

EQUALITY AND SOCIAL JUSTICE

by

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Justitia et constans et perpetua voluntas
jus suum cuique tribuendi

- Ulpian¹.*

Our animal needs ... consist in food, clothing
and shelter. If justice means anything,
nothing can be more unjust than that any man
lack them. But justice does not stop here.
So far as the general stock of commodities
holds out, every man has a claim not only to
the means of life, but to the means of a good
life.

- Godwin².

(* "Justice is the constant and perpetual will to
give to each that which is due to him.")

PREFACE

The exponential expansion of the human population of the earth, together with the accelerating pressure that is being placed on natural resources, is of a magnitude that threatens soon to render the expression 'scarce resources' pleonastic. Too many people chasing too few goods is a reliable recipe for disaster. The problems are of such a magnitude that the search for real solutions can readily appear futile. This is especially so because the gravest problems are often not theoretical at all, but practical. They are the problems of convincing contrary human beings of the necessity of radical changes in their life styles, and in their aspirations and expectations.

The first step, however, is to find the correct theories. High on the list of priorities must be an adequate theory of the morally proper distribution among people of the scarce goods and resources which they all require. Once we have such a theory, it will be time enough to worry about getting people to listen, to understand, and to act.

The received opinion, in many circles, is that the current distribution of goods and resources is unjust because it is gravely unequal. For all that there is evident truth in this claim, the problem of expressing it in a clear and theoretically perspicuous manner has proved to be an intractable one.

The fault lies with egalitarianism itself. In its incomplete apprehension of the nature of injustice, it has embraced a collection of half-truths with a tenacity and a fervour which have seriously impeded further progress. My primary thesis is that egalitarianism, as a theory of social

justice, is false.

Some of the beliefs to which egalitarians have subscribed do deserve, however, to be preserved. My secondary thesis is that this can be achieved by incorporating these insights into a properly formulated, nonegalitarian, socialist theory of justice. This theory will not be presented in detail: instead, the discussion will range over a variety of considerations which converge upon socialism, as providing the only morally acceptable theory of distribution. If the treatment is sometimes tentative, speculative, and controversial, that is because the time has passed for toying with safe and cautious approaches to these problems.

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CHAPTER ONE

MORALITY AND EQUALITY

I

A philosophical theory of morality should identify the basic empirical sources - the sources in the natural and social realms - of moral significance and moral value. The world is a rich and diverse place, and it is by no means always obvious, when moral demands arise from it, what the ultimate sources of those demands are. As I conceive the matter, the fundamental points of contact between morality and the empirical world are to be found in morally-relevant facts. That is, certain things, events or states of affairs have, in virtue of their empirical attributes, some moral significance. I assume here the truth of the basic principle that, whenever states of affairs in the world give rise to moral requirements, and whenever states of affairs are defensibly evaluated as morally good or evil, it is of necessity the case that some of the natural attributes of those states of affairs are possessed of an irreducible moral significance. This does not take us very far, however, and in particular, it leaves open the critical question of the nature of the relationship between empirical facts and the moral significance that some of them have. Given, however, that this principle states a minimal yet necessary condition of any adequate ethical theory, it can contribute significantly to moral debate, as my arguments against egalitarianism will show.

A theory of simple and complex properties is presupposed by my procedure here¹. According to this theory, some

empirical properties are complex, are compounds of other, simpler properties. For present purposes, it is not necessary to show that there are absolutely simple properties: it is sufficient to maintain the more limited thesis that some are more simple than others. The importance of this for moral theory is that the project of identifying the ultimate bearers of moral significance has not been successfully accomplished in those cases where the complex property identified as such a bearer contains component (simpler) properties, some of which are not themselves morally significant. The aim must be to isolate morally significant properties which contain no morally significant simpler properties as components. Some properties which appear, at first blush, to be morally significant, are compound properties which on closer inspection are found to contain some simpler properties, as a component subset, which are the real bearers of moral significance. The relational properties of equality and inequality - or, more accurately, the complex circumstances which are commonly identified as both morally significant and as states of equality or of inequality - are such properties.

The fact that equality is a relational property is important in connection with its 'reducibility', but this should not be taken to imply the radically individualistic and false thesis, that only non-relational properties can have moral significance². Exploitation, oppression, ingratitude, altruism and mercy, after all, do instantiate relational properties which have a moral significance which is not reducible to the moral significance of any non-relational properties. My argument is that a particular pair of relational properties which are widely believed to be morally important, namely equality and inequality, do not in fact possess underivative

moral significance, that they are compound properties which are made up of simpler properties, some of which, sometimes, are bearers of moral significance.

The initial data of any substantive moral theory cannot exclude the firmer of our moral intuitions. The normal procedure, granted this much, is to seek principles which explain those intuitions³. Such principles, however, cannot legitimately be regarded as acceptable without further justification. It is not the case that some moral principles are self-evidently true; nor need it be the case that some, unavoidably, are ultimate commitments which cannot be justified by anything beyond themselves. Scientific laws and theories are ultimately justified, as regards their empirical content (and in some manner which is inadequately understood), by reference to facts about the world. General moral principles, I will suppose, are similarly justifiable, not by reference to ordinary facts, but by reference to morally significant ones. Given that the ultimate bearers of moral significance are natural properties and states, the most basic moral truths will be those which attach a particular moral significance to a particular property. How they do this is not my present concern.

Against this methodological background, the aim of the present work can be seen as that of testing the claim that the attributes of equality and inequality are bearers of ultimate moral significance. This claim will be rejected as mistaken. The general procedure will consist in showing that, in those situations characterized by relationships of equality and inequality which seem to have some moral significance, the entire significance actually devolves onto other properties. These properties will sometimes be simpler components of the

compound property of equality; sometimes they will be properties which are related to the property of equality only by co-instantiation.

A particular test that I will sometimes use is the following: various states of affairs which have some moral significance are modified in order to exclude whatever properties might plausibly explain that significance, other than the properties of equality and inequality. Since no situation can be characterized solely by the latter properties, the test procedure requires that some other properties, ones which clearly have no moral significance (in that context), be substituted for the morally significant ones which have been eliminated. If it should happen that in every case, the resulting situation could not plausibly be invested with any moral significance (no matter how slight), serious doubt would be thrown on the claim that equality was ever a bearer of intrinsic moral significance.

II

Egalitarianism should be characterized as the theory that the relational properties of equality and inequality are, at least in some cases (if that is a coherent qualification), bearers of irreducible moral significance. Accordingly, I regard 'egalitarianism' as a term which carries some descriptive content, and not purely as a name. People may use names however they like: and those who have named themselves 'egalitarians' have often enjoyed that liberty to the full. My concern is solely with any theory which meets the requirements that I have laid down for the application of the descriptive concept.

Equality is sometimes conceived to have a moral signifi-

ance which extends beyond the sphere of justice. Understood in this light, some moral principles of equality will be regarded as forming part of an ideal of the morally exemplary society. This is to say that equalities of these kinds go beyond the limited demands of justice: they are required for moral reasons of a wider sort. The possibility of defending ideals of equality which exceed the requirements of justice does not seem very bright, however. Hugo Bedau makes this point when he says that the attraction of equality is that it is just, "which no one has seriously denied". If equality has to be recommended on any moral grounds other than those of justice (he says), it has at best a precarious hold on our convictions⁴.

The connection between justice and equality, indeed, has seemed to a long tradition of moral philosophy to be peculiarly intimate. I will argue the contrary case, that there is no connection of fundamental moral significance between justice and equality. The extension of my arguments to the area of morality which lies outside justice should present no particular problems. Accordingly, while my specific target is the egalitarian theory of justice, my implied target is egalitarianism itself: I will show that it is an insupportable theory.

III

Three different accounts are possible of the connection between justice and equality:

(i) Analytic egalitarianism. This theory asserts that there is a logically necessary connection between justice and equality. In particular, it amounts to the 'neo-Aristotelian' claim that all morally substantive theories of justice must

necessarily be cast in a particular form, into whose statement the concepts of equality and inequality must enter. I will show that this position is untenable.

(ii) Normative egalitarianism. This theory defends the existence of a substantive or morally necessary connection between justice and equality. This is honest egalitarianism, and represents the major object of my critical attention.

(iii) Nonegalitarianism. This is the theory defended here. I will argue that, to the extent that justice and equality tend, in certain ways, to be found together, this fact is merely contingent and adventitious, though not inexplicable.

As should be evident, my concern is primarily conceptual, and only secondarily moral. I am not defending the moral position of inegalitarianism. Indeed, my departure, in these definitions, from ordinary usage is emphasised by the fact that inegalitarianism becomes, for me, a species of egalitarianism, in virtue of its bestowing moral significance on the properties of equality and inequality. Since the language of egalitarianism is as confused as the theory itself is mistaken, these departures from common usage are simply accepted. While it is likely that many (self-styled) egalitarians would not care to subscribe to all the positions to which I have attached that term, it should be pointed out that the use of descriptive words must proceed in accordance with criteria of fair usage. 'Egalitarianism' must surely be a theory which attaches some special significance to the relational attribute of equality - otherwise it does not deserve to be described in that way. My insistence on the point is a protest against those who have obscured some of the real sources of moral significance in this world by insisting on the moral importance of the fact that they are egalitarians.

It is very important to seek a deeper and more adequate understanding of the values that underlie proposed moral and social policies: after all, a person's understanding of the reasons why some social situation is to be condemned will be reflected in the practical policies he proposes in remedy of it. If he begins from a faulty diagnosis - one which attaches fundamental significance to equalities or inequalities, for instance - he might still hit, by luck, on the right solution. Many egalitarians have in fact done so, in many cases: the policies that they have advanced have been models of morality and justice, in spite of their radical mishandling of the fundamental issues and their failure to describe properly the content of their policies. But sometimes, a faulty diagnosis finds expression in a faulty remedy - as has also sometimes been the case, where the pursuit of equality is concerned. If my arguments succeed in disentangling that which is morally valuable in egalitarian's demands from that which is pernicious - and egalitarians have, sadly, all too often committed themselves to the promotion of pernicious policies - that will be a considerable gain.

IV

The concept of equality itself is not a recondite or mysterious one. Equality is a relational attribute which holds between any two (or more) individuals in respect to some further attribute, just in case they have that further attribute in common. It is logically necessary that each individual that is a term of the relation has some further attribute, and that it is the same attribute in every case. This definition will extend over both equalities in respect to nonvariable properties and equalities in respect to variable ones, provided

that each distinct degree of the latter is accounted a distinct property (as indeed it is). Both equalities and inequalities are relations which hold in respect to a definite property, in every case. Two individuals are equal in respect to a property, F, if they both have F, or if they both lack it. They are unequal in respect to a property, F, if and only if one has F and one lacks it. Any judgement of equality or of inequality between two (or more) individuals will accordingly be incomplete unless the attribute in respect to which they are (respectively) the same or different has been specified.

The concept of equality with which I am working is, then, a descriptive one for which a precise definition can be advanced. A certain amount of 'revisionism' is involved in this, given that some people have invested the notion with favourable evaluative content, so that an 'unfair equality' approaches self-contradiction⁵. This practice has nothing to recommend it. My intention is to return to fundamentals - to the descriptive notion - and to unravel the evaluative structures that have been reared (often so clumsily) on that base.

Because there are so many relations of equality and inequality between individuals (that is, between things generally), and because they are normally totally unremarkable, no rational person could be prompted to defend the view that all equalities were intrinsically good and all inequalities intrinsically evil⁶. Nor is the far more restricted (but still very encompassing) view, that equality between persons is always intrinsically good, in the slightest plausible. If relations of equality or of inequality between persons are to have any moral importance (even derivative moral importance), it must surely be the case that the attributes in respect to which the relations hold should themselves have moral signifi-

cance. The point is both incontrovertible and of fundamental importance. If the possession by one person of a certain property has no moral significance, and the possession (or non-possession) by another person of that property has no moral significance, when these two facts are individually and separately considered, then the derivative or consequential property of equality (or of inequality), which therefore holds (as a matter of logic) between them, cannot have any moral significance. This conclusion can be deductively demonstrated.

If P1 is a proposition which attributes a property, F, to an individual, D1, and P2 is a proposition which attributes a property, F, to an individual, D2, then the conjunction of P1 and P2 (together with the analytic definition of 'equality') entails the conclusion, P3, that D1 and D2 are equal in respect to F. A parallel argument, in which P2 attributes not-F to D2, will entail the conclusion, P4, that D1 and D2 are unequal in respect to F. It follows from this that, if the premises, P1 and P2, include nothing of moral importance, then neither does the conclusion. Indeed, the argument suggests a much stronger conclusion than this. It suggests that, whenever a judgement about the equality or inequality of two individuals does have moral content, that judgement will be wholly replaceable by a conjunction of propositions which has precisely the same moral content, but does not include reference to the relational attributes of equality or inequality. Furthermore, a perfectly familiar operation in formal logic leads to the conclusion that, whatever moral significance resides in the conjunction, $F(D1) \& F(D2)$, must reside in the conjuncts, since it cannot be introduced simply by virtue of their conjunction.

If we could be wholly confident that the transformations and entailments which formal logic permits accurately captured

legitimate moral reasoning in its entirety, this argument would be wholly conclusive. As consequential attributes, equality and inequality are necessarily incompetent to be bearers of any underivative moral significance. But suspicions that, in the actual world, relations of equality do have some moral significance of their own are likely to persist in spite of the evidence of these formal transformations. In any case, while these considerations seem to me to have an impressive force, I do not intend to rest my case on them alone. My subsequent discussion will seek to show, in a variety of particular cases, that whenever a special moral significance seems to accrue to a relationship of equality, it actually belongs elsewhere. However, as my discussion of the principles for the distribution of goods under conditions of scarcity will bring out, relational attributes cannot be dispensed with entirely. Some relational properties, unlike the properties of equality and inequality, do appear to have underivative moral significance.

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CHAPTER TWO

SOCIAL JUSTICE

I

Human societies are typically characterized by relationships of both co-operation and conflict. To some extent, this is a reflection of the fact that persons are both social beings and individuals.

Each person is a product of his environment, and especially of his social environment. He has his character and many of his capacities, his aspirations, values and ideals, in important part as a causal consequence of the impact upon him of influences from the social world in which he develops as a person. He acquires his language and most of his beliefs, together with much of his capacity for rational thought and for moral behaviour, from his social environment. Only in society can homo sapiens become persons. Except in extreme cases of social disintegration, the social environment will be productive of individuals who have both the capacity and the desire for co-operative endeavour. At the same time, if it is the environment offered by a tolerably open society, it will also provide the enabling conditions necessary for its members to have a developed capacity for self-directed action aiming at private ends. In exercising their capacity and desire for co-operation, people must find ways of regulating their pursuit of private ends; they must find designs for the social relations which are to exist between them. Many benefits, both of a material and a non-material kind, will result from their co-operation, to the extent that they are successful in order-

ing their social relationships. Especially because most goods would not be produced at all, or would be produced only in far smaller quantities, if people acted individually, their accruing to society collectively only raises in an acute form, but does not answer, the question what is to be done with them. Because the individual persons who compose society have individual lives of their own to lead, and especially because they have private ends which are not also the collective ends of all, they are not indifferent to how socially-produced goods are distributed. The roots of most social conflict lie here.

There is need of a theory which will offer guidance as to how both the benefits and the burdens of social co-operation and interaction should be distributed. Such a theory will be a theory of social justice.

II

Scepticism has sometimes been expressed about the existence of the topic of social justice. Antony Flew¹ has argued that originally, justice was concerned only with dealings between individuals, especially where they made claims on each other on the basis of antecedent deserts, obligations and entitlements. From this perspective, the claim made by John Rawls that the primary object of the theory of (social) justice is the basic structure of society², is a puzzling one. Indeed, Flew suggests that, in as far as the original connections with the backward-looking claims that individuals make against each other are broken, the modern subject of social justice should be seen as having no real connection with the topic of justice in its original sense³.

There is some merit in Flew's claim. The concerns of modern inquiries into social justice often bear only a loose

resemblance to the concerns of the classical discussions of justice. Indeed, it is arguable that, to the extent that modern philosophers have presupposed too strong a basic continuity of their subject with the subject matter of classical thought, they have sometimes been persuaded to impose inappropriate requirements upon their theories. They have, for instance, considered (although not usually to accept) whether a possible basis for the distribution of socially-produced material goods might be moral desert. Yet that is a suggestion which has very little to recommend it, apart from the supposition that, since moral desert is central to the classical conception of justice, it should therefore be found a place somewhere in the modern conception of social justice.

The historical questions which this issue raises are not my present concern. I do maintain, however, that there is some justification for calling the subject of this inquiry, 'social justice'. The subject is the morally legitimate distribution, within a society, of the benefits and burdens which arise as a result of social interaction and co-operation. (Principles governing the distribution - or re-distribution - of goods between societies, or between existing political states, are at least as urgently needed as are adequate principles of the kind with which I am - sadly - exclusively concerned here). Whatever are the principles which ought to govern these distributions, they will be, under this conception, the principles of social justice.

Accordingly, I depart from T.D. Campbell's recommendation that the term 'justice' should be restricted to a range of considerations - necessarily tied to the concepts of desert and merit - much more narrow than those which are morally relevant to the problems of distribution in general⁴. Disagreements

about usage are less frequently worth pursuing to any great length than has sometimes been thought, but in some cases (including, perhaps, this one), such linguistic disputes are evidence for underlying disagreements of a substantial nature over continuities and discontinuities between different areas of concern. So on the one hand, it could be argued that my interest is in the subject (the distribution of social goods), and that if anyone objects to my calling it 'the theory of social justice', then they can call it whatever else they like, provided that they understand what the subject is. On the other hand, the contemporary appropriation of the name 'justice' for this subject can and should be defended. One of the more widely-accepted points of agreement in classical thought is that justice is concerned to give to each person that which is due to him⁵. Yet in the most substantial modern contribution to the theory of social justice, that of Rawls, this principle has disappeared without trace. To the extent that 'a person's due' is interpreted as that which he morally deserves, the principle is, as I have allowed, of minimal significance for social justice. Nonetheless, I will argue - in the theory of social justice to be developed in this work - that the principle has an important formal suggestiveness. What is so profoundly unsatisfactory about Rawls's principles of justice (quite apart from the fallaciousness of the derivation he offers for them⁶) is that they offer criteria of distribution which are entirely detached from the possibility that each individual person might have legitimate claims⁷ against some part of the pool of social goods. Such claims, as I will develop this concept, are not equivalent to dues, if the latter are understood (as they probably should be) specifically as moral deserts. But there is an important conceptual continuity

here, given that desert is a moral ground for distribution precisely because it is one of the species of claims.

III

Individual persons have claims, in virtue of various natural facts about them, to certain things - which can be referred to generically as 'goods' - in their natural and social environments. These claims are of various kinds, depending (for instance) on whether a person has a need for some kind of good, or whether he deserves it, or whether he is entitled or has a right to it. All claims should be understood as prima facie, in the sense that, if a person has a claim to a good, then there is a presumption that he ought in justice to have it, a presumption which can, however, be overridden by the existence of an incompatible claim which has a greater moral urgency. In that eventuality, the former claim does not cease to be a legitimate claim: it only turns out not to be legitimately satisfiable. It should also be said that the notion of moral legitimacy is built into my concept of a claim, so that (in the absence of special argument) the fact of his making a claim should not be thought to be sufficient to establish that a person has a claim. (Nor is making - or being capable of making - a claim necessary to having one).

Being prepared to accept that people, in virtue of various of their natural characteristics, have a variety of moral claims on some of the goods in their environment, is intimately connected with being prepared to see human beings (unlike such individuals as pebbles) as having some moral significance, in virtue of those characteristics. To be able to see that it matters what is done to some of the things in a person's environment, just because that person has various characteristics

which relate him, in one morally significant way or another, to them, is to possess an important part of the moral concept of a person. To recognize, for example, that certain facts about a person's capacities or his past conduct make it morally appropriate that he be given something or be treated in some special way - to recognize, that is, that he merits or deserves these things - is to be prepared to see the moral significance that is carried by those natural facts about him. Similarly, to see that a person's hunger - his need for food - constitutes a reason why he should be permitted to have or should be provided with food, is to recognize the moral significance of certain other natural facts about him.

When the classical philosophers spoke of giving to a person that which was due to him, they were expressing their recognition that people sometimes have some natural attributes which give rise to moral claims. The theory of social justice that I offer here seeks to capture and to extend this insight. I will argue, furthermore, that it is only by reference to this basic supposition that we can explain why it is that we should take seriously the duty to distribute, in some morally admissible fashion, goods to persons, a duty that we do not have to such other individuals as pebbles. Until we have been told why it is morally important whether or not anyone receives or has access to any goods at all, we lack any reason to seek to implement a theory of distributive justice.

This conception of the presuppositions of justice finds room, too, for retributive justice, the theory of just punishment and just recompense. Although the language of 'claims' is inappropriate here - it is odd to suggest that a guilty man has a claim to punishment - whatever truth there is in a retributive theory of the justification of punishment⁸ rests on the

insistence that desert is a necessary condition of justified punishment. The fundamental difference that there is between punishment and those modes of treatment for the criminal which do not presuppose his desert, is that in the former case but not in the latter, the response which is being made to the attributes and activities of a person take him seriously (in that respect) as a moral being. This is the sense in which, as J.D. Mabbott's prisoner reminds us, to punish a man is to treat him as a person⁹. It is to see certain responses as morally appropriate to certain facts about a person, and to take seriously - in a sense, to respect - his status as a responsible human being. Yet this theory of punishment can easily come to seem too elevated to be a happy description of the situation of many of the derelict creatures who are the subjects of criminal punishment. If this is so, it is a reflection of the fact that people often do not possess all the morally significant attributes that this theory ascribes to them. If the retributive theory of punishment is false, it is not because it is conceptually or morally mistaken, but because it is factually mistaken - people are not as it supposes them to be.

To give a person that which is due to him, when this involves giving him that which he deserves, is to take him morally seriously. But it is not the only morally serious response that can be made to people. To see that a person has, or has the opportunity to get for himself, an adequate supply of food is also to take him seriously, as a person who is also a biological organism, a creature whose needs constitute claims: that is to say, a being whose requirements for survival, or flourishing, are morally of some consequence. Need and merit are the two major bases of claims recognized in

the socialist theory of justice, the foundations of which are laid in the present work.

Because of the fundamental continuity of subject matter - mediated by the requirements for treating persons with full moral seriousness - between justice as giving to each his due (in the classical sense) and the moral problems concerning the distribution of social goods, I regard the latter as part of the theory of justice. Social justice, under my conception, is the theory of the distribution of social goods according to claims.

IV

Some of the goods which are brought into existence by the interaction and co-operation of human beings cannot properly be regarded as of direct concern to the theory of social justice. The roughly-delineated class of 'private goods' is the class of goods which belong to the personal realm in the lives of people: they are the goods of love and friendship, charity, truthfulness, and so on. The enjoyment of these goods is obviously not completely detached from the public circumstances in which people find themselves, or from their possession of goods which are the subject of distributive principles in a theory of social justice. Furthermore, they are goods which are an integral part of the basic conditions of a good life: the concept of those conditions is, I will argue later, one of the basic concepts in a substantive theory of justice. But none of this shows that these private goods are goods which ought to be publicly-distributed. Goods of the latter kind I will call 'social goods'. Social goods are those things, among the total product of collective action and interaction, which are appropriately regarded as goods which ought to be distrib-

uted according to more-or-less fixed and determinate public principles. This immediately provides one sufficient explanation why many private goods are not of direct concern to the theory of social justice: they are goods, the values of which are inconsistent with the attempt (were it practical) to control their distribution in a public manner. This does not, however, exclude the possibility that part of the explanation of the value of some social goods might be found in their contribution to the conditions necessary for the enjoyment of some private goods.

What are the social goods, the goods which ought to be distributed according to the public principles of social justice? An answer to this question would be a contribution to a particular normative theory of justice, for apart from anything else, it presupposes a particular conception of the claims that people have. Which things in the world are goods depends (largely) on the needs and interests that people have, and which of those goods are subject to distributive principles depends on which of those interests are appropriately regarded as the concern of the public provisions that justice makes. Consider a theory of justice which regards as claims in justice only the positive property rights that people have. In such a theory, even such basic and uncontroversial goods as the material necessities of life do not, as such, fall into the category of social goods. The necessary and sufficient condition for a thing to be a social good is simply that it be the object of property rights (including disputed property rights). It is not even necessary that it be a good, in any other sense. The proponent of a theory of this kind can admit that it is a morally good thing that those who are in need should have the basic necessities: but he will deny that the

principles of justice are involved here. By contrast, in any theory which recognizes needs as grounds of claims, food, shelter, and so on, are social goods.

According to my conception of the nature of social justice, the social goods are those goods which (i) contribute to the basic conditions of a good life, and (ii) can appropriately be distributed in a public (and usually institutionalized) manner. This conception is related to Rawls's account of the 'primary goods', things which every rational person is presumed to want, whatever else he wants. The primary goods are given as "rights, liberties, and opportunities, income and wealth, and the social bases of self-respect"¹⁰. It need not be the case, however, that every primary good is also a social good. That will depend on whether or not its distribution according to public principles expressly designed to that end is desirable. The proper assessment of these questions requires some understanding of the nature of social distribution.

V

In all established societies, most goods will already be distributed. Whether as a result of design or of historical accident, institutions will exist which, even if they do not have as their direct object the distribution of particular goods according to principles of justice, do in any case operate in ways which indirectly produce some de facto distribution of those goods. The more overt kinds of political power, such as the occupancy of legislative offices, are distributed, in modern Western societies, in accordance with institutionalized procedures specifically designed for that purpose. The more covert or less obtrusive forms of political power, on the other hand, tend to be distributed as an unde-

signed consequence (or largely so) of the operation either of other distributive mechanisms, distributing other goods, or of institutions and practices which are officially non-distributive.

Not only wealth, but power and social prestige as well (socialists argue), are distributed by, or as a result of, the operations of the free market, even though it is not a part of the express purpose of that institution to distribute these things at all.

Not every distributive mechanism will conform to a single type. In an important discussion, Rawls distinguishes three different kinds of distributive principles¹¹. The basic distinction is between those conceptions of justice which incorporate a definition of the just end-state, and those which do not: the former category is further divided into two kinds. In the case of 'perfect procedural justice', there exists a procedure which is sure to realize an independently-defined just end-state. In 'imperfect procedural justice', an independent definition can still be given for the just end-state, but no sure procedure for realizing it exists, or is (at least) known to exist. Finally, where the second major category, 'pure-procedural justice', is concerned, there is no independently-defined just end-state; instead, it is necessarily the case that if specified procedures are complied with, the resulting distribution, whatever it is, will be just.

A theory of justice might advance principles of any of these kinds. Robert Nozick's entitlement theory¹², for instance, is a theory of pure-procedural justice, because it rejects the legitimacy of any attempt to define some end-state, some pattern of holdings of goods, as just. Justice is a property of the procedures which govern the acquisition, transfer and redistribution of goods, not a property of the patterns

of holdings which result from the workings of those procedures. On the other hand, the proponent of a different theory of justice might be critical of the fact that purely-procedural mechanisms are permitted to distribute some social goods, even though an independent definition of the just end-state (according to that theory) is available for those goods, and yet is not realized by the distributive procedures actually in operation.

The conflict between pure-procedural and patterned conceptions of justice is an important one in modern Western political and social theory. Broadly speaking, theories in the classical tradition of laissez-faire liberalism have standardly insisted that principles of pure-procedural justice are adequate for the distribution of most social goods. Thus Nozick argues that, provided the initial holdings of goods are justly acquired, and provided that all transfers of goods are legitimate, the resulting distribution of social goods must be just, whatever the pattern it happens to instantiate¹³. Nozick is mistaken, however, in supposing that there could be a theory of justice, even a purely-procedural one, which did not also include a patterned component. Such a component is necessary because the proper operation of just procedures presupposes a background of rights and obligations (typically), the just distribution of which is defined in a patterned way. The free market operates, Nozick presupposes, in a context in which every person has a set of basic and very powerful moral rights - roughly (for Nozick is not explicit on this) the classical liberal rights to life, liberty and property - and a correlative set of obligations to respect the rights of others¹⁴. These rights are distributed equally to all persons: they are not themselves, that is, distributed in a purely-

procedural manner.

Any theory of justice which relies predominantly upon the operation of distributive procedures must specify the constraints and conditions with which those procedures, if they are to operate properly, must comply. Only when these conditions of proper operation are satisfied can the de facto holdings to which they give rise be regarded as just. If the procedures of the free market are to generate distributions which are just, there must be restrictions on the ways in which and the circumstances under which people may legitimately exchange goods. The basic rights which all participants in the market have, and which establish the fundamental conditions of legitimacy for market transactions, cannot themselves be the object of free bargaining and exchange. It can only be for this reason that transactions entered into under threat of force (for example) are declared not to be binding. Similarly, the right to make and to enforce contracts is one, the prior distribution of which to all participants in the market is presupposed in the claim that, whatever is the pattern of holdings which results from proper market activity, it will be just.

