Rawls, Dworkin and Inheritance in Liberal Democracy

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Abstract

This thesis examines whether Rawls or Dworkin's theory of justice is better at justifying restrictions on wealth inheritance in a liberal democracy. It sets out to argue that Dworkin's theory is better suited to guide a liberal democracy on justifying restrictions on wealth inheritance than Rawls's theory. This argument begins by proposing that the extant literature reflects a conflict between three intuitive judgements about what matters for the justice of restricting wealth inheritance in a liberal democracy. As a result the successful theory will have fewer disadvantages and more advantages in its impartial justification for restricting wealth inheritance to the liberal, opportunity and luck intuition.

This thesis examines Rawls and Dworkin's theories because both theorists propose views that aim to be impartial and justifiable in a liberal democratic society. They both aim to cater to the associated concerns of protecting individual liberty and guaranteeing social equality. I examine both theories on this aim in three metrics. First I consider their internal coherency. In doing so I examine the coherency of Rawls's principles when they aim to treat social class and wealth inheritance differently. I then explore the coherency of Dworkin's prescriptions with the expectations individuals have in a liberal democracy. The second metric I consider is the ability of either theory to cater to each of the three relevant intuitions. This involves examining the scope of Rawls and Dworkin's theories and their competency in satisfying the concerns of the luck intuition. Lastly I consider the impartiality of the theories as the third metric. As such, I consider how well Rawls and Dworkin give equal consideration to the associated concerns of the opportunity and luck intuition.

Acknowledgements

Contents

Introduction

How should liberal democratic societies justify restricting wealth inheritance? This question is at the forefront of this thesis. It seems they should endorse a course of action consistent with a theory of justice. I offer an examination of the respective advantages and disadvantages between John Rawls's "Justice as Fairness" and Ronald Dworkin's luck-egalitarian "Equality of Resources". I argue that Dworkin's theory is better than Rawls's theory for the purpose of justifying restrictions on wealth inheritance in a liberal democratic society. This is because Dworkin's theory justifies its restriction to a broad range of associate intuitions more equally than Rawls's theory.

Why is wealth inheritance significant for justice?[1] I submit that wealth inheritance is of philosophical interest and needs to be evaluated from the perspective of justice for its contribution to the extreme nature of wealth inequality in liberal democratic societies and elsewhere.[2] The extreme

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[1] Ann Mumford (2007) suggests another alternative. She suggests a sociological analysis that argues in favour of restricting wealth inheritance by analysing how liberal democratic societies understand the supposed fairness of progressive taxes and helping 'the poor' by taxing the rich. Ezra Hasson (2013) has also explored the effect of gender relations on the legal act of will-making and bequeathing.

[2] It seems that if inequality of wealth is extreme then it must necessarily be an inequality of welfare. However, for liberal democracies particularly in the post-war era, growing and maintaining the well-being of citizens at an acceptable level has been accepted as a requirement for good governance. Almost all liberal democracies have some form of social safety net, that either prevents individuals from descending to a diminished state of well-being or ensure efficient systems are in place to help those who

nature of wealth inequality is evidenced best in the most popular statistic of the current zeitgeist which is the percentage share of wealth held by those in the top one percent of wealth holders in the United States. As of 2010, in the United States of America individuals who were in the one percent of the population who held the most wealth, also held a little over one third of the financial assets and made a little over one third of the total household net worth (Keister 2014; Keister and Lee 2014). Another statistic that adds to the importance of wealth inequality is that, as of 2013, less than one percent of the world's adult population owned more than forty percent of the world's wealth (Keating et al. 2013: 22). This one percent of the world's adult population holds more than thirteen times the wealth that two-thirds of the world's adult population holds. The extreme nature of this inequality is hard to ignore.

Recent research of various western liberal democratic economies suggest that cuts in capital taxation have contributed to the rise in wealth inequality (Alvaredo et al. 2013: 4–6, 12–14). This would indicate that a rise in inequality in liberal democracies, and the world, is linked to the rise in inherited wealth due to cuts in the top marginal tax rate and cuts in capital gains taxes. Furthermore, recent analysis and comparison of economic models of wealth inequality, both inside and outside the United States, have indicated that wealth inheritance contributes much more to the wealth share of the richest one percent of wealth holders than for the poorest fifty percent of wealth holders (Cagetti and Nardi 2008; Gokhale and Villarreal 2006).

The next question that suggests itself is why Rawls and Dworkin should be included in this analysis of wealth inheritance at the exclusion of others?

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do end up with intolerably low levels of well-being. Inequality in wealth has grown in liberal democracies to an extent where despite serious concerns for the welfare of citizens diminishing or being incorporated into a system of social protection, some groups of individuals persistently possess vastly more wealth than the great majority of individuals. It seems this requires some explanation which is independent of an analysis of individual welfare.

Rawls and Dworkin are included in this analysis for the simple reason that both argue for unified theories of justice in a democratic society.[3] As Rawls and Dworkin say:

> ...justice as fairness is to provide an acceptable philosophical and moral basis for democratic institutions...(Rawls 2001: 5)

> What political institutions and processes should an egalitarian community have? I assume that the community is large and complex and so must be governed by the decisions of representative officials rather than by separate decisions, case by case, of the whole community. (Dworkin 2000: 184)

> It may seem self-evident that a society committed to equal concern must be a democracy rather than, for example, a monarchy or dictatorship or oligarchy. (Dworkin 2000: 185)

Both Rawls and Dworkin see their theories as existing within and being justifiable to the citizens of a liberal democratic society.[4] Rawls conceives of liberal society as a mosaic of different normative judgements with disagreeing intuitive convictions. Rawls (2001: 32–33) argues that if a liberal democracy is conceived as a society of free and equal persons engaged in a fair system of co-operation then a process of reflective equilibrium will result in an overlapping consensus on a shared justifiable political conception of justice. Rawls expects his theory of justice to be justifiable to a broad

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[3]Given the scope of the contemporary literature and of Rawls and Dworkin's theory, this thesis is focused on wealth inheritance in liberal democratic societies. This does not mean that wealth inheritance is philosophically uninteresting in illiberal non-democratic societies, but only that arguments to restrict wealth inheritance in those societies would be perhaps appropriate or consistent only in those societies. Democratic institutions organised on the general principle of individuals to be governed by free consent, requires normative judgements and an analysis of wealth inheritance that is appropriate to a society with such institutions.

[4]The same expectancy does not appear in Robert Nozick (2013) or Michael Otsuka's (2003) libertarianism, Amartya Sen's (2010) equality of capability or even Gerald Cohen's luck-egalitarianism (2011).

range of disagreeing judgements about how social institutions should be organised. Dworkin (2000: 128, 148) proposes that, if a liberal democratic society accepts the "abstract egalitarian principle" and the "principle of abstraction", then it also accepts equality as a political ideal. This means that the society accepts that governments should show equal concern to all individuals, and that individuals should be free to act as they wish constrained only by the need for society to show equal concern for the life and property of all individuals. However, Dworkin's principles are not absolute principles for political action. Rather they are background principles that Dworkin believes most, if not all, liberal democracies would accept after reasoned reflection. Dworkin (2000: 154–155) argues that his background principles entail a theory of justice that is broadly justifiable to a range of disagreeing convictions on how a society should be organised.

But given the limitations of space I will not argue the merits or deficiencies of any particular theory of democracy. I will not endorse either Rawls's conception of a "property-owning" democracy, or Dworkin's "dependent" conception of democracy (Rawls 2001: 135; Dworkin 2000: 203–204). I will however make an assumption about the democracy that frames this debate which both Rawls and Dworkin have in common.[5] This is that a democracy to some extent requires a decision making procedure that is acceptable to all, which is impartial to the intuitive normative judgements that individuals hold. This means that the comparative analysis of this thesis will be framed within a democratic society that requires restrictions on wealth inheritance to be equally justifiable to a range of disagreeing intuitions about the justice of restricting wealth inheritance.[6]

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[5]This assumption is an implicit endorsement of "democratic pluralism". By this I mean the type of reasonable disagreement that Joshua Cohen (2003: 18) refers to as "reasonable pluralism" or what Thomas Christiano (2003: 42–44) refers to by his view of "Equal Consideration of Interests" or even what David Estlund (2003: 71) refers to as "conscientious disagreement" in a liberal democracy.

[6]Matthew Clayton (2012: 104–105) follows a similar interpretation and compares Rawls and Dworkin's theories as examples of anti-perfectionist liberal-egalitarians.

But, what are these disagreeing intuitions? Specifically, what are the relevant intuitions for justifying restrictions on wealth inheritance? I submit there are three relevant intuitions: the liberal, opportunity and luck intuition. In the following section I clarify these intuitions by showing how they are reflected in the contemporary discussion on the justice of restricting wealth inheritance.

1   A Brief Taxonomy

As I mentioned above, this thesis will be a comparative analysis of how well Rawls and Dworkin justify restricting wealth inheritance to three relevant disagreeing intuitions in a liberal democracy. These intuitions, although not exhaustive provide a useful starting point to analyse how wealth inheritance should be approached in a democracy. In this section I clarify these intuitions by classifying theorists in the contemporary debate about wealth inheritance into theorists who seek to either satisfy the liberal, opportunity or luck intuition.[7] Each intuition draws on a set of concepts and pre-theoretic normative judgements about what matters for the justice of inheriting wealth and any restriction of it in a liberal democratic society.

While similar to the project I propose in this thesis, Clayton's comparison does not draw out the normative intuitions that must be satisfied and attempt an analysis of whether Rawls or Dworkin's theories is better at justifying restrictions on wealth.

[7]Two intuitions that are not included in the taxonomy are the welfare and efficiency intuitions. The welfare intuition is a commitment to a set of pre-theoretic concepts and judgements that emphasise the political significance of individual or social well-being of inheritors and bequeathers. The efficiency intuition is more a justificatory condition that is used by some theorist to justify their normative judgements about the legitimacy of inheritance taxation in itself or at certain rates. The efficiency intuition is a pre-theoretic judgement that all that what is intuitively significant for restricting wealth inheritance is the efficiency of the restrictions to achieving a given end. Very few theorists, at least in the contemporary literature, are committed solely to one of these two intuitions. These intuitions are either commitments that help to justify a judgement or form a complimentary commitment to the opportunity intuition.

The liberal intuition expresses the intuitive judgement that the liberty and freedom of bequeathers and inheritors is what matters most when determining how it is, or can be, just to restrict wealth inheritance. This intuition is a pre-theoretic judgement about whether the restrictions on wealth inheritance maintain the freedom of individuals to accumulate and dispose wealth. The opportunity intuition expresses the intuitive judgement that a measure to restrict wealth is consistent with justice if the opportunities for bequeathers and inheritors to accumulate and dispose wealth are equal. This is a pre-theoretic judgement about whether individuals with the same formal freedoms have an equal chance to exercise their formal freedoms. The luck intuition expresses the judgement that choice as opposed to luck should determine how wealth is distributed regardless of whether it is inherited or bequeathed. The luck intuition considers wealth inheritance to be a matter of luck, for which individuals should not be held responsible whether they inherit wealth or not. The following taxonomy will show how these intuitions are reflected in some of the leading theorists in the contemporary literature surrounding the justice of permitting or restricting wealth inheritance.

The Liberal Intuition

Gordon Tullock (1971) is perhaps the earliest contemporary theorist who argues that we should reject confiscatory inheritance taxes, which progressively transfers a piece of private property into state ownership. By "confiscatory" taxes, I refer to steep progressive inheritance taxation that rises steeply based on either the age or size of the property being inherited. Tullock's perspective can be understood as two arguments about inheritance taxation.

Tullock first argues that a society with a laissez-faire economy with no government policy of income redistribution, is much better at achieving our egalitarian aims if it permits wealth inheritance than if it does not. Tullock (1971: 472) argues that a society that permits wealth inheritance allows

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for capital accumulation that may benefit both the government and the inheritors. Tullock believes that imposing steep progressive inheritance taxes would in effect raise no revenue at all because individuals would spend their wealth before their death. According to Tullock these taxes would also fail to transmit any wealth on to inheritors that truly require some advantage from their ancestors in order to remain competitive in a laissez-faire economy (Tullock 1971: 471).[8]

Tullock's second argument is that inheritance taxes are preferable if they are set at the most efficient level to raise the most revenue but also encourage individuals to produce and accumulate wealth (Tullock 1971: 472). In this regard Tullock is more in favour, not of a steep progressive inheritance tax, but of either a flat or very gradually progressive income tax. These taxes according to Tullock would both raise revenue for the purpose of redistribution but also allow individuals to accumulate wealth so as not to burden the state in old age and allow some freedom for individuals to better the condition of their descendants.

Tullock's arguments emphasise the intuitive importance of individuals having the freedom to accumulate and pass on wealth to future generations. Tullock's perspective is grounded in a conception of society that creates efficient ways for individuals to help themselves and help their descendants. The primary concern of Tullock's arguments is the protection of a bequeather's liberty to dispose their property.

Like Tullock, Edward McCaffery (1994) argues against inheritance taxation. But unlike Tullock he argues not only that it is an inefficient instrument of government but that it is illegitimate in a liberal democracy.

