member or the mean. These averages would ignore the position of the *worst-off members of that group*, despite the fact that Rawls is motivated by the principle of the separateness of persons and the conservative response to risk.¹¹⁸ There are further problems concerning the *delineation* of the groups; who is to determine how to allocate people to groups? As I indicated in the previous section, Rawls would

¹¹⁶ Dworkin discusses the role of the original position in Ronald Dworkin, 'The Original Position', *University of Chicago Law Review*, 40/3 (1973), 500-33, Reprinted in Norman Daniels, *Reading Rawls* (Oxford: Blackwell, 1975), Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977) at Ch 6: "Justice and Rights".

¹¹⁷ Rawls, *A Theory of Justice: Revised Edition* at 80, 83-4. Rawls also excludes those who have 'physical needs and capacities outside the normal range' Rawls, *A Theory of Justice: Revised Edition* at 83. This too is problematic for limiting the ability of the theory to deal with difficult cases, as shown in , Dworkin, *Sovereign Virtue* at 113, Clayton, *Justice and Legitimacy in Upbringing* at 30-1.

¹¹⁸ Rawls, *A Theory of Justice: Revised Edition* at 24, 163-5.

determine groups based upon the *primary goods* held by members of society. I will return to this grouping below.

As well as concerns about the composition of groups, Rawlsians need to justify the thickness of the veil of ignorance on the interest-based approach. Equality of resources asks people what they would choose from a hypothetically equal position, where the circumstances of one's own health, social class and market luck are unknown. In addition to these, Rawls' veil *also excludes* all information about the values, plans and preferences of the contractors.¹¹⁹ It is not clear what justifies this additional restriction on knowledge and how it makes the principles that follow any more just; the attitudes and goals a person has do not have any obvious bearing on the injustice of their putative situation. Furthermore, Rawls does not provide adequate justification as to why the contractors would choose the most conservative possible principles.¹²⁰ According to Rawls, the contractors would not be concerned with probabilities, and with the level of resources they could obtain 'above the minimum.'¹²¹ However, this assumes that contractors would focus on the worst-off group *irrespective* of the cost to the plans of the rest of society.¹²² Excluding knowledge of actual plans, probabilities, and attitudes to risk, are significant restrictions on contractors. It is not clear how these restrictions help to treat persons as equals. The thinner veil utilised by equality of resources, on the other hand, more accurately reflects the individuals of the society; it shows equal concern for all members as it is based upon their actual values—allowing

¹¹⁹ Ibid. at 118.

¹²⁰ Rawls presents three reasons, Ibid. at 134-5. These can be summarized as 1) that contractors would take no account of likelihood 2) a contractor would have a presumed conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend 3) the rejected alternatives have outcomes that one can hardly accept. These were savaged in early criticism of *A Theory of Justice*; Brian Barry, *The Liberal Theory of Justice; a Critical Examination of the Principal Doctrines in a Theory of Justice by John Rawls* (Oxford: Clarendon Press, 1973) at Ch 9, Thomas Nagel, 'Rawls on Justice', *The Philosophical Review*, 82/2 (1973), 220-34 at 230-1.

¹²¹ Rawls, *A Theory of Justice: Revised Edition* at 134.

¹²² Though Rawls seems to think the problem is limited because of his questionable suggestion of *chain connection* that links all groups; Ibid. at 69-72. This is described as Panglossian in its optimism in Barry, *The Liberal Theory of Justice; a Critical Examination of the Principal Doctrines in a Theory of Justice by John Rawls* at 110.

people to take risks in accordance with the *actual ambitions* that they have.¹²³ One Rawlsian worry about the thinner veil might be that people would choose to restrict the use of resources if they knew their particular theory of the good; for example for militant atheists to stop the building of temples. However, such restrictions are ruled out by equality of resources as they would violate the principle of abstraction required to calculate equal opportunity costs.

The third starting assumption is special responsibility, and equality of resources has a clear advantage in this issue. Firstly, as I mentioned above, the worst-off group according to the difference principle is the one with the fewest resources. However, the amount of resources—or primary goods—that an individual has at a particular point in time will depend upon his *choices* as well as his relative fortune.¹²⁴ Remembering the examples above,¹²⁵ Adrian has more resources than Bruce after several years because he worked his land while Bruce used his for tennis. If Bruce is judged to be in the worst-off group on account of his choices, then the society should apparently transfer resources from Adrian to Bruce as a member of the worst-off group. However, this would ignore the liability responsibility that people have for the choices they make regarding their resources and that people should pay the costs of these choices to others. This can be related to the discussion of equal concern in the previous paragraph; overriding Adrian's choices and subsidising Bruce's displays unequal concern for Adrian and Bruce. The focus on primary goods and the use of this measure to determine the worst-off group therefore renders Rawls' approach less responsibility-sensitive than equality of resources.¹²⁶ In addition, secondly, Rawls'

¹²³ Dworkin, *Sovereign Virtue* at 113-4, Dworkin, *Is Democracy Possible Here?* at 103.

¹²⁴ Dworkin, *Sovereign Virtue* at 116-7, Dworkin, *Is Democracy Possible Here?* at 103-4.

¹²⁵ Page 29.

¹²⁶ A Rawlsian response here—suggested to me by Liam Shields—might be to point out that the Rawlsian procedure is for the rules of society, which can include liability rules. These will hold people responsible to the extent that holding people responsible for their costs will assist the worst-off group. While this would allow for some degree of responsibility within Rawlsian institutions, and perhaps brings the institutional implications of the difference principle and equality of resources

prescription of a Property-Owning-Democracy would also appear to overrule assignment responsibility, by restricting the form of property that citizens receive, and also the options available to them.¹²⁷

1.7 Freeman's challenge to market-based egalitarianism

Equality of resources utilises the idea of a market in order to determine when resources are equal. Other resource-based egalitarians, such as Rawls, would accept market institutions, but would not make use of the market to determine equal shares. I will now consider the response to Dworkin provided by Rawlsian scholar Samuel Freeman.¹²⁸

Freeman finds the policy implications Dworkin's theory attractive, and highlights that many egalitarians would accept market institutions.¹²⁹ However, Freeman challenges

much closer together, it does not build liability responsibility into the theoretical structure in the way it is for equality of resources.

¹²⁷ The worry here is that ensuring that all members of society have a property stake in their society would require the distribution of resources of particular kinds (such as shares and housing subsidies), and to limit citizens in their ability to dispose of these resources in accordance with their plans. A suggestion for the implementation of a Property-Owning-Democracy is presented in Williamson, 'Realizing Property-Owning Democracy: A Twenty Year Strategy to Create an Egalitarian Distribution of Assets in the United States'. This proposal attempts a reasonable compromise between equality and assignment-responsibility, since those who do not use their allotted funds in the prescribed manner will be able to access them as cash after ten or twenty years.

However, generally speaking, this still contradicts Dworkin's principle of abstraction which implies that citizens should have the maximum amount of choice regarding their resources. I do accept, however, that there may be justifiable restrictions of a similar nature—such as mandatory pensions savings—on the basis of inoffensive *volitional* paternalist arguments, Dworkin, *Sovereign Virtue* at 217. Dworkin also discusses paternalism in Dworkin, *Justice for Hedgehogs* at 361-2. With regard to pensions, this could perhaps be done by drawing on some of the points discussed in Joseph Heath, 'The Benefits of Cooperation', *Philosophy and Public Affairs*, 34/4 (2006), 313-51 at 346-7.

¹²⁸ Freeman is a former student of Rawls who has written biographical information on him as part of an exposition of his philosophy, Samuel Freeman, *Rawls* (New York: Routledge, 2007) at Ch 1. Freeman has also edited collections of Rawls' work, such as John Rawls, *Collected Papers* (Cambridge, Mass.: Harvard University Press, 1999).

¹²⁹ Freeman compares Dworkin's proposal to that of G.A. Cohen, who argues that it is acceptable to use the market to determine prices and costs, but that no one should be able to earn more than others unless they themselves take on an unusual burden. This would rule-out "rentier" market income on rare skills, talents or investments. See Samuel Freeman, 'Equality of Resources, Market Luck, and the Justification of Adjusted Market Distributions', *Boston University Law Review*, 90/2 (2010), 921-48 at 923, G.A. Cohen, *Rescuing Justice and Equality* (Cambridge, Mass: Harvard University Press, 2008) at 181.

Dworkin on his utilisation of markets at a fundamental level in his theory.¹³⁰ He argues that it is not possible to utilise markets to calculate distributive shares without falling back on a prior theory of justice—such as that of Rawls. Another way to express this is that Freeman challenges Dworkin on the issue of baseline, the point from which the theory—and Dworkin’s market process—begins. Freeman highlights that a baseline is necessary to work out opportunity costs. For Freeman the baseline should be justified by a theory of justice such as Rawls’ difference principle. He suggests Dworkin’s responsibility principle cannot justify a baseline that does not rest upon a further theory. Since Dworkin does not utilise such a theory, Freeman concludes the justification for equality of resources is circular.¹³¹ I will explain how Freeman reaches this conclusion, and then clarify market-based egalitarianism in order to show it is not circular.

Freeman presents what he takes to be the potential reasons Dworkin could use to justify the use of the market in determining his theory. Since Dworkin rejects *laissez-faire* and libertarianism, these cannot provide justification for the baseline conditions from which to work out opportunity costs.¹³² Nor can Dworkin rely on economic reasoning to justify responsibility for opportunity costs. The price of someone’s time is

¹³⁰ Freeman points out that the market can be used to determine a) an efficient allocation of productive resources or “factors of production,” b) efficient pricing of consumer goods, and c) how much of the social product that different individuals themselves receive: Freeman, 'Equality of Resources, Market Luck, and the Justification of Adjusted Market Distributions', at 929. Freeman correctly states that it is possible for the third of these to operate independently from the first two—a rather extreme example of this, which I will discuss in section 3.3, is presented in Joseph Caren, *Equality, Moral Incentives, and the Market* (Chicago: University of Chicago Press, 1981). Freeman then seeks to uncover Dworkin’s motivation for his use of the market on the assumption that this is independent of good reasons to use market institutions for the purposes of a) and b). Put differently, paying the market value of the opportunity costs of one’s consumption choices need not imply that one should be considered responsible for one’s market *income*; Freeman, 'Equality of Resources, Market Luck, and the Justification of Adjusted Market Distributions', at 930.

¹³¹ Freeman, 'Equality of Resources, Market Luck, and the Justification of Adjusted Market Distributions'.

¹³² *Ibid.* at 939-40.

determined by marginal factors and does not indicate its true value in any sense.¹³³ Furthermore, people who gain an income through investment do not contribute to society in the same way that those who work for low-pay.¹³⁴ Their capital makes a contribution to production, but they themselves do not do anything other than abstain from consuming what is legally theirs to consume. However, this abstinence is only of a legalistic form,¹³⁵ and theories of justice apply at a pre-legal level which would then justify legal institutions and rules.¹³⁶ Dworkin cannot utilise these contentious theories to justify his use of market prices.

Dworkin's position is that people should be held responsible for the opportunity costs of their choices and actions, and that these costs should be worked out by reference to the market. Freeman thinks is circular; how is it possible to calculate opportunity costs in the abstract? For Freeman, the obvious solution is to calculate opportunity costs in a pre-existing institutional setting with property rights and a market. These institutions require justification, however, and indicated above this must come from the theory of justice.

Freeman argues that Dworkin's justification comes from the requirement to hold people responsible for the opportunity costs of their choices. This appears simply to take us back to the beginning; the institutions necessary to work out opportunity costs have been justified on the basis that they enable us to work out opportunity costs, even though opportunity costs can only be worked out in a particular institutional

¹³³ Ibid. at 934-5. The issue of whether there is a true sense of economic value, such as that provided by Marx in his labour theory of value, is a complex one that it is not necessary to go into here.

¹³⁴ Ibid. at 935.

¹³⁵ Ibid. at 936-8. For a description of abstinence-based theories of interest or investment-return in the history of economic theory, see Mark Blaug, *Economic Theory in Retrospect: Fifth Edition* (Cambridge: Cambridge Univ. Press, 1999) at 180-8, 230, 480-9.

¹³⁶ Freeman, 'Equality of Resources, Market Luck, and the Justification of Adjusted Market Distributions', at 938-9. For Freeman it would be according to the difference principle, on the basis that allowing investors to receive x per cent of investment income would improve the economy in ways that benefit the worst-off. Of course, in addition, 100 minus x per cent is available for government spending, which should also benefit the worst-off.

setting, which is justified in terms of equal concern through the requirement that people pay their opportunity costs. As indicated above, it is not possible to break this circularity with a libertarian theory, or based upon the nature of markets themselves.¹³⁷ However, this is not the basis of resource egalitarianism.

The baseline institutions for Dworkin are those which will determine *true opportunity costs*, as I explained in section 1.3. This is not a libertarian baseline, but it shares certain features with the libertarian view,¹³⁸ being a rights-based entitlement theory, albeit one with a less restrictive starting requirement. So where Freeman correctly characterises libertarianism as requiring ‘absolute property rights and unconstrained freedom of property,’¹³⁹ he does not see equality of resources as presenting a view in which property rights are crucial though not absolute. In fact, equality of resources can be characterised by the statement that there is *assumed* freedom of contract unless there is a good reason otherwise. The notion of true opportunity costs is therefore *not* justified by the value of markets or market values, but rather that everyone should be in as equal—by which is also meant neutral—a position as possible to make choices and face the costs of these choices to one another as determined by this maximally neutral position.¹⁴⁰

I explained in section 1.3 that the *true opportunity cost* baseline at which to apply market forces allows each person assignment responsibility over their lives, and holds them liable for the costs of that life to others as determined in the most fair and equal possible fashion. The argument is not that markets hold people responsible, but that true opportunity costs would ensure that people could determine how to live their lives in a way that will fairly hold them responsible for the costs of that life to others. This

¹³⁷ Freeman spends much of his article considering possible arguments of this last sort; *Ibid.* at 933-9.

¹³⁸ Equality of resources allows state interventions in markets and transactions to correct for market imperfections, and in line with hypothetical insurance decisions, see page 36-7.

¹³⁹ Freeman, 'Equality of Resources, Market Luck, and the Justification of Adjusted Market Distributions', at 943.

¹⁴⁰ See above, 51.

baseline best meets the principles which a theory of justice requires, whether or not it is a theory of justice as Freeman understands it. Freeman's mistake is in taking Dworkin to be more of a Rawlsian than in fact he is.¹⁴¹ Equality of resources is not a theory of justice in the same way as Rawls', which justifies institutions based upon principles that are the outcomes of the theory. Whether equality of resources has the same form and structure as other theories of justice is irrelevant to this work as what matters is that it is the best available instantiation of the starting principles.

The purpose of equality of resources is not to elevate the role of the market, but rather to develop a theory that *avoids* the use of any prior outcome-based theory of justice or valuation in working out distributive shares.¹⁴² This is Dworkin's point in his short response to Freeman;¹⁴³ to attempt to use a theory of justice will impose a particular ideal metric for use in determining equal concern¹⁴⁴ or to indicate individuals or groups who should be the primary beneficiary from society (in Rawls' case, the worst-off).¹⁴⁵ Regarding the difference principle, those who are not in the worst-off group can complain that the institutions of society are designed for the benefit of a specified group of which they are not a part, and for reasons that they would not have accepted from a hypothetically equal position. True opportunity costs, in comparison, is an attempt to imagine as *neutral and equal* as possible a position from which people can

¹⁴¹ Freeman, 'Equality of Resources, Market Luck, and the Justification of Adjusted Market Distributions', at 945-6, fn80. However, Dworkin distinguishes, as libertarians would not, between a political settlement and individual transactions, Dworkin, *Justice for Hedgehogs* at 353.

¹⁴² I repeat this point in section 4.6.

¹⁴³ Dworkin's response to Freeman can be found in Ronald Dworkin, 'Response', *Boston University Law Review*, 90/2 (2010), 1059-87 at 1081-2, it is reprinted in Dworkin, *Justice for Hedgehogs* at 479 en10.

¹⁴⁴ I will defend the resource metric against welfare and capability alternatives in the following chapter.

¹⁴⁵ Dworkin, 'Response', at 479, en10, Dworkin, *Justice for Hedgehogs*.

value resources.¹⁴⁶ To bring in a prior theory of justice will either violate the equality or neutrality of the starting point, or both.

As with the libertarian view, resource egalitarianism has a presumption that people should be free to make any transaction they desire. However, as I indicated above, this freedom is not absolute. The free choices and activities of individuals can be interrupted, but only for reasons which would ensure the fair and neutral working of the market itself, or for reasons they themselves would accept *ex-ante*.¹⁴⁷ Equality of resources may not count as a full theory of justice on Freeman's reckoning, but it is still a better instantiation of the starting principles set out in section 1.1. It does not rely on actual market institutions or the abstract fairness of market outcomes. Instead, it utilises the market in order to determine equal opportunity costs, which then determines equal shares and equal concern.

1.8 Heath's challenge

I have responded to Freeman's claim that market responsibility can only be determined *after* the introduction of an external theory of justice. I argued that markets are necessary to hold people liable for the costs their choices, and for Dworkin's baseline of true opportunity costs as a basis of neutral choice. I will now consider another recent

¹⁴⁶ There is, of course, room for argument about whether Dworkin's proposal for the true opportunity cost baseline is the most neutral and equal one imaginable, an issue which is discussed the following section.

¹⁴⁷ These transactions are not sacrosanct in the way that they are for libertarians. However, interfering with such transactions for the sake of the difference principle, or a socialist ideal of justice, is ruled out. The important difference is that *ex ante* hypothetical insurance decisions would, of necessity, be *continuous* with the values and desires of the individual, while ideals of just distributions are not. Dworkin, *Sovereign Virtue* at 268-72, Dworkin, 'Foundations of Liberal Equality', Williams, 'Equality for the Ambitious'. If all parties agreed that a particular distribution was crucially important, then they may wish to attempt to get closer to this through their private actions and agreements, for example by making an additional donation to the state or charity.

A *discontinuous* approach—one that did not fit in with the ethical ideals of those to whom it applies—would fail to show equal concern to all, and would violate the requirement of anti-perfectionism. The Rawlsian ideal is that institutions should be prejudiced towards the worst-off, whether or not the worst-off would have accepted such prejudice *ex ante*. However, the *ex ante* approach allows people to choose for themselves what risks they wish to take in order to benefit themselves if they are among the worst-off. I will discuss this advantage of the *ex ante* approach in more detail in Chapter Four.

criticism of equality of resources provided by Joseph Heath. Like Freeman, Heath argues that it is possible to determine equality without utilising the market. However, instead of suggesting that another theory of justice is necessary in order to calculate just market prices, Heath criticises markets on a more fundamental level and proposes that an alternative approach would better fit with the envy-freeness ideal underlying equality of resources. The argument I gave in response to Freeman—that the aim of true opportunity costs is to provide as neutral as possible a basis from which people can make choices and pay the costs of those choices to the plans of others—is not an adequate response to Heath as he accepts the ideal of envy-freeness.

Joseph Heath challenged equality of resources as part of his complaint about a *catallactic bias* within contemporary political philosophy.¹⁴⁸ Heath is sympathetic to

¹⁴⁸ By this he means a bias towards market trades and solely gains of this kind. Heath claims that this focus on gains from trade ignores other types of cooperative benefit, such as economies of scale, risk pooling, self-binding and information transmission; Heath, 'The Benefits of Cooperation', at 319-28. Heath argues that social cooperation within society creates benefits that are overlooked as a realm of distributive justice. This is relevant because political philosophers tend to see the benefits of social cooperation as that which should be shared out according to the requirements of distributive justice, such as Rawls, *A Theory of Justice: Revised Edition* at 4. The problem here, for Heath, is that the activities of the state seem to be limited to redistribution for the purpose of efficiency. However, Heath suggests that the state also needs to provide and/or share out other benefits that are only available through cooperation; such as the provision of a social safety net in the case of risk-pooling, and the provision of national statistics and certification in order to ensure reliable information transmission.

I do not dispute that society produces more for its members than the “catallactic” benefits from trade. However, equality of resources is not explicitly organised around the distribution of gains from trade. This may be a crucial part of other liberal egalitarian theories, perhaps such as that of Rawls, but it does not play an obviously crucial role for Dworkin. The implication of Heath’s view seems to be that there are other gains from society that might not be shared out equally; or that certain sections of society—presumably the wealthy—may be able to garner an unequal share of these advantages. In response to this I would point out that it may be possible for hypothetical-insurance-based taxation decisions to take account of any greater ease that some section of society has in benefitting from society. This is certainly not dismissed as a non-trade-related-gain. Where it is not possible to tax or otherwise utilise these benefits, it is not clear that any rival theory could take account of them either.

Nevertheless, there remains the claim that equality of resources is unable to justify the distribution of other forms of benefit that society can provide, and thus would insist that these forms of social benefit should not be provided or should be left within the

resource egalitarianism, and highlights that since the ideas of envy-freeness and “superfairness” have been discovered and rediscovered so many times they must be compelling.¹⁴⁹ He writes that ‘the envy-freeness principle is very closely tied to the very simple and attractive idea that a just cooperative arrangement must be one that is acceptable to all.’¹⁵⁰ This is indeed one way to look at it, but I will argue there is a further justification for the envy freeness standard—and of the integral place of private property and the market in distributive justice.

Heath explains the economics of envy-freeness, and demonstrates that there can be multiple “superfair” envy-free solutions, using the economic tools of an Edgeworth box and indifference curves,¹⁵¹ as depicted in figure 1-1.¹⁵² An envy-free situation, as I have said, is one in which nobody prefers the resources held by any other to their own—

purview of private interests. I think that this is untrue, however. For one thing, equality of resources would support intervention in *laissez-faire* markets that would reduce imperfections, perhaps including the collection and dissemination of information such that everyone is in a fair position to be held reasonably responsible for their decisions. This would justify state provision of information for the benefit of all. Second, it is also not the case that hypothetical insurance decisions are limited to the provision of compensatory resources to individuals. Hypothetical insurance decisions may be more reasonable if they offer instead of compensation the use of public facilities or the provision of national services. These would have to be justified on a case-by-case basis, but they would take into account the factors that Heath claims are ignored by equality of resources. One example would be that the provision of a universal pension may be a sensible hypothetical insurance option in order to provide valuable security and avoid invidious comparisons.

¹⁴⁹ Joseph Heath, 'Dworkin's Auction', *Politics, Philosophy & Economics*, 3/3 (2004), 313-35 at 314-5. He points out that Hobbes appears to utilise the idea in Thomas Hobbes, *Leviathan* (Harmondsworth, Eng.: Penguin, 1986 [1651]).

¹⁵⁰ Heath, 'Dworkin's Auction', at 316.

¹⁵¹ *Ibid.* at 317-20.

¹⁵² This is taken from Heath (319). The point *a* illustrates that the distribution of commodities could be such that Person 1 has (10, 3) and Person 2 has (40, 7) (in this case, Person 2 would be much better-off than Person 1). The dashed lines are the indifference curves, which indicate the preferences of each Person for the two commodities. Point *e* is the point at which both have an equal amount of both commodities, at which there will by definition be no envy. Dworkin's equal auction may result in a move from point *e* to point *p*. The curved lines running through point *e* are the no-envy lines for each Person. The shaded area with an “S” is the superfair region, in which both parties will prefer their bundle to that of the other. There will not always be such a region, and in a complex economy with many persons and many commodities it is hard to believe the multi-dimensional region would be more than tiny.

they are indifferent. *Superfairness* refers to a situation in which everyone actually prefers their resources to those of everyone else.¹⁵³

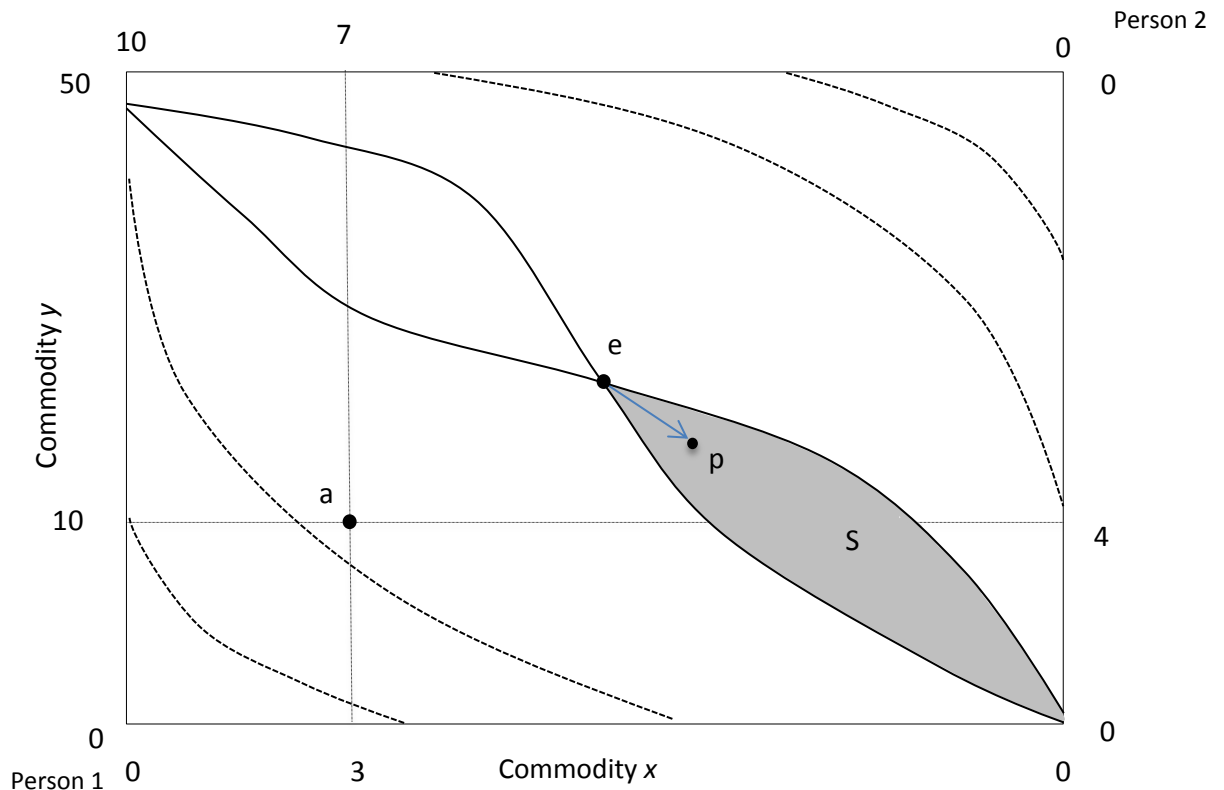


Figure 1-1: Edgeworth box showing the envy-free lines (through point *e*) fair and superfair region.

Heath argues that the existence of multiple envy-free solutions implies the need for further principles, in order to determine the best—or better—among the superfair solutions.¹⁵⁴ Heath acknowledges that the most obvious is the Pareto-efficiency standard, which converts an envy-free starting position into a more efficient envy-free position. This is the process that Dworkin uses and which Heath takes to be his justification for the use of the market. In order to understand this process of efficient trading, Heath suggests we require reference to the Second Fundamental Theorem of Welfare Economics, which is that ‘every Pareto optimal allocation can be the equilibrium outcome of a competitive market, given some initial allocation of goods

¹⁵³ Baumol and Fischer, *Superfairness : Applications and Theory* at 19.

¹⁵⁴ Baumol indicates that it is unlikely that there will be a unique solution in most cases.

and resources. This shows that there is no conflict in principle between equality and the exchange of goods.¹⁵⁵ This allows us to move within the Edgeworth box from an equal allocation—*e*—to an *efficient equal* allocation—*p*, as depicted in figure 1.1.¹⁵⁶

Heath's most relevant criticism¹⁵⁷ is that the auction is not the only means to achieving an envy-free solution, and it is not the best. Indeed, there are many possible envy-free solutions, a point familiar to readers of Dworkin who highlights that the auctioneer could convert all of the resources of the island into wine and eggs and still produce an envy-free result.¹⁵⁸ The Dworkinian auction with equal counters helps to maintain and improve a pre-existing envy-free outcome based on equal counters. Heath takes Dworkin's purpose to be determining the best envy-free approach, and argues that some will prefer an alternative envy-free solution to that produced by an equal auction.¹⁵⁹ I imagine that he has in mind the sort of situation that I will describe between Mike and Mavis. Mike trades some of his sugar with Mavis for her whiskey such that both consider themselves better-off than they did previously—compared to each other and to their previous situation. However, while Mavis only has a slight preference for the post-trade situation, Mike feels he is much better-off.¹⁶⁰ However, there were other trades of sugar and whiskey which Mike would have still considered worth making, which would have been superfair. Within the range of superfair outcomes, the chosen rate of trade appears better for Mike than Mavis, given that he would have happily accepted less if more were unavailable. According to Heath, there are no grounds within Dworkin's market-based approach to conclude that any of these

¹⁵⁵ Heath, 'Dworkin's Auction', at 322.

¹⁵⁶ *Ibid.* at 323.

¹⁵⁷ I have picked out three other criticisms from Heath, which I think rest on a mistake. I will discuss these in footnote 171. Heath makes a further point that Dworkin's position, since it invokes the Second Theorem, can be re-characterised in welfarist terms, and that—if so—it would have some problematic counterintuitive outcomes, *Ibid.* at 331. This relates to the criticism by Roemer and others, which I discuss in section 4.9.

¹⁵⁸ Dworkin, *Sovereign Virtue* at 67.

¹⁵⁹ Heath, 'Dworkin's Auction', at 324-5.

¹⁶⁰ This could be accounted for economically in terms of a consumer surplus, but such comparisons are irrelevant to the envy-freeness approach.

superfair outcomes are fairer than another, and Heath proposes an alternative non-market process that he thinks would be able to make such distinctions.

Heath does not offer much by explanation of his procedure, but he references a section of Baumol's book which describes *sequential superfairness*.¹⁶¹ Baumol suggests sequential applications of the superfairness approach in order to determine outcomes that are "more superfair" than others.¹⁶² This procedure works by taking the each party's *preferred* superfair solution and using that as the two opposite corners of a smaller sub-region of the superfair region. The superfairness approach would then be applied within this smaller region, and this procedure could be repeated again. This multi-stage recursive process may not produce a single solution, but it might reach a limit point.¹⁶³ This is an alternative to the auction procedure, which challenges equality of resources because it is a resource-based proposal which does not utilise the market. Indeed, Heath goes so far as to say that a 'recursive application of the envy-freeness standard' would be more consistent with Dworkin's 'insistence upon a monistic conception of equality.'¹⁶⁴ If Heath is correct, it would appear that the market has a much less prominent role in resource equality than Dworkin makes out.

The problem with Heath's argument is that he overlooks the reasons Dworkin offers for taking a market approach. Heath appears to focus solely on Dworkin's original presentation of equality of resources, before later embellishment and clarification, and he reads this as having presented the market as the only approach that provides a unique envy-free solution. Admittedly, Dworkin did present the market as the solution to the problems of unfairness due to arbitrariness and oversimplification in choosing between envy-free alternatives.¹⁶⁵ However, this is not the main reason for preferring

¹⁶¹ Baumol and Fischer, *Superfairness : Applications and Theory* at 64-70.

¹⁶² *Ibid.* at 65.

¹⁶³ Heath, 'Dworkin's Auction', at 325.

¹⁶⁴ *Ibid.* at 329. We might express this differently by suggesting that the approach better meets the anti-perfectionist starting principle, and the ideal of assignment responsibility.

¹⁶⁵ Dworkin, *Sovereign Virtue* at 68.

the market-based approach. If the main determinant of fair distributions were that they were envy-free and unique, then Heath would be correct that the sequential approach is a possible alternative which could be considered to be as good—if not better—than a market-based approach.¹⁶⁶

The question, therefore, is whether a market in which people pay the true opportunity costs of their resources is superior to sequential superfairness. I will therefore consider this approach. Heath does not mention that Baumol suggests that his proposal is ‘probably more pertinent for theory than for application,’ though Baumol suggested it could be useful for determining divorce settlements.¹⁶⁷ As a proposal to indicate how to distribute resources in the real world, then, it appears to be a non-starter;¹⁶⁸ Heath offers no further suggestions about how to utilise his alternative proposal. His point is therefore that the market is not the only possible way to calculate envy-freeness. This argument does not seem a problem for equality of resources, since equality of resources merely needs to claim that the market is the best known way of maintaining envy-freeness over time, and the only one known to be workable.¹⁶⁹

¹⁶⁶ Indeed, Dworkin wrote in his initial article that the market only enters as a tool for equality, and that it should be ‘abandoned or constrained...[if]...an entirely different theoretical or institutional device would do better.’ Ibid. at 112.

¹⁶⁷ Baumol and Fischer, *Superfairness : Applications and Theory* at 64, 65.

¹⁶⁸ One possible implication is that Heath thinks that sequential superfairness implies an ex post actual-envy-freeness approach, which I consider in section 4.6.

¹⁶⁹ Even if it is not practically viable, it is still worth noting that it is not apparent that the sequential approach would hold people responsible for their choices *over time* in the same way that markets can. It strikes me as akin to a patterned conception of justice, in that it is not guaranteed that the envy-freeness will be maintained once people begin to use and trade their resources. Nozick, *Anarchy, State, and Utopia* at 155-60. A year after the auction Bruce has less valuable resources than others because he has chosen not to produce what others value with his land and labour time. Equality of resources can justify the amount that Bruce has at this stage, but it is not clear how sequential superfairness could do so. It would have to distinguish between choices for which people should be held liable, and those for which they should not. An individual would then not be able to envy the consequences of choices made by others that were also available to her, but envy the choices of others that were not available to her. However, it is not clear how these consequences can be measured in non-market envy-free terms. Perhaps there is a way to do this, but neither Baumol nor Heath provide this, with Baumol explicitly suggesting sequential superfairness could only be applied to one-time-period problems such as divorce.

The auction is only one—illustrative—part of the theory of equality of resources. It is followed by people making decisions about what to do with those resources and bearing the costs of those actions. The principle of special responsibility therefore has a crucial role to play in the justification of the role of private property and the market, of which the auction stands as an illustration. Sequential superfairness might do well at producing an equal and anti-perfectionist outcome, but it may not be able to provide people with assignment responsibility over their lives, nor liability for the costs of their activities to others. Assignment responsibility implies property rights that allow people to use their equal share of resources as they see fit. I cannot see—and Heath does not explain—how it would be possible to apply his superfairness approach to the many choices that people make over time which impact upon the resources held by that individual and others.

As I mentioned in response to Freeman’s criticism, the ideal of determining true opportunity costs plays an important role in justifying the market approach, by providing as much neutrality as possible in the determination of prices by all.¹⁷⁰ Heath proceeds as if the reason for preferring the auction is that it provides Pareto-efficiency, when this is not the case.¹⁷¹ Heath does consider the ideal of true opportunity costs in

¹⁷⁰ The rest of Heath’s arguments rest on this point: that the only argument for the auction is that it offers increased efficiency rather than producing equality. It is this point to which Brown responds; Brown, *Ronald Dworkin’s Theory of Equality: Domestic and Global Perspectives* at 55. Brown highlights that the neutral auction device provides all members of society with an equal influence over the pricing in the auction. The strange thing about Brown’s argument here is that he defends the auction, but the auction itself is there to defend the market approach.

¹⁷¹ As I have said, Heath’s other arguments stem from this point. His first criticism is that equality is provided by the initial equal allocation, and that the auction mechanism merely turns this fair allocation into a more efficient “superfair” one. Heath suggests that the auction does not create equality, but rather preserves it, and thus only proves that equality and markets are compatible, not that they are linked. Heath, 'Dworkin’s Auction', at 325-9.

Heath’s second criticism builds upon the last. This is that while auctions would preserve an equal distribution in ideal theory, they do not do so in practice. In the real world, markets are not perfect and therefore the Second Fundamental Theorem does not hold, due to the general theory of the second best, R. G. Lipsey and Kelvin Lancaster, 'The General Theory of Second Best', *The Review of Economic Studies*, 24/1 (1956), 11-32. Lipsey and Lancaster use examples such international trade and domestic taxation to illustrate their point that if you have a situation in which one or more of the Pareto conditions for perfect markets does not hold, then instating others of them will often not produce the most efficient outcome. Instead, in such conditions it is necessary to attempt a second

an endnote,¹⁷² but only repeats his claim that the auction only increases the efficiency of the initially equal distribution. Heath goes on to acknowledge that the purpose of the auction, according to Dworkin, is to reduce the arbitrariness of division which would occur if an appointed auctioneer were to set the lots.¹⁷³ Heath argues that the baseline operating according to the principle of abstraction does not provide enough to ensure that people have an equal role in the determination of the bundles available, because 'it is entirely the choice of *e* [equal counters] as the initial allocation that equalizes roles.'¹⁷⁴ Heath's argument here is that auction does not itself 'influence the *form* that the resources take,' since Dworkin admits that if the available items were limited to eggs and old claret the person who hated these could not complain.¹⁷⁵

However, this is to mistake two fundamentally different cases. The egg and wine hater cannot complain in the case where the situation, or nature, or a fair society, has only provided eggs and wine. However, people can complain if their choice has been actively restricted to these commodities. The ideal of true opportunity costs is designed to enable people to make these decisions under the most neutral circumstances possible. The principle of abstraction is one way to ensure neutrality, as it should avoid arbitrariness. It states that people should be presumed to be free to make agreements without intervention except where this is designed to improve the generation of

best approach. shows that if one of the Pareto conditions of perfectly competitive markets is violated, then respecting the other Pareto conditions will not necessarily lead to the most efficient 'second best' outcome (Heath, 'Dworkin's Auction', at 324, 30-1.) Heath applies this point to say that an auction will not necessarily maintain an envy-free situation in real world conditions; applying an imperfect market to an envy-free situation may not result in an envy-free outcome. However, this only matters if we assume that the purpose of the auction is solely to achieve efficiency. As I have shown above, the justification for the auction is not based on efficiency but rather upon baseline conditions; without that assumption, these arguments holds no traction.

¹⁷² Heath, 'Dworkin's Auction', at 333 en13.

¹⁷³ Ibid. at 326.

¹⁷⁴ Ibid. at 327.

¹⁷⁵ Ibid. at 326. Referencing Dworkin, *Sovereign Virtue* at 69.

opportunity costs.¹⁷⁶ From the perspective of each individual approaching the market, nature and the preferences of others are taken as *external* to the pricing process, and each has to respond separately to these facts in order to set prices for all. There is no prejudice towards the preference of any one person or another.

Heath's arguments have not successfully shown that equality of resources fails to meet the three starting assumptions that I set out above. Using markets to calculate resources does not violate the requirement of equal concern, and I have argued that the purpose of true opportunity costs is to get as close as possible to that ideal. It is not apparent how Heath's interesting alternative would meet these requirements any better, particularly how any interpretation of it can hold people responsible for the costs of their choices to others *over time*. The potential existence of this alternative does not damage the case for utilising the market to determine equal opportunity costs.

1.9 Conclusion

This chapter has defended the claim that equality of resources satisfied my starting assumptions, and is better at doing so than its resource-based rivals. I began by setting out the three starting assumptions of equal concern, anti-perfectionism and special responsibility. I then presented equality of resources, explaining how it rests on, and elaborates a conception of distributive justice that builds on, these starting assumptions. In the second half of the chapter I presented alternative resource-based approaches and criticisms. The first alternative approach was Rawls' difference principle, which I argued showed neither as adequate a form of equal concern nor adequate assignment and liability responsibility. I then argued against Freeman's Rawlsian criticism of equality of resources that the market cannot do the job required of it. Joseph Heath also criticised the use of market in equality of resources and I

¹⁷⁶ See section 1.3 above and Dworkin, *Sovereign Virtue* at 149-58. This shows that Dworkin's arguments for the market do not rest on efficiency claims, though his initial presentation may have made that conclusion appear valid.

showed his concerns to be unfounded. Heath's alternative proposal would not obviously be able to hold people responsible for their choices and calculate the costs to others in an equal manner in the way that a market-based approach would be. In the following chapter I will consider egalitarian proposals that integrate *non*-resource-based comparisons between persons in their currency of justice.

Chapter 2 Welfare and Capability Metrics

In chapter one I presented equality of resources as the best approach to distributive justice, and defended it against critics who propose resource-based alternatives. I will now consider criticisms that propose that the resource-based metric is inadequate. The intuitive thought that motivates this criticism is that justice should be concerned with what fundamentally matters, and since resources only matter instrumentally, then resources cannot be the appropriate metric of justice. The first alternative metric I will consider, in sections 2.1-2.6, is welfare. The welfarist claim is that the achievement of welfare should play some part in our notion of justice. In the second half of the chapter, sections 2.7-2.11, I explain and counter the capability approach. I will argue that these alternative metrics violate one or more of the starting assumptions set out in chapter one, and that both violate the continuity test.

2.1 Equality of welfare and expensive tastes

The first alternative metric that I will consider is that of welfare. Philosophers, economists, and policy-makers have a history of focusing attention on welfare as the likely answer to the question of what makes a person's life go well.¹⁷⁷ Perhaps this is because it is clear that more welfare or happiness is always better than less or that happiness appears to accompany any good thing.¹⁷⁸ This led to the once dominant utilitarian—utility maximising—approach to moral and political philosophy.¹⁷⁹ The ideal of maximising the total or average amount of utility came under attack in the 1960s

¹⁷⁷ See footnotes 12 and 179.

¹⁷⁸ Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984) at 501.

¹⁷⁹ Famously expounded as the felicific calculus and principle of utility by Bentham, Bentham, *Selected Writings on Utilitarianism* at 87-93, 115-9. See footnote 12 above. A more refined version of ethical utilitarianism was presented by John Stuart Mill, *Utilitarianism, on Liberty, Considerations on Representative Government* (London: J.M. Dent, 1993) at 1-67. Perhaps the most comprehensive statement of Victorian utilitarianism is from Henry Sidgwick, *The Methods of Ethics* (6th edn.; London: MacMillan, 1901).

and 70s.¹⁸⁰ Rawls argued that idealized representatives of people would not choose utilitarianism in the original position because they would worry that they would be someone who would face poor prospects in order to maximise overall utility.¹⁸¹ I will not consider utilitarianism any further as I take it to be unattractive from an egalitarian perspective, though I will discuss the relationship between resource egalitarianism and utilitarianism in section 4.8.

Rawls' separateness-of-persons critique would not apply to an egalitarian theory which focuses on welfare as the appropriate metric.¹⁸² If welfare were equalised, then no-one could complain that she has not been shown equal concern. Indeed, economist Henry Simons made exactly this sort of argument that equality of welfare would be more appropriate than maximisation of welfare.¹⁸³ I will therefore consider equality of welfare as an obvious rival to equality of resources as an interpretation of equal concern.

Dworkin highlights that there is a difference between questions of what makes our lives go well, and that of what the distributive metric should be. The appropriate view for people to take of their lives might not coincide with the correct distributive metric, and so it is not sufficient to show that particular views of welfare are inappropriate for

¹⁸⁰ Probably most notably from Rawls, Robert Nozick, and Bernard Williams; Nozick, *Anarchy, State, and Utopia* at 42-5, John J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge UP, 1985) at 94-99.

¹⁸¹ Rawls, *A Theory of Justice: Revised Edition* at 144-53. I explained Rawls' approach above, in section 1.5.

¹⁸² G.A. Cohen refers to this as the *equalisandum*, that is, the thing to be equalized; G.A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics*, 99/4 (1989), 906-44 at 908.

¹⁸³ Henry Calvert Simons, *Personal Income Taxation : The Definition of Income as a Problem of Fiscal Policy* (Chicago, Ill.: University of Chicago Press, 1938) xi, 238 p. at 14. Simons makes use of an 'impartial spectator' argument, which has a long history of use in philosophy, as it has an important role in Adam Smith's moral philosophy; Adam Smith, *The Theory of Moral Sentiments* (London: A. Millar, and A. Kincaid and J. Bell, 1759) at 52-59. Sen uses the notion of the impartial spectator, and I will discuss his position in the second half of this chapter.

the former purpose.¹⁸⁴ I will briefly note some points about what might be meant by welfare before focusing on the latter, relevant question.

What might “welfare” mean? Various interpretations of welfare have been proposed as an answer to questions such as *what makes our life goes best?*¹⁸⁵ One is that of the *success* people achieve in obtaining what they desire.¹⁸⁶ A second approach to welfare is *hedonism*,¹⁸⁷ which is to focus on experiencing pleasure.¹⁸⁸ A third approach would endeavour to avoid the problems of the previous two subjective approaches by proposing an *objective* position.¹⁸⁹ These different interpretations of welfare are, of course, very different from one another. I have said that there is something appealing in the notion of welfare, but—as Dworkin points out—it is as a nebulous concept and loses some of its appeal once it is specified.¹⁹⁰

These views are problematic with regard to distributive justice since people would need to have an idea of the resources they would have in order to determine their

¹⁸⁴ Dworkin, *Sovereign Virtue* at 19-21.

¹⁸⁵ Parfit, *Reasons and Persons* at appendix I (p493-501).

¹⁸⁶ Dworkin, *Sovereign Virtue* at 21-42, 292-3. Dworkin considers several possible interpretations of this, and highlights the difficulty of each. The main problem with this approach, however, is that people have *personal* beliefs about what makes their life or the world as a whole go well and that it is wrong, if even possible, to compare these beliefs directly. Dworkin, *Sovereign Virtue* at 38. It is wrong because the only limit on a person’s notion of what it would be to achieve success is their imagination, and it would therefore appear that those with greater imagination would receive greater resources than those with less. As a result, in order to be able to compare these beliefs in a sensible fashion it would be necessary to include a notion of *reasonable regret*, by which we can consider whether people’s beliefs about what success they should have are reasonable; Dworkin, *Sovereign Virtue* at 39. In order to determine reasonable desires for success, people would have to take account of expectations about themselves and their world, including what resources they have available. This would then require some prior notion of fair shares from which people would set their desires, which Dworkin argues would need to be equality of resources.

¹⁸⁷ This word usually refers to the attitude that people have in their lives, to seek pleasure, but can be applied as a possible governmental equalisandum.

¹⁸⁸ Dworkin argues that this would be a poor approach to one’s personal life, and that it seems unlikely that anyone would in fact be a “buzz addict,” organising their life with the sole goal of maximising their buzzes of enjoyment; Dworkin, *Sovereign Virtue* at 42-5, 291-2.

¹⁸⁹ *Ibid.* at 46-7. This would attempt to answer the question by specifying certain things that people should be concerned to obtain or achieve, even if they do not in fact desire to. The problem with this approach is that it is perfectionist—it specifies what should matter to people and judges their place in the distribution according to criteria that they do not themselves accept; Dworkin, *Sovereign Virtue* at 300.

¹⁹⁰ Dworkin, *Sovereign Virtue* at 285.

expectations. If people were to waste their resources, then it would be necessary to transfer resources from others to ensure that they were at the same welfare level. This means that an irresponsible use of resources by one person will make everyone else worse off.

Dworkin gives the example of Louis in a welfare-egalitarian society. Louis was initially given the resources he required in order to achieve the same level of welfare as everyone else. However, Louis then developed expensive tastes for rare items like Champagne, with the result that his resources no longer get him to the same level.¹⁹¹ The dilemma for the welfare egalitarian is whether to support the transfer of resources to Louis in order to return to welfare equality. One option is to pander to expensive tastes. However, everyone will then be worse-off as a result of Louis' new preference, as the new equal level of welfare will be lower than previously as it would be more expensive to obtain. This will of course include Louis, who will not be able to meet his new tastes as well as he could his earlier ones. Alternatively, if welfarists do not propose to support Louis then it would appear that they do not respect people's genuine development of preferences expensive or otherwise.

The problem in this case is that while Louis has assignment responsibility over his aims, he does not bear the full liability for them. By altering his tastes, Louis creates costs for society that are shared equally among all. Arguments such as this one led to the development of responsibility-sensitive welfare egalitarianism—equal *opportunities* for welfare—which I will describe in the following section, along with Dworkin's counter-argument. I will then (2.3) consider the strongest welfare-inclusive challenge to equality of resources—the brute taste challenge from G.A. Cohen. In section 2.3 I will also show how welfare considerations are included in the resourcist metric through hypothetical insurance decisions. There are two interpretations of Cohen's position; either as an argument for brute *preference* luck or brute *price* luck, and the latter is the

¹⁹¹ Ibid. at 49-50.

focus of sections 2.4 and 2.5. In section 2.6 I will summarise the reasons to prefer a resource-only metric to one that includes welfare.

2.2 Opportunity for welfare

In order to resolve the responsibility problem from the previous section, welfarists could propose that *opportunity for welfare* should be equalised, rather than welfare levels. This would seek to ensure that everyone in society is in a position where they can attain the specified equal level of welfare. So if someone has a genetic disability or poor upbringing which renders her less able to achieve the same welfare as others, then she would receive additional resources in order to render her equal in that regard. However, if she squanders those resources or additional opportunities then she should be held liability-responsible for squandering them. This is to insist that opportunity for welfare is itself a theory of fair shares. The fair shares are set according to people's ability to obtain the set amount of welfare, and people are responsible for what they do with those shares.¹⁹²

One problem with this view is that this appears to disallow redistribution to individuals whose preferences become more expensive; a strange move given that accounting for more expensive preferences appears to motivate the view. This is borne out in an example that parallels that of Louis, but to which we are more sympathetic.¹⁹³ Jude's initial ambitions in the welfare-equal society are cheap, and he is happy with his resources despite having fewer than others. However, upon reading Hemmingway, Jude decides to take up the challenging sport of bullfighting. Jude's resources are not sufficient to cover this expense, and he is unfulfilled. However, the resources he now requires are still no more than others receive.

¹⁹² Richard J. Arneson, 'Liberalism, Distributive Subjectivism, and Equal Opportunity for Welfare', *Philosophy and Public Affairs*, 19/2 (1990), 158-94 at 186, 92. See also Richard J. Arneson, 'Equality and Equal Opportunity for Welfare', *Philosophical Studies*, 56 (1989), 158-94 at 85-6, Cohen, 'On the Currency of Egalitarian Justice', at 916-7.

¹⁹³ Dworkin, *Sovereign Virtue* at 58.

The two cases have a similar structure, with the difference that Louis already had resources of average value to begin with while Jude had less than the average. Welfarists would have to choose to compensate Jude *and* Louis, in which case they pander to expensive tastes. Or they should reject Jude's claim on the basis that at some previous point in time he had cheap tastes and he chose to change his goals to pursue the more expensive pursuit of bullfighting. In order to explain the intuition that Jude should receive extra resources while Louis should not, we need to have a theory of fair shares, which would imply an underlying theory of equality of resources. Equality of resources provides all people with the same resource-based opportunities, allowing them to reconsider their tastes as they see fit without any redistributive implications. This fits in with the ideal that individuals have assignment responsibility over their tastes, and liability responsibility for the costs of their tastes.

Richard Arneson presents a possible reply to the case of Jude, which is that opportunity for welfare supporters can compensate Jude and not Louis if they distinguish between preferences that are fairly or voluntarily chosen and those that are not. They would then hold people responsible for preferences that they have chosen to cultivate themselves while allowing compensation for those that are not chosen.¹⁹⁴ However, there is clearly nothing wrong with a person intentionally changing their preferences¹⁹⁵ to make them more expensive.¹⁹⁶ The problem is that others bear the cost of this, which opportunity for welfare resolves. However, it does not then answer the case of Jude—if Jude deliberately changed his preferences then he would not be able to go to Spain, even though he has fewer resources than others and developed a genuine interest in something more expensive.

¹⁹⁴ Arneson, 'Liberalism, Distributive Subjectivism, and Equal Opportunity for Welfare', at 184-5.

¹⁹⁵ People may legitimately change their preferences in order to improve their theory of the good or notion of what matters in life.

¹⁹⁶ Cohen, 'On the Currency of Egalitarian Justice', at 923.

The case for a resource metric is well-expressed in the case of Jude. There is no reason why Jude should not develop his tastes as he sees fit and there is no reason why he should not be able to pursue those tastes if others would be so able. We would wish to limit Louis' resources because we would not want him to be able to do things that others cannot afford to do simply because he has more expensive preferences. Similarly, Jude should have the resources to be able to do what others can do, as long as he bears responsibility for the expense of the choice that he makes. This supports the envy-based approach to distributive justice taken by equality of resources.¹⁹⁷

2.3 Hypothetical insurance, welfare and bad preference luck

G.A. Cohen challenged equality of resources on the basis that it is actually the idea of *compensating bad luck* that renders the view attractive, rather than the ideal of equal resources and hypothetical insurance decisions.¹⁹⁸ Cohen argued that it is unnecessary to focus solely on resources as the equalisandum, and that it is possible to include welfare considerations. I will discuss Cohen's arguments in this section and discuss his notion of *bad preference luck*. However, Cohen later changed his position to one focusing on *bad price luck*, as I will explain in section 2.4. I will respond to Cohen's alternative view in section 2.5.¹⁹⁹ In this section I will consider the bad preference luck argument, and clarify that welfare considerations do have a place in equality of resources, but not as part of the metric.

The challenge of bad preference luck is that people may have less luck in their preferences, since they turn out to be expensive, and that people should receive

¹⁹⁷ Another way of putting this is that equality of opportunity for welfare requires three premises to hold simultaneously. These are; some notion of appropriate preferences for each person, a way to measure those appropriate preferences, and a way to ensure that each individual has an equal amount of preference satisfaction. It seems that it is only possible to avoid the—perfectionist—imposition of valuation on the latter two by insisting that people should have their resources restricted to those required to meet whatever preferences they happen to have at a specified time.

¹⁹⁸ Cohen, 'On the Currency of Egalitarian Justice', at 907, 08, 22.

¹⁹⁹ This way of characterising the disagreement—that Cohen is either accusing equality of resources of failing to respect people's *bad preference luck* or *bad price luck*—is from Dworkin, *Sovereign Virtue* at 285-99.

compensation for this misfortune. This is the basis on which it is possible to differentiate between Jude and Louis; if Jude has suffered from bad luck in the unintended formation of a new preference he would (possibly) be due compensation according to the opportunity for welfare view. One problem here is that it is not then clear how the “compensation for bad preferences” view is different from simple equality of welfare, since it is not then the existence of opportunities at a set point that matters, but the existence of opportunities at the initial point plus or minus any legitimate change in preferences later on.

Much of the confusion in the debate between resourcists and opportunity-for-welfarists has resulted from certain similarities between this approach and a feature of equality of resources. For example, Dworkin claims that someone who found tap water to be incredibly sour and undrinkable might have a claim for compensation according to equality of resources.²⁰⁰ This is because they could cite problems such as these as disabilities against which they would insure. Dworkin proposes a test for handicaps that may be considered preferences, which is whether or not someone would take a—side-effect free—pill in order to remove the preference.²⁰¹ If they would take the pill then their unwanted preference is unfortunate—an addiction—and a candidate for compensation according to hypothetical insurance.²⁰² However, if they would not take the pill then they obviously approve of their preference and they have no basis for compensation. This is true even if their preference was initially unchosen, such as the expensive tastes that some religious believers have for pilgrimages.

²⁰⁰ Ibid. at 288, Ronald Dworkin, 'Ronald Dworkin Replies', in Justine Burley (ed.), *Dworkin and His Critics : With Replies by Dworkin* (Malden, MA: Blackwell Pub., 2004) at 348. Cohen claims that this represents a consequential U-Turn by Dworkin, though it might be better considered a clarification of an issue that was not discussed in the initial formulation of equality of resources; G.A. Cohen, 'Expensive Tastes Rides Again', in Justine Burley (ed.), *Dworkin and His Critics : With Replies by Dworkin* (Malden, MA: Blackwell Pub., 2004) at 9, Dworkin, 'Ronald Dworkin Replies', at 347-8.

²⁰¹ Dworkin, 'Ronald Dworkin Replies', at 344-5.

²⁰² The compensation would almost certainly come in the form of free or subsidised addiction treatment, in order to avoid the moral hazard posed in such cases where people can self-certify.

We can understand this point in terms of that for which people should be deemed responsible. Cohen distinguishes according to whether or not tastes have been chosen in order to determine those for which people should be held responsible.²⁰³ He would provide compensation to anyone who did not act in ways that would lead to the cultivation of more expensive tastes. Dworkin, on the other hand, does *not* focus on the genesis of the tastes. Instead, he focuses on whether the individual would rather not have the taste.²⁰⁴ For Dworkin, one must take liability-responsibility for the cost of any taste that one affirms. This is because one has assignment responsibility for one's conception of the good, and for living out one's life in accordance with it. According to equality of resources, people are held responsible for the preferences they have and endorse, and for meeting them, no matter by what process those preferences came about.²⁰⁵

The hypothetical insurance device can therefore include welfare considerations, where preferences are disowned. However, it is important to make clear that this does not mean that welfare is part of the resourcist metric.²⁰⁶ People are able to value any welfare-related problem from which they may suffer according to the *resources* they would be willing to risk as an insurance premium. This means that welfare considerations come into play, to the extent that they matter to people when compared to other considerations. However, these comparisons between people are made in terms of resources, insured from a position of hypothetical equality. People have to consider their aversion to pain and their prospects of pleasure in this situation

²⁰³ For an attempt to decipher Cohen's position on the issue of responsibility, see T. M. Scanlon, 'Justice, Responsibility, and the Demands of Equality', in Christine Sypnowich (ed.), *The Egalitarian Conscience: Essays in Honour of G.A. Cohen* (Oxford: Oxford University Press, 2006), 70-87.

²⁰⁴ Dworkin, *Sovereign Virtue* at 294, Williams, 'Equality for the Ambitious', at 385. This is due to the notion of responsibility discussed in section 1.1.

²⁰⁵ It is this point that makes clear that equality of resources does not fall foul of the criticism levelled against it by M. Matravers, 'Responsibility, Luck and the 'Equality of What Debate'', *Political Studies*, 50 (2002), 558-72. This criticism is that luck egalitarianism is held hostage to problematic philosophical issues regarding responsibility, namely that tastes and theories of the good must have external sources since "no man is an island." However, the issue *does* apply to the other—properly luck egalitarian—views considered such as that of Cohen and Arneson in the first half of this chapter.

²⁰⁶ Williams, 'Equality for the Ambitious', at 383.

of equal resources. Welfare will not be equalized on the quite legitimate assumption that people will care about other matters rather than simply ensuring they achieve as high an amount of pleasure over their lives as possible.²⁰⁷ People cannot claim that their preferences are a form of bad luck, however, because if they did they would disown them. If they disowned them they would legitimately be liable for schooling themselves out of them or simply ignoring them and focusing instead on what matters to them more. Where unable to do so, due to addiction, people would be eligible for assistance.

2.4 Cohen's brute tastes

I have considered one argument from Cohen that *bad preference luck* actually does the attractive work in equality of resources. However, in a later work Cohen emphasised that his complaint was actually against what Dworkin refers to as *bad price-luck*.²⁰⁸ This means that, for Cohen, people can have a legitimate complaint in some circumstances that their self-affirmed tastes are more expensive than those of others. Cohen feels he can avoid the problems faced by other proponents of opportunity for welfare because his metric need not be welfare-based. Indeed, he proposes that what should matter is 'equality of access to advantage', which seeks to equalize opportunity not for 'welfare alone but for a vector which includes that, *and* resources, *and* need satisfaction, and, perhaps, other advantages.'²⁰⁹ I will set out what I take to be Cohen's position in this section, and respond to it in section 2.5.

²⁰⁷ I will discuss the issue of whether hypothetical insurance renders equality of resources the same as equality of welfare in section 4.9.

²⁰⁸ Cohen, 'Expensive Tastes Rides Again', Dworkin, 'Ronald Dworkin Replies', at 344. The confusion between them perhaps arises because they seek to answer different questions. Dworkin attempts to provide the correct institutional approach to justice whereby all members of a society are treated as equals. Cohen is more interested in uncovering what it would be for everyone in society to be equal, irrespective of whether it is possible or desirable to bring this about. Cohen thinks that distributive justice should be concerned with this abstract ideal of equality, presumably with the aim that this is brought about as well as possible given the real-world limitations and competing concerns; Cohen, 'Expensive Tastes Rides Again', at 9, 13, Cohen, *Rescuing Justice and Equality* at 87-91.

²⁰⁹ Cohen, 'Expensive Tastes Rides Again', at 19, Cohen, 'On the Currency of Egalitarian Justice', at 916-7, 20-1, G.A. Cohen, 'Equality of What? On Welfare, Goods and Capabilities', in Martha C.

For Cohen, someone suffers from bad luck if their preferences are more expensive to satisfy than others—assuming certain conditions—and those suffering from this form of bad luck should receive additional resources in order to satisfy those preferences. Cohen’s point is that people do not face the market on equal terms because some are luckier in the price of what they want than others are. If he is able to sustain this view it would undermine the fundamental role of the market in determining equality under equality of resources.²¹⁰ This is because markets respond to preferences as they are, ignoring this alleged form of misfortune; the market is then simply a ‘brute luck machine’.²¹¹ Cohen’s example of Fred and Paul illustrates his point. Fred finds fishing a rewarding hobby, which is cheap, while Paul enjoys photography, which requires expensive equipment.²¹² For Cohen, it is Paul’s misfortune that he does not like the cheaper activity, and equality of resources is unfair to him as it would not enable him to pursue his preferred hobby as easily as Fred can pursue his. According to Cohen, it would be necessary to provide subsidies to those who suffer from bad market luck. However, in practice it would be impractical to provide special, individualised subsidies. Subsidies would therefore have to take a more general form.²¹³ The example Cohen gives in several places is that of public libraries, which may spend more money on expensive arts books than the relatively low readership of arts books would appear to merit.²¹⁴ The need for these subsidies would undermine the claim of the market to deliver equality.

Cohen presents a ‘flagship statement’ of his view on luck, preferences and prices as follows. He would distinguish among ‘expensive tastes according to whether or not

Nussbaum and Amartya Sen (eds.), *The Quality of Life : Studies in Development Economics* (Oxford: Clarendon Press, 1993).

²¹⁰ Cohen, 'Expensive Tastes Rides Again', at 11.

²¹¹ *Ibid.* at 17.

²¹² Cohen, 'On the Currency of Egalitarian Justice', at 923. This example was invented in the late 1980s. With digital photography equipment, the difference between the cost of these past-times has no doubt reduced.

²¹³ Cohen, 'Expensive Tastes Rides Again', at 17.

²¹⁴ *Ibid.* at 10, 12, 17.

their bearers can reasonably be held responsible for the fact that their tastes are expensive. There are those that they could not have helped forming and/or could not now unform without violating their own judgment, and then there are those for whose cost, by contrast, they can be held responsible, because they could have forestalled their development, and/or because they could now quite readily unlearn them, without violating their own judgment.²¹⁵

Cohen can answer the examples of Louis and Jude as he does not take a solely welfare-based metric. Louis desired extra resources because he schooled himself into his desires either because he felt he should have more than others or because he felt he should enjoy the finer things in life, even if everyone would be worse-off as a result. Louis should be held responsible for his tastes if they were generated in these ways, as he knew they would require him to have a greater than equal share of resources if met.²¹⁶ By contrast, if Jude genuinely developed a more expensive preference then he should receive compensation as Cohen feels he was not using resources to which he could have potentially been entitled. Louis had more than a fair share of resources to begin, but Jude did not. This strikes me as something of a fudged job; Cohen can get around the problems of any given metric by appealing to the other when it suits him. He feels he can offer a vague metric as it only needs to be sufficient to undermine the use of the market to determine equality in equality of resources. In the remainder of this section I will attempt to reconstruct, to a degree, Cohen's position, by considering the examples he gives. Cohen does not specify the relationship between the several parts of his metric, but fortunately it is not necessary to do so for Cohen's purposes or

²¹⁵ Ibid. at 8.

²¹⁶ Cohen would be sympathetic to Louis' claim for additional resources if he did not choose to have these preferences—for example if he was raised to have them; Ibid. at 14.

mine. I will show that his examples gain any power that they have from the notion of *need*.²¹⁷ Indeed, Cohen asserts that need is an 'important element' in his view.²¹⁸

I will now consider the examples that Cohen gives in order to show how needs play an important role in them. I have already mentioned the example of Fred the fisherman and Paul the photographer. I contend that the example only has any traction if we assume that everyone has a need to have a fulfilling hobby and that Paul is therefore disadvantaged compared to Fred. The same might be said to apply to the library example also mentioned above; everyone should have access to the reading material that they might want, irrespective of cost differentials. This presumably arises because of an equal need for people to have access to the educative material they desire, or to follow leisure pursuits; where education and leisure count as fundamental needs.²¹⁹ The other examples Cohen gives are of food. Cohen describes Harry, who hates eggs but lives on an island on which eggs are the only cheap food.²²⁰ Cohen also asks whether he should be asked to pay the full price of figs to others if he does not like cheaper apples.²²¹ The power of these examples arises because of the need for food and sustenance. However, in these cases the unfortunate individuals *can* meet their needs for food at the same cost as others, but *only* if they suffer displeasure. They can avoid the displeasure only by taking resources that they might have used for their other needs or wants. Cohen's examples work by ring-fencing each need and specifying that everyone should have that need met as cheaply as possible given their reasonable requirements, which includes tastes. I will now express my concerns regarding Cohen's approach and arguments.

²¹⁷ Need is a concept that plays no role in equality of resources, except of course where hypothetical insurers would take account of what they consider to be their needs when considering policies.

²¹⁸ Cohen, 'Expensive Tastes Rides Again', at 17.

²¹⁹ Dworkin's response to the library example is that we would have different reasons to provide arts books, such as that they help achieve the public good of an educated citizenry, Ronald Dworkin, 'Ronald Dworkin Replies', *Ibid.* at 343.

²²⁰ G.A. Cohen, 'Expensive Tastes Rides Again', *Ibid.* at 8.

²²¹ *Ibid.* at 18.

2.5 Arguments against Cohen's welfare-inclusive view

I have expounded Cohen's metric of access to advantage, his view of responsibility, and his reliance on the notion of needs in his argument. His argument against equality of resources is that people have bad luck in the price of satisfying their preferences for things which they need, and that where this is the case they should receive a greater than equal share of resources in order to maintain equality. In this section I will argue that it is wrong to compensate people for their bad price luck. First of all, I will consider that bad price luck claims would violate the continuity test. I will then consider an alternative *Cohenian* continuity test and argue that this test is inferior to the resources-based continuity test.

I said above in response to the problem of *bad preference luck* that equality of resources implies that people should be held responsible for the true opportunity costs of their activities; for what is expressive of their personality and not simply their circumstances. This can be generalised into a test for disadvantages that are worthy of compensation—for which people should not be liable. This *continuity test* indicates the limits on the kind of compensation that people can request from others. According to this test, only claims that are continuous with one's ethical commitments are acceptable.²²² Paul the photographer's claim that he is disadvantaged by his expensive leisure pursuit is discontinuous with his beliefs. If Paul claims that he needs additional resources to meet his more expensive preferences he would need to claim that preference satisfaction is his aim in life.²²³ However, if he were *really* interested in preference satisfaction he would presumably want to make his preferences as cheap as possible. Instead, Paul wishes to claim that his particular preference is a disadvantage,

²²² Dworkin, *Sovereign Virtue* at 294-5, Williams, 'Equality for the Ambitious', at 387, Clayton, 'The Resources of Liberal Equality', Rasmus Sommer Hansen and Søren Flinch Midtgaard, 'Sinking Cohen's Flagship — or Why People with Expensive Tastes Should Not Be Compensated', *Journal of Applied Philosophy*, (2011), 1-14 at 4-5.

²²³ If he merely claimed that photography was his aim in life then this would not be an attractive basis for allotting resources; it violate the egalitarian and/or anti-perfectionist principles to focus resources on photographers.

while not accepting preference satisfaction as his aim in life. If it is continuous with his ethical beliefs, and he has assignment responsibility for his ethical beliefs, then it would be wrong to limit his liability-responsibility for the pursuit.

Complaints about resource inequalities do not fall foul of the continuity test because they do not involve any ethical commitments on the part of the parties involved; Jude can complain that he envies the resources of others in his society who could afford to go on holiday—to do what he wants to do—while he cannot. Jude is only claiming that he has fewer resources.

Cohen argues that people can regret the *price* of their preferences without rejecting those preferences. He therefore appears to be accepting the idea of a continuity test, but specifying it differently. I will now consider two alternative interpretations of the continuity test, both of which are suggested to me by his discussion. The first is suggested by Cohen in his response to the continuity test. This is that people should phrase their complaint not in terms of what they themselves count as important, but in terms of what is important *tout court*.²²⁴ This *tout court* continuity test would appear to be self-defeating, however, since it would appear to provide an external answer to questions of justice; why do we need to ask people what they envy about others if the answer is always in terms of what is taken to matter *tout court*?²²⁵ Such a test would give up on attempts to determine equality based upon the values and choices of each individual. Since it would require a notion of what matters it is perfectionist. After all, it would need to say what forms of welfare and needs matter and to what extent in order to determine whether the envy that someone has is legitimate or not *tout court*.

²²⁴ Cohen, 'Expensive Tastes Rides Again', at 25.

²²⁵ Hansen and Midtgaard, 'Sinking Cohen's Flagship — or Why People with Expensive Tastes Should Not Be Compensated', at 14, en59.

The second alternative interpretation of the continuity test is a *needs-based* continuity test.²²⁶ Paul can reject not the taste itself, nor the desires of others as calculated in a market process, but *the greater expense of meeting his need for leisure than that faced by others*.²²⁷ Since the needs-based test focuses on *needs* rather than the particular taste in question, it would appear to avoid the problem that Paul would have to reject his self-affirmed desire to make photographs as part of his fundamental ethical commitments. This needs-based test would also allow Cohen to provide a different answer to the expensive tastes of Louis to that of Paul, since Louis' tastes do not relate to his needs.²²⁸ Put in terms of an envy-test, people envy others' cheap *needs*, not cheap tastes. Either one would problematize the use of the market, but the former is much more reasonable than the latter. It is on the basis of this needs-based continuity test that Cohen's examples gain their traction. This continuity test is more attractive than the previous one on the basis that we might not begrudge others greater resources than ourselves if it is necessary in order for them to meet *needs*, while we would feel aggrieved at missing out on resources in order for another person to obtain what they simply desire.

There are many problems with this needs-based test, however. The first is that is a controversial issue as to what counts as a need, and what the specific nature of this need is. It is fairly straightforward in biological cases, such as the need for food, to say that a human needs x calories and y litres of water a day in order to survive. However, to the extent that we can un-controversially accept some matters to be needs, equality of resources would provide for these. People would have an equal amount of resources to others to meet these simple needs. In addition, the requirement that people have freedoms and authenticity in order to ensure that true opportunity costs are met

²²⁶ Indeed, Andrew Williams was partly influenced by Cohen when first describing the continuity test, Williams, 'Equality for the Ambitious', at 388.

²²⁷ Cohen, 'Expensive Tastes Rides Again', at 25.

²²⁸ Cohen seems to tie himself in knots attempting to argue that Louis has deliberately cultivated the taste, *Ibid.* at 21. As Dworkin argues, Louis perhaps had a second order un-chosen taste than led him to desire to cultivate expensive tastes Dworkin, 'Ronald Dworkin Replies', at 347.

means that people would have a decent starting position in which their needs are met. Furthermore, if people cannot take care of their needs through their resource share they would also have had the option to purchase hypothetical insurance to cover the costs of their needs. Most people would insure for homeless shelters and soup-kitchens in case they should find themselves destitute.

Unlike the simple cases of need described above, in the cases of leisure activities upon which Cohen appears to rely it is less obvious what the need is. With the exception of the biological requirements for survival, the extent to which different parts of life generate needs is bound to be controversial.²²⁹ Some people may feel that they should go without leisure activities altogether and dedicate themselves to their careers and/or loved ones. How much leisure should each person have? Should there be a limit on the cost of a leisure pursuit—should someone whose only leisure interest is to visit outer space receive the required compensation? In Paul’s case, is it enough that he can read about professional photographers and observe them as they go about their activities, or does he need to have his own camera, film and dark-room? Paul’s assignment responsibility over his life implies that he should decide upon his leisure activities based upon the resources available to him.