Theories of distribution within the socialist tradition have taken the view (broadly speaking) that the distribution-patterns which result from the free operation of market procedures are not only morally intolerable in a general way, but are also actually unjust as well. Such theories have accordingly usually offered patterned conceptions of justice, and have sought to define institutional procedures which will, whether perfectly or imperfectly, bring about these patterns of holdings. Confronted by the objections raised by socialist theories to the existing market methods of distribution, it will hardly do to protest, as H.B. Acton does, that because

the actual distribution of wealth in liberal capitalist societies is that which has come about through the operation of (supposedly) just procedures, it cannot properly be appraised as just or unjust by reference to a patterned conception¹⁵. The point of the socialist objection is precisely that the distribution neither of material wealth nor of the nonmaterial goods with which, in capitalist societies, wealth is positively correlated, should be left to market procedures. The distribution of social goods should generally be governed, on the contrary, by a patterned conception of what the proper holdings of these goods would be.

If it is possible to identify the basic conditions of the good life for some group of persons, then it should also be possible to describe the ideal pattern of distribution, in that group, of at least some of the available social goods. To the extent that this consideration favours socialist (or other) theories which embrace a patterned conception of justice, however, it might be countered by the liberal argument that the attempt to implement institutional procedures for the patterned distribution of goods of this kind will have very unwelcome side-effects. Opponents of public control of the economy will identify many such (alleged) dangers in socialist policies. From the moral point of view, however - granted, that is, the background theory of the particular virtue of social justice defended in the present work - the liberal's insistence that property rights are the sole basis of legitimate claims in justice represents a serious misunderstanding of the relative importance to be attached to different components of the good life. Indeed, whatever the undoubted importance (under the present order of things) of the property-related liberties which the liberal seeks to protect to the

utmost, they are less important to the good life than the possession of the basic necessities of physical survival. Those necessities, in turn, while they are very often objects of property rights, sometimes have a greater value, or a greater moral significance, as objects of needs. Other things being equal, claims based on needs ought to be preferred to claims based on rights. Simply to insist that this violates property rights is not morally sufficient¹⁶.

All societies evolve ways, more or less stable, more or less widely accepted as just, of distributing social goods. A theory of justice can (as I have said) be concerned with these distributions in either or both of two ways: it can appraise social institutions and practices in the light of standards of purely-procedural justice, or it can appraise them from the perspective of the patterns of holdings which they produce.

This contrast, between procedural and patterned conceptions of justice, is closely correlated to the contrast between planned and unplanned distributions. Some institutions and practices are designed, and function in fact, to distribute social goods in accordance with a plan of what that distribution ought to be, or of how it ought to take place. The distribution of some other social goods is unplanned, in the sense that it results, as a more or less unintended, but not necessarily a totally unforeseen consequence, from the proper operation of institutions and practices which have quite a different purpose or function¹⁷. The adherent of a socialist theory of justice will generally favour the introduction of institutions or community practices which will produce planned (patterned) distributions of some of the goods whose distribution was (under the non-socialist order) unplanned. The

laissez-faire liberal, who will generally oppose both patterned conceptions of justice and the public planning and control which tend to go with them, will usually favour the retention (or the re-introduction) of institutions which operate in accordance with the requirements of procedural justice to produce what are otherwise unplanned distributions. The opponent of socialist distributive and redistributive policies can accordingly advance at least two importantly different arguments. Firstly, he can reject the socialist theory of justice itself: as I have pointed out, this standardly involves regarding property rights, rather than (primarily) needs, as the basic source of claims in justice. I have also implied that there are moral reasons, if we grant the centrality of the concept of the basic conditions of the good life, for preferring the socialist view, because it awards greater moral urgency to needs than to rights. The crucial point here is that property rights cannot defensibly be regarded as having a moral importance which enables them to override most other moral claims. The contribution that they make to the basic conditions of the good life is much less significant than that made by the satisfaction of needs. The liberal will accordingly have to reject this whole conception of the particular virtue of social justice.

The same point - or a closely similar one - can be made in another way. The egalitarian socialist¹⁸ will argue that the liberal theory of basic rights and of the free market does not correspond to the real world. People vary, in morally significant ways, in their ability to take advantage of and to prosper by the institutional mechanisms which are responsible, in free-market societies, for the distribution of social goods. Whatever their 'formal equality', people are substantively

unequal: and it is the latter which counts, because it is that, and not the formal equality of rights, which largely determines the actual distribution of those goods which are necessary components of the good life, for all persons. That being so, it is necessary to give attention, not just to those institutions which are officially involved in the distribution of social goods, but also to a wide variety of factors in the social and natural environment which causally affect the opportunities and abilities that people have actually to acquire and enjoy those goods. It is necessary to intervene in the market, because the free operations of the latter are productive of injustice, whatever might be their theoretical accordance with a proper respect for rights. In the ideal free market, distributive justice perhaps would be (approximately) done: such a market might with some plausibility be seen as the perfect institutional mechanism for mediating the claims to goods that free and equal persons have. But actual markets are far from ideal, not least because actual people are not usually ideal entrepreneurs. Classical liberalism is a theory for another world.

The other important line taken by opponents of socialist justice is based on empirical arguments about the dangers of planning, and of granting to public institutions the powers necessary for them to exercise control over the distribution of goods. This is a powerful argument, and it must be allowed that in the world as it actually confronts us, the institutionalization of principles of distributive justice must always be undertaken cautiously. A society which is distributively just need not be a society which is morally exemplary, or even very attractive, in other respects. But whatever the truth in this disputed area, the philosophical defensibility of the

socialist theory of justice is undiminished by the necessity, admitted by those whose adherence to the theory is tempered by practical wisdom, of exercising considerable care in its implementation.

VI

A complete theory of social justice is not only concerned with the morally appropriate distribution of social goods. The conditions of social life generally, and of the production of social goods in particular, also impose burdensome necessities upon people. How these burdens should be shared out is also of concern in justice, though it has received very little direct attention in the philosophical literature. When these burdens consist simply of smaller holdings of goods than people would prefer to have, they will be justly distributed by any principles which properly distribute those goods themselves. However, the burdens which are of direct concern in justice are of a different kind from these, arising, in particular, from the tasks and responsibilities which are a necessary part of the production of material wealth, and from the distribution of political power, and hence of (relative) powerlessness.

Because the egalitarian precepts which might be advanced in connection with the distribution of burdens are not significantly different, in a formal sense, from those with which I will be directly concerned, they do not require separate treatment. On the substantive side, the complex issues which arise do not concern justice alone, but also pose problems of the justifiable coercion of individuals to social goals, the source of the obligations which people take on as members of communities, and the like. It is not a subject to be adequately treated in a few remarks. Accordingly, I will examine

only that part (but it is the major part) of the theory of justice which involves the distribution of goods.

In sum, I will be concerned with the general form of the theory of social justice, with the intention of showing that the relational attributes of equality and inequality have no irreducible significance in it. I will also sketch the foundations of a particular normative theory of justice - a socialist theory - which is both morally plausible, and illustrative of the substantive content that normative theories of justice might take, in accordance with the format of the general theory. This particular theory, however, is logically independent of the nonegalitarian background, which neither stands nor falls with the fate of the former.

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CHAPTER THREE

THE EMPIRICAL GROUNDS FOR EGALITARIANISM

I

Moral appraisals and moral demands can be rationally defended: that is a fundamental premise of the present work. Unless a prescription can be justified in some way, unless some reasons can be given for acting in that way rather than in other ways, there can be no basis (other things being equal) for treating it seriously. Moral demands need not be groundless imperatives. The point of issuing them is to direct people's intentional actions in certain ways, in order to bring about some morally preferred states of affairs. This influence upon human activity is sought by giving to people reasons why those particular states of affairs should be pursued. While moral appraisals do not describe the world as it actually is, yet they do, in a way, still describe the world - that is, the world as it ought to be¹. Unlike ordinary descriptive judgements, however, moral appraisals, necessarily, are intended to have some prescriptive force, a force which arises from the fact that the world actually is not how it ought to be. At the same time, morality cannot restrict its concern with the actual world to those respects in which the world falls short of what is morally required. To suppose otherwise is to give up all prospect of being able to distinguish, on rational grounds, the more-defensible from the less-defensible members of the indefinitely large class of different possible moral demands that could, in principle, be made. If there is to be a reason for subscribing to some particular account of

how the world ought to be made over, it must be a reason which is attached in some way to how the world actually is already. The defence of a moral condemnation consists in showing that, because some part of the world is thus and so now, its also now being in some other way, in some other part, is morally indefensible.

Defensible moral judgements are backed by reasons, and reasons attach to the world as it is. This is not to say that the connection between facts and values is ever logically compelling, or even that its logic is presently understood. It is to set a minimum requirement that must be satisfied if morality is to be a rationally defensible phenomenon. There are no conclusive arguments at present for supposing that morality is not a phenomenon of this sort.

This insistence on the rationality of moral judgement might be accepted, but the further claim that moral reasons must rest on matters of fact be rejected. There is a long tradition in Western ethical theory which seeks to supply a priori justifications for moral principles. However, the intimacy of the concern that morality has with the actual conditions of human beings in the contingent circumstances of their world militates against the likelihood of there being any a priori moral truths.

There is a mode of theorizing in contemporary ethical philosophy which denies some of these conclusions. It does not seek an a priori base for particular, substantive moral demands; but it does seek to uncover 'the necessary presuppositions of moral thought in general'². These presuppositions, if they did turn out to state genuine necessities, would have an undeniable importance. The thesis of universalizability, though it is sometimes invested with

substantive moral content, does contain logical truths which are sometimes ignored. As my discussion of elitism will show³, important results can sometimes be reached by insisting on these necessities. But these are results which have normative implications only in an indirect way. No a priori considerations, it is reasonable to hold, can lead to conclusions which have a normative content of their own. It follows, if this is so, that a priori negative egalitarianism, the position which derives from acceptance of an a priori principle of the presumption of equality of treatment or of consideration, in advance of any reasons for treating or considering people differently, must be mistaken. It is a theory which really does have substantive content, however minimal it is thought by some to be, yet which pretends to an a priori justification. The examination below⁴ of the precise character of its fallaciousness is important and revealing because it shows that the defence of the presumption principle (in both its a priori and its purely normative forms) tacitly rests on an appeal to certain general facts about the world. Apart, then, from the necessity (for my general thesis) of showing that, as a variety of egalitarianism, this position is mistaken, the reasons for its falsity provide powerful circumstantial evidence for the truth of the meta-ethical principle, that the defence of every moral prescription must eventually connect it, in some substantial way, with facts about the actual world. In the absence of a theory of moral reasons, the defence of this meta-ethical principle can only proceed in an indirect manner. Yet while some of my major arguments presuppose its truth, some others tend to confirm its necessity. A clear appreciation of this necessity is a wonderful solvent where

some of the pretensions of egalitarians are concerned.

II

There has been a tendency, among those whose commitment to equality is unreflecting, to suppose that egalitarian demands can be freed of the necessity of attachment to facts about the world. At its most superficial, this finds expression in the claim that, because they are moral demands and not statements of fact, principles of equal treatment, of equal consideration and respect, and the like, do not need to be defended by reference to any supposed equalities which exist in fact between people⁵. Certainly, the moral insistence that persons ought to be treated equally gains its prescriptive force from the fact that they are not at present actually treated equally. But if the demand for equality between people is a defensible one (as the demand for equality between people and pebbles is not), the world now must be such that it is an appropriate demand to make. If some things in the world as it is at present are morally objectionable, that must be because they are morally incompatible with some other things which are to be found in the actual world at present. Incompatibilities can be resolved, of course, by giving up either one of the incompatible terms. Moral incompatibilities, however, frequently require that just one of the terms be altered. Often, there is no real problem about which should be changed. For instance, a person's being tortured, which is one actual fact, is morally incompatible with some other actual facts, such as his capacity to feel pain; yet it is not legitimate to resolve the moral inconsistency between these facts by eliminating his capacity to feel pain. Why should this be so?

In many cases, we are served with reasonable adequacy by a distinction between the world as it actually is, and the possible directions that freely-indulged human activity might take in that world. Moral problems become problems of conforming our activities to the given constraints and requirements of the world as we find it.

This is not a distinction, however, which will take very much pressure. Moral problems are not just concerned with how individuals should act in a pre-established world order. Part of that world is of human origin: this is the world of social or 'conventional' facts, and is a world which does not lie beyond the reach of legitimate criticism. The practices and institutions of society restrain and direct the lives of people in vastly complex ways. It has never been the case that every person living in a single social environment has been able to lead a life which rendered morally irreproachable the institutions of that society. Moral criticism of the world as it actually is - at least in its conventional aspects - is therefore often justified. Our moral problems, accordingly, become ones, not just of conforming our behaviour entirely to the world as we are given it, but very often of changing the world in certain respects. If policies of making the world over, in some respects, are ever justified, it must be, again, because we find moral incompatibilities in the present world, and because we feel confident that we can identify the term which should be changed.

Some facts about the world seem to be more basic or more 'given' than others, and it is not their modification that is required. Instead, we demand that in other respects the world should be brought into conformity with those fixed facts. We

are no longer dealing with the problem of conforming individual activities to the demands of a given, determinate environment. Instead, we are proposing to re-shape in various ways the environment in which individual activities are undertaken, so that the lives of people will be led in a different framework, one in which fewer moral incompatibilities will arise. The classical distinction between 'nature' and 'convention' was adumbrated with these sorts of problems in mind⁶. Because the problems are real ones, the attempt to draw the distinction has lost none of its significance. What it suggests is that the natural world is given, is to all intents and purposes basic and inalterable. The problems of social morality are the problems of designing a conventional realm, a set of institutions and practices, which will be maximally morally-consistent with what nature has provided.

It has become increasingly apparent, especially through the work of philosophers like Rousseau, Hegel and Marx, that this bold distinction between nature and convention is far too crude. The facts of the world do not divide neatly into those that are natural, given, and inalterable, and those that are conventional, made by human activity, and alterable. Human beings are not creatures who have a complement of natural attributes of sufficient determinacy to enable them, from the vantage point of a pre-social state of nature, to decide how the conventional world should be designed to suit them, within the framework set by those natural constraints.

The contemporary proponents of liberalism, however, still show many traces of their implicit acceptance of the contract theory of society, and its associated metaphysical myths about human nature and human communities. They accept

the possibility of speaking intelligibly about persons in a pre-social state, possessed already of a reasonably full complement of attributes⁷. Each person is said to have (the most important of) his desires and interests, values and aspirations, modes of thinking and of reasoning, of deliberating and deciding, in virtue solely of his natural origins. Each is what he is naturally. By contrast, the social attributes and roles of people are seen as relatively superficial and peripheral, no more a part of each individual's real nature than are the clothes which he wears: and like clothes, they can be taken up or removed as the person inside them thinks fit. How a person ought to be treated depends on what he is; what sort of society people ought to institute depends on what will be maximally compatible with the natural characters of all. The liberal conclusion is that the social properties of any person will only be morally legitimate if they are compatible with his underlying real nature.

This view is false. The attributes of persons cannot be explained in this way. People are to be found only in an environment which is both natural and social, and they are amalgams of natural and social attributes. Some of their properties are natural in origin, are possessed by people in virtue of their being biological organisms, members of a particular species in a particular physical environment. Others of their properties are conventional in origin, are possessed by people as they are members of particular social institutions and bearers of definite social roles. Many of their properties cannot be attributed exclusively to either of these sources, but represent the effect of the impact on growing human beings of both social and natural forces. While human beings are members of a natural species, persons

are members of a social species.

On the basis of a metaphysical theory of the nature of persons which is radically individualist and asocial, the classical liberal is able to insist that the institutions of society must be designed in conformity with the previously given character and behaviour of people. If some persons reveal more intelligence and entrepreneurial acumen than others, and if some are inclined to indolence and criminality, then these are facts about the individual nature of each which must be accepted⁸. Social institutions and procedures must be designed with these constraints and conditions in mind. The metaphysic tends, that is, to be profoundly conservative. The institutions we have are fitted fairly well to the nature of people as we find them: if there is poverty in our society, it is because there are people too indolent to work and to help themselves. Any attempt to make the world over according to some grand plan must inevitably run afoul of the inalterable facts of nature. The inestimable virtue of long-established institutions is that their conformity to the actual nature of people is guaranteed, for the most part, by sound evolutionary principles. To seek to step outside these bounds, to demand that they be changed, is to abandon the principle that moral precepts should be defensible by reference to facts, for the only facts which can serve as the justification for moral appraisals are natural facts. The basic problem of morality (on this view) is to establish a conformity between the social and natural realms, on the foundation of acceptance of the natural realm as fixed and given. If people are not in fact equal in their attributes - in their intelligence, their capacity for work, their foresight and prudence, their ability to conform their

conduct to the directives which society adopts for its own smooth functioning - then the demands of egalitarians that all people be treated as if they are equal are demands which lack justification.

With the rejection of this false metaphysical theory of persons should go a rejection of the normative positions to which it most readily gives rise. Once the possibility of distinguishing clearly between natural and social attributes and circumstances has been given up, however, the characterization of morality as seeking a conformity of the social realm with the inalterable demands of the natural must also be given up, or at least extensively modified. Morally incompatible facts there still are aplenty, but if neither fact in each such pair can confidently be identified as a part of 'the way things naturally (really) are', then that criterion for selecting the basic direction of our policies will not be available to us.

III

Modern egalitarianism is confronted by severe problems of this kind. On the one hand, it rejects the moral legitimacy of the inequalities which actually exist between people, and demands that people be made equal, in certain respects, or that they be treated or considered as equals, in certain respects. On the other hand, egalitarianism must be able to point to facts about the world and about people which show that these demands are not arbitrary or unfounded. Bernard Williams puts the point forcefully. Demands for social and political change designed to bring about greater equality need not (he says) be regarded as gratuitously egalitarian (as based, for instance, on an a priori or an

aesthetic preference for equality over inequality). Instead, these demands should be seen as "affirming an equality which is believed in some sense already to exist, and to be obscured or neglected by actual social arrangements"⁹.

Yet to the extent that people are products of their circumstances, and particularly of their social environments, there will be a tendency for differences, or inequalities, in their circumstances to produce differences in their very characters. Unequal circumstances tend to produce unequal people, and apparently - paradoxically - to deprive egalitarians of the basis of their moral demands. Their response has been (or should be), first of all, to insist that all people possess certain common fundamental characteristics and capacities. The origin of these attributes is not of overwhelming moral significance, provided only that natural and social necessities are such that all people (or very nearly all people) will have them. That is, the native attributes of human beings, when brought into contact with the social forces that will be present in nearly any society (or in any society which turns homo sapiens into people), evolve into these 'original' characters and capacities, ones which are both of fundamental moral significance, and common to virtually all people. These are the common attributes which underlie the more superficial differences between people, and which justify action to repair some of the latter inequalities. Secondly, egalitarians need to rethink the classical doctrine of nature and convention. Part of the point of that distinction was certainly that it should have the force suggested earlier: moral incompatibilities between different facts about a person's total circumstances should be eliminated by altering

the facts which are merely conventional. But why should the conventional rather than the natural be changed? There are two possible answers to this. The first rests on the belief, the cogency of which should not, perhaps, be entirely dismissed, that the natural is ultimately real, and for that reason is also right. (If the real is also rational, and if morality is essentially rational, then all the materials for the classical solutions to these problems are to hand). The second answer is that, while human knowledge and technology were in their infancy, the distinction between the conventional and the natural mapped, very roughly, onto that between those circumstances which could be modified and changed, with a reasonable degree of control being possible over the direction of change, and those circumstances which were not modifiable in any controllable way¹⁰. After all, if people are to act so as to eliminate moral inconsistencies, then one necessary condition is that they can in fact act to that end.

The growth of knowledge and technology - together with the passing of our innocent faith in the moral supremacy of the natural - has meant that the classical approach to these problems is no longer adequate. In some ways, the question of alterability - and of the cost, in both material and non-material terms, of bringing about alterations - is the most basic¹¹. To the extent that we are possessed of a power, not just to shape the future according to our ideals of the good life for people as they are now, but actually to mould people, to make them according to visions of what the ideal society and the ideal person would be - to that extent the justification for our plans and policies, when they are directed to such wholesale reconstruction, is again problematic.

There is a significant danger here, as Williams has pointed out¹², that the concept of an identifiable individual person will start to crumble once we push hard on the belief that any alterable inequalities are fair game. Do any attributes which are also sufficient for personality belong inalterably to those individuals for whom equality is sought? Questions like this become particularly urgent, given the necessity of attaching moral prescriptions to facts about the world. The egalitarian could maintain that his policies are justified by facts alright, but that these are facts about that world which will come to exist if his policies are carried out: such a world will be, in virtue of various facts about it, a valuable world. It is clear, however, that unless fairly firm connections between the present world (and its inhabitants) and this possible one are maintained, the opportunity to evaluate it favourably, now, will not be rationally available. But in that case there could be no reason, now, for pursuing it. Besides, the egalitarian ideal does not have a monopoly on the truth in this visionary realm. There are many different possible worlds in which people, provided only that they had been adequately moulded to their world, could find happiness and fulfilment. Unless reference is made back to the nature of people as we find them now, how can any one of these visions be rationally preferred to any of the others?

The most plausible theory at this juncture (as I have, in passing, already suggested) is a theory of the permanent or abiding characteristics of people. All people will have these characteristics, in virtue of their biological relatedness, and in virtue of the common features of all human societies¹³. There are such common characteristics,

and some of them are of fundamental moral significance.

The impoverished prospects for a decent life that many people have, and their diminished ability to compete on fair terms for scarce goods and resources (in a society with competitive institutions of distribution), can often be attributed to the disadvantageous circumstances of their birth and upbringing. Social forces over which they had no control (and parents over whose selection they had no say) have seriously impaired their capacity to lead lives which are of value both to themselves and to society. It is not necessarily the case that someone is directly responsible for causing these misfortunes: but it is one of the signs of a morally mature society nevertheless that it will recognize a collective responsibility to better the lives of such persons. A crucial part of the justification for this attribution of collective responsibility rests on a definite conception of what an individual person was to begin with - the capacities and the dispositions that he had, or was capable of forming - and of the way that he would naturally have tended to develop had social circumstances been more propitious. We should see socially-disadvantaged people, not as manufactured from poor materials, but as distorted by society's poor workmanship.

The thesis that people have certain original or native capacities, dispositions, and abilities, must not be confused with the thesis that these are all or mainly capacities for good. It is not necessary to subscribe to the optimistic theory that persons are naturally good, and are only corrupted by a bad social environment. On the contrary, society must be given some of the credit for those who are good, as well as some of the responsibility for those who are not. In exercising a profound influence over the formation

of mature people out of the raw material which nature provides, society has the opportunity to see that the capacities of people for both individual and social good are fostered, while their more destructive or harmful capacities are suppressed. No obvious violence is done to the integrity of people by shaping them in this way. Besides, the consequences of not exercising this potentiality for good at all would be a state of extreme disintegration and strife. Social forces, however, usually manage to act to the detriment of some people. Those among the original capacities of such people which would have been of value to them and to society have not been adequately nourished, while others, more harmful, have not been adequately repressed. The lives which such people lead are usually far less valuable than those they could have led, given their native equipment and capacities, if circumstances had been more favourable. Whatever are the responsibilities which society should accept in relation to these people, those responsibilities will be justified by reference to what such people had it in themselves to become, but did not become, because of adverse social circumstances.

Such a view depends, admittedly, on a fairly firm conception of the original dispositions that people have. But this is not an unusual theory. The moral justification for compensatory programmes, for example, rests on the supposition that disadvantaged people are socially rather than natively deprived. If the theory is defensible, then so are those projects which seek to compensate people for the social deprivation they have suffered. Furthermore, the theory provides a rational basis for a belief which deserves to be rationally based, the belief, namely, that there can still be grounds for moral objection to some social

environments, even though the people who live in them accept them without complaint or resentment. The objection will be legitimate whenever these environments are of a kind which do violence to those valuable original capacities and characteristics which are common to all persons, and which the inhabitants of those environments are (justifiably) presumed to have.

All normal people have, originally, the capacities to suffer physical and spiritual pain, to find satisfaction and fulfilment in a range of activities of different kinds, to form projects and to have aspirations and ideals, to direct their activities in the light of reflection and deliberation, and to suffer disappointment and despondency when they are frustrated in the pursuit of their ends. They have the capacity to form close and mutually supportive relationships with some people, to care something about the circumstances of other people, and to share in the life of a community.

The general character of these capacities carries over to the generality of the moral significance which they have, a significance which can be expressed most adequately in a doctrine of natural rights¹⁴ and natural duties. It is an essential part of this theory that such rights and duties have a broadly-defined content, as is appropriate to the generality of their empirical bases in the original capacities of all normal people. In this respect, they can be contrasted with the particular rights and duties which people have in virtue of their specific and narrowly-characterized attributes. Only a person who is in regular paid employment, for instance, can significantly claim to have a right to paid annual holidays¹⁵; only a person who has skills of an appropriate kind can have a duty to render

certain kinds of aid in the event of a disaster. Moral directives of these latter kinds must be supported by appropriately particular empirical grounds. People vary widely in their attributes and capacities at this level of specificity, and accordingly, the moral rights and duties that they have, the precise moral significance of their particular attributes, is also quite variable. In these respects, people are alike neither in their morally significant attributes, nor in their moral rights and duties. However, when we consider, not the particular, variable attributes of people, but the general fact of their common possession of attributes of certain kinds, we are still dealing with attributes which have a marked, although now a general, moral significance. A medically unskilled and inept person has a negligible duty to render medical aid to the victims of a disaster, but in virtue of his possession of such capacities as those for rational thought and action, and for a sympathetic understanding of the situation of other people, he does have a general duty to render whatever assistance he can. What form that assistance should take - if he has a duty to render a certain kind of assistance - will depend on what his particular capacities and skills are, whether or not these skills are widely shared by others. Similarly, the natural rights that all people have cannot be defined as rights to have or to do very specific things; instead, the objects which enter into the definition of those rights are classes and kinds of things and activities, the kinds of things and activities that are appropriate to the general capacities which are their natural base.

If we are looking for particular moral prescriptions, for guides to conduct in particular cases and affecting

specific people, then the general principles which apply to all persons will often be too broad. While they are informative, most importantly in what they prohibit, the positive guidance they offer is usually very limited. They must be variously narrowed down and interpreted by reference to the differing individual characteristics of different individual people. For while people are effectively alike in respect to certain basic capacities which have general moral significance, at the same time they are importantly different in respect to many particular attributes which have a particular moral significance.

IV

The question, whether all people are in fact equal, is an ill-formed one, while the question, whether there are any respects in which all people are in fact equal, is an uninteresting one. Rather more important (but still theoretically less than perspicuous) is the question, whether all people are equal in respect to their possession of any morally significant properties. The answer to that question, I have argued, is that they are (normally) alike in having attributes and capacities of kinds which have a general moral importance of a sort appropriately expressed in a theory of natural rights and duties, whereas they differ in those particular attributes and capacities which are of kinds appropriate to generate specific prescriptions and prohibitions.

It does not follow, however, that these conclusions can be appropriately expressed by speaking of the factual equality, in certain respects, of all people. It is true and important that every person has natural rights and duties,

in virtue of his possession of certain basic attributes and capacities. Nothing of additional moral significance is introduced, however, by the wholly consequential fact that all people are equal in their possession of these basic attributes, and hence in their possession of those natural rights and duties which are based upon them. Furthermore, given that the original capacities of all are (roughly) alike, and given the principle that only (instantiated) properties can be the ultimate bearers - or sources - of moral significance, it follows that all persons are possessors of equal natural rights¹⁶. The existence of these various natural and moral equalities is a conclusion which can be deduced, with logical propriety, from premises which ascribe the relevant attributes to individuals, and which set out the moral significance of those attributes. But anyone who accepts the truth of the premises is already in possession of the most perspicuous statement of the moral facts; he has, accordingly, no good reason to engage in the trivial exercise of drawing the egalitarian conclusion.

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CHAPTER FOUR

NEGATIVE EGALITARIANISM

I

Scepticism about the possibility of finding interesting respects in which all people are actually the same, and about the possibility of grounding interesting moral conclusions on such facts, has prompted some philosophers to advance a position that might be called 'negative egalitarianism'. Alternatively, negative egalitarianism might be regarded as providing an additional defence, of a different kind, for moral claims based on positive empirical equalities. I will argue that, to the extent that the negative theory is true, it is equivalent to the positive theory, which bases its normative demands on actual equalities between people.

Negative egalitarianism maintains that the elimination of (some) inequalities between people can be justified, other than by having recourse to reasons which are based on factual respects in which people are actually already equal.

S.I. Benn, in arguing for this position, sees the real moral force of many demands for greater equality as arising from the recognition (by morally decent people) that a wide range of the more significant inequalities which have characterized most human societies are deeply offensive. The distribution among people of goods, and more generally of opportunities for living self-respecting and worthwhile lives, has been grossly unequal, and has been so quite without moral justification. Where no moral reason can be advanced for the perpetuation of these inequalities (the negative egalitarian argues), they stand condemned as unjustified. There is, in

other words, an initial presumption in favour of equality¹.