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[8]Tullock (1971: 472–473) concedes that if a society truly wishes to express its egalitarian values in public policy, then even in a society with a laissez-faire economy an income tax system would be a more efficient economic instrument to raise revenue than a tax on wealth. Tullock argues this is more effective, if the reason to impose a confiscatory inheritance tax is to empower the individual who inherits nothing. This sort of taxation would not disincentivise individuals to save and yet would allow a constant stock of private property to be redistributed if necessary.

To this end, McCaffery argues in favour of a consumption tax.[9] McCaffery argues against inheritance taxation on two grounds. Firstly he argues that inheritance taxation at least in the more moderate non-confiscatory way that it is adopted is not "furthering liberal values and principles" (McCaffery 1994: 286).[10] McCaffery argues that this is because inheritance taxation incentivises bequeathing private property before death and conspicuous consumption. Both acts increase inequality of opportunity because a large part of the inheritance tax can be avoided if individuals gift private property well before their death yet control the property until their death. Conspicuous consumption on the other hand can directly increase the inequality of opportunity in the market if wealthy individuals spend their wealth before death such that "It can drive up the costs of basic sustenance" (1994: 291). It is the distortion of the marketplace by conspicuous consumption without saving that can actually lead to less opportunities for the less wealthy to compete. Much like Tullock's argument, McCaffery's argument against inheritance taxation is dependent on a conception of what is intuitively significant in a liberal democracy. McCaffery is concerned that an inheritance tax conflicts with the intuitive preference that individuals in liberal democracies have for a free undistorted marketplace where individuals can have the same freedom to accumulate and save as any other individual.[11]

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[9]McCaffery's argument mirrors the current status of inheritance taxes world wide, where most OECD and developing nations have either abolished inheritance taxes, or instituted very minimal estate taxes (Rij and Helmer 2013). The taxing of income rather than wealth has become the preferred instrument of liberal egalitarian societies to redistribute resources.

[10]Although it is not entirely clear what McCaffery means by "liberal values" he appears to refer to the fundamental commitment of liberal societies to the freedom of individuals to use themselves and their property as they desire.

[11]Barry Bracewell-Milnes (1997) is another theorist who joins McCaffery by arguing for the political legitimacy of wealth inheritance as a social practice because of its efficiency in distributing wealth. Bracewell-Milnes argues that inheritance taxation is costly because it diminishes the incentive for individuals to save and hence

Pace Tullock and McCaffery, Daniel Halliday (2012) defends the legitimacy of inheritance taxation as an economic measure to restrict property bequests. Halliday argues that whilst inheritance taxation has become increasingly unpopular in liberal democracies, it is a legitimate economic instrument to reduce inequality, of opportunity, resources and for the dispersal of wealth concentration. This is because bequests have a lower opportunity cost than property that has already been inherited. Halliday's argument rests on the intuitive normative judgement that any restriction on this liberty over their private property is only preferable if it does not lessen the range of opportunities open to an individual in their lifetime. Halliday (2012: 630) argues that:

> When we note that a bequeather and a gift-giver are both subjectively determining the value of transferring their property over the alternatives, we risk overlooking the way in which a bequeather will, other things being equal, have already had opportunity to derive utility from the property in question, when they occupied the place of the gift-giver.

Halliday's argument in short is that the opportunities available to a bequeather to gift or disperse their wealth before their death are less numerous and less valuable to individuals than after the bequeather's death. Halliday argues that this lower opportunity cost means that inheritance

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grow wealth for society's benefit. This is because wealth inheritance itself according to Bracewell-Milnes (1997: 163–164) is a costless form of wealth creation that increases the subjective value of a piece of property. Bracewell-Milnes believes that through the institution of inheritance wealth can grow in subjective value since it is a form of saving that is never drawn down and which always provides a stable level of consumption for the owner and their descendants. Bracewell-Milnes (1997: 163) argues that wealth inheritance perfectly fulfils the general desires of ownership that savers have. Bracewell-Milne's judgement that wealth inheritance is preferable to any measure that restricts it is grounded in the intuition that society should not impede the individual preference to save and accumulate property and that governments should assist, rather than impede, individuals to pursue this end.

taxation as a wealth transfer tax is at best less coercive or at worst as equally coercive as other forms of taxation. Pace McCaffery, Halliday argues that describing the virtue of social links is no justification for the illegitimacy of inheritance taxation, because gifting before death allows for far more potential social links outside one's immediate family.

It is reasonable to conclude that Halliday, Bracewell-Milnes, McCaffery and Tullock all engage with wealth inheritance by either defending or opposing the taxation of inherited or bequeathed wealth to cater to the liberal intuition. Aside from Halliday, these theorists satisfy the liberal intuition by justifying very little restrictions on wealth inheritance either because of the political illegitimacy of inheritance taxation or its inefficiency.

The Opportunity Intuition

David Haslett (1986; 1997) is one contemporary theorist who argues for the legitimacy of inheritance taxation[12] and the social practice of inheri-

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[12]Two of the earliest theorists to propose an inheritance tax were Ernest Solvay and Eugenio Rignano at the turn of the century. For Solvay an inheritance tax was efficient because it would replace many income taxes and it would increase the total revenue of the state by slowly deincentivising the transfer of wealth through inheritance and incentivising the use of wealth in the economy (Solvay 1897: 407 as cited in Erreygers and Bartolomeo 2007: 615; Lafaye 2008: 27). Rignano (1925: 31) believed an inheritance tax was a legitimate political and economic instrument after the First World War in order "to modify the distributive system in the direction of greater justice without causing violent and disastrous crises in production". For Rignano (1925: 34) an inheritance tax that progressively rose higher every time a piece of property was inherited was an efficient method of redistribution that did not require any radical revolution. An inheritance tax as opposed to an income tax does not limit the incentive of individuals to create wealth since the inheritance tax only comes into effect when an individual inherits rather than bequeaths. Rignano believed that the accumulation of wealth ought to be left to the individual initiative but that the state had legitimate claim on taxing inherited wealth. Rignano (1925: 129) believed that his more minimal programme could be suitable for liberal democracies where the nationalisation of the means of production was not democratically popular. Rignano believed that a more robust welfare system to fix the inequality of resources and life prospects created by an economy advantageous

tance with a strong emphasis on the political significance of increasing the equality of opportunity and reducing concentrations of wealth.[13] Haslett's (1986: 127; 1997: 140) argument is premised on three claims. Firstly that in liberal democracies the well-being of each individual is dependent on their ability to be productive in accordance with their preferences. Secondly that any inequality in the opportunity to be productive undermines an individual's reason to be a productive member of their society. Thirdly, that wealth inheritance is a cause of inequality in an individual's opportunity to be productive in the marketplace and therefore to fulfil their preferences. Haslett concludes that some restriction must be placed on the act of wealth inheritance. Haslett's normative suggestion is a limit on the right to bequest based on the age of the property being bequeathed and a lifetime quota for individual bequests.[14] Haslett's pre-theoretic judgement

to capital owners, could be funded by an inheritance tax rather than a high income tax.

[13]The conceptual roots of a political restriction on the right to bequeath or inherit is found in the work of John Stuart Mill (1864) and Francois Huet (Huet 1853; cited in Cunliffe and Erreygers 1999; Cunliffe and Erreygers 2003; Erreygers and Bartolomeo 2007; Lafaye 2008). Both 19th century philosophers, argue for a political restriction on the right to bequeath what one has been bequeathed. Huet and Mill both believe that individuals should not be afforded complete liberty over a piece of private property they have inherited. Whilst Mill (1864: 289) is more cautious in detailing how this restriction on political rights should be enforced, Huet is clear that inherited wealth transferred once, must be confiscated by the state to redistribute it when the inheritor dies (cited in Erreygers and Bartolomeo 2007: 614). What is distinctive about both theorists is their motivation for engaging with wealth inheritance. They are not motivated by a desire for an optimal economic management of a society's resources, but rather the desire to resolve an inequality of opportunities in the free market by using some political measure. Huet understands the inequality of opportunities resulting from wealth inheritance as contrary to his belief that all individuals have a natural right to an equal share of nature's resources (Cunliffe and Erreygers 2003: 94–96).

[14]Caroline Lafaye (2008) is another theorist who proposes a restriction, in the way that Haslett suggests to more efficiently disperse large concentrations of wealth. Lafaye's crucial contribution to the discussion is in recognising that the inheritance tax does in many cases have the potential to sever social links that individuals wish to make (Lafaye 2008: 32). Lafaye (2008: 32) contends that by enforcing a restriction on the

is what grounds his insistence that a restriction on bequest, rather than inheritance is legitimate. Haslett wants to preserve the opportunity for individuals to accumulate wealth and the equal opportunity to do so.

Like Haslett, Lily Batchelder argues for a "comprehensive inheritance tax". Batchelder (2009: 2) argues that if one assumes a welfarist approach to the role of a tax system, then that tax system ought to be concerned with the welfare of all individuals equally. As such wealth transfer taxes are a legitimate economic instrument to bring about an equal fulfilment of a basic level of welfare for all individuals. Batchelder believes inheritance taxation can be made efficient if it operates as another form of income tax such that the receipt of inheritances should be treated as income that is then taxed at a progressive rate like all other forms of income (Batchelder 2009: 62). In this way Batchelder distances herself from a commitment to formal equality and is motivated by the intuitive significance of all individuals being given an equal opportunity to shape and change their welfare.[15]

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right of bequest above a certain threshold, would force individuals to make social links even within the family that are based on immaterial things such as the skill of self-sufficiency. Lafaye's position seems to be in reaction to the kinds of objections posed by Janna Thompson (2001). Thompson (2001) argues that inheritance taxation is politically legitimate only if it can ensure that the bonds between family members are not broken. Thompson (2001: 128) argues that if individuals are unable to give gifts it makes it impossible for families and societies to nurture a sense of shared heritage and historical connection. Thompson does not argue against the effectiveness of inheritance taxation or its consistency with a broad range of modern political and economic values. Thompson (2001: 125) is concerned that steep confiscatory inheritance taxes will rob a society of its ability to reproduce relations of justice between individuals if relations of care between family members are effectively abolished.

[15]James Hines (2009: 203–204) is another theorist who largely agrees with Batchelder, but emphasises one way in which Batchelder's proposal may be modified. He proposes that the tax be made efficient to increase the well-being of individuals and to break up large concentrations of the wealth that may distort the market due to inequalities in consumption. Hines is motivated then not just by the well-being of individuals but for the inequality of consumption.

Martin O'Neill (2007) responds to McCaffery's general concern that inheritance taxation encourages individuals not to save and accumulate capital by arguing that this is an objection to the practicality of the taxation and not its political legitimacy. O'Neill argues that inheritance taxation can be, and is at least in the United Kingdom, applied in such a way that it does not tax the majority of individuals but only those above a certain wealth threshold. Therefore taxation does not prevent the majority of individuals from creating bonds between generations. O'Neill argues that inheritance taxation is as legitimate a form of taxation as any form of taxation because:

> The money and property that we legitimately hold is in part
> defined by, and results from, the operation of the whole complex
> web of tax rules and regulations. (O'Neill 2007: 65)

O'Neill argues that progressive optimal taxation on wealth transfers can both break concentrations of wealth and provide more opportunities for those who inherit little to compete in the marketplace. O'Neill is motivated by a strong commitment to the notion that what is of political significance when discussing wealth inheritance is the ability of a society to redistribute wealth so that liberal property rights are not violated and individuals still have an equal opportunity of achieving social and economic positions.

The Luck Intuition

Anne Alstott, following her book *The Stakeholder Society* in 1999 with Bruce Ackerman, argues in favour of inheritance taxation because it mitigates the luck of having poor ancestors. Alstott argues that individuals are not morally responsible for the advantages or the disadvantages of wealth inheritance because they have not chosen to inherit. Alstott argues that equalising opportunity should be interpreted not as equalising the range of choices that individuals might have, but as holding individuals responsible

for the choices they do make.[16] Alstott's interpretation is clear when she writes in 2007:

> ... the starting point for each individual is the threshold of adulthood - the point at which she can make choices and should be held responsible for their consequences. Childhood is taken to be a time for nurture and education - for the development of the capacities one needs to make choices about one's vision of the good - and the equality of resources ideal suggests that every child should receive an equal investment. At adulthood, the process of development is taken to be finished, and each individual accedes to her equal share of material resources. (Alstott 2007: 486)

Alstott argues that if the purpose of the inheritance tax is to benefit individuals who do not inherit then it must not be seen as a tax on the virtue of saving and capital accumulation, but rather on the concentration of wealth (Alstott 2007: 505). Therefore a lifetime exemption on inheritance up to a certain amount would ensure that individuals may accumulate wealth whilst prevent large concentrations of wealth. Alstott believes an expanded inheritance tax - or accessions tax - that raises revenue at an economically optimal rate would work well in funding a public inheritance fund in order to provide, those who inherit little or nothing, a form of social inheritance. Alstott's suggestion entails that intelligent individuals may accumulate large concentrations of wealth and have more opportunities than others. For Alstott this is permissible if those individuals are genuinely responsible for their larger set of opportunities. This largely conforms to Alstott and Ackerman's recommendations in 1999. The pull of the luck intuition is clear in Alstott's normative claims. It is the intu-

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[16]This intuitive emphasis on choice is the same intuition that Christopher Lake (2001: 5, 12) labels the "egalitarian intuition" when he attempts to clarify what pushes theorists to make certain claims about justice that are rooted in their views about equality and responsibility.

itive appeal of compensating individuals for the role of luck in not allowing individual to live the life they choose, that forces Alstott to judge in favour of inheritance taxation.