2.6 Advantage to Resources?

I will now review why the resource-based continuity test works as it does and why it is so crucial. To begin, I consider Dworkin’s arguments against the claim that someone suffers from bad price luck. Dworkin counters with the claim that *everyone* has bad

²²⁹ Doyal and Gough attempt to determine universal human needs, which they specify as physical health and autonomy, Len Doyal and Ian Gough, *A Theory of Human Needs* (Basingstoke: Macmillan, 1991) at ch 4. They present these in such a way that they can find different expression depending upon cultural norms and personal preferences (for example in the nature of food or shelter taken). Their justification for the existence of universal needs rests upon an attack on those who would deny that there are human needs, Doyal and Gough, *A Theory of Human Needs* at Ch 2. However, even if these very general human needs are accepted, it is difficult to see how they would lead to any specific theory of distributive justice or tax policies. Furthermore, given the requirement for authentic assignment responsibility and equal resources in equality of resources, the only cases in which people would *not* have their physical needs met would be if they would authentically have chosen not to insure to resolve their physical problem.

price luck in the sense that the world *could have been different* in such a way that *their preferences* could be more cheaply fulfilled.²³⁰ However, according to equality of resources—and as should be apparent from the previous chapter—justice is relational.²³¹ It specifies a situation in which people can judge whether they are better-off than others while allowing people to judge for themselves what makes their life go well. This is why people are asked to judge *for themselves* whether they are worse-off than others from a position of initial equality. Each person has to take the definitions that other people have of what matters, and the resources that they would therefore desire, as a given factor when determining their life plans and the resources they need. Equality is built into equality of resources as everyone is involved in the process through the equal and neutral market.

I will now show why Cohen's indeterminate *advantage* metric cannot be used in an egalitarian way, while taking into account the value that resources have to others. Equality of resources sets a clear baseline position of equality from which people can secure resources based upon their values and plans. Cohen does not specify how his multifaceted notion is composed, which precludes the possibility of coming up with counter-examples. However, its multifaceted structure precludes an egalitarian valuation akin to that undertaken in equality of resources.

Consider how it would be possible to use the metric in order to determine some level of equality beyond which people can be held responsible for their actions. This could either be done by imposing one composite of the various welfare-considerations and resource-considerations upon everyone, or by allowing each individual to define their own composite. If the same composite were applied to everyone, then it would require the imposition of a certain form of valuation of the different elements in a way that

²³⁰ Dworkin, *Sovereign Virtue* at 297-8, Dworkin, 'Ronald Dworkin Replies', at 345.

²³¹ Dworkin, 'Ronald Dworkin Replies', at 344.

each individual would find alien. People could complain that they have not been shown equal concern in the generation of the composite.

However, if each individual can determine their own composite based upon their values or preferences then the proposal becomes unwieldy. Pairwise interpersonal comparisons would be made on a different basis on each side: Rachel would value the advantage of Sophie in terms of the hedonic pleasure it would bring her while Sophie would value Rachel's resource advantages. It is not clear how it is open to anyone to say that they are treated unequally as both parties could say they are worse-off than the other. Indeed, allowing each individual to utilise their own composite could even result in an impossible situation,²³² whereby improving Sophie's position relative to Rachel could make everyone else envious of Sophie, requiring further adjustments *ad infinitum*. There would certainly be no basis on which people could set their preferences or determine what they want in life in a way that reflects the equal position of others.²³³ There is, therefore, no way to apply Cohen's approach in order to work out equality in the way that equality of resources does.²³⁴

Equality of resources represents a particular ideal of justice, whereby all individuals in a community come together to work out what fair shares each should have.²³⁵ As a result

²³² We might refer to this as "envy-cycling." This should not happen in a resource-based approach since everyone starts with the same resources. Furthermore, where resources are fungible commodities they can be split up. In the less common cases where they cannot, such as the only well in the region, it is possible to have public or shared ownership to ensure that no one envies the resources of others.

²³³ Dworkin, *Sovereign Virtue* at 295-6, Dworkin, 'Ronald Dworkin Replies', at 342.

²³⁴ We might therefore conclude that Cohen is uninterested in proposing a theory of equal concern. Indeed, he expresses that he has increasing doubts about such attempts, Cohen, 'Expensive Tastes Rides Again', at 24. Cohen elsewhere sets out to "rescue equality," Cohen, *Rescuing Justice and Equality*. By this he means that he wants to reassert the traditional notion of equality as an ideal situation in which all would be equal, even if this was unfeasible or undesirable all things considered. According to Cohen's approach we need to work out what equality is and then weigh it against other goods, such as efficiency and utility, in order to determine the best outcome. However, this is to give up on an approach to taxation that treats all members of society as equals. There is no method of weighing these various factors together that respects all equally without the imposition of some metric of what matters in life upon the situation.

²³⁵ Hansen and Midtgaard, 'Sinking Cohen's Flagship — or Why People with Expensive Tastes Should Not Be Compensated', at 7.

of that process, that outcome is justified to all, since it will not violate the continuity test of anyone. There is an answer to anyone who claims he has received less than he should from society; that giving him more of what he wanted would violate the equal share to which others are entitled. All of the relevant considerations are thereby taken into account in the determination of equal shares, according to the wishes of the members of society.²³⁶

I have answered the challenge that welfare should be either the basis of, or included in, the metric of distributive justice. I have considered the rival metrics of equality of welfare, equality of opportunity for welfare, and equality of access to advantage. When we see that welfare is not a simple notion, but rather can mean one of a number of contentious things, the apparent appeal of the metric recedes. Furthermore, attempts to include the notion of welfare would violate the continuity test, whereby a person can only request compensation for what he considers a disadvantage. An alternative needs-based continuity test which includes bad-price-luck does not work as it imposes a definition of what aspects of life count as needs and the extent to which particular aspects of welfare and resources should matter to people. I will now turn to another rival metric, that of *capabilities*.

2.7 The Capability Approach

I will now defend equality of resources against the claim that fair taxation should be determined using the capability metric. In order to do so I will explain the capability view, before considering whether—and how—it is distinct from equality of resources. One difference is that the capability approach proposes a clear way to challenge social norms, a difference I will argue does not lead us to prefer a capability approach to taxation. Another difference is that the capability approach can accept violations of the continuity test. I will differentiate several alternative capability-based approaches that could be utilised as a guide to tax policy, and show how each of these alternatives fails

²³⁶ Ibid. at 10-11.

to meet the starting assumptions set out in the previous chapter. I will end by highlighting the advantages of equality of resources over capability approaches.

The capability metric was first proposed by economist and philosopher Amartya Sen in the late 1970s as an alternative to welfare and resource-based metrics.²³⁷ Sen presented his proposal as a combination of the best of these rival views, while avoiding their problems.²³⁸ Sen criticised Rawls' (resourcist) primary goods bundle metric on the basis that it is not attuned to the specifics of the individual, and what she is able to achieve with her resources. His criticism of welfarism is similar to that presented by Dworkin.²³⁹

Sen uses the example of a severely disabled individual, who is contented with his lot, but who is unable to get around. Sen's argument is that neither the primary goods nor the welfarist approaches can explain our intuition that the crippled individual requires additional resources. Sen proposed 'basic capabilities' as a shift 'from goods to what goods do to human beings.'²⁴⁰ That is, the focus should be on what sets of functionings individuals are capable of achieving.²⁴¹ The functions might therefore be the ability to have good health, to move around, to interact with others. These capabilities are not commensurable with one another, meaning that they cannot be valued on the same scale.²⁴² Furthermore, Sen does not describe how these alternative sets of capabilities (or their attendant functionings) are to be valued, though he points towards his social choice approach and democratic deliberation as the means to make these difficult decisions. I will return to this latter issue in section 2.10.

²³⁷ Amartya Sen, 'Equality of What?', *The Tanner Lectures on Human Values* (Salt Lake City: University of Utah Press, 1980) at 217-20.

²³⁸ *Ibid.* at 217.

²³⁹ Amartya Sen, *Inequality Reexamined* (Oxford: OUP, 1992) at 54-5.

²⁴⁰ Sen, 'Equality of What?', at 219.

²⁴¹ Sen, *The Idea of Justice* at 231, 87, Sen, *Inequality Reexamined* at 39-40.

²⁴² This marks a difference between the capability approach and the market value of resources or any particular conception of welfare, which would be commensurable.

For the moment, it should be mentioned that other philosophers have adopted the capabilities approach. Aristotle-influenced Martha Nussbaum has utilised the capabilities metric in developing a list of basic capabilities that are required for 'truly human functioning.'²⁴³ Her list of ten basic capabilities includes the capabilities to live, to be healthy, to have bodily integrity and to have the practical reason required in order to form a conception of the good and a rational plan of life. Nussbaum admits that her list may be subject to later amendment, but criticises Sen for being so reluctant to commit himself to a particular list.²⁴⁴ For Nussbaum, the list should be universal, though the interpretation of it may change slightly in different locations.²⁴⁵ Sabina Alkire also proposes to develop a list of capabilities, but based upon *practical reasoning* about the true ends of human activity.²⁴⁶

It should be made clear that Nussbaum's theory is a partial theory of justice, in contrast to a complete theory such as that of Rawls or Dworkin. Partial theories do not provide a full explanation of what to do once the basic capabilities are met. A similar position is taken by Elizabeth Anderson, whose broader view is that everyone within society should be respected by others as an equal.²⁴⁷ Rather than a partial theory of justice, Anderson appears to take a pluralist position. This is sufficientarian initially,²⁴⁸ and then would require other principles once the basic capabilities were sufficiently met.²⁴⁹ Anderson even allows that taxation should be determined according to additional

²⁴³ Martha C. Nussbaum, *Women and Human Development : The Capabilities Approach* (Cambridge; New York: Cambridge University Press, 2000) at 78-80.

²⁴⁴ Martha C. Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice', *Feminist Economics*, 9/2-3 (2003), 33-59 at 35.

²⁴⁵ Nussbaum, *Women and Human Development : The Capabilities Approach* at 77.

²⁴⁶ Sabina Alkire, *Valuing Freedoms : Sen's Capability Approach and Poverty Reduction* (Oxford: Oxford University Press, 2002) at 43-59. She bases her approach on the practical reasoning method of determining human flourishing found in John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 2011) at chs III and IV. Alkire presents her approach as an anti-perfectionist one, and so it appears compatible with my proposal here. However, I will show the problems with this "philosophical" approach to capability lists in footnote 289 and surrounding text.

²⁴⁷ Elizabeth Anderson, "'What Is the Point of Equality?'" , *Ethics*, 109/2 (1999), 287-337.

²⁴⁸ See footnote 10.

²⁴⁹ Elizabeth Anderson, 'Justifying the Capabilities Approach to Justice', in Harry Brighouse and Ingrid Robeyns (eds.), *Measuring Justice* (Cambridge: Cambridge University Press, 2010).

principles, *not* according to the capability approach.²⁵⁰ As such, Nussbaum and Anderson’s views on the capability approach do not necessarily contradict the resource egalitarian position on the determination of taxation-related issues, though they clearly disagree in some areas.²⁵¹ Furthermore, Nussbaum’s approach at least is avowedly perfectionist—it has its foundations in the desire for human flourishing—and so falls foul of the anti-perfectionist starting assumption.²⁵² I will therefore focus on Sen’s views for the most part from here.

As is perhaps already apparent, adopting the capability metric does not require a commitment to one particular distributive approach. Just as one could maximise or equalise utility, capabilities could be applied on an equalising, sufficientarian, maximising, or prioritarian basis. Indeed, as Anderson proves, it is possible to be a pluralist capability theorist, taking a sufficientarian position below a certain threshold and an alternative view above it. What the capability approach offers is a particular “evaluative space” for analysing distributive justice, not a complete theory in itself.²⁵³ It therefore needs to be combined with a distributive approach to create a theory that answers distributive questions.

Sen also attempts to avoid the creation of a complete theory, but for different reasons. Not only does he fail to endorse a particular list of capabilities, he does not specify the trade-off between various considerations against one another. Sen presents his social choice theory approach as a method of determining rankings involving sets of

²⁵⁰ *Ibid.* at 84.

²⁵¹ Anderson criticises resource egalitarianism under the heading of ‘luck egalitarianism,’ Anderson, “‘What Is the Point of Equality?’”. This seems to rest on a mistaken view of equality of resources, see Zofia Stemplowska, ‘Responsibility and Respect’, in Carl Knight and Zofia Stemplowska (eds.), *Responsibility and Distributive Justice* (Oxford: Oxford University Press, 2011), 115-35. Another aspect of Anderson’s criticism is that equality of resources cannot provide for issues such as unequal recognition, an issue to which I return in footnotes 275 and 373 and accompanying text.

²⁵² Jude Browne and Marc Stears, ‘Capabilities, Resources, and Systematic Injustice: A Case of Gender Inequality’, *Politics, Philosophy & Economics*, 4/3 (2005), 355-73 at 362.

²⁵³ Ingrid Robeyns, ‘The Capability Approach: A Theoretical Survey’, *Journal of Human Development*, 6/1 (2005), 93-117 at 96, Amartya Sen, ‘Capability and Well-Being’, in Martha C. Nussbaum and Amartya Sen (eds.), (Oxford: Clarendon Press, 1993) at 49-50.

incommensurable goods.²⁵⁴ Furthermore, for Sen deliberative democracy and public reason should determine the correct choice between outcomes in practice.²⁵⁵

Sen's view would imply that the capability approach should guide taxation decisions, though I am not aware of any capability-based taxation proposals. Capability-based taxation would either require the direct linkage between a person's taxation and her capabilities, or would require some resource-based proxy.²⁵⁶ The former would require the valuation of each person's capability sets and using that to calculate the taxation that would reduce the capability set of some in order to fund improvements to the capability sets of others. How could such a capability valuation be applied to taxation? People could have their individual tax-rates determined by their personal capability set, and how it was considered to be more valuable than that of others. This would require a list of capabilities with fully specified weightings between them,²⁵⁷ which would then contradict Sen's ideal of utilising his social choice approach to deal with incommensurable values.

Before further considering the distinction between resources and capabilities, I will briefly mention the distinction between capability views and opportunity for welfare views.²⁵⁸ The capability view combines two aspects that are separated out in opportunity for welfare views. One is the fact that capability is concerned with the ability to *do something*, not the actual achievement of a given outcome. This corresponds to the distinction between *opportunity for welfare* views and welfare outcomes *simpliciter*. On the other hand, there is the distinction between the single notion of welfare as the outcome as opposed to that of capabilities for *numerous*

²⁵⁴ Amartya Sen, *Collective Choice and Social Welfare* (San Francisco, Calif.: Holden-Day, 1970), Sen, *Inequality Reexamined* at 44-9, Sen, *The Idea of Justice* at 279-82, 309-17, 410.

²⁵⁵ Sen, *The Idea of Justice* at part IV.

²⁵⁶ That is, to make assumptions on capability sets based upon income or wealth.

²⁵⁷ Thomas Pogge, 'A Critique of the Capability Approach', in Harry Brighouse and Ingrid Robeyns (eds.), *Measuring Justice* (Cambridge: Cambridge University Press, 2010) at 51-2.

²⁵⁸ As I discussed earlier in this chapter, Cohen proposes an alternative hybrid view, which is a mixture of welfarist and resourcist elements, which he refers to as "access to advantage" or "midfare;" Cohen, 'Equality of What? On Welfare, Goods and Capabilities'.

functionings in the capability approach. Some have discussed the extent to which these are equivalent, but it appears that the outcome of functionings can be distinguished from the outcome of welfare achievement.²⁵⁹ If the referent functionings within the capability approach were solely welfare-based, such as the ability to be happy, then the view would be equivalent to opportunity for welfare. However, functionings are likely to be broader than this—such as the ability to move about irrespective of its welfare effects—and therefore the view can be distinct from opportunity for welfare.²⁶⁰

Sen claims that capabilities are distinguished from resource-based approaches, with particular reference to the Rawlsian primary goods approach, because resource comparisons pay no regard to the functionings that they enable individuals to achieve.²⁶¹ For example, a pregnant woman may obtain less from the same resource bundle as a non-pregnant woman. By focusing on the functionings that resources enable rather than the resources themselves, there is scope for difference between the capability approach and Rawls' position.²⁶² As Sen puts it, there is a difference between *the means of freedom*—resources—and *the extent of freedom*—capabilities.²⁶³

However, while this complaint may apply against a simple primary goods approach, it does not have as much traction against Dworkin's equality of resources. This is because Dworkin includes the notion of *personal resources*, as well as impersonal ones. The hypothetical insurance scheme is designed to determine just compensation for personal resource deficits such as poor health, bad market luck, and bad luck in social

²⁵⁹ Ibid, Sen, 'Capability and Well-Being', Peter Vallentyne, 'Debate: Capabilities Versus Opportunities for Well-Being', *Journal of Political Philosophy*, 13/3 (2005), 359-71.

²⁶⁰ The views could be equivalent if an objective list view of welfare is taken, which includes some things that could be counted as functionings.

²⁶¹ Amartya Sen, *Resources, Values, and Development* (Oxford: B. Blackwell, 1984) at 323, Amartya Sen, 'Justice: Means Versus Freedoms', *Philosophy & Public Affairs*, 19/2 (1990), 111-21 at 120, Sen, *Inequality Reexamined* at 79-84, Sen, *The Idea of Justice* at 255.

²⁶² This is discussed at length in Harry Brighouse and Ingrid Robeyns (eds.), *Measuring Justice* (Cambridge; New York: Cambridge University Press, 2010), Rawls, *Political Liberalism* at 183-6, Rawls, *Justice as Fairness* at 169-76, Sen, *Inequality Reexamined* at 79-84, Sen, *The Idea of Justice* at 260-3.

²⁶³ Sen, 'Justice: Means Versus Freedoms', at 115, Sen, *Inequality Reexamined* at 36, Sen, *The Idea of Justice* at 255.

background.²⁶⁴ This allows many “capability-disadvantages” to be compensated under the heading of impersonal resource deficits. As a result, the complaint against resource egalitarianism must take a different form to the complaint against other resource-based metrics.

The discussion of the capabilities approach is somewhat hamstrung by the lack of agreement on either a list of valuable capabilities/functionings or their applicability to a complete theory of justice. As such, there are no immediate candidates in helping us determine fair taxation according to the capability approach.²⁶⁵ Nonetheless, we would want to develop a capabilities-based approach to taxation if the approach is superior to the resource-based approach. I contend that it is not a superior guide to equal taxation. In order to do so I will consider the extent to which the approaches differ and to which these differences are telling (sections 2.8-2.9). In section 2.10 I will discuss Sen’s arguments against equality of resources, and will assess the prospects for a capability approach to taxation in 2.11.

2.8 Are capabilities distinct from resources? 1. Social Norms

I have mentioned that Sen’s arguments against resource-based metrics apply much more readily to Rawls’ primary goods than to Dworkin’s resourcist view. Dworkin takes this point further and argues that the capability view is either identical with the resource egalitarian view or with equality of opportunity for welfare. This is because resource egalitarianism allows people to value their personal as well as impersonal resources and it is these together that enable people to ‘do what they want.’²⁶⁶ Dworkin suggests that in order to avoid a collapse into equality of resources, Sen must insist upon a strong outcome-based position, comparing the outcomes people are able to achieve, which would then be equivalent to equal opportunity for welfare. However, there are reasons to think that they are different. Andrew Williams presents two areas

²⁶⁴ As I will discuss in the remaining chapters of this thesis.

²⁶⁵ Beyond the brief discussion above.

²⁶⁶ Dworkin, *Sovereign Virtue* at 299.

in which the two approaches appear to differ; social norms and the continuity test. I will discuss the first in this section and the second in section 2.9.

Williams presents the example of Ann and Bob, twins who are similar in every way except their gender. Both wish to have a family and a career, but it is harder for women to find a partner who is willing to share parental duties than it is for men. As such, Ann is worse-off in capability terms than Bob, despite their otherwise equal personal and impersonal resources.²⁶⁷ Capability theorists emphasise that social norms can affect the relationship between goods and functionings.²⁶⁸ A further example is the subservient role of women in many societies, which greatly reduces the relative capabilities of women compared to men. It may be considered that women have internalised these roles, or would face censure if they acted in certain ways that are acceptable for men, such that women would be more limited in their capabilities even if they had equal resources. Capability theorists can therefore argue that their approach is better able to take account of social norms that cause inequalities than equality of resources.²⁶⁹ I will discuss this issue fully at this point as I will argue that social norms neither undermine the case for equality of resources nor require consideration in later discussions of tax policy.

Dworkin's immediate response to Andrew Williams' example was to insist that this must rest upon a welfarist notion. This is because it refers to the preferences of the 'community at large,'²⁷⁰ something which equality of resources generally takes as fixed factor around which people are held responsible. As such, Ann's lesser capability is based upon the desires of others, and the only way to determine that her capabilities

²⁶⁷ Andrew Williams, 'Dworkin on Capability', *Ethics*, 113 (2002), 23-39 at 31.

²⁶⁸ Referred to as a *social conversion factor* in Robeyns, 'The Capability Approach: A Theoretical Survey', at 99.

²⁶⁹ As emphasised, for example, in Sen, *The Idea of Justice* at 90, 255, Anderson, 'Justifying the Capabilities Approach to Justice', at 89-90, a summary of the issues here appears in Roland Pierik and Ingrid Robeyns, 'Resources Versus Capabilities: Social Endowments in Egalitarian Theory', *Political Studies*, 55/1 (2007), 133-52 at 144-8.

²⁷⁰ Ronald Dworkin, 'Sovereign Virtue Revisited', *Ethics*, 113/1 (2002), 106-43 at 138.

are less valuable is to value them in a welfarist fashion. Dworkin makes the point that both have the same capabilities given the costs of their preferences to others; it is just that Ann's preferences are more expensive given the preferences of men in her society. I am not convinced that this is an adequate response as it seems that Ann and Bob have the same desires and the interplay of their biological sex and social norms are all that makes a difference.²⁷¹

It appears that the capability approach readily allows assessment of social norms while equality of resources appears to acquiesce in whatever social norms exist. So for example, according to the capability approach it is possible to say that the social norms in Afghanistan are unequal as men and women do not have an equal capability to go out in public. Since it focuses on legitimate applications of authority (i.e. government) rather than overall justice in society, it is not clear how equality of resources can make parallel claims. I will now consider whether this undermines a resource egalitarian approach to taxation.

What are the implications of this difference between capability and resourcist metrics? One claim against equality of resources might be that it is an inadequate theory of equality if it is unable to criticise social norms that are obviously unequal and damaging to those who suffer from them. However, this would be too quick. While Dworkin presents equality of resources on an island with no prior social prejudices with which to deal, and has not proposed practical responses to troubling social norms, he has

²⁷¹ Dworkin's claim is more powerful when we remember that the gender bias in this particular case does not only affect women; there may be men who would like to be a homemaker but who find it difficult to find a female partner who wishes to be a bread-winning 'ideal-worker.' As such it is not clear that the social norms can be considered to be unfair to one gender or another, and Dworkin assumes that such comparisons must be based on welfare differences. One strong capability-based response could be to insist upon a requirement that all have an equal capability to have a particular form of domestic arrangement. However, such a proposal appears implausible and unattractive. There may be a difficulty in specifying this as a *particular* capability for comparison, and deciding how to weight this against other capabilities. The problematic nature of this example will recur in later sections, for now it is only worth noting that it is not necessary to consider social norms on a welfarist basis if not a resourcist one.

indicated that he thinks equality of resources can deal with such issues.²⁷² Indeed, in order to take seriously people's choices it is necessary for them to be sufficiently authentic,²⁷³ which might not be the case where victims of damaging social norms have been forced to internalise the oppressive norms of their society. More specifically, Dworkin proposes a *principle of independence*, which insists that prejudice will interfere with market-based equality and is hence an issue to which to respond.²⁷⁴ Others have taken these few remarks on in order to develop a stronger response to the problem of social norms.²⁷⁵

Equality of resources may be able to respond to social norms, and hence the above argument, but it is not as powerful as the capability approach in this regard. In response to this, I would claim that equality of resources is *sensitive enough* to the issue of social norms, as it could be used to deal with the most serious problems of this type without straying into perfectionism. I mentioned above that equality of resources appears vulnerable to the issue of social norms because it focuses on the preferences that people have and the choices they accordingly make. However, it is not clear how the capability approach can avoid going too far in the opposite direction, for example if the state encourages the values that would *maximise capabilities*. The encouragement of these values would interfere too much in people's view of the good life, overriding the assignment-responsibility people have to determine for themselves their good in life.

²⁷² Dworkin writes that equality of resources presupposes a society free from 'unjust patterns of discrimination.' In the case of Ann, there would be a requirement to provide 'remedial measures, including special child-care support for women at work.' Dworkin, 'Sovereign Virtue Revisited', at 137.

²⁷³ Dworkin, *Sovereign Virtue* at 159-60.

²⁷⁴ Ibid. at 162.

²⁷⁵ Browne and Stears, 'Capabilities, Resources, and Systematic Injustice: A Case of Gender Inequality', Roland Pierik, 'Reparations for Luck Egalitarians', *Journal of Social Philosophy*, 37/3 (2006), 423-40, Rasmus Hansen, 'Equality of Resources and the Problem of Recognition', *Res Publica*, 17/2 (2011), 157-74.

Kamm expresses this concern as being that the capability approach struggles to distinguish capability inequalities that are problematic from the perspective of justice from those which are not.²⁷⁶ An example given by Browne and Stears is that of Amanda and Brian.²⁷⁷ The society in this example has gender differences regarding whether people are talkers, listeners, or conversationalists.²⁷⁸ The ratios of each are not even such that women are more likely to be conversationalists and men are more likely to be talkers. Browne and Stears consider the impact of this on the marriage market, where a woman will find it much harder to find a partner who is a conversationalist than a man. However, I do not think this an *injustice* that needs to be rectified.

Taking this further, I would question the role that the state should play in adjusting the behaviour of its citizens.²⁷⁹ This seems to have the potential to stray perilously close to government interference in the development of conceptions of the good. Of course, no one develops their theory of the good in a vacuum, and their surrounding society will be very important in developing such a theory. Indeed, people often try to influence others in their choice of what is good in life, and perhaps the capability approach is useful to us as private citizens in our deliberations about the effects and desirableness of the theories of the good in society.²⁸⁰ However, the capability approach does not seem to be able to specify a line whereby interventions in the name of equalising capabilities are unwelcome and unnecessary interferences with people's autonomy. Equality of resources suffers from the same problem but from the other direction; it is

²⁷⁶ One important—but missing—requirement is that the approach should explain how to account for injustices that exist to compensate for larger injustices, F. M. Kamm, 'Sen on Justice and Rights: A Review Essay', *Philosophy & Public Affairs*, 39/1 (2011), 82-104 at 85-6. More relevant to my point, is the question of whether proposed improvements are really improvements in *justice* at all; Kamm, 'Sen on Justice and Rights: A Review Essay', at 86-90.

²⁷⁷ Browne and Stears, 'Capabilities, Resources, and Systematic Injustice: A Case of Gender Inequality', at 361.

²⁷⁸ Conversationalists like to talk and listen in turn, sharing their thoughts and feelings as part of interaction with another. In contrast, talkers are happy to talk but not so keen on conversing and listening, while listeners are happy to listen but less keen on contributing to discussion.

²⁷⁹ Sen, *The Idea of Justice* at 268.

²⁸⁰ No doubt development charities and influential individuals and organisations would do well to consider the effects of their activities on social norms in terms of capabilities.

difficult to determine genuine preferences from those that are determined by unacceptable social relations. Drawing these lines is a big problem for both approaches.

Fortunately, it is not necessary to consider social norms further in this work. To the extent that it *is* the place of the state to interfere in social norms, it is not clear what impact this would have on redistributive taxation. One possibility would be that those who suffer from discriminatory social norms should be given special tax-breaks as a result. Alternatively, “sin” taxes could perhaps be imposed on products related to problematic social norms. The advantage of this approach over direct payments or advertising is an empirical matter relating to government administration.²⁸¹ However, even if taxation was the best available response, such policies would be *ad hoc* and personalised or issue-specific. Therefore, they would not impact on the tax system options I will discuss in later chapters. At this point it is possible to conclude that the issue of social norms does not undermine the case for equality of resources, and that social norms do not have any general implications for the tax system. Having dealt with this diversion, it is now possible to return to the question of the ways in which capabilities are distinct from resources.

2.9 Are capabilities distinct from resources? 2. The continuity test

The second of Williams’ examples to highlight the difference between capability and resourcist metrics is that of Dan and Ella. Dan and Ella are deaf in a society in which most people can hear. However, while Ella abhors her condition, Dan does not feel any envy towards those who can hear. This is because his deafness allows him to be a member of the deaf community, which he values very highly. According to the continuity test,²⁸² Dan does not have a resource deficit in this case, while Ella does. This is because Ella can claim hypothetical-insurance based compensation for her

²⁸¹ Providing financial compensation for disadvantages may not be an adequate response to these issues, as it might entrench divisions between the parties rather than resolve them.

²⁸² Which was described on page 77.

disadvantage while Dan cannot, since Dan does not envy those with hearing. The capability approach, on the other hand, insists that both individuals are disadvantaged.

The challenge to equality of resources is therefore that the capability approach can propose to compensate the disadvantaged in cases which resource egalitarianism cannot. Dworkin responds to Williams' example by insisting that most hypothetical insurance outcomes will be offered in kind, which Dan could therefore choose not take up.²⁸³ This response highlights that the case is not particularly troubling; people have assignment responsibility over their lives and can reject compensation that others receive. Since compensation that would increase capabilities would usually be offered in the form of services rather than money it is not clear that anyone would receive resources for reasons that they would not approve.

The issue would be troubling in severe cases, of course, in which people rejected what might be considered fundamental capabilities. In the unlikely case that an individual's autonomy were threatened by his lack of the capability, then—of course—his capability would be restored in order to ensure the authenticity of his decisions.²⁸⁴ However, as long as the autonomy of the capability-rejecting individual is not violated we need not worry that he might reject capabilities that most other people would value.

The continuity test is one area in which there is a clear distinction; it is possible to value resources on the basis of the continuity test, but valuing capabilities and welfare in such a way is problematic. This also provides an advantage for the resourcist approach. Incommensurable capabilities cannot be valued on a personal basis from a position of equality, as it is impossible to consider an auction-like device whereby people can trade

²⁸³ Dworkin, 'Sovereign Virtue Revisited', at 138-40. Dworkin also takes the opportunity to question the valuation of the various capabilities.

²⁸⁴ A good example of this, suggested to me by Liam Shields, is that of someone who refuses medical treatment that would cause them to enter a vegetative state. Equality of resources would allow the imposition of such treatment in order to ensure autonomy.

and value their own capabilities and the cost of their capabilities to others.²⁸⁵ This, then, relates to the differences in the valuation exercise in the capability and resource approaches. If it is possible for people to place their personal value on capabilities in a universal fashion, then the approach can be equivalent to equality of resources. However, this need not be the case, in which case the points raised in this section and the previous section mark differences. However, these differences do not establish that the capability approach is a superior approach to distributive justice and taxation.

It is thus possible to pick out several dimensions in which the capabilities approach differs from equality of resources. The first is that the capability approach has a greater ability to make a direct attack on social norms. However, I have shown that this issue should not make us give up on equality of resources as an approach to taxation. The second difference is that equality of resources allows people to value resources themselves according to their personal plan of life (or theory of the good), while the capability approach is less amenable to such valuation. The third difference is that equality of resources is arranged in such a way that equality is integral, while this is not necessarily the case with the capability approach. In the following section (2.10) I will consider capability-based attacks on equality of resources, and then assess the case for capability-based taxation in section 2.11.

²⁸⁵ Dworkin is wrong to insist that the capability view must collapse into either opportunity for welfare or equality of resources; Dworkin, *Sovereign Virtue* at 300-1. I suggest that this mistake arises from two assumptions that Dworkin appears to make. The first, as mentioned above, is that there would be a unitary measure of capability. Sen, however, imagines multiple capabilities that are incommensurable. So whereas resources are all valued on a single scale according their market price, capabilities cannot be placed on such a scale. The second of Dworkin's apparent assumptions is that capabilities should be equalized in some fashion. However, while Sen takes the idea of equality seriously, he—along with all prominent capability advocates—does not advocate strict equality of capabilities; Sen, *The Idea of Justice* at 295. Thus, while it is possible that there would be analogies between equality of opportunity for welfare and equality of capabilities—if capabilities were defined in terms of their welfare-properties—there are alternative approaches to capabilities that do not rest on equality of this kind.

2.10 Sen's criticism of resource egalitarianism: Transcendental institutionalism

Sen takes a rather different approach to justice to that of Rawls and Dworkin, whom he accuses of engaging in what he calls 'transcendental institutionalism.' The first aspect of this complaint is that theorists of justice specify an ideally just situation and then attempt to get the world to that situation. This approach is problematic, for Sen, because if you cannot achieve the ideal then it does not necessarily make sense to say that you have got closer to it. Sen considers whether the transcendental approach is necessary or sufficient for the purposes of comparison and argues that they are not. He argues on this account that we can say that if we accept that the Mona Lisa is the ideal painting, then this does not help us to rank a Picasso against a Van Gough.

Sen's position is that it is possible to determine how to make the world more just without any reference to the ideal. We might refer to this as the comparative improvements approach. I explained my position on ideal theory in the introduction, which is that we should utilise ideal theory, but that it should be appropriate for the question at hand.²⁸⁶ I will return to this issue below after explaining Sen's critique of institutionalism.²⁸⁷

In Sen's view, institutions are a means to the promotion of justice within society. He contrasts this with the Rawlsian idea that the principles of justice apply to the basic structure of society, which primarily relates to institutions. Sen feels that the focus should instead be upon realizing just *social outcomes*. While it is possible to determine ideally just institutions through a "one-shot" procedure, this is less plausible when attempting to determine an ideally just overall outcome. In this section I will argue that there are strong reasons to focus on the basic institutions of society when considering issues of justice.

²⁸⁶ Page 14-6.

²⁸⁷ Sen, *The Idea of Justice* at 83-6.

The first challenge to Sen is that it is not clear that judging or comparing *outcomes* enables us to distinguish justice from injustice. On the institutional approach to justice it is possible to rank outcomes independently in terms of their justice and other factors. Thus we may say that of two societies in which the institutions and relations between individuals are just, one is preferable to the other—because the society is much richer for example. However, Sen appears to go further, and say that the preferable society is more *just* as well. This overlooks the fact that justice must be *relational*; it must be able to consider whether some groups or individuals are unfairly favoured over others. If Sen is suggesting that outcomes are all that matters, then it seems he is either discussing justice with other concerns, or he is not discussing justice at all. Alternatively, if Sen is concerned with relational justice, then it is not clear how his theory can distinguish between societies which could be made more just and those which could just be improved. This is an issue to which I will return.

Obviating any ideal, it is also harder to answer other important questions relating to justice. How are we to judge any institution or individual action as having helped or hindered the achievement of justice without an ideal of justice to which to appeal? Kamm suggests that Sen may have an answer to this, namely that all parties should aim to consider in good faith the consequence of their actions on the capabilities of others, and to limit their activities to those which an impartial observer would approve. However, this would then introduce an idea of perfect justice; where everyone acts in accordance with this ideal.²⁸⁸

In order to answer questions of social justice and equality without invoking transcendental idealism, Sen suggests it is possible to make local comparisons using the ideals of public reason, deliberative democracy, and the notion of the impartial spectator. However, this reliance of public reason and democracy leads to the question as to what role the capability approach should play. If public reason and democracy are

²⁸⁸ Kamm, 'Sen on Justice and Rights: A Review Essay', at 95.

so important, why insist on a particular metric of justice at all? It seems to logically follow that *all* such decisions should be left to the public themselves.²⁸⁹ Furthermore, Sen's reliance upon public reasoning as the means to determining just outcomes appears optimistic. There are many potential problems with democratic decision-making, such as mistakes in reasoning and various forms of power imbalance.²⁹⁰ Supporters of the capability approach would no doubt wish to remove these forms of imbalance, but it is not clear how far they can criticise any outcomes if they do not hold up a further ideal of equal democratic power as a form of equal concern at this level.²⁹¹ A democracy-based approach to distributive justice, however, can result in inegalitarian relations; a majority could vote in its favour against a minority.

Perhaps Sen intends the impartial spectator device to be useful in determining appropriate democratic decisions. However, as Dworkin points out, the ideal spectator does not provide any kind of guide in itself. While the spectator may be impartial, she has to decide on behalf of those who are affected. This spectator therefore needs to have a method of making these decisions, whether utilitarian or based on equality of resources, and this is the important issue of justice that needs to be determined.²⁹²

²⁸⁹ A similar point is made by Claassen when arguing for the philosophical approach to capability lists over the democratic approach, Rutger Claassen, 'Making Capability Lists: Philosophy Versus Democracy', *Political Studies*, 59/3 (2011), 491-508 at 497, 98. The philosophical approach, however, is even more problematic as it would be perfectionist or violate the continuity test. For example, Okin points out that Nussbaum's list of basic human functionings seems to be drawn 'more from the life of a highly educated, artistically inclined, self-consciously and voluntarily religious Western woman than from the lives of the women to whom she spoke in India.' Susan Moller Okin, 'Poverty, Well-Being, and Gender: What Counts, Who's Heard?', *Philosophy & Public Affairs*, 31/3 (2003), 280-316 at 296.

²⁹⁰ Robeyns, 'The Capability Approach: A Theoretical Survey', at 106. The prominent literature on political power is collected in Steven Lukes, *Power* (Oxford: Basil Blackwell, 1986).

²⁹¹ One possible answer would be to lean upon an ideal of *equal capability to influence the public debate and outcome*; however, this appears an unrealistically strong requirement. In contrast, Dworkin emphasises the crucial role of *representative* democracy in his theory, which does not require strict equality of influence; Dworkin, *Sovereign Virtue* at ch 4, Dworkin, *Justice for Hedgehogs* at ch 18.

²⁹² Dworkin, *Justice for Hedgehogs* at 477, en3, Browne and Stears, 'Capabilities, Resources, and Systematic Injustice: A Case of Gender Inequality', at 362.

There is a further problem with focusing on outcomes rather than institutions, namely that private citizens will be agents creating just outcomes along with institutions. This would create duties²⁹³ for agents to improve the capabilities of others in accordance with the democratic will.²⁹⁴ This duty is much more involving and far-reaching than the duty to comply with just institutions, since in it will additionally involve duties that require co-ordination with numerous others. If such a duty would not violate the anti-perfectionist starting assumption, it would certainly violate the continuity test.²⁹⁵ Sen does not wish to say what value society would place on the various capabilities. However, such valuation would have to take place in order to assess what capabilities to improve.²⁹⁶ Duties to the basic institutions of society are much less troubling.²⁹⁷ Supporting these institutions does not relate in any way to a particular social outcome which may not be continuous with the ethical views of a particular member of society.

In the introduction I explained that each theory of justice should be applied with the relevant level of idealisation for the issue at hand. Sen's proposal to take a comparative approach appears unnecessary with regard to distributive justice. With the issue of taxation and benefit regime, it is possible to determine very precise levels of taxation

²⁹³ Kamm considers the nature of the implied Senian rights and duties in Kamm, 'Sen on Justice and Rights: A Review Essay', at 90-4.

²⁹⁴ Or, referring back to footnote 289, in the philosophical approach to capability lists.

²⁹⁵ It is possible to illustrate this point in another way. A general expression of the valuation problem within the capability approach is that the valuation of capability sets will either be too broad or too narrow. Sen writes that 'individual advantage is judged...by a person's capability to do things he or she has reason to value' Sen, *The Idea of Justice* at 231. The question is what outcomes individuals *have reason* to value and who gets to decide this. One response is to limit the focus to the basic capabilities that individuals require in order to function on a basic level; to meet their needs (see page 85-6 above). This is less problematic in terms of perfectionism and the continuity test as people cannot deny that they need certain things in order to live. However, this limited approach overlooks the actual functionings (or plans of life) that individuals wish to achieve, meaning it is removed from the functionings that matter to people. This limited—uncontroversial—list of capabilities is too broad in its implications; its complete lack of ambition-sensitivity making it unresponsive to what people actually value. Making the list more detailed does not help, however. The more detailed and specific the list of capabilities becomes the more removed it will get from what each real individual values. Whether it is too broad or too specific, the tax policy applied will be inappropriate.

²⁹⁶ Pogge, 'A Critique of the Capability Approach', at 51-2.

²⁹⁷ The basic institutions only need to be publicly legitimate, meaning that these institutions must be so constituted as to aim to treat individuals in a just, fair or equal fashion. Dworkin, *Justice for Hedgehogs* at 319-22.

and benefit payment.²⁹⁸ It is much easier to both determine and achieve the ideal where the subject is the major institutions of society—such as the tax system—rather than a description of the society as a whole. With regard to this fundamental institution, then, a transcendental justice approach appears unproblematic. Given the precise determination of taxation readily available to governments, it seems an ideal is actually required in order to provide specific guidance.²⁹⁹ The incremental approach, on the other hand, appears indeterminate, conceivably failing to give detailed guidance in many cases.³⁰⁰ It seems implausible for an incremental approach is a virtue in all possible cases. Therefore, it must only be a virtue where we cannot specify the ideal, presumably due to the complexity and openness of the situation or the limits in coming up with a suitable ideal. There are good reasons to limit the issue of justice to institutions, regarding which the degree of idealisation I have engaged in is unproblematic.

The arguments in favour of the capability metric considered in this and the previous section are based upon an attack on the broadly Rawlsian approach to justice adopted by Dworkin. I have shown this attack to be unconvincing. The discussion of capabilities and resources has been multifaceted and complex, but I will now pull all of these various threads together.

²⁹⁸ This point applies when looked at from the alternative perspective of ‘resource outcomes.’ It seems perfectly possible to judge whether resource-distribution A or distribution B is closer to the ideal.

Of course, it is possible to have two distributions that are different but equally far from the ideal, in which case the closeness to the ideal is not a sufficient test to determine which is better. Sen’s response here may be that the simple distribution of resources does not tell us enough as we also need to know the capability sets involved. However, this would require taxation rules to be individualised in very complicated and potentially controversial ways.

²⁹⁹ Sen does mention tax rates, surprisingly indicating that his reasoner would not be able to choose between 39% and 40% tax-rates from pluralist reasons, though they would reject slavery. Sen, *The Idea of Justice* at 395-6. As Shapiro highlights, perhaps Sen does not feel that determining tax-rates is an important issue of justice, but in that case what can his approach do to respond to someone who complains that their 70% tax-rate is unjust? I Shapiro, ‘Book Review: Idea of Justice’, *Journal of Economic Literature*, 49/4 (2011), 1251-63 at 1255.

³⁰⁰ Pogge, ‘A Critique of the Capability Approach’, at 51.

2.11 Capability Assessment

I have highlighted the differences between the capability and resource-based approaches to distributive justice. I will now assess the attractiveness of the capability approach, with regard to the starting assumptions of this thesis. As I have made clear, there are many variations on the capability approach, and so on some measures a particular variant may appear attractive while it would not on others. Two distinctions can be considered. The first is whether capabilities are to be equalized or to be judged in accordance with another distributive principle or principles. The second is whether each individual is to value her capabilities relative to others, or if comparisons are to be made in accordance with some list.³⁰¹

The first principle was that of equal concern. As I made clear, capabilities can be allied with any distributive principle or combination of those principles. One option is to attempt to equalise capabilities, though capability theorists appear to have withdrawn from such a view. Equalising capabilities would be unattractive, however, as it may result in levelling down. It would require capability transfers even where the parties involved would not think it worth the cost in other capabilities to correct them; for example that they should receive expensive treatment to alleviate an illness even though it would cost so much that other capabilities, such as for example the capability for people to have leisure time, would have to be sacrificed. Other interpretations of the capability approach may be considered broadly egalitarian despite the lack of an obviously egalitarian principle.³⁰² However, it is hard to judge the egalitarian credentials of this capability approach in the abstract.

³⁰¹ Sen, *The Idea of Justice* at 266. Sen views the atomistic aspect of Dworkin's proposal to be a downside, I present the top-down aspect of Sen's imposition of a single weighted capability list as problematic.

³⁰² Some thinkers conceive of egalitarianism in a different fashion to that which I generally present in this work, such as Anderson, "'What Is the Point of Equality?'" at 313, Samuel Scheffler, 'What Is Egalitarianism?', *Philosophy and Public Affairs*, 31/1 (2003), 5-39, Jonathan Wolff, 'Fairness, Respect, and the Egalitarian Ethos', *Philosophy & Public Affairs*, 27/2 (1998), 97-122. We might label these "social egalitarians," following Stemplowska, 'Responsibility and Respect'. These authors tend to

The second principle is that of anti-perfectionism. On the one hand, the focus on freedom rather than outcome implies that people would not be forced into any perfectionist form of life. However, Dworkin's argument is that the capability approach requires the illegitimate imposition of a definition of the value of capabilities that do not reflect the value that the individual would place on them according to their plan of life or theory of the good.³⁰³ Therefore, even if the approach is not perfectionist, it would certainly violate the continuity test. This is because society must determine a fully weighted list of capability values in order to make universal comparisons between persons. The list would have to be fully specified and valued with the relative weighting for each distinct functioning in order to enable comparisons between the disparate capabilities that people have. The problem here is that this is fully weighted list will not accord with the value that actual people place on the capabilities they might have. As a result, resources could be taxed from individuals on the basis that they have greater

describe themselves as "democratic egalitarians," though this fails to distinguish them from other egalitarians as all would endorse democratic government of some form. For such egalitarians what matters most is to ensure that people can relate to one another as equal citizens. This requires society to ensure that citizens have certain basic capabilities (or perhaps achieved functionings) irrespective of their ambitions. On this view, ambition sensitivity does not have a crucial place as it might undermine this form of equality. For example, someone may not have the ambition to be a citizen, or someone may not choose hypothetical insurance coverage that would ensure that they had the resources required in order to obtain the required level of resources for equal-citizenship. Anderson does acknowledge, however, that the capability approach would not guarantee the meeting of such capabilities in all cases, Anderson, 'Justifying the Capabilities Approach to Justice', at 97. This is because some people, perhaps such as those with brain damage, may never be able to obtain the required capabilities however much resources were spent on them.

Indeed, Anderson explicitly suggests that while there should be a sufficientarian theory of basic capabilities, taxation should be determined according to a separate distributive principle; Anderson, 'Justifying the Capabilities Approach to Justice', at 84. Capability theorists could therefore adopt equality of resources as this separate principle, though of course others may be utilised. (Anderson's comments on taxation would appear to go against equality of resources on this point, Anderson, "What Is the Point of Equality?", at 314-30, particularly 25-6.) However, equality of resources is the only metric and principle that utilises ambition sensitivity at a fundamental level. The use of another metric, including capabilities, will require the imposition some theory of what matters in life. Furthermore, as I will argue below, the usefulness of capabilities does not render the approach appropriate as a full theory of justice that would guide taxation decisions. As such, I do not think that this social egalitarian view provides a compelling case to reject equality of resources.

³⁰³ Dworkin, *Sovereign Virtue* at 299-300.

capabilities they do not particularly value in order to provide compensatory resources to individuals for capability deficits those recipients may not find disadvantageous.³⁰⁴

Sen may feel that over-riding personal valuations in this way is acceptable as long as the society has determined this list of valuable capabilities in a suitable fashion. This might distinguish his democratic approach from the more obviously perfectionist philosophical approach. However, as I argued in the section 2.11, Sen is too optimistic regarding democratic capability lists. Sen suggests that there should be public decisions about the trade-off between equality (of capability outcome) and other values such as efficiency,³⁰⁵ but those decisions are taken by society as a whole—with all of the vested interests and so on—rather than on the basis of what individuals would choose. Equality of resources eschews this problem entirely, by avoiding the need to select a view of what functionings matter in life for the purposes of comparison.³⁰⁶ Equality of resources ensures that everyone's valuation of resources for the purposes of distributive justice accord with their ethical commitments, while the capability approach does not.

The third principle is that of special responsibility. This requires that people determine their own notion of the good, something the capability approach seems to allow—people can act or not on the capabilities that they have, and the approach implies a degree of freedom. However, it is harder to see how the capability approach would determine liability responsibility.³⁰⁷ A resource metric lends itself much more readily to a stable and consistent property entitlement regime than a capability based

³⁰⁴ Williams, 'Dworkin on Capability', at 34-8.

³⁰⁵ Sen, *The Idea of Justice* at 232-3, 95.

³⁰⁶ The fact that the focus is on capabilities (perhaps, *opportunities for functionings*) rather than functionings does not get around the problem, just as the addition of opportunity for welfare does not get around the problem of the imposition of a view of welfare. It is true that nobody has to live their lives according to this view of the right purpose of life, but the determination of shares according to these criteria is inappropriate. This is the case even if the individual is better able to live the life he prefers than he might have been if his preferred view was chosen as the form of comparison for distributive justice.

³⁰⁷ Kamm accuses Sen of saying too little on responsibility, Kamm, 'Sen on Justice and Rights: A Review Essay', at 101.

approach.³⁰⁸ Furthermore, it is not clear how it would be possible to create capability-based tax rules.³⁰⁹ However, if capability sets were used directly to determine taxation it would make taxation very complicated, which would make it much more difficult for people to manage and plan their affairs. Taxation needs to be reasonably predictable and capability based resource adjustments could well be very irregular and unpredictable.³¹⁰ This would make it harder for people to make and carry out their plans. Capability valuation based taxation would also be unfeasible and intrusive, as it would involve the collection of very detailed information about each individual.

If the capability approach would rest on pre-existing types of taxation, then it would offer little guide to the determination of precise tax and benefit rules and rates. However, a direct capability-based approach to taxation would threaten to undermine liability responsibility. This would occur if it would insulate property rights from the decisions that individuals make about their property. To illustrate, we can imagine that someone who spent their resources, thereby reducing their capability set, would get additional resources at the expense of others whose capability set was not diminished because they saved their earlier resources.³¹¹ As it is an entitlement theory, equality of resources does not have any such worries.

This relates to the broader concern that I have raised at several points in the discussion so far; that the capability approach appears to be indeterminate and unhelpful. The approach does not offer the fine-grained answers that are required for the setting of tax-rates and levels of compensation for misfortune. Sen's examples are usually pretty uncontroversial, such as slavery,³¹² and he does little to suggest how the approach deals with the difficult issues for which equality of resources is designed. Finally, to the

³⁰⁸ Though perhaps Sen would feel confident that deliberative democratic considerations would always take due account of the importance of stable property rights.

³⁰⁹ Pogge, 'A Critique of the Capability Approach', at 50.

³¹⁰ Ibid. at 51.

³¹¹ Erin Kelly, 'Equal Opportunity, Unequal Capability', Ibid. at 77, Sen, *Inequality Reexamined* at 148-50.

³¹² Dworkin, *Justice for Hedgehogs* at 477-8 (en3).

extent that capabilities matter to people, and affect resources, they will be factored into hypothetical insurance decisions.³¹³

I do not wish to overstate the incompatibilities between capability notions and equality of resources. Firstly, there is a strong case to insist upon limits on the application of ambition sensitivity. Dworkin applies these to the baseline conditions, where people would need to be authentic in order for their ambitions to be taken seriously in order to work out their equal share.³¹⁴ As such, someone should not be permitted to choose to live their life in such a way that their autonomy would be undermined. Dworkin also emphasises the role of democracy, which requires what might be considered the capabilities necessary in order to take part in democracy as a partner.³¹⁵ We might express this in terms of capability, as Rawls more explicitly does,³¹⁶ thus requiring baseline capabilities. However, while this may allow a role for capabilities, it is a very small one that is subservient to the wider goal, and does not provide enough to guide taxation policy. Nevertheless, it shows that the differences between the views regarding “basic capabilities” can be overstated.

I have argued that the capability approach would not be appropriate as a guide to egalitarian taxation, despite its merits. I would accept its usefulness as a guide to development statistics, decisions for development charities, international aid departments of aid donor governments, and even for private citizens considering their interactions with the social norms within their society. However, it is not a suitable guide to egalitarian taxation. In order to be used for the purpose of taxation, a fully

³¹³ Equality of resources does not fall foul of the much repeated complaint against resource-based approaches that they do not acknowledge variability in the ability of different individuals to make use of resources. This is because equality of resources includes personal resource deficiencies, which can be compensated according to hypothetical insurance decisions. Sen accuses resourcists of focusing on the means rather than what really matters, capabilities or functionings. Sen, *The Idea of Justice* at 265. However, people will take account the functionings, or welfare or whatever else, that matter to them when making their decisions about what resources to attempt to gain and their level of hypothetical insurance.

³¹⁴ Dworkin, *Sovereign Virtue* at 158-60.

³¹⁵ *Ibid.* at 383-95.

³¹⁶ Rawls, *Justice as Fairness* at 169.

weighted list of capabilities would be required, which would then need to be imposed upon people who would not agree with such a list. The development of such a list will not treat people as equals, even if they have all had a say in the list, as it will not leave people equally as free as others to pursue their plan of life subject to the requirement that they bear the responsibility for that life.

2.12 Conclusion

In this chapter I have considered two prominent alternative metrics for justice. Both capability and welfare metrics have an opportunity element, which means they are not explicitly perfectionism, and also makes room for holding people responsible for achieving their self-determined ends. They thus appear to meet the starting principles. However, they do not take seriously the value that people put on the different areas of their lives. The move to opportunity or capability-based approaches has appeared attractive as equality of resources because it allows people freedom to set and pursue goals, and holds them responsible for achieving those goals. However, while this removes the issues of *use-level* imposition of values into justice, it still leaves them at the *calculation-level*. Since such calculations need to take place in order to consider whether people have been shown equal concern, there is no way to include either welfare or functioning values without imposing valuations that do not match—are not continuous with—the valuations that each individual places on what matters to her. I have argued that the arguments against equality of resources from supporters of these alternative metric are misplaced, and that arguments for them overlook important advantages of equality of resources.

Chapter 3 Bad Market Luck and *Ex Post* Responses

In the first two chapters I have argued that equality of resources is the best approach to distributive justice. This is because it takes seriously not only the values and choices that people make about how to live their lives, but also the true opportunity costs of these actions to others. In order to achieve this, it utilises a neutral market in which the value of the items is given by the ambitions of the individuals in the society. I will now consider a putative problem for this view that stems from so-called *market luck*. Market luck refers to the different fortune that people have in obtaining resources from others, and from market transactions. The former relates to the differing social backgrounds that influence wealth. The second relates primarily to marketable skill, but is also influenced by other forms of good fortune. Some people are more able to obtain resources, satisfy the preferences of others in market transactions, due to good fortune. Luck is an important issue to resource egalitarianism as it challenges the fairness of utilising the market to determine equal shares. I will explain the issue of market luck in greater detail in section 3.1.

In this chapter I will explain this problem of differing market luck, and then consider, what I shall call, *ex post* egalitarian responses to it. In chapter four I will consider the *ex ante* egalitarian response to inequalities in earning talent. The idea of *ex ante* equality is to consider equality from the most appropriate initial starting position. Dworkin's island auction is an example of this, but he suggests that for those issues where there was no equal starting point that we should ask how much insurance people *would* have purchased against bad luck in a hypothetically equal position. I will describe how this works with regard to market luck in section 4.1, and will describe it in even more detail in chapter five.³¹⁷ The *ex post* responses I consider here propose to respond to bad

³¹⁷ Where I present a holistic, policy-focused, interpretation of the approach which differs from Dworkin's.

market luck without reference to this initial starting equality, or with a different and less attractive comparison point. I will argue that the proposals considered in this chapter are unattractive, or that they cause concerns about unfairness that the *ex ante* response can resolve. I will argue against the *ex post* approaches in this chapter, but emphasise that the strongest arguments against the more attractive *ex post* proposals come out when considering them against the *ex ante* alternative.

I will begin by explaining how different forms of market luck—social luck, talent luck and investment luck—impact upon free market exchanges to the advantage of the fortunate and the disadvantage of the unfortunate. In section 3.2 I explain in more detail what benefits are available to those with marketable skills. The ability to gain extra income is an obvious benefit. However, I will show that talent inequality can affect leisure as well as income, and furthermore that it is possible to consider the less talented as envying the job and careers available to the more talented.

There have been several types of proposal designed to respond to this issue, and in this chapter I consider *ex post* proposals. *Ex Post* proposals attempt to preserve equality after transactions. I have split the proposals into three broad groups for convenience. I will first discuss what I refer to as *radical* responses. These redesign the job market in order to improve the relative position of those with less good market luck and natural talent, which will affect consumers and employers. The first radical response (3.3) holds that since talent inequality undermines the idea of allowing people to keep their above average market-income, it is necessary to *equalize income*. This is achieved by interfering in the motivations that people have to engage in the market, by inculcating moral motivations within the population. The idea that people envy the jobs that more talented persons can obtain suggests an alternative radical response to the problem of unequal talents, the possibility of avoiding *job-envy*, which I consider in 3.4. I argue that these approaches violate the ideal of equal opportunity costs and in some cases rely on perfectionism.

The second type of proposal I consider, in section 3.5, is one that would attempt to mimic a situation in which talents were equal. Unfortunately, it is not possible to mimic this situation while respecting the differently talented persons as they really are. The third type of *ex post* proposal focuses on the suppliers of labour. The most extreme version of this is one I will refer to as the Stalinist forcing approach (3.6), but I will also consider less extreme versions. These are the idea of including labour earning talent in a Dworkinian auction (3.7), an endowment tax (3.8), and the Earning Subsidy Scheme (3.9). I will argue that while each successive response is preferable to its predecessor, all have problems as a result of the claims they make against the more fortunate. This concern about the costs of policies to the more fortunate does not arise with the *ex ante* approach defended in chapter four.

3.1 Bad market luck

The first task is to explain why market luck presents itself as a problem for equality of resources. There are several forms of good fortune that can influence the resources that individuals acquire. Several of these are what I will refer to as *locational luck*; about being in the right place at the right time. The first two are more straightforward, however.

Firstly, people will have better and worse fortune in the investment market despite paying equal attention to the information; imagine you and I both invest in technology companies and the researchers of your company patent the next generation of products ahead of my apparently equally placed company. Dworkin refers to this as *investment luck*.³¹⁸

³¹⁸ Dworkin, *Is Democracy Possible Here?* at 109, Dworkin, *Justice for Hedgehogs* at 358-9.

In this work I will focus more on natural talents, which Dworkin refers to as *personal resources*,³¹⁹ and how they affect market interactions. This can be expressed in terms of ‘wealth-talent, that is, his innate capacity to produce goods or services that others will pay to have.’³²⁰ Dworkin illustrated this with the example of Claude in his initial presentation of equality of resources. He describes Claude as having similar ambitions to Adrian the farmer, but as suffering from a ‘black thumb.’³²¹ It is not necessary to get bogged down in discussion of the nature of natural talents.³²² Most people agree that different individuals are more naturally able in some areas than others, presumably due to genetic reasons beyond their control.³²³ However, any genetic differences are compounded by environmental and social differences; the particular experiences that each individual has and how they happen to respond to those.³²⁴ These differences in talent could not be removed even if it were desirable to do so.

³¹⁹ I described these in relation to disabilities above, page 88. Rawls refers similarly to natural assets, who distinguishes the role of morally arbitrary natural talents and abilities on the distribution of goods in society Rawls, *A Theory of Justice: Revised Edition* at 63.

³²⁰ Dworkin, *Sovereign Virtue* at 323.

³²¹ Ibid. at 85.

³²² For example, whether there is one measure of intelligence (IQ) or many, or the importance of Emotional Intelligence (EQ). Richard J. Herrnstein and Charles A. Murray, *The Bell Curve : Intelligence and Class Structure in American Life* (New York: Free Press, 1994), Howard Gardner, *Frames of Mind : The Theory of Multiple Intelligences* (New York, NY: Basic Books, 2004), Daniel Goleman, *Emotional Intelligence : Why It Can Matter More Than Iq* (London: Bloomsbury, 1996).

Gomberg assumes that all people are sufficiently capable to do all jobs, and that it is a failure of socialization or education when they do not achieve the same skills as others; Paul Gomberg, *How to Make Opportunity Equal : Race and Contributive Justice* (Malden, MA: Blackwell Pub., 2007) at 118-22. I discuss a variant of Gomberg’s proposal in section 3.4, and discuss his argument on page 130 below.

³²³ Focus on genetic differences is controversial because of its potential use to differentiate people according to race, as well as its potential support for eugenics; Stephen Jay Gould, *The Mismeasure of Man* (London: Penguin, 1997). Another reason not to focus solely on genetic factors is that these interplay with environmental factors, to the extent that Tim Lewens has even challenged whether there is such a thing as natural inequalities as distinct from social ones; Tim Lewens, ‘What Are ‘Natural Inequalities’?’, *The Philosophical Quarterly*, 60/239 (2010), 264-85. This is because the value of a genetic ‘advantage’ may be enhanced or dulled depending upon the social environment in which it is nurtured. Another reason not to focus solely on natural differences is that they are not sufficient on their own for success—talents are relative potentials that need to be nurtured and developed. This development will occur based upon the character of the individual, but will also be influenced by the environment in which someone grows up.

³²⁴ If some of those items that I delineate as natural talents were proven to be entirely environmental, this may still challenge the fairness of free-market outcomes, since people have no control over their environment during the crucial formative stage of life. This is true in the case of

Markets make rare but highly desired factors of production expensive,³²⁵ while making cheap those factors of production that are less popular and in ready supply. In economic interactions, therefore, those with rare natural talents which produce something economically desirable will have a lot of market power, while those without any special talents will have very little. The same process applies to *skills*, which are *learned* rather than innate. However, talents have an influence over the development of skills. This is because there are general transferrable talents such as intelligence which makes their bearer a more attractive investment for society and employers. All else equal, those with talents are very likely to end up in the mostly highly sought positions, since they will often receive early recognition and support.³²⁶

natural assets the development of which depends upon environmental factors, and also of the advantages of upbringing. In some cases these advantages are intentionally sought by parents, such as giving encouragement and support to the development of skills. However, sometimes there are inadvertent advantages that just prove to be useful, such as the early access to rare computer terminals described in footnote 329. It is worth emphasising that the existence of environmental fortune does not undermine the role of natural assets. Some natural assets are broadly uninfluenced by environmental factors, such that even if everyone's upbringing were to realise their full potential development there would still be natural differences which would challenge market outcomes.

³²⁵ Where workers have unequal talent, some will be able to produce more than others in a given period of time. The productive efficiencies brought about by the division of labour and economies of scale, as highlighted famously in Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (New York: P F Collier and Son, 1909 [1784]). This is much more productive for the society as a whole. This division of labour also means that each individual only needs to learn a limited number of skills, rather than investing in a full set of skills required to produce all that they want and need. This will create differential positions, where there is a limited supply of highly sought positions.

This limitation on the supply of complex jobs and its effects is emphasised in Gomberg, *How to Make Opportunity Equal* at 30-8. Unfortunately, there is not room here to discuss Gomberg's interesting, though sometimes vague, arguments and proposals beyond my variation of his proposal presented in section 3.4. I would certainly be less optimistic than him that his proposals could be effective at creating a society that would be able to do more than take care of the most basic needs of a small number of individuals. Gomberg's argument for his practical proposal fails to meet the starting principles of this thesis because his view is avowedly perfectionist: it assumes that having a complex job is a requirement of a good life whether or not people actually accept this; Gomberg, *How to Make Opportunity Equal* at 20-5, 45-52, 66-7. Gomberg's response is that resource egalitarianism is perfectionist in assuming that the good life is one that can be bought with money; Gomberg, *How to Make Opportunity Equal* at 151. This criticism is unwarranted, since resources are merely an all-purpose good which people can use to support whatever communal contribution the person wishes to make. I will consider whether a more liberal variant of his proposal would be an attractive response to bad market luck in section 3.4.

³²⁶ This is because highly talented individuals are more likely to receive support from teachers and parents, as well as bursaries and scholarships. More importantly, they are better candidates for investment in personal capital. From their own perspective, any investment they make, whether through loans or time and effort spent training, is much more likely to pay off. Financial institutions

Those with rare natural talents that enable them to perform highly sought tasks will be able to obtain a market premium for them. Employers³²⁷ will bid against one another to get the most talented or skilled workers, pushing up their wages.³²⁸ On the other hand, competition acts to drive *down* the wages of jobs that do not require valuable skills and talents. This is because the jobs available to those without any sought talents have a wide pool of potential applicants, where these applicants will have few attractive alternative opportunities if any. The result is low wages and poor job security.

The other forms of good fortune are *locational*. One person might be in the right place at the right time. They may live in an *area* that is booming while others are in decline, with the attendant employment and investment opportunities. An individual may also just happen to meet the right person at the right time, such as John Lennon and Paul McCartney. *Social connections* can open doors to the development of careers, skills, and investment opportunities. Some people may happen to be taught—or have the rare opportunity to learn—skills which later become very valuable, such as computer software pioneers.³²⁹

It is possible to express an important feature of markets noted above differently, that they are often *winner-take-all*.³³⁰ This means that those who obtain the scarce position

will be happier to loan money to those who have shown themselves to be more talented. Also, employers are much more likely to invest in more talented individuals, giving them opportunities to practice and develop their skills, and supporting them in the pursuit of further skills and qualifications.

³²⁷ Or the final consumers, we might say.

³²⁸ This process has certainly happened over recent decades, with a widening gap in hourly income, Mirrlees and IFS, *Tax by Design : The Mirrlees Review* at 54. This process is driven by the idea of capturing “superstars,” see Sherwin Rosen, 'Prizes and Incentives in Elimination Tournaments', *The American Economic Review*, 76/4 (1986), 701-15, Sherwin Rosen, 'The Economics of Superstars', *The American Economic Review*, 71/5 (1981), 845-58.

³²⁹ Computer software innovators Bill Gates and Bill Joy had access in their youth to rare computer terminals; Malcolm Gladwell, *Outliers : The Story of Success* (London: Allen Lane, 2008). These advantages gave these two individuals a huge head-start in the personal computer revolution, in which they both had prominent roles. Of course, we do not always know which skills or talents will become useful, and we may be lucky and find that we happen to have an unusual advantage over others.

³³⁰ Robert H. Frank and Philip J. Cook, *The Winner-Take-All Society : How More and More Americans Compete for Ever Fewer and Bigger Prizes, Encouraging Economic Waste, Income Inequality, and an*

get all the goods that follow and will thrive, while those who do not have the fortune enabling them to obtain the goods will struggle. In free-market capitalist economies wealth can be utilised to generate further income and those who are required to spend a large proportion of their income on subsistence will not have such opportunities to invest, denying them the chance of further fortune.³³¹ Furthermore, possessing one or more forms of good fortune increases the chances of other forms of good fortune, through the process of *accumulated advantage*.³³² Examples of this I have mentioned are that the talented and socially fortunate often receive more opportunities earlier on, which they can then use to gain further advantages over others. Accumulated advantages also occur in investments, where those who have earned more can invest their surplus and have the potential to obtain further good fortune. Market luck can therefore lead to exponential increases in resources over time, but this does not mean that income is the only measure of market luck, as I will emphasise in the following section.

Impoverished Cultural Life (New York: Free Press, 1995). This relates to the notion of *accumulated advantage*, described below.

³³¹ In the absence of progressive income taxation or wealth taxation this market process is likely to result in widening gaps between the wealthy and the less wealthy, as has occurred since the early 1980s; Edward N. Wolff, *Top Heavy : A Study of the Increasing Inequality of Wealth in America* (New York: Twentieth Century Fund Press, 1994) at ch 3.

³³² It is also related to a phenomenon sometimes referred to as the “Matthew Effect,” as it seems to be referred to in the gospel of Matthew (25: 29); R.K. Merton, 'The Matthew Effect in Science ', *Science*, 159/3810 (1968), 56-63. This occurs in the careers of those who have initial success, as they receive more recognition for their later work, even if it is no more remarkable than that of less well-known rivals.

A similar effect is highlighted in Clare Chambers, 'Each Outcome Is Another Opportunity: Problems with the Moment of Equal Opportunity', *Politics, Philosophy & Economics*, 8/4 (2009), 374-400. Chambers uses this point to destabilise the notion of equality of opportunity, since this must be applied at a particular *moment*, despite the fact that prior inequalities will continue to influence outcomes after the moment. This is less of a concern for the approach I propose here, since that places little emphasis on the outcomes of equal opportunity, instead seeking to determine the appropriate remedy for inequalities that will follow despite the imposition of a preferred notion of equality of opportunity.

3.2 The advantages of talent

I will now consider in more detail the nature of the advantages available to those with more highly valued talents and skills,³³³ and the wider job and career options that follow from these. Those with scarce and valuable skills and talents will have a significant advantage in obtaining the most highly sought jobs and careers. These positions maybe highly sought because of their high wages, relative freedom, and/or opportunities to be creative.³³⁴ Economists have attempted to capture this with the idea of *equalizing differences*, which states that the 'actual wage paid...is the sum of two conceptually distinct transactions, one for labo[u]r services and worker characteristics, and another for job attributes. The positive price the worker pays for preferred job attributes is subtracted from the wage payment.'³³⁵ Those with greater abilities therefore have the opportunity to obtain jobs which either pay more, or, that they and others would feel effectively pay them more once the *attributes* of the job are included.³³⁶ Of course, I have ruled out theories of justice that rely on welfarist comparisons implied by *equalizing differences*. However, we need to be aware that people will be taking account of their *preferences* over jobs, and that better job attributes—as well as are an advantage that is also available to those with better luck.

Having more options therefore means the talented are more likely to find satisfying or fulfilling work than they would if they had fewer options, as well as providing greater opportunities to gain more resources than others as time goes on. However, it is worth

³³³ I will use these terms interchangeably in this section. Talents are innate, whereas skills may result from innate advantages. However, skills are still relevant to the discussion as greater skills can be the result of greater talent and other forms of good locational or environmental luck, as well as from hard work in acquiring the skills.

³³⁴ As well as social esteem, both from the money earned and the positional good of having a highly sought job; Gomberg, *How to Make Opportunity Equal*. I discuss positional goods in section 5.3.

³³⁵ Sherwin Rosen, 'The Theory of Equalizing Differences', in Orley Ashenfelter and Richard Layard (eds.), *Handbook of Labor Economics* (Volume 1; Amsterdam: Elsevier, 1986), 641-92 at 643. It does not seem that it would be possible to place universal monetary value on these un-monetised attributes in a way that would allow them to be compared between individuals. However, each individual would be able to calculate their trade-off between positive attributes of the jobs available to them with the pay that each offers.

³³⁶ *Ibid.* at 671-2.

noting another advantage that complicates comparisons; that in a market society the more talented have greater opportunities for *leisure alongside income*. By this I mean that those with more career and job options have more options to choose their preferred bundle of income *and* leisure. As such, it might not be enough to consider only income differences, but also job satisfaction and leisure.³³⁷ In this section I will illustrate this with a focus on leisure.

Let us imagine a society with several jobs, in which people fall into one of two talent levels. Some jobs are available to all members of the society—which I refer to as jobs A-F below. Some jobs are available only to more talented individuals—jobs G-K.³³⁸ All the jobs have flexible hours, with pay adjusted accordingly. Let us further assume that no one can, or would, work for more than fifty hours in a week. There are 168 hours in a week, and individuals can choose to have anywhere between 118 and 168 of those as leisure-time, which is defined as time spent not in paid employment. We can graph the options available to the less talented in figure 3-1, and for the more talented in in figure 3-2.

³³⁷ Rawls accepted this point after a challenge from public economist Richard Musgrave, who questioned his focus solely on income and wealth as a sign of relative disadvantage; Richard A. Musgrave, 'Maximin, Uncertainty, and the Leisure Trade-Off', *The Quarterly Journal of Economics*, 88/4 (1974), 625-32. This led Rawls to attempt to add leisure and work as factors in his primary goods list; Rawls, 'Reply to Alexander and Musgrave', John Rawls, 'The Priority of Right and Ideas of the Good', *Philosophy and Public Affairs*, 17/4 (1988), 251-76, Rawls, *Political Liberalism* at 181-2 fn9, Rawls, *Justice as Fairness* at 179. One possible solution presented by Rawls is to assume full-time work as his benchmark, and to require a willingness to engage in full time work in order to qualify for public funds. This approach seems to me to be unduly inflexible. Stuart White offers a more leisure-sensitive approach which I will discuss in section 3.9. I propose a similarly leisure-sensitive approach in section 6.2.

³³⁸ There are several possible reasons for this, such as the requirement in the latter jobs for professional qualifications that not all individuals are capable of attaining. Alternatively, it could be because the less talented individuals would not be able to compete in a winner-take-all job, or it could be because the less skilled have not had an upbringing that renders them able to compete in the field.