Negative egalitarianism is concerned with the abolition of unjustified inequalities, an activity it regards as defensible independently of the defensibility (or otherwise) of the positive egalitarian's programme of promoting equality. There is a certain initial plausibility in this view. If there are serious inequalities between people in the material conditions of their lives, or in the respect and esteem they receive from their fellows, it is quite possibly true that the ones who are worse off are the victims of injustices. The existence of such inequalities can often help us to identify those who have not been justly treated. The negative egalitarian will regard the existence of inequalities between people as prima facie evidence of injustice. If he is not also a positive egalitarian, he will not be able to embrace the position that the existence of equalities between people is prima facie evidence that justice has been done; but the negative thesis entitles him to the very similar view that, in the absence of inequalities, there is no reason (other things being equal) to suppose that justice has not been done. The existence of an inequality immediately justifies the suspicion that an injustice might exist, whereas the existence of an equality does not, by itself, raise any warranted doubts. Of course, many inequalities will actually turn out to be justified. Negative egalitarianism is not committed to the indefensible view that this is only very infrequently, or even never the case. However, if it is a significant theory, it is committed to the view, I will argue, that on balance, inequalities between people are unjustified more often than not.

Is the negative egalitarian committed to the prima facie condemnation of every instance of inequality? As D.D. Raphael has argued², this is an absurd position. The negative egalitarian could defend himself by allowing that, in the case of a vast number of wholly trivial and morally inconsequential inequalities - such things as inequalities in physical dimensions - the prima facie case against them is so readily overridden that it has no importance at all in practical contexts. But this will hardly do. It is simply not true that there is any reason at all, no matter how modest and retiring, no matter how insipid its prima facie force, for supposing these inequalities to be bad, or morally improper, or unjust. This follows because it is necessarily the case that, if no moral significance at all lies in the fact that a person has or does not have some attribute - if that attribute has no moral importance at all - then no moral significance can attach to the further fact, the purely consequential fact, that people are either equal or unequal in respect to that attribute. This is a significant problem for the negative egalitarian. How can he justifiably restrict the application of the presumption principle solely to those properties which are of moral significance already? His answer will depend on the kind of defence that he offers for his theory. There is an a priori defence which - were it not fallacious - would lead inexorably to the absurd position noted above. There is also a normative defence which can protect itself against this absurdity, but only at the cost of arbitrariness.

II

The a priori defence of negative egalitarianism is not the unpromising one that relies on the supposed intuitive

self-evidence of its basic principles (a position not unlike the normative one mentioned below). Instead, in the form elaborated most carefully in the work of R.S. Peters³, the argument is that the presumption principle is a principle which is 'constitutive of practical reasoning'. It is logically necessary, that is, that if one does not observe the requirements of the principle, one is not reasoning practically. This is certainly a powerful claim: but it could, without affecting the derivation, be weakened to the more sensible thesis that, although one could reason practically while not observing the presumption principle, one would be reasoning badly were one to do so. The error one falls into, on the latter view, is still logical (as distinct from moral) error, but its cost is no longer literally incoherence.

If there were a sound a priori argument for this principle, it would be an extremely important one, not only for moral philosophy, but for philosophy generally. For on the assumption that any proposition which has substantive normative content is synthetic, the presumption principle would be a synthetic a priori truth. Of special significance to moral philosophy as well, it would also be an instance of a normative proposition which was deductively entailed by some set of (presumably) non-normative premises.

Whether or not the principle is a priori remains to be seen. Its normative character, however, is indisputable, for it is a principle which has justificatory force. It can be formulated thus: 'In the absence of any reasons for treating people unequally, they should be treated equally'. Suppose, then, that in the distribution of a good, everyone is treated equally: that constitutes a prima facie reason for believing

the distribution to be a just, or a morally right one. Only a normative principle could have that conclusion.

The presumption principle is not an insignificant one⁴. It is true that it could be held consistently with other normative principles which no real egalitarian would dream of subscribing to, principles which warranted very unequal distributions of goods along racial, sexual, class or religious lines. For the existence of a presumption in favour of equality does not entail that it is never, or even that it is but rarely overridden. It would be an odd theory, but it would be a possible one nonetheless, that recognized both the a priori truth of the presumption principle, and also the existence of wide variations in the morally relevant characteristics of people, such that their rightful shares of goods were also widely variable. Perhaps, measured on some exotic scale, the claims of human beings vary enormously, and perhaps this justifies extremely unequal distributions of goods to them. Even so (if he is not very good at a priori reasoning), the 'meritarian' or 'elitist' might be persuaded to accept as valid the derivation of the presumption principle, and to accept that he should presume people to have equal claims until he has definite reasons for supposing otherwise. This is possible because the a priori presumption does not imply anything about the kinds of reasons that can outweigh the presumption.

At the same time, it would be a mistake to conclude immediately to the worthlessness of negative egalitarianism. Its significance lies in this, that it establishes a condition of equality as the starting point, the 'initial position' to which all other distributions are referred, at least implicitly. It establishes that the concept of equality

has a very basic significance in the theory of justice. Indeed, it leads on naturally (if not inexorably) to what I call 'the Aristotelian principle', namely that equals are to be treated equally, and unequals unequally. At the same time, and in spite of their frequent confusion, the presumption principle is not equivalent to the Aristotelian formula. The latter is not a presumption principle at all, and insofar as it might be persuaded to yield (something like) a presumption, this will be, as Joel Feinberg has suggested, that "the presumption in favour of equal treatment holds when the individuals involved are believed, assumed, or expected to be equal in the relevant respects, whereas the presumption in favour of unequal treatment holds when the individuals involved are expected to be different in the relevant respects"⁵. Negative egalitarianism leads naturally to a theory of distributive justice which sees it as a pattern of initially equal shares, and of justified departures, in the unequal treatment of those who are unequal, from that initial pattern⁶. Even though it is not necessary for equality in the holdings or shares of goods that people have to be statistically normal, there is an important sense in which it is morally the norm. All just distributions will be mapped onto a pattern which defines them in the language of equality and inequality. That is a conclusion which is incompatible with the aims of this work.

There is a further, non-trivial consequence of acceptance of the presumption principle - it is not an implication, but it is a natural, psychological associate. If the presumption principle is taken seriously, then the situation in which goods are shared equally has a special and primary significance. It is the distribution which, other things

being equal, is already justified. But if this is so, it is difficult - psychologically hard, not logically impossible - to see equality as having as little value as the elitist ascribes to it. There will be a tendency to accept, as the remaining principles of distribution, ones which preserve rather than obliterate the initial normative significance of equality.

What really determines the egalitarian or inegalitarian flavour of all theories of justice in which negative egalitarianism plays a part is the weight given to the presumption in favour of equality. This is a topic on which negative egalitarians have been silent: it is also one on which the alleged a priori derivation has no light to shed. The presumption principle establishes an onus. To be subject to an onus is to be in a position where one is assumed to be unsuccessful in justifying one's course of action, until and unless one can provide specific and sufficient reasons for that action. A presumption in favour of one course of action is equivalent to an onus of justification resting on whomever would act differently. How much contrary weight must other reasons have to override the presumption, to satisfy the onus? There is absolutely no basis (in a priori considerations) for determining that. The presumption of innocence in Anglo-Saxon courts of law, on the contrary, does have a fairly determinate weight. The onus of justification is on the prosecution to establish 'beyond any reasonable degree of doubt' the guilt of the accused.

Pursuing the parallel with the legal situation suggests the following: just as an accused person is favoured by an initial presumption of innocence before any evidence at all, either of his guilt or innocence, has been presented, so too

the person who would treat all people equally is favoured by an initial presumption of being right (and the person who would treat them unequally by an initial presumption of being wrong), before any reasons at all, either for equal treatment or for discrimination, have been produced. In this limiting case, it is not necessary to possess any particular knowledge of the people concerned, knowledge on which reasons for one treating them equally might be based: it is only necessary that there be no known reasons for discrimination, based on knowledge of some morally relevant differences between them. Official action is often pursued under such conditions of anonymity. When different people are known only as names on a computer print-out, then nothing is known about any of them which would justify treating any one differently from the way in which the others are (justifiably) treated. Any reasons that there are for acting in any way which substantially affects the welfare of some people (and such reasons will presumably be required), will be reasons which apply equally to all. Such situations are sometimes regarded as paradigms of justice. Whether justice can be done in advance of all reasons based on knowledge of the particular individuals concerned remains, however, to be seen.

III

The advocates of negative egalitarianism have sometimes subscribed quite explicitly to the a priori character of the presumption it advances. A.C. Graham is particularly clear here. He insists that it is a mistake to suppose that egalitarian arguments must begin from moral premises: the presumption principle is not a normative first principle. On the contrary, it is "a logical rule of moral and prudential

thinking"⁷. But this cannot be right: it is not a logical rule as opposed to a moral one, but is, purportedly, both. Indeed, that it is a normative principle is much more evident than that it is an a priori one.

The principle has been accepted (in one form or another) by a number of philosophers⁸, most of whom have been prepared to ascribe a special, if not always an a priori status to it. But no detailed analysis of the principle, or of the argument for its derivation, has actually been advanced. The argument that I will provide is accordingly my own reconstruction of an argument for which only a few hints have been supplied by its proponents.

Let us accept (since this is not presently at issue) that reasoning in general does have 'constitutive rules'. One way of arriving at such rules would be the following. It is of the essence of a priori truths that they are universally true: to deny them must always be mistaken. Any assertions or sequences of thought or argument will be at fault if they involve the denial of an a priori truth. Reasoning is necessarily defective if it is in error about an a priori truth, if it treats that truth as though it were false.

The law of non-contradiction is an a priori truth; no proposition, consequently, can possibly be both true and false. A 'constitutive rule of reasoning' can be derived from this, by the intermediary of a hypothetical imperative: if one is to engage in sound reasoning, one must not assert that any proposition is both true and false. Because we are concerned with rules of reasoning, which apply to those who have the appropriate intention (namely, to reason), the antecedent of the hypothetical can be regarded as satisfied, leaving a categorical imperative: 'Do not assert of any

proposition that it is both true and false'.

In general, this kind of argument would seem to be valid. The derived rules, however, are rules 'constitutive' of rational thought and discourse in general, both theoretical and practical. It is not immediately apparent how special rules of practical reasoning which were not also rules of theoretical reasoning could be derived by this method. It is not at all apparent that there are any a priori rules which are distinctively practical.

For guidance on the derivation of the presumption principle, we must look to Peters, who argues that it follows from "the general principle of no distinctions without differences"⁹. For there to be a reason for choosing A rather than B (Peters says), "there must be some discriminable feature of A which B lacks which constitutes a ground or a reason". The crucial point of the argument is not that this discriminable feature must be a possible basis for a morally plausible reason for differential treatment of A and B, but that in the absence of any such discriminable difference (whether morally plausible or not), differential treatment of A and B will be irrational. It will be conduct insufficiently based on reasons. The connection with justice, Peters makes in this way: "The notion basic to justice is that distinctions should be made if there are relevant differences and that they should not be made if there are no relevant differences or on the basis of irrelevant differences"¹⁰.

What is 'the general principle of no distinctions without differences'? Presumably it is this, that whatever distinctions we draw in thought and language must, if they are to be valid distinctions, mirror real differences in the world (or other realm) to which the language refers.

Conversely, in the absence of real differences, there can be no valid distinctions. This will be the initial a priori truth. The normative exemplification of it is that one should (or perhaps that one may) distinguish where there are differences, but that one should not distinguish where there are no differences. This, however, is not the presumption principle. The latter is an asymmetrical principle, favouring equality over inequality, whereas the normative principle that actually follows, given the symmetry of the initial a priori truth, must itself be symmetrical. It is in that respect much closer to the Aristotelian principle than to any principle which could establish an onus of justification. What our derived principle enjoins, when translated into the appropriate language (however that is supposed to be achieved), is presumably something like this: Other things being equal, one ought to (or one may) treat differently those individuals who are different in any respects, and to treat the same those individuals who are the same in all respects. (Two individuals are the same if and only if they are equal in all respects; they are different if they are unequal in any respects). But this is not a principle which generates a presumption in favour of equality over inequality. Nor, for that matter, is it a morally felicitous precept, given that it applies at a level of reasoning prior to that at which moral reasons appear. It does not matter, according to this principle, that the differences between individuals have no moral relevance: the mere fact of their existence (and real differences will always - or nearly always - exist between any two existing individuals) creates a presumption in favour of treating them differently.

The conclusion to which we are inexorably drawn is this,

that for there to be a reason for acting in any way at all, there must be some characteristics of things to which those reasons can be attached. If we have a reason for treating two individuals alike (in some way which significantly affects their wellbeing), that reason must attach in some way to empirical states of affairs, including, presumably, attributes of those individuals. We must suppose, in brief, that those individuals are alike in some important and relevant respects, in order that the same reason may be attached to each. The presumption principle in fact tacitly accepts this necessity. In effect - and this is crucial - what the principle states is that, in the absence of any reasons for treating two individuals differently, we are to treat them the same, if we have reasons for treating them the same. That is, 'Act on reasons'.

The presumption principle can never have been advocated in a genuinely neutral form, just because it is so obviously absurd in that form. There is no reason for supposing that, in the absence of reasons for treating things (that is, 'individuals' in the generic sense) differently, they should be treated equally. Instead, the standard presumption principle identifies the kind of things involved, in specifying that they are the same in respect to being persons (or, more neutrally, human beings). If there is a presumption in favour of treating them alike, it is because we have a definite reason for treating them alike (they are known to be the same in at least one general respect, namely, personhood) and none for treating them differently. This is not a presumption which operates in advance of all reasons, both reasons for equal treatment and reasons for unequal treatment. It is a presumption which operates because one reason for

acting in one way is already in. It is not an asymmetrical presumption at all, but simply an explication of the notion of a prima facie reason. That notion allows that where there is some reason for doing one thing and no reasons for not doing it, the present balance of reasons is in favour of doing it.

But this is not all. The presumption principle supposedly operates in advance of any theory about the characteristics which are morally relevant - in advance of any theory, that is, of moral reasons. Yet whatever moral plausibility attaches to negative egalitarianism derives from the belief that the characteristic of being a person (or being a human being) is one which has moral significance. Does a presumption principle which ranges over pebbles carry any cogency? It should do, if the presumption principle is an a priori truth with respect to likenesses and differences between individuals.

We are left with the claim that if we know of two individuals that they are both persons (human beings), then that knowledge is sufficient to warrant the presumption that they ought to be treated the same - until, that is, we have any better reasons for treating them differently. What sort of claim is this? There is only one plausible justification for it, and that is positive egalitarianism. We must suppose that all human beings have certain properties which are of moral relevance. If we know of two individuals that they are both human, then we know that they will both possess this further moral significance. They are equals in that respect. But that is not the end of the matter, for we concluded earlier that a consideration of the morally significant general properties which all people have does not show that their equality in respect to those properties has any special

moral significance¹¹.

Negative egalitarianism can only sustain something remotely resembling the presumption principle by falling back on its positive cousin, ceasing in the process, however, to be a distinctively egalitarian theory.

IV

With this discussion of both positive and a priori negative egalitarianism behind us, the following issue can be canvassed. Is it a plausible moral principle that we should treat people equally unless we have reasons for treating them differently? There is no question now of this being an a priori truth. The question is whether a prima facie duty to treat people alike follows from the common characteristics of people. The answer is, that it does not. If an individual is a person, then he will have certain morally relevant capacities. Even if we know no more of him than that he is a (human) person, we are still in a position to ascribe certain natural rights to him. Natural rights are those broadly defined moral considerations that I spoke of earlier¹². The general moral significance that people have, in virtue of those basic capacities that all have, is captured in the natural rights we ascribe to them. If we know that an individual is a human being, but know nothing else of him, then we are still in a position to ascribe the basic natural rights to him. We know that people (generally speaking - that is, we should presume that we are not dealing with one of the rare exceptions) have various morally significant capacities. They have the capacity to experience pain and grief, and these things are prima facie evils. There exists, then, a prima facie moral reason for not behaving towards any

person in a way which would cause him pain or suffering. This is part - an important part - of what is contained in the doctrine of natural rights. It follows, but only as a purely consequential fact which has no added moral significance, that all persons (who have these capacities) are equal in respect to having these rights. Because this is nearly always true of people, it is a safe empirical assumption that in any case where we are dealing with a human being, that being will have these capacities and these rights. There is a presumption here alright, the presumption (to put it in the currently popular form) that all human beings are persons; or, as in J.R. Lucas's expression of what is basically the same principle, the presumption of humanity¹³. Of course this presumption can, and will occasionally, be overridden. But it is a safe and justified presumption to make, because the generalization on which it rests is empirically (and hence only contingently) true¹⁴. This is unmysterious.

There is no room for a specifically egalitarian presumption, however. Such a presumption would be inductively warranted if it were the case that inequalities between people were unjustified more often than not. But that is an absurd thesis, and its absurdity is not eliminated by restricting its range to morally significant properties. If we focus on the 'property' of personhood, it is of course true that in presuming (as we are warranted in doing) that all human beings have this characteristic, we are presuming it of them all equally. But this only means that in every case we are supposing that they possess certain rights in virtue of possessing certain natural capacities. Because they possess these rights, there are broad restrictions in force on the way in which they can justifiably be treated. The natural

capacities are the same, and therefore the rights are the same, and the broad restrictions are the same. The equality is wholly consequential, and of no irreducible significance.

There are powerful independent reasons for denying the moral plausibility of a presumption of equality. Such a principle does not specify how people are to be individually treated, only that (collectively) they are to be treated the same. It is consistent with this principle to treat them equally by denying to all of them their natural rights. Yet this is morally abominable, and it is nothing but superstition to suggest that it is morally less abominable for involving equality of treatment. If equality is intrinsically valuable, then it should be the case that there is something of value in treating everyone equally vilely. But this is absurd. The greater the number of people who are treated badly, the worse it is: it does not get better for approaching ever closer to equality of (vile) treatment. Besides, unless it got conspicuously better for doing so, whatever value equality had intrinsically would be inconspicuous, and uninteresting. The principle that we should initially presume to treat people equally must be supplemented by principles specifying how they are to be individually treated. But once that has been done, we have sufficient principles governing our conduct towards them, and the principle of equality of (humane) treatment becomes as transparently superfluous as it has always, though darkly, been in fact.

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CHAPTER FIVE

ANALYTIC EGALITARIANISM

I

The existence of a necessary connection between justice and equality has often been alleged. Even if it is not often asserted as explicitly as this, it is still a basic part of the received opinion on these matters that the denial of such a connection involves some form of absurdity stronger than moral absurdity. Chaim Perelman captures something of the strength and persistence of this opinion when he writes: "To everyone the idea of justice inevitably suggests the notion of a certain equality. From Plato and Aristotle, through St. Thomas Aquinas, down to the jurists, moralists and philosophers of our own day runs a thread of universal agreement on this point"¹. It is my belief that there is no sound basis for this 'universal agreement'.

The theory of analytic egalitarianism² asserts the existence, not of a substantive moral connection between justice and equality, but of a formal and logically necessary connection. While the analytic theory will often be accompanied by a substantive one which is also egalitarian, there is no necessity that this should be so. Analytic egalitarianism purports to be a theory of the formal character of the concept of justice, a theory which shows that the concepts of equality and inequality must be built into the very structure of any theory if it is to be a theory specifically of justice, and not a theory of something else.

The full authority of the classical thinkers is often cited in this connection: "If, then, the unjust is unequal", Aristotle says, "the just is equal, as all men suppose it to

be, even apart from argument"³. All men - all philosophers at least - have indeed supposed this to be so, not only apart from argument, but in the absence of real argument as well. I will show that neither the problems of social justice themselves, nor the theory of distribution which is needed to solve them, are illuminated in any way by the effort to characterize them by the concepts of equality and inequality. To the extent that it is not possible to keep the discussion confined to the plane of the non-normative, I will also draw on my arguments against normative egalitarianism (strictly so-called). These arguments show that, if we are to explain why a particular distribution of goods is unjust, we can do so perfectly adequately without using the concepts of equality or inequality, and without resting anything of significance on the relational attributes to which those terms refer. When these concepts are used in an explanation of an injustice (for example), either the real reason why the distribution is unjust has been missed, or the reference to equality or inequality is wholly superfluous, and could be eliminated without loss.

It is very difficult (perhaps impossible) to discuss a normative theory, such as the theory of justice, wholly on a non-normative, conceptual level. When the concepts themselves are impregnated with value, when an important test of the adequacy of a theory is the extent to which it fits and explains our considered normative judgements, it is necessary to concede that the familiar analytic model, with its distinction between normative and conceptual realms, might not be entirely appropriate. Analytic egalitarianism is one variant of the thesis that an entirely formal (that is, conceptual and non-normative) characterization of the

theory of justice is possible, that such a theory can be viewed as a construction of formally-related concepts, into which different normative contents might be poured⁴. But the theory of social justice is not like that. It is a subject which is defined in irreducibly normative terms, as the theory of the proper distribution of goods according to claims. While it is certainly possible to provide some further analysis which does not actually specify what these claims are, it is not possible to say anything very interesting that does not presuppose, at least tacitly, a background moral theory into which the concept of a claim can be fitted, together with theories of the nature of persons and of human societies. From such theories, in such contexts, values cannot be wholly eliminated.

With these reservations in mind, my initial intention is to advance purely conceptual arguments. The most important of these arguments either make no normative suppositions at all, or if they do so, they are suppositions which I suppose to be generally uncontroversial. Where controversial moral precepts are advanced - as they are in my defence of a socialist theory of distribution - they are explicitly defended.

The theory of justice that I am attacking here - analytic egalitarianism - is not a theory which is necessarily egalitarian in the stronger, normative sense. It may, but need not, advance such principles as that serious disparities in holdings of material wealth, the concentration of political power in the hands of a hereditary caste, the existence of relationships of social deference, and similar inegalitarian states of affairs, are all unjust. Similarly, my rejection of the theory will not commit me to the defence

of any disreputable moral precepts, whether inegalitarian or otherwise. My own basic theory - considered, as far as possible, formally - is consistent with either an egalitarian or an inegalitarian normative content, although it rejects that particular distinction between different normative theories. At the same time, my own theory is developed within a background metaphysic of persons in society in which one particular normative development of the theory is more strongly indicated than is any alternative. The social necessity of a theory of justice, when viewed against this metaphysical background, leads fairly readily and naturally (but not, of course, necessarily) to socialism. This result is of particular interest in that it shows, in spite of an impressive battery of assertions to the contrary, that socialism is not really committed to egalitarianism in any inalterable way. This is fortunate, for whereas the socialist tradition has given rise to crucial moral insights about the proper relations of people in society, egalitarianism - any moral theory, that is, which truly deserves the characterization - has sometimes had a pernicious influence upon social thought. It is my wish to rescue socialism from the egalitarians.

This is the normative background of the present discussion. As far as possible, I will meet analytic egalitarianism with conceptual arguments, but if normative preconceptions sometimes intrude, that will be a reflection of the fact that the distinction between analytic and substantive egalitarianism is not a completely exclusive one.

II

The major themes of the orthodox or received view are captured in the following composite portrait⁵. It is a view

which has been widely and uncritically adopted. In the light of its ancestry, it might also be called 'the neo-Aristotelian view'.

Every theory of social justice, whatever might be the particular normative principles of distribution which it advances, must conform to a single pattern. Conformity to this pattern is definitive of its being a theory of justice. The formal features are captured by the Aristotelian principle, that equals are to be treated equally, and unequals are to be treated unequally. ("It appears that the just is equal, and so it is, but not for all persons, only for those that are equal. The unequal also appears to be just; and so it is, but not for all, only for the unequal."⁶) This is not, however (according to the orthodox view), a substantial concession to egalitarianism. This purely formal conception of equality amounts to little more than the essence of rule-following. At this level of formal abstraction, the virtue of justice is closely allied to the virtues of rationality, of impartiality and consistency. Rationality is intimately related to the readiness to conform one's reasoning and judgement to rules. In particular (in the present case), it involves the readiness to agree that, if a particular judgement is appropriate in one case, it must be equally appropriate in any relevantly similar case. What counts as a relevantly similar case is determined by the rule itself; but the universality which is a necessary feature of all rules entails that, if a justification is given in one case for acting in a particular way, the same action must be justified (other things being equal) in any other case which is covered by the same rule. If a person justifies his action in one case by alluding to certain characteristics,

then he is committing himself to the rule that actions of that sort are appropriate (other things being equal) to all situations which have those characteristics. If he wishes to act differently in any other situation which has those same characteristics, he must either abjure the rule, or be prepared to identify relevant characteristics which differentiate the present from the earlier situation. Justice, according to the received view, is pre-eminently the rational virtue.

Even at this level of abstraction, a normative application can be found for the Aristotelian principle. Administrative (formal or legal) justice crucially involves the equal application of a rule, or body of rules⁷. An injustice is done (other things being equal) if those who are equal according to a set of rules are yet treated unequally within the jurisdiction of that body of rules. The importance that precedent has in legal reasoning partly incorporates the formal demands of equality. Although, on the face of it, those whose duty it is to administer justice should be concerned wholly with the actual circumstances of each individual case, it is vital that they take into account how relevantly similar cases have been dealt with in the past. A prima facie injustice will be done to at least one of the parties if one of them is treated in a substantially different way from the others, even though, in the respects defined as relevant by the law, the cases are alike. Formal equality is not sufficient for administrative justice to be done, to the extent that substantive principles of fairness are also necessary⁸; but it is necessary (according to the orthodox theory).

The constraints imposed by the Aristotelian principle on

any normative theory of justice are actually quite minimal. The content of the rules is left entirely open, to be determined by the particular substantive conceptions advanced. These rules will define the respects in which people are relevantly alike and relevantly different, and will define the particular relevance in justice that these characteristics have. Accordingly, the rules operate with two sets of variables, ranging respectively over characteristics of persons (and of their situations), and over the goods to be distributed to them. On the one hand, the attributes of people which entitle them to some share of some good must be identified; on the other, the kind of good and the size of the share of it which is appropriate to those particular claims must also be identified. Substantive principles of distribution match goods to claims. When these principles are put into the form required by the Aristotelian principle, they become principles of proportionality. Thus it is, as Frankena describes it, "that the typical case of distributive justice involves (1) at least two persons, A and B, (2) something to be distributed, P, (3) some basis of distribution, Q, and (4) a geometrical proportion or ratio such that

$$\frac{\text{A's share of P}}{\text{B's share of P}} = \frac{\text{A's share of Q}}{\text{B's share of Q}}^9.$$

We must not suppose, however, that the relational property of 'geometrical proportion' has been substituted for that of equality. Aristotle is explicit on this: "The just, therefore, involves at least four terms; for the persons for whom it is just are in fact two, and the things in which it is manifested, the objects distributed, are two. And the same equality will exist between the persons and between the

things concerned The just, then, is a species of the proportionate For proportion is equality of ratios, and involves four terms at least ..."¹⁰. The significance of the equation is precisely that it brings out the fundamental fact that the relation of equality is an essential part of all just distributions.

This much (the orthodox view maintains) is common ground. Any theory of justice whatsoever must conform to this pattern. Where different substantive theories part company is in the interpretation they give to the variables in Aristotle's formula. Of particular importance, especially for the disputes between normatively egalitarian and normatively inegalitarian theories, are the different kinds of theories of the distribution bases (claims) that have been advanced. Different theories identify different characteristics of persons as relevant to what they should have in justice. Theories of distribution according to needs, to merits or deserts, to rights, to contributions or work, and to effort, have all had their champions, and the lesson to be learned from the long history of dispute between these theories is that no final resolution is likely. Egalitarians and inegalitarians occupy opposing positions in an irreducibly normative contest.

A crucial fact about the human situation is that people are all fairly much alike as judged by some of these proposed criteria for distribution, but are significantly different as judged by others. The variation in (basic) needs, for example, is actually rather limited, so that if a distribution of goods is made according to needs (and according to the formal demands of the Aristotelian principle), then people will all receive roughly similar amounts. A distributive

theory which attaches primary significance to needs will be egalitarian.

Substantively inegalitarian theories of justice distribute goods on the basis of characteristics which are themselves distributed unequally among people. Theories which attach the distribution of goods to rights (for example, Nozick's entitlement theory¹¹), and those which attach goods to deserts (for example, Aristotle's own theory¹²), are substantively inegalitarian.

That is the orthodox theory of the concept of social justice. It is not of course entirely mistaken; but it is, most importantly, seriously astray in its use of equality and inequality as structural concepts. The elements of justice are distorted, I will argue, by being forced into this framework.

III

The Aristotelian principle is really a principle of proportionality. It does not follow, Aristotle and his many followers notwithstanding, that it is therefore a principle of equality. Indeed, Aristotle is mistaken when he says that "proportion is equality of ratios, and involves four terms at least ..." ¹³. The basic relation of proportionality has two terms, terms which, when measured according to some one standard, can be assigned values which combine to express a ratio. If one object has a weight of four units and another has a weight of two units, the ratio of the weight of the first to the weight of the second is two to one. The concept of a proportion is just the concept of a ratio. It follows that there are an infinite number of different relations of proportionality. One particular case, from this infinite range, has been picked out for special attention,

and that is the case of equality, the ratio of one to one. A possible way of describing every other proportional relation is to characterize it indiscriminately as an 'inequality'. The two terms together exhaust the whole range of proportionalities. However, far from its being the case that the concepts of equality and inequality are necessary in order to define the concept of proportionality, the converse seems to be the case. Equality (the basic concept of the pair) is just one kind of proportionality, and inequality is just all the other kinds. Unless we start from the supposition that equality has some special significance, however, the characterization of the whole continuum of possible ratios as that of 'equalities and inequalities' is arbitrary and misleading. Every ratio is what it is and not some other ratio. Every ratio other than one to one is an unequal ratio, but that is a fair characterization only if we already suppose that its being not an equal one has some special significance. Suppose that some special significance attaches to the ratio of three to one, which we call 'a triple'. Every single ratio can now be characterized as either triple or nontriple. Is this still a fair characterization of the continuum of ratios, even if we suppose that three to one has no special significance?