The Results of the Taxonomy

The above taxonomy reveals the contemporary discussion as complex but intelligible if understood through the framework of the liberal, opportunity and luck intuitions. Without this framework it is not clear with whom theorists are arguing or how they justify their arguments. The three political intuitions used to classify the literature highlight the most significant intuitions that motivate the conflicting normative proposals. Theorists committed or motivated by the liberal intuition are concerned with the effect of any restriction of wealth inheritance on an individual's formal freedoms. Theorists committed to the opportunity intuition seem to have a conceptually prior concern, namely the equal chance of individuals to exercise their formal freedoms. The lone contemporary theorist committed to the luck intuition is concerned with whether any restriction on wealth inheritance appropriately holds individuals responsible for the opportunities they actually choose. The intuitive disagreement between these three groups cannot be resolved by merely perfecting or repeated criticism.

I submit that these three groups of disagreeing perspectives on restricting wealth inheritance reflect the disagreeing convictions of individuals and organisations in a democracy. Therefore a normative perspective on the justice of restricting wealth inheritance must be justifiable to these disagreeing group of intuitive convictions. To this end, a more comprehensive inquiry is needed into what restriction of wealth is justifiable to a broad range of disagreeing perspectives in a democracy. I submit that Rawls and Dworkin's theories are best suited to this inquiry, because they both expect to justify their theories of distributive justice to a range of disagreeing perspectives in a democracy.[17] The following chapter argues that the three

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[17]Other contemporary theories of justice are not included as candidates because they

intuitions in the taxonomy above necessarily conflict. It is this conflict I argue that reflects the disagreements in liberal society between competing conceptions of just restrictions on wealth inheritance.

2   Methodology

The taxonomy above shows that the three relevant intuitions to which Rawls and Dworkin justify their restriction of wealth inheritance are reflected in a seemingly intractable discussion about the justice of wealth inheritance. I believe these disagreeing intuitions encapsulate and ground some of the conflicting normative perspectives on restricting wealth inheritance in liberal democracies. So far we have established the framework of this thesis thusly: Rawls and Dworkin are selected at the exclusion of others because they attempt to justify their theories in a liberal democracy, which for the purposes of this thesis is a society which at the very least endorses a reasonable pluralism about competing normative positions. These positions include, again in the context of this thesis, three normative intuitions on what matters for the justice of restricting wealth inheritance, namely the liberal, opportunity and luck intuition.

But the question that now presents itself is: how will we compare the ways Rawls and Dworkin go about justifying their restriction on wealth inheritance to these normative intuitions? In other words, what is the methodology of this thesis? As I alluded to earlier, I offer a comparative analysis which I hope to conclude in favour of Dworkin's theory. But what

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do not appear to impartially cater to the liberal, opportunity and luck intuition. Robert Nozick's (2013) theory intends to cater only to the liberal intuition and so would be partial to justifying only those normative judgements that liberal democracies should leave wealth inheritance unregulated or evolve purely on the basis of individual decisions. Gerald Cohen's (2011) version of luck-egalitarianism intends to cater only to the luck and opportunity intuition in such a way that is partial to the judgement that liberal democracies should redistribute vast amounts of wealth and restrict the institution of wealth inheritance.

are the metrics of this analysis? I submit three metrics.

1. Internal coherency: This is defined as the internal coherency of a theory's theses and motivations after any modifications.

2. Justifiability to each intuition: This is defined as the attempt of a theory of justice to answer rather than ignore the normative concerns associated with each intuition.

3. Broad or Equal Justifiability to all three intuitions: This is defined as the ability of a theory to give equal weight to all three intuitions.

The first metric is perhaps both the most crucial but will also be the least likely to separate Rawls and Dworkin in the analysis. Internal coherency will involve, judging whether Rawls and Dworkin can maintain a coherent set of normative propositions and definitions about restricting wealth inheritance. These definitions will include the concepts that Rawls and Dworkin use to construct their principles. Internal coherency will also include, judging whether the conclusions that Rawls and Dworkin draw are consistent with their own motivations and the motivation of proposing a theory of justice in a democratic society. This will mean that a modification that makes a theory incoherent with respect to its principles or its initial motivations will be ruled out as unsuccessful. While I believe maintaining internal coherency will be crucial it will be unlikely to rule out Rawls or Dworkin given that both theories have unified plausible aims.

The second metric is how well Rawls or Dworkin answer the three relevant normative intuitions. This is a judgement about whether the modifications to Rawls or Dworkin's theories forces either theory to ignore one of the normative intuitions. This can occur if a modification rejects a principle that previously answered a normative concern of an intuition or if it changes the scope of a principle to shift its focus away from one intuition to another. In either case this will count as a significant cost to the candidate theory. This is because the aim of this thesis is to compare how Rawls and Dworkin justify their theories to the three normative intuitions.

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If even one of the intuitions is ignored then it shows that the candidate theory in question has not justified its restriction of wealth inheritance to the three relevant intuitive convictions in a democracy.

The third metric is perhaps what will clearly separate Rawls and Dworkin's theories in the comparative analysis. This is because the third metric is a judgement of how well the theories justify restricting wealth inheritance in three ways, namely how much weight they give to each of our three relevant normative intuitions. This metric judges how well Rawls and Dworkin can balance the normative concerns of competing intuitions without prioritising one intuition vastly above the others. This will mean that even if Rawls or Dworkin's theories answered the normative concerns of all three intuitions they could still have costs if they choose to give more weight to one intuition more than the others. In effect, this will mean the candidate theory is not as impartial between the personal normative convictions of citizens as is required in a democracy.[18] Deciding how well

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[18]This method is similar to the Canberra Plan method of resolving metaphysical disputes. It is similar because it uses intuitions as a primary tool to analyse and decide between competing theories. Canberra Plan conceptual analysis largely consists of three parts (Jackson 1998: 35–36; Braddon-Mitchell and Nola 2009: 5–9). First one looks to the folk or common-sense concepts or institutions that describe certain phenomenon or entity as real. Using these concepts we remove the theoretical or contested terms by replacing them with bound variables. This process fixes the relationship between those terms in our folk theory that are contested and those which are not. Then we look at our best scientific theories for entities or phenomena that play the roles the bound variables play in our folk theory. This last step might show that what is real is more rich and complex than our folk theory or that our folk theory may be false. What is significant for our purposes is that those who use the Canberra Plan methodology believe the best way to arrive at our initial cluster of concepts is to look to our intuitions. As Jackson (1998: 135) says:

> Moreover, we must start from somewhere in current folk morality, other-
> wise we start from somewhere unintuitive, and that can hardly be a good
> place to start from. And we must seek a theory that stands up to critical
> reflection: it can hardly be desirable to end up with a theory that fails to
> stand up to critical reflection.

Rawls or Dworkin do this will be a matter of how they can maintain an equal focus on all three intuitions while solving any problems but not departing too far from their original motivations.

3 An Overview

I now hope the core elements of this thesis are clear, namely the framework and the methodology. I aim to suggest that Dworkin's theory of justice is better at justifying restricting wealth inheritance in a liberal democracy than Rawls's theory. I argue this on the grounds that Dworkin's theory is less costly in justifying restrictions on wealth inheritance equally to all three intuitions. My approach to that conclusion will be the following way.

Chapter 1 will introduce Rawls and Dworkin's theories of justice and how each justifies restrictions on wealth inheritance differently. The chapter will also clarify two sets of distinctions. First a clarification of the three distinct political intuitions that must be catered for by Rawls and Dworkin's theories. Second, wealth inheritance itself will be analysed into two distinct formal relations that must be given equal priority by a theory of justice.

Chapter 2 will critically analyse Rawls's theory with respect to three objections. This analysis will conclude that Rawls's original theory cannot justify restricting wealth inheritance to the opportunity and luck intuition coherently without modification. Firstly I will critique the consistency

My methodology differs from Canberra conceptual analysis in a number of ways. I do not revise or discount intuitions if they depart from our empirical observations. Any failure of Rawls and Dworkin's theories to account for the three intuitions is a cost for Rawls and Dworkin and not our initial intuitions. I use the intuitions as fixed entities, which a candidate theory must satisfy by answering the normative concerns of those individuals in a democratic society who hold the particular normative intuition. In some sense the role of theories and intuitions is reversed in my methodology, because the theories are tested for their impartiality towards the intuitions as opposed to testing the intuitions themselves.

of Rawls's position towards the arbitrariness of social class and wealth inheritance. An objection is then borrowed from Gerald Cohen (2008) as to whether Rawls's basic structure can justify the difference principle and its scope. Finally, I will discuss Iris Marion Young's objection that Rawls's basic structure of social institutions is too narrow to appropriately propose a conception of justice in a liberal democracy.

Chapter 3 will critically analyse Dworkin's theory with respect to three objections. I argue in the analysis that Dworkin's original theory cannot coherently justify restricting wealth inheritance. Firstly, I will discuss the Harshness Problem which argues that Dworkin's theory is incoherent with respect to the motivations and expectation of proportionate treatment. Secondly, I will discuss the Wrong Focus Objection which argues that Dworkin's theory focus on the wrong subject in its pursuit to restrict wealth inheritance by equalising resources. Thirdly I will discuss Gerald Cohen's (2011) challenge that Dworkin's theory makes an incoherent distinction between preference and circumstance.

Chapter 4 will attempt to resolve the internal problems and the external challenges posed to Rawls and Dworkin's theories. I first offer solutions to the Distinction Problem and then Young's Structural Injustice Problem. I then offer defences of Dworkin's theory against Cohen's theory of Equal Access to Advantage.

Chapter 5 attempts the final step of the comparative analysis by addressing the benefits that each solution provides and the costs they inflict. I argue that Rawls's theory, once it adopts the solutions I offer, does not balance the normative concerns of all three intuitions. I argue that Rawls prioritises the luck intuition above the liberal intuition and then the opportunity intuition above the luck intuition. In contrast I argue Dworkin's theory only prioritises the opportunity and luck intuition slightly above the liberal intuition. In sum, Dworkin's theory is less costly because it balances the normative concerns of those who hold each of the three intuitions better than Rawls's theory.

Chapter 1

Intuitions, Relations and Candidate Theories

In the Introduction I outlined the landscape of normative judgements, both philosophical and broader, on wealth inheritance. The landscape is complex, with deep disagreement on how and why liberal democratic societies should restrict wealth inheritance. To understand this complex landscape, I introduced three political intuitions to organise the contemporary literature. These intuitions offer a way to understand the intuitive judgements that theorists are committed to and how these judgements conflict. The intuitions are detailed further in this chapter.

However, using the political intuitions to order the literature did not in itself reveal any plausible way to resolve the conflicting judgements in a liberal democracy. This chapter presents two candidate theories to solve this problem. Rawls and Dworkin's theories attempt to prescribe broadly justifiable principles for restricting wealth inheritance in a liberal democracy. Rawls and Dworkin's theories are selected as candidates because they are conceptions of justice that attempt to justify normative principles to a broad range of political intuitions in a liberal democracy. To this end, Rawls and Dworkin's theories must be acceptable or at least cater to the three political intuitions that reveal the intuitive commitments of disagree-

ing theorists in the contemporary debate about wealth inheritance. This chapter argues that both Rawls and Dworkin's theories of justice can be reconstructed to achieve this end.

Before considering Rawls and Dworkin's theories, two sets of distinctions must be clarified. First the distinction between two constitutive relations of wealth inheritance, and second the distinction between the three political intuitions used to frame the debate about wealth inheritance. Both distinctions are required to understand how Rawls and Dworkin's theories apply to wealth inheritance since both theories are not originally intended solely to argue for the restriction of wealth inheritance. These clarifications are required to understand how the reconstruction of Rawls and Dworkin's theories judge inheritors and bequeathers with different political intuitions about wealth inheritance and how Rawls and Dworkin's theories can be justified to these individuals.

In §1.1, wealth inheritance is understood as consisting of at least two relations - the diachronic and synchronic relations. These relations are offered as the fundamental dimensions of wealth inheritance that candidate theories should account for. This section will also identify one desideratum for a successful theoretical approach, namely that any successful approach has to provide a consistent and on the balance of costs and benefits a complete account of both the synchronic and diachronic relations.

In §1.2, I return to the three intuitions used in the introduction to more clearly identify the normative intuitions that motivate theorists in the contemporary debate about wealth inheritance. The section reveals the conflicts between the three intuitive positions and how these conflicts are reflected in the contemporary literature.

In §1.3, I survey John Rawls and Ronald Dworkin's respective theories of justice. While both theories are not composed to deal specifically with wealth inheritance they are reconstructed and presented in such a way in light of the intuitions regarding wealth inheritance. The survey also includes an explanation of how both theories attempt to be justifiable

to the three disagreeing political intuitions that divide the contemporary literature.

In §1.4, I outline some of the problems that Rawls and Dworkin's theories may need to resolve. Either the arguments show that Rawls and Dworkin's theories are inconsistent in their attempt to justify restricting wealth inheritance, or the arguments show that Rawls and Dworkin do not actually appeal to all three of our political intuitions.