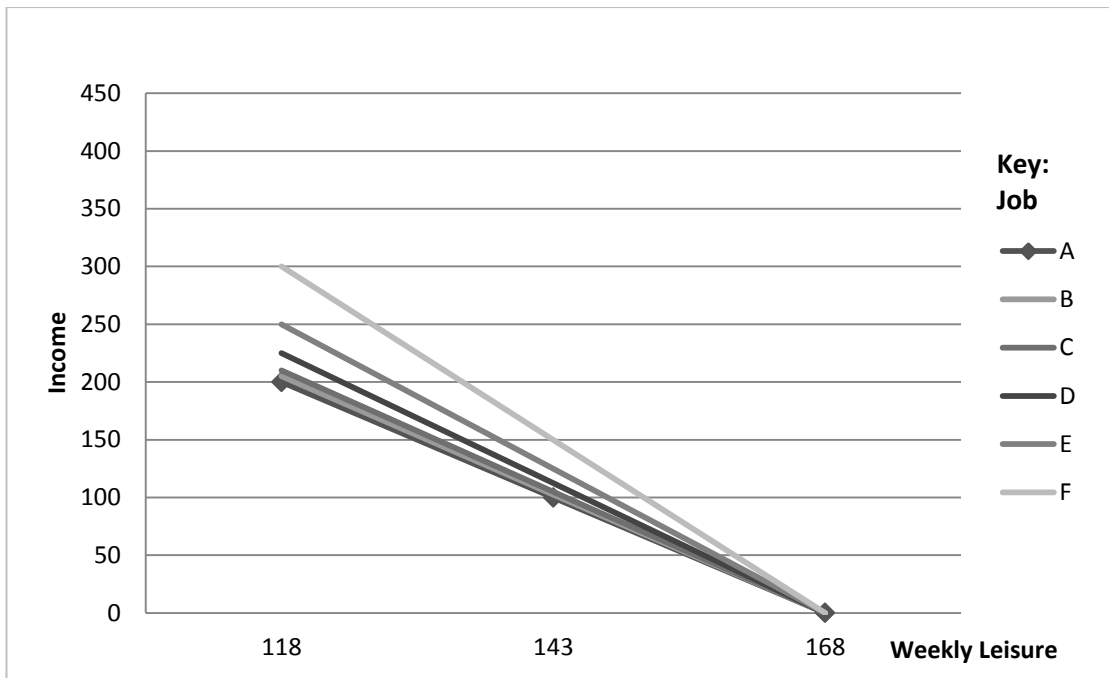


Figure 3-1: Weekly Income and Leisure options for jobs available to less skilled.

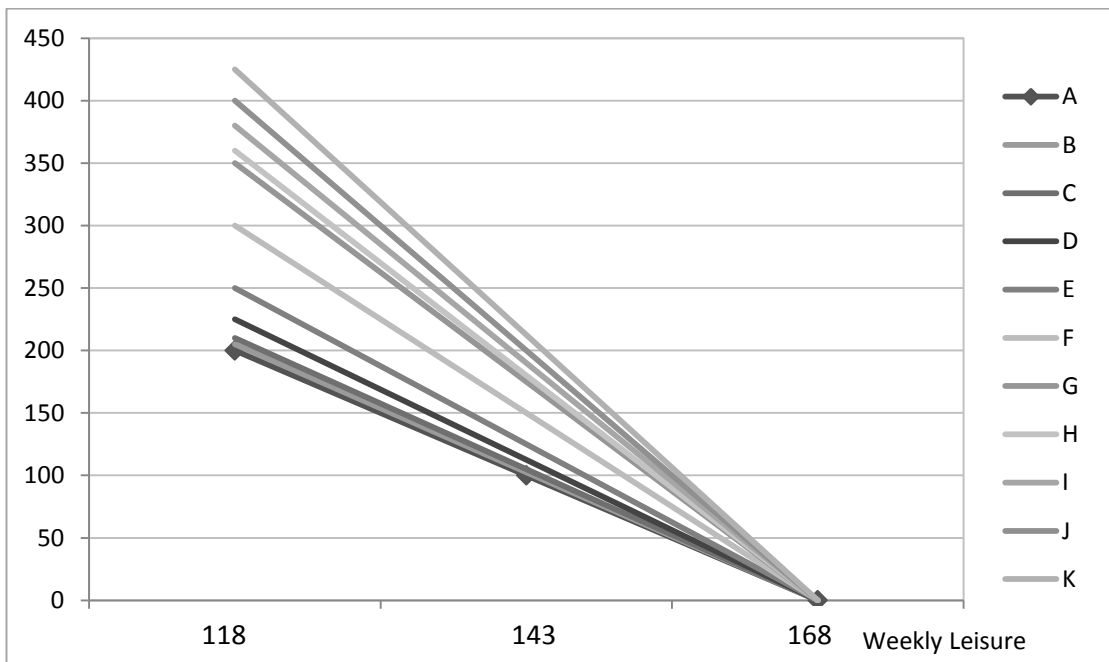


Figure 3-2: Weekly Income and Leisure options for jobs available to more skilled.

It is easy to see by comparing figures 3-1 and 3-2 that the more skilled have all of the options that the less skilled do, along with some others that are unavailable to the less skilled. We can say that the less talented could envy the choices of the more talented,

and they can certainly envy the additional choices of income and leisure available to them. This is problematic for equality of resources as the envy test is the primary means to test the equality of resources—in this case jobs. I will describe some members of the above society, and consider their choices based on their preferences and the opportunities open to them. In doing so, I show the problematic nature of envy-comparisons which focus on one aspect of a job.

Figure 3-3 depicts the choices taken by two individuals, Bertrand and Cassandra, who both generally find all of the jobs equally enjoyable. Bertrand is a more skilled individual, and can choose any of the jobs available, choosing job K from the above options. As Cassandra is less skilled she can only choose from jobs A to F and obtains job F. Cassandra generally prefers income to leisure, and so works full-time. Bertrand likes to read literature, and therefore works part-time in job K, which provides enough income to survive and access books.³³⁹ Cassandra earns more money than Bertrand even though he has the greater talent and job opportunities. Bertrand clearly considers his choice better than that of Cassandra, since he could have chosen Cassandra's employment. We cannot say what Cassandra would have chosen if she had Bertrand's choices, but we can draw certain conclusions. First of all, if Cassandra were able to work job K she would be able to earn the same amount that she does in job F but with twelve extra hours of leisure. Alternatively, she could work the same number of hours as she presently does, and earn an extra one hundred units of income. If Bertrand were only as talented as Cassandra he would have to work an extra eight hours in order to earn the same money, leaving him with eight hours a week less to read Tolstoy.

³³⁹ We might refer to Bertrand as a *leisure-lover*, anticipating a term I introduce in section 5.9, and utilise in chapters six and seven.

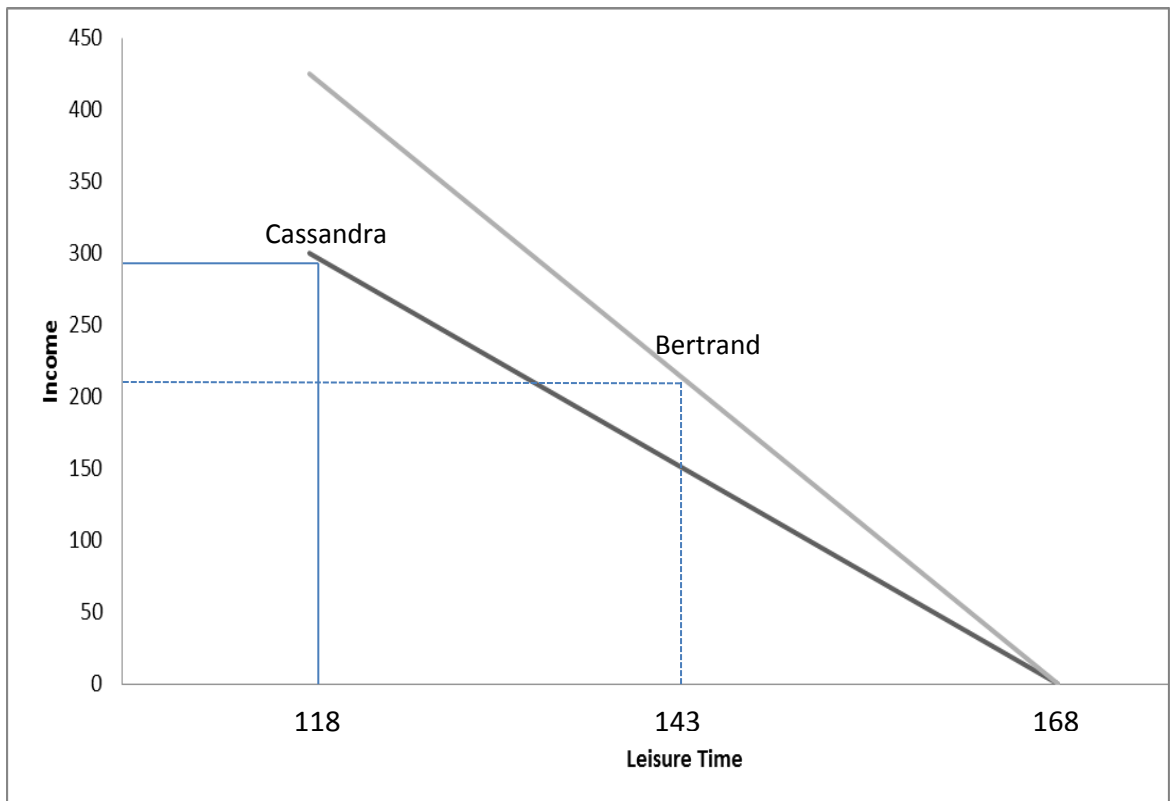


Figure 3-3: Job-type and hours chosen by two individuals

In these examples we can say that Cassandra will envy the opportunities that Bertrand has; we might say that she envies the job resources available to Bertrand. It is also very likely that she will envy the additional *income and/or leisure* that Bertrand can attain. Income is clearly an important resource, and one that Cassandra has less access to than Bertrand. However, as this example clearly illustrates, income can be a very poor indicator of advantage. Bertrand is the better-off individual, in that he clearly prefers his position to that of Cassandra, while Cassandra will envy the income and leisure possibilities that Bertrand has. However, it is Cassandra who earns more; she will almost certainly consume more, and have more valuable assets as time goes on as well. If we compare Bertrand and Cassandra in terms of income, consumption or wealth, then Cassandra incorrectly appears to be better-off than Bertrand. Income, consumption, and wealth are the standard tax bases,³⁴⁰ but these do not adequately capture our intuitions about who is worse off as a result of talent inequality where

³⁴⁰ I will discuss the choice of tax-base in sections 7.1 to 7.6.

individuals can choose the number of hours they work. One response might be to insist that everyone works full-time, but this is unduly inflexible.³⁴¹

I will now introduce two further individuals in order to illustrate the difference that high ability makes. Consider Angela, who has the same preferences over leisure and consumption goods as Cassandra, but has a much higher earning talent. Angela works as many hours as Cassandra, but obtains an income worth a third more than that which Cassandra obtains. The difference between Angela and Cassandra has been covered above. The example of Derrick is more telling, however. Derrick has the same work and income preferences as Bertrand, but has the job options available to Cassandra. As such, in order to obtain the same subsistence income as Bertrand, he has to work an additional twelve hours a week. Derrick is clearly worse-off than Bertrand; he envies the leisure that Bertrand can enjoy. The envy and possible envy between these individuals are depicted in figure 3-4.

³⁴¹ It would violate the principle of abstraction, described on page 34-6. Furthermore, it should be noted that barring part-time work would still offer Bertrand the chance to obtain more leisure than Cassandra if he were to save up his greater income and then retire long before Cassandra does.

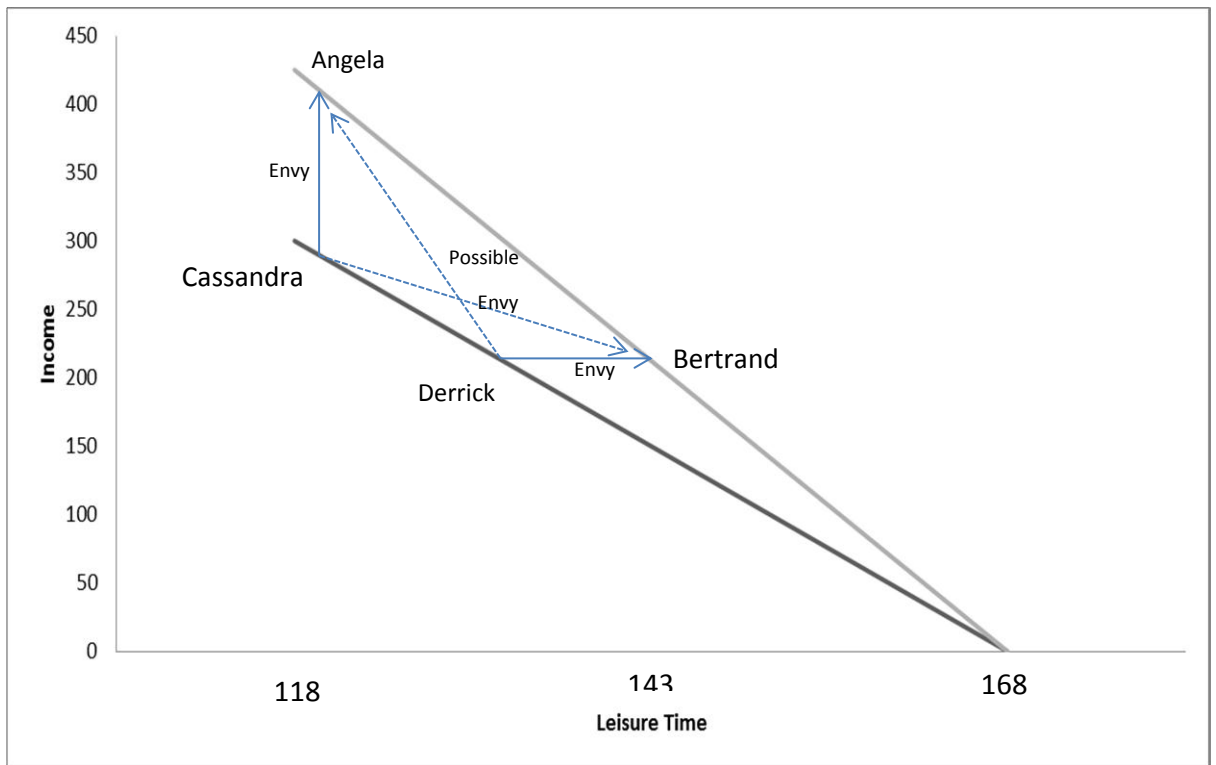


Figure 3-4: Envy between four Individuals

To add further complication, we can consider the case of Edith. Edith is as talented as Angela, but has a strong preference for a particular job—job G—despite its lower pay. Edith therefore does not envy anyone, despite her lower leisure and income than others. Frank, on the other hand, also has strong job preferences, but only has the low-skill job-set. He prefers job D to job F, despite the lower pay. Therefore, he does not envy Cassandra and Derrick. However, Frank would like to have more leisure and income, but not so much that he would work in job F. However, he would prefer the jobs available to the more talented, along with the greater leisure and income that he could obtain from them. He therefore envies Edith, Bertrand and Angela, as shown in figure 3-5.

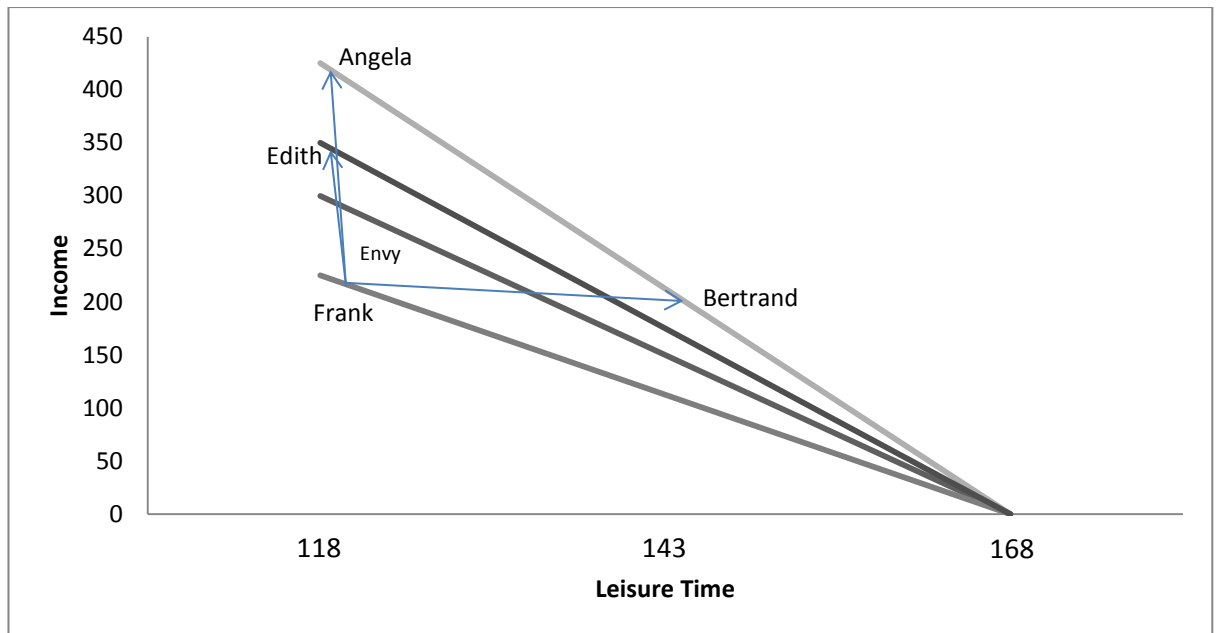


Figure 3-5: Envy with job preferences

The above examples show why we should be wary of treating income, consumption, or wealth as indicators of talent endowment, as leisure is a further indicator.³⁴² However, leisure cannot be the sole indicator; it has to be leisure in conjunction with external resources. This may imply that we need a complex of income and leisure as a measure of advantage. It is necessary to include a function of leisure *and* income as a large amount of either on its own may be of little value to individuals.³⁴³ Furthermore, focusing on such a composite is not appropriate, as the example of Frank shows. Frank does not envy two people with greater leisure (Derrick) and income (Cassandra), but does envy others with better job options even though they do not have more leisure (Angela and Edith) or income (Bertrand).

³⁴² Similar graphs, though with the axes switched, are used to reach the same conclusion in Daniel Shaviro, 'Inequality, Wealth, and Endowment', *Tax Law Review*, 53/3 (2000), 397-422 at 404-6, Daniel Shaviro, 'Endowment and Inequality', in Joseph J. Thorndike and Dennis J. Jr. Ventry (eds.), *Tax Justice: The Ongoing Debate* (Washington, D.C.: Urban Institute Press, 2002) at 130. Shaviro argues for an endowment tax from a utilitarian starting position, though he suggests that it follows from—an overly simplified version of—liberal egalitarianism as well, Shaviro, 'Inequality, Wealth, and Endowment', at 416-20, Shaviro, 'Endowment and Inequality', at 140-3. I discuss utilitarianism in footnotes 12 and 179, and will discuss the attractiveness of endowment taxation as an *ex post* response to market luck in section 3.8 and from my preferred theoretical approach in section 7.1.

³⁴³ The image here is of someone with no time to spend the money they earn, or someone who is involuntarily unemployed with lots of time and little income.

This difficult issue of leisure will recur throughout this work.³⁴⁴ For now it is enough to conclude that leisure time, or discretionary time,³⁴⁵ is an important consideration that must not be overlooked when considering the effects of market luck. In the remainder of this chapter I will consider some *ex post* proposals designed to respond to talent inequality and bad market luck.

3.3 Equal income response

There are many potential responses to bad market luck and talent inequalities, and I will discuss the most promising *ex post* proposals in the remainder of this chapter. The first two responses are rather radical, and I will discuss the first of these in this section.³⁴⁶ The first radical approach holds that the inability of markets to track ambitions given differential talents means that people should not receive the income they are paid on the market. Instead, everyone should receive the same income. Market outcomes are considered inappropriate for the purposes of distributive justice, though market institutions may be necessary for practical reasons. However, it is difficult to see how markets can perform this task while market outcomes are blocked; in order for markets to work at all, people must have certain kinds of motivation, namely, to exchange goods in accordance with their preferences.

³⁴⁴ A pluralist function of income, leisure, and job preference would be problematic. We can measure leisure relatively easily in terms of hours, but how do we then combine this with a notion of income to form a composite value? It seems impossible to claim in the abstract that £250 a week and 120 hours of leisure are more or less valuable than £200 and 135 hours of leisure. I will discuss attempts to resolve this problem in this chapter and the next.

³⁴⁵ Discretionary time is proposed as a more nuanced understanding of leisure time in Robert E. Goodin, *Discretionary Time : A New Measure of Freedom* (Cambridge: Cambridge University Press, 2008). This view focuses on the amount of time that people are likely to have at their discretion given their likely commitments. However, some of the considerations that are counted as discretionary, such as having children might have been considered choices. As such, potentially controversial value judgments are perhaps unavoidable when attempting to develop a more nuanced view of “true” leisure time. A further problem with the discretionary time approach is that it does not take account of the lumpiness (or *discreteness*) of the choices available to people—it may only be possible for someone to earn a large income as a lawyer if they work a large amount of hours (thanks to Ed Page/Zosia Stemplowska for highlighting this last point).

³⁴⁶ I will discuss the second—job-envy-reduction—in section 3.4.

Joseph Carens proposed a solution to this problem. This would require the alteration of preferences within society such that people engage with the market as producers *not just* in their self-interest, but also according to *moral motivations*.³⁴⁷ On Carens' proposal, everyone would receive the same—average—income and no more, but each would want to earn as much as they reasonably could in order to satisfy their moral desire to contribute to society and the lives of others. This means that people would want to earn more money even though they would not personally benefit from it. People would be socialised in order to desire to produce market income from their labour and investments even though the benefits would be shared with everyone in such a way that the producer will receive no discernible personal benefit.³⁴⁸

This equal income proposal has a superficial claim to meeting the starting assumptions from section 1.1. No one would envy the resources that others receive as all would receive the same every month; market luck would have no influence on what people obtain. Furthermore, people are free to do what they wish with the resources they purchase, and have liability for their use of those resources—people will not get additional resources if they later regret their resource usage.

There are practical problems with such a system. It would certainly be difficult to alter the motivations of people in society from considerations of self-interest to some kind of social interest.³⁴⁹ Carens envisages that teachers and other professionals will alter

³⁴⁷ Carens, *Equality, Moral Incentives, and the Market* at 8, for further developments on his view, including a comparison to Dworkin's position, see Joseph Carens, 'Compensatory Justice and Social Institutions', *Economics and Philosophy*, 1/1 (1985), 39-67, Joseph Carens, 'Rights and Duties in an Egalitarian Society', *Political Theory*, 14/1 (1986), 31-49.

³⁴⁸ An additional point regarding Carens' proposal occurs to me. It seems that it would be equally possible to morally motivate people to *limit their consumption* rather than increase their labour, as Weber alleged to have happened as a result of a protestant work ethic, Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (New York: Scribner, 1958). People's motivations could presumably be modified in a number of different ways. So why not allow people to keep their wages, but encourage them to donate the returns to their good market fortune to public funds? The response could not be a practical one, since the practical issues apply just as much to the equal-income approach.

³⁴⁹ In addition, many anti-capitalists would consider Carens' proposal to be utopian. They would think that it would be necessary to introduce a non-capitalist economic system in order to get to the

norms in society. However, even if teachers could be convinced to do so, it seems unlikely that all students would listen to their teachers. If some people were to refuse then others would feel less inclined to follow; an issue which relates to the problem of publicity.

The publicity worry is that if the requirements of justice are vague then people cannot know they or others are acting in accordance with justice. With reliance upon moral motivations, it seems impossible that for everyone to know that everyone else is interpreting her moral requirements in the same manner. How is someone to know if doing a hated job for five hours is as onerous to them compared to someone else doing a job they greatly enjoy for eight? If the jobs are paid the same then each worker may have a tendency to feel others are not doing as much as them, undermining the moral motivation on which the proposal depends.³⁵⁰

A more philosophical problem with this approach is that it is not sensitive to people's ambitions. If everyone wanted to earn the same as everyone else then it might be fair to provide equal incomes, but clearly some people tend to prefer material income over other things like leisure and job satisfaction, while others do not. People do not have the choice to do extra in order to earn more—or to do less work and earn less—than this average amount should they wish to.³⁵¹ Some might prefer to contribute more or less in exchange for a correspondingly larger or smaller share of income. It would appear that everyone is forced to want to ensure that all have the average amount of

ideal of moral motivation, since capitalism undermines such motivations. Marx thought that all history progressed as a result of material (i.e. economic) conditions, in which case the “super-structural” ideas and motivations that people have would depend upon the “structural” nature of economic relations. As a result, according to Marx any attempts to change motivations and ideas would be futile; see David McLellan (ed.), *Marx, Karl: Selected Writings* (Oxford: Oxford University Press, 1977) at 388-92, Karl Marx, *Capital: An Abridged Edition* (Oxford: Oxford University Press, 1999), G.A. Cohen, *Karl Marx's Theory of History: A Defence* (Oxford: Clarendon Press, 1978).

³⁵⁰ This is a practical problem, but also a problem of justice if we include publicity as an aspect of distributive justice, Andrew Williams, 'Incentives, Inequality, and Publicity', *Philosophy & Public Affairs*, 27/3 (1998), 225-47.

³⁵¹ Or, at least, to attempt to do so.

income *and* that everyone should do the average amount of work done required from someone of each level of talents and skills in order to obtain this average.

A modification of the proposal therefore presents itself. This would be to allow variations on income in accordance with the amount of time spent in work rather than leisure, effectively providing an equal *hourly wage* for all workers. Those who wish to work and earn more than others could then do so, as could those who desire more leisure with less income. Talent would play no part in income since all receive the same hourly pay.

However, this modification does not get around the problem that some people are willing to perform very undesirable jobs if greater than the average income *and* leisure is the reward. Take as an example Grant, who is willing to work in a very risky and boring occupation—suppose that this applies to deep sea diving—in order to earn large amounts of money *and* have a lot of leisure.³⁵² Everyone in society would prefer Grant to be able to perform this, and yet it is ruled out under the equal income scheme. Alternatively, imagine a society that consists of ‘consumption-lovers’ and ‘easy-lifers.’ The consumption lovers may be happy to work long and hard in unpleasant work in exchange for resources for their particular projects, while easy-lifers prefer to work in a pleasant environment and are uninterested in consumption. The consumption-lovers would want to work and exchange with other consumption lovers, but they have to share their product with easy-lifers, who receive the same hourly income. Fixing hourly income rather than total income would not allow consumers and producers to trade-off their desires for products and higher wages with one another. This appears to be an unwelcome interference with people in their quest for the resources that they think

³⁵² This example shows that people need not always possess rare talents in order to generate higher than average earnings in a market. However, I ignored such jobs in my examples in section 3.2. This is because these people without special skills can only earn high earnings from such jobs because they are extremely unpopular due to their great danger or unpleasantness. As a result of this, most people would not entertain the notion of doing such jobs.

would make their life go well. It thus fails to show equal concern for those with tastes that require less popular work, or for contributing less labour than the average.³⁵³

Equalising income will always favour those who happen to desire the average amount of consumption goods within the society, challenging the claim that the approach treats all with equal concern. Put differently, it undermines the market as a means to calculate the opportunity costs of work to the worker with regard to the resource-desires of the rest of society. Furthermore, the liability for costs falls on people in proportion to their ability to help others, though each can determine for himself exactly what costs it is appropriate for him to bear.

I have hinted at another major problem with all variants of the moral incentives proposal; that it interferes with each person's assignment responsibility over her life.³⁵⁴ In order for the system to work, people have to be socialised in such a way that they desire to benefit others, which is potentially an interference with—and certainly a limitation on—their ability to decide for themselves what matters in life. Socialising people to seek to *maximise* their pre-tax income as Carens initially argued³⁵⁵ would not leave people with any scope to choose lives that are incompatible with this goal, such as leading a leisured existence at one's own expense. Carens later dropped this maximising requirement in favour of a *general duty* to contribute to society.³⁵⁶ However, while this is an improvement with regard to ambition-sensitivity, it makes the

³⁵³ Even if the requirement to contribute in proportion to ability is not enforced, it is one that people will be socialised to perform in accordance with, even if they would prefer to work and consume less and have greater leisure. If people are free to interpret their requirements accordingly, then they would presumably also be expected to return some of their resources to the common stock. However, this would mean that people would no longer have equal income, but would rather choose their income for themselves, enhancing publicity concerns.

³⁵⁴ This is one of the criticisms in Moon's review of the book, J. Donald Moon, 'Review: Carens, Joseph. *Equality, Moral Incentives and the Market*', *Ethics*, 94/1 (1983), 146-50.

³⁵⁵ Carens, *Equality, Moral Incentives, and the Market* at 25.

³⁵⁶ Carens, 'Rights and Duties in an Egalitarian Society', at 35.

requirement even more vague and difficult for people to follow while feeling secure that others are interpreting the duty in the same way.³⁵⁷

3.4 Job preferences and job envy

It becomes very complicated to delineate any relevant counterfactual which would guide us as to how to deal with the effects of talent inequalities on jobs and pay. The relationship between *ambition* and *fortune* is very complicated indeed. However, one method is to begin with the fact that more fortunate individuals have greater opportunities, which leads to a *wider menu of jobs and careers*, some of which will have much higher market pay.³⁵⁸ Since the problem is that the less talented or skilled have *fewer job and career options*, one solution is to ensure that *talent does not influence the filling of jobs*. A second radical response to talent inequality is therefore to interfere in the job market to remove job-envy.

This response to the problem of unequal career opportunities for the less talented is to change the nature of job filling in society. Instead of the capitalist approach of employers choosing their preferred employee from the applicants, the society via the state could instead choose which applicant should fill the position. The intention here is to ensure that the worker who most wants a job will get it, rather than the worker who offers the most to the employer.³⁵⁹ There are two ways to do this, through *bureaucracy* or *reverse-job-auctions*.

Paul Gomberg presents a utopian ideal of equal opportunity whereby all members of society are able to engage in the good of *complex* labour; jobs that have skill, freedom

³⁵⁷ The *ex ante* approach I describe in the following chapters of the thesis will take account of whatever norms there are in society. I will explain my interpretation of hypothetical insurance in chapter five and apply it in chapters six and seven. I discuss the issue of prevailing social norms in section 6.7.

³⁵⁸ As I showed in section 3.2, this can lead the more skilled to greater income, leisure, or both.

³⁵⁹ Or the final customer.

and creativity.³⁶⁰ In order to achieve this, it would be necessary for all members of society to do a share of *routine* but necessary labour, and to *teach others* their more complex skills.³⁶¹ I refer to this as the bureaucratic method since Gomberg argues that the market should not be utilised at all. Either a state bureaucracy would ensure that everyone is performing both types of labour or—more optimistically—perhaps people can be trusted to perform the labour. However, we can imagine a market-based alternative whereby all receive equal money incomes and are directed to jobs in which they would contribute the appropriate amount of the three types of labour by a state bureaucracy. If everyone spends (roughly) the same proportion of their working time doing all three types of activity, then no-one will envy the job of another.³⁶²

The second method is to allot jobs using *reverse-job-auctions*.³⁶³ Employers would advertise jobs as usual, but instead of choosing their candidate, the state would run an auction for that job and the lowest bidder would obtain the job at the wage they offered in the auction. Employers would be forced to employ this worker, but pay-out the advertised amount.³⁶⁴ The difference between the initial price and final-bid price could perhaps be distributed equally among all members of the society, given to the

³⁶⁰ Gomberg, *How to Make Opportunity Equal* at 66-7. I explained why Gomberg's arguments for job sharing are unacceptable in light of my starting principles in footnote 325.

³⁶¹ *Ibid.* at 75-83. Gomberg seems optimistic regarding the practical prospects of such a scheme—the move to his utopia would presumably require a lot less *routine* work and a lot more *complex* work. He offers some reasons to think this would be the case, Gomberg, *How to Make Opportunity Equal* at 88-9. Gomberg's utopia seems to come at the expense of people being able to obtain property beyond that which they strictly need.

³⁶² This job sharing proposal is therefore less radical than Gomberg's. However, this makes the idea that people would change their consumption preferences to accommodate the costs of the scheme even more heroic in this version.

³⁶³ The idea of running auctions to determine wages for jobs is presented in Philippe Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (Oxford: Clarendon Press, 1995) at 112-3, 22.

³⁶⁴ In practice, of course, employers would then have no incentive to offer more than the average income for most jobs that are currently highly paid. As a result there would be no additional revenue as a result of the scheme—employers would not offer the job for more than they need to. While this is good for employers and bad for consumers and those who benefit from government programmes, this response would undermine the job market for those with skills and talents. Instead of bidding for the best workers, employers instead face a lottery for employees. I will consider the costs of such schemes below.

employer or used as tax revenue.³⁶⁵ To give an example of how the scheme would work, imagine I am particularly keen to work for my favourite charity. I could offer to work for that charity for less money than anyone else, and the charity would have to employ me. The scheme would also presumably need to be extended to self-employed sole traders; customers would express a desire for a service and the state would determine the worker who most wants the job at the pre-determined price.

One worry about job-sharing schemes is that they will result in jobs being done by people who are not capable of doing them, or much less capable than others. This would be particularly problematic in jobs such as surgeons and engineers. A supporter of the scheme may respond that this disastrous outcome would not in fact happen. Gomberg believes that everyone is capable of doing any job if given sufficient training.³⁶⁶ However, this assumption seems to be heroic; at the very least, the scheme would have to exclude those with learning disabilities. An alternative response would be that we could rely on people to avoid jobs for which they do not have the skills or a sufficient level of talent. As a result, they would be assigned appropriately, or workers would bid appropriately in the reverse-auction. This would get around the problem that people would be doing jobs for which they were not qualified. However, if people did not bid for jobs—or get accepted for them—because they were not talented or skilled enough it would render the scheme pointless; the same highly talented people would still do the same jobs.³⁶⁷ I will therefore assume that workers would end up doing jobs for which they were not particularly suited, less competent than other applicants, and in some cases incapable of doing the work to a reasonable standard.

Job-sharing would ensure that talent inequality has no influence on job and career opportunities. However, it is very problematic. Firstly, people could envy the talents of

³⁶⁵ The second or third of these options would probably be sensible, to be used to fund the compensation payments that the scheme would invoke.

³⁶⁶ See footnote 322.

³⁶⁷ And in the job-auction scheme, would obtain the same high rate of pay.

others even if they do not want to take that person's job as things stand due to a perceived lack of training or talent. Second, the proposal runs against the idea of market exchanges as primarily being agreements between two parties, and it is not clear that such a system could function at all. The link between the consumer and producer is mediated in such a way that the consumer's desired outcome and the price they pay would not directly link to the work actually done. In an abstract sense, it is not clear how a market pricing process could begin. Prices would have to be set centrally in order to avoid customers interfering with job choices in the market. As the example of self-employed traders makes clear, the price would have to be somehow determined based on market expectations, but it is not clear how prices would be accurately adjusted as time goes on to mimic free-market prices.

The third problem concerns the costs of such schemes. Consider the problems from the perspective of consumers. The recipient of a service will quite possibly receive a service that they value far less than the price which they would have to pay. Indeed, customers would presumably be forced to deal with inferior workers. This might mean that work would get done, but would take longer than it would if consumers were free to choose their supplier. Alternatively, the worker may not be able to do the job to the required standard, meaning that it would need to be redone at least once. Now consider employment decisions made on behalf of larger employers, which would also interfere with the market in unacceptable ways. Institutions forced to take inferior staff would be less effective, and in a competitive environment this could be very deleterious.³⁶⁸

It is possible to distribute the costs of job-sharing in various ways. One way is for the customer to bear the cost of any inferior service, assuming that they will have no way to select the quality—itsself a cost since it reduces certainty in making contracts.

³⁶⁸ On the bureaucratic approach, an attempt could be made to share out the more and less capable employees equally among companies so that none has a significant advantage. However, the costs of attempting to discern the capability of the employees would be so high that it would not be worth undertaking such an exercise; it would probably be cheaper to compensate companies which have been particularly badly hit. This latter proposal would also add to the costs of the scheme, of course.

Consumers would then bear any costs from repeated purchases. Alternatively, the cost could be borne by the employer, in which case the owners and investors would have to pay the costs of work done by their assigned inferior employees. Again, this increases both risks and costs to investors. The third alternative is for the state to compensate consumers or investors who lose out as a result of inferior work, passing the costs on to taxpayers and/or recipients of alternative state spending.

The cost of redoing the work could fall to the consumer, the employer, or everyone via the state. The first two of these introduce arbitrary costs into transactions, which would conflict with the principle of abstraction in the development of true opportunity costs, violating the principle of equal concern. This is because two people in the same situation would face a different market due to the imposition of a worker they would not choose to employ. In the third—socialised—approach the payment for work to be redone multiple times would come at the expense of higher taxes and/or other programmes that the state could provide. These costs would greatly reduce the resources available in society for other things that people need or value, a huge waste of resources. This only accounts for the costs of redoing inferior work; the schemes would also have massive administrative and efficiency costs.³⁶⁹

In conclusion, as well as the problems with calculating equal opportunity costs with substantial interference in the job market, the job-sharing schemes would impose resource costs on the members of the society. I cannot imagine that many people would be willing to pay the costs of the scheme in order to obtain its advantages.³⁷⁰ Put simply, people care about other things as well as the work they do. The costs of the scheme would fall on the less fortunate as well as the more fortunate, and the most important problem for such schemes, is that the beneficiaries of the scheme—the less

³⁶⁹ The bureaucratic approach would have the additional costs of providing many different types of training to each person which they will only use part of the time.

³⁷⁰ Certainly when considering the possibility of reasonable alternatives of the kind that I will present in this chapter and chapter four.

talented—would not think it worthwhile to pay these costs.³⁷¹ Many would be able to complain that they were not treated with equal concern, as they would prefer to have no scheme at all or almost any alternative scheme. This is an issue which the *ex ante* approach described in the following chapter resolves.

Radical responses would interfere with the job market in the production of goods to make it better for those with low talent.³⁷² However, they are not responsive to the ambitions that people have,³⁷³ imposing costs on the fortunate—and sometimes the less fortunate—that they would find less attractive than they would judge their potential misfortune from a hypothetically equal position. These criticisms hint at an alternative approach, which would attempt to be both ambition sensitive and yet fully compensate misfortune.

3.5 Mimicking a talent-equal world

Dworkin mooted and rejected another type of solution to the problem of talent inequality in his initial discussion of equality of resources. This proposal is, as Dworkin puts it, 'to develop a scheme of redistribution, so far as we are able, that will neutralize the effects of differential talents, yet preserve the consequences of one person's choosing an occupation, in response to his sense of what he wants to do with his life, that is more expensive for the community than the choice another makes'.³⁷⁴ He then asks whether we can 'fix [tax] rates so as to leave each person with the income he

³⁷¹ Gomberg would argue that it would be in people's interests to bear the costs necessary in order to ensure that they do complex work, since this is an important good in itself and because missing out on it robs people of other important goods as well; Gomberg, *How to Make Opportunity Equal* at 46-9, 66-7. However, this argument—as Gomberg readily admits—is perfectionist, and therefore contravenes my second starting assumption.

³⁷² Or indeed, perhaps just a relatively poor start in life.

³⁷³ They impose workers on employers and consumers. However, the fact that employers and consumers should be able to choose who they contract with does not imply that employers should be able to discriminate on the basis of race or political convictions. There should be equal opportunity in this sense. Dworkin would justify this on the basis of his principle of independence; Dworkin, *Sovereign Virtue* at 161-2, Hansen, 'Equality of Resources and the Problem of Recognition'.

³⁷⁴ Dworkin, *Sovereign Virtue* at 91.

would have had if, counterfactually, all talents for production had been equal?’³⁷⁵ That is, to *mimic a talent-equal world*. Dworkin argued that it is unlikely that we could apportion the income that people receive into fortune and ambition, since the two are intertwined. However, resource egalitarian Rakowski argued in favour of such a division.³⁷⁶

In a talent-equal world pay would not be equal, as it would vary in accordance with the desirability of the products of work to all members of society and the relative desirability of the work to potential workers. Essentially, the mimicking proposal would require the state to determine the extent to which the gross (pre-tax) pay received for various jobs arises as a result of competition in an unequal-talent market or due to the unpopularity of the work. In some jobs, such as those of professors and football players perhaps, higher than average pay may come because of competition between universities for professors and football clubs for players. In some jobs, such as cleaning, the lack of higher-paid options for those with less desirable talents may drive down the wages. However, there may be cases—such as the deep sea diver mentioned above—where high pay is somewhat independent of talent. So in these cases there should presumably be transfers from those who work in football and academia, but not from deep-sea divers, towards those who clean for a living in order to mimic the wages they would receive in a talent-equal marketplace.

One way to calculate this would be to consider the various types of job and the extent to which those doing them would prefer to do others if the alternative jobs are higher-

³⁷⁵ Ibid. at 91-2.

³⁷⁶ Eric Rakowski, *Equal Justice* (Oxford: Clarendon Press, 1991) at Part I, particularly 97-106, 38-48. Rakowski appears to take the advantage of resource egalitarianism to be that it does not allow people’s external preferences over the political, religious, or teleological nature of their society to have any weight, as I discuss in section 4.8. He therefore ignores the advantage that it allows each person to value resources themselves in a fair market process. He criticises hypothetical insurance for not necessarily fully compensating those who suffer from bad luck, Rakowski, *Equal Justice* at 125. I discuss this challenge to the hypothetical insurance scheme in sections 4.4-4.7.

paid than theirs.³⁷⁷ This creates a temptation to utilise welfarist comparisons, but I have argued against this above.³⁷⁸ An alternative method to obtain the information would be survey people regarding their desire for alternative careers. Unfortunately this method would be unreliable, as people would be able to tailor their answers in order to increase the remuneration for their own job.

Dworkin rejects the mimicking proposal because the world would be so different and the market would not work in the same way. His examples here are rather strange. He suggests that ‘in a world in which everyone could hit a high inside pitch or play sexy roles in films with equal authority, there would probably be no baseball or films; in any case no one would be paid much for exercising such talents.’³⁷⁹ I would have thought that people would still enjoy watching baseball if it is a good spectator sport, even if the only difference between one team and another would be the preparation of the players and staff, along with luck on the day.³⁸⁰ Certainly people would watch films even if everyone were equally able to act sexily, though the film industry would be very different. The amount that people would be willing to pay to engage in these pastimes may, however, drop, which would have a massive impact on the production of films and interest in the matches, which would in turn affect the building of cinemas and stadia, advertising, and so on.

What Dworkin presumably means is that there is no way to calculate what prices would be paid in a talent-equal world, in order to calculate the transfers required in order to mimic such a world. Although we can fairly comfortably say that film stars would receive pay closer to that of teachers we cannot change the availability of potential film

³⁷⁷ The job auction proposal from the previous section may be one method to achieve this. However, it would be unreliable, as people could bid-down the wages of others with impunity if they would not be forced to undertake the work themselves for that amount.

³⁷⁸ Sections 2.1-2.6 and see footnote 171 and surrounding text.

³⁷⁹ Dworkin, *Sovereign Virtue* at 92.

³⁸⁰ Indeed, many sports have rules which are designed to “level the playing field” such as the draft rules in US sports and the strict rules on car-types and attributes in motor racing. Thanks to Liam Shields for this point.

stars in order to ensure that enough people would be willing to take up this work for the same pay as they would in the imagined equal-talent world. In the talent-equal world some items of consumption would be much cheaper as people would not have to pay the large wages, perhaps for adversarial workers such as lawyers, and people would therefore have more money left over for other things. This would alter the supply and demand of everything else in the society. As a result, the economy in an equal-talent world would be substantially different. Dworkin's point is that it is not possible to mimic the earnings of an equal-talent world as people would make very different consumption decisions as well as labour decisions, which would then affect prices and work decisions throughout the economy, which in turn would affect people's work and investment decisions.³⁸¹ Rakowski even admits that his proposal would not work in practice, and that it therefore merely implies a progressive income tax.³⁸²

I have argued that it is impossible to calculate all the prices that would apply in a talent-equal world based upon our talent-unequal market prices. However, the mimicking approach would still not be an improvement on the *ex ante* approach if it were possible to do. To see why, imagine that there is a supercomputer which can calculate and apply all the talent-equal-world prices throughout the economy. However, the computer requires a lot of information about everyone and it costs a lot of money to hire many people to get the—seemingly bizarre—information it requests.

³⁸¹ A possible response to this would be to admit that it is not possible to fully mimic a talent-equal world, but to assume that the income-mimicking approach described above—if feasible—would do a *good enough* job of mitigating talent inequality. That is, to admit that the proposal is a fudge, but to argue that it does the important job well enough; namely to reduce the returns to talent in order to benefit those with less valuable talents. This would be more responsive to the ambition sensitivity problem because it would accept the ambitions that people actually have, while responding to the variability of benefits to talents and other forms of market luck that motivate this chapter. However, this fudge appears to give up on the principle of mimicking an equal-talent market. It could perhaps be seen as a variant of—or hybrid with—the equal-income approach presented in section 3.3. However it is best categorised, it would not be clear what principle the approach rests upon. To the extent that the fudge gets around the problem of perfect mimicking it is then problematic on similar grounds to the radical proposals.

³⁸² Rakowski, *Equal Justice* at 146-7.

If the computer required almost everyone in the society to be employed in obtaining this information it would not be worth utilising it; the costs—impoverishing everyone—would exceed the benefits of mimicking. Now, imagine that the computer works out a way of obtaining the information itself,³⁸³ so that it can apply the mimic without cost. In this case, hypothetical insurers would clearly choose to employ the computer as their *ex ante* decision and there is no difference between the implication of the approaches. Those who would employ the computer on an *ex post* approach would have to specify a cost-limit in order to avoid the disastrous bankrupting computer, and it is not clear how the mimicking approach can tell us the point at which the cost becomes unacceptable. The *ex ante* approach, however, will be able to answer this question; the cost of the machine becomes unacceptable at the point where hypothetical insurers would prefer an alternative—cheaper—policy. Whether it is possible or not, therefore, the mimicking approach will fail to determine equal opportunity costs in a fair and neutral manner; to the extent that mimicking is possible, its attractiveness—given people’s actual ambitions, and from an equal position—is better determined from an *ex ante* position.

3.6 Labour-supply solutions: forcing the talented to market

I have so far considered radical and mimicking responses to talent inequality and bad market luck. I will now discuss labour-supply responses, which attempt in various ways to *force* the talented to supply their talents to society in order to avoid the need to use unequal market rewards. These can be contrasted with the radical proposals which attempt to *motivate* the talented, though pass additional costs onto *consumers*. I will consider four approaches of this type in this and the following sections; a Stalinist approach, including talents in the island auction (3.7), an endowment tax (3.8), and finally the Egalitarian Subsidy Scheme (3.9). Each labour-supply proposal I consider is

³⁸³ For example, by plugging itself into the internet and looking at everyone’s facebook and twitter accounts and online betting patterns.

an improvement on its predecessor, but the improved versions do not completely solve the problems of the first.

Let us consider the most extreme labour-supply approach. We can consider a situation where those with special talents are *forced to use them* for the benefit of the rest of society, without receiving any compensating income. We could call this a *Stalinist forcing* approach,³⁸⁴ whereby people are ‘dragged in chains’ to their most highly remunerative profession.³⁸⁵ Most people would find this suggestion appalling, and rightly so. It seems to require an objectionable level of coercion, in such a way that people would consider themselves *slaves to their society*.³⁸⁶

It is possible to argue against this *Stalinist* approach from the perspective of liberal neutrality and the envy-freeness test. We can see that it would be possible for the more talented to envy the position of the less talented in the Stalinist world. Imagine someone who could be a successful corporate lawyer, but wants to run an organic café, who would be forced to practise law. This individual would envy a less talented person who was not forced into a particular profession, and who was free to set up the café. If the more talented envy the less talented, we can say that we have gone too far in attempting to respond to talent inequality. We have replaced the natural envy of the

³⁸⁴ I use this term though it is based more on a caricature of Stalin than any specific policies that I am aware of. I take the idea from Cohen, *Rescuing Justice and Equality* at 186. Cohen in his later work appears to endorse a more flexible development of Carens’ utopian equal income approach discussed in section 3.3, see Cohen, *Rescuing Justice and Equality*, G.A. Cohen, *Why Not Socialism?* (Princeton: Princeton University Press, 2009).

³⁸⁵ Shaviro, ‘Inequality, Wealth, and Endowment’, at 410.

³⁸⁶ Though it is likely that not everyone will need to be coerced into their most productive profession. After all, people tend to enjoy exercising their talents, and so will be happy to work in this job. Thanks to Ed Page and Zosia Stemplowska for highlighting this point. However, the fact that some people would have chosen the same job does not alter the fact that they have had their choice restricted in a way that others have not. Furthermore, people value things much more if they have chosen them, and tend to resent being forced to do things they enjoy; T. M. Scanlon, ‘The Significance of Choice’, in S.M. McMurrin (ed.), *The Tanner Lectures on Human values Vol. 8* (Cambridge: Cambridge University Press, 1988), 149-216.

less talented for the more talented with the artificially induced envy of the untalented from the less talented.³⁸⁷

We can, however, imagine a Stalinist solution which managed to avoid actual envy between workers, by manipulating wages, leisure time, and work conditions. Thus, instead of simply maximising output, it would restrain this goal with a requirement that no one should envy the work-package of another *ex post*. However, while this would remove the actual envy felt in the society, it would nevertheless violate the principle of abstraction. Forcing people into particular occupations, and with pre-ordained conditions, would fail to treat people as equals as they would not have the equal ability to organise their affairs. This means that the market prices would not reflect true opportunity costs and therefore people could not be held responsible for the true opportunity costs of their activities. Stalinist approaches are therefore unattractive, even if they can avoid direct working-package envy. I will consider a less invasive version of this ideal of *ex post* envy-freeness in the following chapter—sections 4.4-4.5 and 4.7.

3.7 Inclusion of labour talent in the island auction

The second labour-supply approach I will consider was presented by Dworkin as a possible solution to the problem of unequal earning talent. This is the idea of including the future labour power of all islanders as resources in the equal auction.³⁸⁸ Islanders would have to bid against the others for their own labour in order to control it, otherwise their labour decisions would be out of their hands. This would be much more expensive for some than others, leaving the more highly talented with a lesser ability to

³⁸⁷ See also Dworkin, *Sovereign Virtue* at 90.

³⁸⁸ *Ibid.* at 89-90.

purchase other resources. This would put the less talented on a more equal footing with the more talented.³⁸⁹

Dworkin rejects the proposal to include labour power in the auction because it would still result in a form of 'slavery of the talented.' Dworkin gives the example of Adrian, who would have to use all his resources to purchase his labour, which he would then have to perform full-time, thus restricting his options.³⁹⁰ This would enslave the talented because they would either be unable to afford their own labour, or they would have to expend a lot of resources to obtain it. In the former case, their labour time would literally be owned by others. In the latter case, the talented would have no choice but to earn their maximum amount of income in order to pay for their self-purchase. In both cases, they would have restricted choice—or even none at all—over the type and duration of their work. As a result, the talented would envy the freedom of occupation that the less talented would have, which violates the envy-freeness required to ensure that everyone is shown equal concern.

Miriam Cohen Christofidis challenges Dworkin's argument against including labour in the initial auction.³⁹¹ She argues that Dworkin is too favourable to the more talented, as Dworkin applies the envy test at the wrong place; it is supposed to apply to the

³⁸⁹ This would perhaps coincide with Rawls' notion that we should regard 'the distribution of natural talents as in some respects a common asset and to share in the greater social and economic benefits made possible by the complementarities of this distribution.' Rawls, *A Theory of Justice: Revised Edition* at 87.

³⁹⁰ Dworkin, *Sovereign Virtue* at 90.

³⁹¹ Miriam Cohen Christofidis, 'Talent, Slavery and Envy', in Justine Burley (ed.), *Dworkin and His Critics : With Replies by Dworkin* (Malden, MA: Blackwell Pub., 2004), 30-44. Also published as Miriam Cohen Christofidis, 'Talent, Slavery and Envy in Dworkin's Equality of Resources', *Utilitas*, 16/3 (2004), 267-85. Cohen Christofidis also argues that Dworkin misuses the label slavery. She argues that it would be more correct to say that the inclusion of labour power in the auction would leave the more talented with restricted choice, rather than in a state of slavery; Cohen Christofidis, 'Talent, Slavery and Envy', at 32. Perhaps in some cases restricted choice is a fair description of what would happen if labour were included in the auction. Someone might have to work slightly longer than others in order to pay their additional ownership premium, for example. However, slavery is still a possibility for those with highly valued skills and talents where they are unable to afford their own labour in the auction. A proposal that *effectively* resulted in third party ownership of labour power appears to warrant the term slavery even if this extreme outcome would not occur in most cases.

'resources that individuals have', not to be applied at an *ex ante* stage.³⁹² Dworkin's argument is that Adrian is worse-off when his labour is included in the auction because he loses his option to choose to work less and have more leisure time, or alternatively that he no longer has any choice of occupation. In both of these cases, Adrian could envy those who do have such free choice, and this is certainly problematic. However, the proposals considered in this chapter respond to the envy felt by less talented persons for the additional leisure, income and career paths open to the more talented. Is this envy by the less talented not as problematic as Adrian's envy when his labour is auctioned, showing that Dworkin is prejudiced towards the talented?

Cohen Christofidis seems to imply that including talent in the auction is acceptable to the extent that it would result in an actual-envy-reducing approach.³⁹³ Since unequal talents upsets *ex post* envy-freeness the best available option is to reduce the amount of envy felt throughout society, by apportioning income, leisure and preferred jobs in such a way that no one would envy the package of another. She finds this to be more attractive than the *ex ante* approach. Indeed, Cohen Christofidis suggests that rival resource-distributions would have to be judged based on the *envy-reduction* created under different proposals, when attacking Dworkin's reliance on a single example to count against the labour-auction proposal.³⁹⁴

However, this envy-reduction approach is not an envy-freeness view of the same kind as that used by equality of resources. It requires us to judge between the *levels* of different people's envy instead of the binary distinction between envy and envy-freeness which enables the equal valuation of resources in a way that all can contribute to. This alternative envy-reduction approach would require the *valuation* of envy, which does not seem feasible. However, even if it were feasible, the valuation of envy would require a valuation of different kinds of thing, and will therefore introduce

³⁹² Cohen Christofidis, 'Talent, Slavery and Envy', at 33.

³⁹³ I mentioned such a view above, on page 139.

³⁹⁴ Cohen Christofidis, 'Talent, Slavery and Envy', at 34-5.

controversial comparisons. I imagine that such comparisons would have to be welfare-based, but—whatever form they take—they would require the imposition of a particular valuation that is unlikely to reflect the valuations of all those affected.³⁹⁵

It is possible to explain the rejection of this actual-envy-reduction strategy differently. The actual-envy-reduction approach is appealing because it would appear that there would be less *ex post* envy than on alternative approaches. However, equality of resources is not motivated by the thought that envy is a terrible thing, but rather that people are valuing resources from an equal position and in accordance with their own plans of life.³⁹⁶ There is a difference therefore, between attempting to equalize *ex post* envy of resource-bundles, and equalizing *ex ante* envy of resource-bundles. To anticipate the arguments of the following chapter, the *ex post* approach does not determine *ex post* envy compensation levels in a way that is fair to all. This is because it may provide more compensation than all parties would have chosen from a hypothetically equal position. Furthermore, people in the *ex ante* position can choose whether or not to include talents in the scheme, rather than having this decision made for them, since such a decision would take place without knowledge of talent, it will show equal respect for all.

The above argument is further bolstered by highlighting the difference between Adrian's complaint at the elimination of Claude's *ex post* envy and Claude's initial complaint of *ex ante* envy. Adrian's complaint that his life would be limited in order to benefit Claude—whether or not he would in the end envy Claude—is stronger than Claude's initial complaint that he had bad luck. Firstly, Claude's envy is based on a natural difference, while Adrian's claim is based on a socially induced difference. Second, there is no way to separate people from their talents, and so if talents are

³⁹⁵ Cohen Christofidis responds to this challenge by insisting that Dworkin includes the fulfillingness of occupations—along with preferences over wines—in the resource bundle, *Ibid.* at 36. However, these factors are not directly compared, but rather when individuals are comparing their envy for the resource-bundles of others.

³⁹⁶ As emphasised in section 1.3.

included in the auction, then Adrian's choices are determined in a way that Claude's are not. We have more sympathy with Adrian's complaint because it appears that he is being used a *means* to Claude's ends where he is asked to do more for Claude than either he or Claude would have chosen to do in a hypothetically equal position.³⁹⁷ The worry here is that Adrian is having his body *usurped*,³⁹⁸ and used in ways that he could choose to do himself—or not. The troubling claim that people are being used as a means applies to the endowment-inclusive *ex post* responses to talent inequality but does not apply to the *ex ante* response.³⁹⁹ This provides a further reason to think there is a difference between altering Adrian's choices in order to remove Claude's envy and finding another method which would still allow the calculation of equal opportunity costs.

In conclusion, including labour power in the auction is unacceptable for similar reasons to those against the Stalinist approach. The move from centralised-state forcing to decentralised forcing via market ownership does not solve the problem of enslaving the talented. I will explain in further detail why Dworkin's *ex ante* approach is superior to *ex post* envy-reduction proposals such as that proposed by Cohen Christofidis in section 4.7.

³⁹⁷ The means principle is explained and defended in Victor Tadros, *The Ends of Harm : The Moral Foundations of Criminal Law* (Oxford: Oxford University Press, 2011) at Ch 6. I thank Victor for discussion about the means principle and taxation.

³⁹⁸ Dworkin discusses the notion of usurpation with regard to his second principle of dignity—that people should have sovereignty over their bodies—in Dworkin, *Justice for Hedgehogs* at 295-6.

³⁹⁹ Of course, I do not mean that the morality of taxation should be built up from the means principle. After all, I have not mentioned the means principle up until this point. Doubts about the fundamental place of the means principle in morality are expressed in Scanlon, *Moral Dimensions* at (in particular) 109-21. Furthermore, I should emphasise that my use of the means principle would not rule out taxation entirely. It merely rules out forms of taxation that may result in the usurpation of someone's body. *Ex post* talent-inclusive proposals are troubling since the talented may be enslaved and envy the position of the less-talented, but this may be more acceptable to the talented if they would have chosen such a policy from an *ex ante* equal position. I briefly consider and reject endowment taxation in section 7.1, though it seems Dworkin would outright reject such taxation for the same reason that he would rule out voluntary enslavement; it would violate bodily dignity, Dworkin, *Justice for Hedgehogs* at 298.

3.8 Endowment Taxation

The third labour-supply response to talent inequality is to tax people based upon their *endowment*. Endowment taxes are generally preferred by utilitarians and economists because of their efficiency,⁴⁰⁰ but they also have a claim to resolve talent inequality and bad market luck. In the latter vein, the revenue raised by such an endowment tax would be used for public services for the benefit of all, and/or redistributed to the less fortunate. The first question that arises with this suggestion is how to value different people's endowments. I will assume that everyone's endowment should be valued at the amount of income they would earn if they reached their reasonable earning potential.⁴⁰¹ We may wish to define "reasonable," as something like 80% of maximum earning potential working full-time hours. It would be necessary to value endowment in relation to maximum earning potential.⁴⁰² A tax of 80% would be less demanding than the labour-inclusive auction, as people would certainly control their own labour and will have a little leeway to slightly increase their leisure or choose slightly less highly-paid work.

An endowment tax would therefore require everyone to contribute a percentage of their maximum expected product. I will refer to this as an *endowment tax*, though others have referred to endowment as *faculty*,⁴⁰³ *earning ability*,⁴⁰⁴ and *earning*

⁴⁰⁰ For a review article see Lawrence Zelenak, 'Taxing Endowment', *Duke Law Journal*, 55/6 (2006), 1145-82. Mirrlees took endowment taxation to be the ideal tax from which he developed his famous optimal taxation theory, Mirrlees, 'An Exploration in the Theory of Optimum Income Taxation'. Linda Sugin has recently attacked this economic approach from a liberal egalitarian perspective on the basis of its endowment-based underpinnings, Sugin, 'A Philosophical Objection to the Optimal Tax Model'.

⁴⁰¹ Thus limited so as not to exhaust everyone.

⁴⁰² Richard Musgrave invokes an alternative notion of endowment as *potential welfare* rather than potential earnings; Musgrave, 'Maximin, Uncertainty, and the Leisure Trade-Off', at 630. This would have the advantage of dealing with leisure trade-offs, though as it is a perfectionist welfarist approach. Furthermore, it would not be possible to make inter-personal comparisons on this basis, see Zelenak, 'Taxing Endowment', at 1163-5.

⁴⁰³ Francis A. Walker, 'The Bases of Taxation', *Political Science Quarterly*, 3/1 (1888), 1-16 at 14.

⁴⁰⁴ Daniel Shaviro, 'Beyond the Pro-Consumption Tax Consensus', *Stanford Law Review*, 60/3 (2007), 745-88 at 752.

capacity.⁴⁰⁵ Furthermore, if we assume that the tax income will be redistributed equally to all then we could equally accurately follow Stuart White and refer to it as a *lump-sum transfer scheme*, or LSS.⁴⁰⁶ To explain how it would work, consider the implications of an endowment tax for the examples earlier in this chapter. Bertrand would have to pay, say, 400 units in tax while Cassandra only be required to pay 250. This means that Bertrand would not be able to work part-time, as doing so would not generate enough income to pay his tax bill.

There are two well recognised problems with endowment taxes.⁴⁰⁷ The first is that it is very difficult to obtain the information necessary in order to determine every individual's relative earning potential. The information required is immense, and individuals would have both the means and the incentive to hide their talents.⁴⁰⁸ Furthermore, even with the basic information, it might be difficult to determine a specific market value for talent, given that it will be necessary to make many assumptions and that market prices are in a constant state of flux. Furthermore, initial endowment is not the only source of good or bad fortune. Some people with average talents will receive unanticipated advantages by being in the right place at the right time, while some people with high ability will struggle.⁴⁰⁹

⁴⁰⁵ Mark G. Kelman, 'Personal Deductions Revisited: Why They Fit Poorly in An "Ideal" Income Tax and Why They Fit Worse in a Far from Ideal World', *Ibid.* 31/5 (1979), 831-83 at 841.

⁴⁰⁶ Stuart White, 'The Egalitarian Earnings Subsidy Scheme', *British Journal of Political Science*, 29/4 (1999), 601-22, Stuart White, *The Civic Minimum : On the Rights and Obligations of Economic Citizenship* (Oxford: Oxford University Press, 2003) at chapter four.

⁴⁰⁷ Rawls, *Justice as Fairness* at 157-8, Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice*, (Oxford: OUP, 2002) at 122, White, 'The Egalitarian Earnings Subsidy Scheme', at 603. White also discusses a third problem, that of parity of self-esteem between citizens, under the heading 'civic egalitarianism,' see White, 'The Egalitarian Earnings Subsidy Scheme', at 619-21.

⁴⁰⁸ Dworkin highlights that individuals can 'hide their talents under a bushel' when discussing the talent auction proposal, Dworkin, *Sovereign Virtue* at 100. White attempts to mitigate this problem by partitioning individuals into a small number of endowment groups; White, 'The Egalitarian Earnings Subsidy Scheme', at 618-9. However, this seems unsatisfactory because it does not then reflect the endowment of the particular individual involved. Someone at the "bottom" of the highest group would envy those at the top of other groups, since they would have to pay the highest tax but presumably have very limited job options that would enable them to meet that tax.

⁴⁰⁹ Sugin, 'A Philosophical Objection to the Optimal Tax Model', at 253-5. Examples of both kinds appear throughout Gladwell, *Outliers : The Story of Success*.

The second problem is the moral problem that plagued the previous proposal, that it *enslaves the talented*.⁴¹⁰ Recall the case of leisure-loving Bertrand above; if he had to pay an endowment tax he would have to work full-time rather than part-time. Some may consider Bertrand enslaved because he is forced to work longer than he would like, but on the other hand, so was less-talented leisure-lover Derrick. Perhaps Bertrand would still not envy any other individual even with the endowment tax; he would not envy others with his talents and preferences as they would also have to work full-time and find themselves in the same position. However, he might envy Derrick if Derrick also received an additional low-endowment transfer that would enable him to work part-time. Before considering endowment taxation further, I will consider a refinement of it that responds to this leisure problem.

3.9 The Egalitarian Subsidy Scheme

Stuart White has proposed a novel form of endowment tax in his search for a solution to the question ‘what is the most ethically desirable form of transfer egalitarianism?’⁴¹¹ He suggests that in addition to traditional redistributive taxes and transfers and endowment taxes—which he refers to as LSS—there is a third option; the *Egalitarian Earnings Subsidy Scheme* (ESS). Instead of requiring a straightforward lump-sum transfer from the highly endowed to the less highly endowed, the ESS would take account of the number of hours worked by the individuals involved. The ultimate comparison point is that of full-time working, such that if everyone works full-time then everyone would receive the same income after the transfers.⁴¹² However, instead of

⁴¹⁰ Dworkin, *Sovereign Virtue* at 90-1, Shaviro, 'Inequality, Wealth, and Endowment', at 408-9. This problem is perhaps better described as a family in that it has taken several slightly different forms that can be placed under a similar heading. An unusual expression, alongside the more commonplace complaint that endowment taxes force people to market, is that the enslavement complaint is underpinned by a desire to *avoid human commoditization*, Mark G. Kelman, 'Personal Deductions Revisited: Why They Fit Poorly in An "Ideal" Income Tax and Why They Fit Worse in a Far from Ideal World', *Stanford Law Review*, 31/5 (1979), 831-83 at 841-3.

⁴¹¹ White, 'The Egalitarian Earnings Subsidy Scheme', at 602, the ESS is also presented in White, *The Civic Minimum* at 79-82.

⁴¹² White, 'The Egalitarian Earnings Subsidy Scheme', at 609.

calculating transfers based on this full-time assumption the transfer is calculated on an hourly basis, and thus depends upon the number of hours worked by each individual. So if Bertrand works half-time he does not have to pay the full transfer he would if he were a full-time worker, but rather half the total transfer. If Derrick were to work part-time he would not receive the same transfer that he would with a lump-sum endowment transfer. So instead of lump sum transfers, transfers in both directions are calculated in proportion to the number of hours worked.

White complains that lump sum transfers do not give people ‘access to the same set of income-leisure bundles.’⁴¹³ As I described above, the LSS would enable Derrick to work very little, as most of his expenses would be covered by his lump sum. Bertrand, on the other hand, would have to work near to full-time in order to pay his tax bill, meaning that Bertrand would envy Derrick. However, under the ESS proposal, Derrick’s subsidy and Bertrand’s tax payment would rise in proportion to the hours they work. This means that they could both work part-time, giving them a similar leisure and income bundle. The ESS proposal gets around the inequality between Amanda and Cassandra in the same way as the lump-sum approach, *and* also between Cassandra and Bertrand, and between Bertrand and Derrick. This means that the *work duration* component of the slavery of the talented problem does not arise,⁴¹⁴ because Bertrand would not envy Derrick as he would under a LSS scheme.⁴¹⁵

In addition, White also recognises the *unpleasant job* objection, whereby people have to work in a job they do not enjoy. The problem with the endowment tax is only not the work duration issue—the relationship between Bertrand and Derrick—but rather cases such as those of Edith and Gertrude. Gertrude has valuable talents, like Bertrand, which could command a high wage. However, she hates all the jobs apart from job D,

⁴¹³ Ibid. at 606.

⁴¹⁴ Ibid. at 615, White, *The Civic Minimum* at 82.

⁴¹⁵ The ESS also provides a good answer to the autonomy based criticism of endowment taxation arguments in Rawls, *Justice as Fairness* at 158, Murphy and Nagel, *The Myth of Ownership* at 123. I ignore this line of argument against endowment taxation in this work.

and much prefers this to jobs E-K despite its lower pay. She is happy to work full-time in job D, even though she could earn more in jobs E-K. If Gertrude were forced to pay an endowment tax, she could not earn enough in job D to pay the tax, meaning that she is effectively forced to work in higher-paid jobs (G-K). Gertrude has to pay costs that are generated by her talent rather than her authentic choices.⁴¹⁶ She will envy the less talented person, and while this would be justified to her if she would have chosen such a policy in an *ex ante* position, it is not justified if it is fostered upon her without such a basis.

White argues that the ESS proposal meets the unpleasant job objection *because* it meets the work duration objection. This is because the scheme responds to *earnings*, and so those who work in a lower-paid job rather than working fewer hours will also have their tax—or subsidy—reduced accordingly. Since peak earnings potential is the reference point for everyone, the more and less talented face the same type of decision.⁴¹⁷ Both can choose to work in a job for less than their peak earnings, and would face a proportionate loss of earnings as a result. As such, there is a degree of symmetry in their respective positions; if Cassandra chose job A rather than F, she would be in a similar position to Gertrude in choosing job D over job K.⁴¹⁸ White argues that while the standard endowment tax, or LSS, would lead to a slavery of the talented, his ESS would not. This is because a more talented person could choose to work long-hours at a less highly remunerated job and this would be accounted for in such a way that they would not have to pay the full lump-sum. Since the ESS system reacts in the same way as it would if this highly talented person were working part-time at their peak-earning job, White concludes that while there 'is a price to be paid for trading

⁴¹⁶ I am indebted to Liam Shields for leading me towards this formulation of the point.

⁴¹⁷ White, 'The Egalitarian Earnings Subsidy Scheme', at 616.

⁴¹⁸ This argument relies on the pretty heroic assumption that everyone has the same relationship between job preferences and the income they receive from them. This fact will vary from person to person, but the more talented would presumably fare less well on this front. This is because any given job is a smaller proportion of their peak earning capacity and therefore a greater cost to them from this reference point.

high-paying work for lower-paid, more satisfying work, but the price is not necessarily higher for the talented than for the untalented.⁴¹⁹

White's argument for ESS is not based on equal resources or envy-freeness,⁴²⁰ but rather on the idea of democratic mutual regard and an egalitarian principle of reciprocity.⁴²¹ His view is therefore a form of social egalitarianism.⁴²² He relies upon a notion of *core well-being*, or capability for well-being and agency,⁴²³ that is similar to the views of Cohen and Sen which I argued against in the previous chapter.⁴²⁴ However, despite these differences in approach, it is still worth considering whether the improvement that ESS makes for a welfare or capability egalitarian would also solve the parallel problem for a resource egalitarian considering an endowment tax.⁴²⁵ Clearly, the ESS is much more attractive than the other approaches presented in this chapter; Gertrude can take job D, though she could not under the other proposals.

However, while the ESS is much less troubling than the previous endowment-based proposals, it is still problematic. Although it suffers much less from the unpleasant job problem, it does not fully nullify the issue. Those with valuable talents who desire more leisure or a particular job will have a greater chance of it, but they will still face different options to the less talented as a result of the talent-referenced scheme.

⁴¹⁹ White, *The Civic Minimum* at 82-3.

⁴²⁰ White does appear to endorse Dworkin's *ex ante* approach to disability as a guide to avoiding too much redistribution; *Ibid.* at 42-3, 101-2. However, White uses hypothetical insurance in order to solve the problem of the bottomless pit of redistribution to the worst-off, which is akin to the levelling down problem.

⁴²¹ White, 'The Egalitarian Earnings Subsidy Scheme', at 612-3, White, *The Civic Minimum* at ch 3, particularly 59.

⁴²² More similar, that is, to the positions of Rawls (see section 1.5-1.6), and others (see footnote 302). White, however, makes greater use of the socialist notion of solidarity in his theory of economic obligations than more liberal social egalitarians such as Rawls.

⁴²³ White, 'The Egalitarian Earnings Subsidy Scheme', at 604, White, *The Civic Minimum* at 34.

⁴²⁴ The description of core well-being would either be too determinate—and thus perfectionist and/violate the continuity test—or too indeterminate—and thus not sensitive to the ambitions of real persons and/or violate the continuity test.

⁴²⁵ White admits that there is still a potential for inequalities in capability for well-being, since people have different levels of job-satisfaction, White, 'The Egalitarian Earnings Subsidy Scheme', at 617. White thinks this is less of a problem for his proposal because any inequality of capacity for job enjoyment would be independent of talent levels. As such, this problem arises for practical reasons and not moral ones. However, I have challenged White on this point in footnote 418 above.

Gertrude would still not face the same options as Cassandra, since for any given job she will have to pay a higher tax-rate. If Gertrude takes job D she would receive significantly less net pay than if Cassandra took job D, meaning her choice between available jobs is not the same as that of Cassandra. This is because the tax that each has to pay is referenced to their earning potential, and so they face the same decisions only in relation to their *different* earnings potential. They do not face the same decisions all things considered. Gertrude would still envy Cassandra for her *lesser talent*, a position that it is potentially as problematic as the original situation where Cassandra envied Angela for her greater talent.