The terms between which proportionalities obtain can themselves be complex. They can themselves be relational, for example, the situation that Aristotle mistakenly identifies as basic. But unless the particular case of equality of ratios (that is, a second-order ratio of one to one between two first-order ratios) has some special significance, the characterization of the whole continuum as composed either of equalities or of inequalities is specious.

In particular, the mere fact that proportionalities obtain is not sufficient to warrant that conclusion. Instead, some explanation why the ratio of equality has a special significance that the others do not have must be given.

The first conclusion, then, is that the Aristotelian principle is not a principle of equality (and inequality) at all; it is a principle of proportionality. This is a sufficient refutation of analytic egalitarianism.

IV

The theory of justice for which I am arguing gives far less emphasis than is normal to comparative considerations (in a sense of that term to be clarified later). The orthodox tradition, on the contrary, defines justice in a comparative way, that is, in terms of the comparative circumstances of people. It is important, then to show how little support for this view can actually be derived from the Aristotelian principle.

It is necessary, first of all, to distinguish between two crucially different activities that one might undertake in respect to a system of rules or principles. On the one hand, there are the activities involved in applying the rules; on the other, the activities involved in formulating those rules¹⁴. The formal analysis of justice, as advanced within the orthodox theory, concerns the logic of rule-application; the material or substantive analysis of justice, as understood by that theory, concerns the content of those rules, that is, their formulation.

The Aristotelian principle is alleged, by its modern adherents, to capture the concept of rule-following, that is, of the application of a system of rules. How those rules are formulated and what their content is, is not at issue at

present. It is logically necessary, if a system of rules is to be properly applied, that the rules be applied to all the cases (and only to the cases) to which they apply. This is the basic truth of the matter. It is not an interesting truth, because it is trivial and analytic: it defines the concept of 'proper application' for a system of rules. However, it is this truth, and only this truth, that the Aristotelian principle - considered as an a priori principle - states: those who are equal in this respect, that one and the same rule applies to them, are to be treated equally, in that this rule is to be applied to them; those who are unequal in this respect, that different rules apply to them, are to be treated unequally, in that those different rules are to be applied, as appropriate, to them. This is certainly true: but what purpose is served by rendering the simple analytic truth about the proper application of rules in this exaggerated form? The Aristotelian principle is a wholly trivial implication of the basic (if not very interesting) truth.

Aristotle does not speak of the concept of applying a rule: it is not in explication of this that he advances his principle. Instead, he actually specifies something of the content of such rules, that they include variables ranging over attributes of persons, and over goods. Surely, then (it will be said), the admittedly trivial explication of the Aristotelian principle given above misses the point. The real significance of the principle is this, that it requires that those who are equal in respect to their claims are to be treated equally, in respect to the goods they receive; those who are unequal in respect to their claims are to be treated unequally in respect to the goods they receive. But

this is false.

If we are considering solely the application of rules, and are not concerned at all with their content, then this expanded conception is inadmissible. For it specifies something of the content of these rules, namely, the nontrivial fact that they are rules matching goods to claims. Yet only the rules of justice (according to my conception of the subject) are rules of this kind. The general concept of the proper application of a system of rules - rules of any kind - can only be the trivial principle that rules are to be applied to all and only those cases to which they properly apply.

Nor can the expanded principle be regarded as an explication of the notion of the proper application of the rules of justice. Under such an interpretation, the principle would combine the definition of rule-application with that of justice as giving to each his due. But no reason has been given for formulating these notions, neither of which uses the concepts of equality and inequality, in a principle which employs those concepts in a significant manner.

In any case, the Aristotelian rendition of these two definitions is less informative than might at first be thought. It requires this, that if two persons are equal, in the sense that they fall under a single rule, then they are to be treated equally, by having the same rule applied to them. If two persons are unequal, in the sense that they fall under different rules, then they are to be treated unequally, by having different rules (as appropriate) applied to them. Further, a person 'falls under a rule' in the relevant manner if and only if he has a claim in justice of the kind specified in the rule. A rule is 'applied to' a person in the relevant way if and only if he is allocated the

quantity (or value) of goods that the rule specifies as appropriate for anyone possessing his claim. Two persons who fall under a single rule will, consequentially, be allocated equal shares of a good: but this is not in fact the equality of treatment that the Aristotelian principle specifies. When that principle speaks of equality of treatment, this must be interpreted as 'being treated according to the dictates of a single rule', and not as 'receiving an equal value of goods'. This can be brought out by considering inequality of persons. Suppose there is a third person who falls under a different rule, and is therefore unequal to the first two persons. His inequality (relative to the others) consists in his falling under the provisions of a different rule. He falls under a different rule because he has a claim of a different kind. It is not necessary that he be 'treated unequally' in the further sense that he should be allocated a different quantity (or value) of goods, for different sorts of claims might yet be to like quantities or values of goods. What is necessary is that he be allocated those goods, whatever they might be, which are specified by the rule under which he falls. The inequality of treatment between the first two persons and the third consists solely in this, that they are treated in accordance with whatever are the provisions of the different rules under which they fall, even if they are consequentially equally benefited.

The Aristotelian principle seems to mean more than this, only because we tacitly import substantive moral content into it. Consider the schematic form of the principle, obtained by excluding all normative content from the interpretation of the variables: those who are equal, in respect to p, are to be treated equally, in respect to q, while those who are

unequal, in respect to p, are to be treated unequally, in respect to q. If any principle like the Aristotelian principle is necessarily true, it must be some such principle as this. After all, no normative suppositions about the moral propriety of distributing goods according to claims, rather than on some other basis, are being made here. However, it is only when some normative content of that very kind is supposed that the Aristotelian principle is true. If this normative content is excluded - if we consider the schematic principle, which is equivalent to the normal form less the normative principle matching goods to claims - then we find that, under many interpretations of the variables, the principle is actually false. Thus, suppose that 'p' is replaced by 'a like kind of claim to a like value of goods'. Two claims will be of a like kind if they are both based on needs, or both based on deserts, or both based on rights; otherwise (assuming these are exhaustive of the kinds of claims) they will be of different kinds. Accordingly, if each of two persons has need of the same value of goods, those persons will be equal, according to this principle. Suppose now that 'q' is replaced by 'the value of goods to be allocated'. So-interpreted, both halves of the principle will sometimes be false. Two persons might be equal in that they both need the same quantity of water, but the moral weight to be given to their claims might be different. One person might need the water to drink, while the other needs it to wash his hair: in that case, if there is inadequate water for both, justice might require treating them unequally, even though they are equal in the respect defined by the principle. Similarly, two persons might have claims of different kinds to goods of equal value (one needs them, for

example, while the other deserves them), yet their claims are of like moral weight: they should, then, be treated equally (in the allocation to them of goods of equal worth, as the principle requires) even though they are unequal (in the respect defined by the principle).

Justice is done when goods are allocated to persons according to the claims that they have. In determining what justice requires in any particular case, consideration must be given to the content of particular claims, and to their moral urgency¹⁵. If the Aristotelian principle is to come out true, the interpretation given to the variables must reflect this complexity. The simplest interpretation which is true is also very obviously trivial. It requires that those who are equal in justice be treated equally in justice, and that those who are unequal in justice be treated unequally in justice. But this, of course, is just the requirement that each be treated justly, that is, according to his claims.

The Aristotelian principle, then, does not show that equality and inequality, or even proportionality, are necessary, formal elements of all theories of justice. On the contrary, the trivial truths that it expresses, when it is interpreted in ways that make it true, have nothing to do with those concepts. Or, to put the point briefly, the Aristotelian principle is the subject of one of the most persistent muddles in the entire history of moral philosophy.

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CHAPTER SIX

THE FUNCTIONS OF THE PRINCIPLES OF JUSTICE

I

The orthodox theory of justice, in its adherence to the Aristotelian principle, has failed to show that the concepts of equality and inequality (or proportionality) are basic to the theory of justice. What my analysis does suggest, however, is the centrality, given a certain axiomatic assumption, of what I call 'principles of appraisal'. The axiom is that justice involves the allocation of goods according to claims or dues. The Aristotelian principle, in its true forms, follows analytically and trivially, once it is supposed that we have principles governing such allocations. The evidence is, furthermore, that in the absence of this fundamental axiom, the Aristotelian principle does not work at all. One of the crucial problems for a theory of justice, then, is to formulate adequate principles of appraisal.

The traditional concept of dues is not entirely satisfactory in this context. In particular, it is associated too closely with particular normative theories of justice - those which interpret dues as desert or merit - than is advisable in a concept which seeks the maximum of moral neutrality. The concept of claims, although not entirely satisfactory either, will be employed instead. Particular normative theories will advance different attributes of persons as bases of claims in justice. Following David Miller¹, I will regard the different criteria of claims that are usually (seriously) considered as

subsumable under one or other of the concepts of needs, rights or deserts. To allow that a person has a claim in justice, then, it is not necessary to wait for him to make a claim. It is necessary only that he should have the appropriate sorts of attributes. To assign a claim to a person is to evaluate those attributes in a particular way: it is to assign a definite moral significance to them. If a person has a claim in justice, then he has certain attributes such that it is morally appropriate (for a particular sort of reason) that he should have, or should have the opportunity to acquire, certain things. In identifying some personal attributes as grounds of claims, we are identifying particular reasons why someone should have certain things, things which thereby become goods. It follows that the sorts of attributes on which claims are based must meet certain requirements. In the first place, it is reasonable to insist that they should be personal attributes, that is, attributes of the person whose claim it is. Some reasons for allocating goods to persons are not based on any particular personal attributes of those persons, unless we are prepared to countenance such ad hoc properties as 'being the one millionth person to cross the bridge'. Any goods which are allocated to people on the basis of properties such as these are not goods whose distribution is, for that reason, a part of justice. Instead, justice allocates goods to persons on the basis of properties of those persons themselves. The intuitive concept of a real personal attribute seems to me to be clear enough here, given that the present intention is only to identify, in a general way, a set of conditions which might reasonably be imposed on any theory of claims. My own theory of claims,

in suggesting a definite end that justice should be seen as serving, will provide more definite guidance for the identification of the sorts of attributes that might defensibly be regarded as the sources of claims.

In the second place, any property which is to serve as the basis of a claim must be a property which has some recognizable moral significance². Accordingly, the identification of claims involves the moral appraisal of properties. At the same time, not just any kind of moral significance will do: only certain kinds of significance are relevant in justice. I will sketch a theory of claims in which the guiding notion is that of the basic conditions of a good life for a person. It follows that the particular theory that I am advancing is one in which justice is (partially) subordinate to goodness (by contrast with Rawls's theory, in which "the concept of right is prior to that of good"³). Given that my subject is justice, however, no attempt will be made to provide a fully-elaborated theory of the good life. It will be necessary only to give some account of the notion of that set of conditions which must standardly obtain if a person is to have a reasonable opportunity to enjoy a good life. What is required is less an account of what the good life would be than an account of the conditions which are commonly necessary for there to be a reasonable opportunity for people to realize a good life of any kind.

The goods which justice is concerned to distribute are those goods which are necessary to a good life: the distribution of other goods than these, whatever moral constraints of different sorts might apply there, is not the concern of justice. Similarly, the attributes on which claims in justice are based are those attributes in virtue

of which the possession of certain goods is a basic constituent or a condition of a good life. People often have interests of other kinds in these same goods, but they are not interests whose satisfaction is a basic necessity if they are to enjoy a good life. Such interests do not give rise to claims in justice.

The appraisal of personal attributes which leads to a recognition of claims in justice is, then, an evaluative appraisal made from a definite point of view. A person's condition is appraised as one in which his capacity to enjoy a good life is impaired in some respect. In calling these 'appraisals', it is not of course denied that a background of causal knowledge, knowledge of means to ends, is presupposed; instead, it is recognized that the precise conditions which define the basic features of the good life, the exact manner in which a person's capacity to enjoy that life is impaired, and the seriousness with which it is impaired, are all evaluative problems. Justice, after all, is part of morality.

II

Two main problems need to be solved in the formulation of a theory of claims. The first is the problem of identifying the kinds of personal attributes which are bases for claims. The consequences of making different identifications can be momentous: a theory of justice which recognizes deserts as the sole kind of claim will lead to very different distributions from one which extends recognition to needs as well. If the theory of justice is not provided with a background, if no attempt is made to say what the point of justice is, and why it is important, then

different substantive theories with their different accounts of claims will indeed (as Miller concludes⁴) be forced into irresolvable confrontation. But if the sort of background that I have proposed is accepted, some basis can be found for sorting out claims of different kinds.

The second problem, which arises once the kinds of attributes which can give rise to claims have been determined, is that of appraising their particular significance in justice. I will argue that claims have two relevant sorts of variables: (i) the kind and the volume of goods needed to satisfy them, and (ii) their urgency. The former of these, given the background assumptions relating to the conditions of a good life, is to a considerable degree a technical problem. If a person is in a certain condition which constitutes an impairment of his capacity to enjoy a good life, under some agreed conception of that life, then it is more or less an empirical question what is the kind and quantity of goods needed to eliminate that condition of impairment. Those who are hungry need food, and those who are short-sighted need spectacles. The problems here are philosophically less interesting than the problems raised by the concept of the urgency of claims.

Claims which differ in urgency are claims which constitute reasons having more or less 'strength' or 'weight'. This concept - of urgency - is a crucial one for the theory of justice that I will develop. It recognizes that the different personal attributes and circumstances of individuals can amount to more or less serious impairments of their ability to enjoy a good life. The seriousness of the impairment is not a function simply of the quantity of goods claimed: an adult might need far more food than a

baby, even though the latter is starving, and therefore has a more urgent claim than the former, who is merely hungry. Nor is the seriousness of the impairment a function directly of the kind of claim: needs, desires and rights can all vary widely in urgency. Nor, indeed, is it the case that claims of the same kind to the same quantity of goods are of equal urgency: there can be different reasons - reasons of different urgency - why two people both need, or both deserve, a definite quantity of goods. Urgency is an additional variable: it is a function directly of the seriousness of the impairment to a person's good life. An appraisal of the urgency of a claim is an appraisal of the moral seriousness of his condition and circumstances, understood as a state of deprivation.

An adequate theory of claims must tie these different strands together. It must identify the kinds of personal attributes which are relevant in justice; it must provide some account of the basic conditions of a good life, in sufficient detail to allow estimates to be made of the nature and the quantity of the goods which would satisfy different claims by eliminating the relevant conditions of impairment; and it must, by reference to these factors and to a conception of the varying importance of the different elements of the good life, provide some guidance for the appraisal of the moral urgency of the claims that people have to social goods.

An egalitarian theory of justice is committed to the ineliminability of relations of equality and inequality from some part of the theory. The first and the most obvious place to look for such relationships is in the principles which assign claims, namely, appraisive principles. It is,

furthermore, reasonable to suppose that the relations will hold between persons: that is, we should suppose that if egalitarian justice is done, there must be some interesting respect in which the persons to whom justice is done are equal to each other, and that the justice of their treatment is to be explained, at least in significant part, by their being equal in that respect. Do the principles which assign to persons claims in justice incorporate ineliminable concepts of equality (or of inequality) in some such role as this? If they do, then it would seem that we should look for these relations in one of the areas already distinguished. Does the identification of a person's personal attributes as constituting a state of need, say, or of desert, necessarily involve relations of equality or inequality between him and others? Does the identification (not wholly distinct from the foregoing) of the nature and quantity of goods necessary to eliminate a person's state of impairment, necessarily involve such relations? Finally, does the appraisal of the moral urgency of a claim necessarily involve these relations? In seeking to defend negative answers to all of these questions, I will consider, initially, the more obvious places in which relations of equality (or inequality) might be found. Later, I will consider some further possibilities, especially the thesis that these relations are ineliminable from the concept of the basic conditions of a good life.

III

The question that arises immediately concerns the place of comparisons between persons in the appraisal of their claims. If some ineliminable significance attaches to their being equal or unequal in some respects, then comparisons to

establish the fact must be ineliminable from the appraisal of claims.

The minimal notion of a comparison is of an appraisal which issues in the judgement that two individuals are either the same (are equal) or are different (are unequal) in some respect. A slightly more sophisticated comparison will yield an ordinal judgement, attributing one of the three relations of greater than, equal to, or less than, to one individual, as he stands to another in respect to some variable property. Ordinal judgements of this form distinguish two species of inequality.

Whatever the form that these comparisons take, the judgements to which they give rise must be irreducibly relational, if they are to provide any support for an egalitarian theory of justice. This is of major importance because not every comparative (relational) judgement is ineliminable and basic. The determining consideration is the availability or nonavailability of independent or noncomparative identifications of a property, or of the degree of a variable property, in individual cases.

The problem concerns the manner in which we identify the fact that a person has a certain attribute (such as a need), or the manner in which we measure the degree of a variable property (and most importantly, its moral urgency). Can these activities, of identification and measurement, be carried out noncomparatively? If they can, then the concepts of equality and inequality, concepts which refer to certain comparative relationships holding between persons, do not seem to have an ineliminable role. Consider a property the identification of which does not involve comparisons, such as the property of being male. Whatever is the genesis of

our capacity for identification, it is at least true now that we can identify (or know how to go about identifying) an individual as a male without comparing him with any other individuals, and particularly, without relating him to other, paradigm males. It is possible for us to identify each of two persons as males without comparing them, and to go on to assert the existence of a relationship of sameness or equality between them in respect to this property. The relationship holds as an analytic consequence of the basic facts, that each of the two persons has the appropriate property. They are undeniably the same in this respect, but their having the latter, relational property follows solely as a matter of logic from the conjunction of the facts that each has the property - of being male - in respect to which they are the same. The relationship of equality is a purely consequential one in a situation of this sort. If 'the basic description' of a situation is one in which none of the components of the description is purely a logical implication of some of the others (this is a necessary but not a sufficient condition), then the fact of equality, in the above situation, will not figure in the basic description. That is what I mean by describing it as logically eliminable.

The relationship of equality itself, considered ontologically, would seem to be consequential in every case. However, our concern must be with the descriptions that we give of those situations, with the knowledge of them that we are capable of acquiring. Whatever the ontological truth of the matter, relationships of equality and inequality - comparative relationships - are sometimes ineliminable from the knowledge that we have or the descriptions that we give of things. This is so where the attribute whose

identification or measurement is at issue is actually defined, or its degree is determined (or can only be determined), in a comparative way. Suppose that we know that one person is twice as heavy as another, but we do not know the actual weight of either. Then the resultant knowledge that we have, or the description that we can give, of either or both of these people, in respect to their weights, is irreducibly comparative. We know that one is half the weight of the other; or perhaps we know only that his weight is less than that of the other. If they are of the same weight (but we do not know the weight of either), then the description that we can give of the weight of either is again irreducibly comparative.

Are all judgements or descriptions which are irreducibly comparative, and on the basis of which significant relationships of equality or of inequality might be identified, eliminable from the principles for the appraisal of claims in justice? If they are eliminable, then there is at least a considerable part of the theory of justice which must be nonegalitarian. If it should turn out, however, that comparative descriptions were not eliminable, it would not immediately follow that justice was to that extent egalitarian. It would follow only that it was comparative; and if the ineliminable comparisons which were made ranged indifferently across both equal and unequal comparative relations, then the relation of equality itself - as distinct from that of proportionality - would have no unique significance.

It is in fact necessary to make some use of comparisons in the theory of social justice under conditions of scarcity. But because the particular comparative relationship involved

is that of proportionality, while that of equality has no special significance, it cannot legitimately be argued that social justice (under conditions of scarcity) is therefore egalitarian. The basic importance of this fairly obvious distinction, between equality in particular and proportional relations generally, is obscured by the practice of classifying all proportionalities as relations of equality or inequality.

If appraisive principles directly involve comparisons between persons in some ineliminable role, and if the concept of equality has special importance in those comparisons, then appraisive principles could legitimately be described as egalitarian. If these conditions are not met, then either the concept of equality plays some significant and ineliminable role deeper in the background of the theory of justice - for example, somewhere in the concepts or the standards which appraisive principles involve - or justice is nonegalitarian. The remainder of this work will be largely concerned with testing these different possibilities.

IV

In developing my own account of appraisive principles it is convenient to begin from an account advanced by Feinberg⁵, not because his account is satisfactory, or even approximately so, but because it is suggestive, and also because it is the account from which my own theory was developed. Feinberg accepts that all justice involves giving to each his due, and sees the task of the principles of justice as that of 'measuring dues'. He divides these principles into two kinds, comparative and noncomparative⁶. The distinction here is intended to reflect a distinction within the realm of justice

as a whole, one which is often described as that between social and individual justice. My own account of justice will capture, in its different parts, a good deal of the significance that this more familiar distinction has.

Feinberg's distinction rests on the two different ways in which a person's dues can be determined. Noncomparative principles enable us to settle the dues of one person independently of any comparisons between him and other persons. This is possible (Feinberg says⁷) because the goods which are appropriate to these dues are not goods which are in limited supply. What is due to a person is not a share in or a portion of a divisible (and limited) good, and so it is not necessary to consider the shares that ought to go to others before determining what is due to this person. The judgement of what is a person's due "is based exclusively upon data about him and is incorrigible, as a judgement, by new information about others. When our task is to do noncomparative justice to each of a large number of individuals, we do not compare them with each other, but rather we compare each in turn with an objective standard and judge each (as we say) 'on his merits'."⁸

Where the subject is social justice, however (Feinberg argues), a consideration of the condition of (some) other people is unavoidable in the determination of any one person's dues. Comparative principles are necessary in these cases because "when the occasion for justice is the distribution of divisible but limited goods or the assignment of divisible but limited chores, how much will be left for the others is always pertinent to the question of how much it would be just for any particular individual to get."⁹ The kind of comparison with other people which must be carried out

turns out to be the very kind licensed by the Aristotelian principle: both "(i) comparison of the relevant characteristics, merits, or performances of the individual in question, which are the basis of his claim, with those of the relevant comparison group", and also "(ii) comparison of consequent 'treatments' ... accorded this individual claimant with the 'treatments' ... (of) relevant others."¹⁰ The comparative principles of social justice, he concludes, essentially involve "equality in the treatment accorded all the members of a class"¹¹.

Both kinds of principle have the same function, that of determining the extent of a person's claims in justice. Noncomparative principles achieve this in a direct (and not obviously mysterious) way, namely, by assessing a person's attributes against standards of moral significance. But this procedure (Feinberg argues) will not do in the realm of social justice, because in that sphere goods are limited. It follows that we cannot ignore the claims of others in assigning goods to one person, because we risk using up the entire supply of the goods and so leaving some claims entirely unsatisfied.

It would be reasonable to conclude, however, that where goods are limited, it is not alternative principles but supplementary ones which must be resorted to. That is, in every case a person's claims in justice would be based on his own attributes (his "characteristics, merits, or performances", Feinberg says with reference to the dues that are measured by comparative principles¹²). In every case, the first, necessary step would be to appraise the moral significance of these attributes against the standards which are supplied by the appropriate (noncomparative) principles. Then, provided that the total supply of goods available for distribution was

not less than the sum of claims made on it, the appropriate amount of goods could justly be allocated to each person. Yet Feinberg does not mention the possibility of an initial noncomparative appraisal where social justice is concerned. Instead, he supposes that the goods which are the objects of claims which are measured noncomparatively are goods which are not just contingently but necessarily not subject to shortages. The good reputation that a person deserves (and of which it is noncomparatively unjust for him to be deprived) is not a good which other deserving people can have only if he does not. It is always possible for everyone who deserves a good reputation to have one: hence, problems of scarcity do not affect this sort of justice. It is therefore unnecessary, Feinberg supposes, to check on the total supply of the good before allocating a share to a person who has a noncomparative claim to some of it.

It is not at all apparent why the sort of principle which is appropriate where there is a necessary abundance of claimed goods should be thought to be different from the sort which is appropriate where there is a contingent abundance of such goods. But this distinction without a significant difference is necessary for Feinberg's thesis. Suppose (what seems independently reasonable) that the subject matter of noncomparative justice is defined, not by reference to goods which are of necessity abundant, but simply by reference to goods which are (whatever the modality) abundant. The unacceptable implication which this modified analysis now has (but which was avoided by Feinberg's original arbitrary qualification) is that the claims which people have are actually influenced in some manner by contingent, external circumstances which seem to have nothing to do with them,

namely, by the abundance or shortage of goods in the world. Yet the attributes which a person has and which are the basis of his claims are not themselves affected or altered by the fact that there is or is not a scarcity of the appropriate good. It should follow, if the claims of people are unaffected, that the principles which appraise those claims (in a prima facie manner) are equally unaffected. Appraisive principles should be appropriate in every case.

An increasingly familiar situation today is that in which human beings are confronted by the physical limitations of the world. Many of the goods that people have an interest in, many that they have claims in justice against, are scarce. There are insufficient goods to satisfy all claims and interests, and compromises must be made. But what, the question should be asked, is to be compromised? Surely the answer is, claims. The claims that people have outrun the goods available to satisfy them. Yet as far as material goods are concerned, it is only a contingent fact that they are limited. It has sometimes been the case, in some parts of the world, that valued goods were available in such abundance that everyone's claims could be met - and their interests and last desires satisfied too - while still leaving an effectively undiminished stock of the good. Land was sometimes like this, in spacious, newly-settled countries. Until recently, tolerably fresh air was such a good almost everywhere.

Where goods are effectively unlimited, we do not usually regard any problems of distribution or allocation which happen to arise as peculiarly problems of social justice. People can of course be prevented by others from enjoying goods to which they have claims, but under conditions of abundance, the problems which are distinctive of social justice - problems

involving the weighing and mediating of conflicting claims under conditions of scarcity - do not arise (except in the special case of conflicting property rights¹³). It would not, however, follow from the fact that all claims were everywhere satisfied, that those claims were any the less genuine claims. We could only be persuaded that they were if we thought that for a person to have a claim it was necessary for him to claim it, or to insist on it. But there is often no need for him to do that under conditions of abundance. It remains true under those conditions, however, that he has those natural properties, such that it is morally appropriate for him to have some particular goods. If proof is needed of its being morally appropriate that he should have the goods that he does have (in the normal course of things), it is only necessary to consider the moral consequences of depriving him of them.

If some goods which are actually limited were in fact unlimited, and if we wished to establish the extent of a person's claims to them, what sort of procedure would be appropriate? To what sorts of principles would reference need to be made? Clearly, not to comparative principles: whether or not others have claims to that good, and how much of it they get, are of no relevance, if they do not affect this person's claim-base, and will not affect how much he will require in order to satisfy his claim. The appropriate principles will be noncomparative, will be appraisive principles. The determination of the nature and quantity of a good that is due to a person will proceed by appraising his natural condition (his attributes, achievements, and so on) against the appropriate standards, will assign a particular moral significance to his possession of certain attributes, and will prescribe that some goods ought prima facie, in

justice, to be allocated to him. Provided that we know the good to be effectively unlimited, and given that there are no powerful reasons, based on considerations external to justice, for not allocating those goods to him, then he ought to have them.

Sometimes, however, other things are not equal, and the moral requirements and claims that go through without impediment when they are equal now appear in a different light: their prima facie character becomes evident. In the absence of countervailing considerations, the prima facie nature of moral requirements is not usually operative. It becomes important only when there are reasons against meeting those requirements. It is plausible to argue that this analysis applies in precisely the standard manner to claims in justice. Such claims are always prima facie; but this fact about them only becomes important when goods are limited. For a good will be regarded as limited only if there is a real possibility that the claims to it exhaust or exceed the total supply available. In that case, it is important to recognize that the conflicting claims being made to those goods are, none of them, always and necessarily overriding. Being claims in justice, only other claims in justice can bring into the open this particular kind of prima facie status - which is not to deny that the final demands of justice are only prima facie themselves, in the larger sphere of all moral considerations.

If the claims that people have to goods are all prima facie, and if those goods are sometimes limited, there is need of a procedure for determining what the demands of justice are, all things considered. With, and only with, the introduction of conditions of scarcity of goods do (noncomparative) appraisive principles cease to be sufficient. Only in that

case are principles for the mediation of conflicting claims necessary. These principles must enable us to consider and compare both the claims of everyone involved, and the total quantity of goods available. Such principles will not, however, have the form assigned to them by the orthodox, neo-Aristotelian tradition.

One of the more serious shortcomings of Feinberg's analysis is that it cannot be fitted to the natural and coherent pattern that I have described. His manner of distinguishing comparative from noncomparative principles implies a basic discontinuity between them. There is no sign that he recognizes the need for appraisive principles - noncomparative principles - where distributions under conditions of scarcity are concerned. It is not impossible that principles of a basically different kind might supercede normal appraisive principles when conditions of scarcity intervene, or even with the shift from necessary to merely contingent abundance. But these are unattractive possibilities. The continuity which my theory recognizes in the whole subject of justice promises, by contrast, to give cohesion to the different elements of the subject. There is this continuity because it is a necessary component of every situation in which questions of justice arise that people have those personal attributes which make it appropriate for them to have certain goods. Because this is so, every theory of justice must include principles (which will not always be sufficient for justice, but will always be necessary) whose specific function it is to evaluate or appraise the moral significance of those personal attributes. On Feinberg's analysis, however, it is necessary to explain why it should be that the claims that people have to goods which just happen to be

scarce must be measured by different sorts of principles from those appropriate when goods are not scarce. If the personal attributes themselves are unaltered, then it is surely necessary (if no longer sufficient) to appraise their moral significance by those very standards and principles whose function is, precisely, to evaluate personal attributes of these kinds.