1.1   Two Constitutive Relations

Assessing whether Rawls's theory or Dworkin's theory better justifies restricting wealth inheritance requires a clearer definition of wealth inheritance than has been used so far. I propose that the phenomenon of wealth inheritance is constituted by at least two fundamental relations - the synchronic and diachronic relation.[1] However, the present project is not a description of the sufficient and necessary conditions for wealth inheritance but rather an exploration of what liberal democracies are justified in doing once they encounter something we consider to be wealth inheritance. Therefore, this section clarifies the phenomenon that Rawls and Dworkin's theories judge should be restricted and how the phenomenon itself affects the justifiability of their theories in a liberal democracy.

The first constitutive relation is the synchronic relation that exists between inheritors and bequeathers. The synchronic relation conceptualises wealth inheritance as a distribution of wealth where individuals grow their capacity to bequeath by accumulating wealth. The synchronic relation

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[1]This terminology for the relations that constitute wealth inheritance is used by Janna Thompson (2009b: 2) to describe Rawls's (Rawls 1999: 251-8) conception of the constitutive relations of intergenerational justice. Thompson's terminology of "synchronic" and 'diachronic" is used to pick out the two different ways that just relations may exist; first between living contemporaries and second between living contemporaries and future. I use these terms to pick out the relations of wealth inheritance that are relevant to our concerns about the justice of restricting the practice.

can be observed at different instances in a society's history to provide a snapshot of how wealth is distributed and what political measures caused the distribution.[2] In general terms the relation exists between agents who can exercise the political liberties relevant to private property in the same way. The role of a bequeather is defined as an agent who has enough property to transfer to another agent. The role of an inheritor is defined by the capacity to have ancestors who can bequeath or as an agent who has already benefited by an inheritance. In the synchronic relation individuals are economic agents that use their capital to fulfil the desires they have the opportunity to satisfy. The range of opportunities depends on the amount of capital they have and their ability to use it.[3]

The second constitutive relation of wealth inheritance is the diachronic relation between a bequeather and an inheritor. The diachronic relation conceptualises wealth inheritance as a transfer of wealth. This is different from the synchronic relation where inherited wealth is static and does not move between individuals. The most important property of the diachronic relation is that individuals and their wealth are in a dynamic relation. The diachronic relation is the relation of wealth inheritance where individuals become political actors as opposed to merely property owners. This is not

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[2]The synchronic relation appears different at different times even when it operates between the same sets of individuals. The synchronic relation in adulthood when one is an inheritor looks strikingly different than when an individual is in childhood and enjoys the effects of inherited wealth. The synchronic relation also exists between bequeathers. For example the relation between inheritors as young adults would seem unjust if some inheritors had inherited large amounts of wealth and other inheritors inherited very little. Contrastingly the relation would seem more just in middle age or old age if some bequeathers have more wealth to bequeath due to the income they accumulated through hard work. Here the synchronic relation once again seems different if relating bequeathers in middle age as opposed to old age.

[3]The synchronic relation forces individuals to view their place in society as a whole or at least as one individual amongst the set of inheritors or the set of bequeathers. Individuals must then justify their socio-economic position and the opportunities of that position rather than any specific political action.

to say that being a property owner is not a political action but merely that it is in the diachronic relation that individual freedoms are exercised and individuals have a causal influence on the life of other individuals. The diachronic relation is the conditional relation that decides the distributive outcome of the synchronic relation.

In the diachronic relation individuals are political agents exercising a particular freedom: the freedom to transfer property to one's descendants, or the freedom to receive property from one's ancestors. The diachronic relation describes two groups, each of whom views their own perspective as simple property use. The bequeathers undertake a political action by transferring their property, without coercion or engagement in the wider economy, to their descendants. Importantly this relation does not involve the satisfaction of an immanent desire, eg. nourishment, but a developed desire that reaches its final satisfaction with the act of bequeathing wealth. It may seem that the diachronic relation is asymmetric since inheritors stand in relation to bequeathers not as property users but as property accumulators. The perspective of an inheritor is that of someone who enjoys surplus yield from an arbitrary event. For farmers this event may be heavy rains, for a pensioner who purchases a lottery ticket it may be an unlikely but lucky sequence of numbers, and for an inheritor it is the arbitrary luck of having wealthy ancestors.

One criterion that emerges to decide the success of Rawls and Dworkin's theories, is whether both the synchronic and diachronic relations are taken into account. Given that both theories expect to be justifiable to all, if not most, individuals in liberal democracies, a theory of justice that ignores either the diachronic or synchronic relation will not be justifiable to a broad range of disagreeing judgements. For example, if a theory were to take into account only the diachronic relation and restrict wealthy bequeathers transferring their wealth, that theory would not be justifiable to a group of inheritors who are disadvantaged and never have sufficient capital to accumulate enough wealth to compete with their fellow wealthy

inheritors.[4] This theory would only account for the injustice of bequeathers and inheritors who are diachronically related but not the injustice between inheritors who are synchronically related. Both constitutive relations of wealth must be taken into account to decide whether Rawls or Dworkin's theory is the better theory in justifying restrictions on wealth inheritance to a range of disagreeing intuitive judgements.

1.2   Intuitions

Rawls and Dworkin propose an approach to restricting wealth inheritance that is intended to be justifiable to a range of conflicting judgements. This section describes in greater detail the three political intuitions outlined in the Introduction. I argued in the Introduction that the three normative

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[4]A theory that accounts only for the diachronic relation would be a "deflationary" approach to restricting wealth inheritance. Robert Nozick's (2013) Right-libertarianism and Janna Thompson's (2009b; 2009a) Communitarianism are two theories that allege the diachronic diachronic has been ignored by Rawls and Dworkin and that this ignorance is unjustifiable to those who hold the liberal intuition. Nozick (2013: xix, 178) is supported by Loren Lomasky (1987: 16, 54), Edward Feser (2005: 71) and Eric Mack (Feser 2005: fn. 27) who argue for a minimal restriction of an inheritors right to inherit so that all individuals have a chance to become bequeathers in their lives. On the other hand Thompson argues for minimal restrictions on inherited wealth on the grounds that restricting it in the way Rawls and Dworkin suggest ignores the intuitive importance individuals place on their intergenerational obligations and commitments. To restrict wealth inheritance like Rawls and Dworkin is to break the relationships formed by these obligations even when individuals in liberal democracies value them so highly. Both theories allege that Rawls's Dworkin's theory do balance the normative concerns of the liberal intuition as equally as Rawls and Dworkin hope with the associated concerns of the opportunity and luck intuition. Despite this, these theories have not been included in the comparative analysis because, as Michael Levy (1983: 545–548) and Will Kymlicka's (2002: 102–165) analyse of political philosophy and Michael Otsuka (2003), Peter Vallentyne (2007) and Hillel Steiner's (2009) expositions on "Left-libertarianism have shown, the larger debate about how best to accommodate the concerns of liberty and equality when restricting wealth inheritance is complex and too large for the scope of this thesis.

intuitions relevant for this dissertation are reflected in the contemporary literature on the justice of restricting wealth inheritance. In this section I go further to explain why these intuitive normative judgements conflict. I explain the conflicts to clarify the kinds of normative concerns that Rawls and Dworkin must answer and give equal weight to in their theories.

Our taxonomy of the contemporary literature began with the submission of an intuition that reflects the considered convictions of Tullock (1971), McCaffery (1994), Bracewell-Milnes (1997) and Halliday (2012). Termed the *liberal intuition*, it is the judgement that wealth inheritance should be unrestricted or at least minimally restricted because the justice of wealth inheritance depends on the preservation of the bequeather's liberty. The intuition asks us to attend to the concerns of the bequeather as a disposer of private property. The state of affairs pertaining to wealth inheritance is judged as just, so long as the bequeather is able to exercise the individual freedom to dispose of their private property as they like without violating the liberty of others. Tullock (1971: 465–466) expresses this intuitive judgement best when he states:

> ... we permit people to leave their money to whom they wish, not because of interest in the legatee, but because we are interested in the testator. We are, in this view, compelled by the mere logic of private property to permit a man not only to give it away while he is alive, but also to give it away on his death.

McCaffery (1994: 296) is committed to a similar judgement when he stresses that a tax restriction on wealth inheritance is unpopular in liberal democracies because:

> The estate tax is quite possibly an anti-sin, or a virtue, tax. It is a tax on work and savings without consumption, on thrift, on altruism.

Like Tullock, McCaffery is concerned with the way inheritance taxation imposes restrictions on bequeathers. This judgement is similar to Bracewell-

Milnes's (1997: 163) insistence that rational agents in liberal democracies prefer "ownership to consumption". Bracewell-Milnes's judgement is grounded in the belief that the restriction of wealth inheritance should be aligned to how agents in liberal democracies want to behave, namely to own wealth rather than consume it. Even though Halliday (2012: 621) argues in favour of restricting wealth inheritance, his judgement is based on the conviction that a restriction on wealth inheritance violates the freedom of bequeathers less than an income tax on inheritors. All four judgements in the contemporary literature are grounded on the intuition that the justice of restricting wealth inheritance depends on how the liberty of the bequeather over their property is restricted.

The liberal intuition, however, also entails that if the inheritor is not violating the liberty of the bequeather to dispose of their private property, then the inheritor is acting in a just manner. Accordingly, many contemporary theorists including Tullock and McCaffery judge that even a tax on inheritors is unjust and that any taxation designed to redistribute wealth must take the form of either an income tax, or a consumption tax.

The second intuition submitted in the taxonomy, the *opportunity intuition*, reflected a set of political convictions that conflict with the liberal intuition. The "opportunity intuition" is a helpful label for set of convictions held by Chester (1976), Haslett (1986; 1997), Lafaye (2008), Batchelder (2009) and O'Neill (2007). These theorists are committed to the judgement that the equality of *opportunity* that bequeathers and inheritors have to exercise their social and economic freedoms is what decides the justice of restricting wealth inheritance. The theorists are concerned by a society with a market economy where agents, with similar talents and willingness, do not have the same opportunities open to them to achieve positions in society and the market. Haslett (1986: 128) express this best on behalf of all the above theorists when he states:

> But for people to be productive it is necessary not just that
> they be *motivated* to be productive, but that they have the

opportunity to be productive.

When he repudiates taxing income and not wealth, Chester (1976: 62, 100) expresses the same underlying commitment to the judgement that the justice of any policy that restricts wealth inheritance is dependent on the way it promotes an equality of opportunity. The focus on the distribution of wealth as opposed to income reflects the theorist's consideration of the synchronic relations of wealth between all agents, not just as lone individuals with relations to other individuals. This consideration reveals that some agents have more opportunity due to differences in education, established wealth and personal relations to people of power and influence. Lafaye (2008: 30) expresses this clearly when she states that judging the justice of restricting wealth inheritance:

> . . . ought to refer not only to the balance between personal and impersonal standpoints involved in these reforms, but also to their ability to correct inequalities of opportunities due to morally arbitrary facts.

The opportunity intuition as I understand it here is distinct from the normative intuition that all agents ought to have the same level of resources at any given time. Rather, it is the intuition that wealth inheritance is just, so long as agents with similar natural talents and motivations have equal access to the possible means to live the life they desire by gaining social positions and economic goods. The opportunity intuition conflicts with the liberal intuition because the latter is a concern for individuals to have the liberty to bequeath if they have enough wealth, while the former is a concern for all individuals to have an equal chance to accumulate enough wealth to bequeath. It appears that theorists committed to the opportunity intuition and liberal intuition hold opposing normative judgements of what a liberal society should equalise or protect. The former want to equalise the chances for individuals to bequeath while the latter want to equalise the formal liberty of an individual to bequeath if they have a chance to do so.

The final political intuition, termed the *luck intuition*, in our taxonomy was the intuitive judgement that the justice of restricting wealth inheritance was dependent on mitigating the role of luck in determining whether an agent can live the life they desire. Specifically it is an intuition about the role luck plays in determining whether agents are morally responsible for their interactions with other individuals. The luck intuition assumes that a particular state of affairs is just or at least more just than other states of affairs if individuals have made a genuine choice to live in that particular state of affairs. Importantly the luck referred to by the luck intuition is not the inherent luck of guessing the result of a coin toss or some other event irrelevant to an individual's prospects in life. Rather it is the luck inherent in birth, some illnesses or the effect of fluctuations in the global economy that diminish the role of genuine choice in people's lives. Wealth inheritance is judged as a lucky product of birth that does not reflect an individual's choices, but arbitrarily distributes resources. Alstott (2007: 477) is the only theorist in the contemporary literature who is committed to this intuitive judgement of wealth inheritance. She grounds her judgement in the notion that:

> ... outcomes ought to reflect one's choices (or ambitions) - that one should take responsibility (in the sense of bearing consequences) for one's choices.