White would feel this is acceptable since he includes people's requirement to contribute in proportion to their talent in his *principle of reciprocity* and consequent *basic work expectation*.⁴²⁶ This view therefore has similarities to Carens' duty to contribute in accordance with ability. As I make clear above, I have concerns about this duty as it places different requirements on the more and less talented, despite the apparent similarity in their treatment. Furthermore, since the requirements of this duty are quite vague, if a particular interpretation of this duty were enforced I would worry that this is perfectionist. If the duty is not enforced, then it is not clear what advantage White's approach has over the *ex ante* approach I will present in the following chapter.

So while the ESS is much less troubling regarding the unpleasant job objection than the LSS approach, it leaves open the possibility that talented people will envy the less talented. Some talented persons will be able to complain that they have not been shown equal concern if they are effectively barred from jobs they would much prefer to do and are capable. If the response to them is that they would choose the ESS from a position of equality, then this would disarm the complaint, but would also show the *ex*

⁴²⁶ White, *The Civic Minimum* at 114.

ante approach to be the dominant method of selecting an egalitarian approach.⁴²⁷ Furthermore, the policy requires an assessment of the talent-level of all citizens, a policy that creates additional costs, and which some people would find invasive. To insist on the ESS is to ignore the worry that these costs might be too high, and higher than most people would choose to pay in the *ex ante* position.

The *ex ante* approach I will outline in the following chapter avoids all these concerns; if hypothetical insurers would find the ESS attractive then they can choose it, and it would indicate equal treatment.⁴²⁸

3.10 Conclusion

In this chapter I have introduced the problems of bad market luck and talent inequality into the attempt to determine the correct approach to taxation. There are many forms of market luck, and even in an idealised island society without any pre-existing inequality, people would have differing skills. These skills provide advantages in production, securing investment, and in obtaining desired jobs. These enable the more talented to have additional income and/or leisure over others. Indeed, one thing to notice is the importance of leisure that recurred throughout the chapter. The ability to obtain more leisure is an often overlooked advantage available to those with greater talent and other form of luck. Another point to note regarding leisure is that all of the types of *ex post* proposals I considered were improved when they took account of hours in work and leisure.

⁴²⁷ Supporters of endowment-based taxation may not be troubled by this disparity, perhaps pointing to the additional job options that Gertrude initially had over those of Cassandra. However, to put a value on these comparisons it would be necessary to invoke welfare or capability comparisons of the sort that were ruled out in the previous chapter.

⁴²⁸ We can put this criticism of endowment taxation differently, by highlighting that it violates Dworkin's principle of abstraction. See above, 34-6. An endowment tax violates this principle because it alters the options available to those with greater talents. Endowment taxes add restrictions on the ability of the more talented to organise their lives as they see fit. This does not imply that the more talented *should* be entitled to further resource benefits arising from their greater talent, but rather that endowment-based taxes are an unacceptable response in the abstract. The market prices generated where there is endowment taxation fail to meet the ideal of equal true opportunity costs.

I considered several *ex post* proposals that attempt to correct for talent inequality, and found problems with all of them that are not present in the *ex ante* approach. The two *radical* responses I considered were very impractical and costly, to the extent that many people would feel the policies are not a price worth paying. Attempts to mimic a situation in which talents were equal are fraught with difficulties as it is not possible to simultaneously mimic all aspects of the talent equal situation. Labour-supply responses suffer from the problem that they enslave the talented, and while Stuart White's ESS proposal is the least problematic labour-supply approach it too reduces the options of the talented when compared to the less talented. As a consequence, a talented person could envy a less talented person. This is unacceptable as leaves open the possibility that the requirements placed on the more talented do not show them equal concern. Of the proposals considered in this chapter, the ESS proposal is the most attractive, but even this leaves open the possibility that it requires too much of the talented.

The *ex post* egalitarian policies, where practicable, all leave open the possibility that some members of society have a claim that they have not been shown equal concern. They have costs—or potential costs—that some individuals would not find it worthwhile to pay even if they did not know their relative fortune. In the next chapter I will consider a different approach that avoids this concern; Dworkin's *ex ante* proposal.

Chapter 4 The *ex ante* response to bad market luck

The responses to bad market luck considered in the previous chapter were unsatisfactory, leaving the dilemma set out at the start of chapter three unresolved. The proposals considered there would appear to undermine the attractive features of resource egalitarianism. Namely, that it is a market-based entitlement theory which considers only the uncontroversial demands that people place on resources at the opportunity cost to others. It is therefore necessary to respond to bad market luck in a way that retains this advantage, that of the first person endorsement by all of the valuation of resources from a position of equality.

In this chapter I will present and defend Dworkin's response to this problem, the idea of purchasing insurance from a position of hypothetical equality. The idea here is to extend the hypothetical insurance response to disability to social and—in particular—market luck. In the first two sections I will explain the hypothetical insurance response to low income (4.1), how it would work (4.2), and its advantages (4.3). In the remainder of the chapter I will consider some criticisms of the approach. In sections 4.4-4.5 I will respond to the arguments of Michael Otsuka, who argues that hypothetical insurance is inequalitarian as it allows morally arbitrary factors into the determination of equality. In section 4.6 I will explain how and why people's preferences about distributive outcomes are excluded from consideration. The arguments from the previous sections enable me to explain and justify in section 4.7 the important difference between *ex post* and *ex ante* envy freeness.⁴²⁹ The remainder of the chapter responds to other criticisms of the *ex ante* approach, that it is inappropriate to attribute universal hypothetical decisions to people on a statistical average basis (4.8), and that the hypothetical insurance will support unacceptable utilitarian-mimicking outcomes (4.9).

⁴²⁹ Thus fulfilling the promise given when discussing Cohen Christofidis' envy-reduction proposal in the previous chapter, page 141-3.

I show that these concerns rest on misunderstandings of resource egalitarianism and therefore need not trouble us.

4.1 Dworkin's hypothetical insurance proposal

In response to disabilities, Dworkin proposed a hypothetical insurance scheme which would determine an amount of compensation that would be fair between those who do and do not suffer the disability in question.⁴³⁰ The insurance has to be hypothetical because the sufferers did not have a chance to take out insurance against their disabilities. Where it is possible for people to take out insurance on equal terms, then there is no cause to intervene in such equal-market outcomes. Those who suffer misfortune having had a fair chance to insure against it have no claim to social compensation; they are responsible for their choice not to insure against the misfortune and cannot be said to envy those who did insure. For many instances of bad luck there is a functioning insurance market, which would leave people in the same situation of equality regarding risk and responsibility.

In situations where people are in an equal position to choose their insurance, they can be held responsible for taking the insurance or not. Each individual involved would herself have chosen her level of insurance coverage according to her plans of life. This means that the individual can be assumed to have taken into consideration the cost of the insurance and what it would cover in deciding what level of insurance to purchase. If this individual then suffers the bad luck, she is clearly worse off than others, *ex post*, but Dworkin is untroubled by this as she was in the same position *ex ante*. Everyone faced the same decisions as to whether to insure and since they are responsible for their decision, and whatever should happen the initial equality would be retained.

However, in the case of market luck, as with disability, people do not have the option to take out insurance for these misfortunes on equal terms. Dworkin therefore

⁴³⁰ See chapter one, page 30-1

proposes a similar approach to deal with a relative lack of earning talent as he did for disability. He suggests that we ‘may capitalise on the similarities between handicaps and relative lack of skill to propose that the level of compensation for the latter be fixed, in principle, by asking how much insurance someone would have bought, in an insurance sub-auction with initially equal resources, against the possibility of not having a particular level of some skill.’⁴³¹

In the initial 1981 presentation of equality of resources, hypothetical insurance for talents appears as a second-best approach to equality. However, in his more recent works,⁴³² Dworkin has emphasised that hypothetical insurance actually indicates the egalitarian distribution. As such, rather than attempting to mimic a talent equal world with hypothetical insurance decisions as a guide, Dworkin later makes it clear that the post-hypothetical insurance distribution is the only one that treats people with equal concern. This is because the hypothetical insurance device can simultaneously take account of people’s preferences whether they are lucky or unlucky in one fell swoop.

Take the example of health care costs, used by Dworkin to explain his position.⁴³³ Using the example of severe disability Dworkin distinguishes between a “rescue principle” and a prudential insurance approach.⁴³⁴ The rescue principle attempts to get those who suffer misfortune as close as possible to the level of those without such bad luck. This is therefore an *ex post* solution—trying to get people to the same level after suffering the bad luck—and it has some intuitive pull for egalitarians.⁴³⁵

⁴³¹ Dworkin, *Sovereign Virtue* at 92.

⁴³² *Ibid.* at 340-6, part of chapter nine (which was published for the first time in this work), Dworkin, 'Sovereign Virtue Revisited', at 107-8, Ronald Dworkin, *Is Democracy Possible Here? : Principles for a New Political Debate* (Princeton, N.J.: Princeton University Press, 2006) at 108-10, Dworkin, *Justice for Hedgehogs* at ch. 16.

⁴³³ See pages 30-1 and 88 above, Dworkin, *Sovereign Virtue* at ch 8, Dworkin, 'Justice in the Distribution of Health Care'.

⁴³⁴ Dworkin, *Sovereign Virtue* at 311-8.

⁴³⁵ Such as Michael Otsuka, as discussed in sections 4.4-4.5 of this chapter.

It is worth noting that hypothetical insurance is necessary in cases such as unequal talents and disability because actual insurance is not available to all on fair terms. First because wealth in our society is not currently distributed fairly, and second, because insurance would not be available on the same terms to all due to morally arbitrary differences.⁴³⁶ This is because insurance companies have information about people that enables them to discriminate in ways that are unacceptable from the perspective of justice. Even a society beginning from an equal auction would require *hypothetical* insurance in order to solve the latter problem since the requirement is of *ex ante equal opportunity* to insure. Insurance companies would not ignore factors such as talents as the individuals who have this knowledge would take advantage of this disparity, leaving the company open to problems of moral hazard. Those who knew they were fortunate would not purchase the insurance, meaning that there would be few people who would pay in without requiring pay-out. This would mean either that companies would either not offer the insurance as it would not be profitable, or that customers would not take up the insurance as the terms would be so unfavourable (and hence companies would not offer it). Therefore, *hypothetical* insurance considerations would continue to be relevant even if there were no inequality in family wealth and generosity.

With regard to earning ability, Dworkin rejects the notion that hypothetical insurance decisions should apply to the absence of *specific* inabilities and skills, because people could not form their life plans independently of their talents. Our talents are an important element in our decisions about what we want from life and hypothetical insurance decisions without that knowledge would have to be removed from what we are like. As Dworkin puts it, 'if we suppose that no one has any idea what talents he has, we have stipulated away too much of his personality to leave any intelligible base

⁴³⁶ If insurance were available on equal terms to all, then it would be up to each person to choose their coverage level and bear the liability for the insurance or the full costs if they chose not to insure.

for speculation about his ambitions, even in a general or average way. The connection between talents and ambitions...is much closer than that between ambitions and handicaps.⁴³⁷ He therefore has to propose an alternative approach, somewhat different from the hypothetical insurance for disability.

Those insuring would generally know their own abilities, but they can be asked what insurance they would buy if they did not know what economic rent they are able to receive on these—‘what income the talents they do have can produce, or even whether the economic situation will be such that these talents will find any employment.’⁴³⁸ Hypothetical insurers would know the expected income structure of the society, but not where their talents will place them in that structure, and they will have to choose their level of insurance coverage. However, the insurance payments are paid out of actual income received from the economic rent available. Dworkin points out that while people overall will be worse off as a result of this scheme, since there would be administration costs, they would still endorse it due to their aversion to risk. Most people would fear that they would suffer very low income, and so would find such insurance appealing.⁴³⁹

One criticism of hypothetical insurance for the economic value of talents is whether it makes practical sense. MacLeod challenges Dworkin on his claim that it would be possible to deny people the knowledge of the value of their talents while still allowing them to know their preferences and ambitions. He argues that if someone knows their preferences and ambitions and their society’s level of economic development they can be fairly sure whether or not they have valuable talents.⁴⁴⁰ The thinking here is that someone who likes word games and mathematical challenges will probably do fairly

⁴³⁷ Dworkin, *Sovereign Virtue* at 94.

⁴³⁸ *Ibid.*

⁴³⁹ Some have claimed that this aversion is welfare-based, which shows that hypothetical insurance would collapse into welfarism or utilitarianism, and I will argue against this conclusion in section 4.8.

⁴⁴⁰ Colin Macleod, *Liberalism, Justice and Markets* (Oxford: OUP, 1998) at 147-8.

well in a successful modern economy, while someone who likes wrestling and blockbuster movies may not.

Ability and interests may correlate in some cases, but even in the examples I have come up with, there is no way to be *sure* that someone will find themselves able or not to satisfy the needs and desires of others in the economy based on this information: the geek could have severe autism which would be barrier to many careers while the wrestling fan may make a lot of money from wrestling or from becoming the world's strongest woman. Furthermore, some people with high-brow interests may have poor business sense while others with low-brow interests may be very able to develop and practice a valuable skill. So while people might have reasons to suspect their abilities would be valuable, they could not be sure about this. Furthermore, to the extent that it *is* possible that knowledge of ambitions would still create an information disparity, using universal hypothetical choices—as I will discuss in section 4.7—resolves this issue.

In section 4.3 I will recount the advantages of the *ex ante* approach, but before doing so I will explain in more detail how the hypothetical insurance works and consider whether it should be applied to talent or income.

4.2 How hypothetical insurance would work

I have explained that Dworkin rejected hypothetical insurance on specific talents, instead focusing on their value. I will now explain in more detail how the approach works, and argue that insurance should be based upon income-levels rather than talent-levels. Since talent-inequality is the main impetus for hypothetical insurance, Dworkin began by considering insurance against low-talent. That is, to base insurance premiums on the income that someone with that level of talent would be expected to

obtain. However, it is preferable to focus on income-based insurance rather than talent-based insurance for several reasons.⁴⁴¹

One advantage of the focus on actual income rather than talent levels is that there would be no slavery of the talented; the highly talented would not be forced to work in a particular profession in order to pay their high premiums.⁴⁴² The second advantage is that it reduces the expense of determining the earning potential of each individual. The administrative expense of doing so would be passed on to the insured, increasing premiums and reducing the pay-outs. This would be particularly expensive since people would be tempted to ‘cheat by hiding their abilities under a bushel.’⁴⁴³ Furthermore, it might not even be possible to determine people’s earning potential accurately based on tests and trials. As I indicated at certain points in chapter three, the costs of the *ex post* schemes are not factored in, meaning that many if not most members of society would not feel the costs of *ex post* equality are worth paying given the choice *ex ante*.

A third advantage is that an income-based approach would provide people with the chance to consider hypothetical insurance provisions against other forms of bad market luck as well as talent inequality. On this approach, even a talented person who made good choices but suffered from bad luck in their career and investments could potentially receive compensation.⁴⁴⁴ Furthermore, those who are have no valuable talents but who are otherwise economically lucky—for example because they have a lot of wealthy relatives who wish to support them—could potentially be overlooked if a talent-based approach were taken.⁴⁴⁵ More resources could then be channelled

⁴⁴¹ I will refer to these resources here as income, although I will consider in exactly what the tax-base should be in the following chapter.

⁴⁴² Dworkin, *Sovereign Virtue* at 100. See also sections 3.6-3.10.

⁴⁴³ *Ibid.*

⁴⁴⁴ Dworkin, *Justice for Hedgehogs* at 357-8. This parallels the argument against endowment taxation presented by Sugin discussed in footnote 409 and surrounding text.

⁴⁴⁵ I will argue hypothetical insurers would prefer a comprehensive income-type tax-base in sections 7.1-7.6.

towards those who have suffered some relevant kind of misfortune, irrespective of their “brute” talent level.

Another advantage of the income-based approach is that it readily translates into a tax-rate schedule of the sort with which we are familiar. This is because it allows a tapered approach, where instead of a set amount changing hands between those below and above the insurance threshold, the distance from the threshold will be taken into account.⁴⁴⁶ As such, those with earnings just below the threshold will receive less than those who are significantly below the threshold. The same would apply to those who would be paying-in to the insurance scheme rather than receiving from it; those with a very large income would pay more than those who earn just above the threshold.

Tapering makes the insurance much more attractive for several reasons. Firstly, because people will not worry that they will be just above the pay-out threshold and will have to pay as much as someone with a very large income. If this was the case, it would limit the amount that people would be prepared to stake, reducing the amount available to pay out to the recipients of the fund. Secondly, it directs more resources to those who are *significantly* below the threshold and not to those who are marginally below. Thirdly, it would avoid the creation of a threshold effect, whereby people would obtain a higher net income if their gross income was slightly under the threshold amount than if their gross income was slightly above it. If this were the case, workers and employers would have a strong incentive to pay just below the threshold rather than the true market-rate. This would distort the labour market, subsidise employers who engage in the practice, and also reduce the availability of insurance funds for those who genuinely need them.

With the tapered approach, people would not only have a choice over their threshold, but also the steepness of the rates at which they would be paying or receiving. Where

⁴⁴⁶ Dworkin, *Sovereign Virtue* at 100-1.

the rate is steeper, there will be a greater pay-out from those with the best market luck to those with the worst market luck. These more complicated insurance offerings would be much more attractive, because they would produce more resources for the least talented without any additional costs to those within the “statistically normal” range of fortune. I will consider these insurance considerations in greater detail in the remaining chapters of the thesis.⁴⁴⁷ Having explained the hypothetical insurance approach, I will now explain its appeal.

4.3 Why hypothetical insurance?

The *ex ante* approach to equality treats people with equal concern because it allows individuals to determine the value they place on the compensation for various forms of misfortune from a position of equality. On the other hand, the *ex post* approach does not respect people’s actual concerns. The *ex post* “rescue approach” could require individuals who do not suffer from the misfortune to pay-out *more than* they would have chosen to pay in insurance in order to provide the unlucky with *more than* they would have insured to receive. At the extreme, Dworkin feels that such a policy would lead a society to cripple itself⁴⁴⁸ by using resources to attempt *ex post* equality at the expense of the interests of its members.⁴⁴⁹

One question for those who insist on *ex post* equality is to ask what scope there is for them to allow people to make choices that will lead to *ex post inequality* further down the line. To illustrate, if two people decide to gamble and one wins, should the winnings be redistributed to return to *ex post* equality? If supporters of the *ex post* value of equality reject this then they clearly fail to accept the requirements of anti-perfectionism and responsibility with which I started; they clearly mark out a particular outcome as more important than the choices that people make. However, if they

⁴⁴⁷ I will consider benefits for the less fortunate and tax policies in more detail in chapters six and seven.

⁴⁴⁸ Dworkin, *Sovereign Virtue* at 341.

⁴⁴⁹ This extreme crippling was certainly a worry for the radical proposals from the previous chapter.

accept such outcomes, on the basis that they represent choices that people can legitimately make and for which they can legitimately be held responsible, then *ex post* inequality is clearly trumped by responsibility and choice. Where *ex post* inequality is trumped by—or perhaps just includes—responsibility and choice in some areas, then surely the position to make this choice should go all the way to a position of hypothetical—*ex ante*—equality. It is a strange and unmotivated view which would apply liability-costs to people’s actual choices on the basis that choices should matter but not to do the same regarding hypothetical ones. Presumably there are some situations in which Adrian and Bruce—with different ambitions—should be held responsible for their choices and others in which they should not. If *ex post* equal outcomes are taken to be primary then it is not clear why it is acceptable to hold people liable for the costs of their choices at all. Supporters of *ex post* egalitarian approaches would need to explain why the resulting level of inequality should make such a big difference.⁴⁵⁰

So if Adrian and Bruce have different ambitions, with the result that Adrian will have more resources, it seems that those who emphasise *ex post* inequality should deny that Adrian and Bruce should pay the costs of their choices. This would clearly violate the starting assumption of special responsibility.

The *ex ante* approach rests only upon the resource-based decisions that people would make. The *only* justification for interfering with the resource entitlements that people have is that they would themselves have chosen to make them in the hypothetical-

⁴⁵⁰ Resource egalitarians would apply such a threshold themselves, though not due to the reason that *ex post* inequality is a bad thing, the reason instead is that people would not be in a position to make authentic choices. The restriction in this case arises because people must make authentic choices in order to be held responsible. Since authenticity is a condition of responsibility, people cannot be held responsible for their future inauthenticity. In practice this requirement would usually justify paternalist policies—ones that impose certain actions or costs on persons such as mandatory insurance or pension payments to avoid destitution—rather than justifying the imposition of costs on others. Thanks to Liam Shields for pressing me to clarify this issue.

equal-insurance situation.⁴⁵¹ The approach therefore respects the choices that people make (or would make given the ambitions that they have). Transfers in the name of equality are justified to all parties, since interferences in the freely chosen transfers that people make—taxation—is justified as a further choice that people would have made if they were equally able to insure. The *ex ante* approach indicates what the individual herself would choose to stake from a position of equality. This approach treats all with equal concern, as everyone makes their choice from an equal position. It satisfies the principles of anti-perfectionism and responsibility. People all choose for themselves, according to their assignment responsibility over their lives. In addition, in cases in which people would not have chosen to fully insure, people are liable for any costs of their misfortune above the level to which they would have insured.

If our insurer is lucky, she will then have no complaint if she is asked to pay an amount corresponding to the premium. Similarly, if she suffers from the condition, she cannot complain that she should receive more than she would have insured to receive. It puts these difficult trade-offs into the hands of the individual. As such, equality does not conflict with other goods, such as utility, because it is subsumed into the procedure that takes into account how people will trade these goods against one another under equal risk.⁴⁵²

I will discuss in the following chapters the implications of hypothetical insurance on economic and taxation policies. However, it is possible at this stage to consider the *ex ante* approach against the *ex post* approaches discussed in the previous chapter. The *ex post* proposals considered would not have been chosen in a position of *ex ante* equality as people would have considered them too costly should they prove to be fortunate—

⁴⁵¹ With exceptions of course for those interferences which would be necessary to ensure the appropriate functioning of markets for the purpose of determination of true opportunity costs, as described in chapter one, pages 36-7.

⁴⁵² As such it coincides with the first-person, or continuity, test. See above, 77, and Clayton, 'The Resources of Liberal Equality', Williams, 'Equality for the Ambitious'. This means that it avoids the seeming conflict between freedom and equality apparent in other forms of liberal egalitarianism.

and sometimes even if they were in the unfortunate group. People could choose insurance coverage similar to the options proposed there. However, people certainly would not insure to share-out jobs according to preferences or type, as these would impose large costs due their detrimental effects on economic efficiency.⁴⁵³ People would not choose endowment taxation as it would limit their options if they turn out to be among a talented minority.

The *ex ante* approach is therefore a better instantiation of the starting assumptions set out in section 1.1. This is because it does not rest on any potentially controversial forms of comparison, but only upon the actual decisions people would make, either regarding their real resources or their hypothetical decisions from a position of equality. *Ex post* approaches, on the other hand, have to fall back on a controversial form of comparison, or impose on people a vague duty to achieve a particular distributive outcome. In the following sections I will consider the most prominent criticisms of Dworkin's hypothetical insurance solution. I will consider whether the approach supports outcomes that mimic utilitarianism, and, whether tax-rates should be personalised or universal—based on average coverage. The first line of criticism I will consider, however, is whether the internalisation of all considerations into the equal hypothetical insurance procedure violates the *ideal* of equality.

4.4 Is *ex ante* equality egalitarian?

Michael Otsuka provides perhaps the deepest criticism of the hypothetical insurance response to luck differentials.⁴⁵⁴ The thrust of Otsuka's complaint is that *ex ante*

⁴⁵³ Dworkin, *Sovereign Virtue* at 335.

⁴⁵⁴ Other 'luck egalitarians' might propose to equalise brute luck without use of a hypothetical insurance device, such as Cohen, 'On the Currency of Egalitarian Justice', Arneson, 'Equality and Equal Opportunity for Welfare', Peter Vallentyne, 'Brute Luck, Option Luck, and Equality of Initial Opportunities', *Ethics*, 112/3 (2002), 529-57. I think Rakowski's luck egalitarian approach also fits this description; Rakowski, *Equal Justice*. On this view, the ideal is to iron out the effects of luck on welfare outcomes, while holding people responsible for the expected costs and so on of the choices that people make. The *ex ante* resourcist approach, on the other hand, is motivated by the desire that people value in resource terms the cost of compensating for various types of bad luck, Ronald Dworkin, 'Equality, Luck and Hierarchy', *Philosophy and Public Affairs*, 31/2 (2003), 190-8 at 190-4.

equality has value only to the extent that it leans on *ex post* equality, but that if it does then there is no motivation for the *ex ante* approach. The arguments and responses are complex, and I will explore them over this and the following section.

Otsuka begins by questioning whether the role of *ex ante* envy-freeness is compatible with the *ex post* envy-freeness emphasised in the initial island-auction presentation of equality of resources. He bolsters this argument with the claim that many of the important and relevant risks which people face are both unavoidable and not freely chosen, occurring as a result of the actions of others or just at random.⁴⁵⁵ This is the thought, mentioned above,⁴⁵⁶ that the market is a “brute-luck-machine” that people do not decide to enter. Unlike the decision to gamble at fixed odds or not, the market society is a sort of unavoidable risk. Otsuka suggests that the existence of cases where “full compensation” insurance⁴⁵⁷ is either too expensive, or unreasonably expensive, should lead us to reconsider the insurance approach. For Otsuka, this is because the individual cannot avoid the risk, and yet there is no reasonable insurance available. As such, these are not like cases of option luck, in which people take a choice, but rather that the individual has no choice other than the very limited insurance on offer.⁴⁵⁸

For Otsuka, the fact that an individual would insure at less than “full compensation” does not mean that they have not suffered from bad brute luck, such that they will envy the better luck of others. Dworkin’s position, described above, is that it is appropriate to apply an *ex-ante* envy test, which applies to the purchase of insurance from a position of equality (actual or hypothetical). Otsuka’s argument against the *ex-ante* approach proceeds by use of the example of a horrible mental illness that affects people at random later in life. In a first scenario, (a), there is nothing that can be done

⁴⁵⁵ Michael Otsuka, 'Luck, Insurance, and Equality', *Ethics*, 113/1 (2002), 40-54 at 41. See also Macleod, *Liberalism, Justice and Markets* at 68.

⁴⁵⁶ Page 74.

⁴⁵⁷ By full compensation insurance Otsuka means insurance that would restore the person to an average or equal position, though in some cases—such as severe disability—this would clearly be impossible.

⁴⁵⁸ Otsuka, 'Luck, Insurance, and Equality', at 45.

to alleviate the disease. In scenario (b) we imagine that there is developed an expensive treatment that has a very minor effect on the sufferers. It is then possible for people to purchase insurance, though no one would choose to do so. In a third scenario, (c), an inexpensive miracle cure is discovered, for which people would readily purchase insurance.⁴⁵⁹

Otsuka argues that the *ex ante* procedure does not give us the resources to express that situation (c) is more equal than situation (b), since in both situations insurance is available. However, there is clearly less *ex post* inequality in (c) than in (b). Otsuka suggests that the *ex post* inequality is important in a way not captured by the *ex ante* approach, though it might be outweighed by other considerations in a wider calculation of justice.⁴⁶⁰ Otsuka, therefore, takes the more traditional view that *ex post* inequality is one consideration that must be weighed against others—such as efficiency for example—when determining the just outcome. For Dworkin, however, an individual should undertake such a calculation, considering her own values and the facts about the world from a suitably equal perspective. So while Otsuka thinks that *ex post* inequality can trump other issues when determining justice, *ex post* equality does not enter the resource egalitarian process.

Andrew Williams defended the first-person resource egalitarian approach in a later exchange with Otsuka.⁴⁶¹ This serves to differentiate the approaches and explain the motivation for the *ex ante* approach. I will discuss the substantive differences further in section 4.5. Williams draws on Parfit's distinction between *deontic* and *telic* conceptions of justice in order to explain the difference between the above scenarios (b) and (c). The traditional understanding of these concepts is that for telic egalitarians equality is straightforwardly bad whereas on deontic theories, inequalities are

⁴⁵⁹ *Ibid.* at 50.

⁴⁶⁰ *Ibid.* at 51.

⁴⁶¹ Dworkin responds to this argument by Otsuka only in a footnote, Ronald Dworkin, 'Sovereign Virtue Revisited', *Ibid.*, 106-43 at 124, fn 33.

unjust.⁴⁶² Deontic injustice is taken in this case to be an injustice which there is a duty to rectify, for example if one child steals a toy from another and you can rectify the situation. A telic injustice would apply to the overall outcome, but would not necessarily require any rectification. Deaths resulting from natural disasters might be considered telic inequalities, but not deontic, to the extent that the effects were beyond the control of the society and its institutions.⁴⁶³ The relevant point is that the existence of a telic injustice does not always imply an enforceable duty to—fully or partially—rectify the situation, as only deontic injustices demand action.

Otsuka's examples are clearly of the sort where the universe is unfair, but that does not mean there is a duty to rectify that situation. Indeed, since Otsuka advocates a pluralist approach, other values would temper the requirement to rectify inequality. The difference between the two positions is that Otsuka's position would take account of *ex post*, telic, inequalities, while Dworkin's approach ignores these. Dworkin's concern, and that of this work, is to design a society which treats all its members with equal concern. One question, then, is whether deontic and telic inequalities are entirely coexistent, or whether there can be telic inequalities that do not require rectification.

Returning to the above examples, we can readily accept that (c) is a preferable outcome to (b), but in deontic terms there is no difference between the two.⁴⁶⁴

⁴⁶² Parfit, 'Equality and Priority', Derek Parfit, 'Equality or Priority? The 1995 Lindley Lecture, University of Kansas', in Matthew Clayton and Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: MacMillan, 2000), 81-125 at 84-90. It is perhaps worth noting that the deontic/telic distinction is considered problematic; K. Lippert-Rasmussen, 'The Insignificance of the Distinction between Telic and Deontic Egalitarianism', in Nils Holtug and Kasper Lippert-Rasmussen (eds.), *Egalitarianism: New Essays on the Nature and Value of Equality* (Oxford: Clarendon Press, 2007). We might therefore make the further distinction between *actuality-focused* and *alternative-focused* egalitarianism, where telic injustices are those that appear unjust when looking the actual situation, but deontic injustices would take account of the alternatives in some way in order to consider whether they should have been rectified. For the purposes of this discussion, however, it is acceptable to stick to Williams' Parfitian terminology.

⁴⁶³ It could be argued that allowing people to live in dangerous areas, or allowing inequalities that effectively force some to people in dangerous areas, might be social forms of inequality that would render the death from a natural disaster a social injustice.

⁴⁶⁴ Andrew Williams, 'Equality, Ambition and Insurance', *Aristotelian Society Supplementary Volume*, 78/1 (2004), 131-50 at 139.

Williams highlights that the hypothetical insurance device is a device to determine justice in a deontic sense; the extent to which redistribution is required from one group to another. On the deontic conception of justice, the difference between (b) and (c) is a factual one, and the duties of justice require us to take account of the facts of the case. When the affordable cure becomes available there is a duty to provide it, but when there is no such cure the expensive and ineffective treatment is not a requirement of justice. This leaves us open to hope for changes in these facts, and perhaps even to work for them (such as investing in a cure for the disease),⁴⁶⁵ but these new facts will alter what deontic justice requires rather than rendering one set of affairs more just than the other. Following Rawls, we can say that the natural distribution of luck—the unfairness of the universe—is neither just nor unjust in the deontic sense, and it is these facts to which we should respond in the name of justice.⁴⁶⁶ This explains Dworkin's comment that 'a new issue for equality arose when the cure was discovered.'⁴⁶⁷

This explains the difference between the positions and explains why equality of resources answers Otsuka's examples in the way that it does. Perhaps the two approaches would often produce the same recommendations—they would quite likely be similar. However, the role of the individual is different in both cases. The pluralist approach taken by Otsuka is able to accept the value of telic inequality, but it would have to weigh this against numerous other values. It would either have to take into account the preferences that individuals actually have, in which case it would presumably take a longer route in order to mimic the hypothetical insurance outcome, or, it would ignore the ambitions and values that people in fact have. This latter option is unappealing. Whatever weightings were accepted would be controversial since some or all people would disagree with them. Put another way, to insist on any form of

⁴⁶⁵ The extent to which it is a good idea—or necessary—to seek to change the facts is an interesting and important question, but one which I have no space to discuss in this work.

⁴⁶⁶ Williams, 'Equality, Ambition and Insurance', at 140.

⁴⁶⁷ Dworkin, 'Sovereign Virtue Revisited', at 124, fn 33.

weighting that does not refer to subjective valuations would violate the continuity test. This explains Dworkin's statement in his response to Otsuka that the imposition of greater *ex post* equality than individuals would themselves wish to have is 'equal concern only in the Pickwickian sense of no concern for anyone.'⁴⁶⁸

On the other hand, the subjective *ex ante* approach to justice would determine the proper answer based upon the choices, values, or opinions of actual individuals. In the hypothetical insurance case, the individual is herself asked what level of redistribution (insurance) she would choose, based on her own values. So to consider the mental health illness, the individual is asked what level of insurance coverage she would choose from a position of equality, given that she herself would have to pay-out if she did not suffer from the illness. The hypothetical insurance mechanism thereby allows the individual to weigh up the costs either way. The individual can then weigh-up the various options and consider how much she would pay-out if she is lucky and receive if she is unlucky. Her values are taken into account, whichever position she finds herself in. Like Cohen, Otsuka wishes to define equality as it is a telic value. The purpose of this thesis is to answer the deontic question of what taxes treat people in a just, fair, and equal fashion. Including the value of *ex post* equality in this determination does not treat people as equals, since not everyone would agree on how this outcome should be measured against other important considerations. As a result, most—if not all—members of society would have a potential complaint that their values have not been taken account of by the *ex-post*-inclusive approach. The *ex ante* approach, in contrast, will determine redistribution in accordance with the values that people actually have.

This hopefully explains the attractiveness of the monist egalitarian *ex ante* deontic approach over the pluralist approach which could accommodate the telic bad of *ex post*

⁴⁶⁸ Ibid. at 124. I'm unsure about whether Dworkin has adopted the correct spelling of "Pickwickian" here—I assume it refers to the Dickens character.

inequality. However, this leads on to Otsuka's further arguments, which attack the nature and location of equality in the *ex ante* approach.

4.5 Where is the equality in the *ex ante* approach?

In this section I will consider Otsuka's further response to Williams, and the issues raised. It is possible to draw out several points that Otsuka makes which coalesce around the question of the location of equality in the *ex ante* approach. Otsuka's view of justice is a pluralist one in which various values—including *ex post* equality—should be weighed up against one another, presumably by political philosophers, in order to derive a value for all-things-considered justice. His attack on *ex ante* equality is therefore that something important about equality is lost when taking this approach. I will consider this challenge, the further concern that Dworkin's approach to justice is not constructed appropriately, and finally that *ex ante* equality is inconsistent.⁴⁶⁹

Otsuka begins his response to Williams with the assertion that the intrinsic bad of inequality rests on a 'relational property of some being less well-off than others.'⁴⁷⁰ He gives the example of survivor guilt to show that ordinary people operate with this notion of inequality. While people may accept that *ex post* inequalities are acceptable when they come about from people's choices, this does not apply in the case of a disability that can only be partially resolved. A pluralist might explain this by arguing

⁴⁶⁹ Otsuka suggests that the increased emphasis on the *ex ante* solution in his later work indicates a shift in Dworkin's presentation of equality of resources from a diachronic notion of equality to a synchronic one, Michael Otsuka, 'Equality, Ambition and Insurance', *Aristotelian Society Supplementary Volume*, 78/1 (2004), 151-66 at 157-8. This is an interesting thought, but it is mistaken. Certainly in his initial presentation of equality of resources, Dworkin states that envy-freeness should be considered diachronically; that is over the total course of the life of the individual, rather than at a particular point in time, Dworkin, *Sovereign Virtue* at 83-5. This allows inequalities in resources at different times where this reflects the liability-responsibility that people have for their resources. Otsuka suggests that the *ex ante* envy device is instead a synchronic notion since it implies a hypothetical time at which everyone chooses the level of coverage to which they are held. It is not clear to me that the idea of hypothetical insurance undermines the diachronic justification for ignoring envy arising as a result of different choices, since it seeks to *allow* the person choice over their lives in the same sort of way as the diachronic ideal allows. The difference is just that it is impossible in some cases to introduce this choice in the real world in a way that sustains justice in the distribution of resources, and so it has to be introduced as a hypothetical choice.

⁴⁷⁰ Otsuka, 'Equality, Ambition and Insurance', at 151.

that freedom of choice, which is one cause of *ex post* inequality, is something of value while an *ex post* inequality caused by a disability is not. It is possible to see immediately where the difference in construction lies.⁴⁷¹ I will return to the issue of constructing a theory of justice shortly. I will begin by discussing this idea that *ex post* equality is in itself an important value.

Otsuka admits that his preference for the inclusion of *ex post* equality in considerations of justice would be less ambition-sensitive, but insists that there is no problem here.⁴⁷²

Otsuka considers whether the requirement of ambition sensitivity would block the creation of his pluralist theory, and his strategy is somewhat odd. Otsuka considers whether the inclusion of *ex post* equality is unfair to people in the same way as it was deemed unfair for the initial auctioneer to convert the island into a commodity that some people liked more than others.⁴⁷³ In this case the ambitions of all persons are not taken into account, and it is ruled out as unacceptable. However, Otsuka argues that it is not unfair to insist on the less ambition-sensitive pluralist approach because this 'does not discriminate between the preferences of some and in favour of the preferences of others. Everyone would *ex ante* prefer, and to a roughly equal degree, an option to insure to the levelling policy. Hence this case differs from Dworkin's case...in which the auctioneer unfairly transforms a diverse variety of resources into nothing but plover's eggs and claret.'⁴⁷⁴

Otsuka's argument can be understood in at least two ways, both of which are inadequate. Where he says that everyone would prefer an option to insure to the levelling policy, he cannot mean that the option of insuring to drop everyone to the

⁴⁷¹ Like many, Otsuka agrees that there is something attractive in the idea of allowing people some choice, and sees equality of resources as a flawed attempt to introduce choice into distributive justice. He fails to see that the choice goes deeper than being one of a number of considerations, but that instead the approach is designed to avoid the imposition of such a choice on people by asking them each to choose, *and* bear the liability for their choice.

⁴⁷² Otsuka, 'Equality, Ambition and Insurance', at 160-1.

⁴⁷³ See above, pages 34-6 and 57-8, Dworkin, *Sovereign Virtue* at 67.

⁴⁷⁴ Otsuka, 'Equality, Ambition and Insurance', at 160-1.

level of the severely disabled would not be on the table, since insuring to achieve *ex post* equality is always an option; no-one would choose it as it would be extremely unattractive choice. He therefore presumably means that everyone would prefer the world in which there were no misfortunes, such that no one would face the risk of suffering from these disadvantages. This is clearly the case—everyone would prefer such a world. However, the issue of justice is how to respond to worlds in which such misfortunes do befall people.

Otsuka therefore perhaps means to insist that the relevant reference point is this ideal-world-without-misfortune, whereby this provides the egalitarian baseline from which we can determine ambition-based differences. However, his argument seemingly represents a different approach to justice, in which ambition-sensitivity has a completely different role to play. He seems to assume that there are degrees of ambition-sensitivity, and that *ex post* equality is an option to be considered alongside it. That is, for Otsuka the ambitions that people have are only reference points, whereas with the *ex ante* approach they are the only legitimate manner to determine the appropriate response to the misfortunes that befall people in the real world. This is to determine a form of justice in which people's ambitions are taken into account in the most appropriate fashion given the misfortunes that befall people. Otsuka's ideal-world baseline, alternatively, makes no reference to personal values and preferences at all.

Contrast the construction of justice under both approaches. Otsuka ends his response to Williams by distinguishing between first- and second-order values, suggesting that equality is a first-order value and that justice is the second-order value that has to adjudicate between first-order values.⁴⁷⁵ As I have shown, the hypothetical insurance approach is not structured in this way. On this approach, the individual takes into account the values that they have from an idealised equal position—and the cost of

⁴⁷⁵ Ibid. at 164.

realising their plans on the plans of others. Everyone inputs their own values into the equal market process in order to come up with an outcome that is fair to all. While *ex post* equality is not a value, as such, in this process, it is a possible outcome. The extent to which it is an attractive outcome is determined by reference to the attitudes that the parties have to the costs they would face to their ambitions if they were unlucky or lucky. People *could* choose the extreme insurance choice, though they will not do so, and, for reasons that Otsuka would also include in determining justice. However, by including all issues in one procedure, the approach determines a just outcome whereby everyone involved has a say in the outcome while accounting for the costs to all. Otsuka's alternative approach does not allow individuals to weigh up the different goods in an egalitarian and ambition sensitive manner.

Consider the severe disability possibility (b) mentioned above, whereby the only treatment available has little effect and is very expensive. On the *ex ante* approach the society would not provide the treatment, and would respond to the disabled person that he himself would not have chosen to insure to provide the treatment from a hypothetically equal position. Now consider the pluralist approach, which may or may not provide the treatment. If the society *does not* provide the treatment, the answer to this individual's complaint is that *ex post* equality was a value in the determination of justice, but that other values countervailed such that the treatment was not worthwhile. The disabled person may feel that the values of the society were inappropriately weighed, in which case he feels he has a legitimate grievance that the society has a weighting of values with which he disagrees and suffers as a result. Alternatively, though unlikely, he may accept society's weighting, in which case he is in the same position as in the *ex ante* case—he accepts his complaint has been answered. However, if in the pluralist system the treatment is provided, then *the other* members of society will have a complaint. They will complain that resources have been spent on a treatment that makes little difference to the sufferer and yet makes them worse off. If *they* receive the response that *ex post* equality is an overriding value they have the

legitimate grounds to complain that society has not taken their concerns seriously. The *ex ante* approach on the other hand accounts for all the concerns people have, including those of the unlucky. On the pluralist approach, it seems someone will always have a complaint⁴⁷⁶ that the society does not show them adequate concern.

This returns us to the concern that the hypothetical insurance approach is unable to place any value on *ex post* equality, while the more traditional pluralist approaches can. So where *deontic* equality of the *ex ante* variety is taken to be the right way to determine issues of redistribution, this means that *telic* equality can have no value. This is the concern that there is a further *ideal of equality*, which cannot be captured by the hypothetical insurance approach.⁴⁷⁷ However, I have shown that the *ex ante* egalitarian approach is constructed differently. It would be possible for people to choose insurance that would produce *ex post* equality, but where people do not choose this option it does not represent a lack of equal concern.

This leads to the final criticism we can draw from Otsuka's paper, that equality of resources is inconsistent. Otsuka finds no justification for inserting the equality at the level of *ex ante* hypothetical insurance envy-freeness rather than at the level of *ex post* envy-freeness. He accepts that the requirement of ambition sensitivity plays an important part in this, but challenges this move with the example of gambling one's initial stake. Otsuka asks why individuals in the initial auction of resources shouldn't be given the alternative (to 1,000 clamshells) of a 50-50 gamble for either 500 or 1,500 clamshells with which to bid for resources.⁴⁷⁸ On the one hand, if people had the ambition to take this gamble, it seems that they should be allowed to do so, while on the other hand, it would seem to violate equality in the initial auction. If we would

⁴⁷⁶ Unless all agree on the weighting of concerns, however, this level of agreement is unlikely if not impossible. I cannot imagine many people care about *ex post* inequality for itself.

⁴⁷⁷ Otsuka, 'Equality, Ambition and Insurance', at 166.

⁴⁷⁸ *Ibid.* at 158-9.

allow hypothetical insurance in order to respect ambitions, Otsuka argues we should allow people to gamble their initial equal resources before undertaking the auction.

This sets a challenge for the Dworkinian; how is the choice of line justified between endowment insensitivity and ambition sensitivity? Otsuka's feeling is that the requirement of endowment insensitivity should lead us to value the presence of *ex post* equality. However, to the extent that *ex post* equality is rejected as a value, does this render the insistence upon *ex ante* equality unmotivated, and thereby inconsistent? Otsuka appears to believe that *ex post* equality must have value in order to motivate the island auction and hypothetical insurance as otherwise their location is in some sense arbitrary, a point he phrases by asking where the line should be drawn between ambition sensitivity and endowment insensitivity. The worry might be expressed that Dworkin is attempting to sit on a knife-edge between the two issues, and that this is an inherently unstable position. Why not, for example, insist on greater ambition sensitivity and focus only on actual insurance decisions?⁴⁷⁹ Or why not go further in the other direction, and insist on a greater amount of endowment insensitivity, and insist upon *ex post* inequality?⁴⁸⁰

However, the reason to include hypothetical insurance in some cases and not others is clear. So in response to the example above, there is no reason to force people to take a 50-50 gamble. However, the cases in which it is—unfortunately—necessary to respond to an external cause for inequality, *ex ante* is the appropriate response. This does not imply that gambles are more important than equality, since the 'enforced' gambles of *ex ante* equality are used to respond to pre-existing unavoidable situations and not motivated by the inherent value or advantage of gambling. The application of *ex ante* equality in some cases and not in others is explained by the existence of relevant and unacceptable differences in circumstance against which there was no opportunity to

⁴⁷⁹ Ibid. at 162.

⁴⁸⁰ Ibid. at 163.

insure. The purpose of the auction is to allow everyone to value the resources of society according to their own subjective concerns, rather than some external objective criteria. There is no inconsistency between equality and ambition-sensitivity because equality comes in at whatever position is necessary in order to determine equal true opportunity costs.

4.6 The basis for hypothetical insurance judgments

Some may express a concern at this point. I have argued that there is no place for the *value of ex post* equality to influence distributive outcomes, and it should be clear from my description that this applies to other distribution-outcome values. Some may feel that this excludes the perfectly legitimate views that individuals have about the correct distributive outcome, and that equality of resources fails to show people adequate concern and respect when ignoring these views. Such distributive values might be views about property entitlement like libertarianism.⁴⁸¹ Or, more likely, they would be views about pre-institutional desert, such as that people should receive from their society in line with their *contribution* as determined by the market,⁴⁸² their *efforts*,⁴⁸³ or as *compensation* for their social activities.⁴⁸⁴ A third type of view is that the distribution of resources in society should be organised to bring about the most desirable state of affairs.⁴⁸⁵

⁴⁸¹ See footnote 11.

⁴⁸² David Miller, *Principles of Social Justice* (Cambridge, Mass.: Harvard University Press, 1999), David Miller, *Social Justice* (Oxford: Clarendon Press, 1976), David Miller, 'Two Cheers for Meritocracy', *Journal of Political Philosophy*, 4/4 (1996), 277-301.

⁴⁸³ Heather Milne, 'Desert, Effort and Equality', *Journal of Applied Philosophy*, 3/2 (1986), 235-43, Julian Lamont, 'Problems for Effort-Based Distribution Principles', *Journal of Applied Philosophy*, 12/3 (1995), 215-29.

⁴⁸⁴ James C. Dick, 'How to Justify a Distribution of Earnings', *Philosophy and Public Affairs*, 4/3 (1975), 248-72, Julian Lamont, 'Incentive Income, Deserved Income and Economic Rents', *Journal of Political Philosophy*, 5/1 (1997), 26-46.

⁴⁸⁵ This could be to create a religiously observant society, or to maximise happiness, as in utilitarianism, see above footnotes 12 and 179. Alternatively, the consequences to be promoted could be to best enable the natural aristocrats to develop, as Conway imputes to Nietzsche, Daniel W. Conway, *Nietzsche and the Political* (London; New York: Routledge, 1996) at 41, Friedrich Nietzsche, *Beyond Good and Evil* (London: Penguin Books, 1990), Friedrich Nietzsche, *Thus Spoke Zarathustra* (London: Penguin Books, 1969).

Equality of resources implies that we should ignore all these views about distributive justice, and that it does not show people a lack of concern when doing so. If everyone in society had the same preference for a distributive outcome, then the correct egalitarian distributive outcome would not matter anyway; people would donate their excess to create the outcome they all desire. However, in the absence of unanimity, implementing *any* distributive values would fail to show concern for all members of society. It should therefore be emphasised that equality of resources is premised on *constructing* an egalitarian outcome that treats all with equal concern, and that it is therefore appropriate to ignore the distributive preferences—such as for free-market outcomes—of the members of society.⁴⁸⁶

4.7 The *ex ante* argument against the *ex post* actual-envy-free approach

The previous sections make it now possible to fulfil the promise made in the previous chapter.⁴⁸⁷ This was to provide a fuller explanation of why the *ex post* actual-envy-freeness approach endorsed by Cohen Christofidis and others is inferior to *ex ante* envy-freeness. This was the proposal that it should be possible to adjust incomes, jobs, and working hours such that no-one would envy any other person in their society. I have argued against this,⁴⁸⁸ and similar proposals,⁴⁸⁹ on the basis that they do not respect equal opportunity costs, but it is now possible to develop this argument.

The *ex post* envy removal procedure has an apparent advantage over the *ex ante* response to envy as people will not prefer their actual position to that of any other in their society. People in an *ex ante* envy free position could complain that there is an

⁴⁸⁶ The approach I have taken here of course also implies that people's preferences regarding censorship of art and other forms of personal and political expression should also be ignored, with any censorship needing to be justified on other grounds. For discussion of freedom of speech see Rawls, *Political Liberalism* at Lecture VIII, Dworkin, *Sovereign Virtue* at Ch 10, particularly 365-6.

⁴⁸⁷ Pages 141-3.

⁴⁸⁸ Again, pages 141-3.

⁴⁸⁹ By which I refer to my discussion of Heath's criticism in section 1.8, particularly page 51.

alternative under which they would not envy a particular—fortunate—person whose resources they currently envy. The problem with this advantage is that it fetishizes envy-freeness as an end in itself. It should now be clear that the advantage of envy-freeness is that each person values the resources in society according to their own plan of life. The *ex post* actual-envy-freeness approach does not construct distributive justice from an equal position in which individuals themselves value resources from an equal position. Instead, it searches out an attractive initial outcome in which no-one envies anyone else. The *ex ante* approach takes account of the gamble and risk attitudes that individuals have to the possible sources of *ex post* inequality, while the latter approach ignores this.

To see the difference, imagine the conversation between the government and a complaining individual in each society. In the *ex ante* society we can imagine Ivan, who has a disability and envies the overall resources of others. When complaining of his envy, Ivan would admit that he would not have chosen to insure to remove the actual envy felt between him and those others, as the gains to unfortunate Ivan would not outweigh the costs to fortunate Ivan. There is therefore a response to Ivan to suggest that he “has been treated as an equal, as he would have chosen not to insure to eliminate *ex post* envy.”

Now consider Hector in the *ex post* actual-envy-free society, who is fortunate and would prefer to be in an *ex ante* society where he would pay less tax. The *ex post* government response is that he should accept this situation as he would not prefer to be in the position of any *actual* person in his society. However, Hector could be much worse-off than he would be in the *ex ante* society, in a way that he would not have endorsed if given the choice between the two options. Hector can point out that those who would have envied him in the *ex ante* envy-free society would have taken the risk that they would have had this outcome *despite its actual envy*.

The complaint against the government is different in each case. The only restrictions within the *ex ante* approach arise due to the desires of equally-placed others for the same resources. As a result, the restrictions come about only from the choices of equally placed others. The actual-envy-freeness approach adds a further restriction, which is that others cannot envy what you have. This further restriction violates the ideal of people jointly determining an outcome that treats all with equal concern. The two approaches therefore display respect for the individual in a different place, and while the *ex post* actual envy free approach is attractive as it will *implicitly* take account of people's plans of life, it does not make such considerations from an egalitarian baseline. It begins instead from the position that *ex post* actual envy-freeness is simply valuable. In the *ex post* case, people's plans of life are considered at a later stage, in their valuation of actual resources after they have been distributed and adjusted. In the *ex ante* approach, everyone *jointly* values resources in a manner that is fair to all. Everyone has the chance to insure to the "equal-outcome" if they wish, though in practice there are many areas in which no-one would do so.

The *ex ante* approach respects the decisions that people make from the most suitable egalitarian baseline. It therefore shows equal concern to all as it provides an answer to Ivan that the *ex post* actual envy-freeness approach cannot provide to Hector on terms he would have to accept. Envy-freeness plays a crucial role in resource egalitarianism because it enables people to value resources in terms that they themselves accept, but it is not a value in itself that should be imposed.

4.8 Would rates be personalised or universal?

I mentioned above an important question regarding the hypothetical insurance approach, concerning the nature of the move from personal hypothetical insurance decisions to a tax system. The issue is whether it is necessary to produce a personalised

tax rate *for each individual*.⁴⁹⁰ Different people have different attitudes to risk under uncertainty and would choose different levels of hypothetical insurance coverage as a result. Some would be concerned to maximise their income should they turn out to be unfortunate—maximinimising—while others would be willing to take the risk of destitution for the tiny chance of being super-rich—maximising. Tax rates *could* be personalised based upon each person's preferences and attitude to risk under uncertainty, and ideally, people would have personalised tax rates based upon their risk profiles.

As I have described it above, however, hypothetical insurance would apply a single tax-rate to all in society, based on the presumed *average* level of coverage that people would choose. If this universal approach is taken, some may feel their ambitions and values are not respected. This would appear problematic because the advantage of equality of resources over alternative views is its ambition-sensitivity.⁴⁹¹ Those who would be willing to risk extreme poverty in order to have the chance to earn huge amounts would have a claim to less progressive taxation should they prove to be high earners.⁴⁹² Additionally, those who would wish to avoid the risk of low income would have a claim if they would not have taken the risk in the hope of high income and hence purchased a very high level of low-pay compensation coverage. Those in the other extreme positions—paying less tax and receiving more benefits—might not complain that they are better-off than their hypothetical insurance decisions would have created, but this would only be because they were willing to benefit from injustice.

⁴⁹⁰ The problems with equality of resources if it did take this personalised approach are considered in Robert Van Der Veen, 'Equality of Talent Resources: Procedures or Outcomes?', *Ethics*, 113/1 (2002), 55-81 at 79-80.

⁴⁹¹ Ronald Dworkin, 'Sovereign Virtue Revisited', *Ibid.*, 106-43 at 111.

⁴⁹² Such persons are referred to as Nietzschean maximisers in Robert Van Der Veen, 'Equality of Talent Resources: Procedures or Outcomes?', *Ibid.*, 55-81 at 80.

In practice, it will often be necessary to choose hypothetical insurance rates on people's behalf. This is because the collection of the information required to design personalised taxes would be hugely problematic; if even possible, it would be overly expensive. One method to obtain this information would be to ask people what coverage they would have chosen if they did not know their current income. However, this would be unreliable, since people could report their hypothetical decisions consciously or unconsciously with knowledge of their relative fortune. An alternative to the reliance upon asking people would be to base coverage levels upon observations of the risk profile of each individual by observing their actions and choices. However, even this would not get around the problem, since people would potentially change their actions in order to improve their tax-rate. People with rare and valuable talents would have an incentive to take big risks in order to lower their personalised tax-rates. Meanwhile, those without any valuable talents would take fewer risks than they otherwise would in order to maximise their low-income earnings. This makes such an approach—even if feasible—unreliable also.⁴⁹³

Even if it were deemed possible to obtain reliable and authentic information, there are still reasons to choose the averaged approach. Obtaining the reliable information required about each individual in order to make such decisions would be a hugely expensive undertaking. Indeed, attempting to determine actual views may be much more expensive than applying the average level, such that even those with the preferences that come out badly would be worse-off due to the administrative costs of

⁴⁹³ Furthermore, these two activities together would tend to undermine any such scheme; there would be more requirements to pay out to the low-earners yet smaller payments received from high-earners. Such a process would have similarities to common presentation of Californian referendum politics whereby people consistently vote in referendums for lower taxes and more expensive services. These inconsistent decisions then result in regular budget crises, though this received wisdom has been scrutinized by John G. Matsusaka, 'Direct Democracy and Fiscal Gridlock: Have Voter Initiatives Paralyzed the California Budget?', *State Politics & Policy Quarterly*, 5/3 (2005), 248-64. In the hypothetical insurance setting, the result would be that those who could change their behaviour in the beneficial way would be able to improve their position relative to those who could not change their behaviour. If everyone found it equally easy and costless to change their behaviour in order to rig the result, then it would seem that those with bad market luck would be worse off.

the scheme. Given that no-one would then benefit from the personalised approach, everyone would accept this as superior. It therefore shows greater concern to impose a universal approach.⁴⁹⁴

A potentially problematic claim that Dworkin makes to further defuse worries about universalising is that people would only choose from a *small range of policies*.⁴⁹⁵ Since no-one's choice would therefore deviate very much from the average it is acceptable to impose this average level. In response to this, Robert Van Der Veen points out that people have a wide range of attitudes to risk, and that imposing an average is less legitimate than Dworkin assumes.⁴⁹⁶ Dworkin's narrow-range assumption is a potentially controversial empirical claim, and may prove not to be true. If there were a large deviation in the range of insurance coverage people would choose, would the imposition of an average be acceptable? As explained above, people would have will be strongly inclined to the universal approach due to the problems with a personalised approach.

In response to Van Der Veen, it is important to note that there is a difference between the range of views regarding risk and the corresponding range of hypothetical insurance choice. While people have very different attitudes to risks, the sensible insurance options available would be in a smaller range. This is because insurers would take account of the moral hazards and disincentives produced by the chosen level of insurance.⁴⁹⁷ So those who would wish to maximise the prospects of those in the

⁴⁹⁴ Dworkin, 'Sovereign Virtue Revisited', at 112. Ripstein highlights that it is acceptable to hold people to hypothetical choices because equality of resources is an attempt—like that of Rawls—to determine background conditions on private interactions. This means that it does not depend upon actual choices and actions, Arthur Ripstein, 'Liberty and Equality', in Arthur Ripstein (ed.), *Ronald Dworkin* (London: Cambridge Univ. Press, 2007), 82-108 at 103.

⁴⁹⁵ Dworkin, *Sovereign Virtue* at 102-3, 333, Dworkin, 'Sovereign Virtue Revisited', at 111-2, Dworkin, *Justice for Hedgehogs* at 360-1.

⁴⁹⁶ Van Der Veen, 'Equality of Talent Resources: Procedures or Outcomes?', at 79.

⁴⁹⁷ Dworkin, *Sovereign Virtue* at 334-5. Dworkin there refers to the maximin approach as a bad bet because he takes it to mean the most redistributive policy, but I here refer to it as the most redistributive policy available once the incentive, administrative, and moral hazard costs are factored in.

lowest position—to maximinimise—would have to take account of incentive effects and the increased scope for—and therefore costs of—fraud.⁴⁹⁸ As a result, those with an extreme aversion to risk would not choose to equalise income. Therefore, the sensible insurance options would be of a smaller range than the range of attitudes to risk, making the imposition of an imputed average on all members even less troubling.

The imposition of assumed average insurance coverage does not undermine the hypothetical insurance solution; it is perfectly consistent with it. People individually would choose the universal approach, meaning that it would pass the first-person or continuity test. I will now discuss another claimed problem with hypothetical insurance, that it would mimic utilitarianism and therefore be inegalitarian.

4.9 Would hypothetical insurance replicate equality of welfare?

In a series of articles in the mid-1980s, John Roemer attacked resource egalitarianism on the basis that it mimicked utilitarianism, which is ostensibly an inegalitarian doctrine.⁴⁹⁹ This line of argument was then repeated by Marc Fleurbaey.⁵⁰⁰ The examples given are those of Andrea and Bob, who in different examples, have different talents, disabilities, enzymes to convert food, endorphins, and hidden resources. Andrea and Bob do not know which of them is disadvantaged, but they have to make an insurance decision. The disadvantage not only makes them worse-off than the other, but also renders them less capable of converting resources into utility. The argument is that since equality of resources proposes hypothetical insurance to

⁴⁹⁸ I will discuss the considerations of hypothetical insurers, such as incentive effects, in section 5.8.

⁴⁹⁹ Most explicitly, and in mathematic terms, in John E. Roemer, 'Equality of Resources Implies Equality of Welfare', *The Quarterly Journal of Economics*, 101/4 (1986), 751-84. He also makes the point in John E. Roemer, 'Equality of Talent', *Economics and Philosophy*, 1 (1985), 151-87, John E. Roemer, 'The Mismatch of Bargaining Theory and Distributive Justice', *Ethics*, 97/1 (1986), 88-110 at 103-09, John E. Roemer, 'Egalitarianism, Responsibility, and Information', *Economics and Philosophy*, 3 (1987), 215-44 at 221-43, all of which were reprinted in John E. Roemer, *Egalitarian Perspectives: Essays in Philosophical Economics* (Cambridge: Cambridge University Press, 1994). Roemer has continued the line of argument into his more recent work; John E. Roemer, *Theories of Distributive Justice* (Cambridge, Mass.: Harvard University Press, 1996) at 252-6, John E. Roemer, 'Egalitarianism against the Veil of Ignorance', *The Journal of Philosophy*, 99/4 (2002), 167-84 at 178-81.

⁵⁰⁰ Marc Fleurbaey, 'Equality of Resources Revisited', *Ethics*, 113/1 (2002), 82-105 at 91-7.

compensate people for their personal resource deficiencies, and people make insurance decisions in order to maximise their expected utility, hypothetical insurance would lead people to choose coverage that would mimic the utility-maximising outcome. Just as utilitarianism would redistribute resources from those with lower to higher marginal utility, so would equality of resources.

Roemer reaches this conclusion in the case of disability, where people would choose to insure to maximise the resources available to the non-disabled as they would be better able to convert the resources into utility. Similarly, those with superior enzymes should receive all the food, those who are better at producing endorphins should receive more resources in order to increase expected utility—by increasing total utility. Roemer argues that since all differences in ability to achieve utility will boil down to personal resources of one sort or another, we can extend the analysis to include hidden resources, which effectively sets up an entirely utilitarian programme, albeit for resource egalitarian reasons. The concern here is that if these conclusions were true, then resource egalitarianism would result in many of the extreme forms of inequality that plague utilitarianism, which would appear to contradict the egalitarian motivation behind the proposal. This would be because hypothetical insurance would not respect the distinction between persons that afflicts utilitarianism.⁵⁰¹

These conclusions follow on the assumption that the prudent insurance deal is the one that maximises expected utility, or welfare, under conditions of uncertainty. This is the common interpretation of insurance decisions, and Dworkin certainly—and perhaps unfortunately—referred to welfare considerations when he first described the hypothetical insurance approach.⁵⁰² Roemer admits that there are other theories about decision making in conditions of uncertainty,⁵⁰³ such as prospect theory⁵⁰⁴ and regret

⁵⁰¹ Ibid. at 92. See also footnotes 12, 97 and 180.

⁵⁰² Dworkin, *Sovereign Virtue* at 96.

⁵⁰³ Roemer, 'Equality of Talent', at 159.

theory,⁵⁰⁵ but argues that it is appropriate to take the dominant *expected utility* maximising approach.

Given that Roemer assumes that insurance is purchased for the purpose of utility maximisation, and builds this into his mathematical assumptions, it is unsurprising that the outcome of his axioms mimics utilitarianism. However, there are obvious flaws in his approach. Scanlon provides several criticisms. His first is that Roemer's models include welfarist assumptions that are alien to resource-based accounts, as they based on welfarist foundations; such as the axiom of pareto efficiency.⁵⁰⁶ This challenges the claim that resource egalitarianism really can be reduced to utilitarianism. However, it is noteworthy that economic theory has shifted focus over time from its utilitarian roots in welfare outcomes to a definition of utility which is *inclusive of preferences*.⁵⁰⁷ When including personal preferences regarding risk, an egalitarian utility-based approach will indeed produce the same outcome as the *ex ante* approach. In this case the two approaches have the same outcome.

A second criticism from Scanlon is that Roemer takes all resources as resources for the generation of utility, which need not be case. Not everyone decides on their values and preferences based upon the effect these will have on his utility. Scanlon points out that if someone has a guilt-inducing religion which results in lower levels of utility, Roemer's

⁵⁰⁴ Daniel Kahneman and Amos Tversky, 'Prospect Theory: An Analysis of Decision under Risk', *Econometrica*, 47/2 (1979), 263-91, which was developed into a second cumulative approach in Amos Tversky and Daniel Kahneman, 'Advances in Prospect Theory: Cumulative Representation of Uncertainty', *Journal of Risk and Uncertainty*, 5/4 (1992), 297-323. A third generational approach to prospect theory is presented by Ulrich Schmidt, Chris Starmer, and Robert Sugden, 'Third-Generation Prospect Theory', *Journal of Risk and Uncertainty*, 36/3 (2008), 203-23.

⁵⁰⁵ Graham Loomes and Robert Sugden, 'Regret Theory: An Alternative Theory of Rational Choice under Uncertainty', *The Economic Journal*, 92/368 (1982), 805-24.

⁵⁰⁶ T. M. Scanlon, 'Equality of Resources and Equality of Welfare: A Forced Marriage?', *Ethics*, 87/1 (1986), 111-18 at 112-3.

⁵⁰⁷ My understanding is that economists from the marginalist revolution—perhaps from Jevons to Edgeworth—would have considered themselves as traditionally utilitarian. The shift to the explicit focus on personal attitudes began with—or around the time of—Alfred Marshall, and was completed by economists such as Pareto, Samuelson, von Neumann and Morgenstern. See Blaug, *Economic Theory in Retrospect* at particularly 337-8. I also believe that contemporary financial economics includes attitudes to risk, following K. Borch, *The Mathematical Theory of Insurance* (Lexington, Mass.; London: Heath, 1974).

approach would label this as a resource deficiency.⁵⁰⁸ This, however, is an inappropriate way to describe a person's deeply held belief. Roemer's approach implicitly treats every aspect of a person's life as a means to utility. Accounting for people's preferences in terms of their effect on utility is exactly the sort of controversial view of what counts as a good life that equality of resources is designed to avoid. It does so—partly, and relevantly for this challenge—in order to avoid perfectionism, which cannot treat people with equal concern.

Fleurbaey challenges equality of resources utilising Roemer's assumptions about hypothetical insurance. He argues that it will be unacceptable for the same reasons that utilitarianism is unacceptable; namely that it would have anti-egalitarian features. This would occur since it would be a utility-maximising insurance choice to transfer resources from the badly-off to already well-off "utility monsters" who will get more utility from the resources.⁵⁰⁹ Dworkin responds to this argument by pointing out that people do not currently purchase insurance in this way—people insure to avoid bad outcomes despite the overall utility loss.⁵¹⁰ Furthermore, Dworkin points out that it does not matter whether equality of resources is extensionally equivalent to any other theory of justice, as it stands and falls on its own merits and not those of another theory with the same outcome.⁵¹¹

⁵⁰⁸ Scanlon, 'Equality of Resources and Equality of Welfare: A Forced Marriage?', at 115-7.

⁵⁰⁹ Marc Fleurbaey, 'Equality of Resources Revisited', *Ibid.* 113 (2002), 82-105 at 96.

⁵¹⁰ Ronald Dworkin, 'Sovereign Virtue Revisited', *Ibid.*, 106-43 at 135.

⁵¹¹ *Ibid.* at 130-1. Dworkin also points out that equality of resources might be extensionally equivalent to utilitarianism only if everyone making hypothetical insurance decisions would do so on the basis of the *same interpretation of utility*, Dworkin, 'Sovereign Virtue Revisited', at 133. This degree of unanimity would be extremely unlikely given that there are many different interpretations of 'welfare' or 'utility,' as Dworkin showed in his writing on equality of welfare; Dworkin, *Sovereign Virtue* at 16-21. Furthermore, the utility-based insurance decision is based upon the values that the individual has, which are not themselves likely to be based on their utilitarian properties. People would seek to maximise their expected utility given the values that they have. It is a step further to assume that people would all therefore base their values on utility maximisation. This explains why hypothetical insurance would not be likely to collapse equality of resources into utilitarian proposals. Dworkin also discusses utilitarianism and hypothetical insurance briefly in Dworkin, *Sovereign Virtue* at 349-50.

Fortunately, there is no need to worry about the possibility of transfers to utility monsters anyway. Hypothetical insurance is a means to calculate transfers *from the envied to the enviers* where they had no opportunity to choose insurance coverage from an equal position.⁵¹² It is therefore only available only to those who envy the position of another. In the problematically inegalitarian examples, the transfer would take place from the *envier* to *envied*, which would not be a valid hypothetical insurance option. So if equality of resources does mimic utilitarianism in some sense, the troubling outcomes that plague utilitarianism would not apply anyway.

4.10 Conclusion

I have explained the *ex ante* hypothetical insurance based response to bad market luck. The compensation is based upon the insurance decisions that people can be assumed to have made when making binding insurance decisions from a hypothetical position of equality. This approach allows a form of compensation that is compatible with the anti-perfectionist form of equal concern described in the first chapter. I have shown that, *contra* Otsuka, this approach is appropriately egalitarian, though not in the same way that he and others perhaps take that to mean. I explained that there is no place for potentially controversial distributive values in the determination of equal concern, and that it is consistent with the values of equality of resources to apply a statistical average policy. Finally, I then showed that hypothetical insurance would not mimic a problematically utilitarian approach. I have therefore countered the most notable criticisms and misunderstandings of this view, and have hopefully clarified the advantages of the *ex ante* egalitarian approach to tax policy. In the remaining chapters I will apply this approach to determine an egalitarian tax system.

⁵¹² Dworkin highlights that hypothetical insurance gives 'considerable priority to the position of those who would be at the bottom of the economic distribution,' Dworkin, 'Sovereign Virtue Revisited', at 133.

Chapter 5

The holistic interpretation of hypothetical insurance

Having presented hypothetical insurance as integral to distributive justice, I now turn to the more positive task of determining the tax system that hypothetical insurers would choose. In this chapter I present a holistic interpretation of hypothetical insurance that differs from Dworkin's in several areas. I will explain constraints and considerations that hypothetical insurers will apply in such a situation. I will conclude that hypothetical insurers would choose an on-going⁵¹³ tax and benefit system that will cover certain baseline costs and also transfer resources from the more economically fortunate to the less fortunate while taking account of the economic effects of the policies. In the following two chapters I will apply the findings of this chapter to the benefit system for the unfortunate (chapter six), and to a tax system that will tax the fortunate in order to provide the necessary revenue (chapter seven).

I will begin—in section 5.1—by presenting my proposed hypothetical insurance approach to taxation, explaining where I agree with Dworkin. While I agree with Dworkin on the broad approach, I criticise two unwarranted assumptions that he appears to make. The first—in section 5.2—is that he wrongly assumes that insurance decisions imply hypothecated taxation. The second (5.3) is that Dworkin's focus on hypothecated insurance decisions creates an unnecessary and unhelpful distance between the theory and the policies that are available. I propose instead that insurers should directly consider the policies available to resolve all forms of bad luck, which is a better fit with Dworkin's ideal of including practical considerations in the construction of justice. My proposal is therefore to apply hypothetical insurance in a holistic and policy-focused fashion.

⁵¹³ That is, one that would be applied from the point of their decision into the foreseeable future.

The nature of this approach will become clearer through my responses to various possible challenges, mostly regarding differences between Dworkin's interpretation and mine. Firstly, the insurance choice between different types of policy is different from the initial presentation of hypothetical insurance which focused instead on *premiums*; I emphasise that qualitative issues are very important as well as quantitative ones. This raises a concern regarding the idea of determining the "average" policy, given that averaging will need to take place across types of policy as well as levels of premium and coverage. After explaining in section 5.4 that it is possible to overcome this problem, I will move on to a second—related—concern (5.5). This is that there are too many moving parts for people to make hypothetical insurance decisions. Insurers would have to take account of the effects of many policies simultaneously, simultaneously determining the level of coverage for multiple insurance policies. I will argue that it is possible to undertake such a dynamic process by bracketing some policies and tax expenditures and taking some issues as given while focusing on others.

The final challenge to my hypothetical insurance approach is that it is unclear where the envy occurs in the process of determining egalitarian policies. I will clarify this point against two alternative interpretations in section 5.6.

After answering the various possible criticisms of the approach just sketched, I will explain how to apply the approach. In order to do this, I take the position of the hypothetical insurers and explain the considerations that would guide them in their deliberations. This will involve more detailed discussion of the incidence of taxation (5.7) and the considerations that would guide hypothetical insurers (5.8). Finally, in section 5.9 I explain some of the ways of classifying people that will be useful when considering policy options. Once it is clear what hypothetical insurers would be deciding, and how they would deliberate, it will be possible to apply the approach.

5.1 Hypothetical insurance and taxation

I will begin by setting out my interpretation of the hypothetical insurance approach to taxation. There are several aspects to this approach, and some will be developed in more detail in later sections. After sketching out the approach I will discuss the areas in which the approach corresponds to Dworkin's.