The cost is high of giving up appraisive principles. Theories of justice which pay scant regard to them are possible: Rawls has (in effect) endeavoured to make his theory independent of the sorts of personal attributes on which my theory bases claims. More to the present point, no theory which recognizes that justice consists in distributing goods according to claims can give up appraisive principles without also giving up the very possibility of actually matching goods to the claims that people have. If there are no such principles, then it is not possible for justice to give to each that which is due to him.

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CHAPTER SEVEN

THE END OF SOCIAL JUSTICE

I

The special virtue of social justice is that it makes available to persons the basic conditions of a good life. The claims that persons have in justice issue from their actual conditions and circumstances, when viewed from the perspective of this guiding purpose. The natural abundance or scarcity of goods of the kind to which they have claims is an additional element which does not alter the analysis at the present level.

If ours were an exceptionally well-endowed world, and if human beings were blessed with a less perverse nature¹, then the virtue of justice (or of the parallel virtue in such a world) might well be to bring about the joyful and wholly fulfilling life for all. But that is not our world, we are not such beings, and the objectives of justice are more humble. It is still partly a teleological concept; but it is not one which is defined in the maximizing way with which Utilitarianism has made us familiar. Good undoubtedly does flourish in a world in which justice is done, but the maximization of good is not the value which justice seeks to secure. Its special virtue is to seek for each and every person the material and social circumstances which are necessary if each is to have a reasonable and decent opportunity to enjoy a good life².

Those institutions and practices which are constrained by a public conception of justice are not required actually to secure, for each person, the good life. The enjoyment of such

a life, after all, is far from being wholly a passive condition. People are not just consumers³; a good life for them involves purposive activity and the exercise of powers and capacities, especially those powers and capacities the exercise of which involves their owner in enriching and satisfying activities of kinds which leave little room for discontent and ennui, or for a sense of under-achievement. Accordingly, it is quite inappropriate to see the good life as one in which persons are passive consumers of the social goods which are institutionally distributed to them. Instead, as far as possible - and as far as is consistent with the goal of providing people with a reasonable prospect of securing for themselves the basic conditions of a good life - distributive institutions should generally require an active contribution, a willingness to make something of one's life, and to turn to one's own ends the benefits which are made available through social action⁴. In particular, my conception of socialist justice is not committed to paternalism on a grand scale, or to the omni-competent welfare state. To the extent that people are individually motivated, that they are guided by a freely acknowledged conception of what their own good life would be, the role of social institutions and practices must be a supportive one, leaving to each individual, as far as is practicable, the opportunity to make what he will of the chances he is given. After all, social action is collective action, and the good life for all will be actively pursued socially just to the extent that people, acting both singly and collectively, do themselves actively pursue it.

The liberal ideal of autonomous activity can easily be given an unreal interpretation in this connection. Persons are of course initiators of activity, but they are themselves

extensively shaped and influenced by the continuous interaction they have with their social and physical environments. The interpretation of autonomous action as action which reflects the self-examined beliefs and desires of the agent is compatible with the conception of it as action which also bears heavily the marks of the environment of which the agent is an inseparable part. Even on this more limited and realistic interpretation of autonomy - as characterizing the examined life - it is still the case that the social arrangements which have prevailed throughout most of human history have not encouraged its existence. But if these arrangements are alterable to some extent, and if there are reasons for supposing that the most satisfying deployment of the native talents and capacities of human beings requires some measure of critical self-awareness in thought and action, emotion and desire, then the fact that few people have attained to a reasonable autonomy cannot be used in proof of the inapplicability of the ideal. What is necessary is not an assertion of the value of individuality at the expense of a person's place in a web of social interactions and responsibilities, but - with Marx and Engels - a recognition that "Only in community (with others has each) individual the means of cultivating his gifts in all directions; only in the community, therefore, is personal freedom possible."⁵ We must substitute for the crass liberalism which regards the social relations of an individual as external and contractual, not the equally crass collectivism which absorbs the individual without trace into the social organism, but the humanist socialism which recognizes that individuality is a property of members of social groupings.

If the provisions of justice are to serve this end, then

the goods with which people are provided must not be such as to restrict artificially and unnecessarily the range of lifestyles which are practical within their social milieu. That is why the institutions of social justice should seek to provide for all, not the good life (as authoritatively conceived), but rather those conditions and circumstances which make a practical possibility of such a life, whatever its particular design, provided it falls within the limits of the socially tolerable. Justice will be done if each person has adequate opportunities to pursue a legitimate conception of a good life, whether or not he takes up those opportunities.

The good life is one which is lived by real human beings, by physical creatures who are born with limited capacities - and limiting incapacities - into a world which is in many respects finite and cramping. Within these natural constraints, people strive (to varying degrees) to realise aspirations and to act in ways in which their physical, rational and spiritual capacities are exercised and developed. In this striving they encounter barriers, some of which are more impenetrable than others. Some are the products of human action, are 'conventional', while others are 'natural', are products of the operation of forces outside the realm of social activity. A rational conception of the good life will be adjusted to the prevailing realities, both natural and social; but its accommodation to alterable (especially social) realities will be less automatic and more critical than its accommodation to inalterable (especially natural) realities. It is not always necessary for a person to accept physical defects fatalistically, for example, to seek to accommodate his life to them. Depending on the cost - in terms of all the resources of time, materials, labour and so on - of overcoming

or correcting the disability, doing so might be seen as demanded by justice or fairness. For some natural disadvantages, however, people can at most be given compensation: but to the extent that such disadvantages characterize the human condition as a whole, they will not be seen as individual disabilities unless the cost of correcting them for all is fairly low and the benefit of doing so is clear. (If circumcision had definite benefits, it might fall into this category.) Social disabilities as well can be ranged along a continuum according to the cost of repairing them.

A legitimate and adequate conception of the good life is one which is sufficiently adjusted to the actual circumstances in which a person finds himself. At the same time, a definite adjustment of some of those circumstances to the demands of such a conception may be rationally sought. Central to demands of the latter kind are those which are claims in justice, the demands that people may make to share in those conditions which are necessary if they are to have a reasonable chance of enjoying a good life. It follows that the concept of a legitimate conception of the good life for a person is a complex one, formed out of an interplay between a person's aspirations, and the natural and social circumstances of his life. In the course of the interplay, both factors will be adjusted and adapted to each other. An adequate conception is one in which some proper compromise of this kind has been reached.

The major activities in which a person engages should ideally arise from his own examined aspirations and choices, should reflect the kind of person he is, and should not simply be accounted for by the pressures and compulsions of a coercive or an unjust socio-economic system, or by the dead hand of

conformity. Even so, to the extent that individual capacities, attributes and aspirations are themselves the product of social and historical circumstances, what will count as a legitimate conception of a good life for an individual will itself be partly dependent upon the actual social conditions in which each finds himself. At the same time, of course, every conception of a good life must square with those universal attributes and capacities which people have as biologically determinate creatures. This means that there will be both sameness and difference in human nature, and in adequate conceptions of the good life, from epoch to epoch.

What sort of life would constitute a good life for an individual human being, then, is not something which can be determined ahistorically, precisely to the extent that many of the facets of human nature with which a conception of the good life must cohere are themselves at least in part historically determined. For similar reasons, any individual's particular conception of his own good life not only will, as a matter of fact, reflect his historical and social milieu, but it ought to reflect that milieu, if it is to be adequate to the human material for which it is intended.

No complete account of the attributes and circumstances which give rise to claims in justice can accordingly be given independently of some definite historical context. To the extent that conceptions of a good life will reflect the actual social and historical conditions in which that life is to be pursued, they will also tend to be constrained by public knowledge of the kinds and quantities of goods that are actually available in that milieu. It is, after all, possible to conceive of a world (including, one would surmise, our own) in which creatures have latent capacities such that, were

certain kinds of things which do not exist in that world available in it in actuality, those capacities could be exercised to the benefit of their owners. Do we human beings, living (we will suppose) in a world of that kind, have claims to such goods, even though they are not available to us, and even though we do not know what they are? Unless legitimate conceptions of the good life are seen as constrained by actual circumstances, it is difficult to avoid the conclusion that we do have such claims. It is clearly necessary, then, to argue for the limitation of such conceptions by standards of what is attainable or realizable by persons in their actual contingent circumstances.

This is not to concede that the particular conditions of moderate scarcity which give rise to the need for principles for the mediation of conflicting claims also act at this stage to moderate the scope of individual claims, when these are considered in isolation. The sorts of goods to which a person can have claims in justice are those which are actually available to people generally, in the broadest grouping to which that person may, in a morally legitimate sense, see himself as belonging. Under contemporary conditions of international exchange and interaction, the world community is just such a reference group, though this was not the case under the conditions of separate development which prevailed in earlier ages.

The influence upon the legitimacy of claims of the actual conditions which prevail in a person's environment does not mean that these claims include all manner of ephemeral and 'acquired' wants, of tastes manipulated and instilled by commercial pressures and other, less-guided social forces. Instead, the content of a person's claims - that part of them

which is not biologically determined - evolves out of the beliefs and expectations which enter into his fundamental conception of himself and his needs, and which form the horizons or boundaries of his understanding of what it is reasonable, possible, or indeed desirable to seek. For the most part, it is not the case that people see their opportunities for self-development and fulfilment as constrained or limited by the natural limitations of their physical environment. If they do, it is likely to be so because they are aware that other human beings are living in richer environments, in which case their deprivation may often reasonably be attacked as unjust anyway. But in the absence of interaction with more fortunate people, natural limitations tend to express themselves in the horizons of a person's perception of the good life, and in the boundary conditions of the kind of human nature which evolves within those physical and social settings.

II

This approach to the problem of appraising claims does not accept that each individual person is the sole judge of what those claims are. For the liberal, such an approach poses the danger that the liberty and integrity of each individual will be compromised by his submission to institutionalized ideals of the good life. The conventional kinds of lives that any society will tolerate, and regard as rationally defensible, will rarely extend widely enough to encompass all the diversity of life-style to which some people actually aspire. It might seem, on the one hand, that if the distributive mechanisms of a society are geared to a particular conception of the good life, then the worst that

can happen to the eccentric and the nonconformist is that they will have irrelevant goods made available to them, and will have to fend for themselves in those areas of their lives in which their basic requirements are unusual. But this, the liberal will object, is to ignore the pressures for conformity and the potential for oppression of all who are different which appear in a society in which particular ideals of life have been institutionalized.

The liberal is opposed to 'idealism' in the design of social practices and institutions⁶. He argues that, because the public recognition of ideals tends to be oppressive for those who do not share them, those ideals cannot provide satisfactory criteria for assigning claims to all people. Yet it is only when such ideals are legitimately available that public criteria exist allowing the appraisal of a person's condition as representing some impairment of his capacity to realise a good life. Such criteria do not take expressed preferences as sufficient to establish claims.

Liberalism rejects all theories of distribution which disregard expressed preferences. The unreconstructed classical liberal regards self-ordered preferences as sufficient, in fact, to determine what a person's claims in justice are, and seeks principles designed to distribute the goods which are desired, according to a formula which takes only such claims into account. Theories of these kinds regard their own independence of ideals as necessary to any defence of the individual, and of liberty, against oppressive and paternalist institutions. Liberalism is not, however, independent of all ideals itself. Instead, it advances a definite conception of the individual and of his relations to society; and in particular, it defends an ideal of the good life as one in

which, as far as possible, a person's actual preferences are satisfied. The ideal might be a positive one, regarding this life as actually the one which is the best of all possible lives; or it might be negative, advancing this conception as a defence against the abuses to which all other ideals are prone. But in either case, a significant claim is being made about the best life for people under the conditions which actually prevail in human societies.

The 'idealist' theory of claims that I have been building up rejects both the liberal's own theory, and the charges made against itself on the grounds of its oppressiveness. At the same time, it recognizes the need to extend the account given so far to include some of liberalism's crucial insights. In the first place, the liberal, individualist view of human beings must be rejected, not as mean or degrading (nor even just as reading into human nature traits of acquisitiveness and egoism which are characteristic only of men in capitalist, market economies⁷), but as being in certain respects too elevated. People are not as independent of social pressures and forces as individualism supposes: nor are their actual stated preferences by any means always the most reliable assessments of their own requirements. To insist on treating them as beings whose own natures are transparent to themselves is to consign many of them to lives of self-inflicted misery and tragedy; it is to ignore the fact that the preferences that they express will be conformed willy nilly, anyway, to prevailing conceptions and ideals.

It is true and important that the considered preferences of individuals cannot legitimately be ignored, that in some things and under some circumstances, a person's considered appraisals of his own requirements will be the best guide to

the conditions that are necessary if he is to enjoy the basic conditions of a good life. At the same time, it is necessary to recognize the limitations, as the sole ground for claims, of expressed preferences, since these are often ill-considered, advanced by people not capable of performing the feat of abstracting themselves, to any significant extent, from the mechanisms of social conformity. If our concern is to provide for all the conditions of a good life, then the liberal's approach is not sufficient.

The distributive institutions of a society can operate according to ideals without being oppressive, if these ideals are minimal ones. They do not, in that case, extend into the details of the individual lives of people, into those regions in which people impose their own conceptions of themselves onto the private and immediate circumstances of their lives. The virtue of justice is that it seeks to secure the minimum conditions that are still necessary if people are to have reasonable opportunities to pursue, with some success, the good life. For the purposes of any single set of distributive institutions, the supposition can be made, and will generally be justified, that the goods which these institutions distribute will be goods which all people will require. A common minimum for all can generally be assumed. If situations occur in which this assumption is falsified, any enlightened society whose institutions are well-designed will have some procedures whereby the necessary adjustments and special provisions are made. If this does not happen in practice, that is because the societies with which we are familiar are not particularly enlightened, and their institutions are not particularly well-designed. This is a reason for reforming society, not one for rejecting the theory.

The liberal gives insufficient weight to the fact that what most people are prepared to accept as the good life for themselves is profoundly influenced by the prevailing ideals and patterns. Where their own individuality is stamped on their lives, it will almost always be in those parts which lie beyond the minimum which justice serves. A common conception of the minimum is not incompatible with individuality, because people simply are creatures who are largely the products, in their aspirations and values and in their images of themselves, of their natural and social environments, and this is the very same environment (assuming idealized conditions, and especially the absence of rapid or revolutionary social change) from which the prevailing ideals have sprung. To the extent that all this is so, that a person is a social being in a reasonably persistent and stable social and natural environment, it will often be true, not only that he will usually adopt as his own a conventional ideal, but also that such an ideal really will be the best for him. When both individual people and the ideals of the good life which they adopt grow out of a single environment, a conformity of this kind between them is only to be expected. If this conformity is often found, the presumption that the aspirations and ideals of different individuals will include a common minimum conception of the necessary conditions for the good life will be particularly well-founded.

In any case, the oppressiveness or restrictiveness of a common conception of the basic conditions of the good life can be alleviated - if there is still a residual problem - by the proper design of distributive institutions. It is by no means always necessary that institutions should distribute particular goods themselves: it will sometimes be sufficient to make

available adequate opportunities to acquire these goods (or a sufficiency of them) at will. The institution of money operates to this end, enabling people to determine for themselves, at least some of the time, what goods they will acquire. The circumstances and experiences which led to the rise of the welfare state also suggest, however, that the free market - this being the distributive mechanism (for all but the basic rights) which the laissez-faire liberal accepts, as the mechanism most compatible with the object of letting preferences determine distributions - is not sufficient to secure the basic conditions of the good life for all. Such goods as education, health care and housing, come to be regarded, in a welfare state, as basic conditions of everyone's good life, and as goods which, in those circumstances, will be better distributed for not being channelled through the market.

III

The claims that people have in justice are determined, in the first place, by the particular attributes or conditions of each individual. These attributes give rise to claims to the extent that they represent impairments to an individual's opportunity to participate in the basic conditions of a good life. The recognition of a claim is the morally appropriate response to the recognition that a person's attributes or conditions act to impair, in some remediable way, his capacity to realize the minimal level of well-being which is necessary for a good life. On the other hand, the explicable and justifiable existence of standardized conceptions of the good life leads to the presumption that there are certain goods that all persons will require. Many

distributive institutions will not wait to assess the actual conditions of each individual before providing him with these goods. In a well-ordered society, distributive institutions will continue to operate in this sort of way just to the extent that the presumption they make is indeed justified. The fact that, in practice (for very good reasons) individual appraisals are often dispensed with does not show that they are theoretically dispensable.

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CHAPTER EIGHT

THE APPRAISAL OF CLAIMS

I

The first function of the principles of justice is to assign to persons definite claims to goods. These claims will vary, not only in the kinds and quantities of goods sought, but also, particularly, in their moral urgency. In arriving at an understanding of the latter notion, it is necessary, first of all, to distinguish between provisions or shares of goods, and holdings¹ of goods. The latter must be further divided into initial holdings, those which exist prior to a particular distribution, and final holdings, those which exist following a distribution. Accordingly, a person's final holding of a good (relative to a particular distribution) consists of his initial holding plus his current share of the good. Alternatively, if goods which were initially held by him have been redistributed to others, then his final holding (relative to that distribution) will consist of his initial holding less the amount taken for redistribution.

Some criteria of dues, but not all, are sensitive to initial holdings of goods. The two criteria that are advanced in my theory - needs and deserts - support claims which are partly dependent on each individual person's initial holdings. By contrast, a particular thing might be due to a person as of right, even though he already holds far more goods of that kind than he needs or deserves, and far more than is held by anyone else, including people who need or deserve some goods of that kind. Property rights, for this reason (and also

because they have particular items as their object, and not goods of a kind, as needs and deserts typically do), have an ambivalent moral status which an adequate theory of social justice must clarify.

Needs and deserts, however, are not independent of initial holdings. In the clearest case, this is brought out by the distinction between unsatisfied and satisfied needs. In the one case, if a person needs a good then it is the case that he does not already hold a sufficient quantity of that good to secure the valuable end that it serves. In the other case, a person needs a good whether or not he already possesses a sufficiency of it, provided only that his possession of it continues to be necessary for his securing the particular valuable end at issue.

Actual claims in justice can arise only from needs which are unsatisfied. The urgency of such claims is dependent upon two factors. The first is the degree to which the person who needs a good is deprived of the valuable end which that good serves. For any one particular kind of need, such as the need for warmth, for food and for shelter, the urgency of a claim based on it will usually (threshold effects and the like apart) be directly related to the smallness of the initial holding of that good, expressed as a proportion of the holding which would satisfy the need. (This otherwise useful measure of impairment fails, unfortunately, in those cases where the initial holding is zero). It follows that it is not the absolute quantity of the good needed which determines the urgency of a claim: if this were the case, then the starving adult would have a far more urgent claim to a limited supply of food than would the starving baby. Accordingly, the relevant factor is the proportional

deprivation of a good which a person's current holding represents.

The urgency of a claim is also a partial function - and this is the second element - of the importance, or the value, of the end which it subserves, the contribution which the final holding of that good (were the need satisfied) would make to the good life of the individual. The description of some needs as more basic than others is one familiar and roughly accurate way of drawing attention to relative differences in importance of this kind. The general point is that the different elements of the basic conditions of the good life have contributions of differing importance to make to the whole. The requirement that a person be adequately nourished is more important than the requirement that his work be satisfying and enjoyable, and needs based on the former will generally have greater moral importance than those based on the latter.

These two elements - the proportional deprivation and the value of the end - together make up the degree of impairment of a person's enjoyment of the basic conditions of the good life. The elements combine readily to form this latter function: the greater the proportional deprivation or the greater the value of the end, the more urgent (other things being equal) the claims based on such needs. Likewise, as the holding of a good proportionally approaches the level of satisfaction, the urgency of a claim based on it diminishes, with the result that claims based on a proportionally greater deprivation of a good which subserves a less important end-state will now surpass it in urgency.

This analysis, in much the same form that it applies to needs, can be extended to merits and deserts. Again, it is

possible to speak of both satisfied and unsatisfied ('met' and 'unmet') deserts. A person might or might not currently hold a good which he deserves to have. If he does not, then it must be the case that he deserves that quantity of a good by which his current holding of it falls short of the level of holdings at which his deserts would be satisfied.

The two components which together make up the factor of degree of impairment can also (though perhaps less usefully) be identified in the case of deserts. There is, firstly, the proportional deprivation of a deserved good, as represented by a person's initial holding, and secondly, the value represented by his having the goods which he deserves (or simply, as I suggest later², by his having his deserts satisfied).

The concept of moral urgency, which is basic to my theory of justice, supposes that this concept of a condition which is an impairment to a person's enjoyment of the basic conditions of the good life, can be formulated with sufficient precision to enable plausible solutions to be found for a representative range of distributive problems. It is idle (as Aristotle pointed out³) to seek greater precision than this. If the condition of deprivation suffered by someone whose deserts have not been met can be judged only in an impressionistic way, and not measured in any reasonably precise, quantitative sense at all, then that is a conclusion which should be neither unexpected, nor unacceptable. Any theory which could provide ways of measuring moral urgency which were both more precise than those we have at present, and morally acceptable, would be most welcome; but it is not an objection to a theory that it lacks that precision, that it only captures and does not improve upon our actual processes of moral reasoning.

II

An objection of crucial importance for the egalitarian's case can be proposed here. This is that my procedure here simply assumes that the moral urgency to be assigned to the like claims of different persons is actually the same, whereas in fact the only necessity that this should be so is a moral necessity. My theory is apparently committed to the acceptance of a normative principle of the equal moral urgency of equal claims, or more generally, a principle of equal consideration⁴.

There are two distinct issues here, and I will disentangle them as I proceed. The first raises the problem of the 'elitist' who maintains that some persons have a higher moral status than others, and consequently that their states of impairment give rise to claims of a greater urgency than the like states of many others. I will show that one form of elitism - the variety against which some egalitarians have aligned themselves - is logically impossible because its assertion is self-contradictory. The other form of elitism is a possible normative theory which raises serious and familiar problems: but egalitarianism is of no assistance in countering these arguments. The second issue concerns the evaluative appraisal of the states of impairment of different people, once we have accepted the (trivial) truth that like cases will be of like moral significance. Here it is necessary neither to compare people, nor to appeal to relations of equality, in order to make the right appraisals. Egalitarianism is not the theory we need in this case either.

III

Some of the conditions in which people find themselves

are unpleasant, or damaging, or evil: some are evils because they are impairments to a person's capacity to pursue a good life. The ranking of natural conditions as constituting more or less serious impairments to the basic conditions of a good life is not itself a natural (or factual) ranking, a ranking solely in accordance with variations in natural properties. It is an evaluative ranking, an appraisal to the effect that some conditions are better or worse than others.

No coherent theory of value can attach value to the fact of being a particular individual, independently of the fact of his being the bearer of certain properties. Values attach to attributes, states or conditions, or to individuals in virtue of their attributes, states or conditions. If persons are individuals who have moral value or moral worth while pebbles and space-time points are individuals which do not have such value, this must be so in virtue of some of the properties which persons but not pebbles have. This much is logically necessary. Yet it is not sufficient simply that persons should possess some attributes which pebbles do not possess, no matter what those attributes are. They must be valuable attributes, or attributes which are value-bestowing.

Several of the worries which egalitarians have sometimes had are not genuine theoretical problems at all. (It does not follow that they are not practical problems: moral villainy can easily be coupled with theoretical confusion). In particular, there is one kind of elitism which is a logically mistaken theory, one which correctly derives objectionable moral conclusions from mistaken premises. Because its errors are not moral ones, it is not appropriate to attack it with moral arguments. Egalitarians, however, have often supposed it to be necessary to combat elitism by advancing fundamental

normative principles of the equal worth of all human beings. But such principles (which beg fair to be seen as the central principles of contemporary egalitarianism) do not identify ineliminable morally significant equalities. Instead, all such principles present a conceptual truth in a theoretically-misleading normative form.

Consider the elitist thesis that conditions of like impairment suffered by different persons can give rise to claims of unequal moral urgency. Suppose, for example, that a man and a woman both have a need of food, such that the condition of each represents the same degree of impairment of the good life of each. According to this elitist, the claim based on the man's need has a greater moral urgency than the claim based on the woman's need. Therefore, the needs of the man must, up to some point at least, be favoured over those of the woman.

Egalitarians have mistakenly supposed that the only way in which this patently objectionable view can be combatted is by their affirming, as a basic moral principle, that equal consideration must be given to the claims of all persons. The question arises, in that case, whether such a principle is justified or not. If it is not justified, we have no reason to accept this variety of egalitarianism: a basic philosophical principle of the present work is that morality is firmly based upon reasons (founded on natural facts), and that where it ceases to be this, it becomes irrational⁵. Suppose then that the principle is justified. Egalitarians usually do suppose this when they challenge the elitist to disclose the attributes which distinguish men from women and which justify the discrepancies in evaluation. If there are no such attributes - as, for general moral purposes, there are

not - then the elitist must concede defeat. But he has not been morally defeated: he has simply admitted to being inconsistent. On the one hand, he had implied that a certain set of attributes (possessed by the man) had a certain value; on the other, he had denied that the very same set of attributes (possessed by the woman) had that same value. But this is simple and uncluttered self-contradiction. On the one hand, certain properties are being assigned a certain value, and on the other, those same properties are being denied that value. The properties involved in the two cases are the same properties, in the strictest sense, in virtue of the fact that the criterion for the individuation of properties is that of qualitative likeness. It follows, therefore, that any two (separately instantiated) properties which are qualitatively alike are one and the same property, in the only sense (the proper sense) of that expression⁶.

What the elitist must do is to find those properties possessed by the man which distinguish him from the woman and which justify the differentiation in value. If he cannot do so, he must withdraw from his elitism in the interests of consistency. He might assert that the property of 'being a man' is the morally significant differentiating one; but this will not do. Either this ad hoc property is just a compendium of other properties, which will already have been considered and rejected; or the elitist is claiming, on behalf of each individual (named) man, that that man has an intrinsic value which is greater than that of any woman, but which is not dependent on his attributes. This does not seem to be a coherent thesis.

If this argument is correct, then it is not necessary for a theory of justice to include an underivative moral

principle of the equal basic worth of all persons, or a principle of equal consideration for the like interests of all. While both principles can carry an undeniable practical force, they are not basic moral principles. The only way in which the elitist might seem to have a theory at all involves his supposing that some individuals, considered apart from their properties, can still have some definite intrinsic value, and this is not a coherent possibility. Otherwise, he is just being self-contradictory when he attaches a different value (or a different moral urgency) to conditions which are empirically alike.

Because this argument is so swift and easy, it must raise doubts about whether it really deals with the problem of the elitist. There is a very real sense in which it does not do so. I have not shown to be logically confused the elitist who insists that there is a subclass of persons, identified by their possession of some unique properties, whose possession of those properties warrants their receiving preferential treatment in a wide variety of circumstances. How moral argument to shift someone from this position should proceed is an interesting and difficult question. But it is not my topic, because it does not raise any special egalitarian considerations. Instead, it is the problem of determining which properties have (or bestow) value, and what their value is, a problem which has nothing in particular to do with questions of equality. Accordingly, if the principle of equal consideration for all persons is justified, it is so as the conclusion of an argument, the premises of which detail the moral significance of the various attributes of persons in a way which reveals that none have distinctive properties which have a general moral significance of a kind justifying (a

presumption of) preferential treatment. The fundamental moral fact is not the egalitarian one of equal worth of all persons, but the nonegalitarian one that each person has the (initial) moral worth that his properties bestow on him - the same (initial) moral worth, as it happens (if it so happens), in each case.

IV

This conclusion leads to the second problem mentioned above. This is the question whether values can be assigned to the properties and conditions of different persons independently of comparisons between them, comparisons of a kind which might rest on significant relationships of equality. The egalitarian argument is as follows. The urgency of the moral claim which is based on one person's condition must be the same as the urgency of the claim which is based on the like condition of another person. That much, the argument against the elitist shows, is certain. But in the absence of comparisons with other people, how can we know, with sufficient precision to guarantee the principle of the equal urgency of like claims in practice, what actually is the moral urgency of the particular claims based on particular individual's conditions of impairment? All we can be confident of is that one claim has an urgency which is equal to, or is perhaps greater or less than, the urgency of some other claims: that is, while we can assign comparative measures of urgency to claims, it is far from evident that we can assign noncomparative measures.

Many of the egalitarian arguments I consider in other contexts are defeated by an argument which is not so obviously available here. This argument depends on the necessity that, if two individuals are equal, then there must be some (other)

respect in which they are the same. The existence of two individuals instantiating a single property underlies every relation of equality. Accordingly, in the present context (if this form of argument should turn out to be available), it would be argued that in every case where we judge the moral urgency of one claim to be equal to (or greater or less than) the urgency of some other claim, this comparative judgement could be replaced by two judgements, each ascribing a definite urgency to one of the claims, and which jointly entail the comparative judgement.