If theorists are committed to the judgement that distributions of wealth should reflect choices, then restrictions on wealth inheritance are more likely to be just. However a commitment to the luck intuition conflicts with both the liberal and opportunity intuitions. The luck intuition as I understand it here, is not concerned with the restrictions of a bequeather's liberty over their private property, or whether inheritors and bequeathers have the same opportunities to exercise their freedoms. Importantly, the luck intuition differs with the opportunity intuition because the luck intuition is perfectly compatible with an inequality of opportunities for individuals who do not inherit, so long as their disadvantage is the result of

genuine choice. This means that the luck intuition is not concerned with making the range of choices open to all individuals equal, but just that individuals should be morally responsible for the choices that are open to them. The luck intuition is concerned with the justice of individuals with equal liberties, having their choices limited or curtailed by luck or unchosen circumstances. This consideration is not limited to individuals who are similarly talented or willing, but is in fact sensitive to the differences in talent and willingness between individuals and the reasons for these differences. Consequently, theorists who hold the luck intuition are opposed to those theorists committed to the liberal and opportunity intuition with respect to what states of affairs individuals are morally responsible for in liberal societies.

The above clarification brings out the conceptual links between our taxonomy of the contemporary literature and the conflicts between the detailed intuitions. The clarification has revealed that theorists arguing in the contemporary debate about what liberal societies should do about wealth inheritance, hold disagreeing normative judgements that reflect a conflict of political intuitions. As I proposed in the Introduction I view this conflict as a form of reasonable democratic pluralism about what intuitively matters to individuals who live in a democratic liberal society that proposes restrictions on wealth inheritance. My thesis enters this framework of reasonable pluralism and compares whether Rawls's theory or Dworkin's theory is better suited to guide us through the pluralism. Both attempt to do this by balancing and catering to the disagreeing intuitions by proposing principles about how to organise social institutions and to redistribute wealth.

1.3 Candidate Theories

This section explicates two candidate theories of justice that argue for a restriction on wealth inheritance. Both theories intend to be systematic

theories of justice that are justifiable to a range of disagreeing conceptions of the good life for the individual and the politically right action for society. As explained in the Introduction, Rawls's conception of liberal society as a system of fair co-operation between free and equal people, and Dworkin's conception of the abstract egalitarian principle and principle of abstraction entail that they must be impartial to a range of disagreeing judgements about restricting wealth inheritance. Neither theory is intended to cater to only a narrow set of normative judgements, but a range of disagreeing convictions about what is just in a liberal democracy. This is not to say that Rawls and Dworkin judge wealth inheritance in the same way. On one way to understand them, the theories prioritise the three intuitions in different orders but attempt to cater to all three.

1.3.1   Rawls's Justice as Fairness

One distinctive aspect of Rawls's theory is that it does not judge the inequality of wealth inheritance as morally distinct from the inequality in natural endowments like intelligence or height. Rawls (1999: 245; 1971: 278) is unequivocal when he says:

> The unequal inheritance of wealth is no more inherently unjust than the unequal inheritance of intelligence.

However Rawls (1971: 277–279; 1999: 245–247; 2001: 56) qualifies this view when he argues that the inequality of wealth inheritance is just insofar as it benefits the "least fortunate" and is compatible with his first and second principles of justice. For Rawls the institution of wealth inheritance does not meet these conditions and therefore it is just to restrict it through taxation. Rawls's judgement requires an account of what his principles of justice are and why a liberal democracy should accept them as justification for restricting wealth inheritance.

Rawls's (2001: 42) first principle is that in a just society, each individual has an indefeasible claim to equal liberties that are compatible with

the liberties of all other individuals. These liberties are also assured so they have equal value to all. This means that liberties for one group of individuals cannot be curtailed for the benefit of another group, for the efficient management of the economy or state security. One of the liberties that Rawls believes is guaranteed by his principle is the freedom to own private property and the freedom to use it to further our self-interest.

Although the freedom and self-determination of bequeathers and inheritors is important for Rawls, it is important only in the context of facilitating ongoing mutual agreement on an arrangement of social institutions. To achieve this Rawls (2001: 42) introduces his second principle of justice, which states that social and economic inequalities are permissible if they maintain a fair equality of opportunity and be of the "greatest benefit to the least advantaged". While Rawls does not believe that wealth inheritance is inherently unjust, he does believe it is unjust in some circumstances. These include circumstances in which wealth inheritance prevents similarly talented and motivated individuals to have equal opportunities to attain economic goods and social positions. This is the basic consequence of Rawls's second principle of justice which is a combination of the difference principle and the principle of fair equality of opportunity (2001: 43, 64).

The first part of Rawls's second principle of justice is the principle of fair equality opportunity which states that the attainment of economic goods and social positions in a society should be equally open for competition by all individuals (Rawls 2001: 43–44). The principle of fair equality of opportunity does not just refer to economic and social position being formally open to competition but that all individuals of similar talent and motivation should have an equal chance to attain them. The difference principle states that inequalities in the distribution of economic goods or social positions are permissible and just if the inequalities are of some advantage to the worst off in a society and that without these inequalities the worst off would have even worse prospects. By "worse off" Rawls refers

to a general description of the social and economic opportunities that an individual is likely to have. By "opportunities" I mean the real prospects an individual has for leading their life the way they wish in accordance with the laws and institutional arrangements compatible with the first principle of justice. These desires can include increasing individual welfare, the accumulation of property or the fulfilment of some long term desire.

Rawls acknowledges three ways that his second principle of justice can be interpreted. One way is that the difference principle along with the first principle of justice judges a state of affairs to be just if individuals are allowed to exercise their liberties and talents over their private property as they see fit (1971: 72). Such a state of affairs would yield the most efficient distribution of social positions and goods because no alteration in the state of affairs could be made that would advantage any individual without disadvantaging another individual. This state of affairs is what Rawls refers to as being an efficient distribution. This interpretation of Rawls's principles of justice would not judge wealth inheritance or bequest to be unjust because individuals are exercising their liberties and talent freely where no redistribution of wealth could advantage some individuals without disadvantaging other individuals. Therefore this interpretation of the second principle would not judge that wealth inheritance ought to be restricted. Rawls argues that this interpretation of his second principle is not justifiable in a liberal democracy because it allows arbitrary aspects of an individual's life to radically affect their life prospects and so does not treat all individuals as free and equal.

Rawls's second interpretation is that the principle of fair equality of opportunity requires that the similarly talented and skilled individuals in a society should have the same social and economic opportunities (1971: 73–74). To this end, a society should try and mitigate the effects of the initial social class the individuals are born into by regulating the free market system so that opportunities in education, healthcare, and cultural knowledge are open to all citizens. By "social class" Rawls refers to the income

bracket of the individual's parents. This second interpretation would judge wealth inheritance as just because it accepts the initial natural distribution of property and opportunity. This second interpretation would not judge that society ought to restrict wealth inheritance. Rawls believes that the flaw with this interpretation is that it accepts that individuals with differences in their natural talent will have different prospects and opportunities no matter the social or economic regulation.

Rawls rejects his first two interpretations in favour of a third. This third interpretation is what Rawls calls "democratic equality" (1971: 75–76) or "liberal equality" (2001: 44). In this interpretation the difference principle would ensure that a state of affairs could have an unequal distribution of resources and starting social positions and still be just (1971: 75–80). Such a state of affairs could still be just as long as the unequal distribution was of some advantage to the worst off individuals in that society. The distribution is unjust, if diminishing the prospects of the better off did not make the prospects of the worst off better. Rawls does make a point to differentiate between his liberal equality and the formal meritocracy of the second interpretation. Liberal equality for Rawls does not accept that equal opportunity should just apply to those with similar natural talents and skills but to everyone in the society regardless of their natural talents and skills (2001: 43–44). To do this society must redress the initial unequal distribution of natural talents and socio-economic positions by compensating individuals through social initiatives and not only by state regulation. But Rawls is quick to point out that such initial inequalities must not be eradicated or those advantaged would be disadvantaged in ways that violate their individual freedom (2001: 43). The liberal equality interpretation of Rawls's second principle allows him to judge the restriction of wealth inheritance through taxation as just if the concentration of wealth becomes too great.

Rawls argues that his two principles of justice are the most rational way to organise social institutions in a society of fair co-operation with

individuals who consider themselves free and equal. Therefore the citizens of a liberal democratic society should accept his two principles of justice as justification for restricting wealth inheritance. Rawls's (2001: 5) first reason relies on his conception of the purpose of liberal democracy as a society of fair social co-operation. In this conception it is self-evident that a democratic society is not one where individuals are socially and economically dominated as in feudal or slave societies. According to Rawls, this conception entails that a system of fair co-operation conceives all participating individuals as free and equal in fulfilling their life plans and goals (Rawls 2001: 19). Rawls argues that his principles are the best way to achieve and maintain a society of fair social co-operation with free and equal individuals. The restriction of wealth inheritance is justified, in cases where not imposing restrictions would undermine the best way to achieve a society of free and equal persons engaging in fair social co-operation.

Rawls's theory of justice, despite its use of normative principles, is a theory of procedural justice. The principles of justice are intended as normative constraints on the basic structure of society, which for Rawls is the cooperative interaction of political and social institutions (Rawls 2001: 10). The pure procedural justice of Rawls's theory hinges on the way his principles are applied to society. They are not applied as normative principles on every individual transaction between individuals. Rather they are to apply as the rules according to which a society's institutions must be organised. Rawls (2001: 54) expresses his notion of procedural justice when he states:

> . . . when everyone follows the publicly recognized rules of co-operation, the particular distribution that results is acceptable as just whatever that distribution turns out to be.

Rawls's contention is that if a society's social and political institutions are organised and continually modified to conform to his principles of justice then a form of background state of justice is achieved (Rawls 2001: 52–54). Individuals may be then left to live and interact within the institutional

arrangements of their society. The normative principles need not intervene at every transaction an individual undertakes or every contract an individual enters. Pure procedural justice is achieved when the social and political institutions are regulated continually according to the two principles of justice making any subsequent complex array of free interactions just.

Rawls's theory clearly attempts to cater to all three of the intuitions sketched earlier. The theory satisfies the intuitive concern for a bequeather's liberty to dispose of their property through the first principle. Restrictions on wealth inheritance cannot curtail the bequeather's freedom to posses and transfer wealth in order to advantage those that either possess little wealth or have no interest in transferring it. In addition, the second principle satisfies the intuitive normative judgements of the opportunity and luck intuition. The purpose of the second principle is to ensure inheritors and bequeathers that are similarly talented and willing have an equal chance to achieve the same social and economic positions regardless of arbitrary social contingencies like social class. Both the difference principle and principle of fair equality of opportunity attempt to ensure that the long term prospects of inheritors are, as far as possible, a product of individual choices rather than the luck of birth. Rawls's argument for the restriction of wealth inheritance is intended to be justifiable to all the citizens of a liberal democratic society including the theorists in the contemporary literature mentioned earlier. This is argued on the grounds that his principles of justice are the best way to organise a society of fair social co-operation with free and equal individuals.

Nevertheless, Rawls's theory *prioritises* the opportunity intuition. Rawls (2001: 149) makes clear that the "... requirement of the fair value of the political liberties, as well as the use of primary goods, is part of the meaning of the two principles of justice". This means that Rawls's theory prioritises the opportunity intuition not at the expense of the liberal intuition, but to ensure all individuals enjoy an equal value of the political

liberties. Rawls justifies this order of prioritisation by appealing to the observation that without an intuitive concern for citizens to have equal opportunities to exercise their liberties, liberal societies would regress into a system of natural liberty where contingent facts about a citizen's class and natural talent would determine their prospects in life. This observation highlights how Rawls can judge wealth inheritance to be unjust only in certain circumstances. For Rawls one circumstance is when inheritance helps to concentrate wealth and power such that the equal opportunity of all individuals to gain any social or economic position is threatened (1971: 277; 2001: 51). In these cases wealth inheritance is unjust but not inherently unjust such that it should be abolished as an illiberal and unfair institution. Wealth inheritance under Rawls's approach is justified as a social institution in a property owning democracy satisfying the first principle of justice (1971: 54; 2001: 114). Wealth inheritance would be unjust only if the distribution of resources and social and economic positions was inconsistent with the difference principle, fair equality of opportunity principle and the first principle of justice.

1.3.2 Dworkin's Equality

Dworkin's theory is a version of luck-egalitarianism that understands justice as an equality of resources. The theory uses a distinction between different types of luck to argue for a restriction on wealth inheritance. Dworkin's argument for the restriction of wealth inheritance is grounded in what he sees as a fundamental principle of justice, namely the abstract egalitarian principle which states that:

> . . . government must act to make the lives of those it governs better lives, and it must show equal concern for the life of each. (2000: 128)

Dworkin takes this as a politically and culturally accepted principle in most liberal democratic societies and that insofar as we accept it we are

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committed to equality of some kind as a political and distributive ideal. Dworkin's theory of justice is a theory that interprets the most coherent conception of this abstract principle to be the "equality of resources". An equality of "resources" as opposed to Rawls's "opportunities", is what Dworkin believes allows all individuals in a liberal democracy to choose their own ends. It is the ability of the state to promote or maintain the ability of all individuals to choose their own ends that shows an equal concern for all individuals.

Similar to Rawls's theory, Dworkin's theory places great importance on the view that individuals have personal freedom and individual liberties that should be protected. But crucially Dworkin judges that differences in the opportunity of individuals to choose how to live their lives should not be an arbitrary fact about the world. Rather all individuals insofar as they are treated with equal concern must have the same opportunities to pursue their own ends. Dworkin's method for creating a distribution of resources that allows all individuals to choose how to live their lives, as opposed to being determined by unchosen facts, is by using three theoretical devices. The first is the envy test which determines whether an equal distribution of resources has been achieved. The envy test requires a second device, the auction, so that individuals may choose the resources they wish to use to purse their ends. In order to redress any inequalities resulting from lucky events, like wealth inheritance, that may interfere with the auction, Dworkin uses a third device, insurance schemes. These schemes allow people to insure themselves against unlucky consequences, like inheriting very little property.