The first aspect of the approach is that insurers will be choosing an *on-going tax and benefit system*. Insurers will be interested in the *whole system* and its effects, and I therefore refer to this interpretation as *holistic*. As they consider the whole system, insurers have to consider many issues as part of a *dynamic* process.⁵¹⁴ This approach therefore differs from Dworkin's hypothecated approach, as I will discuss in section 5.2. Furthermore, it makes the hypothetical insurance procedure more complicated, though not problematically so—a defence I will make in section 5.5. The second aspect is that insurers should focus on the *policies* available to them and choose the best mix of policies to meet their insurance requirements. This differs from Dworkin's *insurance-focused* approach, whereby the hypothecated insurance decisions are primary and the policies have to mimic the insurance outcomes.

A third aspect of the approach is that the *revenue raised* will need to be sufficient to meet certain *baseline costs to government*, as well as enabling a *transfer of resources*

⁵¹⁴ One point to make is that the approach is always forward-looking. Some may feel that justice should be backward-looking given the injustices of the past. However, we might worry that it will be impossible to fully achieve justice as if equality of resources were applied at some point in the past. Many of the beneficiaries of injustice will have died or spent their resources already and be unable to provide compensation. In cases in which there has been a clear injustice, such as state-based discrimination, it should be possible to provide compensation, something which can proceed independently of the forward-looking approach to distributive justice.

I do not find the forward-looking aspect too troubling, given the effects of the rather radical tax proposals that come out of the procedure—over several generations historical social inequalities would be largely removed. After all, good and bad economic fortune will follow from injustice as well as other forms of luck. In addition, I would suggest that any costs incurred in shifting to a just regime should fall primarily on those who have benefitted from a less just regime in the past, see footnote 739.

from the more economically fortunate to the less fortunate.⁵¹⁵ Raising revenues is limited by the fourth aspect; insurers will have to take account of the *economic effects* of the policies. The negative economic consequences of a policy can make it less attractive than alternatives that appear to improve the position of the less fortunate more directly.

I will now describe Dworkin's conclusions regarding taxation and redistribution, in order to highlight where I agree and disagree with his conclusions.⁵¹⁶ Dworkin linked his hypothetical insurance approach to taxation from its first presentation, indicating that his hypothetical islanders would choose a 'recognizable pattern of tax. They might establish a graduated income tax financing transfer payments in the amount of the difference between the average coverage level less the co-insurance factor and what an applicant can plausibly argue is the highest income he can in fact command.'⁵¹⁷ As I have discussed,⁵¹⁸ Dworkin suggests that an income-based tax would be linked to actual earnings rather than ability to earn, to avoid enslaving the talented, along with reasons of administrative cost and privacy.

Dworkin discussed hypothetical insurance in more detail in a chapter written for *Sovereign Virtue*.⁵¹⁹ He suggested that people would not take a "maximin" approach to hypothetical insurance, because of the costs of doing so to the economically lucky.⁵²⁰ These are the administrative costs of the scheme, but Dworkin also highlights that moral hazard issues—worries that insurance opens up opportunities for people the

⁵¹⁵ These baseline costs are mostly those relating to the requirements of operating a democratic state and providing the conditions for equal opportunity costs; see page 36-7. I will describe these costs in further detail on page 203-4.

⁵¹⁶ For a summary and development of the Dworkinian approach to taxation see Matthew Clayton, 'Equal Inheritance: An Anti-Perfectionist View', in John Cunliffe and Guido Erreygers (eds.), *Inherited Wealth, Justice and Equality* (London: Routledge, 2012), 98-118 at 112-5.

⁵¹⁷ Dworkin, *Sovereign Virtue* at 102. Co-insurance refers to the sharing of risk between parties in order to reduce the riskiness and the attractiveness of fraudulent claims and hence improve the terms. This payment is usually referred to as the 'excess' in UK insurance policies.

⁵¹⁸ In sections 3.6-3.10, 4.1. *Ibid.*

⁵¹⁹ *Ibid.* at ch 9. This was therefore written nearly twenty years after the original article on equality of resources republished as chapter two of *Sovereign Virtue*.

⁵²⁰ *Ibid.* at 334-5.

costs of which they can pass on to others—would also weigh heavily in hypothetical insurance decisions. People would therefore insure to cover themselves to obtain a poverty-line level of income, which would reduce the potential gains of—and hence attractiveness of—cheating the system.⁵²¹ In addition, insurers would not include a policy that would take account of specific job preferences.⁵²² I broadly agree with these points, though I will argue in section 5.3 that insurers would look to do more than Dworkin assumes to improve the position of low-earners. Indeed, I will discuss these issues in more detail in this and the following chapters.

Dworkin discussed taxation more recently in the context of U.S. politics in his book *Is Democracy Possible Here*. In that work, the focus of his discussion of taxation is more negative as he argues that the reduction of taxes demanded by increasingly powerful libertarian and conservative lobbies, and tax-cutting president George W. Bush, would not be legitimate.⁵²³ Dworkin discusses what it takes for a government to be legitimate—for it to attempt equal concern. His argument is that cutting programmes for the poor members of society as a consequence of the proposed tax cuts would not show adequate concern for those members of society.⁵²⁴ His claim is that proposed changes to U.S. tax policy would turn a regime that is probably illegitimate in its treatment of the poor into one that clearly would be. Where Dworkin does discuss tax policy in more detail he insists again that ‘we would insist on a fairly steep progressive-tax-rate system.’⁵²⁵ He then repeats his earlier insistence that income taxes would be preferred to consumption taxes and that there would also be an accessions-type tax

⁵²¹ *Ibid.* at 335.

⁵²² Thus ruling out job-sharing schemes of the sort considered in section 3.4.

⁵²³ Indeed, the chapter is entitled ‘Taxes and Legitimacy,’ Dworkin, *Is Democracy Possible Here?* at ch 4.

⁵²⁴ *Ibid.* at 97.

⁵²⁵ *Ibid.* at 117.

with multiple-year averaging.⁵²⁶ Accessions taxes are taxes on the recipients of gifts and bequests, rather than the estate of the deceased.⁵²⁷

I explained the difference between justice and legitimacy above,⁵²⁸ and my interest in this work to determine the ideally just tax system. Dworkin makes a few claims about the just tax system—that it would involve progressive taxation of both earned income and unearned income from gifts and inheritance. I will discuss these policies in more detail—whether we can go any further than Dworkin does in specifying which form of tax and benefit system people would choose as part of their hypothetical insurance deliberations—in the following chapter. However, I will now examine the points of disagreement between my interpretation of hypothetical insurance and that of Dworkin.

5.2 Should taxes be hypothecated?

The first challenge to the holistic approach is that considering the overall nature of the tax and benefit system requires us to combine together insurance decisions that should be separate. This is the idea that taxes should be hypothecated⁵²⁹ such that the income from a particular tax should correspond to the expenditure on a related issue. For example, Dworkin considers insurance against bad market luck in the labour market *separately from* insurance for bad social-luck. Regarding the latter, Dworkin writes that in ‘a more nearly equal world, people would be able to insure against bad inheritance luck,’⁵³⁰ and would purchase insurance against the fear of being relatively worse off than others. Thus, people would want to insure *ex ante* against ‘occupying a low tier in

⁵²⁶ Ibid. at 117-8. I will discuss the tax-base in chapter seven, and the option of lifetime averaging in both of the final chapters (sections 6.2 and 7.7).

⁵²⁷ I will discuss the related tax-bases in section 7.2.

⁵²⁸ See footnote 28.

⁵²⁹ Hypothecated taxes are taxes that are ring-fenced for a particular use, usually related to the activity that is taxed. An example might be where taxes on road vehicles are used only to maintain roads, and not spent on other social programmes.

⁵³⁰ Dworkin, *Sovereign Virtue* at 347.

a class system,⁵³¹ and would therefore support highly progressive gift and inheritance taxation. Dworkin assumes that hypothetical insurance should proceed in this hypothecated manner. My approach, in contrast, is focused on the whole tax and benefit system and its effects, and I will show that Dworkin's assumption is unwarranted.

In some respects, Dworkin's hypothecated approach is the obvious one; we need to consider different forms of fortune separately as thought experiments that will guide our choice between policies. However, this does not imply that taxes should be hypothecated such that taxes that are related to one form of good fortune should be used solely to relieve that form of misfortune. I contend instead that there is no need to determine the amount expended upon schemes *directly* designed to compensate those with poor social luck based solely on social-luck related taxes. As Clayton argues, there is no reason to restrict or expand the expenditure on one type or purpose of policy on the basis of the amount of taxes collected from the corresponding area.⁵³²

There are several reasons to take the holistic approach and focus on the overall tax and benefit system rather than limiting options to *direct* responses. General—indirect—policies will often have several effects which are justified by multiple reasons. For example, subsidised or free education may assist in mitigating social luck as well as ensuring authentically choosing citizens.⁵³³ It seems difficult to determine on the hypothecated approach how much of this spending should be attributed to the hypothecated source and how much to other reasons.

Limiting government spending to direct policies may preclude more effective multiple-overlapping-reason policies. For example, one policy may be helpful with regard to many justified reasons but would not be effective enough at responding to any one

⁵³¹ Ibid. at 348.

⁵³² Clayton, 'Equal Inheritance: An Anti-Perfectionist View', at Section 2.3.

⁵³³ The baseline requirements of equality of resources were described on page 36-7.

issue alone. Considering the whole package would allow such policies while the hypothecated approach would not, an inefficient use of resources. Such inefficiencies would make the policy options less attractive, and thus provide less attractive hypothetical insurance options. This would result in lower taxes and less provision as a result of the inefficiencies caused by unnecessary hypothecation. Of course, the same point applies to taxation as well as government spending; taxes may also achieve several ends at once.

Second, hypothecating taxes makes as little practical sense from the perspective of insurers as it does for governments.⁵³⁴ Governments rarely want to expend exactly the amount collected from a particular tax on that particular area of policy—some areas will require more resources and others will cost less than the revenue raised. Furthermore, in practice tax revenues will just go into a central pot, and so the hypothecation is merely a limitation on the ability of government to move tax revenues around in accordance with their most productive use. Hypothetical insurers would therefore not wish to be limited in their tax package options in this arbitrary manner.

While there are advantages in considering hypothetical insurance decisions regarding market talent and social luck separately, this should not restrict us in finding the most effective overall tax system. I will therefore focus on the *overall tax system* guided by the considerations that people would make in response to the *several problems* against which they will consider insurance. It will be necessary to remember throughout that decision-making may relate to multiple kinds of relative brute luck, and to various forms of potential disadvantage.

5.3 Policy-focus and low-earners

The second challenge is that the policy-focus of the holistic approach is too far removed from the insurance-ideal. The contrast here is between Dworkin's focus on

⁵³⁴ Mirrlees and IFS, *Tax by Design : The Mirrlees Review* at 471.

insurance policies against various forms of bad-luck and the holistic focus on policies that together will be attractive means to abate the consequences of bad-luck. One possible worry is that focusing on complicated policies obscures the important issue of the insurance that people would purchase. However, I will explain how the approach would work in the following section, thereby showing the feasibility of the holistic approach. Furthermore, real-life insurers choose their insurance in a similarly holistic fashion.

Another possible worry is that the policies will affect those who should not be affected in certain ways according to the insurance scheme. For example, it might lead to policies that would affect two people who have no envy for the resources of the other.⁵³⁵ In response, I would highlight that the policy-focused approach by-passes the requirement of tailoring available policies in order to mimic the outcome of the insurance scheme.⁵³⁶ This insurance-mimicking process could just as readily affect people in ways that does not fit with the insurance-focused scheme. It seems more appropriate to take account of the insurer's views of the policies directly rather than imposing a—potentially crude—mimic of the insurance-focused ideal, which may result in transfers between parties without the correct envy-relation.

This point regarding mimicry indicates a further advantage of the policy-focused approach. If insurers focus directly on policies, then they can take account of the issues and costs that will the policies cause. The insurance-mimicking process, however, will make no reference to the costs or unfeasibility of implementing the mimic. Focusing on policies internalises the policy costs into the insurer's considerations, as is done with

⁵³⁵ An alternative point might be that the policies may respond to multiple forms of bad luck, but this is unproblematic if we accept my arguments from the previous section regarding the need to take a holistic rather than hypothecated approach. Furthermore, in market situations it is not possible to entirely separate out the consequences of bad market luck from other choices. It is therefore inevitable that the *ex ante* will have this consequence, and so it makes sense to allow insurers the most relevant choice possible—the available policies.

⁵³⁶ I agreed with Dworkin that attempting to mimic a talent-equal world is problematic in section 3.5. Though mimicking the insurance coverage is less problematic than attempting to mimic equal-market prices, since these feed back into one another.

other costs such as moral hazard, meaning that insurers are making more appropriate decisions. By removing an unnecessary stage of mimicking the policy-focused approach constructs the egalitarian outcome in a much more plausible and attractive manner. This also fits well with the claim that the hypothetical insurance approach is not unduly idealising.⁵³⁷

To see the advantage of the policy-focused approach, consider the response to those with low-market earnings. Dworkin presented hypothetical insurance as a response to low earning talents. However, in his writing on policies he only explicitly discusses the case for unemployment benefits.⁵³⁸ This is perhaps because of the unattractiveness of utilising talent-based insurance policies to increase income or of setting a threshold below which to increase income at anything but a very low level. However, insurers may find some *policies* designed to increase the position of the less talented quite attractive, and I discuss these in chapter six. The insurance-focused approach leaves little to be said for these policies beyond their efficacy at mimicking a talent or earnings-based insurance scheme. While the provision of unemployment benefits will improve the position of those with fewer marketable talents,⁵³⁹ it does not offer very much for the less talented who are *in work*. On the approach taken here, however, it is possible to include policies that would assist those who are in work as part of the hypothetical insurance approach.⁵⁴⁰

⁵³⁷ See the discussion of ideal/non-ideal theory in the introduction, page 14-6.

⁵³⁸ Dworkin, *Sovereign Virtue* at 335-8.

⁵³⁹ Such a policy will provide a degree of security—actual and psychological. Unemployment benefits will also provide workers with greater security when they need to stand up to an unreasonable or exploitative employer, without risking personal (and perhaps familial) desolation. It should also improve workers' wage bargaining position vis-à-vis employers.

⁵⁴⁰ The failure to consider alternative schemes to improve the position of low earners does not necessarily imply that Dworkin would disagree with the broader remit of the approach I take. The absence of a discussion on this point may be a simple omission on Dworkin's part, or it may indicate that he did not think there were any serious candidates to rival the status quo, or to improve the position of the worst off in a way that would be attractive to hypothetical insurers. It is quite possible that Dworkin would support the pre-existing minimum wage earnings subsidies and welfare programmes. Indeed, not only does he not condemn these, but he is generally supportive of the status quo against perceived threats to these from libertarians and conservatives in government. If it

I will briefly explain why it is necessary to look at policies beyond unemployment benefits.⁵⁴¹ There has always been a disparity in market income between higher and lower paid workers. Furthermore, recent trends indicate growing inequality in both wealth and income in most countries since the early 1980s, certainly in the UK and US.⁵⁴² As a result, the current trend appears to be towards an hourglass wage-structure⁵⁴³ as some jobs become more highly paid while others disappear or become low-paid jobs.⁵⁴⁴ There is certainly going to be reason to consider whether policies to improve the lot of low-paid workers would be worthwhile hypothetical insurance decisions.⁵⁴⁵

An alternative reason for Dworkin to have overlooked alternative policies for low-earners might be that he assumed insurers would only be concerned with falling below an *absolute* level and not with their position *relative to others*. However, I agree with Clayton that there is no good reason to restrict hypothetical insurers in this way. If securing a reasonable relative position is attractive to insurers then they should have this option.⁵⁴⁶ Indeed, Dworkin is not consistent on this point. He appears to focus solely on *relative* fortune in his discussion of social fortune, while he appears to focus

is the case that Dworkin would support the approach taken here, then it is still worth considering the challenge from those else who may not.

⁵⁴¹ I therefore agree with Alexander Brown that it is necessary to consider more policies than Dworkin does. Alexander Brown, 'The Slavery of the Not So Talented', *Ethical Theory and Moral Practice*, 14/2 (2011), 185-96 at 190. Brown argues that the insurers would wish to have more freedom—they would be concerned about a kind of wage-slavery—and would purchase hypothetical insurance accordingly. Brown refers positively to the arguments of Olsaretti and Bou-Habib, which I will consider in more detail in section 6.7 of the following chapter.

⁵⁴² Dennis J. Ventry, 'Equity Versus Efficiency in Historical Perspective', in Joseph J. Thorndike and Dennis J. Ventry (eds.), *Tax Justice : The Ongoing Debate* (Washington, D.C.: Urban Institute Press, 2002) at 51-2.

⁵⁴³ Edmund S. Phelps, *Rewarding Work : How to Restore Participation and Self-Support to Free Enterprise* (Cambridge, Mass.: Harvard University Press, 1997) at 17, Charles Duhigg and Keith Bradsher, 'How the U.S. Lost out on Iphone Work', *New York Times*, 2012.

⁵⁴⁴ Phelps, *Rewarding Work* at 66-7.

⁵⁴⁵ Murphy and Nagel, *The Myth of Ownership* at 182.

⁵⁴⁶ Clayton presents this criticism of Dworkin's approach in parallel to his arguments against hypothecated taxation, discussed in the previous section; Clayton, 'Equal Inheritance: An Anti-Perfectionist View', at Sec. 2.3.

solely on *absolute* fortune in his discussion of talent-based market luck. There is no obvious reason to restrict the insurance choices along these dimensions.

Absolute considerations will clearly motivate people in all insurance decisions. However, people will also be concerned with their resources relative to others due to the existence of *positional goods*. These goods matter not only for their intrinsic properties, but also for the position that they allow their bearer to stand in relation to others. The term was coined by Fred Hirsch, who uses the examples of access to attractive land for leisure and positions of leadership in a hierarchy.⁵⁴⁷ Those with more wealth will have greater access to the pleasant view, and those with greater education and talent will have access to the most highly-sought jobs.⁵⁴⁸ Insurers would be concerned about their ability to carry out whatever plans they have in life, and would be concerned that it would be difficult to carry out those plans if they have low-paid employment once they have taken care of the basic cost of living in their society.

Hypothetical insurers would be concerned about being low-talent individuals with poor employment prospects and so in chapter six I will consider policies that provide more than merely unemployment benefits.

⁵⁴⁷ Fred Hirsch, *Social Limits to Growth* (Cambridge, Mass.: Harvard University Press, 1976) at 27-8. Hirsch presents the economic inefficiencies that result from the motivations created by positional goods (examples include over-suburbanisation and over-education in order to gain job advantages over others even where there are poor marginal gains to education) Hirsch, *Social Limits to Growth* at 36-51. This work has been echoed in a more formal fashion by Robert Frank; Robert H. Frank, 'The Demand for Unobservable and Other Nonpositional Goods', *The American Economic Review*, 75/1 (1985), 101-16, Robert H. Frank, 'Frames of Reference and the Quality of Life', *The American Economic Review*, 79/2 (1989), 80-85, Robert H. Frank, 'Positional Externalities', in Richard Zeckhauser (ed.), *Strategy and Choice* (Cambridge, Mass.: MIT Press, 1991), 25-48, Robert H. Frank, 'Positional Externalities Cause Large and Preventable Welfare Losses', *The American Economic Review*, 95/2 (2005), 137-41. On the topic of this work, Hirsch also highlights that the gains to the worst-off as a result of economic growth will never entirely satisfy them as they will always be behind in positional goods, and so the distribution of resources will always matter as well, Hirsch, *Social Limits to Growth* at 175.

⁵⁴⁸ A further example borrows from a well-known saying. Someone with one working eye in our society would no doubt be a slight disadvantage, but in the kingdom where everyone else is blind, the one-eyed man is king.

5.4 Qualitative issues and averaging

I have argued for a holistic approach to hypothetical insurance, taxation, and benefits, as opposed to a segregated—hypothecated—approach. The whole package of taxation and spending is the proper focus of analysis, rather than any particular tax or benefit in isolation. I will compare *packages of different types of policy* to consider which would be more attractive to insurers, as well as considering the rough levels—quantity—of redistribution with the preferred approach. This need to compare packages of policies leads to another possible challenge to the approach I take; how is it possible to determine an *average*—as required in accordance with section 4.8—where *qualitative* decisions are concerned? In order to determine an average it is usually necessary to consider options on a scale, while qualitative considerations do not necessarily sit in such a scalar relationship; there may be no qualitative option in the ‘middle’ of all of the others.

The challenge is either that it does not make any sense to consider packages of policies as hypothetical insurance decisions, or that attempts to do so would produce an indeterminate answer. In order to answer the first challenge I will explain a little more about the process. It is important to emphasise that the hypothetical insurance approach as I conceive it is a dynamic process. As I have indicated, and will emphasise again in the following section, it is necessary to bracket some aspects of the overall decision at any given moment in order to focus on others. Once one issue appears resolved, the bracketed issues can be reconsidered, with the possibility of returning to the primary issues later. The approach is therefore one of reaching an *equilibrium*,⁵⁴⁹ the sort of undertaking that people considering insurance packages and coverage *already* make in real insurance markets.

⁵⁴⁹ This idea has roots in observations of liquids, which led to mathematical theories in physics and the sciences, and was then extended to form the basis of modern economic analysis. It is also utilised in Rawls’ “reflective equilibrium,” Rawls, *A Theory of Justice: Revised Edition* at 18-9.

It is important to note that insurers should consider the broad institutional policies⁵⁵⁰ *prior to the precise determination of the level of coverage*. It does not make sense to ask how much policyholders will be willing to risk from their fortunate possible selves in order to help their less fortunate possible selves if we do not know what sort of policies they will be paying into. Different policies will have different advantages and disadvantages, costs and so on, and insurers will take these issues into account when determining their preferred level of coverage. Where there are many policy packages available, it is therefore necessary to choose the policy package before determining the payments and receipts of the policy. Of course, insurers will have to consider the likely level of coverage that they will choose—given the likely cost of the policy package, and based upon the choices that others will make—with each of the packages when considering which packages will be most preferable. Nevertheless, they would have to determine between them a policy, and I will explain this process in more detail in answer to the second challenge.

I have so far responded to the first challenge by highlighting that it is necessary to choose a policy before considering the level of coverage, but this point is not enough to establish that insurers should have the option to choose from a full range of packages. The attractiveness of the approach becomes clearer when we consider the alternative. This would be to insist that insurers should only make quantitative decisions based upon a single pre-determined policy. This policy could be the one that most closely mimics a typical insurance choice, or it could be the one which would provide the more direct response to the problem which motivates insurers. However, as with the hypothecated tax restriction, it would be very unattractive to the insurers themselves to limit their options in this way. For example, two forms of insurance may cover some of the same risks,⁵⁵¹ and so there would be no need to pay the full price of both when

⁵⁵⁰ What I have referred to above as “qualitative issues.”

⁵⁵¹ For example if damage to an automobile or housing contents were covered by a household insurance policy the policyholder would not wish to pay for these to be covered by their automobile

these resources could be saved—or redirected to provide better coverage for other risks. So just as real insurers will select the most attractive *overall package* of policies of them, hypothetical insurers should have the full range of possible options available to them.

The second challenge is that the dynamic qualitative approach will be *indeterminate*. This worry arises as there is no single scale on which an average can easily be determined. However, while it is more difficult to determine an average where there are qualitative issues, that does not mean it is impossible to obtain an acceptable notion of an average on the qualitative issues before working out the average coverage people would buy given the preferred policy package. In some cases, it may be that all insurers would prefer one policy package to all others. Therefore, the approach first requires us to look for policies that would dominate all others as insurance choices. By this I mean that all insurers, whatever their plan of life and attitude to risk, would choose a particular set of policies over all others. Such unanimity may not always occur, however. Where no policy would obtain full dominance over its rivals, we can ask what proposals are broadly attractive to all and then choose the most popular from these acceptable policies.

To show how this might work, imagine that insurers would rank policy packages as *strongly preferred*, *slightly preferred* and *undesired*. We can imagine different scenarios regarding the strength of these preferences, and what would happen in a real insurance market. So we can take it that if a large number of insurers would find a policy undesirable, they would not agree to sign up to the policy if it were offered. A policy which many people strongly prefer and few find undesirable would then come out as the average choice. An alternative scenario would be that there are opposing groups, with policy L strongly preferred by one group and undesired by another group,

or additional contents insurance as well. As I understand it, insurance policies contain rules against claiming for the same thing under two different policies.

and policy M *vice versa*. In this case, the existence of a third policy, N, which all find acceptable might win the day. However, if no alternative were available then it would be necessary to go with the choice of the larger group.

In general, if there is a group for whom a policy package would be undesirable, then that policy would not be on the table. However, it may be that some people would have very contrary preferences to others—such as an unusual proclivity to take risks—such that they prefer particular policies that the majority find undesirable and reject the policy that the majority strongly prefers. There may be scope to exempt risk-takers from compulsory schemes by removing coverage from them—such as not providing rescue for those engaging in extreme activities,⁵⁵² and requiring those who wish to ride motorcycles without helmets to fund their own medical care. However, where such profiling is unavailable, it would be necessary to overrule the exemption for the minority on the basis for the requirement of an average policy that is applied to all.

5.5 Is it too complex for insurers?

The approach described in the previous sections is a very dynamic process where many factors are simultaneously considered. The question for this section is whether this approach is too complex for hypothetical insurers. I have already indicated how it would be possible to deal with all of the moving parts of the approach; to treat some issues as fixed at any one moment and to come to a decision about any particularly important issue that needs to be resolved. The undertaking would, as a result, be a multi-stage process, with the possibility of returning to reconsider previous stages once other issues had been resolved. Insurers would have to consider what forms of bad luck they are concerned about, and then consider the extent to which *packages of policies* will respond best to those forms of misfortune.

⁵⁵² Such as climbing tall and remote mountains like Everest, or those who attempt to sail across wide oceans such as the Pacific.

Some decisions should come first as they are qualitative issues that will have a bearing on the more fine-tuned insurance decisions, as I discussed in the previous section. Another set of decisions should take place early—and can therefore be taken as fixed—as they are uncontroversial and will yield relatively certain outcomes. One item that we can keep relatively fixed throughout is that it will be necessary to raise and spend taxation revenues for certain purposes. These must be taken account of, though this need not concern hypothetical insurers for the most part.⁵⁵³ Tax revenues are required in order to provide for the enforcement of basic liberties and rights,⁵⁵⁴ as well as the functioning of democratic government. The provision of the military, police, free and fair elections, and the justice and penal system is not cheap.⁵⁵⁵

A second purpose for taxes which can be taken as fixed is the need to mitigate market externalities, such as pollution.⁵⁵⁶ These should be determined as per the requirements of equal opportunity costs.⁵⁵⁷ The third requirement has the same motivation as the second; to reduce externalities. However, these externalities are those resolved by the government *providing a good* that the free market will not provide. An example is the provision of statistical and other information to the general population where no one has the incentive to do so despite its usefulness to all. These public goods would require a slice of government revenue, which can be considered reasonably fixed for the purpose of hypothetical insurance deliberation.⁵⁵⁸ Of course, the effects of these public goods should be accounted for in the hypothetical insurance process.⁵⁵⁹

⁵⁵³ Dworkin, *Is Democracy Possible Here?* at 168 n20.

⁵⁵⁴ The spending on these background are not calculated based upon hypothetical insurance risk profiles, since the provision and enforcement of rights is necessary to ensure that equal opportunity costs are calculable at all.

⁵⁵⁵ This point is made at length in Stephen Holmes and Cass R. Sunstein, *The Cost of Rights : Why Liberty Depends on Taxes* (New York: W.W. Norton, 1999). (However, see in particular p.15 and the appendix for a list of the costs of rights enforcement from the 1996 US federal budget)

⁵⁵⁶ These are referred to as market 'bads' as opposed to market goods.

⁵⁵⁷ I explained this in section 1.3, see particularly page 34-6.

⁵⁵⁸ The need for such a constitution is argued by tax constitutionalists,

⁵⁵⁹ We could also add a fourth additional purpose of taxation that would be reasonably fixed. This is that taxes may also have a role to play in the functioning of the economy, where additional taxes are

Another issue which hypothetical insurers could determine at an early stage occurs where there are multiple alternative policies to deal with some bad outcomes against which insurers wish to purchase insurance. For example, insurers could receive public goods or individualized compensation payments.⁵⁶⁰ In some cases one will be much more attractive than the other, while in others the insurers will be largely indifferent and the decision can be postponed until a later stage or left to democratic or political decision-making. There are cases under which hypothetical insurers would insure to receive a particular good that will benefit them as individuals, where the government could either provide the good or to hand over money or vouchers of the same value.⁵⁶¹ I will generally be ecumenical here about the most appropriate *form* of redistribution resulting from hypothetical insurance decisions in these cases.⁵⁶² This need not be a compensatory payment to an individual; it can take whatever form is most suitable.⁵⁶³

required to cool or stimulate economic activity. This might not require any additional action given that taxes will to some degree automatically achieve this function, for example where benefit payments increase during a slump and progressive taxation will capture larger amounts during a boom. However, to the extent that further action is required, this can be taken as a fixed requirement. Any smoothing demand within the economy as a whole could be done through the use of a sovereign wealth fund, into which money could be channelled during good times and withdrawn during depressed times. This could perhaps be built in to the "economic constitution," see footnote 6.

⁵⁶⁰ In either of these cases there may be the possibility of means-testing the potential recipients.

⁵⁶¹ Such goods could be provided either universally to everyone in the society, or on a means-tested basis depending on the case and what will work best in the society in question.

⁵⁶² Insurers would have a reason to prefer the distribution of money for reasons of convenience to all parties and to reduce the administrative costs of the scheme. However, in some cases there will be a moral hazard issue with the disbursement of money, in which case insurers may prefer the provision of vouchers or services. As a form of targeting, or tagging, the needy and excluding those who seek merely to benefit materially from the public good; George A. Akerlof, 'The Economics Of "Tagging" As Applied to the Optimal Income Tax, Welfare Programs, and Manpower Planning', *The American Economic Review*, 68/1 (1978), 8-19, Albert L. Nichols and Richard J. Zeckhauser, 'Targeting Transfers through Restrictions on Recipients', *The American Economic Review*, 72/2 (1982), 372-77. So, in the case of housing it may be sensible to offer money, while with drug treatment it may make sense to provide the treatment rather than money. Where there is no clear advantage either way, these decisions can be left to democratic decision making.

⁵⁶³ Some have criticised the hypothetical insurance approach on the misplaced assumption that it requires payments to individuals only, something I have shown to be untrue in this chapter and chapter one. Examples can be found in; Shelley Tremain, 'Dworkin on Disablement and Resources', *Canadian Journal of Law and Jurisprudence*, 9/2 (1996), 343-59 at 355-6, Jerome Bickenbach, 'Disability, Non-Talent and Distributive Justice', in Kristjana Kristiansen, Tom Shakespeare, and Simo Vehmas (eds.), *Arguing About Disability: Philosophy Meets Disability Studies* (New York: Routledge, 2008), 105-23 at 117, Jonathan Wolff, 'Social Justice and Public Policy: A View from Political

I have said that it is sensible for insurers to determine the cost and form of important government services at an early stage in the procedure. However, some government services—for example those discussed earlier in this section—can be received *only* in the form of public goods rather than individual payment. Where the receipt of the public goods is ‘progressive,’ as the well-off will pay more in tax and the less well-off will often benefit more from the public goods, insurers can include this as an element of the hypothetical insurance compensation package.⁵⁶⁴ These goods need to be paid for, and—despite their necessity and benefits to all—insurers may be happy to choose them to be funded by taxes paid by the fortunate but not the less fortunate. Hypothetical insurers will know that they will be receiving some goods in kind and that these must be paid for by taxation, which could fall more or less on the economically fortunate. I will not focus on the provision of public goods in detail,⁵⁶⁵ but their provision in some form will be included in the chosen package of taxation.⁵⁶⁶ This is therefore another issue that can sometimes be fixed—and factored in—when considering other elements of the hypothetical insurance package.

I do not deny that holistic hypothetical insurance decisions are complex and multifaceted. However, this does not undermine the approach, since it is possible to take many aspects of the decision as fixed when focusing on any given aspect of the decision. I have outlined some of those provisionally fixable aspects here, adding to the strategy of prioritising qualitative issues described in the previous section. Insurers merely need to be mindful at every stage of the process of what is being kept fixed for the purpose of the decision, what is already likely to be included in the package, and what is still open for decision. These sections should have further clarified the nature of

Philosophy', in Gary Craig, Tania Burchardt, and David Gordon (eds.), *Social Justice and Public Policy* (Bristol: Policy Press, 2008), 17-31 at 25.

⁵⁶⁴ This issue is discussed at length in Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*, at ch 4.

⁵⁶⁵ I may mention the provision of public goods where the case for one form of other is particularly strong or where it impacts upon other aspects of the hypothetical insurance decision.

⁵⁶⁶ I therefore follow Dworkin in focusing on the taxation rather than expenditure side, as explained in Dworkin, *Is Democracy Possible Here?* at 106-7.

the process. Before explaining the considerations that hypothetical insurers will take account of, I will briefly mention another challenge to the approach which should also help to clarify it further.

5.6 What is envied?

I now discuss an issue which may influence the interpretation of the hypothetical insurance scheme; what is it that is envied? By this I mean; *which forms of envy provide reasons to redistribute?* This may appear clear from the discussion so far—hypothetical insurance is for people who envy the *economic resources of others which have resulted from their greater market or social luck.*⁵⁶⁷ However, this raises the question of what should count as an *economic resource* about which people might have good or bad fortune. I have argued against hypothecated taxation which directly links compensation from one area to that of another, and this perhaps makes it more important to be clear about what are acceptable reasons to tax and subsidise.

Since good and bad luck will affect incoming resources and therefore also expenditure by individuals, it is possible to be quite open with regard to tax and subsidy policies. One question is how fine-grained the envy needs to be. Must a woman *wish she was a man* in order to claim for the greater costs of children that fall on women?⁵⁶⁸ A question such as this would be mistaken, however; it is not necessary for someone to envy everything about another in order to qualify.⁵⁶⁹ The issue is whether someone has a *potential resource deficit*, and what hypothetical insurance people would on average purchase. This can be as fine-grained as compensation for the loss of an arm, or more general like the loss of particular abilities, or lack of resources in general with the most attractive overall package of insurance being at issue. So the question in the childcare

⁵⁶⁷ As I described in sections 1.2 and 4.1.

⁵⁶⁸ This example is from Justine Burley, as reported by G.A. Cohen in Cohen, 'Expensive Tastes Rides Again'.

⁵⁶⁹ It is possible that this example is designed to highlight the inability of the envy test to respond to social norms, an issue I discussed in section 2.8.

case is what level and type of compensation for children each person would choose to provide in a society, given the increased taxation required to pay for it.

There is another suggested extension of this envy-freeness approach which I reject. Phillippe Van Parijs presents a—purportedly resource egalitarian—argument for unconditional basic income⁵⁷⁰ in which he suggests that those who hold jobs should support those without jobs since they hold a valuable and scarce *resource*.⁵⁷¹ Van Parijs highlights that workers can earn rents from employers,⁵⁷² and that since these rents are unavailable to the unemployed they are legitimate revenues for redistribution to those who have no income. The problem with this argument is that it pulls together several issues that can—and should—be separated. Van Parijs seems to adopt a rather strange version of the hypothecation approach that I argued against in section 5.2; since *workers* obtain this form of rent, *non-workers* should receive the proceeds.

In addition to the challenge to hypothecation, it is possible to break the link between employment rents and income for all unemployed entirely, by focusing only on the

⁵⁷⁰ Van Parijs claims unconvincingly that the argument is based upon resource egalitarian foundations, Van Parijs, *Real Freedom for All : What (If Anything) Can Justify Capitalism?* at 28. For resource egalitarian criticisms of his arguments see Andrew Williams, 'Resource Egalitarianism and the Limits to Basic Income', *Economics and Philosophy*, 15/01 (1999), 85-107, S. F. Midtgaard, 'Ambition-Sensitivity and an Unconditional Basic Income', *Analyse und Kritik*, 22/2 (2000). For a good general criticism of the position, despite containing a misunderstanding of resource egalitarianism; see Brian Barry, 'Real Freedom and Basic Income', *Journal of Political Philosophy*, 4/3 (1996), 242-76. Another critic, though a nuanced one, of the unconditional nature of the basic income is Stuart White; see Stuart White, 'Liberal Equality, Exploitation, and the Case for an Unconditional Basic Income', *Political Studies*, 45/2 (1997), 312-26, White, *The Civic Minimum* at Ch 7, Stuart White, 'Fair Reciprocity and Basic Income', in Andrew Reeve and Andrew Williams (eds.), *Real Libertarianism Assessed* (Basingstoke: Palgrave, 2003), 136-60, Stuart White, 'What's Wrong with Workfare?', *Journal of Applied Philosophy*, 21/3 (2004), 271-84.

To me it seems that Van Parijs' conclusions that rest on an interpretation of leximin real freedom that is skewed in favour of leisure-lovers, see Barry, 'Real Freedom and Basic Income', at 262-4. I will consider basic income more indirectly as a policy response to bad market luck from a hypothetical insurance perspective in section 6.6.

⁵⁷¹ Van Parijs, *Real Freedom for All : What (If Anything) Can Justify Capitalism?* at Ch 4.

⁵⁷² This occurs, for example, because it would be costly for employers to lose the worker and have to advertise the position, have a period without a worker performing the task, and possibly in expending resources on teaching another how to do the job.

involuntarily unemployed who are definitely unwillingly excluded from these rents.⁵⁷³ *Contra* Van Parijs, it is possible to reject the idea of compensating the jobless *qua* jobless. Some of those who are jobless will desire a job and income, in which case they can claim compensation for misfortune. However, others who prefer not working will not envy those who hold jobs, and as a result would not be eligible for compensation.⁵⁷⁴ This does not rule out unconditional compensation for the jobless—I consider such a policy in section 6.6—but it does not rule it in either. Of course, the rents obtained by job-holders are presumably a source of revenue for redistribution that would be very attractive to hypothetical insurers, as I will discuss below and in Chapter Seven. However, this does not mean that these rents necessarily be used to support *all those who do not work*.

5.7 Tax (and Policy) Incidence

I have answered various challenges to my interpretation of the best hypothetical insurance approach to taxation and benefits. In the remainder of this chapter I will explain some of the more technical economic factors of which insurers would need to be aware. In this section I will explain the idea of tax incidence, in section 5.8 I will run through the economic consequences of policies that insurers would need to take into account, and in section 5.9 I will explain the classifications that they might utilise.

Understanding the *economic incidence* of policies is of prime importance. Most people have some degree of understanding that the person who hands over a particular tax—the personal with the *legal* obligation—is not always the person who *really* pays the

⁵⁷³ Since Van Parijs suggests earlier in his book that state revenue should be used to maximise a sustainable basic income, he only considers this as a possible use for the rents when he argues that they are a legitimate source of revenue that do not violate his self-ownership principle; Van Parijs, *Real Freedom for All : What (If Anything) Can Justify Capitalism?* at Ch 2, 106-8. Van Parijs explicitly rejects considering subsidies designed to do anything other than increase unemployment; Van Parijs, *Real Freedom for All : What (If Anything) Can Justify Capitalism?* at 111. He does this despite the fact that employment subsidies can improve the position of the worst-off in other ways as well—as I will discuss in chapter six. He thereby makes his argument for basic income tenable by excluding all other reasonable policies, whereas all such options should of course be on the table for hypothetical insurers.

⁵⁷⁴ Williams, 'Resource Egalitarianism and the Limits to Basic Income'.

tax. A common illustration is the 'sin' tax on tobacco, which is handed over by manufacturers and shopkeepers but *effectively* paid by smokers. This is because the cost of the taxes will be added the tax on to the final price of the cigarettes. It is the incidence of taxation that will concern hypothetical insurers.⁵⁷⁵

Working out the incidence of taxes can be very complicated. In some cases, the person handing over tax payment will be the effective payer, while in other cases the ultimate consumer of the product will be the true payer. However, such clear cases will be rare as the cost will often be shared. To complicate matters further, taxes also affect behaviour. Increasing the tax on labour may encourage some people to work more in order to maintain their previous income. Alternatively, some may find the tax on labour makes the returns to their labour less worthwhile, which would lead them to increase their leisure instead. These are respectively known as the *income* and *substitution* effects.⁵⁷⁶ These effects will ripple all over the economy, as prices will change in line with the new decisions that people will make as workers and consumers as a result of the policy change. Such effects will also impact upon government revenues, and therefore those who benefit from government programmes. There are therefore many possible effects of policies which must be weighed by insurers.⁵⁷⁷

It is very useful to consider these economic effects from the perspective of the individuals in the economy, and the effect that policies will have on their work

⁵⁷⁵ Of course, it will also be of concern to those who approach justice in taxation from other perspectives.

⁵⁷⁶ Varian, *Intermediate Microeconomics: A Modern Approach* at 136, 40-1.

⁵⁷⁷ The *real* consequences of taxation explained above will always fall on individuals. This means that while there are taxes on corporations, these will (potentially) affect the shareholders, workers, and consumers of the corporations. Hypothetical insurers would have no concern for corporations, of course; their concerns would be for their prospects should they prove to be a worker, consumer, investor, or the beneficiary of government spending funded by the tax. In the case of corporation taxes it is likely that these effects will largely cancel each other out once all of the prices adjust. This is because all corporations would be affected, and so the shift would occur only from those businesses (and their workers and consumers) who were more affected by the tax change towards those businesses (and their workers and consumers) who are less affected. Prices will then change accordingly; such that worker pay and profit-levels will re-calibrate across firms and industries, meaning that prices would probably only change slightly for most consumers in the long-run, and for workers and shareholders hardly at all.

decisions.⁵⁷⁸ Where people withdraw their labour, this will increase the costs of labour and therefore consumption products throughout the economy. Individuals may respond in one of three ways to taxes or benefits; they may *withdraw* their *participation* from the labour market entirely, they may *reduce* their working hours, or they may refuse—or ignore—higher paid work.⁵⁷⁹ Marginal tax rates have previously received most attention as they are crucial to the decisions of workers in their decisions over working hours and taking higher-paid work. However, economists have recently focused more on *Participation Tax Rates* (PTR) and *Marginal Effective Tax Rates* (METR).⁵⁸⁰ The importance of *effective-tax-rates* has been noticed with regard to benefit policies. These policies may produce disincentives to work at all, or to increase hours of work or income from work. The PTR refers to the difference that working-at-all will make to someone's net income, once taxes and benefits are taken into account.⁵⁸¹ A high PTR will result in a disincentive to work at all. Participation tax rates may also apply to early-retirement decisions by the more fortunate. Hypothetical insurers would want these rates kept low as a rule, and certainly below 100%, since at this point workers are actually no better off working.

⁵⁷⁸ Of course, the effects on people's financial investment decisions matter as well, though the economics of this are much simpler to understand and model.

⁵⁷⁹ Economists have referred to the first decision as being taken on the extensive margin, and the second and third as falling on the *intensive* margin, Emmanuel Saez, 'Optimal Income Transfer Programs: Intensive Versus Extensive Labor Supply Responses', *The Quarterly Journal of Economics*, 117/3 (2002), 1039-73.

⁵⁸⁰ To be clear, *effective* tax-rates are calculated based upon the withdrawal of benefits or subsidy as income increases. For definitions of METR and PTR see Mike Brewer, Emmanuel Saez, and Andrew Shephard, 'Means-Testing and Tax Rates on Earnings', in Stuart Adam et al. (eds.), *Dimensions of Tax Design: The Mirrlees Review* (Oxford: Oxford University Press, 2010) at 97-9. EMTR is an acceptable alternative acronym to METR, as is MTR, particularly where tax-rates are the only factor, in which case there is no need to consider *effective* tax-rates separately from the *actual* tax-rates.

⁵⁸¹ The PTR is defined mathematically as 1 minus the financial gain to work as a proportion of gross earnings. If the result is over 1 then of course the person is better off *not* working, however once the attractiveness of extra leisure is included, a PTR below one may still make work relatively unattractive for some.

5.8 Considerations of hypothetical insurers

I will now explain the considerations of hypothetical insurers when making their decisions. These are of course my interpretation of the considerations of hypothetical insurers, but I feel confident that the considerations I list would match those of most—if not all—people if they were in the hypothetical insurance situation. To begin, I explain the need for the chosen system to allow people to make and form plans, and also describe Adam Smith’s principles of taxation, which may limit policies. I then discuss the strong reasons that insurers would have to prefer progressive taxation, though I also note the countervailing reasons for limiting progressivity. Next, I explain the attractiveness of focusing taxation on unearned windfall income, though again offer reasons to limit this form of taxation.

Insurers will want to support their unfortunate selves, but will be concerned about bad consequences of potential policies. Insurers will not want to find themselves overly restricted as a result of the policies. Whatever life plans the insurers will have, they will want a degree of *certainty*,⁵⁸² and therefore would avoid policies that would make it difficult to *form and carry out plans*.⁵⁸³ This will occur where policies impose heavy costs on some groups, make it difficult for people to anticipate future liabilities, or where policies interfere with people’s ability to purchase and own the items of property they require. I will assume that this consideration will override any others, though this will leave most of the options on the table. We can add two more of Adam Smith’s principles of taxation; *stability* and *convenience*.⁵⁸⁴ Taxpayers would desire taxes that were stable over time, as would be the case if hypothetical insurance choices

⁵⁸² This is one of Adam Smith’s principles of taxation, see footnote 584 below.

⁵⁸³ By this, I mean that insurers will (*ex ante*) want to ensure that their real (*ex post*) selves can form and carry out plans.

⁵⁸⁴ Smith has four principles of taxation, Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* at 498-501 These are usually listed as equity, certainty, convenience, and efficiency. Equity, however, is superseded by hypothetical insurance decision-making in this analysis. I discussed the utilisation of equity within the public economics literature in footnote 5.

were installed permanently. Insurers would also want to ensure that the tax package was not inconvenient to them; that is, not unduly onerous on their time and efforts.

Hypothetical insurance policies compensate those who suffer misfortune at the expense of those who do not suffer the misfortune. As Dworkin showed from his initial presentation of equality of resources, this leads insurers to prefer smoothly⁵⁸⁵ *progressive* taxation.⁵⁸⁶ Progressive taxes will provide most effectively for the less fortunate as they will secure larger revenue without impacting upon the less fortunate.⁵⁸⁷ Following the traditional—binary—insurance approach of setting a level below which people *receive* a set amount and above which people will *pay out* a set amount is not an attractive option. The difference between those immediately above and below the threshold is tiny, but the effect on changing between the two would be large. This would encourage insurers to choose a very high pay-out threshold, which reduces the amount of tax revenue while increasing the number of people who share the proceeds despite being less needy. It would also have significant economic effects as those near the insurance line would alter their behaviour in order to fall below rather than above. The sensible option is therefore to have a group of people in the middle who neither pay in nor receive, with progressively more assistance provided to the worst-off and progressively more contribution from those who are best-off. Thus, smooth progression is the most sensible insurance bet.⁵⁸⁸

There are further reasons to prefer progressive taxation. The first is the concern insurers would have regarding their economic *position* relative to others. I have mentioned some reasons for this concern—in section 5.3—regarding relative access to

⁵⁸⁵ That is, without any sudden changes—jolts—in the rates as tax-base increases or decreases.

⁵⁸⁶ See above, page 191. A further justification for progressive taxation comes from the requirement to deal with externalities such as pollution and climate change, that taxes or charges to deter such activity will be both unfair and ineffective unless they are done in a progressive fashion; footnote 86, Casal, 'Progressive Environmental Taxation: A Defence'.

⁵⁸⁷ At least, not *directly* impacting on the less fortunate, as taxes will affect the economy in various ways as I outline below.

⁵⁸⁸ Aside from the general assumption that a progressive structure is required, I will bracket consideration of the precise tax-rate structure until sections 7.7-7.8.

positional goods. This concern for access to positional goods is paralleled by a desire to ensure that political power is not dominated by the wealthy. Progressive taxation may help in this aim, along with restrictions on the ability of the wealthy to buy political power. Second, insurers would be worried that they would suffer from a lack of relative *opportunity* due to their family background. Progressive taxation and redistribution would help in this regard, along with the provision of public goods such as education and training for those from poor families. A final additional reason to prefer progressive taxation and redistribution for relative reasons as well as absolute ones is that insurers would fear the shameful stigma of appearing in public in a position of relative poverty.⁵⁸⁹

I have provided many reasons which would lead hypothetical insurers to prefer progressive taxation, but other factors may weigh against this. Insurers would also be concerned with the general effects of the tax system. They would want a system that would encourage economic stability, efficiency, and—if possible—growth. Policies or rate-levels that threatened to damage the economy would be a bad choice for hypothetical insurers. The progressivity of taxes would therefore be limited in accordance with the marginal economic considerations described in section 5.7; that marginal-effective and participatory tax-rates (METR and PTR) should not be too high, and should certainly not go above 100%.

Returning to the theme of taxation designed to capture the returns to the fortunate, some kinds of fortune will be of particular interest to hypothetical insurers. What might be called ‘unearned income’ will stand out as a prime target for taxation. The first instance of this is income received in the form of gifts and bequests. However, the attractiveness of taxes on gifted income will be tempered by people’s desire to leave

⁵⁸⁹ This thought is given a very prominent place by Rawlsians and “democratic egalitarians” (see footnote 302). These thinkers emphasise the importance of people relating to one another as equals, which motivates the desire for a property-owning democracy (see footnote 112 and surrounding text).

themselves *some* scope to give and receive property.⁵⁹⁰ The second type of unearned income the taxation of which will appeal to hypothetical insurers is what I have called locational fortune, which can be described as *windfall economic rent*.⁵⁹¹ This occurs where the owners of a particular type of property benefit from a broadly unforeseen change in the economy that greatly increases the value of their property.⁵⁹² Of course, while the benefits are random, someone with a large portfolio of property and investments is much more likely to benefit than someone with very little to their name, and so taxing such windfalls should also transfer from those with greater market talent and good social fortune to those with less.⁵⁹³ Even in cases where economic rents are not totally unanticipated—the owner was a more perceptive investor than others in society—it will still be attractive to tax this income at a high rate. This is because there some investors will be in a position to invest due to some previous form of good fortune, as well having the ability to anticipate better than others. Furthermore, since the fortune is a windfall, taxing it will have little effect on economic decision-making and therefore economic efficiency. Of course, that it is desirable to tax unearned income does not imply that it will always be practically straightforward to distinguish unearned income. However, where it is possible to tax unearned income at a higher rate without serious consequences hypothetical insurers would choose to do so.

To summarize, insurers will avoid policies that make their real lives unduly difficult, interfere with their ability to form and carry out their plans, and cause economic

⁵⁹⁰ I will discuss the tax-base options in more detail in sections 7.1-7.6. For discussion of hypothetical insurance and bequests see section 7.1, Dworkin, *Is Democracy Possible Here?* at 117-8, Clayton, 'Equal Inheritance: An Anti-Perfectionist View'.

⁵⁹¹ See above, page 110.

⁵⁹² A good example is the discovery of gold or oil below some previously low-value farm land. Since there is a random distribution of good fortune, insurers would want to increase their chance of sharing in the good fortune.

⁵⁹³ This relates to the idea of *accumulated advantage* described above, page 114.

hardship. However, within these constraints, insurers will desire progressive policies,⁵⁹⁴ particularly with regard to taxation focused upon unearned income.

5.9 Useful classifications

I will end by briefly explaining how hypothetical insurers may classify their co-insurers. I will highlight three-stage classifications along three different continuums that are relevant to insurance decisions.⁵⁹⁵ With regard to luck they could distinguish; the fortunate, those with average fortune, and the unfortunate. Often people will fall somewhere on a continuum as regards their luck, and the insurers will seek to determine the levels *below which* they will be particularly concerned to insure to receive additional resources, and the levels *above which*—and cases in which—they are happy to risk paying out more. The lines they draw between classes will presumably alter depending on the particular issue against which they are considering insurance. Happily, I do not think there would be very wide variation in people's perceptions of fortune and misfortune regarding taxation.

In order to have some idea of the insurance choices that will be attractive to society as a whole, which will affect the policies available and their costs, it is useful to group people according to their attitudes and preferences. For instance, we might consider the insurance bet that would be made by those who are risk-averse, risk-neutral, and particularly risk-taking. The averaging requirement will mean the average level of risk-aversion in society is needed, but this social average will also impact on the decisions of insurers. The different preferences people have regarding work and leisure will also be very important to insurers. There will be those who are *leisure-lovers*, those with a desire for a balance between work—and the corresponding income—and leisure, and those who are *work-lovers*. People may fall into the work-lover category because they

⁵⁹⁴ That is, policies which tax people more in accordance with their economic fortune and provide them with more in accordance with their lack of fortune. I provided the definition of progressive taxation in footnote 14.

⁵⁹⁵ It is, of course, possible to make the classes more fine-grained if this is useful. The approach here is merely a useful heuristic to indicate the relevant considerations.

are consumption-lovers, gift-lovers, wealth-lovers, because they have a protestant-style work-ethic or because they simply enjoy their work more than anything else.⁵⁹⁶ In many cases, the majority of people will have preferences between those extremes, which I will refer to as *statistically normal*. Those in the extreme positions will have to accept the offer that is best for those in the large middle group. People may not have the same position on this spectrum throughout their lives, though some no doubt will.

Of course, as the position taken here is anti-perfectionist there is no room to commend or condemn any of these positions. However, insurers will be interested in the effects of policies and will therefore be particularly interested, for economic incentive reasons, in leisure-lovers.⁵⁹⁷ The preferences of this group render them particularly relevant because they will have a very strong inclination to respond to taxes and benefit policies that would enable them to work less or not at all. However, it will be necessary to consider whether those within the extreme groups will tip the balance towards an insurance package that would be more acceptable to them while still being acceptable to the others. This might occur where the other packages are very unattractive to a group with the extreme preferences.

5.10 Conclusion

The purpose of this chapter has been to explain how to consider issues of taxation from the perspective of hypothetical insurers. I will use this analysis to find the most attractive policy for the less fortunate in the following chapter. In the final chapter—chapter seven—I will consider the type of taxation that people would choose to pay for the costs of government and for the benefit policies set out in chapter six.

⁵⁹⁶ The terms leisure-lovers and consumption-lovers appear in Martin Feldstein, 'On the Theory of Tax Reform', *Journal of Public Economics*, 6/1 (1976), 77-104 at 82. The term "protestant work-ethic" comes from Weber, *The Protestant Ethic and the Spirit of Capitalism*.

⁵⁹⁷ These may consist of *non-needy bohemians*, who have a strong preference for a lifestyle that produces nothing for which others are willing to pay. The term comes from Richard J. Arneson, 'Is Work Special? Justice and the Distribution of Employment', *The American Political Science Review*, 84/4 (1990), 1127-47 at 1134. The relative size of this group has been used to attempt to explain the different welfare systems in Europe and the U.S.A., Roland Hodler, 'Leisure and Redistribution', *European Journal of Political Economy*, 24/2 (2008), 354-63.

In order to prepare for the detailed analysis of policies, I have explained what I take to be the correct way to approach hypothetical insurance. I presented a holistic policy-focused approach to hypothetical insurance decision making, whereby all of the hypothetical insurance decisions are considered simultaneously and impact upon one another. I expounded Dworkin's writing on taxation, endorsing some of his conclusions while criticising his hypothecating assumption and his failure to directly consider policies. I then considered several possible challenges to my approach, showing them to be unproblematic. In sections 5.7-5.9 I listed various points that insurers need to consider when thinking about taxation. I will consider alternative types of tax and benefit packages to see which is most attractive, given the need to raise taxes for redistribution as well as for other crucial government functions.

The most immediate transfer from this chapter to the following two will be the list of considerations which will be used to judge the policies available to the insurers. These are—in order of priority—that they should enable people to form and carry out plans, that they should not cause economic or personal hardship, and they should be as progressive as possible—particularly with regard to unearned income. Meanwhile, we—on behalf of the insurers—need to be mindful of the economic incidence and effects of the policies.

Chapter 6

Hypothetical Insurance and the Economically Unfortunate

Governments have attempted many policies designed to improve the position of those who suffer from the misfortune of unemployment or low-pay. While people have some responsibility for their employment situation, luck plays a role. As I discussed in the previous three chapters, people have different talents, and those who lack the talents that create products valued in their society will face fewer options, less access to resources, and a greater likelihood of involuntary unemployment. Furthermore, some people will simply find themselves in “the wrong place at the wrong time,” and lose their job or business as a result of unforeseen changes in their market.

I have so far defended resource egalitarianism as the best approach to distributive justice, and argued in the previous chapter for a holistic interpretation of this. As I indicated there, while all the policies must be combined together in the construction of a just overall policy mix, it is necessary to treat some issues as fixed and to focus on the qualitative issues prior to the determination of one’s quantitative rates and levels. In this chapter I will determine the most attractive policy response to bad market luck for those considering insurance policies from a hypothetically equal position;⁵⁹⁸ the first such undertaking. I will argue that a negative-rated hourly-averaging tax system with a guaranteed work programme and the provision of income for those with caring

⁵⁹⁸ Private insurance is available for involuntary unemployment, though the terms are generally quite poor since there is a self-selection moral hazard; people with very secure employment and highly valuable talents will not purchase the insurance while those in less secure employment and without highly sought talents will. For this reason, the existence of such insurance does not remove the need for hypothetical insurance policies.

responsibilities and for those who undertake education would be the most attractive set of policies.⁵⁹⁹

I will begin the chapter by itemising in section 6.1 the relevant considerations for hypothetical insurers. Bad market luck poses two worries for insurers. The first is that they should find themselves involuntarily unemployed, and the second is that they should find themselves in a low paid job with no prospect of better work. Insurers will want to select the policy that provides them with security but with consideration of the cost to the fortunate in taxation and to all members of society through its effects on prices and unemployment levels throughout the economy.

Unfortunately, there is insufficient room to compare all possible policies to one another, and so I will present what I consider to be the most attractive policy and then compare this to the prominent alternatives.⁶⁰⁰ I argue that the most attractive policy would include a negative hourly-average tax, which subsidises the income for each additional hour worked by those with a low lifetime average income. Since the negative hourly-average tax proposal is original to this work, I will dedicate a section—6.2—to explaining how this tax would be calculated. After explaining this form of tax calculation, I will then explain—in section 6.3—why insurers would prefer such a method of subsidising low-earnings. In section 6.4 I explain how insurers would wish to protect themselves from unemployment. They would ensure that they would have access to income despite caring responsibilities and through guaranteed work programmes, education and training. This policy mix would provide something for those who have low earnings (negative hourly taxation) and those who are

⁵⁹⁹ Here assuming that it would be possible to raise the necessary tax to pay for it, an issue I will discuss in more detail in the following chapter.

⁶⁰⁰ There are other potential policies that I will not discuss for reasons of space. These are the idea of job sharing (limiting the amount of time that an individual can spend on each job they hold), the provision of large numbers of public sector jobs, and direct subsidies for items like housing and food that will be useful for those with bad market luck. I will not consider these and other proposals as they are generally very expensive and they are not targeted policies to help the low-paid and unemployed.

unemployed (a guaranteed work and training programme). Insurers would choose such a policy because it would provide these advantages without having economic consequences as undesirable as the rival policies.

Having set out what I take to be the most attractive policies, I will then discuss rival policies that deal with each of the two issues in turn, beginning with unemployment. The issue for unemployment payments concerns *what conditions should be placed on recipients of compensation*. The preferred policy places many conditions on the receipt of additional income though it would allow people to obtain income from education and training.

I will consider why insurers might choose to have greater or fewer restrictions than I have proposed, and show these arguments to be wanting. One alternative—discussed in 6.5—would be to set *stricter conditions* on the receipt of additional income by excluding training and education. I show that the benefits of strictness would not outweigh the reasons to include education and training. The opposite extreme is to set no conditions on unemployment payments at all, thereby providing an unconditional basic income. I argue—in 6.6—that this option is unattractive to insurers, however, as it enables leisure-lovers to reduce their hours of work at great potential cost to the scheme as well as the economy and consumers. Finally, in section 6.7 I consider levels of conditionality between the unconditional position and the one I propose. I will respond to the arguments of authors who think that hypothetical insurers would choose to place fewer conditions on claimants.

Having discussed unemployment policy alternatives, I will then then consider alternative policies to improve the position of those with low-earnings. The first alternative—discussed in in section 6.8—is the imposition of a *minimum wage* as a means to improve the hourly wages of the low-paid. I argue that this policy has too many deleterious side-effects due to its tendency to raise unemployment and the price of goods. I will then consider alternative forms of employment subsidies to my

negative-hourly-averaging proposal. I argue these would be less attractive to insurers. These are firstly the *limited subsidies* of the sort currently provided in many countries (6.9), and, second, the more comprehensive *wage subsidy* proposed by Edmund Phelps (6.10). After dismissing these alternatives, I will finally consider—in section 6.11—two possible arguments against the preferred policies. These are that the policies suffer from the problems with earnings subsidies presented by Anne Alstott, and that the policy is unfair to leisure-lovers.

The focus of this chapter is on policy responses to bad market luck from a hypothetical insurance perspective. Of course, this is not the only reason to raise taxes or the only purpose of tax expenditure. I outlined other baseline requirements,⁶⁰¹ and will take those provisions as a given throughout. I will also bracket other forms of bad luck which could be separately considered and acted upon. These include social luck, disability, medical needs, and support for needy children and carers. I agree with Dworkin that these issues should be dealt with through hypothetical insurance decisions.⁶⁰² However, since these needs can usually be more easily and accurately identified than can bad market luck I will generally bracket them off as already decided on the basis of more straightforward hypothetical insurance decisions. One way to express this point is that social luck, disability, medical needs, and the guardianship of children or incapacitated adults can readily be targeted separately, or *tagged*.⁶⁰³ Therefore, for the purposes of this chapter I will treat the requirements for the above problems as fixed costs while focusing on market luck.⁶⁰⁴

⁶⁰¹ See pages 36-7 and 203-4.

⁶⁰² Dworkin, *Sovereign Virtue* at Chs 8 and 9.

⁶⁰³ Akerlof, 'The Economics Of "Tagging" As Applied to the Optimal Income Tax, Welfare Programs, and Manpower Planning', Nichols and Zeckhauser, 'Targeting Transfers through Restrictions on Recipients'. Akerlof considers the extent to which welfare programmes can be designed to perform tagging in the same manner as other programmes, an issue to which I will return throughout this chapter.

⁶⁰⁴ Nevertheless, the attractiveness of hourly-averaging is such that it is actually a very useful tool for dealing with other issues as well, a point I highlight at times in passing.

6.1 Relevant considerations for hypothetical insurers

I explained the considerations of hypothetical insurers in chapter five, and these will apply here. Nonetheless, I will briefly explain the considerations that are particularly pertinent to benefit policies. Bad market luck arises from the possession of fewer marketable skills than others possess. It can also arise where someone is simply in the wrong place at the wrong time—such as living in a region that is in decline while others are booming. Bad market luck can result in a *low income* compared to others, or alternatively *involuntarily unemployment*. The former is a problem because a low income will leave individuals less able to carry out their plans, as well as reducing access to important positional goods. Involuntary unemployment has the same effects, but in a more severe form, as well as potentially harming mental well-being⁶⁰⁵—for example, due to loss of self-esteem and self-confidence.⁶⁰⁶

Insurers will want policies that reduce—and ideally remove—the harms associated with low pay or unemployment. However, they would of course be mindful of the cost of policies. The most obvious cost is the scheme's *direct cost*. This is the administrative cost of the policy, where administrative costs will reduce the effectiveness of the policy by directing funds away from the intended beneficiaries. As well as the direct effects, however, policies will have *indirect costs*.

Any policy that improves the position of those with bad market luck will have wide-ranging effects upon the economy. Insurers will be concerned about such effects on the wider economy. Each policy will have its own side-effects, but insurers are affected as beneficiaries of the economy, as consumers, and as taxpayers. The first issue is that of the broad economic effects, and is the most complex. This refers to concerns about the

⁶⁰⁵ Richard Layard, *Happiness : Lessons from a New Science* (New York: Penguin Press, 2005) at 67.

⁶⁰⁶ For some panel-data based evidence on the effects of unemployment see; Liliana Winkelmann and Rainer Winkelmann, 'Why Are the Unemployed So Unhappy? Evidence from Panel Data', *Economica*, 65/257 (1998), 1-15, Peter Warr, Paul Jackson, and Michael Banks, 'Unemployment and Mental Health: Some British Studies', *Journal of Social Issues*, 44/4 (1988), 47-68, Andrew Clark, Yannis Georgellis, and Peter Sanfey, 'Scarring: The Psychological Impact of Past Unemployment', *Economica*, 68/270 (2001), 221-41.

effectiveness of the economy at meeting the needs and wants of consumers. Policies that would harm economic efficiency and growth would be unattractive to hypothetical insurers, as they will do one or more of the following; increase unemployment, lower pay or profits, or raise prices. Increased unemployment would be a concern to insurers, as it may affect them personally. In addition, increased unemployment would increase the direct costs of the policies. If the policies damaged economic growth, they could reduce the returns to investments and therefore result in lower profits. Reduced economic growth also harms investment-levels, which would lead to lower pay as there would be a larger proportion of workers competing for available jobs and driving down wages.

The second issue is that policies could increase prices for consumers. This occurs where it becomes less attractive for people to produce what consumers want, either through encouraging people to perform less work and take more leisure or by encouraging firms to shift to more expensive technology (in place of workers). Price increases would make it harder for people to carry out their plans. The second worry relates to the third, which is the cost to taxpayers.

The analogous concern between increased prices and the effects on taxpayers arises because, as well as affecting the decisions of those with bad market luck, the policies may also alter the decisions of those who are *not* unfortunate. Policies may induce other workers to reduce their work hours or effort, reducing tax revenues. Of particular importance are the Marginal Effective Tax-Rates (METR) and the Participation Tax-Rates (PTR) that the policies have.⁶⁰⁷ High marginal rates on working more will discourage productive work by those with low earnings, which will increase the tax-revenue cost of the programmes and also have unwelcome economic effects. These

⁶⁰⁷ I explained these in the previous chapter, in section 5.7. In some cases, people may feel they are better off *not participating* in the workforce at all and maximising their leisure. While this has similar consequences to high METR's—it increases costs—it should be distinguished as a separate type of response.

broader economic effects are a fourth consequence. It is therefore preferable to avoid high marginal and participation tax-rates if possible.

The second and third indirect costs described above—increasing prices and increasing taxation—have a distributional element. Insurers will generally prefer policies which have costs that fall primarily upon their economically fortunate potential selves rather than on the less fortunate. This is because policies whose costs—in unemployment, increased prices, or tax—fall on the less fortunate will be somewhat self-defeating, since some (or all) of the benefits of the policy will be lost to its intended beneficiaries. Such losses make policy options with such effects less attractive.

6.2 Hourly-averaging through hour-credits

The policy that I propose would be most attractive to hypothetical insurers is an hourly-averaging scheme to benefit those with bad market luck. I will not discuss whether it should be used for the calculation of tax on the more fortunate until the following chapter.⁶⁰⁸ Before explaining the preferred policies for the less fortunate in full, it is necessary in this section to explain this new form of hourly-averaging tax calculation. I will begin by explaining the long-standing idea of time-based tax averaging, before explaining the hourly variant of this idea. I will briefly explain hour-credits and what they do for their recipients. Unfortunately, there is no room to discuss the practicalities of the proposal,⁶⁰⁹ and I will assume that the administrative costs of the system would be comparable to its rivals.

Tax is usually calculated on an annual basis,⁶¹⁰ or on each individual transaction of a particular type.⁶¹¹ However, a third option is to calculate taxation on a period longer than a year by utilising an average from a longer calculation period. The idea of

⁶⁰⁸ I will show its superiority in this regard in sections 7.7 and 7.8.

⁶⁰⁹ These will be discussed in more detail in Bamford, *Rethinking Tax*.

⁶¹⁰ Such as income or corporation tax, or—less commonly—a wealth or endowment tax.

⁶¹¹ Such as stamp duty, import and export excise, estate taxes, sales taxes and VAT.

averaging income for tax purposes has a long heritage.⁶¹² Multiple-year averaging has been introduced on several occasions around the world,⁶¹³ but a more principled lifetime averaging approach has been discussed since its advocacy in the 1930s and 40s by U.S. economist William Vickrey.⁶¹⁴ Vickrey's calculation involves *cumulative averaging*. This means that someone who had been taxed for five years would have her total income over that period applied to a five-year tax-rate table, and there would be similar cumulative tables for people who had been taxed for four years, six years, and so on. Our taxpayer would apply her cumulative taxable income to the relevant (five year) tax-rate table to determine how much tax she should have paid up until this point in her life. In order to calculate her current tax liability she would deduct her past payments from this new total and pay the tax authority the difference.

It is straightforward enough to replace this cumulative approach with a *true averaging* proposal which would divide total lifetime income (with past income adjusted for inflation) by the time period in order to calculate an average annual income. A single average tax-rate schedule could then be applied to all. In order to calculate her tax liability, our five-year taxpayer would split this gross annual average into an annual tax average. She would then multiply this tax average by the number of years—five—to

⁶¹² There is no reason why averaging could not be applied to other types of tax calculation, such as a consumption tax. I will discuss the tax-base in the following chapter.

⁶¹³ For example in Wisconsin and Australia in the 1920s and 30s, and as part of US federal income tax from the 1960s to 80s. See William Vickrey, *Agenda for Progressive Taxation (with a New Introduction)* (Clifton N.J.: Augustus M. Kelley, 1972) at 105-6, William Vickrey, *Public Economics: Selected Papers by William Vickrey* (Cambridge: Cambridge University Press, 1994) at 169-72. The US federal system changes were introduced in the Internal Revenue Code §§ 1301-1305 (1964), and discussed in Richard Schmalbeck, 'Income Averaging after Twenty Years: A Failed Experiment in Horizontal Equity', *Duke Law Journal*, 3 (1984), 509-80. Moving averages are problematic because the averaging period contains different income each time yet income from a particular period appears in several separate averaging calculations. The moving average calculation, however, does not account for all of these past tax payments based partially on the same income, with arbitrary and unfair results. Moving averages can result in high taxes when people have a lower income and are less able to pay. Furthermore, it can reduce taxes for some people with high overall income. In addition to moving averages like this one, averaging has been allowed for particular professions, including authors and inventors in the UK (thanks to Andy Reeve for pointing this out to me).

⁶¹⁴ Vickrey's initial article is reprinted in Vickrey, *Public Economics: Selected Papers by William Vickrey* at ch 5. In 1947 he published a book length exposition of the proposal for cumulative averaging, later reissued as Vickrey, *Agenda for Progressive Taxation*.

see the amount of tax she should now have paid in total. She would then deduct her past tax payments from this new total in order to calculate her current liability. All past payments would need to be adjusted for inflation, which would be done automatically by the tax authority.

That explains *time-based averaging* proposals, but I propose a variation that does not utilise time passed, but rather *hours credited*. The idea here is that people would be credited with an hour-credit for each hour of work they perform for a registered employer,⁶¹⁵ and that these hour-credits would form the basis of the averaging calculation. Employers would inform the tax authority of the number of hours that each worker has been paid for working in the specified period.⁶¹⁶ These hour-credits would take the place of years or months in time-based averaging calculations, with each person's total lifetime income divisible instead by his total number of hour-credits to determine an *average hourly gross value*. The government would set an hourly-average tax schedule, which would determine the amount of tax that each person should pay on this gross average. The gross average is then split into a net and tax portion in accordance with the relevant tax-rate. This average hourly tax amount is then re-multiplied by the number of hour-credits. This total then indicates the amount of tax that the individual should have paid to the government and the net amount that she should have received up until that point. This calculation can be done as often as desired—for example once a week or month—each time as if it were to be the last payment on the person's account. Some may find it easier to understand the system if it is expressed in equations, and so I have included these as an appendix.

⁶¹⁵ Employers would need to be registered for anti-fraud compliance reasons. Conferring hour-credits will reduce tax revenues, as well as effecting greater transfers to the recipients through lower tax-rates. Therefore fraud of this kind would be doubly expensive to the government and the rest of society.

⁶¹⁶ Clearly there would need to be strong anti-fraud measures in order to ensure that employers and employees do not collude to overstate the amount of hours worked. These would include cross-referencing employment advertisements, job offers and contracts and the enforcement of serious penalties for firms and managers who are found guilty of hour-credit fraud.