The objection to this procedure in the present case is that value properties in general, and urgency in particular, are not the sorts of properties which can be measured with an accuracy which renders comparative appraisals superfluous. Perhaps all that we can ever know of the urgency of one claim is where it stands, relative to some other claims. In particular, given the aims of an egalitarian analysis of justice, and given the mediating principle for justice under conditions of scarcity which I will formulate below⁷, it becomes important to settle the status of judgements of equal urgency. If such judgements are basic and irreducible, then my theory of justice is not, strictly, nonegalitarian. (Even so, it would not be egalitarian in any morally interesting sense). If the theory is nonegalitarian, such judgements must be reducible - in principle if not always readily in practice - to appraisals of the individual urgency of the individual claims.

To ascribe a definite urgency to a claim is to evaluate the condition of the person concerned. Urgency is not a natural property of things, one which can be identified, and the degree of which can be recognized, by standard empirical

procedures. The problem should be seen, not as one of recognizing what the urgency of a claim is, so much as one of ascribing the appropriate degree of urgency to a person's condition of impairment. Values (I assume) are not logically independent of evaluations; but the properties of a thing in virtue of which we evaluate it do have this logical independence. Appraisals of the urgency of claims are evaluations of the attributes and circumstances of people, when these attributes are regarded as factors which impair the ability of people to enjoy the good life. We appraise these attributes in the light of the significance that they have as factors causing such impairments. In these appraisals, we make use of a conception of the basic conditions of the good life, and of standards of what constitutes an impairment to that life. It does not follow, however, that in these appraisals based on standards, we are involved in ineliminable references to similar cases. On the contrary, appraisals of the latter sort presuppose those based on standards. After all, the practice solely of comparing like natural conditions of impairment with like (and unlike) natural conditions will not yield any evaluations, let alone correct ones. Somewhere along the line, noncomparative evaluations of these different conditions must be made. If we need to know what is the urgency of some claim, it will be of no real help to us to learn that it is that urgency - whatever it is - which some other claim has, if we know no more than this about the urgency of either.

The standards by which we evaluate can and should evolve and mature over time. All such standards should be regarded as conjectural: if they seem to give us adequate evaluations in particular cases, we should be prepared to regard them as

'corroborated' to that extent. But we should not regard them as immune to change: their shortcomings and their areas of inadequacy will usually only become evident in particular applications, on the basis of which we will be justified in making whatever adjustments and modifications to the standards seem appropriate. In extreme cases, we might eventually be led to abandon a standard entirely: the kinds of 'respectability' which people sought in the Nineteenth Century, as integral to their conceptions of the good life, are no longer seen by most people as important. The standards by which we judge claims (for example, to satisfaction for offences against our honour) have changed.

Conceptions of the good life (and of its basic conditions) alter as society and its inhabitants alters; but even when these conceptions remain unchanged, the evaluations which are made of conditions of impairment can still be refined and amended. If the existing criteria have survived the testing circumstances of many different particular cases, we will come to have some confidence in them: we will see those standards as expressing the right evaluation of those sorts of cases. Sometimes, we might never be free from perplexity, never able to make with any confidence a noncomparative assignment of value, or of moral significance, to some set of facts. If the moral status of a human foetus puzzles us, then we may simply have to learn to live with our ignorance on that score. Needless to say, the knowledge that all (like) foetuses have equal moral significance will not be of any use to us.

To the extent that we find it useful to compare different cases with each other, we do it with an eye to the standards which we are seeking to apply, or perhaps to refine. At most, precedent and comparison are guides to the proper evaluation.

This is obscured, however, by the egalitarian principle of treating people equally. If we resort to comparisons with other, like cases, in order to settle on the evaluation of this case, we must be careful to select other cases in which a defensible evaluation has been made. There is no merit at all in assessing the present case in the light of cases in which wildly improper evaluations were made. We seek to compare with those like cases where the evaluation seems to be just, and we resort to precedents only if we have confidence that they are right. Yet to appeal, not just to like cases, but to other cases which we believe to be right, is precisely to appeal to them as expressing standards. If we are able to identify them as defensible standards, then we must be able to see that they express appropriate and just evaluations of cases of this kind.

I have argued that, in evaluating the urgency of a particular claim, comparisons with other claims, as distinct from appeals to standards, are not made. What sorts of assessments of urgency do standards enable us to make? We do not of course have a numerical scale of urgency. If we did, then all judgements of equality and inequality between claims would, in principle, be eliminable. But we do have an informal scale which serves our purposes reasonably well, in most cases. We can sometimes be quite confident that the condition a person is in is such that his claim to a particular good is critically urgent. Similarly, there is here an analogue of the notion of a 'fixed zero', a notion which is crucial in the formulation of a non-ordinal scale for the measurement of variable properties⁸. Given the guiding conception of the basic conditions of a good life, we are capable of recognizing that, in respect to a person's holdings of some goods which

contribute to that sort of life, his claims to those goods are wholly satisfied. There is, in other words, a noncomparatively definable concept of 'zero urgency'.

Egalitarians might argue that only ordinal measurements of urgency are possible. If we could say of any claim only that it was of greater urgency, equal urgency or less urgency than some other claims, if we could say of no claim that it was of zero urgency (only that it was of 'least urgency' relative to some others), then irreducibly comparative principles of distribution would seem to be necessary. But in fact, we have a fairly clear conception of both ends of the scale of urgency - of both critical and zero urgency - and we can, over time, build up fairly comprehensive standards of the urgency of intermediate claims.

In some cases, some implications of these standards might conveniently be expressed in a comparative way. It will sometimes be useful to know that needs of a particular, non-biological kind can still have an urgency comparable to some of the less basic biological needs; or to know that, generally speaking, needs are more urgent than deserts. The usefulness of these comparative facts clearly presupposes, however, that we can give independent (that is, noncomparative) appraisals of urgency for some of the claims confronting us in any particular case. It is likely that a fly that has been sprayed with insecticide suffers some pain as it dies. If we were moved to give this fact some weight in our moral calculations, it would not be a very considerable weight. But it is a moral appraisal which is virtually useless until it is tied to some more or less independent standard of moral significance. It is all very well to know that spraying a room containing ten flies is not as morally reprehensible (if

it is morally reprehensible at all) as spraying a room containing twenty flies, but what we do need to know is how reprehensible it is to do either. The claims of justice make definite demands on us: if justice is to take its proper place in our practical deliberations, we will need to know what sort of weight can be attached to those claims, what sort of significance they have.

V

The moral urgency of a claim is expressed in evaluations of the extent to which a person's circumstances represent an impairment to the basic conditions of a good life for him. I have argued that the different degrees of moral urgency can be determined noncomparatively, by reference to standards, and that these standards themselves should not be seen as being egalitarian, in any interesting sense. Prior to that, I argued that principles of equality were not appropriate to the attempt to refute elitism. A further, related possibility can be mentioned here, although it has already been settled, implicitly, in the foregoing. This is the claim that my theory of justice presupposes that the enjoyment of the basic conditions of the good life is something which has the same value, no matter whose enjoyment it is. An egalitarian principle of the equal value, to all persons, of the basic conditions of the good life, might be alleged to lie hidden in the bowels of my theory.

It is not sufficient, however, to insist on the equal value of the good life for everyone, for that is compatible with ascribing to it an utterly trivial or even a negative value. Is it even necessary to insist on equality of value here? The value that we place on human lives, the importance

that we attach to the absence of physical deprivation, and so on, are not quantifiable: but they represent, nonetheless, definite values. It is possible to trace evolving patterns in the amount of value that people (especially 'the common people') are seen as having: some societies have had a rather casual attitude towards individual lives, and have not regarded suffering and deprivation as of outstanding moral interest. It is of course true and important that - at least among the morally more enlightened - there has been a trend towards the inclusion of all human beings in the class of those whose lives have some definite value. But this is not an arbitrary or an unjustifiable trend: there are reasons for regarding all persons as having the capacity to realize lives which have some value. It is because and only because each person has these properties and capacities that he is also a person whose good life is of value. The properties and capacities we are mainly concerned with here are of a general kind, sufficiently general to be possessed by (nearly) all persons, yet sufficiently determinate to allow for the definition, in terms of these capacities, of the basic conditions of the good life for each. If the good life of any person is of equal value to the good life of anyone else, this is only because each such life already has some particular value. If it did not, neither my conclusion about the presence of all human beings in the class of those who have claims in justice, nor the egalitarian's similar but theoretically less perspicuous assertions, would be rationally defensible.

VI

I have insisted that the problems of social justice should be seen as occupying two stages. The first stage

consists in the appraisal of the claims that each individual has. I have developed an analysis of this concept which, while sensitive to the very important truths insisted upon by those theories which attach morality to particular social and historical conditions, yet insists as well on the basis in each individual's own condition and capacities of the claims he has in justice. I have argued also that the concepts of equality and inequality have no ineliminable significance here, that the appraisal of claims neither involves nor presupposes such relationships.

If it were not for the fact that this world does not enjoy an abundance of all the things which contribute to the good life, this account of justice would be sufficient. But the conditions which are distinctive of social justice are precisely those conditions of scarcity which render a second stage necessary. While it might be conceded (as it is by Feinberg⁹) that 'noncomparative justice' is nonegalitarian, it seems injudicious, a sign of an immoderate affection for paradox, to argue for a nonegalitarian theory where conditions of scarcity prevail. But there are powerful arguments for the conclusion that, while comparative assessments must sometimes be made in practice under conditions of scarcity, such assessments are neither theoretically ineliminable, nor egalitarian in any morally interesting sense. If, finally, these arguments should prove unconvincing, they will at least serve notice on the egalitarian to produce what we do not yet have, an adequate egalitarian theory of social justice.

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CHAPTER NINE

JUSTICE AND SCARCITY

I

The critical problems of social justice arise under conditions of moderate scarcity. Some goods are available in sufficient quantity to satisfy some of the demands made on them, but not to satisfy all. A good deal of the conflict that characterizes the life of societies, and hence many of the institutions and practices which have grown up in an attempt to contain or resolve that conflict, can be traced to the competition for a share in the natural resources of the earth, for the material goods that are the products of human labour upon these natural resources, and for the more or less intangible goods (political and economic power, social prestige, and the like) which arise from the interaction and co-operation of people. Any society which is not prepared simply to accept those de facto distributive institutions which are the fruit of historical circumstance must devise, or seek to introduce piecemeal, institutions which will distribute social goods in ways which are (at the very least) sufficiently acceptable to most people to ensure the maintenance of a reasonable peace and stability in society. If these ends are not secured, then such mechanisms, whatever their other virtues, will not really have solved the larger problems of distribution which they confront. If many social goods are in very limited supply, such that any distribution whatsoever will lead to desperately impoverished lives for the majority of people, then no distributive institutions, no

matter how wisely designed, will be of much avail. The empirical possibility of designing institutions which will distribute goods in ways consistent with the persistence and stability of society, rests on there being only a moderate scarcity of goods¹.

Where that condition is met, however, it is not yet morally sufficient to distribute goods with an eye solely to establishing a tolerable level of peace and goodwill in society. That the majority of people can be persuaded to accept some particular distribution of goods is not overwhelming evidence (though it is some evidence) that the good has been properly distributed. The question of justice arises as well, imposing severe restrictions on what will count as a morally adequate solution to a distribution problem. The fundamental kind of objection that can be made, from the perspective of justice, to a particular distribution, is that it has ignored, or has not given sufficient attention to, the claims of some people. A situation which promotes social peace can yet be a very paradigm of injustice. Suppose (improbably) that all persons but one could have their claims satisfied, provided only that this one innocent fellow lived a degrading and abject life: the source of our objection to situations of this sort is precisely that this person has claims which have been ignored. If he did not in fact have any claims in justice - if it were not the case that his attributes and capacities were such that his current situation represented a state of impairment - then there could be no objections to his situation on grounds of its injustice. There might well be other moral objections, but that is not the point.

The problems of social justice arise because there is no

way in which the claims of all can be satisfied, given the natural scarcity, relative to the human population, of goods. The principles with which claims are individually appraised are no longer sufficient. They are, however, necessary, a conclusion which is strongly supported by the same considerations which show that an attention to the claims of each is central to all problems of justice.

II

My own theory of justice, under conditions of scarcity, is a natural outgrowth of the account already given of justice as the proper satisfaction of claims. We are to suppose that different people have claims to goods, claims which are of varying urgency. Because goods are limited, however, these prima facie claims cannot all be satisfied. It is possible for justice to be done, under conditions of scarcity, even though there are some claims which are left (partly) unsatisfied. The latter do not, however, cease to be claims, or to be objects of moral concern.

The mediation of conflicts between claims must - if those claims are to be taken as having any relevance at all - turn upon the details of the actual claims advanced. The most obvious - and the obviously right - feature of claims in terms of which mediation must proceed, is their urgency. The whole conception of justice and of its special virtue which I have developed leads naturally to this conclusion. If our concern is with the alleviation of conditions which act as basic impairments to the good life, then that concern must obviously be adjusted to the seriousness of the impairment in each particular case. The fundamental moral intuition on which my theory rests at this point is that it is clearly wrong, or

unjust (other things being equal), to prefer the less urgent to the more urgent claim.

Metaphors have a power to enthrall our thinking, sometimes for the worse. The partly-metaphorical concept of moral weight is an instance of this truth. The term encourages us to think of all processes of moral deliberation as akin to weighing the different morally relevant factors on a balance. Each of these factors has a definite weight, either positive or negative: each tells for or against an action with a force of that weight. Once each has been placed on the appropriate pan of the balance, the final 'balance of forces' can be read off. This should tell us, not only whether we ought to do that action or not, but also the moral weight which attaches to our doing or not doing it.

Acceptance of this metaphor virtually commits us to an acceptance of the utilitarian theory of moral reasoning. Once we have settled on the basic theory of value - or of claims - the only remaining problem is one of 'moral arithmetic'. The single principle which is the natural outgrowth of the weighing model is the principle of maximization, enjoining the production of the maximum total positive value - or the maximum total satisfaction of claims². Yet this principle can lead to solutions which are quite unacceptable: it is notoriously the case that the utilitarian goal of maximizing value can conflict with what are widely recognized to be principles of justice³.

The concept of urgency, however, does not lend itself to utilitarian maximization, precisely because it is a measure, not of quantitative differences between claims, but of qualitative ones. Where a quantitative scale is concerned, like intervals (measured on some appropriate non-moral scale)

at different points on the scale are of like moral significance, whereas this is not the case where qualitative scales are concerned. It is not the case that several claims of minor urgency could be equivalent (for purposes of moral reckoning) to a single claim of greater urgency, any more than it is the case that the value of a Schubert song cycle is equivalent to that of some greater number of trivial popular songs. Qualitative differences of this kind are not unfamiliar, and they provide a more accurate model for the procedures of moral reasoning than does the quantitative model of the utilitarians.

III

Any principle for mediating between conflicting claims which was genuinely sensitive to differences in the urgency of those claims would have to attach priority to claims of greater urgency. After all, the more urgent claims are precisely the ones which call out more urgently for attention. The intuitive notion to follow, then, is simply that the most urgent claims ought to be attended to first, that claims ought always to be satisfied in decreasing order of urgency. In this way, our conviction that the more urgent claims have an absolute priority over the less urgent is specifically and precisely captured.

In order to arrive at a principle for the mediation of conflicting claims, consonant with this moral axiom, it is first of all necessary to modify in one significant respect the concept of a claim. So far, I have implicitly individuated claims of a particular kind by reference to the individuals whose claims they are. That is, if a person needs a certain quantity of food, then that constitutes one claim -

of a definite urgency - to a share of that good. This must now be adjusted, by recognizing that what has hitherto been called a single claim consists - or can be regarded as consisting - of a series of (component) claims. This conception is only a more precise rendition of the familiar fact that, as a claim approaches the level of full satisfaction, the urgency which attaches to the unsatisfied part of the claim diminishes. Instead of speaking in that way, it is convenient to divide claims into ordered series, each member of which has (or can be regarded as having) a definite urgency. The number of members that will in practice need to be recognized in any claim-series does not rest with the supposition that the continuum of decreasing moral urgency is, in the end, only finitely divisible. Instead, the criterion is wholly pragmatic: the number of members that it is necessary to recognize will depend on the particular context of scarcity, and on the kinds of competing claims. The divisibility of claims is a theoretical device which enables us to see how the basic principle of mediation is applied; once we have grasped its mode of operation, the details of the device cease to be important.

The fundamental axiom of the mediation of conflicting prima facie claims is the following:

Goods ought always to be distributed to the most urgent claims.

In applying the principle, the claims to which it refers are the individual components of claim-series, which I will call 'unit claims'.

Suppose then that several people have claims, of differing urgency, to some limited supply of goods. My principle requires that goods be distributed first to the

person whose claim-series includes the most urgent unit claim. No goods will be allocated to anyone else until the unit claims of this person which are of outstanding urgency have been met ('met' in the sense that this person is now in possession of the goods, or of the opportunity to acquire them - not in the sense that he has, for example, actually consumed the goods). If there comes a point in the allocation of goods to this person at which he no longer has unit claims which are of greater urgency than any of the unit claims of anyone else, then he ceases to have moral priority over the others. This is the basic procedure for distribution when claims are of unequal urgency.

When claims are of equal urgency, the obviously just distribution of goods is typically the one which divides the available goods equally among everyone concerned: that is, what I call 'equal-maximal' shares are (very often) required in justice, at least where some goods are concerned. It is not my intention to dispute this secure moral truth, only to show, in a nonegalitarian way, why it is just. The objection that we should have to a principle which simply seeks equal-maximal shares is that it does not, finally, really explain why this is required. Yet the burdens of insight which intuition is asked to bear should be kept to a minimum.

The situation in which all claims to a good are of like urgency is one of equilibrium. The application of my principles of justice requires the ability to judge when such a situation obtains, to judge, that is, that several claims are all of equal urgency. But this does not show that the relation of equality is ineliminable, in any interesting way, from the theory. To the extent that we are able to make fairly precise noncomparative assessments of the urgency of

individual claims, comparative judgements of relative urgency will be derivative. But if in practice the comparison of claims is the most useful procedure to adopt, this is to concede only that judgements of proportionality must be made. We must be able to recognize, not only that claims are of equal urgency, but also that some are less and others more urgent. In fact, judgements of the latter sort will often be easier to make than those of the former. Especially where two claims are of quite different kinds, the conclusion that they are of equal urgency might be reached only by deducing it from the fact that neither claim is either more or less urgent than the other. The primary judgement in these cases is not that the claims are positively of equal urgency, but that we are unable to detect, or are unwilling to commit ourselves to the identification of any difference in their urgency.

In any case, the judgements of comparative urgency which the application of my theory requires do not carry any particular moral significance. We cannot conclude, from the fact that the proper application of a moral principle requires of a person that he possess certain capacities (including conceptual capacities), that the latter are themselves bearers of moral significance. The necessity of making judgements of relative urgency, in applying the (nonegalitarian) principle of mediation, does not show that any morally significant relations of equality (or inequality) are ineliminable from the theory.

Where a condition of equilibrium obtains, no claim has greater urgency than any of the others, and the principle for the mediation of claims accordingly does not provide a basis for selecting any one individual as the first recipient of a share in the good. However, the first principle of

distributive justice is that goods are to be distributed to those who have claims on them, a principle which accordingly requires that some allocation of goods be made in the present case. It does not matter to whom we give the first share, provided that we regard his claim as a reason for allocating to him some of the good. We are prevented from allocating to him a disproportionate quantity of the good by the fact that only a small share needs to be allocated to him in order to upset the equilibrium, and to restore the applicability of the principle of mediation. The latter will require that the others now receive some of the good, since they now have the most urgent claims. Since they in turn constitute a group which is in equilibrium, the same procedure, in which both principles play a role, will be repeatedly employed until equilibrium over the entire group has been restored, and the good has been entirely shared out.

There is no danger that these principles, applied strictly, will license the division of goods into infinitely small portions, and the like division of claims (in the large sense) into an infinite number of unit claims. This is because the condition of equilibrium holds in relation to the urgency of claims, not to the holdings of goods. Therefore, the equilibrium is only upset if one person has a claim which is measureably more urgent than the others. There are very real limits to the fineness with which we can discriminate such differences of moral urgency.

The application of the mediating principle is not governed by the objective of producing an equality in the urgency of all unsatisfied claims, or an equality in the sharing of those burdens and disadvantages that are inevitable when goods are scarce. Instead, the aim is precisely to meet

as far as possible the claims for goods that people have, consistent with the differences in urgency between them. The consequences of our application of these principles can often (and with dexterity, always) be described as an equality in some respects. But there is no theoretical significance in that.

IV

Granted that my principles provide possible solutions to problems of distribution, might it not be the case that some egalitarian principles provide simpler, more elegant, or even more just solutions? After all, my principles require that we be able to make quite sophisticated assessments of the different urgency of different claims. Is it possible to avoid this, especially as the measurements of urgency we make in practice do not seem to be particularly subtle?

The two most obviously egalitarian principles for distribution under conditions of scarcity have fatal disadvantages. The first of these stipulates that the provisions or shares of goods are to be equal-maximal: that is, they are to be as large as possible, consistent with everyone's having an equal share. But instead of providing a solution to distributive problems in situations where the claims of different people cannot all be met, this principle simply ignores claims. It refuses to face the problem of justice.

If two persons both have valid claims to a good which is insufficient to satisfy them, and no one else has a claim to any of it, it will be grossly unjust to distribute that good in equal-maximal shares to all persons. Apart from these two persons, no one has any claim at all to the good,

in which case it is unjust to distribute among everyone goods to which these people alone have claims. Unless we admit that claims have some relevance to the question of who is to receive a share of the good, there can be no justification for distributing any good in any way other than in equal-maximal shares (if that is still our objective) to all persons. Indeed, it is not obvious that we are justified in discriminating against all non-persons in our distribution. There must be some way of identifying the individuals to whom shares of the good are to be given, and it must be a mode of identification which indicates why there is a reason (in justice) for providing a share to each of those individuals, and only to those individuals. Those theories of justice which try to do without the concept of a claim will usually identify the appropriate individuals as all and only those who have interests in the goods. What these interests are will normally be spelled out in some way which makes it clear why the having of them gives rise to reasons for making particular allocations of goods. Yet such a specification seems to amount to the recognition that these interests constitute claims, in my sense of the term; that is, that they are properties of persons in virtue of which it is morally appropriate that they should have (some of) those goods. But once this much has been admitted, there is no good reason for denying that people have different claims to different goods - and that some have no claims at all to some goods. Once the relevance of personal attributes (of the right sort) to claims has been recognized, the way is open to match differences in the urgency of claims to appropriate differences in those attributes.

No principle which disregards claims can be satisfactory

in justice: yet this is precisely what the principle of equal-maximal share does. Nor will it do to qualify the principle to one allocating equal-maximal shares to all who have some claim to that good: if claims differ in urgency, this cannot be right. The only form of the principle which will always produce a just distribution is the one which assigns equal-maximal shares to each of a group of persons under the following conditions: (i) each of those persons has a claim to some of the good, (ii) their claims are of equal urgency, (iii) no one not of that group has a claim to any of the good of an urgency greater than the urgency of any residual claims which members of the group might still have, on the completion of the distribution, and (iv) the actual share that each receives is equal to or less than the amount of that good to which he has a claim. Even so, there is no reason to regard the principle as an ultimate part of the theory of justice: why this principle produces just distributions in cases subject to the above four conditions - but only in those cases - and what its relation is to the principles which govern other cases, would require considerable explanation. The only plausible explanation is the one which - finally - substitutes my own principles of distribution.

The major alternative egalitarian principle of distribution seeks equal-maximal holdings of goods, and adjusts shares accordingly. But the same objection applies, namely, that this principle cannot discriminate in a defensible way between those individuals who ought and those who ought not to receive shares of the goods to be distributed. Even if this information is surreptitiously introduced in the statement of the problem - for example, by

specifying that a cake is to be divided among a particular group of people⁴ - it by no means follows automatically that equal-maximal holdings will always be just. They will be just, generally speaking, only when like quantities of those goods have a like contribution to make to the good life of each person involved in the distribution. The principle of seeking equal-maximal holdings is at its most plausible in the case of the more basic and urgent claims which people have, such as those based on their survival needs. Because people's basic needs are much the same, and because the goods which will satisfy them are not often present in amounts so large that we need worry about setting an upper limit to mean holdings, the goal of equal-maximal holdings of those goods will often coincide with that required by justice. But the explanation why this should be so, and the explanation why it fails to apply in cases where people's needs - and claims - are unequal, is only possible by reference to the very data which lead naturally to the recognition of my own principles of distribution.

Both of these egalitarian principles have a sphere of application in which they produce just distributions. By subsuming them, together with their restrictions, under a single, general principle of distribution, my account of justice is clearly theoretically superior to them.

V

The phenomenon of relative deprivation might appear to show that relations of equality and inequality sometimes have an independent significance in justice. The concept of relative deprivation is used⁵ in explanation of the sense of injustice that a group of people can feel at being worse off,

in some respect, than some other, more favoured group of people. It is a sentiment which presupposes, not an awareness of absolute deprivation, but one of relative deprivation. If there is no more-advantaged group available for ready comparison, the sense of deprivation and injustice might not arise.

Suppose that, in the world's wealthiest society, one racial group enjoys political and social privileges and economic advantages which another does not have. The disadvantaged group might see their situation as unjust, relative to that of the dominant race, even if they recognize that their own situation is at least as good, in absolute terms, as that of any human beings anywhere else at all. Their sense of injustice takes, not the normal condition of the world's people as its comparison group, but the condition of those unusually privileged ones whose country they 'share'. (Whether they are justified in restricting the class of the disadvantaged to those within their own national borders - and presumably restricting any redistributions they can secure to that group - is another question⁶. They would have to show, presumably, that national or political differences either were themselves, or were correlated with, morally relevant differences).

The sense of relative deprivation, however, can only be regarded as a sense of injustice if an appropriate reference group is chosen⁷. Those who are advantaged, and those who are disadvantaged relative to them, must share some attribute; and it must be, not just any attribute, but a morally relevant one. In short, it must be an attribute which is relevant to the claims that people have in justice. The disadvantaged group sees itself as sharing, with the

advantaged group, those very attributes which justify the latter in enjoying (some of) those goods. It sees itself, that is, as deprived of goods to which it has a legitimate claim. The fact that some people whose claims are no better are enjoying those goods anyway, is taken as evidence that the disadvantaged group have satisfiable claims (to a share of those goods) that are not being satisfied. If that is indeed the case, then the injustice is one of 'absolute deprivation' after all: the comparison with the advantaged group serves mainly to make the deprived group aware of this fact.

But it might be the case that the claims of the disadvantaged have already been fully met, whereas the advantaged are receiving in excess of their claims. This postulate rules out many privileges, especially all those which adversely affect legitimate access to goods and opportunities by those who are less privileged. However, if this situation does hold, it must follow (given my theory), that the distribution cannot be an unjust one, though it is very likely to be an immoral one. In a society in which goods are sufficiently abundant to satisfy all claims in justice, but not to satisfy all desires, some moral principles will be needed to govern the distribution of the surplus goods. Such principles might come to be grouped with the principles of justice, for obvious reasons. The most familiar candidate for such a principle is the one that would distribute the surplus in equal-maximal shares. But as we have seen, this is a description of a distribution-pattern, not a justification for it. In order to provide the latter, we must suppose (what is surely not always the case) that each person has an interest in receiving as many of these

goods as possible: otherwise there would be no particular reason for including him in the distribution. But once this has been allowed, a principle of distribution of the same kind as the principle of urgency will lead to the equal-maximal solution. If we are seriously concerned to justify equal (maximal) distributions, it is to nonegalitarian principles that we must turn.

VI

For various reasons, among which looms large the wish to circumscribe the power of paternalistic institutions, the public administration of justice should often seek to distribute, not the social goods themselves, but instead, adequate and fair opportunities to secure them. If this is so, the sort of ideal which egalitarians have tried to capture in their principle of equality of opportunity is an important one in the theory of justice. I will be directly concerned here neither with egalitarian defences of this principle, nor with the attacks that have been mounted on it by other egalitarians, who see it as working to divert criticism away from existing structures of inequality by allowing those with talent to achieve positions of unequal privilege within those structures⁸. Instead, I will develop my own account of the distribution of opportunities which justice requires, an account which will be nonegalitarian.

It is common for human beings to be motivated, to some extent, by the desire to be independent, to secure some of the things that they value through their own efforts. The good of self-esteem, which is a necessary part of the good life⁹, can usually be secured by a person only if he is able to see some important parts of his life-activities,

especially his successes, as due to his own efforts. A person's self-esteem will be most secure when he can see the circumstances of his life as being, in a significant way, partly his own creation, and can take pride in them. Even if a single pattern of the good life could do for all people, the desire of many to secure for themselves, by their own efforts, some of the conditions of that life, would require that opportunities rather than goods should sometimes be distributed. This kind of distribution is even more important in the light of differences between the circumstances of the good life for different people. It is necessary, in some cases, to provide opportunities to secure whatever different sorts of goods might be seen to be appropriate to the particular conception of the good life that each has. That is why the distribution of liberties, and of (some of) the conditions which give people the power to secure their ends, is so important. The prevailing conception of the basic conditions of the good life which the institutions of distribution will be adjusted to, in a reasonably just society, will include a conception of the sorts of liberties and powers that a person should have. Like the other features of the ideal, this conception will reflect the material and social circumstances of the age, and the prevailing values and aspirations of its people. It will be adjusted, in a general sort of way, to the abundance or the scarcity of different kinds of goods, and will express a conception of what opportunities, liberties and powers are adequate for a person, if he is to have a reasonable chance of securing his ends.