Dworkin's central motivation for understanding the equality of resources as the best interpretation of the abstract egalitarian principle is that the distribution of resources in a just society cannot be caused by an arbitrary fact about the individuals in that society or the world in which that society exists (2000: 65). An equal distribution of resources must be chosen by the agents of that society and not entailed by unchosen facts.

Dworkin's initial method of determining an equal distribution of resources is the device of the auction (see below). Dworkin's auction is a way to avoid a simplistic numerically equal distribution of resources. A simple numerically equal distribution would not take into account the inherent variations in resources in nature and the preferences of each individual for each resource. Individuals would quickly become envious and prefer the resources of other individuals. To resolve this Dworkin proposes the envy test.

The envy test is the criteria by which an equal distribution of resources is actually deemed to be equal by all the individuals in society (2000: 66–67). The test states that in a society with limited resources and with limited means to use them, as long as no individual prefers the resources of another individual after the distribution takes place then an equal distribution of resources has been achieved. The test applies only to the initial distribution of resources, so that the initial distribution reflects what individuals mutually accept given their own preferences and life plans. The test is an end state test that certifies a distribution as equal so long as individuals have chosen to fulfil some preferences and not others. Thus, the distribution of resources is sensitive to the preferences that each individual wishes to fulfil given a limited set of resources available for distribution.

Dworkin proposes an auction as a way for a distribution of resources to pass the envy test. First, tokens of value such as clamshells, as he uses in his example, are allocated to each individual (2000: 67–69). These tokens are allocated equally and are used as a way for individuals to bid for a certain fixed metric of resources. A mutually agreed upon auctioneer then adjusts the starting price up or down depending on the initial lowest bid. Then the auction is left to run its course so that eventually only one individual or set of individuals own the resources without any other individual wanting that resource at that price. By "price" Dworkin means the number of tokens of value distributed earlier. The auction ensures that no individual desires a resource for the price that the individual who won the auction paid. This

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means that individuals who lose an auction on a given set of resources have greater bidding power on subsequent auctions, in contrast to the individual who won, who has lost this bidding power and has less opportunity to win the subsequent auctions. In short, the opportunity cost of using the tokens in an auction is the diminished bidding power in all the subsequent auctions. Dworkin believes this type of auction achieves quite neatly and through a market mechanism an envy free state of affairs. Since according to Dworkin the criteria for an actual equal distribution is the envy test, the state of affairs resulting from the auction is an equality of resources. This is despite the fact that some individuals will have numerically fewer resources than other individuals.

The immediate problem Dworkin anticipates is that the auction does not account for the extra resources or handicaps that individuals may have before or after entering into the auction. The pertinent example of this for our purposes is wealth inheritance. Dworkin (2000: 77) believes these unchosen facts are important because they will affect whether there is an actual equal distribution of resources after the auction. To solve this problem, Dworkin (2000: 73–74) distinguishes between two types of luck. First there is option luck which is a state of affairs that is a consequence of a deliberate choice that has inherent risk. Such luck is luck that individuals should have anticipated when making their decisions. The other type of luck is brute luck, that is a consequence of truly unforeseeable and unpredictable events that an individual has no choice in inflicting upon themselves. Dworkin points out this distinction is not one of an essential difference but one of degree.

Brute luck poses a problem for the auction model of equal distribution if it causes individuals to bid in the initial auction with more tokens of value than other individuals. An inheritor who benefits from wealthy ancestors is an example of how brute luck can disrupt the auction. Individuals who come to the auction with more tokens of value because they were lucky to inherit them from their ancestors or were born in an area with a

resource surplus, would have the opportunity to take risks with potentially higher pay-offs and be able to accrue more resources to their desires than individuals with fewer tokens of value (2000: 67–69). Dworkin attempts to neutralise the effects of brute luck by proposing that every individual have the equal opportunity to take out insurance against certain brute luck events. This insurance would obviously vary in value and premium based on the chances that each individual actually has of suffering the brute luck event that they were insuring against.

The example of brute luck for our purposes is when individuals have very little or no chance of inheriting wealth because of their poor ancestors. Individuals would have the option of taking out insurance against not receiving any inheritance or very little and would be compensated in the event that this occurs. This does not mean that insurance for these individuals is a futile effort to equalise inheritance levels among wealthy and poor bequeathers. Rather the insurance would compensate inheritors for the unchosen advantage of having poor ancestors. Dworkin also suggests that if individuals come to the auction already affected by brute luck then they are entitled to be compensated in the form of greater purchasing power in the auction. This means that some individuals who suffered brute luck before they came to the auction are entitled a greater number of clamshells in order to balance their disadvantages against individuals who have not suffered brute luck.

The insurance device transforms the lack of an option that individuals face in the possibility of brute luck into the very real option of being insured against the costs the brute luck event would impose on them if it were to occur. Nevertheless, Dworkin believes that in this type of insurance market individuals pre-disposed to inheriting very little property would be charged higher premiums. Dworkin (2000: 77–78) acknowledges that while this is a problem it is not a knock down objection. Dworkin argues that dispositions that lead to higher premiums cannot rationally be admitted when conducting the auction because such dispositions themselves are forms of

brute luck. For the insurance scheme to discriminate against individuals with unchosen dispositions would undermine Dworkin's abstract egalitarian principle. One example is if an individual is charged higher premiums to insure against developing cancer because they are medically disposed to have a higher chance of developing cancer. This individual has not chosen to suffer the brute luck of having a higher disposition for developing cancer, therefore the individual should be charged the same premium as any other individual. Dworkin concedes that in reality the insurance scheme for wealth inheritance would be taken out by everyone in a hypothetical insurance market which would then model a progressive taxation system on inherited wealth. Apart from this, the hypothetical insurance works the same way as an actual insurance market, with the exception that it is made efficient by reducing it to a taxation system that taxes inheritors progressively higher amounts as the size of the inherited wealth grows.

What has been described so far is a luck-egalitarian account of a just distribution of resources. However Dworkin does advance an account of individual freedom and property rights through commitment to what he calls the "principle of abstraction". The principle of abstraction is a minimalist liberal principle that states:

> ...an ideal distribution is possible only when people are legally
> free to act as they wish except so far as constraints on their free-
> dom are necessary to protect security of person and property,
> or to correct certain imperfections in markets. (2000: 147–148)

The principle of abstraction secures the freedom of choice and the right of all individuals to prefer any life they choose within the bounds of ensuring the physical and mental security of others as well as the fair running of the auction. Dworkin unlike Rawls does not give a lexical ordering to either the principle of abstraction or abstract egalitarian principle. He firmly believes there is no conflict between equality and liberty as is sometimes made out. By giving individuals more discriminating choices in the auction, Dworkin believes that his conception of a just distribution of resources is impartial

and justifiable to every individual's particular plans and preferences for their life (2000: 147–148). A distribution of resources is equal if it passes the envy test. A distribution can pass the envy test, if individuals are afforded the liberty of choosing their own lives through the auction. Individual freedom and self-determination then is assured in the establishment of the auction as a background constraint on what kind of auction takes place. An auction must allow all individuals the most fine grained choices so that every individual would have the resources that reflect the most fine grained costs of not having any other individual's resources.

For our purposes we may understand Dworkin's luck-egalitarianism as attempting to cater to all three of our political intuitions. The intuitive concern for the individual liberty of the bequeather is satisfied by Dworkin's principle of abstraction, that ensures that the auction must allow for the maximum possible set of choices to accumulate and protect their private property. Dworkin's conception of "equality of resources" satisfies both the opportunity and luck intuition. The intuitive concern for individuals with similar talents and willingness to have the same opportunities in society and the market is achieved by Dworkin's method of redressing brute luck like social class and wealth inheritance through insurance schemes. The flexibility of this method also allows it to ensure that individuals are able to choose and be morally responsible for their own lives. Therefore the intuitive judgement that wealth inheritance ought to be restricted for its role in determining the lives of individuals is also satisfied.

Nevertheless, Dworkin's theory prioritises the luck intuition in a way that attempts to placate the liberal and opportunity intuitions. Dworkin's prioritisation is justified by his understanding of the abstract egalitarian principle and principle of abstraction. If a state must show equal concern for all citizens, then it must establish a regime that is equally sensitive to the desires of each individual and the ways they choose to satisfy them. Individuals have no reason to take part in such a regime if some individ-

uals are held responsible for their lives and others are not. According to Dworkin's theory if poor inheritors are not held responsible for their disadvantage for being born to poor ancestors, then wealthy inheritors are also not responsible for the wealth they inherited. Therefore, Dworkin is compelled to treat wealth inheritance as a form of brute luck that would be unjustly imposed on individuals without compensation.

1.4 Some Problems on the Horizon

Taking stock for a moment, I have presented two theories as different ways to justify restricting wealth inheritance in a liberal democracy. Both theories attempt to argue for a restriction of wealth inheritance that is justifiable to three intuitively conflicting perspectives on the restriction of wealth inheritance. Rawls's theory considers the maintenance or creation of equal opportunity as the highest priority when restricting wealth inheritance. Dworkin's theory considers mitigating the role of luck in people's lives as the highest priority when restricting wealth inheritance.

In this section I flag some of the problems that I will be discussing in Chapters 2, 3 and 4. I flag these problems to outline the way the candidate theories I have detailed in this Chapter will be analysed and criticised. The problems question the coherency of Rawls and Dworkin's theories to answer and balance the normative concerns of the liberal, opportunity and luck intuition. The analysis will involve testing how well Rawls and Dworkin's theories can actually justify restricting wealth inheritance to all three normative intuitions. If it seems the problems are genuinely troubling I suggest some modifications to Rawls and Dworkin's theories to resolve the problems.

One immediate internal problem seems to be that Rawls's theory does not treat wealth inheritance the same way as social class. By this I mean that Rawls does not recognise wealth inheritance as being arbitrary in the same way as an individual's social class of origin. Another problem

originally raised by Gerald Cohen (2008; 2011) is that Rawls's principle of fair equality of opportunity and the difference principle are motivationally incoherent. This is troubling for our purposes because both these principles are the primary normative tools that Rawls uses to answer the normative concerns of the opportunity and luck intuition. Another problem that I will discuss further in Chapter 2 is Iris Marion Young's (2011) argument that Rawls's theory defines the basic structure of society too narrowly. This argument entails that despite the perfect application of the Rawls's principles of justice, social behaviours can reflect social values that limit the choices open to certain individuals. In effect this problem questions the extent to which Rawls's theory can answer the normative concerns of those who hold the luck intuition.

Turning now to Dworkin's theory, one immediate problem that suggests itself is that his theory is intuitively too harsh on individuals because it allows individuals to suffer greatly from their own choices.[5] Another problem is that in trying to answer the normative concerns of the luck intuition Dworkin's theory focuses on equalising the wrong thing, namely resources instead of social relations. Both problems question the coherency of the way Dworkin's theory answers the normative concerns of the luck intuition with the democratic expectation for proportionate treatment and the normative ideal of equality. Both problems are originally raised by Marc Fleurbaey (1995), Jonathan Wolff (1998), Elizabeth Anderson (1999) and Samuel Scheffler (2003).

The final problem I discuss for Dworkin's theory is Gerald Cohen's (2011) argument that Dworkin's theory makes an inconsistent distinction between unchosen preferences and unchosen circumstances. This is troubling for Dworkin because Cohen argues that in order for Dworkin to resolve this inconsistency he should modify his theory to equalise all forms of

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[5]The earliest responses to Rawls and Dworkin's theories emerged after the first publications of Rawls's *A Theory of Justice* (1971) and Dworkin's four-part essay "What is Equality?" (1981a; 1981b; 1987a; 1987b).

advantage. Cohen argues that a better way for Dworkin to answer the normative concerns of the luck intuition is to equalise "access to advantage" and not just resources like inherited wealth.

1.5 Conclusion

I would like to conclude this chapter hopeful that Rawls and Dworkin's approaches to justifying restrictions on wealth inheritance in a liberal democracy are clear. Rawls and Dworkin's theories both argue for restrictions on wealth inheritance they expect will be justifiable to the three groups of intuitive judgements on the restriction of wealth inheritance. To make this clear, I clarified wealth inheritance into two relations - the synchronic and diachronic relation. This was to to show that a successful theory must account for the relation between bequeathers and inheritors and the relation between inheritors. I then clarified how the three normative intuitions conflicted and how this conflict is reflected in the contemporary debate.

The following three chapters will offer a thorough explanation and analysis of the problems outlined in the previous section. Chapters 2 and 3 will question the coherency of Rawls and Dworkin's theories in trying to justify restrictions on wealth inheritance. These chapters will also question how Rawls and Dworkin balance the normative concerns of the liberal, opportunity and luck intuition.