I will now return to the example individuals from Chapter Three, and use these to illustrate the calculation.⁶¹⁷ Bertrand and Angela could earn more than others—let us say up to £25 an hour. Derrick and Cassandra had fewer options, and can only earn £6. Bertrand and Derrick are leisure-lovers, and desire only the income necessary to survive while pursuing their other interests, which we will assume to be £6,000 a year. Cassandra and Angela will desire to work full-time and earn whatever they can from that. Let us assume that these numbers have held constant for their entire working lives, and that they have received no outside income. The tax on a £6 gross average is zero, while the tax on £25 is sixty percent. This allows us to create the following table for each month.

	Gross Income	Hour Credits	Hourly Average	Tax Rate	Net hourly	Net Income
Angela	4000	160	25	60%	10	1600
Bertrand	1250	50	25	60%	10	500
Cassandra	960	160	6	0%	6	960
Derrick	504	84	6	0%	6	504

Table 6.1: Monthly figures

The system works by treating each point in time as if it will be the last payment by (and to) the taxpayer.⁶¹⁸ It is possible to calculate the amount of tax that the individual should have paid and net income received up to the present. These totals are then used to calculate current liabilities. To illustrate this, imagine the individuals above have reached their 100th month of work, represented in table 6-2. The net income due to the individual at the latest point is easily calculated by subtracting past total net receipts from 99 months (*) from the current amounts due after 100 (**).⁶¹⁹ Since in

⁶¹⁷ Page 120-2.

⁶¹⁸ Though there may be scope to allow deferred tax payments for those who have a sudden decrease in net income.

⁶¹⁹ The calculation could just as well be undertaken on the basis of *tax paid* in the past in order to calculate *tax due* in the latest period. This is because gross income equals net income plus tax.

the simplified example the individuals have had a consistent average hourly income level their net income does not change, and it is the same in the 100th month as it was in their first.

	Previous Gross total	Prev. H/C total	Prev. Net total *	New Gross total	New H/C total	New Net total **	New Net Income
Angela	396,000	15840	158,400	400,000	16000	160,000	1600
Bertrand	123,750	4950	49,500	125,000	5000	50,000	500
Cassandra	95,040	15840	95,040	96,000	16000	96,000	960
Derrick	49,896	8316	49,896	50,400	8400	50,400	504

Table 6.2: One hundredth month calculation

In the artificial examples above, the tax rate does not change. Imagine now two further individuals, Humphrey and Irene. Both of these individuals lack earning talents but they inherit large amounts of money.⁶²⁰ Humphrey inherits at 18 years old, while Irene inherits at sixty. Irene’s situation is the same as that of Cassandra until she inherits. At this point, she has 80,000 hour credits, and has earned £480,000 in total gross.⁶²¹ Upon inheriting a million pounds, her hourly average rises from £6 to £18.50, which we will say corresponds to a tax-rate of thirty-five percent. Irene will have to pay £350,000 in tax on her windfall. Humphrey, however, receives his windfall when he has no hour-credits. He therefore receives none of it up-front,⁶²² though the gross income will increase his net income throughout his life with each additional hour-credit he obtains. After his first month at work, he earns 160 hour-credits, an hourly average of £6256. We will say that this has a 99% tax-rate, meaning that he receives £62.56 an hour net, £1009.60 for the month of work. Each additional month will bring him more hour-

⁶²⁰ I here assume that all kinds of income should be included in the one comprehensive calculation, anticipating the discussion of the tax-base in the following chapter.

⁶²¹ And the same amount of net income, given her zero per-cent tax-rate at this point.

⁶²² This is because, when re-multiplying whatever the net-hourly-income is by *zero hour-credits* the result will always be zero.

credits, which will drop his gross hourly average. This drop will in turn reduce his tax-rate, which will mean that he will receive a greater proportion of his inheritance as time goes on. When Humphrey and Irene reach sixty, their tax situation will be the same.⁶²³

In order to drive home the crucial role of hour-credits in this system consider how they affect their recipients. There are two ways of looking at the effect an additional hour-credit will have on its recipient. The first is that the hour-credit will have a value of x pounds to them, corresponding to their net hourly income. Angela would receive roughly £10 if she were given an additional credit. The other way to look at hour-credits is that they will reduce the tax-rate that the individual faces—compared to a situation where they did not obtain that credit. So, when someone receives an hour-credit without their usual level of income her tax rate will reduce as a result. This occurs because the total is now divided by more hour-credits, meaning a reduced gross average, which will correspond to a lower tax-rate. This is what happens in the case of Humphrey.

6.3 The preferred policy for low-pay

Having explained hourly averaging I can now explicate what I argue would be the most attractive policy against bad market luck for hypothetical insurers. The first part of the policy to discuss is the element intended to improve the position of those who work but have low pay. This relates to the hourly averaging proposal, and is—put simply—that *those with a low hourly average income should have a negative tax-rate*. This negative rate would top up the income of the low-paid from state funds for each hour credit that they receive. So if we assume the desirable minimum net income is £5 an hour, those with an average of £0.01 would have a negative fifty-thousand percent tax

⁶²³ Of course, Humphrey may have spent some or all of his inheritance before Irene received hers. However their lifetime net receipts and tax payments would be the same at this point.

rate in order to obtain £5 for each hour.⁶²⁴ Someone with an average gross income of £3 an hour might have a negative 83.333% tax rate. This would increase their net lifetime average to £5.50, meaning that the state will have paid them £2.50 extra for every hour they work. The tax rate would reach zero, let us say, for those with a £6 average. This proposal is, therefore, a new form of *earnings subsidy*. I will discuss alternative earnings and wage subsidy policies in sections 6.9-6.10.

The hourly-averaging subsidy is attractive to insurers because it would improve the position of those who work in low-paid employment, as an hour of work for them will be worth more than it would otherwise. This is shown by the negative tax rates in Figure 6-1. The subsidy provides the low-paid with more resources or leisure to carry out their plans. The graphs below indicate how the tax-rate would apply to those with low lifetime hourly income. As figure 6-2 indicates, net income should always rise with gross income in order to maintain the incentive for people to perform more economically productive labour, while ensuring that those with a very low average would be elevated to a higher hourly income.

⁶²⁴ Hourly-averaging would therefore remove the need for a minimum wage, an alternative policy I will consider in section 6.8. However, I would propose that with hourly-averaging there should be a selective minimum wage in place which would vary according to *employer or job-type*. For some jobs the minimum gross wage could be £0.01 an hour, but for others it would need to be set at the zero-tax-rate level. The idea is that hour-credits should only be available to those who have sufficient economic demand for their activity.

Two categories of job are immediate candidates for higher minimum-gross-wage levels. The first category is jobs which are also leisure activities, such as professional footballer, artist, and political philosophy academic—based on the testimony of a professor who admitted that he would do his job for free. Put technically in terms of equalizing differences—see page 115—the *attributes* of these leisure-activity jobs are positive in themselves, and so it is necessary to ensure that those undertaking these jobs are doing so as a result of a demand for their activities rather than a desire on their part to practice them. A second relevant category arises since people will be keen to support their preferred political ideology or religion in whatever way they can; if they could work full-time to support their cause with taxpayer subsidy many would be inclined to do so. As a result, religious and political organizations would be required to pay their workers more than profit-seeking firms in order to stop people taking advantage of the subsidies to do work that they would do for free. This selective minimum wage serves to ensure economic efficiency and to reduce the scope for fraud and misuse of hourly subsidies.

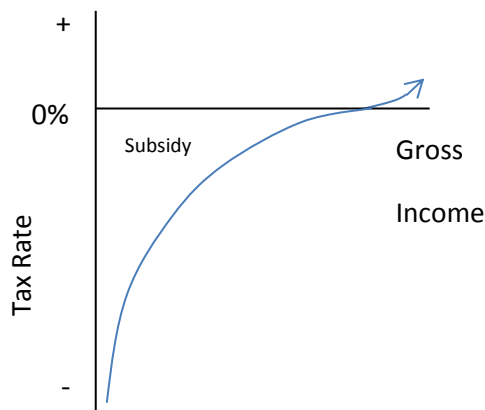


Figure 6-1: Hourly Average Tax-rates¹

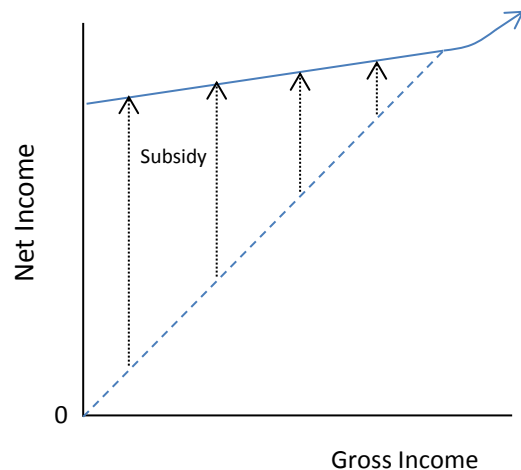


Figure 6-2: Hourly Net Income

Lifetime hourly averaging would also improve the income of those who have a high lifetime income, but who experience a significant drop in income. Imagine, for example, that Fred’s income dropped from £6-an-hour to £2-an-hour. While his gross average would not immediately drop into the subsidy region, his lifetime tax-rate would drop with each hour worked. This drop would release even more of his past gross earnings, since this reduced average will correspond to a reduced tax-rate, and this new tax-rate will be applied to his historical income as well. Effectively, those who suffer a large drop in their average gross income will receive some of their past higher-tax-rate payments back. As a result, those with a low present income who are not receiving overall negative tax-rates could still receive tax rebates as a result of their now reduced income.⁶²⁵ This is attractive to insurers as it will *smooth-out* their income, meaning that they will not face any extreme changes in circumstances.

The main advantage of hourly averaging, however, is that it will take account of good fortune in a manner that insurers will find more attractive than the rival policies. As I emphasised in section 3.1, the more fortunate can utilise their fortune to increase their leisure-income-job-satisfaction composite. Hourly-averaging is far better at

⁶²⁵ This case emphasises that although lifetime totals are used in the calculation, it is the *lifetime average* that does the work. The lifetime net income and tax totals are therefore dynamic. It therefore avoids the lifetime inequality versus present inequality worries highlighted in Dennis McKerlie, 'Equality and Time', *Ethics*, 99/3 (1989), 475-91. I discuss this issue further in section 7.7.

determining those who are less fortunate than the rival policies. It taxes part-timers with a high hourly income but not those who work long hours at a lower income, thus focusing much more help on the less fortunate. As well as improving the financial situation of low-earners, hourly averaging should also give them better scope to find work that is more attractive, or to negotiate higher pay for unappealing work. Furthermore, the less fortunate can choose to work less as a result of their hourly subsidy.⁶²⁶

The hourly-averaging approach also combines two features that are attractive to insurers; it has limited moral hazard and causes less economic damage than its rivals. The approach creates less of a moral hazard when compared to subsidies provided on a non-hourly basis. This is because leisure-lovers—whether economically fortunate or not—will withdraw their labour by reducing their hours and making use of the subsidy. This is a hazard for the insurers as it would increase the costs of the policy, as well as increasing costs to consumers by reducing the amount of labour undertaken in the economy. Some of the alternative policies can avoid the moral hazard problem, though they then face the second problem of damaging the economy. Hourly-averaging should not cause any additional unemployment and indeed should help to reduce unemployment.⁶²⁷ It would not cause price rises when subsidising low-earners. Indeed, the policy should even *reduce* prices by encouraging more workers into employment and thus lowering wages. This benefit should then be passed on to consumers in lower prices.⁶²⁸ However, lowered wages would raise the cost of the policy, requiring more taxes to pay for the scheme. Furthermore, the subsidy will be focused on those with consistently low hourly earnings. I will discuss alternative policies to increase the

⁶²⁶ The policy has many of the advantages of the ESS policy described in section 3.10, but without endowment-focus which insurers would find unattractive for reasons I will outline in section 7.1.

⁶²⁷ The feature of earning subsidies has long been touted.

⁶²⁸ This effect would not be universal, since even low-talent workers would have a better bargaining position. Low-paid jobs that are undesirable would therefore require higher pay, with these costs passed on to consumers. The costs of this advantage to the less talented workers would therefore be shared rather indiscriminately among consumers.

earnings of low-earners in sections 6.8-6.10, which will further show the superiority of hourly-averaging.

I emphasise that the subsidy is applied on a lifetime-average basis, and not on the basis of *each* hour worked with a low hourly-gross-income. Some of the proposals considered below, such as the minimum wage and wage subsidy, work in the latter way. Again, the advantage of lifetime-averaging over those proposals is generally that it is more sensitive to the overall fortune of the worker in question, enabling more focused subsidies and keeping costs down.⁶²⁹ There are also administrative reasons and incentive reasons for lifetime hourly-averaging, and—in addition—I will show attractiveness of the approach taxing the more fortunate in the following chapter.⁶³⁰ It will make sense to have the same system in place for subsidising low earners and taxing high earners if it is attractive in both areas.⁶³¹

6.4 The preferred policy for unemployment

The other problem which will concern hypothetical insurers is that of *involuntary unemployment*. The traditional question is the extent to which *conditions* should be placed on those who receive unemployment assistance, and I will discuss rival views in sections 6.5 to 6.7. Dworkin argues that hypothetical insurers would choose what he calls a *mandatory-interventionist* policy.⁶³² This would require the scheme organisers to provide training for new skills where it will benefit the claimant and/or the community, and also provide jobs where no work is available. I broadly agree with Dworkin on this point, though I will add more detail to his conclusions. I will also show how the

⁶²⁹ These advantages of averaging for the worst-off are considered in Lilly Batchelder, 'Taxing the Poor: Income Averaging Reconsidered', *Harvard Journal on Legislation*, 40/2 (2003), 395-439. Batchelder argues that the US averaging should have been applied to calculations of benefits for the worst-off rather than focused on providing tax-breaks for the best-off.

⁶³⁰ Sections 7.7-7.8. I also emphasise in sections 7.3-7.6 that it is attractive to combine all forms of fortune into the same lifetime tax calculation by adopting a comprehensive tax-base which would include gifts and therefore account for both social and market good fortune.

⁶³¹ That is to say that if the approach were as attractive as its rivals at income subsidy, but more attractive than its rivals with regard to taxation, then the administrative advantage of having a single system for both ends would tip the balance towards the proposal.

⁶³² Dworkin, *Sovereign Virtue* at 336-8.

response to unemployment can be interwoven with the hour-credit approach to low wages.

Given that I have suggested a negative hourly-average tax proposal would be the most attractive response to low-pay, it is sensible for the unemployment policy to be compatible with that. I therefore propose that the involuntarily unemployed should have access to hour-credits, but *only* if they meet the requirements of a *guaranteed work programme*. This policy would involve a jobcentre⁶³³ in each locality which would provide job search assistance, training, and also local community work.⁶³⁴ The advantage of this policy is again that it would reduce the moral hazard to the scheme from leisure-lovers. This is because leisure-lovers would not have the option of utilising this scheme to gain leisure instead of performing work on the market.⁶³⁵

As well as reducing moral hazard, the provision of guaranteed jobs in the community would provide some useful employment to those who would otherwise find themselves unoccupied. The existence of this backup work would be a boon to workers who can only find insecure jobs.⁶³⁶ In addition, with less conditional schemes, those with bad employment luck may find it difficult to distinguish themselves from leisure-lovers who are happy to take advantage of unemployment benefits. Insurers would fear that this misapprehension on the part of employers may hurt their prospects of

⁶³³ To borrow the term currently used in the UK.

⁶³⁴ This would then include work in the community, either manual work improving the local environment, or service work at local schools, hospitals, care-centres and so on. The job providers would have to work with the local community, local government and NGO's to obtain proposals for schemes, and to ensure that these schemes were functioning appropriately.

⁶³⁵ Unless perhaps they can find work that is more leisurely on the scheme than they can on the market. In this case, the difference should not be sufficient to encourage a large number of leisure-lovers to join the scheme. Furthermore, to the extent that leisure-lovers might join the scheme for this reason, at least those paying for the scheme would benefit more from the community-minded work performed by the leisure-lovers than if the alternative whereby leisure-lovers receive an income without performing any work.

⁶³⁶ There appears to be a trend towards more short term and temporary work, very likely driven by globalisation. The neologism 'precariat' (from precarious proletariat) was coined by Guy Standing to describe workers in the 21st century, who are much less likely to have the prospect of a job-for-life that characterised employment in the mid-20th century.

finding further work. Finally, and relatedly, a guaranteed job programme should reduce the stigma of unemployment claims by providing socially useful work.⁶³⁷

I have said so far that insurers would choose to have access to hour-credits for work or workfare-type activity. In addition, it is worth noting that insurers would also consider the advantages of combining the hour-credit system with other benefits. For example, it would be advisable to provide those with disabilities that render them less able to take part in the economy with compensatory hour-credits along with any aids and care assistance that their particular disability requires. I also suggest that low earners with children or who care for disabled adults should receive hour-credits for performing this task.⁶³⁸

Furthermore, I suggest the provision of hour-credits to those who undertake training or learning that will improve their employment prospects.⁶³⁹ This is because a more educated society is a public good,⁶⁴⁰ but also because otherwise the hour-credit system

⁶³⁷ It is necessary to fight any such stigma because of one downside of the interventionist policies, namely that they add additional barriers to claimants. The fear for conditional benefits is that some worthy individuals might fail to receive them, whether due to bureaucratic complexity or due to the associated stigma.

⁶³⁸ This should perhaps be extended to all carers, irrespective of wealth or income. Alternatively, there could be different quantities of additional hour-credits provided depending on the average gross hourly income of the carer. Child benefit in the UK has traditionally been a universal benefit for all parents and it may make sense to continue this tradition for reasons of administrative simplicity, and to avoid creating additional incentives for parents to earn less. Subsidising carers is attractive both because hypothetical insurers would wish to insure themselves against having to provide care for needy relatives, and because the responsibility for doing so would otherwise fall on the rest of society. For a discussion of the problems inherent in defining work for the purposes of workfare, see Noah Zatz, 'What Welfare Requires from Work', *UCLA Law Review*, 54 (2006), 373-464. For arguments for the inclusion of caring in the definition of work see Zatz, 'What Welfare Requires from Work', at 456-62, Noah Zatz, 'Supporting Workers by Accounting for Care', *Harvard Law & Policy Review*, 5/1 (2011), 45-68.

⁶³⁹ I would propose a maximum amount of hour-credits that people could get from these additional hour-credit schemes should be less than the maximum for those in paid employment, for example 32 hours a week instead of 42. This would limit the overall expenditure on these schemes to the tax system, and would provide an additional incentive for workers to find more economically productive work. I mean productive here in the sense that consumers or taxpayers are willing to pay for the goods or services produced.

⁶⁴⁰ Subsidising education by sharing the costs with the educated would provide the public goods of a more deliberative and productive society. However, the provision of subsidy is only justified on the basis that the chosen benefit system (hourly-subsidy) would make education much less attractive when compared to work, rather than on the basis of resource envy. For more on this see footnote

would produce a strong incentive not to undertake adult education and retraining at great potential cost to economic productivity. Insurers would agree to this policy as a form of education subsidy that will be compatible with the hour-credit scheme, since without this policy people would have a strong disincentive to spend time in education rather than work. Insurers would fear that such a disincentive would, in the long-run, lead to a less educated and less productive economy. The presence of fees for education and the requirement that students meet course requirements should provide adequate disincentives to leisure-lovers from using education as a means to paid leisure.⁶⁴¹

When combined with the guaranteed work programme, the negative hourly-averaging tax is good for less-talented workers.⁶⁴² It provides security from unemployment and improves take-home hourly pay,⁶⁴³ while maintaining the economic incentive to work. For this reason, amongst others, the policy just described would be the most attractive for hypothetical insurers. In order to bolster this claim, I will present rival policies in the remainder of this chapter. The advantages of the preferred policies will therefore

648. The inclusion of education, training and care work is also supported in Elizabeth Anderson, 'Welfare, Work Requirements, and Dependant-Care', *Journal of Applied Philosophy*, 21/3 (2004), 243-56 at 255.

⁶⁴¹ Insurers may also be tempted to allow hour-credit fines for those who do not use their education or training within a given period—say ten years from the end of their education. This would discourage leisure-lovers, but would also make education and training much more of a risk and hence less attractive.

⁶⁴² It would need to be combined with a guaranteed work programme or conditional unemployment scheme, since earnings subsidies alone would not provide enough incentive to ensure that all workers would be able to find work at any given point in time. This ability to combine the two policies negates the argument of Alstott that basic income is superior to earnings subsidies on the basis that they do more for the involuntarily unemployed; Anne L. Alstott, 'Work Vs. Freedom: A Liberal Challenge to Employment Subsidies', *The Yale Law Journal*, 108/5 (1999), 967-1058 at 1022-3, Anne L. Alstott, 'Why the Eitc Doesn't Make Work Pay', *Law & Contemporary Problems*, 73 (2010), 285-314 at 308 Alstott's broad argument is that minimum wage or earnings subsidies can *either* help improve employment prospects *or* the economic position of low-earners but not both, Alstott, 'Work Vs. Freedom', at 1041. My response is that *combining* these policies with unemployment benefits or guaranteed work programmes would largely resolve both problems.

⁶⁴³ The hour-credit scheme would be more generous than the other proposed schemes for the involuntarily unemployed. This is because past earnings will still count in the average, and hour-credits are more valuable for those who have a higher average. Those whose average is dropping through the receipt of additional hour-credits therefore effectively receive some of their previous tax payments back again.

become clearer through comparison with inferior alternatives. I will begin with alternative approaches to unemployment insurance, which involves considering the imposition of more conditions (section 6.5) or fewer conditions (6.6 and 6.7) on unemployment assistance. In sections 6.8-6.10 I will consider alternative proposals to improve the position of low earners; the imposition of a minimum wage and alternative forms of earnings subsidies.

6.5 More conditions on unemployment benefits

The first alternative I will present is the idea that there should be *more* conditions on unemployment payments. This can be dealt with very briefly as my proposal is among those with the most stringent conditions. The system could be made more stringent by introducing a cumulative time-limit on claimants, or by disallowing the provision of additional hour-credits that I proposed in the previous section.

The proposal to place a cumulative time-limit on unemployment claims is described by Dworkin as a *severe* policy.⁶⁴⁴ Dworkin suggests could this limit could be set to two years, after which the individual would never again be eligible for unemployment assistance. This proposal would be the least onerous on the fortunate, since the scheme would be much cheaper due to the limit on expenditure per claimant. In addition, the less fortunate would have a strong incentive to find work quickly and to hold on to it once obtained. This should reduce gross wages and therefore prices. However, as a result of this, it would leave less-skilled workers in a more precarious position; they would have a considerably weakened bargaining position with regard to their employers, and much less security to stand up against workplace bullying and abuse. Furthermore, some of the most disadvantaged workers will find it very difficult to find work—they will always be last to be picked due to their relative lack of ability. The chances of exceeding the time-limit would be much greater for such disadvantaged workers.

⁶⁴⁴ Dworkin, *Sovereign Virtue* at 336.

Dworkin argues that the severe policy would not provide enough security for insurers, and I agree with him. Indeed, while there are some benefits for those who find themselves economically fortunate, these benefits are limited. For example, the guaranteed work policy should reduce the moral hazard issues caused by leisure-lovers, and so the main advantage is in the cost savings in pay-outs to genuine claimants. As a result, the policy is a bad insurance bet—a very slight gain for the fortunate is weighed against a severely worsened position for the unfortunate.

The other way to apply more conditions on unemployment benefit would be to restrict the activities for which people could receive additional hour-credits.⁶⁴⁵ Some of these additional hour-credits are justified by other types of reasons, not necessarily related to bad market luck—such as those designed to mimic hypothetical insurance decisions regarding disability and medical needs. The additional hour-credits in question, therefore, are those for carers and students. Not providing extra hour-credits to carers and students would greatly reduce the expense of the system on the premiums for the more fortunate. I am therefore less sure of this point than some of the others. However, if I am right that insurers would consider hourly-averaging to be the most attractive policy, then they will wish to include the additional credits.

One reason is that those with disabled loved ones will often lose out in the job market as a result of their caring responsibilities, and the provision of hour-credits for caring would compensate them for their reduced career and work opportunities. Furthermore, insurers would fear being in need of care, and would therefore support credits for caring as they would wish to have the support of their family members without facing additional financial hardship as a result. This applies to children as well, since insurers would be concerned to avoid growing up in an impoverished

⁶⁴⁵ Discussed above, page 235-7.

environment, and would wish to have a policy in place to ensure that low-earning parents can provide well for their children.⁶⁴⁶

As I have indicated, there are also public good arguments for providing additional credits. In the case of education, the public good is a more educated public society and workforce. Insurers would want to ensure that the incentive for people to undertake education is retained, since the taxation required for the hourly-subsidy scheme would reduce the returns that people could expect to obtain from educational investments.⁶⁴⁷ Regarding caring, where the government would have to provide care for the needy—as a result of hypothetical insurance choices regarding care—in the absence of family assistance the provision of hour-credits would be a ready substitute for this alternative cost. Of course, the hour-credit policy would no doubt be much more expensive as many families otherwise would simply bear the cost themselves rather than leave their loved ones to the care of an institution. However, to the extent that this is the case, it is also an argument for the hour-credit approach, since it is clear that many carers are keen to look after their loved ones even where they are disadvantaged by the cost of the caring responsibilities they accept. This is presumably because all parties in these cases think it is preferable where possible to care within the family. Given this fact, insurers would plausibly wish to purchase carer-cover to avoid burdening the lives of their loved ones.⁶⁴⁸

⁶⁴⁶ Dworkin, *Sovereign Virtue* at 338-9. The argument for extending additional hour-credits to those higher up the tax scale would be that otherwise people with children will have an incentive to lower their income in order to qualify for the benefit, see footnote 640. It is harder to tell at this abstract level what the best policy would be in this case, as it would depend on many empirical factors.

⁶⁴⁷ I emphasise here that the argument is based on returning to roughly the baseline levels of education that would occur in an economy without hour-credits, though it might not be that the people and form of education would be the same. This argument is therefore that there is a case to ensure that the public good of tertiary education is not overly damaged by the introduction of hour-credits. I am not arguing that there should be additional expenditure on education as it is a public good, for reasons explained in the following footnote.

⁶⁴⁸ It is important to note that the argument here proceeds on the basis of the hypothetical insurance decisions of the less fortunate, rather than on the basis that all public goods should receive subsidy. The latter argument is problematic from a resource egalitarian perspective, as it is not always acceptable for to charge individuals for public goods even if they benefit from them on

6.6 Unconditional Income

I will now consider whether my proposal has *too many conditions* on unemployment benefits, and will begin—in this section—by contrasting it to the strongest alternative policy; unconditional income.⁶⁴⁹ Unconditional income⁶⁵⁰ has a long—though discontinuous—heritage and a wide variety of supporters.⁶⁵¹ It has been supported under many names, such as basic capital,⁶⁵² demogrant,⁶⁵³ stakeholder grant,⁶⁵⁴ and a negative income tax.⁶⁵⁵ These proposals are all effectively the same mathematically,⁶⁵⁶

resource egalitarian grounds, see Casal and Williams, 'Equality of Resources and Procreative Justice', at 156-9. However, as Casal and Williams point out, where it is not possible to hold people accountable for the costs of their choices—specifically those of procreation—and yet innocent others would be harmed by the imposition of such costs, it may be necessary to acquiesce in one form of injustice in order to prevent a larger one. One policy that may be helpful in this regard would be to provide parents with soft low-interest loans rather than payments to ensure that their children do not suffer poverty, thus making it clear that they should have borne the cost themselves—even if they never actually pay back the loan.

⁶⁴⁹ For a selection of writings in support of basic income from Thomas Spence in 1797 to Juliet Rhys-Williams in 1943 see John Cunliffe and Guido Erreygers, *The Origins of Universal Grants: An Anthology of Historical Writings on Basic Capital and Basic Income* (Basingstoke, Hampshire: Palgrave Macmillan, 2004) at Part 2.

⁶⁵⁰ Since I am assuming a single-state world in this work, the idea that the income should be universal to all the human race or just citizens of the country in question does not arise. However, in a multi-state world, citizenship or some form of official status would presumably be a condition on the otherwise unconditional income.

⁶⁵¹ Cunliffe and Erreygers, *The Origins of Universal Grants: An Anthology of Historical Writings on Basic Capital and Basic Income* at xiii.

⁶⁵² See the chapters reprinted in *Ibid.* at Part 1.

⁶⁵³ I.e. a grant to all members of the *demos* (Greek word for 'population').

⁶⁵⁴ Bruce A. Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven, Conn.: Yale University Press, 1999) at Ch 1. Alstott claims a Dworkinian heritage for her position, Alstott, 'Work Vs. Freedom', at 982-3. However, she takes the position that Dworkin describes as a starting-gate theory, and dismisses Dworkin, *Sovereign Virtue* at 87-8. I discussed this in chapter 1, page 30-1.

⁶⁵⁵ Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962) at 191-2.

⁶⁵⁶ The mathematical equivalence of the schemes is shown in John Creedy and Richard Disney, *Social Insurance in Transition: An Economic Analysis* (Oxford: Clarendon Press, 1985) at 147-8. However, it should be noted that the decision to include basic income as taxable or not would make a difference on this point.

An attempt to highlight the differences between the two approaches is made in Davide Tondani, 'Universal Basic Income and Negative Income Tax: Two Different Ways of Thinking Redistribution', *Journal of Socio-Economics*, 38/2 (2009), 246-55. However, the differences highlighted—that the two schemes would appear differently on the government budget (p248) and that the negative income is more focused on benefitting the lowest earners (p248-9)—are derived using overly strict assumptions. Tondani goes on to discuss the different motivations of supporters of the two schemes (p250-4), which is irrelevant here. Of course, the different motivation for supporters of the scheme may lead them to prefer different rates and levels within the approach—for example to have a maximally high sustainable basic income or a sufficient minimum guaranteed income to avoid extreme poverty through a negative income tax.

since the taxes paid by higher earners would outweigh any grant, making them net contributors to the scheme despite their ‘grant.’ Some have argued that a basic income is a requirement of justice, though I am unconvinced of this and will treat this as an open question in this work.⁶⁵⁷ I do accept the possibility of independent reasons to provide a one-off grant for adults beginning life or as a regular payment, for example to mimic the arrival of a new citizen into society in line with the imaginary island auction situation.⁶⁵⁸ However, I will bracket such reasons for unconditional income here as I am considering responses to bad market luck. I will therefore focus on the more pragmatic claims; those that would be considered by hypothetical insurers as a response to bad luck in employment.

The basic income policy can benefit both the unemployed and those who are employed with low wages. This is because the basic income is paid to anyone who has low earnings in the specified period, either to top it up to a pre-ordained minimum (Figure 6-3), or to a minimum level plus a small tapered amount in order to ensure that there remains an incentive for people to earn more while in the subsidy region (Figure 6-4).⁶⁵⁹ The latter—tapered—approach is generally favourable as it provides incentives to people to earn even small amounts,⁶⁶⁰ although there are still very high effective marginal rates on additional hour of work within the region of the subsidy.

⁶⁵⁷ The most prominent argument for a basic income is presented in Van Parijs, *Real Freedom for All : What (If Anything) Can Justify Capitalism?* For more on Van Parijs’ position see section 5.6.

⁶⁵⁸ See page 28-9, Ackerman and Alstott, *The Stakeholder Society* at Ch 2, Rakowski, *Equal Justice* at 150-5. Further reasons might be to ensure a reasonable opportunity for all or as a means to share out a natural resource dividend.

⁶⁵⁹ For a series of graphs that illustrate different proposals see Philippe Van Parijs, ‘Basic Income: A Simple and Powerful Idea for the Twenty-First Century’, in Bruce A. Ackerman et al. (eds.), *Redesigning Distribution : Basic Income and Stakeholder Grants as Alternative Cornerstones for a More Egalitarian Capitalism* (London: Verso, 2006) at 27-34 (appendix).

⁶⁶⁰ Put another way, without the tapering, the METR is 100% for incomes below the basic income level.

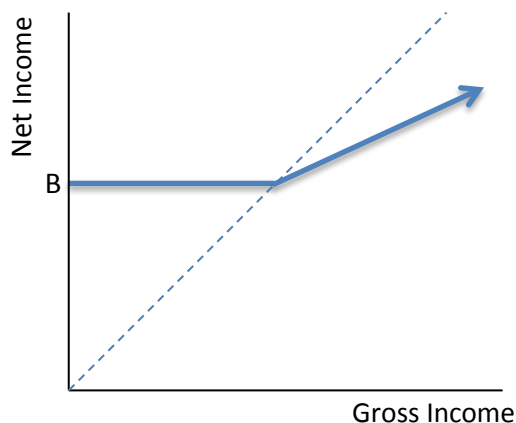


Figure 6-3: Basic Income

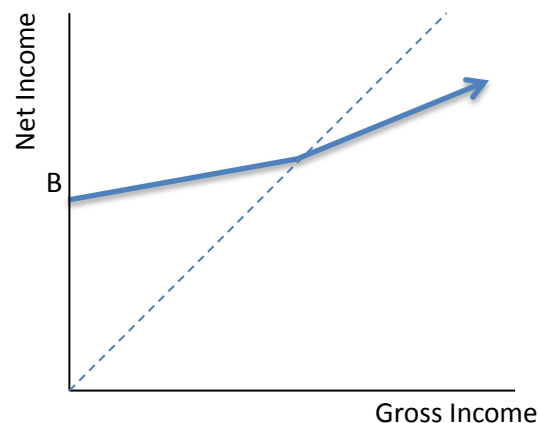


Figure 6-4: Negative Income Tax/Tapered Basic Income

The eternal question for supporters of the basic income is the level at which the basic income—B in the graphs—is set. The higher the basic income, the more it provides for the involuntarily unemployed, and the more it subsidises the income of low-earners. As well as the material benefits to those who find themselves under-employed or involuntarily unemployed, a high basic income would give workers greater security and bargaining power in the employment market. If an employer offers them bad terms they can walk away from the offer safe in the knowledge that they will receive a decent income.

However, the higher the level of basic income is set, the greater the cost to taxpayer funds. Furthermore, the higher the level of basic income is set, the more people will be inclined to stop working.⁶⁶¹ Leisure-lovers will take the opportunity to live a life of leisure, irrespective of their level of talent. Indeed, as the level rises, more and more low-talent workers who are not leisure-lovers but who value leisure will feel that they are better off with the basic income and large amounts of leisure rather than a slightly larger gross income and much less leisure. This drop in workforce participation will vastly increase the cost of the policy. In addition to the greater costs to taxpayers, the lesser amount of work done in the society will be likely to reduce the quantity of goods

⁶⁶¹ This is because any rise in unconditional basic income will raise the PTR on working at all.

and services produced, which will push up prices for all. This in turn will make the basic income less valuable to those with bad luck than it was when initially set.

Armed with an understanding of the basic income proposal, it is now possible to consider whether hypothetical insurers would prefer this scheme.⁶⁶² The basic income could be set at a relatively high or a relatively low level, where either is less attractive to hypothetical insurers than the guaranteed work and negative hourly tax policy I set out above. I will first discuss a low-level basic income, set so as to stave off starvation and death for those who find themselves without any income.

A low-level basic income would be considered preferable to a *laissez-faire* system as it would provide some security and subsidy. However, it would have a very limited effect on the lives of low-earners, who would still live in poverty. It would certainly not provide enough income to ensure that the unemployed would be able to access all or most of the positional goods in the society.⁶⁶³ It therefore offers little security to hypothetical insurers.

Setting a higher basic income that would get low-earners out of poverty, however, creates a dilemma. The higher the level, the greater the assistance it offers to the economically unfortunate, but the greater the number of leisure-lovers that will take advantage of the scheme. Indeed, in terms of feasibility, I doubt it would be possible to provide a sustainable basic income at a level that would provide a subsidy for hard-working low earners.⁶⁶⁴ As such, even the high basic income would not be set particularly high, and would provide no assistance to those who are in work. This

⁶⁶² Dworkin at one point suggested the possibility that a negative income tax scheme could be the most appropriate; Ronald Dworkin, *A Matter of Principle* (Oxford: Clarendon, 1985) at 208.

⁶⁶³ A low level basic income—since it is set at a low level—would not assist to those who work full-time in low-paid jobs. This means that it would not provide any benefit to less talented individuals who have a preference for consumption or saving and can obtain work. As such, it would be only be of use as an alternative to the guaranteed work scheme for the involuntarily unemployed.

⁶⁶⁴ However, if it were possible, this high-level basic income would be *even more* expensive in terms of taxes and prices on the fortunate and those who are not leisure-lovers, compared to a lower-level basic income.

means that the basic income would not be anything like as generous to the involuntarily unemployed as the guaranteed work programme could be.

Van Parijs asserts that the basic income proposal is, in general, the most effective form of redistribution due to its low administrative costs and simplicity.⁶⁶⁵ However, I am sceptical of this claim, and Van Parijs does not offer any figures. While basic income would be inexpensive to administer it is reasonable to assume it would be very expensive in increased pay-outs to leisure-lovers, and in increased prices as a result of the reduced amount of work. Van Parijs would therefore need to provide evidence that these well-founded fears are in fact incorrect.⁶⁶⁶

For insurers with statistically normal and work-loving preferences, an unconditional income policy would be extremely unattractive. Setting the income level low will be of little help to the unfortunate, while setting it high will greatly increase the costs to the more fortunate—and those with average fortune.⁶⁶⁷ Leisure-loving hypothetical insurers, however, would have a very strong preference for a basic income at as high a level as possible.⁶⁶⁸ However, given that the leisure-lovers would be a minority and everyone else would have a very strong preference for placing conditions on unemployment payments, they would not agree to contract with the leisure-lovers on this policy.

⁶⁶⁵ Van Parijs, 'Basic Income: A Simple and Powerful Idea for the Twenty-First Century', at 17-8.

⁶⁶⁶ Van Parijs does not provide any evidence to contradict the common sense conclusions regarding the cost of basic income versus other programmes. The increased costs of administering the alternative programmes would have to amount to more than the lost services, goods and taxes from those who would choose a life of leisure as a result of the policy.

⁶⁶⁷ The dilemma is shown in welfarist terms in Robin Boadway et al., 'Optimal Redistribution with Heterogeneous Preferences for Leisure', *Journal of Public Economic Theory*, 4/4 (2002), 475-98 at 495-6, Philippe Choné and Guy Laroque, 'Optimal Incentives for Labor Force Participation', *Journal of Public Economics*, 89/2-3 (2005), 395-425 at 398.

⁶⁶⁸ If the leisure-lover were highly talented they could work part-time just as they could in a *laissez-faire* environment, but if they were less talented they would have the resources to have maximal leisure. The taxes and increased prices that would result from the policy would fall much more heavily on those with normal or work-loving preferences, and so they would face very little risk when supporting extensive redistribution using a basic income policy.

In conclusion, while the basic income proposal would be very attractive to leisure-lovers, those with normal and work-loving preferences would much prefer the guaranteed work proposal. They will therefore refuse to agree with leisure-lovers on such a policy, and insist instead upon conditions on unemployment assistance. I will next consider whether insurers would be tempted to take an approach with more conditions than an unconditional basic income but less than the guaranteed work programme.

6.7 Less conditional unemployment policies

I will now consider policies that are closer to the one I endorsed in section 6.4, though with fewer conditions. Some authors have suggested that hypothetical insurers would choose to place fewer conditions on the unemployed than Dworkin suggests, and I will consider their arguments. It is not clear whether they would support an unconditional basic income or whether they would allow additional exemptions from workfare activities. However, since I have shown that the basic income approach is unattractive to insurers, I will assume that the option is to reduce the work requirements imposed upon those receiving payments. Of course, I have already proposed to reduce the work requirements for those who enrol on approved education courses and who have caring responsibilities. Nevertheless, some authors appear to think that insurers would go further than this and I will now consider their arguments.

Bou-Habib and Olsaretti argue that conditional programmes would be unattractive to insurers, since it would require them to take whatever job is found, meaning that they would not have freedom of occupational choice.⁶⁶⁹ Their argument is presumably that Dworkin does not give enough weight to the advantages to less talented workers of an unconditional basic income. The advantages are that it enables citizens to refuse offers of work until an attractive job and career becomes available, as well as offering them

⁶⁶⁹ Paul Bou-Habib and Serena Olsaretti, 'Liberal Egalitarianism and Workfare', *Journal of Applied Philosophy*, 21/3 (2004), 257-70 at 263.

the time and resources to develop their skills in their preferred profession. The work requirement implied in the guaranteed work programme would mean that the unemployed would have to take whatever jobs were found for them, which would reduce the time they have available to pursue their preferred career.

I accept that people would be willing to risk a slightly higher premium in order to avoid the possibility of being unable to find their preferred type of employment. Indeed, these considerations were relevant in the inclusion of education and training as activity worthy of hour-credits despite the extra expense. This provision would enable people to retrain with some public subsidy if they desire a new career.⁶⁷⁰ Furthermore, I suggested that those on workfare programmes should have an occasional hour-credit-worthy day at their local jobcentre where they could receive advice, improve their résumé and apply for jobs. In addition, the workfare programme would be very generous for each hour-credit—given that it would be supported by the negative hourly tax—and that workers would face a limit of unpaid hour-credits amounting to less than a usual full-time week.⁶⁷¹ As a result, those on the workfare scheme would have a reasonably large amount of time available to pursue other employment, and indeed would be assumed to be doing so.⁶⁷²

The proposal I support therefore offers something to insurers who would be worried about the work requirements. Perhaps this would answer the concerns set out by Bou-Habib and Olsaretti. However, if they felt insurers would want to go further than this

⁶⁷⁰ I would also propose that people could ask the tax authorities to store ‘potential hour-credits’ where they spend time on a hobby that they hope to turn into a career. If they were to later become successful in this career, they could then call upon these stored credits. Unfortunately there is no space to discuss this possibility further in this work, but this could also provide insurers with some consolation that those who do follow a particular dream and make it come true may receive some compensation later on.

⁶⁷¹ I would suggest a limit of 30 or 32 hour-credits a week for those obtaining them without pay, where those being paid would have a limit of something like 42 to 45.

⁶⁷² Those on the workfare scheme would not have complete control over the hours they can work, of course. They would be offered projects with set hours, and would have to undertake them in order to obtain the credits. Where possible, though, the skills and preferences of the workers would be considered when assigning them to projects.

then I disagree. If those in receipt of the unemployment payment were able to self-certify as holding out for their ideal career then the cost of the scheme—directly and indirectly through lost work—would balloon. Not only would unscrupulous leisure-lovers assert that they were waiting for their ideal job, but many people would simply take advantage of the chance to work for their ideal career no matter how unlikely their chance of success. Offering to subsidise people to pursue their ideal career would be hugely expensive and insurers would balk at the extra expense for a policy that would provide little in the way of benefit. After all, many of the claimants would not manage to obtain their preferred career if everyone had the same increased opportunity to work at it; there would still be only a limited number of economically viable jobs available.⁶⁷³

Bou-Habib and Olsaretti also consider whether there are problems with the use of actual preferences in hypothetical insurance decisions. Their first argument⁶⁷⁴ is that actual insurance preferences might be based on mistaken statistics, though I take it as acceptable to assume that hypothetical insurers are armed with all the relevant statistics. Their second argument⁶⁷⁵ appears to consider people's preferences to be inauthentic due to social attitudes, an issue that is anyway resolved by the application of the principle of authenticity.⁶⁷⁶ The example given is of a society in which there is a strong protestant work ethic, though some people are 'well-adjusted.' The social norms result in the choice of a conditional policy, though the well-adjusted would prefer to be able to reject jobs they find undesirable. However, Bou-Habib and Olsaretti fail to realise that the hypothetical insurance outcome will usually be the *opposite* of the values of the society—for example as they would be chosen democratically. This is

⁶⁷³ Another relevant point is that the negative hourly tax and guaranteed work programme would push the economy as a whole away from less popular jobs and create more of those jobs that people prefer.

⁶⁷⁴ Bou-Habib and Olsaretti, 'Liberal Egalitarianism and Workfare', at 262.

⁶⁷⁵ *Ibid.* at 263.

⁶⁷⁶ Described in footnote 69.

because a society in which there was a majority of leisure-lovers, the policy that favours leisure-lovers would be even more costly, and hence less sustainable.⁶⁷⁷

I have argued that the arguments above for fewer conditions on unemployment insurance would not convince hypothetical insurers. Reducing the conditions in the described way would greatly increase the cost of the scheme without offering much in return. I say this because the preferred policy would allow low-earners greater leisure to pursue a preferred career by subsidising hourly income. Furthermore, allowing hour-credits for tertiary education would enable people to undertake training that would open opportunities for them. The preferred policy therefore provides opportunities while keeping costs at a reasonable level.

6.8 Minimum Wage

I have considered whether alternative responses to unemployment would be more attractive to hypothetical insurers than my proposal. I will now consider policies that have been implemented or proposed as a response to *low-pay*, and whether hypothetical insurers would find them attractive. I will present two broad approaches designed to improve the position of low-earners; a minimum wage and alternative forms of employment subsidy. I will argue in this section that insurers would prefer employment subsidies to the minimum wage. In sections 6.9 and 6.10 I will explain that the negative-hourly-income-tax on low-earnings described above would be more attractive than other subsidy policies.

The minimum wage is the most common policy to improve the position of low-earners. It regulates employment transactions, forbidding any labour contracts that pay less than a set amount per-hour.⁶⁷⁸ It comes in the form of a regulation, but Shaviro points

⁶⁷⁷ The same effect occurs where there is a strong work-ethic, or majority work-lovers, since a basic income would then pay out to few leisure-lovers.

⁶⁷⁸ In the UK it was set at £6.08 for over 21 year olds from the 1st October 2011. The U.S. federal rate was set at \$7.25 on July 24 2009, though several states also enforce higher rates—for example Vermont at \$8.46.

out that it can equally accurately be viewed as a form of tax and subsidy.⁶⁷⁹ That is, a tax on employers who would have paid below the minimum wage, which must be paid directly to their—otherwise below minimum wage—employees. Of course, this policy requires the setting of a single threshold, and the choice of this threshold is very important. The insurers would have to take account of the likely effects of the policy, which I will now discuss.

The effects of the minimum wage are empirically difficult to determine, and there is disagreement on this point. I will generally follow the predictions of mainstream economic theory,⁶⁸⁰ though these have faced strong challenges.⁶⁸¹ Even accepting the mainstream approach, it is very difficult to assess the effects of the policy, since it will depend upon the elasticities of supply and demand for each type of product and labour. To illustrate the possible effects I will describe four *ideal-type* responses to the introduction of a minimum wage on a firm that previously paid below-minimum wages to a large number of its staff.

The first response is that the workers receive an increase in pay at the expense of the profits of the company. This situation would be ideal for the policy, as the benefits would go to the otherwise low-paid workers and consumers would be unaffected. However, this effect will only occur where the company was previously able to set the

⁶⁷⁹ Daniel Shaviro, 'The Minimum Wage, the Earned Income Tax Credit, and Optimal Subsidy Policy', *The University of Chicago Law Review*, 64/2 (1997), 405-81 at 407, 11-9.

⁶⁸⁰ George J. Stigler, 'The Economics of Minimum Wage Legislation', *The American Economic Review*, 36/3 (1946), 358-65.

⁶⁸¹ For some evidence that the mainstream theory is wrong see David E. Card and Alan B. Krueger, *Myth and Measurement: The New Economics of the Minimum Wage* (Princeton, N.J.: Princeton University Press, 1995) at chs 2-4. However, for a good criticism of their empirical research see the comment by Hamermesh in Charles Brown et al., 'Comments by Reviewers', *Industrial and Labor Relations Review*, 48/4 (1995), 828-49 at 835-8. Card and Krueger refer to the existence of monopsony in labour markets to explain the disagreement with textbook economic expectations, Card and Krueger, *Myth and Measurement* at 269-83. In this they follow Richard Allen Lester, *Economics of Labor* (New York: Macmillan, 1964) at 280-1, 510-8. Another explanation is that firms are not usually as productive as they should be, and a minimum wage will shock them into greater productivity. However, this effect is only likely to be short-term, since the effects will be felt upon the introduction of the policy but not later on. I will focus on the expected long-term effects according to economic theory, which I do not think Card et. al. have adequately dismissed.

price of goods at a high level and earn super-profits. This would only be possible where companies have monopoly or cartel power over pricing, or where there are limits on entry to rival firms. Most industries, however, are competitive, and so there will be no windfall to redirect towards employees.⁶⁸² This leads to a second idealised response, one which is also of benefit to workers. Here, the increased labour costs are passed on in the price of the company's products. However, this price increase is likely to make any given member of society worse off, with no regard for the fortune of those who are affected. This means that the worst-off will be affected, meaning that some of the advantage they receive in higher wages will be lost when they pay higher prices.

The third ideal-type response is for the company to use more or better technology in order to improve productivity and reduce its labour force. This will enable producers to provide the same product or service as before for a lower labour cost, though a higher technology cost. Production will be more expensive than the non-minimum-wage regime, and the increased costs will be passed on to consumers. However, the technology will be chosen as it is cheaper than the employees, and so the price rise will be less than in the second response. Companies who are unable to pass on the additional costs to their consumers or improve their productivity will simply go out of business. The fourth possibility is therefore that some products and services will no longer be viable where there is a minimum wage.⁶⁸³ Consumers will have no access to such products, and production and consumption will shift elsewhere. The third and fourth responses will increase unemployment. This is because they will increase the proportion of spending in the economy on industries with greater use of technology

⁶⁸² In those firms that are not subject to competition, or who gain from rent windfalls of this kind, other actors will have had a strong incentive to attempt to get a piece of the pie. This will include the government and workers. Workers will have had a strong incentive to organise into a trade union in order to obtain some of the surplus anyway. Ideally, though, in industries with a tendency towards monopoly—such as large infrastructure—the government should regulate prices or offer franchises to run the infrastructure in order to avoid monopoly pricing.

⁶⁸³ As I have indicated, alternative theoretical ideal-type responses to a minimum wage are considered in Card and Krueger, *Myth and Measurement* at Ch 11. I remain unconvinced that these alternative effects would last into the long term.

rather than labour. They will also make consumers worse off, as they may find their preferred products become more expensive or even unavailable.

The above examples are ideal-types. The first and last responses are unlikely to occur, and it is unlikely that a firm would respond with only one of the second and third responses. The introduction of a minimum wage is therefore most likely to cause a mixture of increased unemployment and increased prices to consumers.⁶⁸⁴

Having described the possible responses that firms will take to the introduction or increase of the minimum wage, I will now consider the effects on low-earners. Some individuals would have earned just below the minimum wage, and they directly benefit from the policy as their wages will be increased accordingly. Furthermore, those slightly higher up the wage structure will find themselves in a better bargaining position as they can threaten to leave for other jobs that now pay a higher rate than otherwise – i.e. the minimum wage.⁶⁸⁵ So some low-paid workers will be better off; they earn an increased hourly wage.⁶⁸⁶ However, some low-paid workers may find themselves *worse* off. They may lose their jobs upon the introduction of, or increase in, the minimum wage and then find themselves unemployable thereafter. A dilemma then appears; set the minimum higher and increase wages but also involuntary unemployment, or, set the minimum lower and increase wages less but avoid causing as much unemployment. Insurers would be very concerned about the downsides of whatever minimum wage level they chose.⁶⁸⁷

⁶⁸⁴ For some evidence of increases in prices as a result of minimum wage changes, see *Ibid.* at 51-6, 390, Jonathan Wadsworth, 'Did the National Minimum Wage Affect Uk Prices?', *Fiscal Studies*, 31/1 (2010), 81-120 at 106-7. For considerations regarding *who pays* for the price rise, see Wadsworth, 'Did the National Minimum Wage Affect Uk Prices?', at 92.

⁶⁸⁵ Of course, if the minimum wage policy increases unemployment, then this bargaining position is simultaneously undermined due to the reduction in available alternative jobs.

⁶⁸⁶ Which they could use to increase their consumption, or to work less and increase their leisure.

⁶⁸⁷ For a selection of writing criticising the minimum wage along these lines see Stigler, 'The Economics of Minimum Wage Legislation', Phelps, *Rewarding Work* at 146-7, Shaviro, 'The Minimum Wage, the Earned Income Tax Credit, and Optimal Subsidy Policy', at 433-4, T. M.

There may be some economic benefits to the minimum wage, for example if some people are tempted to seek work at the minimum level who would not have worked at the sub-minimum price.⁶⁸⁸ However, this advantage would apply just as much to other earnings subsidy schemes such as the one I have proposed. Indeed, earnings subsidy schemes such as the negative hourly tax should be much better than the minimum wage with regard to labour participation.⁶⁸⁹ Another possible advantage would occur if some of the workers made better-off were to reduce their hours, since this may open opportunities for others. This would reduce slightly the worry about unemployment, though I doubt the effect would be very helpful given the likely scale of increased unemployment.

As I have said, it is difficult to be sure what the economic effects of the minimum wage would be, but it seems very likely that if it is effective in raising wages, then it will also increase prices. The increased prices are equally as likely to apply to those with good and bad market luck. Since the costs of the minimum wage come more through higher prices than increased public revenue, this does give it one relative advantage over more expensive alternatives. It is effectively a tax on consumers and so does not require as much of an increase in tax revenues, where these revenues would also have potential economic effects on productivity and prices.

The reduced tax cost may tip the balance towards the minimum wage where it is difficult or impossible to raise the required tax revenues. In this sense, the choice here

Wilkinson, 'The Ethics and Economics of the Minimum Wage', *Economics and Philosophy*, 20/02 (2004), 351-74 at 359-60.

⁶⁸⁸ More technically, it lowers PTR rates.

⁶⁸⁹ Brewer, Saez, and Shephard, 'Means-Testing and Tax Rates on Earnings', at 118, Saez, 'Optimal Income Transfer Programs'. As a result of this increased participation, and the inability of governments to determine earning ability, negative income taxes of the kind implied by earnings subsidies can even be optimal on a utility-focused optimal taxation analysis (described in footnote 4); see Saez, 'Optimal Income Transfer Programs', at 1054, Choné and Laroque, 'Optimal Incentives for Labor Force Participation', at 409-11, Philippe Choné and Guy Laroque, 'Negative Marginal Tax Rates and Heterogeneity', *American Economic Review*, 100/5 (2010), 2532-47, Paul Beaudry, Charles Blackorby, and Dezsö Szalay, 'Taxes and Employment Subsidies in Optimal Redistribution Programs', *The American Economic Review*, 99/1 (2009), 216-42 at 239.

depends upon the findings of the following chapter on the scope for taxing the fortunate. However, it is well to remember that the increased unemployment that is likely to follow from the introduction of a minimum wage will require tax revenue. The additional unemployed would be a further drain on the unemployment schemes. The prospect of providing generous unemployment compensation would be reduced, since there would be a greater number of claimants. As well as the direct and indirect costs, insurers would also fear that they will be more likely to suffer the effects of long-term unemployment.

A further problem with the minimum wage is that it is not very well targeted at the economically unlucky.⁶⁹⁰ Some of the beneficiaries will be those who are temporarily in low-paid work but who will earn a large amount over their lifetimes. After all, it applies to the worker's contract, though that worker may also have the benefit of a very wealthy family or have a very high wage at another point in life. The negative hourly lifetime average tax, on the other hand, will focus benefits on those who have a consistently low average. This will further reduce the cost of the scheme when compared to the increased living costs for low-earners caused by the minimum wage.

The headline is that the minimum wage is likely to be ineffective—or possibly even harmful—to the economically less fortunate.⁶⁹¹ Some will find it harder to get work as a result of the policy, with potential costs to their mental well-being as well as the direct cost to taxpayers. Furthermore, both the fortunate and less fortunate will face higher prices as a result of the policy. Insurers would therefore only prefer the minimum wage to the negative hourly tax policy if it were very difficult to raise the required revenue,

⁶⁹⁰ Stigler, 'The Economics of Minimum Wage Legislation', at 362-5.

⁶⁹¹ Some further problems arise as a result of international considerations that I am abstracting from in this work. The first is that in a global economy, a minimum wage may reduce international export competitiveness with corresponding effects on trade balance and economic performance. Second, some firms and workers may conspire to evade the minimum wage, particularly illegal immigrants—who are in a worse bargaining position due to their lack of rights. The use of illegal labour of this kind will increase unemployment for the worst-off, while not improving the wages of anyone.

an issue I will discuss in the following chapter, and which we can assume to be possible at this stage.

6.9 Limited earnings subsidies

I will now consider alternative earnings subsidy policies to the one I presented in section 6.2.⁶⁹² Limited earnings subsidies have been introduced in several countries, and I will describe these below. What the policy aims to do in general is to direct government-funded subsidy to those who are working but who have a low income.⁶⁹³ These subsidies can either be paid directly to employers employing low-earners—with the assumption that it will be passed on to the workers—or through the tax system in the form of a ‘tax credit.’ In this section I will discuss the current wage subsidies in the UK and USA. In section 6.10 I will describe Phelps’ more comprehensive wage-subsidy proposal. I will argue that these two policies would be less attractive to insurers than the negative hourly-averaging approach.

Many countries currently have *limited* earnings subsidy schemes, calculated on the basis of earnings. These involve “tax-credits”, and I refer to them as limited as they have numerous restrictions, taking account of family composition, and possibly requiring a certain amount of hours worked. However, unlike the negative-hourly-averaging proposal these are not directly calculated on an hourly basis. I will explain the Earned Income Tax Credit (EITC) from the USA and the Working Tax Credit (WTC) in the UK as examples of limited schemes. These schemes are administered by their

⁶⁹² It is of course possible to have both a minimum wage and earnings subsidy in place at once, as is currently the case in many countries including the UK and USA. Indeed, I proposed a minimum wage for some types of job in footnote 624. However, since any minimum wage for the vast majority of jobs would be set much lower than the desirable minimum hourly standard the negative hourly-averaging subsidy would do the majority of the work to improve wages. The minimum wage in my proposal merely serves to ensure economic efficiency and to reduce the scope for fraud and misuse of hourly subsidies.

⁶⁹³ These are related to, though distinct from, hiring subsidies. Hiring subsidies are designed to combat unemployment by providing payments to firms who increase their employment of low-wage workers. This is therefore a temporary incentive, which does not do much to improve the income of low-earners, see Alstott, 'Work Vs. Freedom', at 1029-38.

respective tax authorities.⁶⁹⁴ They are primarily intended to incentivise work given the parallel attempts to combat poverty among families by providing benefits. As a result, these policies were previously focused on those with children and dependent adults. This requirement was later relaxed potentially to include all 25 to 65 year olds in both countries. This relaxing accompanied the creation of additional Child Tax Credits, though the split credits are still administratively integrated.

The qualifying conditions are extensive and thresholds regularly change,⁶⁹⁵ and so I will discuss the policies in broad terms. The WTC requires claimants to work a certain number of hours per-week,⁶⁹⁶ in addition to the earning requirements. The EITC, by contrast, takes no account of hours worked and is calculated based upon the amount of income that the claimant has received from sources that indicate that they have worked for it.⁶⁹⁷ The effect of the tax credits is to top up the income of those who qualify for them, at a rate based on income. Both the WTC and EITC have a plateau level and then a phase-out stage (or tapered reduction) of the subsidy in order to reduce threshold effects.⁶⁹⁸ In addition, the EITC has a phase-in stage, so that people have an incentive to earn more money up to that point in order to gain a larger subsidy.

⁶⁹⁴ HMRC in the UK and the IRS in the USA. The current UK coalition government plans to roll the Working Tax Credit into its new "Universal Credit," which will be administered entirely by the department of work and pensions. The description of these schemes is taken from the HMRC and IRS websites, and refers to the rules in Spring 2012 unless otherwise indicated. For a description of the history and nature of the EITC see V. Joseph Hotz and John Karl Scholz, 'The Earned Income Tax Credit', in Robert a Moffitt (ed.), *Means-Tested Transfer Programs in the United States* (Chicago: University of Chicago Press, 2003), 141-97 at 143-55.

⁶⁹⁵ As I mentioned the previous footnote, the current UK government plans to subsume the credits into a new system.

⁶⁹⁶ In 2012 this was 16 hours for single parents, 24 hours for couples with children, and 30 hours for those without children and between 25 and 65 years old, though there are different requirements for couples and those with disabilities.

⁶⁹⁷ That is: wages, salaries, tips; Union strike benefits; certain disability benefits received before minimum retirement age; and/or Net earnings from self-employment.

⁶⁹⁸ Put differently, excessive METR or PTR rates as a result of subsidy changes will make it much less attractive for workers to work any additional hours once they reach the threshold point.

I will begin by considering advantages for the limited subsidy schemes. The main advantage seems to be that it does not require the tax authority to take account of the number of hours worked by each claimant. This advantage applies with regard to the EITC, though less so with the WTC which does have hour requirements. Nevertheless, since people have to claim the tax credits the onus is upon them to prove their hours worked, albeit through a signed confirmation by their employer. This may also be subject to fraud, but it would appear that the authorities would have a much smaller number of claimants to assess than the universal hour-credit approach. With a lifetime hourly averaging approach it is necessary to record the income and hour-credits for all citizens, even those with high earnings, in case they might have a reduced average in the future. The hour-credit scheme can therefore be expected to be much more expensive to administer than the limited subsidies. Other than this, however, the limited schemes seem to offer no further advantages to insurers—apart from its likely preferability to leisure-lovers. Nevertheless, insurers would need the hour-credit approach to have many advantages over the limited scheme in order to overcome losses to the scheme through this extra expense.

The first disadvantage of the limited subsidies is that they produce threshold effects. A problem for both the basic income and minimum wage approaches is that it is necessary to set a single threshold, where there are reasons to make it higher (to provide more to the unfortunate) along with strong reasons to make it lower (to reduce costs and economic disincentives). The analogous issue for earnings subsidies is where to set the break-even point at which workers receive no subsidy, and how strong to make the subsidy below that point. However, because the subsidy is tapered, the decision is much less fraught than it is for the previous policies. Despite this lack of a single-threshold-setting dilemma, however, the limited earnings subsidies that are currently in force produce unwanted economic incentives because of the way in which they are calculated.

Negative-hourly-averaging subsidises on an hourly-basis, based upon the hourly-average-rate for the worker. However, the EITC bases its calculation on the income that people receive from earned sources. This gives higher-paid workers who have an interest in greater leisure an incentive to work part-time instead of full-time in order to qualify for the subsidy.⁶⁹⁹ This transfer to part-time high-earners increases the cost of the scheme to taxpayers, while also reducing the amount of taxes, goods and services provided by those workers. This problem is not shared by hourly-averaging, where the subsidy depends upon the number of hours worked and is applied to those with a low average.⁷⁰⁰

The WTC avoids this problem, to a degree, by imposing a work requirement of a certain number of hours per-week.⁷⁰¹ This will stop the most extreme losses—for example from high earning self-employed workers working reduced hours. However, the WTC introduces an alternative threshold effect. Workers will have an incentive to work the required number of hours, but less incentive to work more hours than this. This again incentivises certain behaviour that employers and employees may not have otherwise have chosen, with any additional costs likely to be passed on to consumers. Furthermore, some people may struggle to find a job with exactly the number of hours required in order to qualify for the subsidy.⁷⁰² So while the addition of an hour-requirement has virtuous elements, it also adds another threshold effect. As I mentioned above, the hour-requirement also reduces the administrative advantage of limited subsidies over hourly averaging.

⁶⁹⁹ More technically, by potentially subsidising high paid part-time work, it creates very high METR rates for full-time employment for such workers.

⁷⁰⁰ Alstott points out an additional worry about the EITC, which is that people have an incentive to claim that they have received more income than they have, as it will increase their subsidy. Her concern is that tax authorities administering the payments have experience in uncovering underreporting of income (in order to reduce tax bills) but not of over-reporting, Anne L. Alstott, 'The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform', *Harvard Law Review*, 108/3 (1995), 533-92 at 586.

⁷⁰¹ The amount of hours required is varied according to relationship and family status.

⁷⁰² Particularly during economic downturns and in economically depressed regions

The limited subsidy policies have the further disadvantage that they can fail to provide subsidies to those with bad market luck. I have mentioned that it will not directly help those who still cannot find work despite the subsidy, or not enough hours to meet any hour requirements. In addition, since it focuses on overall earnings in each period it may exclude those who have low hourly earnings but who work very long hours in order to provide themselves a reasonable income. Some such individuals may decide to reduce their hours in order to qualify for the scheme and the greater leisure time it might allow them. However, others might have a strong preference for work and these low-earners will not be helped by the limited scheme. To include those who work long hours at low wages, it would be necessary to raise the pay-out threshold. This would then enlarge both the cost of the scheme and—more importantly—the problematic economic disincentives described above. The hour-credit scheme avoids these problems by calculating the subsidy on an hourly-basis.

One final concern that insurers would have regarding earnings subsidies is how effective their administration would be, and the limited subsidies currently in operation have administrative problems. It is necessary for claimants to apply for the benefit, and to renew it periodically,⁷⁰³ which is bureaucratically difficult. Furthermore, people have to know about the policy and that they may be eligible to benefit from it. As a result of these barriers, many people who are worthy recipients miss out on the subsidy. An additional worry is that the barriers may well have the perverse result that while some of the unfortunate might miss out, those who are less unfortunate yet eligible are more able to make use of this scheme. The administration of the scheme is therefore expensive yet still fails to help many intended recipients.

Insurers would strongly prefer hourly-averaging, given that it would be less likely that they would fail to obtain assistance if they were less fortunate. Insurers would also prefer hourly-averaging on economic grounds, as it does not have any of the economic

⁷⁰³ Every six months in the case of WTC.

disincentive problems and threshold effects that I have highlighted for the limited subsidy schemes.

6.10 Phelps' wage-subsidy proposal

Economist Edmund Phelps has proposed a more comprehensive wage subsidy scheme, which is therefore closer to my own proposal than the limited subsidies.⁷⁰⁴ Phelps sees the cause of many social problems as arising from the reduction in pay for—and loss of—low-paid work in US cities.⁷⁰⁵ This, according to Phelps, has resulted in the decline of urban areas, poverty, irresponsible parenting and criminality in the inner cities.⁷⁰⁶ Phelps argues that the pre-existing policies of welfare payments, unemployment benefits and the minimum wage promote welfare dependency and do not help these communities.⁷⁰⁷ Phelps sees the solution as being the return to relatively high incomes for low-paid labour, so that the traditional breadwinning-male family will return. Phelps therefore presents an economically-informed conservative argument for wage subsidies, an argument which is not compatible with the starting assumptions set out in section 1.1. However, his proposed policy is worth considering as an alternative to the hour-credit approach.

Phelps proposes that companies should be paid money from the government for employing low-waged workers. Firms would get a \$3-an-hour subsidy for a \$4-an-hour employee, with the subsidy gradually being reduced until it is phased out at around \$12-an-hour.⁷⁰⁸ According to economic theory, firms would then have a much greater incentive to employ low-paid workers than they currently do, and they would have to pass on the subsidy to the employees in wages. The minimum wage level for the lowest-earners could then be substantially dropped, as the government would make up the shortfall. Phelps “guesstimates” that the policy would cost a hefty \$125bn in 1997,

⁷⁰⁴ Phelps, *Rewarding Work* at ch 8.

⁷⁰⁵ *Ibid.* at ch 3.

⁷⁰⁶ *Ibid.* at ch 4.

⁷⁰⁷ *Ibid.* at ch 7.

⁷⁰⁸ *Ibid.* at 113.

roughly 1.75% of US GDP.⁷⁰⁹ Phelps restricts his subsidy to those employed in *full-time* work of 35 hours a week or more.⁷¹⁰ This is because Phelps' focus is on the conservative aim of economic self-sufficiency through work,⁷¹¹ though I will consider whether this feature would be attractive to insurers.

I will now highlight the differences between the Phelps plan and the hour-credit scheme to gauge whether it offers any advantages. One difference between the schemes is that the Phelps plan pays employers who will then pass on the subsidy to their workers, while the hour-credit plan will directly enlarge the pay packet of the worker. The argument in favour of the former is presumably that it is cheaper and easier administratively, an issue I will discuss later in this section. However, there is a downside to wage subsidies. This comes from the worry that firms who employ low-earners will obtain a windfall if they can avoid passing on the wage subsidy to their workers in higher pay.⁷¹² Economic theory may predict that prices will recalibrate, but this process does not always happen as smoothly in reality as it does in theory, and firms might take advantage of this. In the short term the employers might get a windfall until the new prices sort themselves out. While any windfall would only be temporary, it is a downside of the Phelps scheme that any temporary windfalls that do occur would go to company shareholders rather than low-earners. Insurers would therefore have a preference—*ceteris paribus*—for earnings subsidies paid through the tax system rather than wage subsidies paid to employers.

A second difference is that the Phelps plan supports the wages of low-paid *workers*. These low-paid workers may be high-paid workers at another point in time, or have a

⁷⁰⁹ *Ibid.* at 116.

⁷¹⁰ *Ibid.* at 108.

⁷¹¹ For a good summary of arguments for workfare from arguments of self-sufficiency, see Zatz, 'What Welfare Requires from Work', at 388-424. Other arguments for 'workfare' are proposed by those on the left, but on the basis of self-improvement and reciprocity, see Zatz, 'What Welfare Requires from Work', at 424-45 and 45-51. While all these starting points lead to support for workfare-type policies, they would each define slightly different activities as work.

⁷¹² Alstott, 'Work Vs. Freedom', at 1025-6.

share in larger family wealth. These factors can be taken account of by a lifetime-hourly-averaging scheme but not by a wage subsidy scheme. In this way, the Phelps plan is less targeted at the unlucky, meaning that more resources are spent on those who are less likely to be in a position that insurers would be particularly concerned to improve. Insurers would prefer a more targeted scheme that would channel more resources towards their less fortunate possible selves.⁷¹³

The third clear difference between the schemes is that Phelps would restrict his subsidy to those working in full-time employment. This produces a large incentive for workers to take full-time work even if they would prefer to work fewer hours.⁷¹⁴ Phelps' arguments here rest on his paternalistic and conservative assumptions, which do not apply to the hypothetical insurance approach taken here. Insurers would not want to restrict low-hourly-wage subsidies to those who work full-time, since part-time workers are *at least* as likely to be less fortunate. Hypothetical insurers would wish to ensure that they receive help even if they prefer to work part-time.⁷¹⁵ Some people with bad market luck may also have disabilities or caring responsibilities that would make it difficult or impossible for them to work full-time. Phelps focuses on making low-paid work more attractive for inner city men, enabling a return to the nuclear family and reducing social problems. However, insurers will be concerned that they will have caring responsibilities or some other misfortune that would make full-time work unmanageable.

Both the Phelps and hourly-averaging schemes require firms to inform the authorities of the number of hours worked or contracted for each of their employees. This is an additional cost for both schemes, and in both cases opens an additional avenue for fraud. Firms may attempt to collude with employees to overstate the number of hours

⁷¹³ Alternatively, we can say that hourly averaging is better than its rivals at tagging those who are good candidates for earnings subsidy and excluding those who are not, see footnote 603.

⁷¹⁴ Ackerman and Alstott, *The Stakeholder Society* at 208.

⁷¹⁵ This will particularly apply to leisure-lovers, but will also apply to many with preferences for work and consumption in the normal range.

they have worked in order to gain additional payments.⁷¹⁶ It would be just as necessary to have systems in place to make such fraud difficult and costly under both schemes.⁷¹⁷ The only possible advantage for the Phelps plan in this regard is that it would only be necessary for the authorities to investigate those who claim to employ low-paid workers at any particular point in time. Hourly-averaging, however, would require the potential assessment of the hour-credits of *all* workers.

The one advantage of Phelps' proposal is its lower administrative costs. However, this would not outweigh the other issues for insurers. It is a less targeted scheme, as indicated in the second difference between schemes. Phelps' scheme will also fail to support many less-fortunate people, and the subsidies for people who are fortunate overall will increase the cost of the scheme. Breaking this link between low-pay and overall fortune further limits the advantage gained in paying out via employers rather than the tax system; the tax authorities would have to liaise very intimately and expensively with employers to create personalised payments.

6.11 Negative hourly taxation and leisure-lovers

I will now briefly consider two challenges to the proposal I have favoured. The first is the set of criticisms of income subsidies by Alstott. While income subsidies are intended to improve the position of low earners, this policy of course has other effects. I will first explain the effects of earnings subsidies on prices in order to consider Alstott's arguments that earnings subsidies create untargeted windfalls and cause displacement.⁷¹⁸ The second criticism is the worry that the policy is unfair to leisure-lovers.

⁷¹⁶ Alstott, 'Work Vs. Freedom', at 1043-4, Ackerman and Alstott, *The Stakeholder Society* at 209-10.

⁷¹⁷ See footnote 616 above. Firms could also claim the subsidy for part-time high-earning workers unbeknownst to the employee, something which would not be possible with hourly-averaging.