The principle of an adequate opportunity for each captures what is important but ill-expressed in the principle

of equal opportunity. Unlike the latter, it recognizes a definite level of opportunity that each should have: there can be no reason to suppose that fairness is satisfied if the opportunities of all are equal but minimal. Provided only that there is some measure of the adequacy of opportunities, the distribution of those opportunities could turn out to be equal-maximal, even if each share fell short of the ideal level, simply in virtue of the requirements of my principle of distribution under conditions of scarcity.

This is not, however, the end of the matter. The ideal of equality of opportunity is often thought to be necessary to secure a proper distribution of scarce but indivisible goods. Positions of political and administrative power, for example, cannot always be divided up into a multitude of shares for wide distribution. If not all can enjoy scarce goods that all, or nearly all, are assumed to desire, then conditions of fair equality of opportunity¹⁰ must prevail in the competition for such goods.

It is generally the case that particular kinds of personal attributes are thought to be appropriate grounds for having certain kinds of goods. The principles of merit and desert are of the first importance in this area. A just society seeks to match scarce goods (of certain kinds) to those who have the capacity to make the best use of them. Positions in universities, for instance, should go to those who have the appropriate academic skills; and conversely, we should see to it that scarce goods do not go to people who lack the appropriate attributes, but who have others - such as wealth or social status - which are not an appropriate basis for the distribution of those goods. The governing conception here is of a distribution of goods according to

merits, together with the refusal to admit such attributes as wealth or social class as justifying the appropriation of these goods. The ideal is precisely that of giving to each his due.

A system in which some goods are distributed according to merit, when it is also a system which recognizes the importance of avoiding excessively paternalistic institutions, must incorporate conditions of fair competition. A fair competition is one in which those who merit scarce goods will be the most likely to achieve them - provided that they are willing to exercise, to whatever degree of competitiveness is thought to be appropriate, their capacities for intelligent and resolute action, their will, courage and resourcefulness. To seek to state these requirements as the requirements for fair equality of opportunity is not very helpful. What is crucial is that conditions should be such that the influence upon the outcome of the relevant attributes should be maximized, and the influence of irrelevant attributes should be minimized. These are not egalitarian requirements.

An exception to this conclusion might be seen in the application, to the distribution of opportunities to acquire scarce goods, of what Joseph Raz has called the principle of non-discrimination¹¹. The principle requires that, if some have opportunities to acquire scarce goods that others do not have, then we should seek to extend those opportunities to all (provided, always, that we have a further principle which enjoins maximization of opportunities). If the principle of non-discrimination overrides the principle of maximization, and if it is not possible to extend those opportunities to all, then those who have them should be deprived of them.

Although this principle appears initially to be a

genuinely egalitarian one, it is so only under certain absurd conditions. If the standard assumptions about matching goods to dues are made, however, then it is not an ineliminably egalitarian principle after all. The practice of depriving some specially advantaged people of powers or opportunities can be justified - when it can be justified - by the aim of matching goods to merit. The powers of which some are deprived are those which give them an unfair competitive advantage: that is, they are powers which increase a person's chances of obtaining, but which are not themselves morally appropriate bases for enjoying, those goods. To equalize the chances of two persons obtaining a good which one merits more than the other is unjust. Yet the principle of non-discrimination will warrant this injustice, unless it is qualified in ways which render it equivalent, given the appropriate reductive analysis, to my own principles of distribution.

A practical difficulty which has theoretical importance arises here: how do we assess when opportunities are equal? It is far from obvious that an appraisal of the existing social mechanisms and the opportunities themselves will allow of such a conclusion. There is one way - a reliable way - to judge, and that is to see whether or not the end state that these mechanisms are designed to secure is in fact achieved. Are scarce goods actually distributed appropriately, that is, in accordance with merit? That is, after all, precisely the state of affairs which these practices are designed to secure: what better criterion of their success could there be? Further, this nonegalitarian criterion is at least as easy to apply as that provided by any principle which requires that we be able to judge when opportunities are equal.

If we accept the importance of sometimes providing people, not directly with goods, but with opportunities to acquire them, then we accept that it is proper in those cases that people should have to seize their opportunities and to exercise their abilities if they are to have those goods. If their achievement is to be a real one, then they must have overcome some obstacles - of some presumably natural rather than conventional kind - in securing these goods¹². We also accept the importance of matching, as far as possible, these goods to merit. These two ideals fit somewhat uneasily together, an awkward marriage made more convivial by our tradition of regarding success in the competition as part of the criterion of merit. But if success has this importance, it seems to become additionally important to ensure that the obstacles which each person faces should be roughly the same. Within certain limits - the obstacles should, after all, be neither inappropriately enormous nor inappropriately trivial - it matters less that they be of a definite extent than that they be the same for all. The principle of non-discrimination captures this requirement, in its indifference, by itself, to the manner in which the equalization of opportunities is secured, whether by giving to those who have not, or taking from those who have. Do we have, then, an irreducible - and fair - principle of equality here?

The independent criterion of goods matched to merit is no longer available. The existence of a fair competition is still definable by its distributing goods according to merit; but to the extent that we regard merit as determined by success in the competition, this partly circular criterion cannot be a sufficient test for fairness. The design of the competition is at issue here: it must be a competition which

meets certain standards of fairness which are not defined wholly by reference to the end-state. These standards will be what Nozick has called 'side-constraints'¹³. Is a principle of equality - in the form of the principle of non-discrimination (suitably elaborated) - a necessary side-constraint?

There are, I would argue, serious difficulties in the application of the principle. People have many different attributes, attributes which do not contribute to their merit yet which can be of more or less assistance to them in the competition. If the wealthy are sometimes successful in virtue of their wealth, this is not usually evidence that wealth is a part of the merit which the competition seeks to reward. This is why criteria of merit which are independent of competitive success are at the very least always necessary. When all this has been said, can judgements of equality of opportunity still be made, in a useful way, given differences in people's capacities to take advantage of different kinds of opportunities? We seem to be forced back inexorably to the independent standards of adequacy of opportunity, defined in terms of the success of the competition in rewarding those whose merit, defined other than by competitive success, is greatest. After all, the object of the competition is not that everyone should be a winner. If our aim is that the best - the most meritorious - should win, but we are not certain who the best are, then equally we are not in a position to know whether equalizing a particular obstacle will help to secure that end. It might be that it is an obstacle which is less obstructing to one person, because of some of his non-meritorious capabilities, than it is to an equally meritorious person, because of his lacking those particular

non-meritorious capacities. To seek equality of opportunity in this case will be to subvert the aims of the exercise.

If it is often difficult to be confident that competitions are such as to reward the most meritorious. I have not argued that my principles provide clear and unambiguous directions here, only that the egalitarian principle is even less helpful. My conclusion is that it is improper to regard competitive success as a criterion of merit, that it should instead be regarded as evidence of merit, provided that the competition was a fair one. The standards of fairness for competitions, in turn, rest on their being won, in general, by those whose merits, as judged by independent (noncomparative) criteria, are greatest.

Justice is a demanding virtue, and her administration is not easy. I do not claim it as a distinctive merit of my theory that its practical institution is straightforward. But it is at least as easy to apply as any egalitarian theories, while its theoretical superiority to those theories is no longer, I take it, at issue.

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CHAPTER TEN

REMARKS TOWARDS A THEORY
OF CLAIMS I: RIGHTS

I

The concept of the basic conditions of a good life is not one that can be defined by reference solely to a person's biological attributes together with the appropriate features of his physical environment. That is because people are also social beings: not just creatures who must live with others for at least part of their lives in order to live at all, nor even ones who must live with others in order to live a good life, but ones who acquire many of their distinctively personal characteristics because they are nurtured in an association of human beings. The natural attributes of people, the physical characteristics that are common to all, do not provide an adequate grounding for a full conception of the basic conditions of the good life under varying social circumstances: but in a world in which such basic goods as food, water and fuel are growing increasingly scarce, the achievement of a condition which is little more than one of sheer physical survival is all that many ever really anticipate. The concern of justice in such a world will often be with the most basic aspects of survival, with the promotion of conditions which are common to every conception of the good life. There are some claims in justice, often the most urgent, which every person will have, in virtue simply of being, biologically, a member of our species.

If the most basic claims that people have are more or less invariable, this is not necessarily true of the remainder.

The natural base surely imposes limits on what sort of person a human being can become, but within those limits, considerable variation is possible, and has occurred. Whether or not the possession of some particular thing or the enjoyment of some particular condition is good for a person might well depend on his possessing attributes which he would not possess, were he a person in a quite different social world. While it is important not to exaggerate the extent to which a person's characteristics can be attributed to his social environment, or to overlook the influence of genetic factors and of the natural environment on the possible permutations of the social realm, it is equally important not to fall prey to that delusion of the study - that everyone, in the end, is really just like me.

II

The claims that people like us have in justice can be categorized in various ways. Miller has usefully argued that the different categories that have been recognized in Western moral theory can be reduced to three basic types, namely rights, deserts and needs¹. I adopt this thesis here.

One way to identify the subject matter of a theory of social justice would be to define it as the theory of the distribution of goods to persons in accordance with their rights, their deserts, or their needs. But this is a procedure which, unless pursued very much further than it usually is, leaves unanswered the crucial question of why the distribution of social goods should be based on those criteria, and not on some others. For some philosophers, an inquiry of the latter kind would be an ill-considered one. Rights (they might say) are the sorts of things that just are

claims on others, and which are correlated with duties. To be a morally mature person it is necessary to have the capacity to recognize that this is so, together with the willingness to conform one's behaviour accordingly.

Similarly, the satisfaction of claims based upon desert might be seen as possessing an ultimate, intrinsic moral propriety: to ask why a person's deserving some good (or some punishment) is a reason for his having it, is to ask an improper question.

The concepts of rights and deserts are developed moral concepts; that is, they are ways of organizing certain phenomena in accordance with their moral significance. They are not basic moral notions, if this means that it is not possible to analyse their structure and to explain their moral point in other (more fundamental) terms. The concept of needs, while it has obvious moral significance, is not similarly a developed moral concept. That is why it is plausible to argue that the intrinsic moral importance of the satisfaction of certain human needs is something that one is ultimately required to see for oneself, since it can be further explained only by spelling out what it is for a person to have a need, and the cost to him of not having that need satisfied. There will come a point in any moral theory where the analysis can go no further: certain things must simply be appreciated to have moral significance. The value of a good life for a person is one such resting place.

Familiar considerations - of theoretical elegance and simplicity - encourage the recognition of as few such axioms as possible. In the theory of social justice, it is possible to wield this methodological precept to considerable effect. I will argue here that it is not necessary to recognize

(legitimate) demands based upon rights as axiomatic. It is sometimes possible to defend such demands by the derivation of them from more basic moral facts, to show that, insofar as they ought to be respected, it is because they serve the end of the good life for a person. But this is not to accept theories of axiomatic rights at their face value. On the contrary, I will argue in the present chapter that rights are only relevant to social justice to the extent that they can be related to the end which it is the special virtue of justice to serve. Similarly, I will argue in the following and concluding chapter that, to the extent that merit and desert are relevant to claims in justice, this also is explicable by reference to the underlying conception of the promotion of the (basic conditions of the) good life. It is not necessary to regard principles which distribute goods according to rights, or deserts or merit, as axiomatic. For that reason, it cannot be the case that justice is adequately definable as the distribution of goods in accordance with rights², nor that it is the distribution of goods in accordance with deserts³.

In my approach to these problems, I have started, not with an axiomatic theory of claims, but at the other end. I have supposed that the good life for a person is something which has considerable value, and that one of the guiding moral principles of a good society must be that it seeks to promote, in whatever ways are appropriate, the good life of its members. I have further supposed that the promotion of this end by the constraining of social institutions, and hence of people, in accordance with the principles of justice, is prima facie justified. Importantly, I have accepted the legitimacy of regarding all social goods as

potentially available for public distribution. There is no a priori proof of this last thesis. Its acceptance requires a recognition that social goods are basically collective assets, that they represent, never simply the expended labour of individual persons upon natural resources, but are fundamentally the fruits of the skills, the efforts and the accumulated knowledge of many people, in building and shaping the social world within which alone these individuals, even when acting alone, were able to achieve their productive successes⁴. My socialist theory of justice regards the distribution of goods by public institutions in accordance with a public theory as proper, because it regards these goods as ones upon which the community as a whole has the first claim.

The claims that persons have in justice are not identified, at the primary level, by moral notions like rights and deserts. The guiding conception is of those things which contribute, at the most basic level, to the good life for each individual person. Rights and deserts come in, if they do at all, only at a higher level, when a certain kind of ordering of claims, in accordance with features of general significance, is felt to be useful. In a sense, all claims are needs, things that are necessary for the good life. That is one reason why the concept of needs, proper, cannot be fitted to the sort of account I am proposing for rights and deserts. For the latter, I am not suggesting that they can or should be abandoned. I am suggesting that we will understand why the demands that people make on the basis of their rights and deserts have their peculiar moral significance, only once we have located rights and deserts in the particular context that gives to each of them their

point.

The full and detailed analysis of the concepts of the basic conditions of a good life, and of rights, deserts and needs, will not be undertaken here. In these two chapters, I will aim only to defend, in an initial and admittedly speculative way, the theory of claims that I have sketched.

III

Only some rights are of relevance to social justice. The natural rights that people have must often constrain proper distributions in certain ways; and the property rights that they claim to have (whether or not these are also natural rights) do often in fact constrain distributions and redistributions that are sought on other grounds.

If a person has a natural right to some kind of thing, then there is a moral reason, of a certain prima facie kind, for his having that sort of thing. The reason he should have it does not derive from his legal status, or from his role in some social institution or practice: these are grounds, rather, for positive rights, rights of a kind which, apart from property rights, are not particularly relevant to social justice. Instead, in virtue of a person's own characteristics and condition - when he is considered as a creature abstracted, as far as that is possible, from at least the more contingent social roles that he occupies - there is some distinctive value in his having some things of that kind. The adjective 'natural' presupposes nothing more (nor less) mysterious than this distinction between a person's natural attributes and his contingent social roles. Similarly, whatever moral reasons for action derive from a person's possession of such rights will be reasons which rest

on the moral significance of a person's (more basic) natural attributes, rather than on his (more contingent) social attributes.

Not every existing individual is a possessor of natural rights. Each person is, but no pebble is: whether or not other animals are is a disputed question. The problem is not one of locating instantiations of a property of a peculiar kind, namely natural rights, properties which some things have and others do not, more or less independently of their other properties. Instead, moral rights are supervenient 'properties': if an individual has rights, then it does so because it has certain other properties. If it did not have those properties (or if it did not have some sufficient set of relevant properties) it could not have those rights. Furthermore, rights are morally relevant: if one individual has a right which some other individual does not have, then there are some ways in which (other things being equal) it would be morally improper to treat the former while it would not be morally improper so to treat the latter. Rights make a moral difference. It follows that the properties in virtue of which individuals have natural rights are properties which themselves have moral significance. Theoretically at least, the dispute over whether or not animals have moral - natural - rights could be resolved into the question whether they have the morally relevant properties which make it morally improper to treat them in the ways that would be forbidden, if they had those rights. If it is wrong to kill a creature, for example, then although it is not devoid of significance to defend this proscription by appealing to that creature's right to life, this can never be the basic or ultimate ground for its being wrong. The

possession of moral rights, unlike, for instance, the capacity for suffering, does not have irreducible moral significance.

Claims in social justice which rest upon natural rights do not represent a separate category: if a person claims a share of some good on the basis of a right of this kind, then his claim, if it is to be defensible, must be derived from the fact that a share of this good will promote, or is needed for, his good life. If the social good in question does indeed do this, then that is the source of his claim; if it does not, then he has no claim, and very often no right.

What, then, is the point of the concept of a (natural) right? Why could it not be replaced simply by the recognition that a person's possession of certain attributes constitute reasons for treating him in some definite ways? Part of the reason lies with the sophistication of the concept of a right and the way it is embedded in a network of concepts of claims and entitlement, obligations and duties, and so on. However, of more importance in the present context (and in contexts of substantive moral concern generally), is the fact that the natural properties on which such rights are based are ones which have a wide, general significance⁵. When an individual has these properties, it is the case, not just that one or two particular sorts of actions in one or two particular sorts of situations would be prima facie wrong, but that whole classes and kinds of action affecting him are wrong. These properties are such as to support prohibitions which are, not just particular and very definite, but quite general. It is as though, in virtue of his particular properties, each individual were surrounded by a 'moral

space' having fairly definite contours. Certain guaranteed avenues ought accordingly to be open to those individuals, allowing them to move or to grow at will in those directions; and fences against various external forces ought to be erected in various places around them, to preserve them against the violation of which ever of their interests are at stake.

To ascribe a natural right to an individual is to ascribe to him a permanent interest in having some things, and in being protected from others. It is to recognize that it is generally in his interests that certain liberties or opportunities, certain powers or goods, should be permanently available to him, and that normative guarantees should be permanently available against his being deprived of those liberties, opportunities, powers or goods. Generality and permanence (or permanent relevance) are a part of the character of natural rights. They are compendious ways of organizing the permanent moral significance of some of the natural characteristics of individuals. If there were reason to do so, the content of a natural right could, in principle, be spelled out in fine detail, in a way which made no reference at all to the concept of a right itself. This would involve listing the different kinds of things that other persons had an obligation to do or not to do to a person, in the innumerable different situations in which he might possibly find himself, together with the legitimate demands that he might make in those circumstances, in virtue of his possessing certain morally significant natural attributes. Expressed formally, the suggestion is that a proposition ascribing a natural right to an individual is equivalent to a proposition (of great complexity) which

details the moral significance, in every possible case, of certain of the natural properties of that individual. Such a proposition might be of the following form: if an individual has natural properties p, q, r , then, if circumstances c' arise, the morally appropriate action (other things being equal) will be e' , if c'' then e'' , and so on.

It follows that there is a basic continuity in the kinds of justification that can be given for acting, or refraining from acting, in certain ways. Rights are not a separate or special kind of morally relevant consideration, a kind which is discontinuous from the other more familiar kinds; instead, if an individual has a natural right to a thing, then the permanent availability (or provision, or whatever) of that thing is something which has a significant moral weight, but not a moral weight of a significantly different or special kind.

An important consequence of this account is that natural rights are seen not to be unique moral properties whose importance is of an unusual and recondite kind. Instead, the nature and the moral weight of all such rights will be determinable by reference to the interests and the values that they preserve. If any right is absolute, and always inviolable, then these interests must be of a spectacularly important kind. The present account, in fact, offers a real chance for progress in arguments about such rights. We are no longer confronted with the unyielding problem, whether a person's right to the fruits of his own labour (for instance) is absolute or not: instead, we are encouraged to unearth the values and interests that such rights serve, and to assess the moral significance that they have.

A further important consequence lies in our increased

ability to determine the scope of a right. Given that a person has a right, such as a right to private property, it is not immediately evident precisely what sorts of actions are incompatible with that right. But on my account, we are required to look to the attributes and capacities on which the right is based, and to seek out the particular moral reasons which they support.

Finally, once our attention has been drawn to the morally significant natural attributes of human beings, we are in a much better position to determine just what their general importance and relevance is, and so in that way to arrive at a defensible and defended theory of natural rights.

The sorts of things which people have claimed as of natural right have very often been precisely those things which are the basic conditions of a good life. Demands based on those rights, and the claims based on needs that people have in justice, will often for that reason coincide. However, natural rights, on my account of them, should be dispensed with in the theory of social justice, to the extent that theoretical simplicity is one of our objectives. Once needs have been accorded their full moral significance, the theory of claims need make no ineliminable use of a doctrine of natural rights.

IV

The distribution of goods according to the moral claims that people have to them, claims based on needs and deserts, will often conflict with the existence of property rights over those goods. Most goods, in populous communities which have an institution of private property like our own, will be owned by someone, not necessarily someone who needs or

deserves them. The distribution of goods according to needs and deserts, under these conditions, will usually involve some redistribution, and some violation of property rights. Can this be justified?

The institution of private property does have some value. People enjoy their possessions, and often express their personalities, their characters and values, through the things they own. A person can make a home for himself in the world by impressing his personality upon his immediate environment, even if this amounts only to placing a few treasured possessions on the dressing table of his hotel room. To deprive people - at least, to deprive people like us - of all our possessions, is to leave us naked and vulnerable. It is to degrade us physically and spiritually.

Perhaps the most widely acknowledged source of property rights is in personal labour: a person, it is said, has a right to the fruits of his own labour. There is no need to regard this as an axiomatic right, however, provided that we are prepared to recognize the creative and self-creative aspects of a person's labour upon the world around him. In such labour, a person moulds a part of the natural world according to his own will, and in doing so, contributes to the moulding of himself into a certain kind of person. There is, as well, an aspect of freedom involved here. Free action is exercised in the world, to bring into being certain ends. To deprive a person, against his will, of the products of his labour, is akin to depriving him of the ends of his free action: it is to thwart him in the exercise of his freedom, leaving him with the memory of the activity, but without the accomplished fruit of it.

The account of rights that I have given should

discourage the view that to own something is to stand in a particular, single and substantial relation to it. Instead, there are a variety of different relationships in which a person might stand to some thing, and in virtue of which he will have certain specific entitlements to use that thing in certain ways, entitlements which other persons, or most other persons, do not have. If he has some sufficient number of entitlements to the virtually exclusive use of a thing, he has private property in it. Conversely, a person might be entitled, for various reasons, to use an object in some specific ways in some specific contexts, but these entitlements might not be sufficiently extensive and cohesive to amount to the kind of substantial entitlement that is a private property right. In assessing the extent of an individual's moral entitlement to the use of some thing, a variety of considerations will be relevant. The interests of the person concerned, which are served by his using that thing, are a part, but only a part, of the moral basis of a property right. After all, the thing over which the entitlement is claimed might itself have morally significant properties limiting the ways in which it can legitimately be used; alternatively, other persons might have interests in it, interests which must be considered; or there might be various ways in which legitimate claims and interests would be damaged if the unconstrained use of some thing were granted to a person. Thus, respectively, people (and probably some higher animals, such as whales) cannot legitimately be owned; further, there are severe moral restrictions on the exclusive use of such scarce natural resources as arable land and fossil fuels; and thirdly, the dangers of plutonium wastes from nuclear plants are such

that the primary moral relationship that a person might have to such wastes should perhaps be seen, not as having property in them, but as being morally responsible for them. The account of rights that I have offered forces us to uncover the complexity of the various morally significant relationships of these kinds, a variety which is hidden behind our normal, naive talk of property rights.

A crucial distinction should be recognized between what I will call narrow and extended private property rights. There is kinship here with Tawney's distinction between "property which is actively used by its owner for the conduct of his profession or the upkeep of his household", and "Passive Property, or Property for Acquisition, for Exploitation, or for Power"⁶.

The preceding arguments give us some reason to ascribe to individual persons narrow property rights. That is, people have certain kinds of standing interests in their personal possessions, and in the other goods which contribute to their daily existence, and they have a special interest in the fruits of their own creative labour. To deprive people of their personal property is sometimes to violate these interests. Clearly, on this analysis, the wrongness of depriving a person of some of his property will vary from case to case, depending on the strength and importance of the interests involved. Extended property rights, by contrast, are those rights which people have (or claim to have) to goods which they have not, in any material sense, produced themselves, goods which they cannot legitimately count among their personal possessions, as expressions of their personality, or as objects of intrinsic value to them, or goods which are not among those which regularly contribute

to the more personal and private elements of a person's good life.

The distinction between narrow and extended property rights is not a neat one, but its moral point is clear. The sorts of reasons there are for respecting narrow property rights are far weaker where extended property rights are concerned. An absentee landowner or a shareholder in a modern corporation does not own the things over which he has (partial) property rights in virtue of his having laboured upon them. Nor, for the most part, are they things which have intrinsic or immediate (as distinct from financial) value for him. There can be strong property rights in these cases of extended ownership only to the extent that they can be assimilated to the circumstances of the more favourable narrow cases. The ultimate justification for respecting a person's property, accordingly, can never be simply, that he has a right to the exclusive use and disposal of his own things. On the contrary, it is the value, all things considered, that they have for him, and the value, all things considered, that they would have for others, that are the finally conclusive considerations.

To restrict property rights is not to allow that people may legitimately be deprived, willy nilly, of their most treasured possessions. But in a world of scarcity, a world in which some have accumulated goods far in excess of what they can use or can enjoy, while others have desperately little, then the more extensive a person's holdings of goods, the less moral reason there is for leaving him in undisturbed possession of them. It is not as though we have to concede that, whatever the undoubted misery that starving or oppressed people suffer, that alone can never justify the

violation of a person's rights, as though the latter were quite singular moral properties of an especially inviolable kind. It is true that in a capitalist society, people normally have expectations of being left in (relatively) undisturbed possession of all their goods, and that they will usually be shocked and upset if these expectations are disappointed. These factors must be taken into account (though there is no reason to suppose that they must always warrant reimbursing a wealthy owner the full market value of the property seized from him), but the expectations themselves do not introduce a factor which must be given any special consideration, given that they were not morally legitimate expectations in the first place. Ultimately, the various considerations that we are weighing here are considerations of the same general kind: the values that these goods represent for people, the interests that they satisfy.

Suppose that there exists a machine which will totally convert matter into energy, and will dissipate the energy into space. Suppose too that one person comes to own, in accordance with the proper operations of a free market economy, a very large proportion of the world's goods and resources. Since he has property rights over all of these things, he is, supposedly, entitled to dispose of them at will. Is he entitled, in that case, to put them all into the machine? Any decent theory will deny him that right. For the socialist, the reason is straightforward: the world's goods and resources are, finally, collective assets. It is not in the least incompatible with this thesis to allow that one of the best ways of putting some of these goods to use is to recognize limited property rights over a narrow range of

them. Other things being equal, a person may do what he will with his personal possessions. But the more extensive are his holdings of goods, the more willing should we be to regard him as at most a steward⁷, one who has those goods in temporary trust. His entitlement to enjoy them is subject to various restrictions, all of which are explicable by reference to the natural bases, in him and in other people, of the moral dimensions of the institution of property. In the right sorts of circumstances - if, for instance, he threatens the wanton destruction of the goods he holds - the community might be justified in withdrawing its recognition of his entitlement, and appropriating these goods back into the common pool of collective assets, from which they had only been removed in the first place in a qualified and conditional way.

V

The inflation of natural rights into inviolable constraints upon what it is ever permissible to do to persons is one possible outcome of ignorance of the underlying moral point of ascribing rights to people. The influence of such a view upon theories of distribution will depend, of course, on the particular list of natural rights which is adopted. The theory to be considered now is that which can, with most propriety, be regarded as the liberal theory of justice; it takes its inspiration from a particular theory of natural rights in which the right to private property looms large. The theory that Nozick has defended is a paradigm of theories of this kind: the grounds for accepting it, I will argue, are very weak indeed.

Nozick apparently accepts, on the authority of John Locke,

that all persons have natural rights to life, health, liberty and property⁸. The liberty of each person is expressed, in part, in the right each has to decide for himself the goods that he would prefer to own. No 'ideal' conception of his needs or deserts can be permitted to override this right. The right to property, furthermore, is a right to the exclusive use of all those goods which a person has legitimately acquired. Such acquisitions will have resulted from dealings which were in accordance either with the principle of justice in acquisition or with the principle of justice in transfer⁹. These are the principles which set out, in the light of the natural rights of all persons, the conditions under which an individual's appropriation of some previously unowned goods is justified, and the conditions and procedures in accordance with which an individual can come to have property rights in goods which were previously the property of others. In addition, a principle of justice in the rectification of holdings will be needed to repair past injustices¹⁰.

Given these requirements, what sorts of distributive mechanisms are most appropriate? The answer of classical liberalism, and of Nozick, is that no institution which distributes goods in accordance with an ideal conception of what people should have (as determined by their attributes, whether actual or standardized) is compatible with the basic moral premises. Only the free market can distribute goods in ways which are consistent with the rights to liberty and to property that those premises recognize. Whatever are the holdings which result from the proper functioning of the free market, they will be just, because they will reflect, as closely as human conditions allow, the actual free decisions

and compromises and preferences of each individual, acting with a minimum of constraint.

Like every moral theory, liberalism presupposes (although usually only implicitly) a definite theory of the nature of persons and of society. It does not advance the free market as an ideal which is self-recommending, or as an end-in-itself. On the contrary, it is the distributive institution which is most consistent with liberal ideology, that is, with the underlying metaphysic of persons and society, together with the values (the natural rights) which are embedded in it. To the extent that it fails to be consistent with the rights (and especially, with the underlying and unremarked values) that are its justification, the free market falls short of achieving the ends which recommend it to classical liberalism. Conservative scepticism about the possibility of designing institutions which distribute goods in any more satisfactory way than does the market may come to the aid of the liberal here¹¹, but the plausibility of this scepticism will depend, in part, on how seriously the market fails to secure the values on which it rests, and on how serious are the injustices which it promotes.