Chapter 2

Rawls's Justice as Fairness

This chapter attempts a critical analysis of how Rawls's theory of justice justifies the restriction of wealth inheritance to the opportunity and luck intuition. By focusing on three particular problems I argue that Rawls's theory cannot coherently justify restricting wealth inheritance without some modification. The first two problems criticise how Rawls's theory analyses wealth inheritance as an arbitrary distribution of resources. The third problem criticises the scope of Rawls's theory and its definition of the basic structure of a liberal society.

First I will argue that Rawls's distinction between the arbitrary distributions of resources caused by wealth inheritance on the one hand and social class on the other is questionable. This problem suggests that for Rawls's theory, the arbitrary distribution of resources due to birth matter less in equalising the life-prospects of individuals than their social class of origin. Rawls's different treatment of wealth inheritance and social class is unjustifiable to the opportunity and luck intuition. One response to this argument may be that wealth inheritance is a necessary inequality. I then take up the argument used by Gerald Cohen to show that Rawls's use of the difference principle to justify necessary inequalities undermines the motivations for the principle of fair equality of opportunity.

The third problem I take up is one first formulated by Iris Marion

Young. Young argues that Rawls's definition of the basic structure as the subject of justice is too narrow and cannot account for the way individual actions like bequeathing and inheriting contribute to social behaviours that limit the set of choices open to individuals. This problem suggests that Rawls cannot justify the restriction of wealth inheritance to the luck intuition if it applies only to his original conception of the basic structure.

2.1   Arbitrariness and Rawls

In this section I present two arguments that challenge the way Rawls's theory justifies the restriction of wealth inheritance. These arguments suggest that Rawls's theory may not be coherent in its attempt to justify the restriction of wealth inheritance to the opportunity and luck intuition. The consequence of this is that Rawls's theory requires some modification or must be offered some way of responding to the criticism. The first argument questions the extent to which Rawls's theory is actually committed to satisfying the opportunity and luck intuitions. This argument centres on why Rawls chooses to focus on social class as the primary source of inequalities rather than inequalities like natural talent and wealth inheritance. One response to this argument is that wealth inheritance is a necessary inequality that cannot and should not be restricted. The second argument questions this response. I question whether some inequalities of opportunity, such as wealth inheritance can really be justified as necessary by Rawls's theory. Specifically this argument is a three step argument that questions how Rawls's theory can justify judging some inequalities such as wealth inheritance as necessary in the background of the principle of fair equality of opportunity and the difference principle.

2.1.1   Wealth Inheritance and its Arbitrariness

In this section I deal with the equalisandum claims of Rawls's theory. These claims are what Rawls's theory judges should be equal, namely

the equal chance to achieve social and economic positions. I advance the argument that Rawls's original theory evaluates the domain of morally arbitrary resource distributions in a way that is not justifiable to the luck intuition. I argue that Rawls's theory unjustifiably distinguishes the arbitrariness of wealth inheritance and natural talent from the arbitrariness of social class. The consequence of these arguments is that Rawls's theory requires either some response that deflects the seriousness of these arguments or modifies Rawls's theory to more coherently justify restricting wealth inheritance in a liberal democracy.

Rawls (1999: 245–247; 1971: 277–278) accepts that the distribution of wealth inheritance is arbitrary, but not any more unjust than other talents or natural endowments. It appears that Rawls (2001: 124) believes both are necessary inequalities used by a just society for the benefit of all its citizens. However there is one relevant way in which natural talents and endowments are different from wealth inheritance. It seems that natural talents and endowments are not entirely under the control or determination of their possessor. An individual with above average intelligence cannot truly choose to double the power of their talent or transfer it to a descendent. In the case of wealth inheritance it appears the life-prospects of the inheritor is entirely dependent on the choice of the bequeather. Although the inheritor is free to choose how they use their good fortune, their good fortune was the product of social contingency, namely a social practice that values wealth accumulation for the good of future generations. Further, the inheritance of vast wealth is an inherent advantage to accumulating more wealth. The capacity to control and shape one's future and the future of one's descendants is a crucial difference between wealth inheritance and natural talent.

Despite wealth inheritance being a social contingency, Rawls is not eager to declare it unjust. This contrasts with the way Rawls (2001: 55) judges that unequal opportunities caused by the "social class of origin" should be equalised. According to Rawls's (2001: 44) principle of fair

equality of opportunity, social class is an arbitrary distributor of resources that should not cause an inequality in life-prospects for individuals who are similarly talented and motivated. As Rawls (2001: 46) says:

> The fair value of the political liberties ensures that citizens
> similarly gifted and motivated have roughly an equal chance of
> influencing the government's policy and of attaining positions
> of authority irrespective of their economic and social class.

Rawls is however less clear on why the social contingency of inheriting wealth should be treated differently. Rawls's conception of social class is not the same as the luck of inheriting wealth. Social class as Rawls conceives it refers merely to the groups of individuals in a society who have differing opportunities and life-prospects. A family's wealth, cultural status, or income causes these differences in opportunities. Rawls's principle of fair equality of opportunity forbids differences in life prospects if individuals are similarly talented and motivated. But it does not forbid differences in life-prospects between individuals who are differently talented or differently affected by the luck of birth. Rawls distinguishes the arbitrary distributions of resources caused by social class from the distribution caused by lucky individuals. I contend that Rawls cannot justify this distinction when justifying the restriction of wealth inheritance to those who prioritise the luck intuition in their normative judgements.

Let us consider an example that illustrates my contention. Consider a Honey Farmer who lives in a liberal society that resembles Rawls's conception of a property-owning democracy. The Honey Farmer's first problem is that her start-up costs involve a piece of land, a shed and other bottling facilities. Although she has a natural talent for business unlike her fellow discoverers, she is not part of the wealthy upper class. Therefore she does does not have the means to buy this equipment and at her current occupation it would take too long to amass the necessary capital to farm the productive but lethal bees. Our Honey Farmer then asks her near dying parents for a portion of their savings in order to start her honey making

business. They freely bequeath a portion to her immediately which she then invests in her business. Our Honey Farmer is able to have a considerable advantage over her competitors and establish her business. Many years pass as she sells honey, grows her business, hires new people and makes greater profits. However one day one of the lethal bees escapes, stings and kills another individual. Our Honey Farmer is brought into a court battle over her negligence for not keeping her bees safely away from other individuals. She once again finds that she is short of money to fight her court case. Fortunately for her, her parents die and their remaining estate is inherited by our Honey Farmer. With this new inheritance our Honey Farmer is able to hire expensive lawyers that argue within the laws of the state that our Honey Farmer is not responsible for the individual's death. Our Honey Farmer then goes on to sell honey and lead the life she always wanted.

The somewhat long winded example is meant to highlight the familiar role of wealth inheritance in creating an inequality of opportunity in society and the way this inequality is judged to be just under the difference principle. In a very direct sense, our Honey Farmer's business could not have employed other individuals with less valued talent and endowments if she had not been bequeathed wealth to start her business. In an indirect sense wealth inheritance helps to maintain the survival of the business with respect to the court case and so saves the jobs of many employees simultaneously. In both instances, according to Rawls's theory, the inequalities in wealth between our Honey Farmer and any other individual is just because the inequalities are advantageous to the worst off. This is because if the inequalities did not exist at all then the Honey Workers would be unemployed. Unemployment would make the workers, who are worse of compared to our Honey Farmer, even more worse off. Just as the Honey Farmer has a natural talent for managing a business she also has the advantage of inherited wealth. Both, according to the difference principle, are necessary inequalities that make the worst off in society bet-

ter off compared to a state of affairs where these inequalities did not exist. Therefore any restriction of wealth inheritance must not tax or redistribute the Honey Farmer's wealth so that it disadvantages the least advantaged. An important assumption in this is that one cannot simply remove or redistribute natural talent unlike money or land. Similarly, under a commitment to the first principle of justice, liberty over one's private property would mean that the state could not simply remove or redistribute the right or freedom of an individual to bequeath property.

The Distinction Problem

I contend that the problem for Rawls is that although he can justify the inequality of opportunities between the Honey Farmer and the plaintiff in her court case, he cannot justify the initial inequality between our Honey Farmer and the other individuals who discovered the lethal bees. In the latter context Rawls treats wealth inheritance as an inequality just like natural talents. Wealth inheritance is an inevitable feature of family relations that allow individuals to exploit their natural talents. Restricting individuals from using their natural talents would be beneficial to no one. Rawls justifies this judgement by appeal to the difference principle. But Rawls's theory is clear that the Honey Farmer's social class should not allow her more opportunities than similarly talented and motivated individuals, to compete for social and economic positions. However, the problem is that Rawls does not justify why he distinguishes equalising the arbitrariness of social class, from the arbitrariness of natural talent or wealth inheritance.

In the example, our Honey Farmer is only one individual among others who discovers the potentially lethal bees. The only thing that distinguishes her from the other discoverers is her ability to exploit her natural talent by using her inherited wealth. Her social class does not enable her to establish her business any more easily than her competitors. In fact she pays taxes at her pre-farming job just as anyone else to fund the education of children from lower social classes. Nonetheless, the Honey Farmer's luck to have

wealthy parents who are able to bequeath capital allows her to use her business talent to gain an advantage over others.

Although Rawls's theory advocates the restriction of wealth inheritance so that our Honey Farmer would have to pay some amount of tax on her inheritance, it does not permit taxing our Honey Farmer so she has the same opportunity as the other individuals who discovered the bees. How does Rawls justify this constraint on restricting wealth inheritance? In short why does the arbitrary distribution of resources due to birth matter less in equalising the life-prospects of individuals than their social class of origin? After all, limiting the influence of social class is the primary motivation for Rawls (2001: 46–48) to move away from pure meritocratic distributions of resources or "careers open to talents". But Rawls is not clear on why less talented individuals with less wealthy parents should have less opportunity to start businesses or use the legal system than our Honey Farmer.

Rawls's treatment of wealth inheritance is put into sharp contrast when what Rawls's theory prescribes for when the Honey Farmer discovers the bees is compared to the Honey Farmer's good fortune in finding the money to pay skilled lawyers. In the second instance the plaintiff, whether a relative of the deceased or the state, is similarly talented to the Honey Farmer in legal practice. Both sides must pay for the help of others. In this case there should not be any inequality in opportunities for the Honey Farmer and the plaintiff to fight their cases. An equality of opportunity to fight the court case is required for the procedural justice of the court, but also for the justice of having opportunities to keep the business running. It appears that Rawls's theory would advocate a redistribution of resources to allow the plaintiff and our Honey Farmer the same opportunities to fight their cases. It would seem that Rawls's theory treats the court battle differently to the initial luck the Honey Farmer enjoys. Why should the less talented businessperson who discovers the bees at the same time have less opportunities as our Honey Farmer to establish a business? This question

is pertinent because it expresses the central worry of the luck intuition. Why is the Honey Farmer responsible for her initial advantageous business opportunity, whilst not responsible for the self-evident advantage she has in fighting the court battle.

I contend that Rawls's inability to answer this worry means he cannot coherently justify restricting wealth inheritance to the luck intuition. This inability means that Rawls's theory requires some modification either by reinterpreting a principle or by additional theoretical commitments. Rawls's restriction of wealth inheritance only when it causes inequalities of opportunities between similarly talented and motivated individuals is only weakly justifiable to the luck intuition. This is because he ignores the associate concerns of the those who hold the luck intuition for the way the Honey's Farmer's initial wealth inheritance is as much a lucky event as her family's social class.

Rawls's theory appears to recognise wealth inheritance as an unjust distributor of resources insofar as it stops an individual from a different social class but of similar talent and motivation from competing with our Honey Farmer. However, Rawls's theory does not recognise the arbitrariness of wealth inheritance in the Honey Farmer's initial inheriting of wealth as an impermissible inequality of opportunity. In the Honey Farmer's case, her life-prospects are determined by her initial advantage over others, yet she is not in any way morally responsible for this advantage.

One response to this contention is that wealth inheritance, like social class and natural talent, is a necessary inequality. An inequality that is necessary for individuals to use the superior natural talents for the benefit of the least well off in society. This response seems powerful because it includes social class, natural talent and wealth inheritance in the same category. According to the difference principle, differences in social class might be necessary in preventing the least well off having fewer opportunities than they already do. The argument links diminishing opportunities to the restriction of wealth inheritance, the advantages of natural talents

and social class. If all are necessary to some extent then treating wealth inheritance the same as natural talents is justifiable. I leave this argument here as a catalyst to what I argue in §2.1.2, namely that considering wealth inheritance, social class and natural talent as all necessary inequalities to some extent undermines the principle of fair equality of opportunity. I suggest that a possible response to this is for Rawls to adopt a modified difference principle that includes natural talent as the only necessary inequality. If this is the case then the Distinction Problem remains open and shows that Rawls's restriction of wealth inheritance is only weakly justifiably to the luck intuition.

2.1.2 The Distilled Argument: Equality of Opportunity to the Difference Principle

In §2.1.1 I presented the Distinction Problem. I argued that Rawls's theory unjustifiably distinguishes the arbitrariness of wealth inheritance and natural talent from the arbitrariness of social class. I argued that this made Rawls's theory only weakly justifiable to the luck intuition. I suggested one response for Rawls could be to consider wealth inheritance, social class and natural talent as necessary inequalities. In doing so it was justified that wealth inheritance was treated similar to natural talent and social class. In this section I argue against the motivational coherency of the principle of fair equality of opportunity and the difference principle when attempting to justify the restriction of wealth inheritance. I argue that if wealth inheritance is considered as a necessary inequality then the difference principle undermines the motivations for the principle of fair equality of opportunity. This once again means that some further modification is required for Rawls's original theory to be justifiable to the opportunity and luck intuition.