⁷¹⁸ Alstott, 'Work Vs. Freedom', at 1024-8, 43-5. Alstott focuses her criticisms on limited subsidies, employment subsidies, and Phelps' plan. I am therefore translating her criticisms to see if they apply to the hour-averaging proposal.

Earnings subsidies are likely to raise some prices and lower others compared to a *laissez-faire* system. Where low-paid work is relatively more attractive workers have greater choice and power. As a result, it will be harder to convince workers to perform unattractive work. This will then increase costs for the products and services that require unattractive work. As with the minimum wage, we can assume that these costs will affect fortunate and less fortunate members of society equally—though work-lovers will be more affected than leisure-lovers.⁷¹⁹ For relatively more attractive low-paid work, conversely, more workers will prefer this now-subsidised work to the better-paid-but-less-enjoyable work that they would do otherwise. Increased demand for these jobs will reduce pay, and therefore some of the income subsidy will be passed on to consumers in the form of lower prices. These interferences with the market seem to me to be minor compared to the gains to low earners, and I take it that hypothetical insurers would feel the same. However, I will now defend the proposal against some further arguments against earnings subsidies.

Another challenge based on this scenario is that earnings subsidies produce a *windfall* for those who are not really of concern to insurers, which we can refer to as “leakage.”⁷²⁰ Some high-ability people may have a strong preference for a particular kind of work, such that they will do this work as long as it provides for their basic needs. Earnings subsidies might therefore provide a windfall for these workers at taxpayer expense. Of course, resource-egalitarians would not have a problem in principle with any additional welfare obtained by these already fortunate individuals.⁷²¹ Nevertheless, such cases would be included in the costs of the scheme, but provide no help to those with bad market luck. If there were a large group of fortunate workers who are happy and motivated in low-paid jobs, then this expense might be difficult to

⁷¹⁹ This effect would also be exacerbated by the need to raise more taxes from more productive workers in order to pay for the subsidy. I will discuss taxation in more detail in the following chapter.

⁷²⁰ This term is found in Timothy Besley and Stephen Coate, 'The Design of Income Maintenance Programmes', *The Review of Economic Studies*, 62/2 (1995), 187-221 at 188, 99.

⁷²¹ As discussed in sections 2.1-2.6.

justify, though I imagine that the numbers affected would be small.⁷²² Furthermore, this windfall effect also occurs with the minimum wage, which is the only real alternative to doing nothing at all.⁷²³

A further argument against earnings subsidies presented by Alstott is that it will displace one set of workers for another, with little overall net gain.⁷²⁴ This is due to an inverse effect of that described above regarding the minimum wage. Minimum wages cause firms to spend more money on technology, generally operated by higher-paid workers, increasing unemployment for low-skilled workers. Wage subsidies would push firms the other way, making it more attractive to employ lots of workers to do work that could be done by fewer, more productive, workers. Alstott worries that wage subsidies would create more menial jobs, reducing the opportunities for employers to create and sustain more advanced roles that workers would prefer. However, the insurers would have to take account of the full effects, and this issue seems trivial compared to the problems with the alternatives of a minimum wage or doing nothing at all. The quality of the work is included in the price to the extent that workers have some power over jobs, and the earnings subsidy scheme combined with a guaranteed work programme would provide workers with a very good bargaining position. Firms who find it easier to hire may increase their workforce at the expense of technology, but that will serve to focus technological solutions in society on to those jobs that workers find less desirable. This seems like a fairly unproblematic result to me, and I do not think insurers would have much concern here.

⁷²² It would also be possible to add additional rules in order to capture some such cases. For example, that the new minimum wage for qualification for earnings subsidy or hour-credits could be set differently depending upon the type of work or employer, as discussed in footnote 624.

⁷²³ Alstott prefers the introduction of a “stakeholder grant” to deal with bad market luck, see fn 654. However, this policy will mostly help leisure-lovers and risk-lovers irrespective of levels of fortune.

⁷²⁴ Alstott, 'Work Vs. Freedom', at 1027-8. Alstott's explanation of displacement is directed at subsidies that are focused on a particular sub-group of society who are felt to be deprived, such as the long-term unemployed. However, when later discussing Phelps' plan, Alstott extends this to the idea of displacing higher-wage workers with lower-wage workers, Alstott, 'Work Vs. Freedom', at 1044.

I will now consider the second challenge to the hour-credit scheme: that it is unfair to leisure-lovers. Leisure-lovers will have very different policy preferences other people. They will tend to prefer basic income as this will give them the chance for a large amount of leisure whether they are economically fortunate—and work part-time—or are less fortunate and live off the basic income. It is this very preference of leisure-lovers, however, that leads those with even a slight concern about their ability to purchase items for consumption beyond the basics to prefer any reasonable alternative to an unconditional basic income. Therefore, this preference of leisure-lovers will not outweigh the preferences of others. This raises two issues: first, whether leisure-lovers should be included in the scheme at all. As I argued in section 5.6, leisure-lovers do not envy their employed neighbours, and so have no hypothetical insurance claim against them. However, leisure-lovers appear in the hypothetical insurance scheme since less fortunate leisure-lovers will envy more-fortunate leisure-lovers.⁷²⁵

The second issue is whether it is possible to reach any agreement at all from a hypothetical insurance perspective given the very different preferences of the insurers. Certainly, the prospect of agreement is complicated, but not impossible. The idea of the *average* policy is more difficult to specify where there are discrete policies on offer. However, as I described in the previous chapter,⁷²⁶ one policy choice may be more attractive than the others, and I have argued that negative-hourly-averaging with a guaranteed work policy is that policy. All would agree that all the policies considered in this chapter are superior to *laissez-faire*. Since the vast majority of people would have normal or work-loving preferences, the modal, mean and median average would all indicate a preference for the hourly-subsidy and guaranteed work policy. The presence of a substantial minority of leisure-lovers—and leisure-likers who would take the opportunity to enjoy leisure if they could also have a reasonable income—makes

⁷²⁵ I described how market fortune affects leisure-lovers in section 3.2.

⁷²⁶ Sections 5.1, 5.4-5.5, 5.9.

unconditional income a less attractive option.⁷²⁷ This is because it would always be more expensive to improve the position of the less fortunate with this policy. Since leisure-lovers would choose my suggested policy over *laissez-faire*—in order to be able to afford more leisure should they turn out to be unfortunate—the leisure-lovers would agree to the scheme and therefore the average policy.⁷²⁸ I will extend this discussion of this issue when discussing leisure-lovers and tax policy in section 7.9.

6.12 Conclusion

In this chapter I have presented several policies designed to improve the position of the less economically fortunate members of society, and considered which hypothetical insurers would choose. Economic misfortune could result in low-wage work, involuntary unemployment, or interspersed periods of both. The general problem for hypothetical insurers is that attempts to improve the position of the unfortunate will usually have detrimental effects on the economy, and that the more that is done for low-earners the greater the costs. I have isolated a group—leisure-lovers—as particularly relevant to this calculation and explained with each policy how this group would react to the policy.

To assist those who find themselves unable to get work, I proposed a guaranteed work programme, in which people can obtain an income if they undertake the work and training requirements set by their local jobcentre. I also proposed that those who undertake accredited courses should obtain subsidy through hour-credits, as should those who have onerous caring responsibilities that affect their ability to work full-time. I have defended this policy from arguments that it either imposes too many or too few conditions on claimants. Imposing *more* conditions would make the least

⁷²⁷ In section 6.6 I discussed unconditional income as a response to unemployment rather than low-wages, but the same type of problems arise when utilising it for this purpose. Indeed, they occur to a greater extent, since the threshold level would have to be set very high in order to help those who already work, which will result in a very high METR and PTR.

⁷²⁸ It is conceivable that some extreme risk-taking leisure-loving insurers could decide to risk being unfortunate in a *laissez-faire* society for the chance of being fortunate in such a society. However, this would be a minority within a minority and would not have any scope to sway the decision.

fortunate much worse off with little gain to the more fortunate, a very bad insurance decision. Imposing *weaker* conditions would enable leisure-lovers to take advantage of the scheme, which would be very expensive, both in terms of direct costs and indirect economic costs affecting all members of society.

In order to improve the position of those who have low-paid work, I proposed negative-hourly-averaging. I have shown that the hour-credit policy is attractive to insurers as it provides incentives to work. There is an incentive to engage in work, and while low-incomes are subsidised there is still an incentive for those in work to work longer.⁷²⁹ This is because hour-credits will always have a minimum value for their recipient. Negative-hourly-averaging is clearly superior to limited subsidies, as there are fewer restrictions and the hour-rates can be much more generous without producing the serious unwanted economic effects of limited subsidies. The advantage of negative-hourly-averaging over Phelps' proposal is that it raises the income of part-time low-earners, and any short-term windfalls would go to low-earners rather than company shareholders.

Indeed, while negative-hourly-averaging is the policy that is least likely to exclude the low-paid, it is also the most targeted at the less economically fortunate. Many point out that the minimum wage and earnings subsidies can benefit those from wealthy families, and those who will go on to earn large amounts later in life.⁷³⁰ Using lifetime averaging, those who benefit from a wealthy family⁷³¹ or who previously had high earnings will not be eligible for the subsidy. Furthermore, those who receive the subsidy early in life but later in life become high-earner will have to pay a greater

⁷²⁹ More technically, the PTR and METR rates will be lower than the rival schemes.

⁷³⁰ Alstott, 'Work Vs. Freedom', at 1027, fn217, 41.

⁷³¹ Or, who are part of a high-earning couple where couples would merge their tax and hour-credit accounts upon marriage or civil partnership. Of course, avoiding subsidy of the low-earner in an averaging-couple does require a drop in tax on the high-earner, which may sometimes cancel the revenue gain.

amount of tax later in life as a result, decreasing the overall cost of the subsidy.⁷³² By taking account of the most information, it will be possible to reduce leakage as much as is possible without knowledge of the true nature of the economic misfortunes that people have suffered or not.⁷³³

Despite being the most expensive to taxpayers and potentially leading to some price increases, negative-hourly-averaging would provide by far the most comprehensive coverage without costing very much more than the alternatives. It should also have the least detrimental effect on the economy. It is therefore the most sensible insurance choice for hypothetical insurers, assuming that it can be funded. The collection of tax revenue is the focus of the next chapter.

⁷³² This is because the subsidy paid to them will always count as net income they have already received in their tax calculation

⁷³³ A further advantage of hourly-averaging is that, as I have indicated in footnote 638, it is readily compatible with other forms of redistribution, for example for education, disability and carers.

Chapter 7

Calculating Egalitarian Taxation

In this chapter I will consider which taxation policies would be most attractive to hypothetical insurers. In the bulk of this chapter I will discuss the crucial matter of the tax-base. This refers to the basis on which to calculate an individual's tax; so for example, a wage income tax-base would tax workers on the size of their pay packet. The first proposals I will consider—in sections 7.1 and 7.2—are to calculate taxation based on endowment, on wealth and interpersonal wealth transfers. None of these is attractive, nor would they be able to provide sufficient revenues to pay for the policies of the previous chapter. I therefore consider (7.3) a broad-based mix of several forms of taxation, such as we have at present. I argue that a comprehensive tax-base would be a more attractive choice for the insurers, and consider the options. I reject both the traditional ideal-types of tax base, accretion-income (7.4) and consumption taxation (7.5). I propose instead—in section 7.6—a hybrid approach I refer to as the acquired-income tax-base.

Towards the end of the chapter I complete my analysis of taxation from a hypothetical insurance perspective by considering the calculation of tax-rates. I advocate lifetime averaging—in section 7.7—and the use of hour-credits—in section 7.8—as a means to achieve greater progressivity and revenue gathering without compromising economic efficiency. In section 7.8 I also explain the limits on tax-rates and provide graphs of the progressive tax-rates that insurers would find attractive as a means to tax the fortunate. I end by rebutting some final challenges to my preferred policies in sections 7.9 and 7.10.

7.1 Endowment and wealth taxation

I will begin by briefly discussing two tax-bases which will be unattractive to hypothetical insurers, endowment and wealth-based taxation. I rejected endowment taxation in section 3.9 as a direct response to bad market luck and talent inequality.

Nevertheless, the approach reappears on the agenda because it may still be the most attractive option available to hypothetical insurers. One attractive feature of endowment is that it could be taxed progressively and still be efficient. However, insurers would worry that they would be effectively forced to work in their most remunerative occupation whether or not they desire to. Or, where they would not be forced, those who turned out to have special talents would still have to pay a high price in work-choice or leisure-time in order to pay off their larger tax bills. The insurers would be happy to have taxation that taxed the more highly endowed at a higher rate *if* they utilise their endowment, as most forms of progressive taxation would. However, they would not choose to calculate taxes on the basis of endowment alone.

A second base to consider is that of wealth.⁷³⁴ This would work by taxing the amount of wealth that a person holds at a given period in time, say, once a year.⁷³⁵ So those with more wealth could be charged more in tax, which would be progressive. This appears attractive because those with good fortune will often have greater access to wealth. The wealthy can invest their wealth to make further gains,⁷³⁶ and a wealth tax would interrupt this process without having too much effect on those with little market-luck who will earn and own little.

Nevertheless, wealth is an unattractive tax-base. Firstly, it focuses on savers and ignores spenders. This means that someone with huge earnings who immediately spends what they earn will never pay any tax while someone with low earnings who is saving-up for something will pay tax. Saving levels could be independent of market luck, even though there will be a general tendency for the lucky to be more wealthy. In addition, given that the tax will not raise revenues from some of the fortunate—those who spend a lot—it is difficult to raise substantial tax revenues. This would be

⁷³⁴ Wolff, *Top Heavy* at 55-7, Edward N. Wolff, 'Time for a Wealth Tax?', *Boston Review*, (1996).

⁷³⁵ Wolff, *Top Heavy* at Ch 7, Eric Rakowski, 'Can Wealth Taxes Be Justified?', *Tax Law Review*, 53 (2000), 263-375 at 266-7.

⁷³⁶ This is accumulated advantage, or the "Matthew effect" described above, 114.

exacerbated as a wealth tax would encourage spending and discourage saving, requiring ever higher tax-rates on an ever diminishing pool of savers. Furthermore, the disincentive to save may have detrimental economic consequences—for example the ownership of businesses would be unstable as those with highly valuable businesses would have to pay large taxes. This instability would result in inefficient business management. Business-owners may also render their businesses less efficient in order to reduce their wealth-tax liability or the enforced sale of their business.

Hypothetical insurers would worry that their plans may require them to save up for something, where a wealth tax would make such a plan much harder irrespective of their social class or natural talents.⁷³⁷ A related problem is that it would interfere with the ability that people have to carry out plans that involve the transmission of wealth from one period into the next. This is because they may be forced to liquidate their assets in order to pay their tax bill.⁷³⁸ As an example, consider someone who enjoys tinkering with electronics and builds herself a robot. Other people think of profitable ways to employ this robot and its value shoots up accordingly. Similarly, imagine an art-lover who buys a painting that she thinks would go particularly nicely in her house. The artist later becomes famous and dies and her old works become priceless. The robot-owner and art-owner would have to pay tax on the increase in value of their items and would therefore have to sell the items that they consider an important part of their lives.

The wealth tax is therefore unattractive as a sole tax, but would it be attractive as part of a multiple-tax package? I will consider broad-base taxation shortly, but I would think that hypothetical insurers would prefer not to include wealth taxes even in a broad-

⁷³⁷ Rakowski, 'Can Wealth Taxes Be Justified?', at 365.

⁷³⁸ William D. Andrews, 'A Consumption-Type or Cash Flow Personal Income Tax', *Harvard Law Review*, 87/6 (1974), 1113-88 at 1143.

based system unless it was at a very low-rate.⁷³⁹ The purpose of this would be to build some progressivity into an otherwise regressive taxation system, where it is not possible to tax profits. This would work by taxing a very small proportion of wealth, which would correspond to the annual profit that someone would expect to earn from investing their wealth.⁷⁴⁰ However, the revenues from such a wealth-tax would be negligible.

In conclusion, a wealth tax is not a very attractive option on its own. It may be considered necessary as part of a mix of taxes if it were deemed necessary to fill gaps in the other tax-bases, though only at very low-rates. Such a tax would be included in a broad-base, which I will consider shortly. Prior to the broad-base, however, I will consider taxes on inheritances and gifts.

7.2 Wealth transfer taxes: Estate and Accession taxation

The next tax-base for consideration is that of what is sometimes called a “death tax.” This is the tax on the value of the estate of those who have died, and so is properly called the *estate tax*. This tax-base is attractive as it is efficient for government and taxpayers; it falls at a time at which assets are assessed and valued for the purpose of inheritance. Furthermore, the deceased can be said to no longer need their assets to carry out their plans, though this would be controversial.⁷⁴¹ Finally, since such transfers are a *windfall* to their recipients, and the wealth of family and loved ones is a matter of fortune, it would be an attractive form of tax for hypothetical insurers.⁷⁴² However, the

⁷³⁹ I also mentioned two other possible situations in which temporary wealth taxes may be acceptable, footnote 514. These are when there is a national emergency, and if it is necessary in order to pay for the costs of the transition to a just regime, see also Barbara H. Fried, 'Compared to What? Taxing Brute Luck and Other Second-Best Problems', *Tax Law Review*, 53 (2000), 377-95 at 385.

⁷⁴⁰ Deborah H. Schenk, 'Saving the Income Tax with a Wealth Tax', *Ibid.*, 423-76.

⁷⁴¹ It seems perfectly reasonable to say that the deceased can have interests, and that there will be reasons to carry out their wishes.

⁷⁴² For reasons explained in section 5.8.

estate tax has been described as a voluntary tax since it is very easy to avoid this tax;⁷⁴³ for example, one could use one's wealth to purchase an annuity⁷⁴⁴ and then give away the remaining wealth before death. The tax would therefore not provide much revenue to support the unlucky.⁷⁴⁵

An alternative to estate taxation is to tax recipients on their cumulated lifetime gifts and bequests from others. This is called an *accessions tax*,⁷⁴⁶ and it would probably raise more revenue than an estate tax, since people could not gift resources in advance of death in order to avoid the tax.⁷⁴⁷ The accessions tax is perhaps harder to administer than estate taxation, since gifts take place irregularly over the course of the life of

⁷⁴³ George Cooper, 'A Voluntary Tax? New Perspectives on Sophisticated Estate Tax Avoidance', *Columbia Law Review*, 77/2 (1977), 161-247.

⁷⁴⁴ That is, a regular payment that continues until the death of the recipient. The purchase of a pension therefore allows people to be prudential in the face of an uncertain lifespan without the need for wealth holdings.

⁷⁴⁵ Edward J. McCaffery, 'The Uneasy Case for Wealth Transfer Taxation', *The Yale Law Journal*, 104/2 (1994), 283-365, Edward J. McCaffery, 'The Political Liberal Case against the Estate Tax', *Philosophy & Public Affairs*, 23/4 (1994), 281-312 at 287-8. McCaffery argues that it would be sensible to give up on the estate tax entirely on the basis that it does not assist in equalising opportunity, with the underlying assumption that it will not raise very much revenue for justice purposes. For a response to this argument see Anne L. Alstott, 'The Uneasy Liberal Case against Income and Wealth Transfer Taxation: A Response to Professor McCaffery', *Tax Law Review*, 51 (1996), 363-402.

Many writers on accessions and estate taxes argue that the tax should be higher or lower depending on the relationship between donor and recipient. Those who emphasise equal starts propose to tax transfers from parents at a higher rate than others on the basis that these interfere with equality of opportunity, Anne L. Alstott, 'Equal Opportunity and Inheritance Taxation', *Harvard Law Review*, 121/2 (2007), 469-542 at 507-11. Others have suggested that transfers from close family members should be taxed at a lower rate than gifts from others, William D. Andrews, 'The Accessions Tax Proposal', *Tax Law Review*, 22 (1966), 589-634 at 592. I cannot see any reason why hypothetical insurers would want to differentiate between different sources of income, since money is money to the recipient and to the government. Any deductions for close relatives or everyone-but-close-relatives will lead to a loss of revenue, Joseph M. Dodge, 'Beyond Estate and Gift Tax Reform: Including Gifts and Bequests in Income', *Harvard Law Review*, 91/6 (1978), 1177-211.

⁷⁴⁶ Harry J Rudick, 'A Proposal for an Accessions Tax', *Tax Law Review*, 1/1 (1945), 25-44, Andrews, 'The Accessions Tax Proposal', Cedric Thomas Sandford et al., *An Accessions Tax: A Study of the Desirability and Feasibility of Replacing the United Kingdom Estate Duty by a Cumulative Tax on Recipients of Gifts and Inheritances* (London: Institute for Fiscal Studies, 1973), Edward C. Jr. Halbach, 'An Accessions Tax', *Real Property Probate & Trust Journal*, 23 (1988), 211-27. Work on accessions taxation often focuses on the thorny issue of working when and how to tax trusts, particularly that of Rudick, Andrews and Halbach.

⁷⁴⁷ The estate tax in the UK and USA retrospectively includes any gifts given by the deceased in the several years leading up to death, in order to somewhat reduce the scope for this sort of tax avoidance. However, it still ignores transfers made twenty or thirty years before the death of the donor, and is then less convenient to recipients.

individuals. Insurers may therefore have concerns that accessions taxes would be less convenient for them, though the additional progressivity in determining and taxing windfall fortune would no doubt sway them towards an accessions tax over estate taxation.⁷⁴⁸ Indeed, the strongest case for accessions taxation over estate taxation is that accessions taxes focus on the recipient while estate taxes focus on the donor. I assume that hypothetical insurers would prefer to tax recipients of gifted income in accordance with their level of *fortune*, rather than the fortune and *preferences* of donors.⁷⁴⁹

Despite its likely ability to raise more revenue than an estate tax, an accession tax would still fail to provide enough taxation to support the redistributive programmes described in the previous chapter. After all, most people spend most of their resources on themselves rather than giving it to others, something that would be exacerbated if only this activity were taxed. Accessions taxes might be used—of course—as part of a broad based tax, which I will consider shortly. Furthermore, accession income would be included in a comprehensive income approach, which I will also consider.

However, some have suggested that there should be no taxation on gifts and bequests of these forms.⁷⁵⁰ Such arguments are generally made by those who propose a comprehensive consumption tax, and I will consider the case for consumption taxes that exclude wealth transfers when I discuss this.⁷⁵¹ However, it is worth considering now one argument against wealth transfer taxes found in the work of consumption tax supporters. This is that such taxation would have detrimental economic consequences because some people work longer and harder, and save more, in order to benefit their

⁷⁴⁸ Accessions taxes could be calculated on a lifetime-averaging basis, which makes them even more attractive to insurers. Of course, recipients would receive less up-front, but as the example of Humphrey in section 6.2 showed, this is released as a tax rebate over time. This initially high taxation would be better for equal opportunities, as I will further argue in section 7.5.

⁷⁴⁹ After all, a very fortunate individual could decide to spend all that they have during their life, while a modestly endowed person might decide to give their resources to others.

⁷⁵⁰ Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*, at 99-112.

⁷⁵¹ In section 7.5.

loved ones. The higher the tax on interpersonal wealth transfers, the argument goes, the less people will work and save.⁷⁵² Working and saving are beneficial to the general running of the economy, and so reducing the incentive to do these things would be bad for everyone.⁷⁵³

One response to this is to point out that taxes have income effects, and so those who desire to benefit their loved ones by a chosen amount will have to work and save *more*. However, this is unlikely; people will generally desire to benefit their loved ones, but also desire other things as well. They may for example respond to this taxation by working as much as before, but spending more on themselves. Nevertheless, I doubt that the effect on work and saving would be that great, since people will still wish to benefit their loved ones. Hypothetical insurers will be happy to share the proceeds of the windfalls caused by such feelings, since they might be in the less fortunate majority of people who will not benefit from generous *and* wealthy loved ones. They would worry about the effect such transfers would have on their opportunities and access to positional goods. Furthermore, to the extent that people would give less away in proportion to the degree of wealth-transfer taxation, they might nevertheless work as much but spend more on themselves. Insurers would worry that highly talented people would have less incentive to work if it was harder for them to benefit loved ones, but it seems that enough talented people would work for other incentives that the effect of wealth-transfer taxation would not be so great as to overwhelm the reasons to tax such windfall transfers.

⁷⁵² McCaffery presents the rather strange argument that 'liberal society likes work and savings, but has liberal suspicions over excessive consumption' McCaffery, 'The Uneasy Case for Wealth Transfer Taxation', at 350. This argument violates the liberal requirement of anti-perfectionism, or that each has responsibility to choose her preferred ends in life. It should be up to each individual whether they wish to save or consume. For further criticism of McCaffery on this point see Eric Rakowski, 'Transferring Wealth Liberally', *Tax Law Review*, 51/3 (1996), 419-72 at 432-6.

⁷⁵³ The argument regarding savings seems to proceed on the basis that there is an optimal level of savings and investment for the economy and that income based taxation will depress investment below that level. However, the idea of an optimal level of savings does not outweigh the hypothetical insurance approach to taxation, and hypothetical insurers will take the economic consequences of taxation into account. Furthermore, if we remove our abstraction to a single-country state, then in a global economy the rate of investment will depend on international factors.

Regarding the worry that wealth-transfer taxes reduce savings for investment, it is worth emphasising that people save for other reasons than to gift money—for example to shift money across their life-cycle⁷⁵⁴—which would provide some investment funds. Nonetheless, if such taxation were considered to have a damaging effect on savings, the government could divert tax revenues to the creation of a *sovereign wealth fund* which would provide investment.⁷⁵⁵ This solution would be much more attractive to insurers, who would be concerned about their relative position while still desiring economic investment.

In conclusion, wealth-transfer tax-bases alone would be unattractive to insurers because they cannot raise large amounts of revenue. However, it would appear that they—or a substitute for them—will have an important role to play, given that the arguments against them would not convince hypothetical insurers. I will now consider tax packages that will have the ability to raise the sorts of revenue that would be desired by hypothetical insurers.

7.3 Broad-based taxation

The broad tax-base is the one with which we are familiar. This a tax system in which there are lots of different types of taxes on lots of different things, usually at fairly low rates. In the UK at present there is a wage tax, corporation tax, VAT, capital gains tax, estate tax, National Insurance, and so on. This is the approach taken by pretty much all countries around the world, for clear practical reasons. It is a very effective way of raising revenue without too much administrative expense. Nor does the tax interfere

⁷⁵⁴ Joseph Bankman and Barbara H. Fried, 'Winners and Losers in the Shift to a Consumption Tax', *Georgetown Law Journal*, 86 (1998), 539-6 at 547-50. This paper summarizes the literature on life-cycle savings and finds that it does not account for all savings.

⁷⁵⁵ This is a more attractive form of investment for insurers, since the investment returns that would benefit all members of future generations rather than the fortunate few. Unfortunately, there is no room here to discuss how this would work, or should be calculated.

hugely with people's decisions. It also has limited ill-effects on the economy, producing little in the way of economic distortion as long as the rates remain low.⁷⁵⁶

However, the low tax-rates that accompany the broad-based tax are problematic for hypothetical insurers. It is not possible to introduce a high degree of progressivity into the system for several reasons. Since it contains elements of consumption, wealth, and income taxes, increasing the tax rates will have extreme effects on some people, as well as on economic behaviour generally, and hypothetical insurers would worry that they would suffer from these effects. Secondly, it is often possible for high earners to organise their affairs through clever accounting in order to minimise their tax exposure under a broad-based system. Typical examples are the shifting of personal income to business or capital-gain income through the creation of a business or payment in shares, the receipt of perks,⁷⁵⁷ or by postponing income until retirement.⁷⁵⁸

Hypothetical insurers would also worry that the broad-based taxes will fall disproportionately heavily on them should they turn out *not* to be among the fortunate. As there are many types of taxation, almost everyone will get caught in the web, and usually over and over again. Thus, while high-earners can often find ways to reduce their tax bills, low and middle earners will find that they have little recourse to such activities and that they will contribute greatly to the public revenue. While this does mean that there are plenty of resources available to government, the general approach does not tax the highly fortunate at higher rates than the less fortunate.

⁷⁵⁶ In addition, broad-based taxes are attractive because they will be compatible with whatever system other countries have. I abstract from this problem in this work by considering a single-country case. However, if international agreements were not forthcoming, then a broad-based tax-base may be the best option. The comprehensive approaches I discuss in the following sections would require either international agreement to have a universal tax system, or—more attractively—to agree on a shared tax-base and to share revenues and information on individuals who have interests in multiple countries, as described in Bamford, 'Comprehensive Lifetime Taxation of International Citizens: A Solution to Tax Avoidance, Tax Competition, and Tax Unfairness'.

⁷⁵⁷ The industry of "corporate hospitality" appears to have grown massively in recent decades.

⁷⁵⁸ This is only possible where retirement savings receive government support or preferential tax-treatment, as they currently do in the UK. This support may not be available under a just tax system, though I will not consider this issue here.

This lack of focus on the more economically fortunate is exacerbated because the multiple taxes, even if somewhat progressive, are calculated independently of one another. As a result, someone who is fortunate in one area—say in their family background—will pay as much tax as others who are fortunate in that area. However, another person may be fortunate in lots of ways, also being highly talented and skilled. While this person may pay more in other taxes, this will be limited due to the limited progressivity of each separate tax. Hypothetical insurers would be reluctant to set tax-rates on the separate bases sufficiently progressively to tax the multiply-fortunate person at a high rate. Such rates would fall then very heavily on those who are fortunate in only one area and not others, meaning that it will not fall as effectively upon the most fortunate. It would also interfere with the running of the economy as it would create incentives of different kinds for different people to change their behaviour.

In conclusion, the broad tax-base is good at raising tax revenue, but only up to a certain point, which might not provide very much to fund the programmes described in the previous chapter. Attempts to raise more revenue than this will usually hit the majority of earners more and the economically lucky less, along with producing detrimental effects on the economy. Insurers would then face an unattractive choice between raising more revenue for redistribution at the expense of those who are not particularly lucky, or not to do so. If there were no alternative, insurers would prefer a broad based tax system that would tax gifted income and wage income at a progressive rate, and in which sales and VAT-style taxes played a minimal role.⁷⁵⁹

Due to the limitations of the broad-based approach, I will consider the idea of *comprehensive personal taxation*; taxes that attribute gains to the person. These are more attractive than broad-based taxes to the extent that they can more accurately

⁷⁵⁹ Since these fall on low earners particular hard, given that the taxes are proportional, and that low earners generally have no choice but to spend a large proportion of their income on necessities.

differentiate the more fortunate from the less fortunate and apportion tax accordingly. Furthermore, being comprehensive, they should not cause the sorts of accountant-led-shifting and economic behaviour distortions that the broad-based tax encourages.

7.4 Comprehensive income tax

I will now discuss attempts to focus taxation more comprehensively on each person. The original proposal of this kind was the *comprehensive income tax*, also known as the *Schanz-Haig-Simons* (S-H-S) approach after three prominent proponents.⁷⁶⁰ The tax is also known as the *accretion* tax, as it taxes the accretion in wealth during the period. To calculate someone's income for a year, we would add the money he has spent to the increase in his wealth in the period.⁷⁶¹ The thinking is that the person will either use their income on personal expenditure or it will increase their overall wealth. This has been taken to be an ideal tax-base because it accurately reflects the use of, and increase in, economic power that the taxpayer has obtained during the year. It tracks the *gain* during the period. There is no way for a taxpayer to shift resources in order to avoid the tax,⁷⁶² and so it has the potential to be very progressive without interfering too much with economic incentives. This means that it will effectively indicate the fortunate and less fortunate and enables transfers to take place from one to the other.

Unfortunately, the accretion approach is not very practical. It—technically—requires the government to know exactly what each person spends each year, and exactly what their wealth was worth then and now. The government would need to value *everything*

⁷⁶⁰ Robert M. Haig, 'The Concept of Income—Economic and Legal Aspects', in Richard A. Musgrave and Carl S. Shoup (eds.), *Readings in the Economics of Taxation* (Homewood, Ill.: Irwin, for the American Economic Association, 1959), Simons, *Personal Income Taxation: The Definition of Income as a Problem of Fiscal Policy* at 49. The approach is traced back to Schanz by Richard Goode, 'The Economic Definition of Income', in Joseph A. Pechman (ed.), *Comprehensive Income Taxation* (Washington D.C.: Brookings Institute, 1977), 1-30 at 7-8. His reference is to Georg Von Schanz, 'Der Einkommensbegriff Und Die Einkommensteuergesetze', *Finanzarchiv*, 13 (1896), 1–87. For a (slightly) more recent discussion of the ideal see Joseph A. Pechman (Ed.), *Comprehensive Income Taxation* (Washington D.C.: Brookings Institute, 1977).

⁷⁶¹ This 'increase' could of course be negative if people divest their savings or investments to fund consumption.

⁷⁶² Apart from destroying resources, which would be a self-defeating strategy to reduce one's tax bill.

every year, an operation that would be expensive and impractical.⁷⁶³ Hypothetical insurers would have another serious concern. Taxing accretion in the value of property will effectively install a wealth tax on gains in so-called paper-value.⁷⁶⁴ Insurers would therefore fear that they might not have the liquid resources to pay tax on increases in their wealth, which would result in their having to prematurely sell items they own.⁷⁶⁵ This might make it more difficult for them to make and enact their plans. So, assume that someone has built a cottage on some land that is later found to contain a lot of gold. The owner would be forced to sell their cottage to pay their tax bill on the gold they initially knew nothing about. It therefore shares problems with the wealth tax. This also affects our business owner, robot builder and art lover,⁷⁶⁶ each of whom would find it hard to live out their life according to their choices, a risk that insurers would not wish to take.

For these reasons, consumption taxation is now a more popular choice for advocates of comprehensive personal taxation.⁷⁶⁷ I will therefore consider this tax-base next.

7.5 Consumption tax

An alternative comprehensive approach is therefore to ignore the wealth side entirely and focus only on the market value of each person's *consumption*.⁷⁶⁸ So if I earn

⁷⁶³ Andrews, 'A Consumption-Type or Cash Flow Personal Income Tax', at 1141-3. Indeed, a proponent of the approach appears to support a realization-based approach rather than an accretion-based one, Simons, *Personal Income Taxation : The Definition of Income as a Problem of Fiscal Policy* at 212.

⁷⁶⁴ Indeed, the accretion approach is referred to as a wealth tax in Jeff Strnad, 'Periodicity and Accretion Taxation: Norms and Implementation', *The Yale Law Journal*, 99/8 (1990), 1817-911 at 1832.

⁷⁶⁵ Andrews, 'A Consumption-Type or Cash Flow Personal Income Tax', at 1143.

⁷⁶⁶ Described in section 7.1.

⁷⁶⁷ Some propose that the broad-base tax system should more closely resemble the consumption tax-base; J. E. Meade and IFS, *The Structure and Reform of Direct Taxation : Report of a Committee [Set up by] the Institute for Fiscal Studies [and] Chaired by J.E. Meade* (London: Allen and Unwin [for] the Institute for Fiscal Studies, 1978), J.A. And King Kay, M.A., *The British Tax System* (London: Open University Press, 1990). Others argue for a complete move to consumption taxation, Edward J. McCaffery, *Fair Not Flat: How to Make the Tax System Better and Simpler* (Chicago: Chicago University Press, 2002), Laurence Seidman, *The Usa Tax: A Progressive Consumption Tax* (Cambridge, Mass.: MIT Press, 1997).

£100,000 in a year but save £50,000 and spend £50,000 then I would pay tax on the £50,000, the same as someone who earned £10,000 and spent £50,000. There are two approaches to the collection of consumption taxes. I will call the first *point-of-sale* as it requires retailers to collect the tax when items are bought by consumers, as with sales taxes and VAT-type taxes.⁷⁶⁹ The alternative approach is a *cash-flow based* tax system, which accounts for income from all sources but allows investors to *deduct* their investments from their taxable income. When the investments are cashed in, they count as taxable income at that later stage. The cash-flow approach is therefore somewhat like a deferred comprehensive income tax. I will consider each version of consumption taxation in turn before discussing the general problems with consumption taxation.

A progressive point-of-sale tax system would be very unattractive. If people were required to report their spending at the end of each year it would be very labour intensive to check all receipts and to ensure that taxpayers have not failed to report all spending. For this reason, as well as one of convenience to taxpayers and general administrative feasibility, it would be better to withhold tax revenues at source. This would involve retailers charging an additional tax on each item they sell. This is straightforward where there is a proportionate tax rate, assuming retailers comply with the tax, but is much more difficult where progressive taxation is required. This would require retailers to know the tax-rate of each customer and add the correct amount of

⁷⁶⁸ Support for consumption taxation has been traced back to Hobbes, *Leviathan* at 386, Dudley Jackson, 'Thomas Hobbes' Theory of Taxation', *Political Studies*, 21/2 (1973), 175-82 at 180. However, whether Hobbes really meant what we now consider consumption taxation is controversial. We can be more certain that such prominent thinkers as J.S. Mill and John Rawls have endorsed consumption taxes; Mill, *Principles of Political Economy: Books IV and V* at 164 (Book V, Ch 2, S4), Rawls, *A Theory of Justice: Revised Edition* at 246. The modern debates about consumption taxation were sparked by Nicholas Kaldor, *An Expenditure Tax* (London: Allen & Unwin, 1955). More recent advocates have included Meade and IFS, *The Structure and Reform of Direct Taxation*, Kay, *The British Tax System*, Seidman, *The Usa Tax: A Progressive Consumption Tax*, McCaffery, *Fair Not Flat*.

⁷⁶⁹ VAT is paid on each transfer. However, businesses who have purchased goods can claim VAT back on their expenses. The idea is that the businesses in the product chain each pays VAT only on their gains, though the final non-productive consumer of the product cannot claim anything back.

taxation accordingly. It might be possible with modern IT technology to develop a system by which to do this, though it would make purchase calculations much more difficult for consumers. This is because consumers would have to add their personal tax rate on to the advertised pre-tax cost of each item they are considering, making it inconvenient for taxpayers. Furthermore, it suffers from the general disadvantages of consumption taxation I will discuss after the alternative—cash-flow—approach.

The cash-flow approach would measure the income that people receive from wages, investments, gifts and other gains, and tax the recipients on this income minus the amount that they invest in recognised investment vehicles.⁷⁷⁰ This approach would therefore ensure that high-earners could not recharacterize their income in order to avoid progressive rates, and also ensure that people who were lucky in multiple areas were taxed accordingly. However, the tax is only applied when people divest their investment, meaning that they can retain control over their gross income until they spend it. This is an important difference to which I will return when criticising the consumption approach. Before doing so, however it is worth considering its advantages.

One obvious advantage of the consumption tax-base for insurers is that it would not interfere with the plans of our cottage owner, art lover and robot builder. It does not mimic wealth taxes in the way that the accretion-income approach does.⁷⁷¹ The

⁷⁷⁰ Andrews, 'A Consumption-Type or Cash Flow Personal Income Tax', Michael J. Graetz, 'Implementing a Progressive Consumption Tax', *Harvard Law Review*, 92/8 (1979), 1575-661. One practical issue is whether the tax-base is tax-inclusive or tax-exclusive, where it is often assumed that consumption taxes would be of the latter sort. Tax-exclusive calculations would effectively allow taxpayers to pay taxes out of their savings without it affecting their tax-liability, meaning that much more progressive rates would be required in order to achieve the same *effective* progressivity, Graetz, 'Implementing a Progressive Consumption Tax', at 1482-3. As such, in order to achieve the same progressivity as a tax-inclusive 98% rate, a tax-exclusive consumption tax would have to apply a rate of 4,900%.

⁷⁷¹ Supporters of luck egalitarianism and equality of resources will also find consumption taxes attractive as people can choose to save at the market rate without any interference from taxation; Rakowski, 'Transferring Wealth Liberally'. The market rate of returns to investment, after all, reflects the desires of others. However, it should be emphasised that the idea of equal opportunity costs *includes* the decisions of hypothetical insurers, and as such the tax-free returns to investment has no

consumption tax-base obtains this advantage by excluding wealth entirely from taxation, but I will argue that it goes too far in the other direction as it ignores *returns* to wealth. Another advantage claimed for consumption taxation is that it encourages saving and investment, an issue I discussed and dismissed in section 7.2.

A question arises regarding the treatment of wealth transfers from one person to another—gifts and bequests—under a consumption tax-base. Most assume that consumption taxation would *exclude* such transfers from the tax-base as long as the recipient immediately invests the wealth upon receipt. I discussed this issue when discussing the desirability of taxes of wealth-transfer income, arguing that exempting gifts would not be attractive to hypothetical insurers. As an alternative, it would be possible to include such transfers in taxation by labelling them as a form of consumption by the donor.⁷⁷² However, this would create a perverse hybrid-style tax which would take the worst from all proposals; particularly since the tax would fall on the donor rather than the recipient.⁷⁷³ This compromise would perhaps be attractive if it were not possible to find an attractive income-based approach, which I will consider in the following section. I will therefore focus here on the traditional wealth-transfer-exclusive consumption tax.

I will now consider the significant difference between consumption taxation and its rivals; its treatment of savings and investments.⁷⁷⁴ Consumption taxes would exempt

special moral status. In addition, arguments based on the equal position of savers and spenders depend upon the interpretation of the importance of market-rates, where it is unclear how to measure equal positions inter-personally and inter-temporally. Furthermore, the existence of infra-marginal returns undermines the argument entirely anyway, see Barbara H. Fried, 'Fairness and the Consumption Tax', *Stanford Law Review*, 44/5 (1992), 961-1017 at 982-5, Deborah H. Schenk, 'Saving the Income Tax with a Wealth Tax', *Tax Law Review*, 53 (2000), 423-76 at 460. So while hypothetical insurers would want to ensure that they had the chance to save for the future without penalty if they desire to do so, they would not be concerned that people can get the same returns that they would under a *laissez-faire* system. This is because those with greater social and market luck will be in a better position to save in the first place, and are likely to make better use of their savings.

⁷⁷² This is a further reason to prefer accessions-type to estate-type taxation.

⁷⁷³ I argued that this was unattractive above, 274-5.

⁷⁷⁴ Alvin C. Warren, Jr., 'Fairness and a Consumption-Type or Cash Flow Personal Income Tax', *Harvard Law Review*, 88/5 (1975), 931-46 at 938-41.

savings from taxation until they are spent, which defers the tax—assuming the consumption tax rates are much more progressive than the income tax.⁷⁷⁵ However, those savings can be invested to obtain additional returns. The consumption tax-base has no way to differentiate the returns to savings of this kind from other forms of income that the less fortunate will have to work for. Essentially, the more fortunate can invest their good fortune and use it to receive more resources,⁷⁷⁶ but attempts to tax this will also fall upon some of the less fortunate.⁷⁷⁷ Two factors exacerbate this. The first is that investors can achieve infra-marginal returns—returns above that which would induce them to save.⁷⁷⁸ Hypothetical insurers would have a strong reason to want to tax gains from investments given that some of the gain will be a bonus to the saver. The second factor is that the more able and socially connected are likely to have greater success with their investments.

Hypothetical insurers would prefer tax revenues to come from investment returns than other sources—consumption—which affect the less fortunate as well. The leisure-loving fortunate⁷⁷⁹ would be able to convert their investment returns into leisure without incurring any additional taxation by spending the average amount. If the

⁷⁷⁵ To be clear at this point, even though will I discuss these issues below, there are two reasons why consumption taxes need to have more progressive rates than those of income taxes in order to achieve the same outcome. The first is that the untaxed investments will in turn have gains which accrue to the owner. The second is that the calculation is presumably (though not necessarily) tax-exclusive. That is to say that people can use untaxed investment revenue to pay their tax bills, which would not be possible under an income tax.

⁷⁷⁶ Some have argued that the marginal return to *risk-free* investment is very low—around 0.5%. As a result of this, the fact that people can alter the risk-profile of their investments, and the fact that the government allows deductions from lost investments there is actually very little difference between consumption and income taxation Joseph Bankman and Thomas Griffith, 'Is the Debate between an Income Tax and a Consumption Tax a Debate About Risk? Does It Matter?', *Tax Law Review*, 47/2 (1992), 377-406, William M. Gentry and R. Glenn Hubbard, 'Distributional Implications of Introducing a Broad-Based Consumption Tax', *Tax Policy and the Economy*, 11 (1997), 1-47. If the difference between the tax-bases were that small, then the case for either tax-base over the other would be mitigated. However, I would suggest that hypothetical insurers would want to limit the extent to which governments subsidised investment losses in the up-front matter that is assumed in these calculations. Furthermore, Gentry and Hubbard compare flat-rate taxes, which are much more likely to be similar in nature between bases while the question here is how to introduce progressive taxation without undesirable side-effects on individuals and the functioning of the economy.

⁷⁷⁷ Namely, those with a strong preference for work and consumption.

⁷⁷⁸ Fried, 'Fairness and the Consumption Tax', at 982-5.

⁷⁷⁹ As well as some of those closer to the statistically normal preferences.

consumption tax-base is to generate as much revenue as rival tax-bases it would have to tax at much higher rates. It would then tax those who are hard-working-but-less-socially-and-market-lucky to a greater extent, in order to make up for the lower revenues from the more fortunate.⁷⁸⁰ In addition, the avoidance of work by the leisure-loving fortunate would decrease the amount of work done in society, probably increasing prices and affecting the economy.

A further worry regarding consumption taxes is their dynastic element.⁷⁸¹ The gold owner will not have to pay any tax upon the find, but *nor will their heirs* if they inherit the gold. The wealth—if unspent—can therefore pass untouched from generation to generation, conferring advantages on each. One worry insurers may have is that the dynasts will have the better opportunities as a result of their greater—untaxed—leisure. So for example, the dynasts would be able to improve their human capital—developing new skills, doing unpaid internships—while others have to do productive work.⁷⁸² As I emphasised in section 3.1, leisure is one form of advantage and consumption taxes may not tax this form of advantage. However, combining a consumption tax with the hourly-averaging system would mitigate this difference.⁷⁸³ Another worry with regard to business-ownership dynasties is that they will be less efficient, as people will obtain great economic power without necessarily having any economic or investment skills.

The consumption tax is more attractive than the accretion-base. It will interfere less with people's ability to make and carry out plans. However, insurers would worry that *progressive* consumption taxation is inconvenient to taxpayers, and that it is less

⁷⁸⁰ To add to the case against the alleged progressivity of consumption tax, see the following paper, which shows that inequality would be greater over time with a consumption tax that raised as much revenue as an income-based equivalent; Nigar Hashimzade and Gareth D. Myles, 'Inequality and the Choice of the Personal Tax Base', in Peter J. Lambert (ed.), *Research on Economic Inequality, Volume 15: Equity* (Amsterdam: Elsevier JAI, 2007), 73 - 97.

⁷⁸¹ A further, minor, consideration might be that the wealthy dynasts would not spend their resources in the hope that they may find a way for their descendants to avoid taxation in the future.

⁷⁸² Our old friend "accumulated advantage" again, see page 116.

⁷⁸³ I described this in section 6.2, and will discuss averaging again in sections 7.7-7.8.

progressive than income taxes. It will either raise less revenue for the programmes described in chapter six, or raise the same amount of revenue but tax less-fortunate consumption-lovers more heavily. I will therefore consider the possibility of a hybrid comprehensive tax.

7.6 A refined comprehensive income tax-base: *Acquired-income*

The comprehensive tax-bases considered in the previous two sections are ideal types or models and fortunately we are not faced with a choice between two problematic options. After all, ideals are irrelevant aside from their features. I will therefore propose a hybrid comprehensive tax-base which takes different elements from the consumption and income ideals.⁷⁸⁴ I will begin by reviewing the advantages of each extreme approach, after which I will provide a general outline of the hybrid *acquired-income* base that will be most attractive to hypothetical insurers. I will finally run through some further cases to clarify whether they should be included or ignored for the purposes of taxation, or to clarify when it will be the most attractive time to apply taxation in the case.

The advantage of comprehensive income is that it captures more revenue and sooner, and from the more attractive sources. However, undertaking an annual valuation exercise would be unattractive as it would be onerous on governments and taxpayers. Furthermore, as people would have their gains taxed before realising them it would become harder for people to carry out their plans without interference from taxation. The consumption tax-base does not suffer from this problem, since it taxes assets upon consumption.⁷⁸⁵ However, this feature is the one that undermines progressivity. We

⁷⁸⁴ Some have suggested that the current system is a hybrid between the consumption and income ideals, Andrews, 'A Consumption-Type or Cash Flow Personal Income Tax', at 1117, 20, Edward J. McCaffery, 'Tax Policy under a Hybrid Income-Consumption Tax', *Texas Law Review*, 70 (1992), 1145-218. However, while this may be a more appropriate label in the US than other countries, I think they mean that the broad-based approach taken has both consumption-type and accretion-type elements.

⁷⁸⁵ Or, in the cash-flow case, are liquid assets available for consumption.

can see that the timing issue is crucial. Both extremes appear problematic, and so I propose a hybrid approach.

I propose that comprehensive personal taxation should be applied to the *realized* gains that people *acquire*.⁷⁸⁶ This would be done by installing a cash-flow tax that did not allow deductions for investments. I will call this proposal the *acquired-income* tax-base to distinguish it from the traditional *accretion-income* approach.⁷⁸⁷ On the *acquired-income* approach, all incoming money and items of property would count as taxable based on their money value at the time of receipt—though with a small exemption I will mention below. Furthermore, when an individual realizes a gain on an investment or item of property, this *gain* would count as income.⁷⁸⁸ This is to count capital gains as part of the personal tax-base. The attractive feature here is that people would only pay tax on their gains when they sell the item and realise the gain. This means that the cottage owner would only have to pay tax on their gold when she sells her cottage, in contrast to the *accretion* approach whereby she would have to sell it earlier. This is an attractive compromise since insurers would want to tax people who have instances of

⁷⁸⁶ McCaffery presents what he refers as pragmatic reasons for preferring a hybrid approach which has come about due to political compromises, McCaffery, 'Tax Policy under a Hybrid Income-Consumption Tax', at 1174-5. In contrast, I think that many of these compromises have come about for sensible reasons when looked at through the lens of this thesis.

⁷⁸⁷ An alternative name for the new approach would be to refer to it as a Newly-Acquired-Resources for Consumption (or NARC) tax-base.

⁷⁸⁸ This one area of the proposal that may appear unattractive for practical reasons. It would be necessary to track the ownership of items of property that generally appreciate in value in order to ensure that gains are accurately captured. Ownership information is already kept by governments regarding ownership of land and motor vehicles, though for different reasons, and it should be possible to integrate these databases with the tax system. I do not think that this would be difficult with modern IT systems, and it would be possible to create further 'asset registers' for other items that tend to appreciate such as art works and jewellery. These asset registers should be reasonably self-policing since every seller would have an incentive to register the trade at a lower value and every purchaser would have an incentive to register the trade at a higher value; meaning that the true value will be recorded. The one exception to this would occur where people wished to gift items to others by selling them at a lower value, and it would be necessary for the authorities to trawl for such gifts.

fortune of this kind as long as it did not risk interfering with their plans. And why should it interfere with their plans to have a *financial* windfall taxed?⁷⁸⁹

I should make clear how the tax-base should treat death and bequests. I propose that it would be most attractive to apply *constructive realization*.⁷⁹⁰ This would ensure that the gains are taxed and utilised to the benefit of the unlucky rather than simply the fortunate heirs. There would be no place for an estate tax as the gains to the beneficiaries would be included as taxable income for the receipt.⁷⁹¹ In this way, wealth transfers will be effectively taxed—the gain to the previous owner and to the new owner—without interfering with anyone’s plans.⁷⁹² In addition, this should be more economically efficient; business-builders will be able to keep control of their business while they are alive, while their—probably less able—heirs will not automatically assume control.⁷⁹³

⁷⁸⁹ I emphasise that the windfall is financial here as this makes clear that hypothetical insurers would be interested in financial luck and less interested in other forms of luck. This explains some of the differences between the acquired and accretion-income approaches that I will go on to explicate. Many writers have assumed that what should be taxed is some form of *psychic* pleasure, since the early discussions about tax-bases, following Irving Fisher, *The Theory of Interest* (New York: The Macmillian Company, 1930), reprinted in Irving Fisher, 'Income and Capital', in R. H. Parker and Geoffrey Colin Harcourt (eds.), *Readings in the Concept and Measurement of Income* (London: Cambridge U.P., 1969), 33-53 at 34-6. Hypothetical insurers would not choose to account for any such notion of inner, psychological, pleasure even if it were measurable, since it would be invasive and would potentially interfere with their non-hedonic-based plans. This matter would concern hypothetical insurers in one case, however, which is where business owners use their power over their business resources to directly benefit their own happiness rather than pursuing profit through the satisfaction of the needs and wants of others. Such a business would not be a legitimate entity worthy of public recognition and special tax treatment.

⁷⁹⁰ This means that the property of the deceased is valued as if it were realized—sold—at the time of death. Andrews, 'A Consumption-Type or Cash Flow Personal Income Tax', at 1147.

⁷⁹¹ It is therefore similar to the accessions tax described in section 7.2.

⁷⁹² Some heirs may claim that their plans have been affected by the taxation of their inheritance income, on which they had designs. However, this would be an invalid claim, since the legitimate plans we take seriously would have to be made after the imposition of taxation based upon hypothetical insurance.

⁷⁹³ Those who would therefore worry about the economic disadvantages of transferring economic power to the control of a national sovereign wealth fund in the case of income-based taxes would therefore have less to worry about on this acquired-income approach in comparison to the accretion-income approach. My claim above is that while the business-builder may be better than the sovereign wealth fund at understanding and managing their business, the professional sovereign wealth fund is likely to be better than the *heirs* of a success business-builder. After all, the wealth fund could appoint the heir if they have a good claim to run the company.

What differentiates the acquired-income from the accretion-income approach is that gains are only taxed when they are *acquired* in a financial form—or take the form of a newly acquired item of property—by their recipient. I refer to it as an “income-based” approach because gains on savings and property are taxed upon death or divestment. However, it will be important to clarify some further differences between the hybrid *acquisition-income approach* and the *accretion-income approach*.

It is generally assumed that the accretion-income approach would require the taxation of *imputed* income on the rental income of owned items such as houses,⁷⁹⁴ and also on human capital.⁷⁹⁵ The acquired-income proposal, however, would ignore these. If imputed rent were included in the tax-base, then hypothetical insurers would fear that they would be unable to afford the tax on the rental value of items that have become more valuable while still part of their plans. Including human capital in taxation would be unattractive to insurers as it would compel those with valuable skills or talents to use them.⁷⁹⁶

One possible reason to explain the attractiveness of the consumption approach to those interested in tax-bases is because of its better treatment of gains over time than the accretion-income approach. However, as Vickrey realized, many of the disadvantages of progressive income taxation could be mitigated by averaging. I will therefore discuss the idea of calculating tax on a lifetime basis in the following section. For now, it is useful to make clear that—whether using lifetime averaging or annual tax calculations—it will be necessary to account for the difference in changes in the value of money over time.⁷⁹⁷ This is an issue where multi-year investments are concerned, as well as when taxing on a multi-year basis (as I will discuss in the following section). If

⁷⁹⁴ William F. Hellmuth, 'Homeowner Preferences', in Joseph A. Pechman (ed.), *Comprehensive Income Taxation* (Washington D.C.: Brookings Institute, 1977), 163-201.

⁷⁹⁵ Andrews, 'A Consumption-Type or Cash Flow Personal Income Tax', at 1145-6. Though this is not assumed by Goode when presenting a S-H-S type tax, Goode, 'The Economic Definition of Income', at 12-3.

⁷⁹⁶ In other words, it would take a similar form to an endowment or capacity tax.

⁷⁹⁷ This is less of a problem for the accretion approach as it would revalue each item each year.

inflation were ignored, savers would face an additional cost when saving or purchasing an asset for the future, and so insurers would want to ensure that taxation focused on *real* windfall gains rather than “paper-value” gains that do not represent any improvement in relative material wealth.⁷⁹⁸

When explaining that gifts would count as income under the *acquired-income* base I mentioned that there would be an exemption. I propose that hypothetical insurers would choose to exempt low-value items of property from taxation for practical reasons. Many people give each other gifts as a token of affection and these gifts do not substantially affect the relative material wealth of members of society. It would be very difficult to keep track of so many small items, and they will often cancel each other out—as in the case of taking it in turns to buy rounds of beer.⁷⁹⁹ However, in order to ensure that this exemption was not used as a route to the transfer of substantial amounts of wealth in a tax-exempt fashion, it would be necessary to impose an annual limit on the estimated net total of such gifts between two people.⁸⁰⁰

Another issue that I have mentioned is that of deductions for losses on investments. Both the accretion-income and consumption tax-bases would allow tax deductions for investment losses.⁸⁰¹ As with accretion-income, a decision would need to be made regarding whether to *allow* losses to be deducted. The downside of allowing such

⁷⁹⁸ Some writers, such as Andrews, 'A Consumption-Type or Cash Flow Personal Income Tax', at 1143-5. appear to think that inflation represents a problem for lifetime and income-based taxation as it is impossible to get a perfectly accurate of the rate of inflation that is fair to all. However, I do not see that it is necessary to determine a *perfect* inflation rate. Rather, we should consider whether it is necessary to take account of inflation, and if we accept that it is then it is legitimate to apply the best and fairest calculation available from quasi-independent government statistical departments (the “Office of National Statistics” in the UK).

⁷⁹⁹ Or whatever drink they prefer.

⁸⁰⁰ Or, perhaps more accurately, two “taxable entities,” as it may be possible for couples to merge their tax accounts. I would suggest that this should be allowed, but there is no room to argue for this here, except to say that if two people merge their property, assets, and decision-making then it seems that hypothetical insurers would want to judge their fortune as a unit rather than separately.

⁸⁰¹ This rule would have to be made explicit and applied directly in the case of the accretion-income approach, though it would appear the default choice since the loss would cause a drop in wealth for the investor in the period in question. On the consumption tax the deduction would be applied “in effect,” since the invested income would have been excluded from taxation and since it is then lost it would never be available for consumption and hence taxed.

deductions is that it will reduce future tax revenues from investment returns, which could be used for the unfortunate. An additional worry is that it may discourage careful investment.⁸⁰² However, the argument for allowing deductions is that it would skew investment decisions back towards more speculative investments that are considered risky by others. This would be useful in order to encourage innovations that would improve economic efficiency and productivity. I therefore propose to allow deductions, but to a limited extent, by allowing deductions only from *future investment returns*, rather than present or past income. This means that someone with a riskier investment profile could be in the same tax position as someone who makes more cautious conservative investments, encouraging a good blend of investment strategies rather than encouraging one type or the other.⁸⁰³

I have now presented the basic features of the *acquired-income* tax-base. It is designed to tax the gains to each individual in such a way that it will distinguish the fortunate from the less fortunate, making it preferable to the consumption tax approach. The acquired-income base also avoids the problems of the accretion-income approach. These are that it makes it harder for people to live in accordance with their plans, and that it would require the annual valuation of all items of property. Both problems are solved by ignoring all gains until they are realized. At the point of realization it becomes clear what the overall gain is on the property, and taxing that gain will not affect the plans of the owner, since the item is clearly no longer part of their plans.

7.7 Tax-rates and lifetime averaging

I have assumed since chapter five that hypothetical insurers would choose to have progressive tax-rates.⁸⁰⁴ Indeed, it is on this basis that they would find the *acquired*

⁸⁰² Another worry is that it may encourage people to take out loans in order to speculate. If this were the case, then perhaps there would need to be restrictions on the investment exposure to which one person can expose themselves (and therefore their society) to.

⁸⁰³ Furthermore, such deductions should only be allowed on specified types of investments, which would have to be approved as true investments rather than tax avoidance scams.

⁸⁰⁴ Sections 5.1 and 5.8.

income tax-base the most attractive. I will now discuss tax-rates in more detail, though I will not specify *exact* levels since these will depend upon the empirical details of a particular society. However, I will indicate the limits on progressivity, and in the following section I will present the sorts of tax-rate graphs that insurers will find attractive. However, before presenting the graphs, I will explain that there are some further *qualitative* issues of tax calculation to consider. The first is the taxable period over which to apply the tax-rates. Currently, taxes are either calculated on a particular *event*—such as stamp duty or estate taxation—or have a horizon of a year—such as income taxation. In the latter case, once the horizon is reached the tax-base is reset to zero for the new period. In this section I will explain the advantages of expanding the horizon to a lifetime by utilising averaging. In the following section I will explain the further advantages of *hourly*-averaging.

I have said that taxes should be progressive,⁸⁰⁵ and explained in section 5.7 that it is self-defeating for effective marginal and participatory tax-rates to reach 100%. This is the extreme limit on tax progressivity, but insurers would consider whether 80% or 90% tax-rates would also have such damaging effects on incentives—and thereby economic activity and growth—as to make them unattractive. Furthermore, insurers would worry that some products would be rendered extremely expensive—or unavailable—due the high tax-rates on their producers. Insurers would worry that they may be potential producers who would not be able to undertake the work due to reduced demand, or they may be potential consumers who are unable to obtain their preferred product. This would interfere with their ability to carry out their plans. In this section and 7.8 I will present methods of tax-rate calculation that enable higher tax-rates without creating these disincentives.

⁸⁰⁵ For the precise definition of progressive taxation see footnote 14.

I described lifetime averaging in section 6.2, mentioning that that its attractiveness has long been recognised.⁸⁰⁶ Modern technology makes such averaging much simpler now than it would have been previously, and I provide a mathematical exposition of averaging calculations in the appendix.⁸⁰⁷ For now I will explain the advantages of lifetime averaging, through use of the examples of windfall-recipients and different career-paths. Those receiving windfalls may do so evenly over the course of their lives, but most windfall-recipients receive a few large windfalls at various points in their lives—for example when a relative dies. It is much more common for workers to receive a steady income over their lives, though this is by no means universal. Some jobs—such as doctors of medicine—require years of unpaid or low-paid training, followed by a relatively highly-paid career. Other people have careers whereby they start at a relatively low position in their field or company and work their way into specialist or high-responsibility positions. Self-employed workers are also more likely to have variable incomes; they often have to build up their reputations within their field, and sometimes have to spend a lot of time creating their product—for example artists or musicians—or updating their skills through re-training—for example technology consultants.⁸⁰⁸ Another example is that of time-limited careers, such as professional sportspeople who can earn large sums in their twenties and thirties, but then retire with uncertain prospects.

⁸⁰⁶ Multiple-year ‘moving average’ taxes were introduced in Wisconsin and Australia in the 1920s and 30s, and as part of US federal income tax from the 1960s to 80s; Vickrey, *Agenda for Progressive Taxation* at 105-6, Vickrey, *Public Economics: Selected Papers by William Vickrey* at 169-72. The US federal system is from the Internal Revenue Code §§ 1301-1305 (1964), and discussed in Schmalbeck, ‘Income Averaging after Twenty Years: A Failed Experiment in Horizontal Equity’.

⁸⁰⁷ The appendix describes averaging using hour-credits, a system I described in section 6.2 and will discuss again in section 7.8. However, it is possible to use the equation to calculate time-based averaging by replacing hour-credits with “years of adulthood” (or months or weeks).

⁸⁰⁸ Though I note that many such self-employed workers have scope to smooth out their income such that it is received in less variable portions. Artists and musicians can receive “advance payment” from publishers. Those who have companies can use their company status to defer payments from their company accounts to themselves in order to pay for fallow and re-training periods.

As I pointed out in section 5.1, Dworkin proposed averaging for accessions—or windfall—taxation.⁸⁰⁹ This is attractive because it allows us to distinguish between those who have higher lifetime cumulative windfalls from those with larger but infrequent windfalls which do not add to as much. Indeed, without averaging, insurers may choose to have much lower taxes on windfalls, in order to ensure that they are able to give and receive resources to others without facing the prospect of punitive taxation even on relatively low transfers. Furthermore, those who receive their windfalls in one large sum would fare much better under a lifetime-averaging system. The same advantages apply to workers. Where taxes are calculated on an annual basis, there is no way to distinguish those who have an unusually high income in a particular year from those who receive a high income more consistently in their working lives, which will better indicate good market fortune.⁸¹⁰

Annual tax calculations reflect the amount of time that the earth takes to go around the sun,⁸¹¹ but resource egalitarianism focuses on whole-lives and insurers will also take a lifetime perspective. Lifetime averaging also fits in better with the principle of abstraction which implies that people should be as free as possible; annual taxation would discriminate against those who wish to organise their lives very differently from one year to another⁸¹² in comparison to those who have a more consistent lifestyle.

However, this does not create the problems highlighted for complete-life approaches to distributive justice. The problem with these views is that those with shorter lives⁸¹³ are treated either favourably or badly—and others therefore *vice versa*—by an

⁸⁰⁹ See footnote 526, and surrounding text.

⁸¹⁰ That is to say, the lifetime rates on the consistently fortunate can be higher without correspondingly increasing the tax-rates of all. In addition, the PTR and METR rates for those with temporary good fortune will be much lower when calculating on a lifetime average basis.

⁸¹¹ Annual taxation therefore makes more sense than half-yearly taxation, since it will average out any seasonal variations.

⁸¹² For example in spending one year working and earning a lot and then the following year at leisure.

⁸¹³ For example because of an incurable terminal illness.

approach which compares people by their lifetime total.⁸¹⁴ Those with shorter lives are treated favourably if they receive the same—*total*—allotment of resources over a shorter period, and they are treated badly if everyone receives an *average* amount of resources at each segment of time meaning that they receive less in total. The philosophical view here is total-life, but it does not imply that all individuals should receive exactly the same amount of “units” of something over their lives. Lifetime-averaging is a *policy* which insurers would choose when taking a whole-life perspective. The policy allows people to take account of their expected lifespan both at the hypothetical insurance and real-life stage. It taxes or subsidises people on a time-relative basis—taxing or subsidising for each time-period—and so shares attractive features with the averaging approach. However, it is still a total-life approach.⁸¹⁵

Lifetime averaging enables us to distinguish those with a *consistently* high windfalls or income—and therefore good fortune—from those with a temporarily high income—who may not have such good fortune overall. It therefore more effectively distinguishes between the highly fortunate and those who are not so highly fortunate. This enables higher tax-rates on those with high average earnings, without fear of excessive impact upon those with temporarily high income or a one-off large

⁸¹⁴ McKerlie, 'Equality and Time', at 476-7. This refers to the difference between the total and average view of complete-life egalitarianism. McKerlie compares three forms of time-sensitive egalitarianism; complete lives egalitarianism, simultaneous segments egalitarianism, and corresponding segments egalitarianism. Each of these potentially allows inequality of some form or another with regard to the other views. McKerlie argues that the simultaneous segments approach is superior, perhaps sharing this intuition with the social egalitarians discussed in footnote 302.

I take a complete life approach, in the sense that the approach here does not rule-out inequalities of resources at a particular point in time or at corresponding segments of people's lives, as long as these result from choices people make from a suitably equal position. However, this does not mean that the view imagines an equal amount of “units” of something which all people should obtain across their lives; this is the wrong way to consider equal opportunity costs. People can keep their resources for their whole lives or use them up, as they see fit. The examples that McKerlie gives against the complete lives approach do not apply, as any differences in people's positions at a particular point in time or corresponding section in life arise due to different choices that the individuals from an equal position. If these inequalities were enforced upon people by a dictator or king, as appears to happen in the examples, then they would be unacceptable even if the inequalities evened themselves up over a lifetime.

⁸¹⁵ Put another way, the numerator and denominator both rise over someone's lifespan.

windfall.⁸¹⁶ There are further advantages when moving from *time-based* to *hour-credit-based* averaging.

7.8 Tax-rates and hour-credits

I have shown the greater tax-rate progressivity that lifetime averaging allows without affecting those who do not have consistently good market luck. I will now describe the further advantages of applying the hourly-averaging described in section 6.2 to all taxpayers. The cost of applying the same system to all taxpayers rather than those with low incomes will be relatively small, and so the attractiveness of applying the system to the fortunate and the less fortunate is cumulative.

The advantages of utilising hour-credits to distinguish between the highly fortunate and those with average fortune are similar to those of utilising it to distinguish the least fortunate from those with temporarily low income. First, it more accurately determines the person's level of fortune, and—secondly—it retains the incentives to labour. Regarding the first point, in addition to the advantages of lifetime-averaging highlighted in the previous section, the use of hourly-averaging also enables us to distinguish those who have obtained a high income from *windfalls* from those who have obtained a high income from work alone. As I said in section 5.8, it is attractive to apply a higher tax-rate on windfalls since this will create the fewest economic disincentives. Even more importantly, it further enables us to distinguish—and therefore tax at the highest rates—those who are fortunate in *both* respects under an acquired-income tax-base.

The second advantage—economic incentives—occurs because of the substitution effects of hourly-averaging. High marginal tax-rates will reduce the incentives to work more hours, and perhaps incline high-earners to retire earlier.⁸¹⁷ The role of hour-

⁸¹⁶ Tax averaging also has the advantage that it smooths the taxpayer's income out over time, as mentioned on page 232.

⁸¹⁷ That is, high marginal tax-rates will encourage high-earners to reduce or withdraw their labour.

credits in hourly-averaging, however, is such that however high their tax-rate people always have a countervailing tax-incentive to work longer hours and to retire later. This is because hour-credits always create income for their recipient, and will also release past windfall income by reducing the tax-rate on it. As a result, insurers could support higher tax-rates on the most fortunate without the worry that this will cause them to withdraw their valuable labour.⁸¹⁸

Hourly-averaging enables the taxation of the highly able without their having the option of withdrawing their labour entirely. This also mitigates a further worry about high tax-rates. This is that those with greater ability will not use their abilities but will instead perform “regular” work, thus reducing the amount of highly valuable work performed in society. While my response to this worry is an empirical claim about which I have no conclusive evidence, I think that a substantial number of the more talented would still utilise their talents. The highly able will not have the option—at least any more than others—to avoid work, and so most will choose to use their abilities. After all, people work hard and in jobs that produce things that others value highly for reasons other than the high-net-pay, such as the desire for positions of power, to learn and exercise skills,⁸¹⁹ to be considered by others or themselves to be successful, and to contribute to their locality, society, nation or humanity.⁸²⁰ Furthermore, those with really high incomes usually obtain them because they are in “winner-take-all-markets,” and hence high taxation will fall on the rents they earn

⁸¹⁸ This point appears to be anticipated in Boadway et al., 'Optimal Redistribution with Heterogeneous Preferences for Leisure'.

⁸¹⁹ This has been emphasized as an important aspect of human existence since Aristotle, *The Ethics of Aristotle : The Nicomachean Ethics* (Harmondsworth: Penguin, 1976).

⁸²⁰ Some of these points are highlighted in Martin J. Jr. McMahon and Alice G. Abreu, 'Winner-Take-All Markets: Easing the Case for Progressive Taxation', *Florida Tax Review*, 4/1 (1998), 1-82 at 56, 65. This perhaps applies particularly to those who thrive in competitive environments, who may be most likely to occupy the highly paid positions.

rather than anything else.⁸²¹ Earning hour-credits for ensuring that one receives one's rents is not too arduous.

Another worry is that the more able might be inclined to switch to jobs with more attractive non-pay attributes. As well as shifting low-paid workers into more attractive forms of work, hourly-averaging will have a similar effect for some highly-paid workers—such perhaps as those providing legal, financial and accountancy services.⁸²² In order to obtain the more able workers, it will be necessary to offer even larger gross remuneration, making the products and services produced by those in such jobs more expensive.⁸²³ Consumers of affected jobs will then have to go without their products or pay more for them. However, insurers would be willing to pay more as consumers for the more important of these products and services in exchange for better insurance coverage. In the most important cases, these services usually fall on institutions rather than individuals, meaning the costs are then shared amongst many customers.

Despite these possible challenges, then, hourly-averaging should enable much higher tax-rates without the usual disincentives of such taxation. This enables tax-rates that reach the highest possible level; up to 99.99% on those who have an incredibly high hourly income. This is still attractive to insurers because those very few with such a high income will have received it through windfalls or on rents received.⁸²⁴ Taxing the

⁸²¹ See above, page 113-4, Frank and Cook, *The Winner-Take-All Society : How More and More Americans Compete for Ever Fewer and Bigger Prizes, Encouraging Economic Waste, Income Inequality, and an Impoverished Cultural Life*, McMahon and Abreu, 'Winner-Take-All Markets: Easing the Case for Progressive Taxation', at 47. The latter highlight that the 'winner take all market dramatically eliminates the equity/efficiency trade off.'

⁸²² A popular response to this at present is that lawyers, financiers, and accountants are merely rent-seekers whose attempts to earn money for themselves actively makes the society and economy worse-off. There is perhaps something in this, or at least the point that too great a proportion of the talented individuals in younger generations are devoting themselves to pursuits that add little to humanity. However, this may overstate the case for such taxation, since the greater financial efficiency that these efforts should in theory bring will be of (some) benefit to all.