The familiar objection to the free market, as the sole distributive institution, is (as I would express it) that it is not stable over time¹². It presupposes a prior distribution to all persons of (effective) rights, and is justified by reference to that initial distribution. But the effect of the unconstrained operation of free market forces is eventually to alter, very extensively and thoroughly, the original allocation of rights. Classical liberalism does not take seriously the differences between people in their

acquisitiveness and entrepreneurial capabilities. The historical evidence is overwhelming, that left to its own 'iron laws' (even granted that it never has been totally free of state management¹³), the free market leads to concentrations of wealth, power and opportunities in the hands of a few, to the disadvantage and deprivation of the many. To regard the wage labourer, under the conditions of unrestrained industrial capitalism, as an entrepreneur engaging in free market transactions with his fellow entrepreneurs, is to falsify his real position. The free market does not preserve the distribution of rights which is its initial justification: it is not, after all, the distributive institution which is most consistent with the liberal's basic precepts.

It is because this objection is so obvious - and so devastating - that liberalism has insisted upon a distinction between the possession of rights (to liberty and property, for instance), and the enjoyment of the conditions necessary for their effective exercise¹⁴. The wage labourer does not always enjoy the latter: but he does not have a right to enjoy them. The rights that he does have are the very rights - the formal guarantees of freedom of contract, security of possessions from arbitrary seizure, and so on - that are preserved, whatever his material condition might be. Since these are the rights which justify the free market, and since they at least are preserved, the free market is, after all, stable over time.

The analysis of rights that I have suggested brings out the fatal weakness of this thesis. It is certainly possible to distinguish, as the liberal does, between coercive interference with a person's life, his free activities and

his possessions, on the one hand, and the provision of social and economic goods and opportunities which would enable him to secure a good life for himself, on the other hand. It is also true that the latter goods can be seen as necessary conditions for the full enjoyment of the benefits of free activity and of possessions. The crucial question, however, is whether goods of the latter kind should be regarded solely as conditions for the enjoyment of the liberal's set of rights, conditions which are not themselves subject to any relevant moral requirements, or whether a right to be provided with those goods should also be recognized. The issue is that of the scope of the rights which people have, an issue which can be settled only by referring back to the underlying values on which rights are grounded.

If people can legitimately be regarded as having rights to liberty and possessions, then it must be the case that these things are of value to them. Yet once we inquire what these values and interests are, it becomes apparent that there is no moral justification for distinguishing, in the severe and momentous way that liberals do, between the different kinds of humanly-originated circumstances and conditions which can limit a person's enjoyment of the ends which liberty and possessions serve. There are, of course, morally important differences between suffering from the violent physical interference of other people, and suffering from the blind (or blinkered) working-out of social and economic forces. Even granted that there are limits to the extent to which these forces can be controlled, it is not the case that society is powerless to remedy, or to compensate for, their more disastrous effects. It is true that human aggression is different from social and economic oppression:

that shows that the appropriate assessments of and responses to them might have to be different, not (absurdly) that it is only human aggression that has any moral relevance.

The fundamental reason for recognizing human rights is that it is desirable to take a general notice of the presence of certain permanent interests that people have. Given that these are the interests that are to be protected, we are obliged to recognize that the existence of certain formal provisions and legal guarantees might not be sufficient to that end. People can be deprived, just as effectively from their point of view, of the capacity for enjoyment of liberty and personal possessions by constraints or conditions of other kinds, and especially by social and economic circumstances. The laissez-faire liberal is not justified in limiting the basic rights that he recognizes to the relevant negative liberties - to the guarantee that coercion will not be exercised upon a person to restrain him from pursuing his own good and gathering property to himself. This is an important guarantee - it was especially important in the historical circumstances which gave birth to liberalism¹⁵ - but it is not sufficient to secure the values which are liberalism's ultimate justification.

An opportunity is not a good to a man who has not the capacity to use it¹⁶. A person's ability to shape his life in accordance with his own will, his own examined aspirations and desires, can be seriously curtailed by the existence of social and economic conditions which operate, not directly through the crude instrumentality of physical force, but in more subtle yet equally effective ways. These conditions exist as a consequence of human activities. These are not necessarily activities which are undertaken by anyone with

the express intention of creating conditions which frustrate the free development of some people, but they have those effects nonetheless. If these effects once were both unintended and unforeseen, they are no longer unforeseen. Mature moral agents cannot divorce themselves entirely from responsibility for the foreseen consequences of their activities¹⁷, and from the need to weigh the advantages of unconstrained activity against the disadvantages suffered in consequence by others.

The liberal's defence of the free market as a morally adequate distributive mechanism places him in a dilemma. Either the market is accepted, along with an indefensible conception of basic human rights, or a moral theory which is genuinely adequate to the nature of human beings and the conditions of their social existence is adopted, together with a set of restrictions on permissible activities which effectively require the abolition of the free market.

If rights are regarded, as they so often are, as ultimate moral properties, it becomes possible to assign a particular content to them without worrying unduly about the precise justification for doing so. Taking the Lockean rights as axiomatic, as Nozick does, leads with virtual inevitability to the classical liberal theory of justice. However, any theory of natural rights must be justified by relating those rights to an appropriate underlying ideology, a procedure which in this case shows that the classical liberal theory of justice is untenable.

VI

In spite of the tendency to monopolistic holdings which is inherent in free market capitalism, classical liberalism

sometimes presents itself as an egalitarian theory. It actually has as good (or as poor) a reason for doing so as have many other theories which appropriate that label. The fundamental thesis advanced by liberalism is that all persons possess equal basic rights and liberties, a thesis which finds its most characteristic expression in the constitution of the social contract. This thesis (of equal rights) is either defensible, or it is not. If it is not defensible, it need detain us no longer. If it is defensible, it is so in virtue of various basic facts about human beings. If these rights can justifiably be attributed to any person whatsoever, then it must be in virtue of some facts about persons, about the attributes which they have which make certain kinds of things of permanent interest to them. If all persons are indeed equal in possessing these rights, then they must also possess these attributes. Because rights are supervenient properties, it is not logically possible for two persons to be equal in respect to their rights but unequal in every other (significant) respect. On the contrary, they must also be equal in their possession of those natural properties in virtue of which each has his rights. Each, in short, has his basic rights because he has the appropriate natural properties: none has his rights solely because he is equal to the others. That all persons have equal rights might be a useful precept, but it cannot be an axiomatic principle.

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CHAPTER ELEVEN

REMARKS TOWARDS A THEORY
OF CLAIMS II: DESERTS AND NEEDS

I

People have claims in justice to the goods which it is necessary for them to have if they are to enjoy a good life. These are the goods that they need, for that reason. This sufficiently explains why human needs are the primary source of claims in justice.

This approach, however, seems to leave no room for any other grounds of claims. The virtue of justice is to promote the basic conditions of the good life. Any good which is needed to that end is a legitimate object for claims in justice. If it is not needed to that end, how can it be properly claimed? Yet desert and merit do seem to have some relevance in justice. I will argue that people can have claims based on desert or merit, just in case the goods they deserve or merit have some special contribution to make to their good life. It is not really the case that these goods are necessities of the good life, but a person's life will generally be enhanced, nonetheless, if his good deserts are satisfied and if he has the goods that he merits. He will not suffer for being deprived of them in the way that he would suffer were he to be deprived of goods that he needs, but his life will still be less satisfactory than it would otherwise have been.

Claims based on needs will accordingly usually take precedence over those based on merit and desert. The basic

conditions of the good life should have priority over those conditions which merely enhance a person's life. Indeed, given that the virtue of justice is to promote the basic conditions of a good life, claims based on desert are peripheral to justice, or might even seem to lie outside its realm. To the extent, however, that there are available for distribution goods which, while not (always) needed by anyone, yet can enhance the quality of life, principles for their distribution are required, and can, with propriety, be included among the principles of social justice.

II

The general concept of desert, Miller has argued¹, is of the matching of appropriate kinds of treatment to the specific qualities and actions of people. Good desert is the fitting of desired treatment to qualities and actions which are generally favourably appraised. The range of desert bases (he says) coincides with the range of bases for appraisive attitudes. These attitudes, in turn, make intelligible the connection between desert and desert base, and so explain why a benefit is considered appropriate.

This analysis helps to bring out the fact that to deserve something can never be a basic and irreducible moral fact about a person. (Any theory of just punishment which regards the proposition that the guilty deserve to suffer as self-evident or axiomatic must accordingly be defective). To ascribe good deserts to a person is to allow that it is morally appropriate that he should have some kind of favourable recognition, in virtue of some of his attributes or achievements. Why we regard these attributes favourably will explain why it is fitting that he should have that

recognition, or those benefits.

Material benefits are evidently morally inappropriate where many species of (good) desert are concerned. The sorts of intangible goods which people sometimes deserve to have can contribute to the quality of their lives in various significant ways. This is especially so to the extent that to treat a person as he deserves (if he deserves well) is, in a sense, to recognize his personality and integrity, and to respond to that in him which is worthy of respect. A person's self-respect, and his belief in the value of his own life and achievements, are enormously enhanced if his fellows respond to him in appropriate ways whenever he deserves well of them.

Where some other kinds of desert are concerned, material rewards are widely thought to be morally appropriate. These are standardly cases where the attributes or achievements that are recognized have some special relation to material goods, either in their production or (where personal merit is concerned) in their consumption.

If a person makes an unusually significant contribution to his community's production of its collective material wealth, this achievement of his is usually seen as a ground for holding that he deserves some special recognition. As it happens, the form that this recognition customarily takes is that of an additional share (in excess of needs) of the community's goods. But there is no moral necessity that this should be so, and in a community which had achieved a genuine realization of the attitudes and values that anarchists and communists have seen as the mark of a truly humane society, it perhaps would not be so. The consciousness that one was contributing in some unusually significant way to the

Erratum: (Insert between pp.80 & 81)

enhancement of the lives of all one's fellows, together with the knowledge that others held one in high regard for doing so, would be reward enough. The necessity to reward with material incentives those who are especially productive is an admission of our moral and spiritual shortcomings, and a concession to the shameful fact that many of us will only exert ourselves for the good of the community as a whole if we can see something tangible in it for ourselves. If there is indeed a moral principle which allows that an additional share of material goods should be made available to those whose contributions to the community's welfare are unusually significant, then it is a morally ambivalent principle. Yet it maintains a strong grip upon us. Striking evidence for this is supplied by Rawls's principles of justice, in which, in effect, material incentives provide the primary ground for justified departures from an equal-maximal distribution of goods.² True, it would be unjust not to recognize such contributions at all; but the justification for rewarding them materially is perhaps not that it is a requirement of justice, but that, because of the weakness and acquisitiveness of people in societies like our own, not doing so would often be interpreted as a failure to recognize, in an appropriate way, those deserts.

III

There is one kind of desert which can, with moral propriety, serve as a ground for claims in justice to various goods, including material goods. Someone merits goods of a certain kind whenever his personal attributes are such that goods of that kind will make an especially significant contribution to the quality of his life. The principal

relevance of desert to social justice is to be found in personal merits of this sort.

A plausible accompaniment for the principle of urgency is a principle of excellence, a principle that directs us (other things being equal) to distribute certain kinds of goods in whatever way will be most productive of excellence in the quality of life. The dominating ideal is still that of the good life; but we are concerned now, not with the minimization of impairments to it, but with its optimization, with the promotion of that which is best in the lives of people. Again, the principle is not an additive one: just as claims based on the worst impairments have an absolute priority, so claims based on the most outstanding prospects for excellence have priority over those based on lesser prospects. The dominance of a single ideal - that of the good life - allows us to construct a defensible priority principle, favouring claims based on the elimination of impairments to those based on the promotion of excellence: the first priority must always be to secure for all the basic conditions of the good life itself. But where those conditions have been secured, or where some social goods are not the objects of any claims of that kind - that is, of claims based on need - the principle of excellence provides a defensible way of allocating such goods to persons.

Justice certainly does require, in the case of many goods, that they be allocated initially to those who merit them the most, that is, to those, the excellence of whose lives will be most enhanced by their having those goods. Certainly, too, there are often utilitarian reasons for such practices as the admission of people to universities, or their selection for touring sports teams, in descending order

of merit. But the principle of excellence provides a different way of looking at these practices. The production of conditions in which people can lead valuable lives is still the object; but we are not seeking to maximize aggregate value, in the utilitarian manner. Instead, we recognize that the pursuit of excellence is an aim which is not always served best by the utilitarian's maximizing approach.

The principle of urgency, which ensures the priority of claims based upon needs, guarantees that social goods will be distributed initially in a way that ensures for all the basic conditions of a good life, to the extent that this is materially possible. There can be no excuse, then, for regarding the principle of excellence simply as a warrant for diverting scarce resources away from those whose lives are most impoverished, in order that an elite of talent might enjoy every extravagant luxury. For if these goods - or (importantly) the raw materials and the productive forces that have gone into them - can indeed help to eliminate impoverishment, then the claims to them which are based on those needs will have priority in justice. If there is no one whose life is impoverished by his not having some particular good, then it seems obvious that this good should be allocated to the person who will make the best use of it, the person to the excellence of whose life it will make the most significant contribution. Admittedly, by allocating goods in this fashion, the inequalities of excellence in the lives of people might be greater than they otherwise would be. But that fact of itself has no moral significance. The egalitarian supposition that it does have significance readily leads to the unacceptable conclusion

that excellence has to be discouraged. It is not denied that the existence of inequalities of this kind might be productive of undesirable consequences: sometimes, morally distorted relationships of patronage and deference accompany wide disparities in personal achievement. This does not show that the inequality itself is morally objectionable, only that people's behaviour and attitudes sometimes are. It is possible, indeed, that there could be conclusive moral objections to a distribution which was still socially just. But what is far more probable is that the proper and morally unobjectionable workings of the principles of social justice among people who had been moulded by a materialistic, acquisitive and unjust society would initially be productive of some degree of resentment and bitterness. Those who do not possess any special merits, but whose talents enable them to make special contributions to the production of goods, might well resent the fact that they receive in return no more of those goods than they can justify on the basis of their needs: justice serves neither the most-talented nor the least-talented exclusively. The most effective way to eliminate mutual resentment is not to modify the principles of distribution but to inculcate in all an adequate sense of justice.

IV

The modern temper is sceptical of deserts. Bad arguments have been unduly influential here, especially one to which Rawls has ascribed considerable importance. He argues³ that the natural distribution of talents and advantages is arbitrary from the moral point of view, that no one deserves his greater natural capacity, nor does he

merit a more favourable starting place in society (if such has been fortune's blessing to him)⁴. Rawls concludes from this that the distribution to those who are naturally advantaged of additional benefits, over and above what everyone else receives, is morally unjustified⁵.

One fairly weighty objection to this argument is that Rawls has simply assumed, quite falsely, that in order for a person to deserve something, he must also deserve the particular attributes on which that primary desert is grounded. But as Nozick says, in reply to this argument, "It needn't be that the foundations underlying desert are themselves deserved, all the way down."⁶

This does show that Rawls has not deployed his argument very well. But it might also encourage the rejoinder, on behalf of Rawls, that these considerations demonstrate that the concept of desert is in fact incoherent: given that it is necessary, if one is to deserve something on the basis of some of one's attributes, that one must also deserve those attributes, and since it is not possible to deserve one's attributes 'all the way down', it is not possible to deserve anything at all.

Leaving aside the question whether this is a very good argument - a question which raises the issues of determinism and moral responsibility - there is an objection which cuts much deeper than this. Rawls assumes, in one of the unargued axioms of his theory, that persons are "free and equal moral beings"⁷. Because they are, in this basic respect, all the same, their basic claims in justice must also be the same. However, if any of them actually do have any claims in justice at all, it is necessary (as I have argued) that they have these claims in virtue of some facts

about them. These facts, for Rawls, are that 'moral persons' are capable of having a conception of their good, as expressed by a rational plan of life, and of having a sense of justice⁸. The capacity for moral personality, he says, is a sufficient condition for being entitled to equal justice. There is, accordingly, an initial presumption in favour of equal treatment for all. The existence of differential natural advantages cannot justifiably upset that presumption, because the only condition under which those sorts of advantages could upset it - namely, the condition that they were deserved - is necessarily not satisfied.

That is Rawls's argument - and it is fallacious. If the attributes in respect to which people differ, the natural advantages that some have, are of no relevance to people's claims, in virtue of the fact that those attributes are not deserved, then likewise, the attributes in respect to which people are the same are of no relevance to the claims that they have, because those attributes are equally undeserved. Since every attribute of persons belongs to one or other of these classes; Rawls must conclude that persons have no attributes at all which can serve as the basis of claims in justice. It follows that people, like pebbles, have absolutely no claims in justice, and hence that it is not possible to treat them either justly or unjustly.

Rawls's theory of justice officially includes no theory of claims. But if people are to have a significance in justice that such other individuals as pebbles do not have, then Rawls must allow that they have some personal attributes in virtue of which there are sound moral reasons for distributing goods to them. The identification of those

attributes as preferences or interests can only solve the problem if preferences or interests are themselves regarded as sufficient sources of claims. Once claims have been admitted in this manner, however, there can be no justification for formulating principles of justice which effectively ignore them. Besides, Rawls faces a residual problem here. People, after all, do not deserve the preferences and the interests that they happen to have. Accordingly, if Rawls's argument against desert is cogent, their having those preferences cannot be a morally adequate ground for distributing goods to them. What this shows is that either Rawls's analysis of desert is mistaken, or that he is mistaken in his implicit assumption that deserts are the only personal attributes on which individual claims could be based.

V

The most important claims in justice are those which are based on needs. A need is sufficient to ground a claim if it is a need for one of the basic conditions of a good life. A theory of needs cannot be independent of a theory of the good life, and a theory of the latter cannot be independent of the particular conditions and characteristics of particular historical milieux. The patterns of the good life which are appropriate to different social and natural environments, and to which people in those environments can most defensibly aspire, will determine what are the important impairments to a good life as well as the relative urgency of claims based on those impairments. In some cases, the identification of a need and the ascription to it of a definite urgency will be unproblematic. In other cases,

evaluations will have to be made and preferences expressed, in order that some components of the good life can receive priority over others in the distributive arrangements that a community makes.

A sufficient and adequate concept of needs, for the purposes of a socialist theory of justice, is that of the necessities of a good life. People need those goods the lack of which is a significant impairment to their prospects for a decent life. The concept can only seem vague and unhelpful if it is examined in abstraction from the physical and social environments, the human materials and the appropriate patterns of the good life on which it depends for its content.

VI

Theories of justice which base claims on needs are often described as egalitarian. The claim, characteristically, is commonly made on the basis of that cluster of fallacies that I have identified as the orthodox theory of justice⁹. By contrast, the received view is that theories based on desert and merit are inegalitarian¹⁰. The only reason for maintaining these connections is that, since people are assumed to differ less in their needs than in their deserts, distributions of goods according to needs will be more equal than those which are made according to merits. But why is this fact of any interest? The concept of equality is not a necessary component of a theory which bases claims on needs: if my own theory warrants the distribution of some goods in equal shares, or warrants distributions which will produce equal holdings, that is because people are alike in respect to many of their needs. The equality of these

distributions is wholly contingent and adventitious. If people's needs happened to vary widely, then the just distribution would be an unequal one: but it would not be necessary to remark on the fact. If justice is done, it is because people's claims are met. When their claims are based on deserts or merit, rather than needs, then their shares, and their holdings, might turn out to be unequal - but that is also contingent and adventitious. If desert were in fact the sole, or a principal criterion for claims, then the inequalities of distribution which resulted could not be condemned as unjust. Similarly, if need is the principal ground for claims, then distributions made properly, according to needs, must be just. Whether or not they involve equal shares or result in equal holdings of goods is neither here nor there. On the other hand, if the connection between justice and equality of distribution is regarded as necessary, or as not subject to the contingencies of human circumstances, then it can only be a contingent truth that need is the primary ground for claims.

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Postscript

The guiding moral ideal for my theory of social justice has been that the goods and the resources of the world ought to be distributed in ways which match them, as appropriately as possible, to the particular needs and interests, the individual talents and capacities, that people have¹. This is an ideal which is profoundly worthwhile. But it has not been a particularly effective ideal. Social justice has never been a common achievement in this world: it is certainly not a virtue of any contemporary Western society. The distribution of too many goods is matched in these societies, not to the morally most appropriate attributes of people, but simply to wealth, as once it was matched to social status. It is true for that reason that these societies are unjust. It is also true for that reason that these societies are unequal. It is not true, however, that they are unjust because they are unequal.

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NOTES

(Full details of the works referred to will be found in the Bibliography).

Epigraphs

1. Digest, I,I, 10, pr. (Quoted in Nathan).
2. Quoted in Woodcock (2), p.24.

Chapter One, Morality and Equality

1. Armstrong (2).
2. The objection has been raised by Paul Crittenden.
3. Rawls (1), p.19f.
4. Bedau (1), p.18.
5. For a striking example, see Komisar & Coombs, *passim*.
6. McCloskey (5).

Chapter Two, Social Justice

1. Flew, p.71f.
2. Rawls (1), p.3f.
3. Flew, p.73f.
4. Campbell (1), p.1f.
5. Vecchio, *passim*.
6. Browne (2), *passim*.
7. Rescher, Ch.3.
8. There is some: see especially Hart (3), *passim*, and McCloskey (3), *passim*.
9. Mabbott (2), p.158.
10. Rawls (5), p.639; (1), p.62.
11. Rawls (1), p.85.
12. Nozick, p.150f.
13. Nozick, *ibid*.
14. Nozick, p.10f.
15. Acton, p.62f.
16. See further Chapt. Ten, Sect. IV.
17. Hayek, p.96f.; cf. Nozick, p.18f.
18. Egalitarianism is often cited as one of the defining conditions of socialism: Berki, p.25f. For a more balanced view, see Lichtheim (1), *passim*.

Chapter Three, Descriptive Egalitarianism

1. Cf. Kovesi, p.63.
2. Cf. Griffiths, p.180.
3. See further Chapt. Eight, Sect. III.
4. See further Chapt. Four, *passim*.
5. For example, in Singer (1), pp.3-5.
6. Rees, p.14f.
7. See especially Rawls (1), *passim*.
8. Rothbard, Chapt. 8.
9. Williams, p.112.
10. Rees, pp.25-6.
11. Williams, pp.128-9.
12. *Ibid*.
13. Cf. Hart (1), p.189f.
14. See further Chapt. Ten, Sect. III.
15. Cf. Cranston, p.74.
16. Cf. Wollheim (2), *passim*.

Chapter Four, Negative Egalitarianism

1. Benn (4), pp.64-5 and passim; Benn & Peters, p.114f.
2. Raphael (1), p.175f.
3. Peters, Ch.4.
4. For the contrary view, see Lukes (2).
5. Feinberg (2), p.101 (emphasis in original).
6. As in Rawls's second principle; see Rawls (1), p.60.
7. Graham, pp.63-5.
8. See e.g. Frankena (2), Bedan (1), Benn (4), Peters, Berlin (1), Graham.
9. Peters, p.121.
10. Ibid, p.123.
11. See above Chapt. Three, Sect. III.
12. See further Chapt. Ten, Sect. III.
13. Lucas (3), p.298, and Lucas (4), pp.268-9.
14. Cf. Stephen, p.186.

Chapter Five, Analytic Egalitarianism

1. Perelman (1), p.12.
2. See above Chapt. One, Sect. III.
3. Aristotle (3), 1131 a.
4. Katzner (1), p.64f.
5. Cf. especially Frankena (3), passim; Perelman (1), passim.
6. Aristotle (1), p.118 (1280 a).
7. See e.g. Feinberg (2), p.103f.
8. Golding (1), Chapt. 6.
9. Frankena (3), p.6.
10. Aristotle (3), 1131 a.
11. Nozick, Chapt.7.
12. Aristotle (3), 1131 a.
13. Ibid.
14. Cf. Rawls (2), passim, for a similar distinction.
15. See further Chapt. Eight.

Chapter Six, The Functions of the Principles of Justice

1. Miller, Chapt.1, Sect.2.
2. Cf. Nozick, p.48.
3. Rawls (1), p.31.
4. Miller, passim.
5. Feinberg (5), passim.
6. Cf. Barry (1), p.44.
7. Feinberg (5), p.300.
8. Ibid.
9. Ibid, p.299 (emphasis in original).
10. Ibid, p.303.
11. Ibid, p.299.
12. Ibid, p.303.
13. See further Chapt. Ten, Sect. IV.

Chapter Seven, The End of Justice

1. Rawls (1), p.126f., and the references cited there.
2. Rawls (1), p.62.
3. Macpherson (2), p.5 and passim.
4. Cf. Campbell (3), passim.
5. Marx (3), p.83.
6. Barry (1), Chapt. 3.
7. Macpherson (1), passim.

Chapter Eight, The Appraisal of Claims

1. Cf. Nozick, p.150f.

2. See further Chapt. Eleven, Sect. II.
3. Aristotle (2), p.27.
4. See e.g. Benn (4), passim.
5. See above, Chapt. One, passim.
6. Cf. Chappell, passim.
7. See further Chapt. Nine, Sect. III.
8. Ellis, passim.
9. Feinberg (5), passim.

Chapter Nine, Justice and Scarcity

1. Rawls (1), p.126f.
2. Nozick, p.28.
3. See e.g. Lyons, Chapt. 5.
4. Berlin (1), p.305.
5. Runciman, passim.
6. Cf. Flew, p.83f.
7. Runciman, p.10f.
8. Schaar, p.236f.
9. Rawls (1), p.440f.
10. The expression is Rawls's: see Rawls (1), p.83f.
11. Raz, passim.
12. Campbell (3), passim.
13. Nozick, p.28f.

Chapter Ten, Remarks Towards a Theory of Claims I

1. Miller, Chapt. 1, Sect. 2.
2. Cf. Raphael (1), p.166; Campbell (2), passim.
3. Campbell (1), p.2.
4. Marx (3), p.128 and passim.
5. See above, Chapt. Three, Sect. 3.
6. Tawney (1), p.66; cf. Marx (2), p.931.
7. Cf. Godwin, p.283.
8. Nozick, p.10.
9. Ibid, p.151.
10. Ibid, p.152.
11. Acton, p.68f.
12. Cf. Rawls (8), p.160.
13. Von Mises, passim.
14. Berlin (3), p.liii; cf. Rawls (1), p.204.
15. Hobhouse (1), p.21f.
16. Rashdall, I.8.
17. Glover, p.86f.

Chapter Eleven, Remarks Towards a Theory of Claims II

1. Miller, pp.88-9.
2. Rawls (1), p.60 and passim.
3. Ibid (1), p.74.
4. Ibid, p.102.
5. Cf. Feinberg (2), p.108, and Frankena (3), p.10.
6. Nozick, p.225 (emphasis in original).
7. Rawls (1), passim.; cf. Dworkin (1), passim.
8. Rawls (1), p.505.
9. See above, Chapt. Five.
10. Frankena (3), p.8f.

Postscript

1. Walzer, passim.

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AJP.	=	Australasian Journal of Philosophy.
APQ.	=	American Philosophical Quarterly.
CJP.	=	Canadian Journal of Philosophy.
JP.	=	Journal of Philosophy.
PAS/(SV).	=	Proceedings of the Aristotelian Society (Supplementary Volume).
Philos.	=	Philosophy.
Pol.Stud.	=	Political Studies.
PPA.	=	Philosophy and Public Affairs.
PQ.	=	Philosophical Quarterly.
PR.	=	Philosophical Review.

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Synopsis

Equality and Social Justice. D.E. Browne

In this thesis, the deeply-entrenched belief that justice and equality are intimately connected is systematically examined and rejected. It is shown that, in so far as justice and equality, injustice and inequality, are found together, their connection is merely contingent, and of no fundamental theoretical significance. That is, the different relations of equality and inequality which can be found in states of affairs which are just or unjust, are shown to have nothing in particular to do with the justice or injustice of the latter. The arguments to this end are not normative (defending an inegalitarian theory), but conceptual (defending a nonegalitarian one). Detailed attention is given, in the course of the thesis, to the belief that all people are actually equal, in some morally significant respects, and certain important moral truths which are obscured by this formulation are elicited. The analysis and confutation is also undertaken of 'the presumption principle' which holds that all persons are to be treated equally, in the absence of any reasons for treating them unequally, and of 'the Aristotelian principle', which maintains that all justice consists either in the equal treatment of those who are equal, or the unequal treatment of those who are unequal.

A 'formal' and nonegalitarian theory of social justice is developed in which the critical concept is that of a claim. It is argued that of necessity, in every situation in which questions of justice arise, some people have claims to some goods. Accordingly, any theory of justice must provide an account of what these claims are - must provide a set of principles for the appraisal of claims - and also an account of the way in which conflicts between claims (in the face of a scarcity of goods) are to be arbitrated - a set of principles for the mediation of conflicting claims. A theory which meets these requirements in a coherent way is developed and defended. That it also provides a sufficient theoretical basis for a full normative theory of distribution is shown by sketching a socialist theory of justice within the non-egalitarian framework, a theory of a kind which would normally (misleadingly) be described as '(radically) egalitarian'.

A variety of related topics are discussed as they arise, including the relationship between individual human nature and social environment, the theory of natural rights, the free market as a distributive mechanism, liberty, private property, deserts and needs.