⁸²³ This is the worry about the cost of negative tax-rates, see the example of Grant from page 126.

⁸²⁴ Those who have worked for extremely large fortunes—or potential fortunes where they have not cashed them in—have usually obtained those amounts by finding ways to obtain rents. Bill Gates, Warren Buffet, and Carlos Slim (the three richest men in the world in 2012) have been very successful at finding investments which will earn larger rents than others, with Gates having made

extremely fortunate at this level is attractive to insurers as it creates more resources for the less fortunate without impacting on those further down the fortune scale.

I will not specify the particular rates that should be applied, since these depend on the particular facts of the society in question. However, I will specify some graphs of lifetime hourly tax-rate that would be attractive to hypothetical insurers for the reasons I have outlined.⁸²⁵ The constraints are that the tax-rate should always rise,⁸²⁶ every income point must have one and only one tax-rate,⁸²⁷ and the graph should never be vertical nor reach 100%.⁸²⁸ Accordingly, all graphs rise up to a 99.99% rate which they should never exceed. Figures 7-1 and 7-2 are curved, while 7-3 and 7-4 have straighter lines. Figures 7-2 and 7-4 have a kink which may make them more attractive as they provide fewer disincentives for those with high ability to practice their abilities. My hunch is that the slightly more complicated graph in figure 7-5 would prove to be the most attractive.

his fortune through a monopolistic position in the computer software market. Taxing these individuals at a higher rate would not have had a significant effect on their productivity, though it should be noted that they would not have been taxed at the extremely high rates since I do not believe they have not yet “cashed-in” most of their investments and transferred them for their personal use.

⁸²⁵ I present these as graphs rather than stepped “bands” because the bands actually imply a graph anyway. In addition, it is highly advisable to have very smooth rate-changes, for reasons I explained on page 191.

⁸²⁶ That is, that the tax-rate is progressive throughout.

⁸²⁷ That is, the graph should never slope back over itself, which would create the impossible situation of two tax-rates applying to a particular income. This would also violate the following constraints.

⁸²⁸ These last two points ensure that the marginal rate on increasing income never reaches 100%. The graph, essentially, must always rise or be level as income increases. The gradient of the slope must be less than infinity (or less than 90 degrees from the horizontal line) and be positive or zero (or no less than 0 degrees). I express these constraints mathematically in the appendix. It is important to remember that marginal tax-rates do not work in the same way with hourly-averaging as with any other tax system. This is because the decision to work an additional hour will have *reducing* effect on the person’s lifetime tax-rate. With other systems the individual’s marginal tax-rate simply applies on their next hour (or however long) worked, and so the headline rate is much more important.

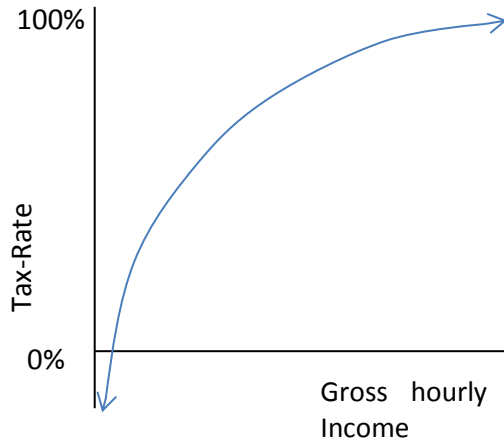


Figure 7-1: Smooth curve (logarithmic graph)

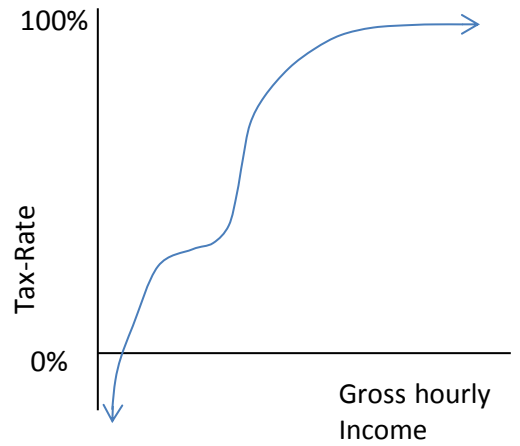


Figure 7-2: Smooth graph with kink

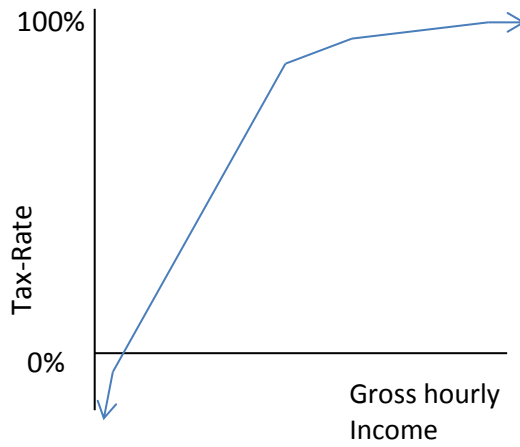


Figure 7-3: Straight-line graph

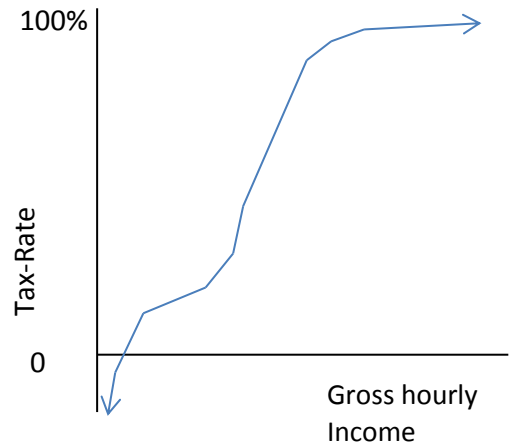


Figure 7-4: Straight-line graph with kink

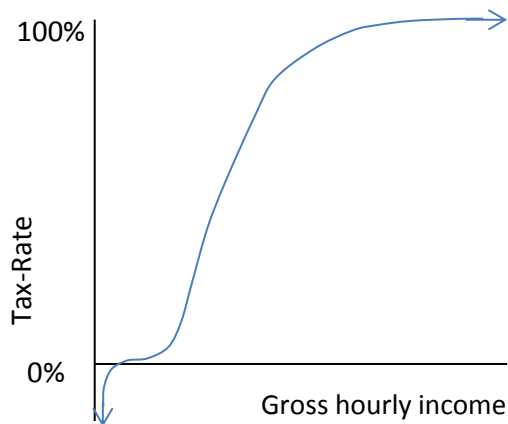


Figure 7-5: Curved graph with kink around 0% tax point

Net income must always rise with gross income, though the kink will cause a faster rise in the “kinked” region. These points are illustrated in figures 7-6 and 7-7.

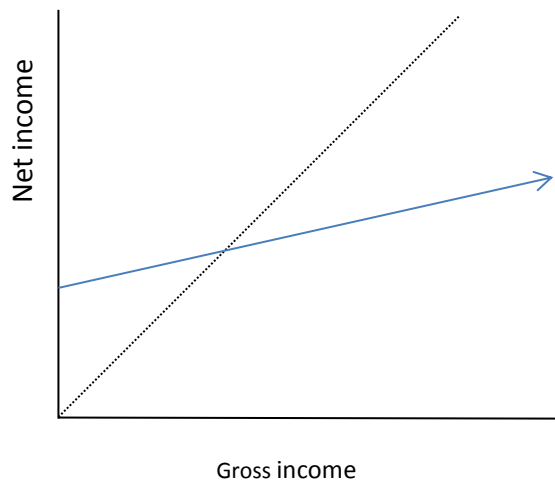


Figure 7-6: Gross and net income corresponding to figure 7.1.

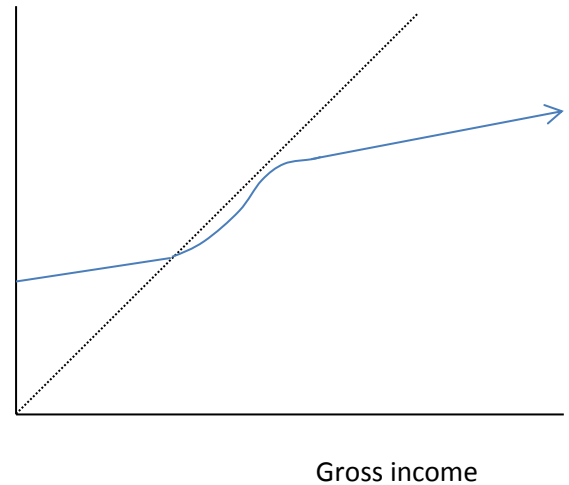


Figure 7-7: Gross and net income with kinked graphs.

I emphasise that these graphs apply to the lifetime average gross-hourly-income, which smooths out income changes, meaning people will usually move very slowly along the graph over time.⁸²⁹ It is important to remember that marginal tax-rates do not work in the same way with hourly-averaging as with any other tax system. This is because the decision to work an additional hour will have a *reducing* effect on the person’s lifetime tax-rate. With other systems the individual’s marginal tax-rate simply applies on their *next hour*⁸³⁰ worked, and so the headline rate is much more important.

I have specified what the most attractive tax and benefit policies for hypothetical insurers; progressive hourly-averaging of comprehensive acquired-income. I refer to this policy for simplicity as the CLIPH-rate tax.⁸³¹ This should raise the required revenue without impacting on people’s abilities to live their lives, affecting the less fortunate, or having economically deleterious consequences. I have considered some potential

⁸²⁹ Except those who receive a large windfall early in life, who may jump from one extreme of the graph to the other.

⁸³⁰ Or whatever unit of time they contract to.

⁸³¹ Which stands for **C**omprehensive **L**ifetime **I**ncome **P**er-hour-**r**ate.

challenges to this—that it would interfere with supplies of some products and that it would increase prices. I will consider some further possible challenges to this proposal before concluding.

7.9 Challenges

In this section I will consider two possible challenges to my proposal; that it *enslaves the able* and that it *enslaves the leisure-lover*. In sections 3.8-3.9 I rejected endowment taxation on the grounds that it enslaves the talented and it is important to be clear that the proposal here does not fall foul of this concern. While the CLIPH-rate tax enables much higher tax-rates on those with high ability and general good economic fortune it does not single them out for different treatment to anyone else; they are not forced to use their talents, and so they cannot envy the less talented. However, some may express a similar concern; that it forces the talented to the market.

Those with good market luck would certainly be worse off under the CLIPH-rate tax than rival proposals; they would receive much less and would not therefore have the option to retire as early as under other schemes, for example. People may have to work longer first because of the role of hour-credits and hourly-averaging, and secondly because of the comprehensive acquired-income tax-base. These two elements combine in such a way that people cannot receive any of their good social fortune without obtaining hour-credits,⁸³² and furthermore that the talented are forced to perform *some labour* which they would otherwise not be.

Fortunately, there is no reason to be troubled by these points. While those with good social and market fortune would be worse-off with the CLIPH-rate tax than they would be under any other acceptable policy, this does not mean that they are unfairly treated.

⁸³² I should note that while those who wish to confer social advantages on others will be less able to do so when the recipient is young and has few hour-credits, such transfers would still have significant consequences for their recipient. They would receive a higher net income than they would have done for every single hour-credit that they earn for the rest of their lives. This is because their gross income will have risen, and any increase in gross income will also result in a larger net income, as I described in the case of Humphrey above—page 229-30.

The important point is that they are in the same position as the less fortunate in their society; to the extent that they are forced to market, so is everyone else.⁸³³ Furthermore, the policies are obviously judged from the hypothetical position of equality where individuals do not know their fortune. What matters is that the policies are attractive to people *in this position*, not their attractiveness to those who know they are fortunate. This leads us to our second concern; that leisure-lovers would reject it.

The primary answer to this challenge is that the vast majority of leisure-lovers would accept the policy as it offers them the chance for more leisure if they are unable to earn a large hourly amount, as I explained at the end of section 6.11. However, some leisure-lovers may not choose in this way. Some may be willing to take the risk that they will be fortunate, in which case they are the sub-minority which suffers from the averaging requirement as I discussed in section 6.11. Another group of leisure-lovers are those such as Grant from chapter three.⁸³⁴ These leisure-lovers are willing to do extremely unattractive jobs in order to obtain large amounts of leisure *and* income. Highly progressive hourly taxation will affect the fraction of the small minority who undertake such work for the sake of leisure.⁸³⁵ Such individuals would not prefer the

⁸³³ In fact, people may not be forced to market by the CLIPH-rate tax, if certain possibilities exist. The first is that all citizens may receive a tax-exempt 'stakeholder grant' at the start of their adult life, which would enable them to live without working. Second, people could use this grant—or other money they have obtained through working—to purchase some land on which they could live a subsistence lifestyle. If they obtain all they need from their land and have no economic contact with others then they will have no need of hour-credits, at least as long as they are physically able. People only need to pay tax on items that they consume which they have acquired from *outside* their property. This lifestyle does not strike me as a particularly attractive choice, of course, and it is clear that no-one has any special talents that make life as a crofter or subsistence farmer particularly easy. However, I merely wish to point out that there would be options open to those who are desperate for whatever reason to opt out of the hour-credit system.

⁸³⁴ See page 126.

⁸³⁵ Some may do such work because they are perfectly happy to accept the conditions that others find unacceptable, in which case they are merely fortunate to be able to earn a kind of rent on a "talent" for working in such conditions. Others may of course choose such work due to their preferences, for example because it shows off their machismo or bravery, or because they enjoy challenges or facing danger.

system; they are unlikely to desire the improved conditions for the low-waged provided by the hourly-subsidy.⁸³⁶

One way around this problem might be to propose that some designated jobs should be considered to be special cases for which compensatory hour-credits would be awarded, perhaps to designate that a certain amount of “recovery time” is necessary for those undertaking such work. These additional hour-credits could be applied to jobs which meet an important social and economic need, and which would go unfilled without special compensation.⁸³⁷ This could even be limited to jobs which do not require rare and valuable talents⁸³⁸ in order to ensure that those with unusual abilities are not able to claim this form of compensation when it is unnecessary. However, while this may be a good policy, and greatly mitigate the potential complaints of workers and consumers, it is not an entirely satisfactory response.

The more principled response to this case is to accept—as in a previous case—that some people would prefer other policies due to their highly unusual taste for a large amount of work *and* leisure at any cost, or for consumption items which require highly unpopular work.⁸³⁹ However, these people would fall in a minority within a minority and would not form a substantial enough group to tip the scales in favour of other policies when applying the averaging procedure described in section 4.8. They would not be able to reject the averaging procedure, since it is more effective than the alternative of attempting to determine and react to the risk-preferences of all members of society.

⁸³⁶ Though of course some might, since low-paid jobs would have a larger net hourly income under the CLIPH-rate tax.

⁸³⁷ This would therefore reduce the additional costs to those who wish to utilise the goods or services provided by those undertaking such work. This would further answer the concerns raised in the previous section regarding the costs to consumers of highly progressive hourly taxation.

⁸³⁸ I suggested on page 126 that deep-sea diving may be one such example, if there are even any such jobs.

⁸³⁹ These are items which differ from the institutional services described in the previous section, the costs of which can be shared out between numerous customers if they are worth paying at all.

7.10 Conclusion

In this chapter I have discussed the two important aspects of taxation policy; the tax-base and the tax-rate. Regarding the former, I argued that a comprehensive acquired-income tax-base would be the most attractive to hypothetical insurers. Insurers would reject endowment, wealth, and wealth-transfer tax-bases as these tax-bases may affect their ability to carry out their plans. Insurers would prefer comprehensive taxation to broad-based taxation as it is able to distinguish the multiply fortunate from the singly fortunate, and also to prevent people from using one form of fortune to reduce their taxation on other forms. I argued that comprehensive income taxes are more progressive than consumption taxes, but that the traditional accretion conception of income shares some of the problems which led us to reject endowment and wealth taxation. I therefore proposed a form of comprehensive income taxation which shares some features with a consumption base, which I call *acquired income*. This tax-base taxes recipients of income only on the realized gains that taxpayers make on their property, and would allow them to effectively offset losses against future gains. This enables insurers to choose the tax-base that will allow the most progressive form of taxation without interfering with their life-plan formation and enactment.

The second issue discussed was the *tax-rate*. I have argued that the form of tax calculation I advocated in sections 6.2 and 6.3 for the benefit of low-earners should be applied to all taxpayers. This is to calculate taxation based upon the lifetime average hourly income of each individual, with highly progressive tax-rates applied. This allows the application of high tax-rates on those who are consistently fortunate without creating the disincentives to work engendered by the same high tax-rates under any other policy. Insurers would choose such a system as it provides sufficient resources to fund redistribution to low-earners without causing problems that would affect those without great fortune; increased consumption prices or damage to the economy. The preferred policies together would also put a heavy break on the accumulated advantages that create the most severe forms of positional inequality.

Finally, I considered some possible challenges to my conclusions. I have argued that the policy is justifiable to all members of society either because it is the policy that they would choose from a position of *ex ante* equality, or because their choice would not be possible due to the averaging requirements.⁸⁴⁰ The policy is thus justified to leisure-lovers and those with unusual insurance tastes.⁸⁴¹

⁸⁴⁰ That is, their unusual tastes are such that they cannot be accommodated into the hypothetical insurance scheme in a way that they themselves would find acceptable, but the broader agreement about these issues and the need to apply a universal policy overrules their preference.

⁸⁴¹ An additional problem, not considered here, is that I have been overly optimistic about the costs of hourly-averaging and the acquired-income tax-base. I have assumed away this problem on the basis that technological advances make such policies less expensive to administer and onerous on taxpayers. If these assumptions were shown to be overly optimistic then the case for the policies would be weakened. One or more elements would have to be altered, with the consequence that taxation could not be as progressive. This in turn would doubly threaten the viability of hourly averaging for the benefit of low-earners. Something closer to Dworkin's more limited proposals may then be all that could reasonably be supported by hypothetical insurers.

Conclusion

I have argued that those who share my desire for a tax and benefit system that shows equal concern for all members of society, does not make any perfectionist claims, and holds people responsible for their own lives will find the *CLIPH-rate tax*—along with a *guaranteed work programme* for those otherwise unemployed—the most attractive system.⁸⁴² This policy utilises lifetime hourly averaging in order to calculate the negative or positive tax-rates that each individual should pay. It applies highly progressive tax-rates which effectively start at negative infinity and rise to 99.99% on all forms of acquisition excepting small non-financial gifts and any universal stakeholder grant. The CLIPH-rate tax enables high taxation on good fortune and good support for the less fortunate in a way that avoids the usual economic problems with such attempts; that people will substitute leisure for income.

In order to reach this conclusion I defended resource egalitarianism and a particular—holistic—application of it. In chapter one I explained how resource egalitarianism is an attractive instantiation of the starting assumptions as it attempts to construct property entitlements that treat all as equals and are therefore justifiable to all. It achieves this through the ideas of envy-freeness and equal opportunity costs. In chapter two I

⁸⁴² I will note that the policy would also be highly attractive for those who support many alternative political philosophies, particularly if we assume that it will not be possible in practice for the government to know the market talent of its citizens. The CLIPH-rate tax seems to follow from prioritarianism (footnote 9), as an attempt to mimic a talent-equal job market (3.5), or a non-ideal version of White's Egalitarian Subsidy Scheme (3.10, see also White, *The Civic Minimum* at 86-94. It might also be considered a reasonable social egalitarian policy along the lines of Rawls' difference principle regarding primary goods and principle of equal opportunity (section 1.5, footnote 302), as a proxy for equality of welfare (sections 2.1-2.5), as a means to greater equality of capability (section 2.7), and desert-based views (see footnotes 482-484). I think it would also be a reasonable utilitarian policy, assuming that there is no way to determine "utility monsters" (described in Nozick, *Anarchy, State, and Utopia* at 41.

The policies presented here are generally incompatible with self-ownership-based entitlement theories such as libertarianism (described in footnote 11) and left-libertarianism (a variant of libertarianism which allows self-ownership but communal world-ownership, see Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), Michael Otsuka, *Libertarianism without Inequality* (Oxford: Clarendon, 2003). However, some self-ownership-based views may be compatible with my proposals, for example, see John Philip Christman, *The Myth of Property: Toward an Egalitarian Theory of Ownership* (New York: Oxford University Press, 1994).

presented two alternative metrics that claim to offer something that resources do not. With regard to welfare, I showed that welfarist approaches violate the responsibility assumption, and that those approaches which do not will violate the continuity test; that people can only claim to be disadvantaged if they simultaneously reject the basis of their claim. The second alternative metric was capabilities. These are not readily amenable to egalitarianism, since people will value capabilities differently, and hence will tend to require a perfectionist starting point or violate the capability test. I considered Sen's case for a capability metric and showed that he does not offer a viable approach to justice.

In the next part of the thesis I considered responses to differential market luck. In chapter three I considered *ex post* approaches that attempt to equalise outcomes in some fashion. I rejected the first two *radical* proposals impose costs on the *unfortunate* which many of them would not be willing to pay. I then considered proposals to mimic a talent-equal market, agreeing with Dworkin that it is impossible to achieve. The second half of chapter three was concerned with various forms of work-forcing. I argued that these proposals can cause the talented to envy the less talented. Chapter four focused on Dworkin's *ex ante*—hypothetical insurance—response to bad market luck. I explained this proposal and why it is attractive. I then countered various arguments against it; that it is inegalitarian, that it is less attractive than *ex post* envy freeness, that it would require personalised tax-rates, and that it would mimic equality of welfare.

In chapter five I discussed the best interpretation of the hypothetical insurance approach, and argued for a holistic and dynamic approach whereby all relevant issues are considered simultaneously. This contrasts with Dworkin's assumption that the insurance should be hypothecated. I also challenged Dworkin's apparent oversight with regard to policies that would improve the position of low-earners. I answered possible worries about my approach—about its applicability to qualitative policy issues and complexity—and in doing so further specified how to apply the approach. I then

clarified what can be included within the scope of hypothetical insurance. In the final sections of chapter five I explained the issues that insurers would need to take account of in their deliberations; the *incidence* of tax and benefit policies, the importance of forming and carrying out plans, the economic effects of policies, and the classifications of fellow insurers that would be useful.

Chapter six presented a negative hourly-averaging tax system as the most effective means to assist those with bad market luck, alongside a well-funded guaranteed work programme. I argued that these policies, while expensive, would be attractive to insurers because they do not create costs for the worst-off. I argued that insurers would insist upon a work-requirement, but might allow hour-credits for carers and those in education or training. The prominent alternative policies increase costs by increasing prices and having negative economic effects (minimum wage and basic income), or by failing effectively to help all low-earners (alternative wage subsidy policies).

In chapter seven I considered taxation policies in detail. I began with the tax-base, and rejected several possible tax-bases in favour of comprehensive taxation that would best distinguish how fortunate taxpayers are. I argued that an *acquired-income* tax-base would be the most attractive to insurers as it allows progressivity while enabling taxpayers to make and carry out plans with substantial certainty. I then turned to the calculation of taxation. I argued that lifetime hourly-averaging is the most attractive form of tax calculation. This is because it best distinguishes the level of fortune of each individual, allowing highly progressive tax-rates on the fortunate without affecting the less fortunate or producing troubling economic disincentives. I ended by rejecting some possible challenges to the proposals; that the policies would enslave the talented or leisure-lovers. Indeed, *leisure* is one area which this thesis has considered at greater length than most works, emphasising both the advantages to those who convert talent into leisure (section 3.2) and the need for policies to take account of the responses of leisure-lovers (5.8, 6.6-6.7, 7.8).

Appendix: Equations

I will now express the lifetime hourly averaging scheme tax calculations described in sections 6.2, 7.7 and 7.8 in the form of equations and identities. This will be helpful to those who are mathematically inclined. I use the following symbols:

c = hour-credits

g = gross lifetime income

h = gross hourly average income

n = net lifetime income

γ = net hourly average income

β = past net income received

ω = current net income due

t = lifetime tax liability

σ = hourly average tax

ρ = past tax paid

θ = current tax liability

r = Tax-rate, which is expressed decimally. This would have a range of $-\infty$ to ∞ , with zero representing no tax and 'one' indicating a one hundred percent tax-rate (though this is never reached or exceeded, as shown in the restrictions below).

I will begin by presenting the stages of the *present or current tax liability calculation*, namely the tax which our taxpayer owes. This is calculated with the hour-credits and gross income of the taxpayer in question, along with the present tax-rates.

Step 1: Calculate gross hourly average income

$$g \div c = h$$

Step 2: Apply the tax-rate (r) to gross average income to calculate the taxpayer's hourly tax level (σ)

$$h \times r = \sigma$$

Step 3: Re-multiply by hour-credits to get total lifetime tax

$$\sigma \times c = t$$

Step 4: Deduct past lifetime tax payments (ρ) to get present tax liability

$$t - \rho = \theta$$

It is possible to calculate *net income due to the individual* from h calculated in step 1 above.

Step 2*: Apply the tax-rate to this average to calculate net hourly income

$$h \times (1 - r) = \gamma$$

Step 3*: Re-multiply by hour-credits to get net lifetime income

$$\gamma \times c = n$$

Step 4*: Deduct past lifetime income received (β) to get current net income due

$$n - \beta = \omega$$

Remember that gross income equals tax plus net income

$$g = n + t$$

This means that from it is possible to cross between one approach at the other at step 3 or 3*.

From step 3 it is possible to reach step 4*

$$g - t - \beta = \omega$$

From 3* it is possible to calculate 4

$$g - n - \rho = \theta$$

That explains the calculation of current liability. I will now present the lifetime equations. The expression for lifetime tax is

$$t = \left[\left(\frac{g}{c} \right) r \right] c = g - n$$

The expression of lifetime net income is

$$n = \left(\frac{g}{c} \right) c(1 - r) = g - t$$

The current-liability equations can be expressed as follows.

$$\omega = \left[\left(\frac{g}{c} \right) (1 - r) \right] c - \beta$$

$$\theta = \left[\left(\frac{g}{c} \right) r \right] c - \rho$$

This is subject to the following constraints, the reasoning behind which is found in section 7.8:

A higher hourly average (γ) will result in a higher tax-rate (r).

$$\frac{\delta r}{\delta \sigma} > 0$$

An increase in gross income (g) must also always result in an increase in current net income due (ω), which limits the progressivity of the tax. Put differently, the tax-rate will never reach 100%.

$$-\infty < r < 1$$

References

- ACKERMAN, BRUCE A. and ALSTOTT, ANNE, *The stakeholder society* (New Haven, Conn.: Yale University Press, 1999).
- AKERLOF, GEORGE A., 'The Economics of "Tagging" as Applied to the Optimal Income Tax, Welfare Programs, and Manpower Planning', *The American Economic Review*, 68/1 (1978), 8-19.
- ALKIRE, SABINA, *Valuing freedoms : Sen's capability approach and poverty reduction* (Oxford: Oxford University Press, 2002).
- ALSTOTT, ANNE L., 'The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform', *Harvard Law Review*, 108/3 (1995), 533-92.
- , 'The Uneasy Liberal Case against Income and Wealth Transfer Taxation: A Response to Professor McCaffery', *Tax Law Review*, 51 (1996), 363-402.
- , 'Work vs. Freedom: A Liberal Challenge to Employment Subsidies', *The Yale Law Journal*, 108/5 (1999), 967-1058.
- , 'Equal Opportunity and Inheritance Taxation', *Harvard Law Review*, 121/2 (2007), 469-542.
- , 'Why the EITC Doesn't Make Work Pay', *Law & Contemporary Problems*, 73 (2010), 285-314.
- ANDERSON, ELIZABETH, "'What is the Point of Equality?'"', *Ethics*, 109/2 (1999), 287-337.
- , 'Welfare, Work Requirements, and Dependant-Care', *Journal of Applied Philosophy*, 21/3 (2004), 243-56.
- , 'Justifying the capabilities approach to justice', in Harry Brighouse and Ingrid Robeyns (eds.), *Measuring Justice* (Cambridge: Cambridge University Press, 2010).
- ANDREWS, WILLIAM D., 'The Accessions Tax Proposal', *Tax Law Review*, 22 (1966), 589-634.
- , 'A Consumption-Type or Cash Flow Personal Income Tax', *Harvard Law Review*, 87/6 (1974), 1113-88.
- ARISTOTLE, *The ethics of Aristotle : the Nicomachean ethics* (Harmondsworth: Penguin, 1976).
- ARNESON, RICHARD J., 'Equality and Equal Opportunity for Welfare', *Philosophical Studies*, 56 (1989), 158-94.
- , 'Is Work Special? Justice and the Distribution of Employment', *The American Political Science Review*, 84/4 (1990), 1127-47.
- , 'Liberalism, Distributive Subjectivism, and Equal Opportunity for Welfare', *Philosophy and Public Affairs*, 19/2 (1990), 158-94.
- ARNSPERGER, CHRISTIAN, 'Envy-Freeness and Distributive Justice', *Journal of Economic Surveys*, 8/2 (1994), 155-86.
- BAMFORD, DOUGLAS, 'Comprehensive lifetime taxation of international citizens: A solution to tax avoidance, tax competition, and tax unfairness', in Jeremy Leaman and Attiya Waris (eds.), *Towards a New Political Economy of Tax Justice: Taxation and Economic Development in the Twenty-First Century* (Oxford: Berghahn Books, 2013).
- , *Rethinking Tax: an introduction to hourly averaging* (London: Searching Finance, forthcoming).
- BANKMAN, JOSEPH and GRIFFITH, THOMAS, 'Is the Debate between an Income Tax and a Consumption Tax a Debate about Risk? Does it Matter?', *Tax Law Review*, 47/2 (1992), 377-406.
- BANKMAN, JOSEPH and FRIED, BARBARA H., 'Winners and Losers in the Shift to a Consumption Tax', *Georgetown Law Journal*, 86 (1998), 539-6.
- BANNOCK, GRAHAM, BAXTER, R. E., and DAVIS, EVAN, *The Penguin dictionary of economics* (London; New York: Penguin Books, 2003).

- BARRY, BRIAN, *The liberal theory of justice; a critical examination of the principal doctrines in A Theory of Justice by John Rawls* (Oxford: Clarendon Press, 1973).
- , 'Real Freedom and Basic Income', *Journal of Political Philosophy*, 4/3 (1996), 242-76.
- BATCHELDER, LILLY, 'Taxing the Poor: Income Averaging Reconsidered', *Harvard Journal on Legislation*, 40/2 (2003), 395-439.
- BAUMOL, WILLIAM J. and FISCHER, DIETRICH, *Superfairness : applications and theory* (Cambridge, Mass.: MIT Press, 1986).
- BEAUDRY, PAUL, BLACKORBY, CHARLES, and SZALAY, DEZSÖ, 'Taxes and Employment Subsidies in Optimal Redistribution Programs', *The American Economic Review*, 99/1 (2009), 216-42.
- BENTHAM, JEREMY, *Selected Writings on Utilitarianism* (Ware, Herts.: Wordsworth, 2000).
- BESLEY, TIMOTHY and COATE, STEPHEN, 'The Design of Income Maintenance Programmes', *The Review of Economic Studies*, 62/2 (1995), 187-221.
- BICKENBACH, JEROME, 'Disability, Non-talent and Distributive Justice', in Kristjana Kristiansen, Tom Shakespeare, and Simo Vehmas (eds.), *Arguing About Disability: Philosophy meets Disability Studies* (New York: Routledge, 2008), 105-23.
- BLAUG, MARK, *Economic theory in retrospect: Fifth Edition* (Cambridge: Cambridge Univ. Press, 1999).
- BOADWAY, ROBIN, et al., 'Optimal Redistribution with Heterogeneous Preferences for Leisure', *Journal of Public Economic Theory*, 4/4 (2002), 475-98.
- BORCH, K., *The mathematical theory of insurance* (Lexington, Mass.; London: Heath, 1974).
- BOU-HABIB, PAUL and OLSARETTI, SERENA, 'Liberal Egalitarianism and Workfare', *Journal of Applied Philosophy*, 21/3 (2004), 257-70.
- BRENNAN, GEOFFREY and BUCHANAN, JAMES M., *The power to tax : analytical foundations of a fiscal constitution* (Cambridge: Cambridge University Press, 1980).
- BREWER, MIKE, SAEZ, EMMANUEL, and SHEPHARD, ANDREW, 'Means-testing and Tax Rates on Earnings', in Stuart Adam, et al. (eds.), *Dimensions of Tax Design: The Mirrlees Review* (Oxford: Oxford University Press, 2010).
- BRIGHOUSE, HARRY and ROBEYNS, INGRID (eds.), *Measuring Justice* (Cambridge; New York: Cambridge University Press, 2010).
- BROWN, ALEXANDER, *Ronald Dworkin's theory of equality : domestic and global perspectives* (Basingstoke: Palgrave Macmillan, 2009).
- , 'The Slavery of the Not So Talented', *Ethical Theory and Moral Practice*, 14/2 (2011), 185-96.
- BROWN, CHARLES, et al., 'Comments by Reviewers', *Industrial and Labor Relations Review*, 48/4 (1995), 828-49.
- BROWNE, JUDE and STEARS, MARC, 'Capabilities, resources, and systematic injustice: a case of gender inequality', *Politics, Philosophy & Economics*, 4/3 (2005), 355-73.
- BUCHANAN, ALLEN E., et al., *From chance to choice : genetics and justice* (Cambridge, U.K.; New York: Cambridge University Press, 2000).
- CANEY, SIMON, *Justice beyond borders : a global political theory* (Oxford: Oxford University Press, 2006).
- CARD, DAVID E. and KRUEGER, ALAN B., *Myth and measurement : the new economics of the minimum wage* (Princeton, N.J.: Princeton University Press, 1995).
- CARENS, JOSEPH, *Equality, Moral Incentives, and the Market* (Chicago: University of Chicago Press, 1981).
- , 'Compensatory Justice and Social Institutions', *Economics and Philosophy*, 1/1 (1985), 39-67.
- , 'Rights and Duties in an Egalitarian Society', *Political Theory*, 14/1 (1986), 31-49.
- CASAL, PAULA and WILLIAMS, ANDREW, 'Equality of Resources and Procreative Justice', *Dworkin and His Critics* (Blackwell Publishing Ltd, 2004), 150-69.

- CASAL, PAULA, 'Progressive Environmental Taxation: A Defence', *Political Studies*, 60/2 (2012), 419-33.
- CHAMBERS, CLARE, 'Each outcome is another opportunity: Problems with the Moment of Equal Opportunity', *Politics, Philosophy & Economics*, 8/4 (2009), 374-400.
- CHONÉ, PHILIPPE and LAROQUE, GUY, 'Optimal incentives for labor force participation', *Journal of Public Economics*, 89/2-3 (2005), 395-425.
- , 'Negative Marginal Tax Rates and Heterogeneity', *American Economic Review*, 100/5 (2010), 2532-47.
- CHRISTMAN, JOHN PHILIP, *The myth of property : toward an egalitarian theory of ownership* (New York: Oxford University Press, 1994).
- CLAASSEN, RUTGER, 'Making Capability Lists: Philosophy versus Democracy', *Political Studies*, 59/3 (2011), 491-508.
- CLARK, ANDREW, GEORGELLIS, YANNIS, and SANFEY, PETER, 'Scarring: The Psychological Impact of Past Unemployment', *Economica*, 68/270 (2001), 221-41.
- CLAYTON, MATTHEW and WILLIAMS, ANDREW, 'Egalitarian justice and interpersonal comparison', *European Journal of Political Research*, 35 (1999), 445-64.
- CLAYTON, MATTHEW, 'The Resources of Liberal Equality', *Imprints*, 5 (2000), 63-82.
- , *Justice and legitimacy in upbringing* (Oxford; New York: Oxford University Press, 2006).
- , 'Equal Inheritance: An Anti-Perfectionist View', in John Cunliffe and Guido Erreygers (eds.), *Inherited Wealth, Justice and Equality* (London: Routledge, 2012), 98-118.
- , 'Liberal Equality: Political not Erinaceous', *Critical Review of International Social and Political Philosophy*, (forthcoming).
- COHEN CHRISTOFIDIS, MIRIAM, 'Talent, Slavery and Envy', in Justine Burley (ed.), *Dworkin and His Critics : With Replies by Dworkin* (Malden, MA: Blackwell Pub., 2004), 30-44.
- , 'Talent, Slavery and Envy in Dworkin's Equality of Resources', *Utilitas*, 16/3 (2004), 267-85.
- COHEN, G.A., *Karl Marx's theory of history : a defence* (Oxford: Clarendon Press, 1978).
- , 'On the Currency of Egalitarian Justice', *Ethics*, 99/4 (1989), 906-44.
- , 'Equality of what? On welfare, goods and capabilities', in Martha C. Nussbaum and Amartya Sen (eds.), *The Quality of Life : Studies in Development Economics* (Oxford: Clarendon Press, 1993).
- , *Self-ownership, freedom, and equality* (Cambridge: Cambridge University Press, 1995).
- , 'Expensive Tastes Rides Again', in Justine Burley (ed.), *Dworkin and his critics : with replies by Dworkin* (Malden, MA: Blackwell Pub., 2004).
- , *Rescuing Justice and Equality* (Cambridge, Mass: Harvard University Press, 2008).
- , *Why not socialism?* (Princeton: Princeton University Press, 2009).
- CONWAY, DANIEL W., *Nietzsche and the political* (London; New York: Routledge, 1996).
- COOPER, GEORGE, 'A Voluntary Tax? New Perspectives on Sophisticated Estate Tax Avoidance', *Columbia Law Review*, 77/2 (1977), 161-247.
- CREEDY, JOHN and DISNEY, RICHARD, *Social insurance in transition : an economic analysis* (Oxford: Clarendon Press, 1985).
- CUNLIFFE, JOHN and ERREYERS, GUIDO, *The origins of universal grants: an anthology of historical writings on basic capital and basic income* (Basingstoke, Hampshire: Palgrave Macmillan, 2004).
- DANIELS, NORMAN, *Reading Rawls* (Oxford: Blackwell, 1975).
- , *Just health care* (Cambridge: Cambridge University Press, 1985).
- , *Justice and justification : reflective equilibrium in theory and practice* (Cambridge: Cambridge University Press, 1996).
- , *Just health : meeting health needs fairly* (Cambridge: Cambridge University Press, 2008).
- DICK, JAMES C., 'How to Justify a Distribution of Earnings', *Philosophy and Public Affairs*, 4/3 (1975), 248-72.

- DODGE, JOSEPH M., 'Beyond Estate and Gift Tax Reform: Including Gifts and Bequests in Income', *Harvard Law Review*, 91/6 (1978), 1177-211.
- DOYAL, LEN and GOUGH, IAN, *A theory of human needs* (Basingstoke: Macmillan, 1991).
- DUHIGG, CHARLES and BRADSHER, KEITH, 'How the U.S. Lost Out on iPhone Work', *New York Times*, 2012.
- DWORKIN, RONALD, 'The Original Position', *University of Chicago Law Review*, 40/3 (1973), 500-33.
- , *Taking Rights Seriously* (London: Duckworth, 1977).
- , 'What is Equality? Part 2: Equality of Resources', *Philosophy & Public Affairs*, 10/4 (1981), 283-345.
- , 'Comment on Narveson: in Defense of Equality', *Social Philosophy and Policy*, 1/01 (1983), 24-40.
- , *A Matter of Principle* (Oxford: Clarendon, 1985).
- , 'Foundations of Liberal Equality', in Stephen L. Darwall (ed.), *Equal freedom* (Ann Arbor, Mich.: University of Michigan Press, 1995).
- , 'Justice in the distribution of health care', in Matthew Clayton and Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: Macmillan Press, 2000).
- , *Sovereign Virtue* (Cambridge, Mass: Harvard University Press, 2000).
- , 'Sovereign Virtue Revisited', *Ethics*, 113/1 (2002), 106-43.
- , 'Equality, Luck and Hierarchy', *Philosophy and Public Affairs*, 31/2 (2003), 190-8.
- , 'Ronald Dworkin Replies', in Justine Burley (ed.), *Dworkin and his critics : with replies by Dworkin* (Malden, MA: Blackwell Pub., 2004).
- , *Is Democracy Possible Here?* (Princeton, N.J.: Princeton University Press, 2006).
- , *Is democracy possible here? : principles for a new political debate* (Princeton, N.J.: Princeton University Press, 2006).
- , 'Response', *Boston University Law Review*, 90/2 (2010), 1059-87.
- , *Justice for hedgehogs* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2011).
- ENGLAND, PAULA and FOLBRE, NANCY, 'Who Should Pay for the Kids?', *Annals of the American Academy of Political and Social Science*, 563 (1999), 194-207.
- FELDSTEIN, MARTIN, 'On the theory of tax reform', *Journal of Public Economics*, 6/1 (1976), 77-104.
- FINNIS, JOHN, *Natural law and natural rights* (Oxford: Oxford University Press, 2011).
- FISHER, IRVING, *The Theory of Interest* (New York: The Macmillian Company, 1930).
- , 'Income and Capital', in R. H. Parker and Geoffrey Colin Harcourt (eds.), *Readings in the concept and measurement of income* (London: Cambridge U.P., 1969), 33-53.
- FLEURBAEY, MARC, 'Equality of Resources Revisited', *Ethics*, 113/1 (2002), 82-105.
- FOLEY, DUNCAN K, 'Resource Allocation And The Public Sector', *Yale Economic Essays*, 7/1 (1967), 45-98.
- FRANK, ROBERT H., 'The Demand for Unobservable and Other Nonpositional Goods', *The American Economic Review*, 75/1 (1985), 101-16.
- , 'Frames of Reference and the Quality of Life', *The American Economic Review*, 79/2 (1989), 80-85.
- , 'Positional Externalities', in Richard Zeckhauser (ed.), *Strategy and Choice* (Cambridge, Mass.: MIT Press, 1991), 25-48.
- FRANK, ROBERT H. and COOK, PHILIP J., *The winner-take-all society : how more and more Americans compete for ever fewer and bigger prizes, encouraging economic waste, income inequality, and an impoverished cultural life* (New York: Free Press, 1995).
- FRANK, ROBERT H., 'Positional Externalities Cause Large and Preventable Welfare Losses', *The American Economic Review*, 95/2 (2005), 137-41.
- FRANKFURT, HARRY, 'Equality as a Moral Ideal', *Ethics*, 98/1 (1987), 21-43.

- FREEMAN, SAMUEL, 'Illiberal Libertarians: Why Libertarianism Is Not a Liberal View', *Philosophy & Public Affairs*, 30/2 (2001), 105-51.
- , *Rawls* (New York: Routledge, 2007).
- , 'Equality of Resources, Market Luck, and the Justification of Adjusted Market Distributions', *Boston University Law Review*, 90/2 (2010), 921-48.
- FRIED, BARBARA H., 'Fairness and the Consumption Tax', *Stanford Law Review*, 44/5 (1992), 961-1017.
- , 'Compared to What? Taxing Brute Luck and Other Second-Best Problems', *Tax Law Review*, 53 (2000), 377-95.
- , 'Why Proportionate Taxation?', in Joseph J. Thorndike and Dennis J. Jr. Ventry (eds.), *Tax Justice: The Ongoing Debate* (Washington, D.C.: Urban Institute Press, 2002), 149-92.
- FRIEDMAN, MILTON, *Capitalism and freedom* (Chicago: University of Chicago Press, 1962).
- GARDNER, HOWARD, *Frames of mind : the theory of multiple intelligences* (New York, NY: Basic Books, 2004).
- GENTRY, WILLIAM M. and HUBBARD, R. GLENN, 'Distributional Implications of Introducing a Broad-Based Consumption Tax', *Tax Policy and the Economy*, 11 (1997), 1-47.
- GLADWELL, MALCOLM, *Outliers : the story of success* (London: Allen Lane, 2008).
- GOLEMAN, DANIEL, *Emotional intelligence : why it can matter more than IQ* (London: Bloomsbury, 1996).
- GOMBERG, PAUL, *How to make opportunity equal : race and contributive justice* (Malden, MA: Blackwell Pub., 2007).
- GOODE, RICHARD, 'The Economic Definition of Income', in Joseph A. Pechman (ed.), *Comprehensive Income Taxation* (Washington D.C.: Brookings Institute, 1977), 1-30.
- GOODIN, ROBERT E., *Discretionary time : a new measure of freedom* (Cambridge: Cambridge University Press, 2008).
- GOULD, STEPHEN JAY, *The mismeasure of man* (London: Penguin, 1997).
- GRAETZ, MICHAEL J., 'Implementing a Progressive Consumption Tax', *Harvard Law Review*, 92/8 (1979), 1575-661.
- HAIG, ROBERT M., 'The Concept of Income—Economic and Legal Aspects', in Richard A. Musgrave and Carl S. Shoup (eds.), *Readings in the Economics of Taxation* (Homewood, Ill.: Irwin, for the American Economic Association, 1959).
- HALBACH, EDWARD C. JR., 'An Accessions Tax', *Real Property Probate & Trust Journal*, 23 (1988), 211-27.
- HAMLIN, ALAN, 'What Political Philosophy should learn from Economics about Taxation', in Martin O'Neill and Shepley Orr (eds.), *Taxation and Political Philosophy* (Oxford: OUP, forthcoming).
- HANSEN, RASMUS, 'Equality of Resources and the Problem of Recognition', *Res Publica*, 17/2 (2011), 157-74.
- HANSEN, RASMUS SOMMER and MIDTGAARD, SØREN FLINCH, 'Sinking Cohen's Flagship — or Why People with Expensive Tastes Should not be Compensated', *Journal of Applied Philosophy*, (2011), 1-14.
- HARRIS, J. W., *Property and justice* (Oxford: Clarendon, 1996).
- HASHIMZADE, NIGAR and MYLES, GARETH D., 'Inequality and the Choice of the Personal Tax Base', in Peter J. Lambert (ed.), *Research on Economic Inequality, volume 15: Equity* (Amsterdam: Elsevier JAI, 2007), 73 - 97.
- HEADY, CHRISTOPHER, 'Optimal Taxation as a Guide to Tax Policy: A Survey', *Fiscal Studies*, 14/1 (1993), 15-36.
- HEATH, JOSEPH, 'Dworkin's auction', *Politics, Philosophy & Economics*, 3/3 (2004), 313-35.
- , 'The Benefits of Cooperation ', *Philosophy and Public Affairs*, 34/4 (2006), 313-51.

- HELLMUTH, WILLIAM F., 'Homeowner Preferences', in Joseph A. Pechman (ed.), *Comprehensive Income Taxation* (Washington D.C.: Brookings Institute, 1977), 163-201.
- HERRNSTEIN, RICHARD J. and MURRAY, CHARLES A., *The bell curve : intelligence and class structure in American life* (New York: Free Press, 1994).
- HIRSCH, FRED, *Social limits to growth* (Cambridge, Mass.: Harvard University Press, 1976).
- HOBBS, THOMAS, *Leviathan* (Harmondsworth, Eng.: Penguin, 1986 [1651]).
- HODLER, ROLAND, 'Leisure and redistribution', *European Journal of Political Economy*, 24/2 (2008), 354-63.
- HOLMES, STEPHEN and SUNSTEIN, CASS R., *The cost of rights : why liberty depends on taxes* (New York: W.W. Norton, 1999).
- HOTZ, V. JOSEPH and SCHOLZ, JOHN KARL, 'The Earned Income Tax Credit', in Robert A Moffitt (ed.), *Means-Tested Transfer Programs in the United States* (Chicago: University of Chicago Press, 2003), 141-97.
- JACKSON, DUDLEY, 'Thomas Hobbes' Theory of Taxation', *Political Studies*, 21/2 (1973), 175-82.
- KAHNEMAN, DANIEL and TVERSKY, AMOS, 'Prospect Theory: An Analysis of Decision under Risk', *Econometrica*, 47/2 (1979), 263-91.
- KALDOR, NICHOLAS, *An expenditure tax* (London: Allen & Unwin, 1955).
- KAMM, F. M., 'Sen on Justice and Rights: A Review Essay', *Philosophy & Public Affairs*, 39/1 (2011), 82-104.
- KAY, J.A. AND KING, M.A., *The British Tax System* (London: Open University Press, 1990).
- KELLY, ERIN, 'Equal opportunity, unequal capability', in Harry Brighouse and Ingrid Robeyns (eds.), *Measuring Justice* (Cambridge: Cambridge University Press, 2010).
- KELMAN, MARK G., 'Personal Deductions Revisited: Why They Fit Poorly in an "Ideal" Income Tax and Why They Fit Worse in a Far from Ideal World', *Stanford Law Review*, 31/5 (1979), 831-83.
- KOLM, SERGE-CHRISTOPHE, 'Playing Fair with Fairness (A comment on Arnsperger's 'Envy-Freeness and Distributive Justice')', *Journal of Economic Surveys*, 10/2 (1996), 199-215.
- , *Justice and equity* (Cambridge, MA; London: MIT Press, 1997).
- KYMLICKA, WILL, *Contemporary Political Philosophy* (Oxford: OUP, 2002).
- LAMONT, JULIAN, 'Problems for Effort-Based Distribution Principles', *Journal of Applied Philosophy*, 12/3 (1995), 215-29.
- , 'Incentive Income, Deserved Income and Economic Rents', *Journal of Political Philosophy*, 5/1 (1997), 26-46.
- LAYARD, RICHARD, *Happiness : lessons from a new science* (New York: Penguin Press, 2005).
- LESTER, RICHARD ALLEN, *Economics of labor* (New York: Macmillan, 1964).
- LEWENS, TIM, 'What are 'natural inequalities'?', *The Philosophical Quarterly*, 60/239 (2010), 264-85.
- LIPPERT-RASMUSSEN, K., 'The Insignificance of the Distinction Between Telic and Deontic Egalitarianism', in Nils Holtug and Kasper Lippert-Rasmussen (eds.), *Egalitarianism : new essays on the nature and value of equality* (Oxford: Clarendon Press, 2007).
- LIPSEY, R. G. and LANCASTER, KELVIN, 'The General Theory of Second Best', *The Review of Economic Studies*, 24/1 (1956), 11-32.
- LOOMES, GRAHAM and SUGDEN, ROBERT, 'Regret Theory: An Alternative Theory of Rational Choice Under Uncertainty', *The Economic Journal*, 92/368 (1982), 805-24.
- LUKES, STEVEN, *Power* (Oxford: Basil Blackwell, 1986).
- MACINTYRE, ALASDAIR C., *After virtue : a study in moral theory* (Notre Dame, Ind.: University of Notre Dame Press, 1984).
- MACLEOD, COLIN, *Liberalism, Justice and Markets* (Oxford: OUP, 1998).

- MARX, KARL, *Capital : an abridged edition* (Oxford: Oxford University Press, 1999).
- MATRAVERS, M., 'Responsibility, Luck and the 'Equality of What Debate'', *Political Studies*, 50 (2002), 558-72.
- MATSUSAKA, JOHN G., 'Direct Democracy and Fiscal Gridlock: Have Voter Initiatives Paralyzed the California Budget?', *State Politics & Policy Quarterly*, 5/3 (2005), 248-64.
- MCCAFFERY, EDWARD J., 'Tax Policy under a Hybrid Income-Consumption Tax', *Texas Law Review*, 70 (1992), 1145-218.
- , 'The Political Liberal Case Against the Estate Tax', *Philosophy & Public Affairs*, 23/4 (1994), 281-312.
- , 'The Uneasy Case for Wealth Transfer Taxation', *The Yale Law Journal*, 104/2 (1994), 283-365.
- , *Fair not flat: how to make the tax system better and simpler* (Chicago: Chicago University Press, 2002).
- MCKERLIE, DENNIS, 'Equality and Time', *Ethics*, 99/3 (1989), 475-91.
- MCLELLAN, DAVID (ed.), *Marx, Karl: Selected writings* (Oxford: Oxford University Press, 1977).
- MCMAHON, MARTIN J. JR. and ABREU, ALICE G., 'Winner-Take-All Markets: Easing the Case for Progressive Taxation', *Florida Tax Review*, 4/1 (1998), 1-82.
- MEADE, J. E., *Efficiency, equality, and the ownership of property* (London: G. Allen & Unwin, 1964).
- MEADE, J. E. and IFS, *The structure and reform of direct taxation : report of a committee [set up by] the Institute for Fiscal Studies [and] chaired by J.E. Meade* (London: Allen and Unwin [for] the Institute for Fiscal Studies, 1978).
- MERTON, R.K., 'The Matthew effect in science ', *Science*, 159/3810 (1968), 56-63.
- MIDTGAARD, S. F., 'Ambition-Sensitivity and an Unconditional Basic Income', *Analyse und Kritik*, 22/2 (2000).
- MILL, JOHN STUART, *Principles of Political Economy: Books IV and V* (London: Penguin, 1970).
- , *Utilitarianism, On Liberty, Considerations on Representative Government* (London: J.M. Dent, 1993).
- MILLER, DAVID, *Social justice* (Oxford: Clarendon Press, 1976).
- , 'Two Cheers for Meritocracy', *Journal of Political Philosophy*, 4/4 (1996), 277-301.
- , *Principles of social justice* (Cambridge, Mass.: Harvard University Press, 1999).
- , 'Distributing Responsibilities', *Journal of Political Philosophy*, 9/4 (2001), 453-71.
- MILNE, HEATHER, 'Desert, Effort and Equality', *Journal of Applied Philosophy*, 3/2 (1986), 235-43.
- MIRRLEES, JAMES A., 'An Exploration in the Theory of Optimum Income Taxation', *The Review of Economic Studies*, 38/2 (1971), 175-208.
- MIRRLEES, JAMES A. and IFS, *Tax by design : the Mirrlees review* (Oxford: Oxford University Press, 2011).
- MOON, J. DONALD, 'Review: Carens, Joseph. Equality, Moral Incentives and the Market', *Ethics*, 94/1 (1983), 146-50.
- MURPHY, LIAM and NAGEL, THOMAS, *The Myth of Ownership: Taxes and Justice* (Oxford: OUP, 2002).
- , *The Myth of Ownership: Taxes and Justice*, (Oxford: OUP, 2002).
- MUSGRAVE, RICHARD A., *The Theory of Public Finance* (New York: McGraw-Hill, 1959).
- , 'Maximin, Uncertainty, and the Leisure Trade-off', *The Quarterly Journal of Economics*, 88/4 (1974), 625-32.
- NAGEL, THOMAS, 'Rawls on Justice', *The Philosophical Review*, 82/2 (1973), 220-34.
- , 'The Problem of Global Justice', *Philosophy & Public Affairs*, 33/2 (2005), 113-47.
- NICHOLS, ALBERT L. and ZECKHAUSER, RICHARD J., 'Targeting Transfers through Restrictions on Recipients', *The American Economic Review*, 72/2 (1982), 372-77.
- NIETZSCHE, FRIEDRICH, *Thus spoke Zarathustra* (London: Penguin Books, 1969).

- , *Beyond good and evil* (London: Penguin Books, 1990).
- NOZICK, ROBERT, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974).
- NUSSBAUM, MARTHA C., *Women and human development : the capabilities approach* (Cambridge; New York: Cambridge University Press, 2000).
- , 'Capabilities as Fundamental Entitlements: Sen and Social Justice', *Feminist Economics*, 9/2-3 (2003), 33-59.
- OKIN, SUSAN MOLLER, 'Poverty, Well-Being, and Gender: What Counts, Who's Heard?', *Philosophy & Public Affairs*, 31/3 (2003), 280-316.
- OTSUKA, MICHAEL, 'Luck, Insurance, and Equality', *Ethics*, 113/1 (2002), 40-54.
- , *Libertarianism without inequality* (Oxford: Clarendon, 2003).
- , 'Equality, Ambition and Insurance', *Aristotelian Society Supplementary Volume*, 78/1 (2004), 151-66.
- PARFIT, DEREK, *Reasons and Persons* (Oxford: Oxford University Press, 1984).
- , 'Equality and Priority', *Ratio*, 10/3 (1997), 202-21.
- , 'Equality or Priority?', in Matthew Clayton and Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: MacMillan, 2000), 81-125.
- , 'Equality or Priority? The 1995 Lindley Lecture, University of Kansas', in Matthew Clayton and Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: MacMillan, 2000), 81-125.
- , 'Another Defence of the Priority View', *Utilitas*, 24/Special Issue 03 (2012), 399-440.
- PECHMAN, JOSEPH A. (ED.), *Comprehensive Income Taxation* (Washington D.C.: Brookings Institute, 1977).
- PHELPS, EDMUND S., *Economic justice : selected readings* (Harmondsworth, Angleterre: Penguin, 1973).
- , 'Taxation of Wage Income for Economic Justice', *The Quarterly Journal of Economics*, 87/3 (1973), 331-54.
- , *Rewarding Work : how to restore participation and self-support to free enterprise* (Cambridge, Mass.: Harvard University Press, 1997).
- PIERIK, ROLAND, 'Reparations for Luck Egalitarians', *Journal of Social Philosophy*, 37/3 (2006), 423-40.
- PIERIK, ROLAND and ROBEYNS, INGRID, 'Resources versus Capabilities: Social Endowments in Egalitarian Theory', *Political Studies*, 55/1 (2007), 133-52.
- POGGE, THOMAS, *World poverty and human rights : cosmopolitan responsibilities and reforms* (Cambridge: Polity Press, 2002).
- , 'A critique of the capability approach', in Harry Brighouse and Ingrid Robeyns (eds.), *Measuring Justice* (Cambridge: Cambridge University Press, 2010).
- QUONG, JONATHAN, *Liberalism without perfection* (Oxford: Oxford University Press, 2011).
- RAKOWSKI, ERIC, *Equal justice* (Oxford: Clarendon Press, 1991).
- , 'Transferring Wealth Liberally', *Tax Law Review*, 51/3 (1996), 419-72.
- , 'Can Wealth Taxes Be Justified?', *Tax Law Review*, 53 (2000), 263-375.
- RAWLS, JOHN, 'Justice as Fairness', *The Philosophical Review*, 67/2 (1958), 164-94.
- , 'Reply to Alexander and Musgrave', *The Quarterly Journal of Economics*, 88/4 (1974), 633-55.
- , 'Justice as Fairness: Political not Metaphysical', *Philosophy & Public Affairs*, 14/3 (1985), 223-51.
- , 'The Priority of Right and Ideas of the Good', *Philosophy and Public Affairs*, 17/4 (1988), 251-76.
- , *Political liberalism* (New York: Columbia University Press, 1996).
- , *A Theory of Justice: Revised Edition* (Oxford: Oxford University Press, 1999).
- , *Collected papers* (Cambridge, Mass.: Harvard University Press, 1999).

- , *The law of peoples : with "The idea of public reason revisited"* (Cambridge, Mass.: Harvard University Press, 1999).
- , *Justice as fairness : a restatement* (Cambridge, Mass.: Harvard University Press, 2001).
- RIPSTEIN, ARTHUR, 'Liberty and Equality', in Arthur Ripstein (ed.), *Ronald Dworkin* (London: Cambridge Univ. Press, 2007), 82-108.
- ROBEYNS, INGRID, 'The Capability Approach: a theoretical survey', *Journal of Human Development*, 6/1 (2005), 93-117.
- ROEMER, JOHN E., 'Equality of Talent', *Economics and Philosophy*, 1 (1985), 151-87.
- , 'Equality of Resources Implies Equality of Welfare', *The Quarterly Journal of Economics*, 101/4 (1986), 751-84.
- , 'The Mismatch of Bargaining Theory and Distributive Justice', *Ethics*, 97/1 (1986), 88-110.
- , 'Egalitarianism, Responsibility, and Information', *Economics and Philosophy*, 3 (1987), 215-44.
- , *Egalitarian perspectives : essays in philosophical economics* (Cambridge: Cambridge University Press, 1994).
- , *Theories of distributive justice* (Cambridge, Mass.: Harvard University Press, 1996).
- , *Theories of distributive justice* (Cambridge, Mass.: Harvard University Press, 1998).
- , 'Egalitarianism against the Veil of Ignorance', *The Journal of Philosophy*, 99/4 (2002), 167-84.
- ROSEN, SHERWIN, 'The Economics of Superstars', *The American Economic Review*, 71/5 (1981), 845-58.
- , 'Prizes and Incentives in Elimination Tournaments', *The American Economic Review*, 76/4 (1986), 701-15.
- , 'The theory of equalizing differences', in Orley Ashenfelter and Richard Layard (eds.), *Handbook of Labor Economics* (Volume 1; Amsterdam: Elsevier, 1986), 641-92.
- RUDICK, HARRY J, 'A Proposal for an Accessions Tax', *Tax Law Review*, 1/1 (1945), 25-44.
- RYLE, GILBERT, *The concept of mind* (London: Hutchinson's University Library, 1949).
- SAEZ, EMMANUEL, 'Optimal Income Transfer Programs: Intensive versus Extensive Labor Supply Responses', *The Quarterly Journal of Economics*, 117/3 (2002), 1039-73.
- SANDEL, MICHAEL J., *Liberalism and the limits of justice* (Cambridge: Cambridge University Press, 1982).
- , *Justice : what's the right thing to do?* (New York: Farrar, Straus and Giroux, 2009).
- SANDFORD, CEDRIC THOMAS, et al., *An accessions tax : a study of the desirability and feasibility of replacing the United Kingdom estate duty by a cumulative tax on recipients of gifts and inheritances* (London: Institute for Fiscal Studies, 1973).
- SCANLON, T. M., 'Equality of Resources and Equality of Welfare: A Forced Marriage?', *Ethics*, 87/1 (1986), 111-18.
- , 'The significance of choice', in S.M. McMurrin (ed.), *The Tanner Lectures on Human Values vol. 8* (Cambridge: Cambridge University Press, 1988), 149-216.
- , *What we owe to each other* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1998).
- , 'Justice, responsibility, and the demands of equality', in Christine Sypnowich (ed.), *The egalitarian conscience: Essays in honour of G.A. Cohen* (Oxford: Oxford University Press, 2006), 70-87.
- , *Moral dimensions : permissibility, meaning, blame* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2008).
- SCHANZ, GEORG VON, 'Der Einkommensbegriff und die Einkommensteuergesetze', *Finanzarchiv*, 13 (1896), 1-87.
- SCHEFFLER, SAMUEL, 'What is Egalitarianism?', *Philosophy and Public Affairs*, 31/1 (2003), 5-39.

- SCHENK, DEBORAH H., 'Saving the Income Tax with a Wealth Tax', *Tax Law Review*, 53 (2000), 423-76.
- SCHMALBECK, RICHARD, 'Income Averaging after Twenty Years: A Failed Experiment in Horizontal Equity', *Duke Law Journal*, 3 (1984), 509-80.
- SCHMIDT, ULRICH, STARMER, CHRIS, and SUGDEN, ROBERT, 'Third-generation prospect theory', *Journal of Risk and Uncertainty*, 36/3 (2008), 203-23.
- SEIDMAN, LAURENCE, *The USA Tax: A Progressive Consumption Tax* (Cambridge, Mass.: MIT Press, 1997).
- SEN, AMARTYA, *Collective choice and social welfare* (San Francisco, Calif.: Holden-Day, 1970).
- , 'Utilitarianism and Welfarism', *The Journal of Philosophy*, 76/9 (1979), 463-89.
- , 'Equality of What?', *The Tanner Lectures On Human Values* (Salt Lake City: University of Utah Press, 1980).
- , *Resources, values, and development* (Oxford: B. Blackwell, 1984).
- , 'Justice: Means versus Freedoms', *Philosophy & Public Affairs*, 19/2 (1990), 111-21.
- , *Inequality Reexamined* (Oxford: OUP, 1992).
- , 'Capability and well-being', in Martha C. Nussbaum and Amartya Sen (eds.), (Oxford: Clarendon Press, 1993).
- , *The Idea of Justice* (London; New York: Allen Lane, 2009).
- SHAPIRO, I, 'Book Review: Idea of Justice', *Journal of Economic Literature*, 49/4 (2011), 1251-63.
- SHAVIRO, DANIEL, 'The Minimum Wage, the Earned Income Tax Credit, and Optimal Subsidy Policy', *The University of Chicago Law Review*, 64/2 (1997), 405-81.
- , 'Inequality, Wealth, and Endowment', *Tax Law Review*, 53/3 (2000), 397-422.
- , 'Endowment and Inequality', in Joseph J. Thorndike and Dennis J. Jr. Ventry (eds.), *Tax Justice: The Ongoing Debate* (Washington, D.C.: Urban Institute Press, 2002).
- , 'Beyond the Pro-Consumption Tax Consensus', *Stanford Law Review*, 60/3 (2007), 745-88.
- SHIELDS, LIAM, 'The Prospects for Sufficiencyarianism', *Utilitas*, 24/01 (2012), 101-17.
- SHOEMAKER, DAVID, 'Attributability, Answerability, and Accountability: Toward a Wider Theory of Moral Responsibility', *Ethics*, 121/3 (2011), 602-32.
- SIDGWICK, HENRY, *The Methods of Ethics* (6th edn.; London: MacMillan, 1901).
- SIMONS, HENRY CALVERT, *Personal income taxation : the definition of income as a problem of fiscal policy* (Chicago, Ill.: University of Chicago Press, 1938) xi, 238 p.
- SMART, JOHN J. C. and WILLIAMS, BERNARD, *Utilitarianism: for and against* (Cambridge: Cambridge UP, 1985).
- SMITH, ADAM, *The Theory of Moral Sentiments* (London: A. Millar, and A. Kincaid and J. Bell, 1759).
- , *An Inquiry into the Nature and Causes of the Wealth of Nations* (New York: P F Collier and Son, 1909 [1784]).
- STEINER, HILLEL, *An Essay on Rights* (Oxford: Blackwell, 1994).
- STEMPLOWSKA, ZOFIA, 'Responsibility and Respect', in Carl Knight and Zofia Stemplowska (eds.), *Responsibility and Distributive Justice* (Oxford: Oxford University Press, 2011), 115-35.
- STIGLER, GEORGE J., 'The Economics of Minimum Wage Legislation', *The American Economic Review*, 36/3 (1946), 358-65.
- STRAWSON, GALEN, 'The impossibility of moral responsibility', *Philosophical Studies*, 75/1-2 (1994), 5-24.
- STRNAD, JEFF, 'Periodicity and Accretion Taxation: Norms and Implementation', *The Yale Law Journal*, 99/8 (1990), 1817-911.
- SUGIN, LINDA, 'A Philosophical Objection to the Optimal Tax Model', *Tax Law Review*, 64 (2011), 229-81.

- TADROS, VICTOR, *The ends of harm : the moral foundations of criminal law* (Oxford: Oxford University Press, 2011).
- TONDANI, DAVIDE, 'Universal Basic Income and Negative Income Tax: Two different ways of thinking redistribution', *Journal of Socio-Economics*, 38/2 (2009), 246-55.
- TREMAIN, SHELLEY, 'Dworkin on Disablement and Resources', *Canadian Journal of Law and Jurisprudence*, 9/2 (1996), 343-59.
- TUNGODDEN, BERTIL and VALLENTYNE, PETER, 'Who Are the Least Advantaged?', in Nils Holtug and Kasper Lippert-Rasmussen (eds.), *Egalitarianism : new essays on the nature and value of equality* (Oxford: Clarendon Press, 2007).
- TVERSKY, AMOS and KAHNEMAN, DANIEL, 'Advances in prospect theory: Cumulative representation of uncertainty', *Journal of Risk and Uncertainty*, 5/4 (1992), 297-323.
- VALLENTYNE, PETER, 'Brute Luck, Option Luck, and Equality of Initial Opportunities', *Ethics*, 112/3 (2002), 529-57.
- , 'Debate: Capabilities versus Opportunities for Well-being', *Journal of Political Philosophy*, 13/3 (2005), 359-71.
- VAN DER VEEN, ROBERT, 'Equality of Talent Resources: Procedures or Outcomes?', *Ethics*, 113/1 (2002), 55-81.
- VAN PARIJS, PHILIPPE, *Real freedom for all : what (if anything) can justify capitalism?* (Oxford: Clarendon Press, 1995).
- , 'Basic Income: A simple and powerful idea for the twenty-first century', in Bruce A. Ackerman, et al. (eds.), *Redesigning distribution : basic income and stakeholder grants as alternative cornerstones for a more egalitarian capitalism* (London: Verso, 2006).
- VARIAN, HAL, 'Equity, envy, and efficiency', *Journal of Economic Theory*, 9/1 (1974), 63-91.
- , 'Distributive Justice, Welfare Economics, and the Theory of Fairness', *Philosophy and Public Affairs*, 4 (1975), 223-47.
- , *Intermediate Microeconomics: A Modern Approach* (New York: W.W. Norton & Co., 1996).
- VENTRY, DENNIS J., 'Equity versus Efficiency in Historical Perspective', in Joseph J. Thorndike and Dennis J. Ventry (eds.), *Tax Justice : The Ongoing Debate* (Washington, D.C.: Urban Institute Press, 2002).
- VICKREY, WILLIAM, *Agenda for Progressive Taxation (with a new introduction)* (Clifton N.J.: Augustus M. Kelley, 1972).
- , *Public economics: selected papers by William Vickrey* (Cambridge: Cambridge University Press, 1994).
- WADSWORTH, JONATHAN, 'Did the National Minimum Wage Affect UK Prices?', *Fiscal Studies*, 31/1 (2010), 81-120.
- WALKER, FRANCIS A., 'The Bases of Taxation', *Political Science Quarterly*, 3/1 (1888), 1-16.
- WARR, PETER, JACKSON, PAUL, and BANKS, MICHAEL, 'Unemployment and Mental Health: Some British Studies', *Journal of Social Issues*, 44/4 (1988), 47-68.
- WARREN, ALVIN C., JR., 'Fairness and a Consumption-Type or Cash Flow Personal Income Tax', *Harvard Law Review*, 88/5 (1975), 931-46.
- WEBER, MAX, *The Protestant ethic and the spirit of capitalism* (New York: Scribner, 1958).
- WHITE, STUART, 'Liberal Equality, Exploitation, and the Case for an Unconditional Basic Income', *Political Studies*, 45/2 (1997), 312-26.
- , 'The Egalitarian Earnings Subsidy Scheme', *British Journal of Political Science*, 29/4 (1999), 601-22.
- , 'Fair Reciprocity and Basic Income', in Andrew Reeve and Andrew Williams (eds.), *Real Libertarianism Assessed* (Basingstoke: Palgrave, 2003), 136-60.

- , *The civic minimum : on the rights and obligations of economic citizenship* (Oxford: Oxford University Press, 2003).
- , 'What's Wrong with Workfare?', *Journal of Applied Philosophy*, 21/3 (2004), 271-84.
- WILKINSON, T. M., 'The Ethics and Economics of the Minimum Wage', *Economics and Philosophy*, 20/02 (2004), 351-74.
- WILLIAMS, ANDREW, 'Incentives, Inequality, and Publicity', *Philosophy & Public Affairs*, 27/3 (1998), 225-47.
- , 'Resource Egalitarianism and the Limits to Basic Income', *Economics and Philosophy*, 15/01 (1999), 85-107.
- , 'Dworkin on Capability', *Ethics*, 113 (2002), 23-39.
- , 'Equality for the Ambitious', *Philosophical Quarterly*, 52 (2002), 377-89.
- , 'Equality, Ambition and Insurance', *Aristotelian Society Supplementary Volume*, 78/1 (2004), 131-50.
- WILLIAMSON, THAD, 'Realizing Property-Owning Democracy: A Twenty Year Strategy to Create an Egalitarian Distribution of Assets in the United States', in Martin O'Neill and Thad Williamson (eds.), *Property-owning democracy : Rawls and beyond* (Malden, MA: Wiley-Blackwell, 2012), 225-48.
- WINKELMANN, LILIANA and WINKELMANN, RAINER, 'Why Are the Unemployed So Unhappy? Evidence from Panel Data', *Economica*, 65/257 (1998), 1-15.
- WOLFF, EDWARD N., *Top Heavy : a study of the increasing inequality of wealth in America* (New York: Twentieth Century Fund Press, 1994).
- , 'Time for a Wealth tax?', *Boston Review*, (1996).
- WOLFF, JONATHAN, 'Fairness, Respect, and the Egalitarian Ethos', *Philosophy & Public Affairs*, 27/2 (1998), 97-122.
- , 'Social justice and public policy: a view from political philosophy', in Gary Craig, Tania Burchardt, and David Gordon (eds.), *Social justice and public policy* (Bristol: Policy Press, 2008), 17-31.
- ZATZ, NOAH, 'What Welfare Requires from Work', *UCLA Law Review*, 54 (2006), 373-464.
- , 'Supporting Workers by Accounting for Care', *Harvard Law & Policy Review*, 5/1 (2011), 45-68.
- ZELENAK, LAWRENCE, 'Taxing Endowment', *Duke Law Journal*, 55/6 (2006), 1145-82.