I wish to borrow a three step argument from Gerald Cohen (2008; 2011) that reconstructs and distils an argument from Cohen's many arguments against Rawls's difference principle. I wish to distil from these wide ranging

and at times confusing exchange of arguments a straight forward argument against Rawls's theory. This argument centres on how the second principle of justice justifies the restriction of wealth inheritance to those individuals who hold the opportunity intuition. The distilled argument is composed of three steps. Firstly, Cohen establishes what justifies the difference principle given that it is lexically subordinate to the principle of fair equality of opportunity. The second step establishes *how* the difference principle justifies inequalities of opportunities. It is argued that Rawls's theory treats inequalities of opportunities caused by wealth inheritance and other social contingencies as inevitable inequalities for a just distribution of resources. Cohen then argues that the incentive based system of production is Rawls's justification for considering wealth inheritance as a necessary inequality of opportunities. Cohen argues that this justification at worst undermines the principle of fair equality of opportunity, and at the very best, undermines the commitment of a society to a structure of just institutions justifiable to everyone.

Cohen opens his argument by asking how a society can justify the difference principle whilst also justifying the principle of fair equality of opportunity. Specifically this question asks how Rawls's theory can justify to all individuals in the original position behind the veil of ignorance that they should endorse two things. First that they should accept a principle that guarantees the equal opportunity to attain social and economic positions and secondly accept the principle that some unequal distributions of opportunities resulting from social contingencies like wealth inheritance are permitted. Rawls's answer to this opening question is that his theory of justice is about analysing why some individuals have lower life-prospects than others and whether this is justified. As Rawls (2001: 55) says:

> Justice as fairness focuses on inequalities in citizens' life-prospects. . . as these prospects are affected by three kinds of contingencies:
>
> (a) their social class of origin: the class into which they are

born and develop before the age of reason;

(b) their native endowments (as opposed to their realized endowments); and their opportunities to develop these endowments as affected by their social class of origin;

(c) their good or ill fortune, or good or bad luck, over the course of life (how they are affected by illness and accident; and, say, by periods of involuntary unemployment and regional economic decline).

The above contingencies are causes of inequalities that cannot easily be resolved or made illegal by a well-ordered society that conceives of itself as a system of fair cooperation between free and equal people. A society would violate the equality of basic liberties if it outlawed individuals of certain income from having children or attempted to actively disadvantage some individuals because of their inherited wealth. In fact Rawls believes that for society to satisfy the equal value of basic liberties for all its citizens the society must produce goods and services for which difference in talent, good and ill fortune are required. However, Rawls also judges the above social contingencies as unjust determiners of an individual's life-prospects. Rawls argues that the difference principle balances these two concerns.

Rawls (2001: 64) argues that the type of inequality judged as just by the difference principle is an unequal distribution of resources and opportunities that are of benefit to the worst off individual. This is because those with lower prospects are able to benefit from the productive power of those with higher prospects. As Rawls (2001: 64) states:

> . . . the difference principle requires that however great the inequalities in wealth and income may be, and however willing people are to work to earn their greater shares of output, existing inequalities must contribute effectively to the benefit of the least advantaged.

The answer to Cohen's opening question is that the difference principle

is justified by its egalitarian purpose. The principle is intended to justify some inequalities of opportunities so that individuals with lower life-prospects may compete for their own benefit with individuals with higher life-prospects, without violating any basic liberties.

The second step of Cohen's argument is a critique of *how* the difference principle is applied to benefit the worst off. Why would a liberal society accept a principle that judges as just, distributions of resources where, despite their efforts, some individuals will have lower prospects and some will have higher prospects? Rawls's answer to this question is the incentive based system of resource distribution. Specifically Rawls (2001: 64) believes that the difference principle must be understood as a "principle of reciprocity". This means that the difference principle impels a society to redistribute resources so that:

> ...the better endowed (who have a more fortunate place in the distribution of native endowments they do not morally deserve) are encouraged to acquire still further benefits - they are already benefited by their fortunate place in that distribution - on condition that they train their native endowments and use them in ways that contribute to the good of the less endowed (whose less fortunate place in the distribution they also do not morally deserve). (Rawls 2001: 76–77)

Rawls believes that differences in talent and natural endowment mean that some will by the luck of birth have more ability to offer services or goods that are more valuable to all. These individuals are those with higher life-prospects than those with talents and endowment that are not valued by most individuals.[1] Rawls believes that those with higher prospects will by market forces need an incentive to be productive at the level needed for those with worse prospects to benefit. Incentives in this context would mean higher pay or the opportunity to bequeath their wealth. Clearly these

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[1] By "value" here I mean nothing more than the value placed on goods and services by individuals in the market.

"incentives" are inequalities of resources and opportunities, but justified under the difference principle. However, these "incentives" are precisely the sorts of things that lead to differences in social class and inherited wealth. Rawls (1971: 78; 2001: 77) argues that if the worst off can be advantaged in some way then inequalities of social class and wealth inheritance can be permitted and even maximised. The reasonable conclusion to this argument is that any restriction of wealth inheritance can only be justified insofar as it is to the benefit of the worst off even if it does not satisfy the opportunity or luck intuition.

To highlight the importance of this critique to the justification of restricting wealth inheritance, let us use a modified version of Cohen's (2008: 70–73) example of a Doctor. The resource distribution where a Doctor earns consistently and significantly more than a Hospital Cleaner is judged to be just under the difference principle. It is just, because it is reasonable to expect the Doctor will demand higher pay as incentive to work as a Doctor for the benefit of the Hospital Cleaner. Without the higher pay, the Doctor would not have any impetus to be productive enough so that her services are affordable enough for the Hospital Cleaner. The most important aspect of this example is that the Doctor will also have more opportunities to accumulate and bequeath wealth. This allows the Doctor's descendants to enjoy a greater array of opportunities than the descendants of the Hospital Cleaner. However, according to the difference principle, the Doctor's incentive is just even if it produces further social contingencies. It appears that restrictions on wealth inheritance are justified only to the extent that those with more valued natural talents have the incentive to be productive. Any restrictions that would create an equality of opportunities for both the eventual Hospital Cleaner and the eventual Doctor to earn the same income would be unjustified. This is clearly contrary to the opportunity intuition.

Rawls responds by comparing the Hospital Cleaner's state of affairs when the Doctor has no incentive to be productive and when she does. In

both cases the Hospital Cleaner is the worst off. She has a reduced capacity to accumulate and bequeath wealth and fewer opportunities to compete in the labour market. The Hospital Cleaner is the worst off whether the Doctor has enough incentive to be productive to benefit the Hospital Cleaner or not. However in the cases where the Doctor has the incentive to be productive the Hospital Cleaner is advantaged by having access to the Doctor's services. Rawls goes on to argue that the principle of fair equality of opportunity and the difference principle only permit the Hospital Cleaner to have fewer opportunities than the Doctor if she is less naturally talented and motivated. As Rawls (2001: 44) says most succinctly:

> . . . those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin. . .

According to Rawls, the difference principle is to every individual's advantage and it justifies unequal distributions of resources and opportunities. In the case of wealth inheritance, Rawls's rebuttal to Cohen is that any restriction on wealth inheritance should not disincentivise the Doctor from being productive, even if it would create unequal opportunities in the future. The difference principle judges that some arrangement of social institutions where individuals with the lowest prospects are benefited in some way is more just than some other arrangement where the worst off are not benefited in any way. Rawls's restriction of wealth inheritance is justifiable to the opportunity intuition only on the condition that an equality of opportunity incentivises the naturally talented and motivated to be productive enough to benefit the worst off.

Cohen responds that if the difference principle is understood in the way Rawls argues, the difference principle actually undermines the motivation for the principle of fair equality of opportunity. Cohen argues that Rawls is committed to equalising opportunities while also committed to maintaining or maximising inevitable inequalities of opportunities that are necessary for the advantage of the worst off. Cohen believes that these commitments

are entailed by the incentive based justification for the difference principle. Individuals with high prospects only have high prospects because they need the incentive to be productive enough to benefit those with lower prospects. However Cohen (2011: 246) argues that:

> ...if the inequality is indeed necessary, then it's necessary because and only because productive people would be unwilling to be as productive as they are if they did not prosper better than others do.

Cohen believes that to permit incentive seeking like the Doctor in the above example, means that individuals are not really committed to the principle of fair equality of opportunity. They are actually committed to the exploitation of one's natural talents and endowments to the greatest extent whilst still benefiting others in some way. For Cohen the individuals who need incentives to benefit those with lower prospects are not really interested in having an arrangement of social institutions justifiable or agreeable to everybody (MacKay 2013: 522). Rather individuals are interested in an arrangement where those with higher prospects can impose unnecessary burdens on the arrangement in terms of higher pays or higher social status. These burdens are unnecessary precisely because they are used simply to incentivise those with more valued talents and natural endowments to share some of their production with those who have less valued talents and endowments.

This criticism is particularly important for our purposes since one primary determiner of whether someone inherits or bequeaths wealth is their opportunities to accumulate wealth. Those born into wealthy families are more likely to inherit wealth that confers more opportunities to accumulate and bequeath more wealth. It appears that if the difference principle justifies unequal distributions of resources and opportunities by appealing to the incentives for talented individuals to produce, then Rawls's theory does not satisfy the opportunity intuition and luck intuition in the way he hopes. This is because the opportunity intuition is the intuitive judge-

ment that what matters for the justice of restricting wealth inheritance is whether bequeathers and inheritors have equal opportunity to exercise their social and economic freedoms. If Rawls judges unequal opportunities as just then the restrictions on wealth inheritance entailed by this judgement will not promote an equality of opportunities for bequeathers and inheritors. Rawls's theory would not answer the normative concerns of the opportunity intuition. Similarly, Rawls's theory would not answer the normative concerns of the luck intuition. This is because the luck intuition expresses the intuitive judgement that the justice of restricting wealth inheritance depends on mitigating the role that luck plays in determining whether agents are morally responsible for their interactions with other individuals. If Rawls's theory uses the difference principle to justify unequal opportunities then restrictions on wealth inheritance will either be impermissible or too weak to mitigate the role of luck in determining people's lives. Cohen (2011: 246) concludes that Rawls's theory incorrectly argues that inequalities of opportunities are necessary to make the worst off benefit even if they are still the worst off:

> ... inequality isn't *really* or strictly necessary to make the worst off better off: it is not necessary independently of human will - it is necessary only because and insofar as the productive are unwilling to act otherwise: it is *their choices* that *make* the inequality necessary.

It should be noted that Cohen does not argue that inequalities of opportunities are unnecessary in a society of fair social cooperation. He also does not argue that there are no normative principles that can justify unequal distributions of resources and opportunities. Cohen's argument is only that Rawls's second principle of justice contains two constituent principles, of which the lexically subordinate principle undermines the motivation for the lexically prior principle. This is because the difference principle treats inequalities resulting from wealth inheritance as a necessary condition for making the worst off benefit in some way. In short Cohen's argument shows

that Rawls's theory is incoherent in responding to the Distinction Problem by treating wealth inheritance as a necessary inequality. The Distinction Problem was problematic because it shows that Rawls's theory could only weakly justify restricting wealth inheritance since it did not answer the normative concerns of the luck intuition. If the Distinction Problem stands then Rawls require another solution to the Distinction Problem or against the distilled argument I have presented in this section. The next section explores the latter option.

Rawls's Possible Response

One possible response to Cohen's argument is that Rawls's theory overstates the case when it argues that inequalities of opportunities are necessary for the benefit of the worst off. Importantly this would mean that wealth inheritance might not be a necessary inequality. This response begins with a new perspective on Rawls's difference principle, namely the perspective of an individual who is the worst off in a society and attempting to reach a state of reflective equilibrium with her fellow citizens. This individual may compare her preference for a difference principle that defines necessary inequalities more broadly than a difference principle that defines necessary inequalities more narrowly. In particular, the individual would compare the consequences for her under a difference principle that defines only natural talent as a necessary inequality to Rawls's original difference principle that defines social class, good fortune and natural talent as necessary inequalities. The first definition is clearly more narrow than the second.

The broad definition of the difference principle is familiar because it is the definition that Rawls endorses. The narrow definition prescribes that wealth inheritance and social class are contingently permissible inequalities. They are contingent on whether permitting them would actually be to the benefit of the worst off. The benefit in such a case would be that the worst off were helped to compete with equal opportunities with the

better off.

Let us return to an earlier example to illustrate my contention. Our Honey Farmer along with other individuals finds potentially lethal bees and hatches a plan to farm them and sell bottled honey at a profit. Our Honey Farmer let us assume was born into the lower class of her society. This is because compared to other individuals her life prospects at the time of birth were limited by the economic and social opportunities that individuals of her class usually enjoyed. Neither of her parents could afford to start a similar business because neither had the time, talent or capital. Our Honey Farmer finds that despite her motivation and talent she has no initial capital to start a business. This is contrasted with other individuals who received inheritances from their ancestors and were easily able to start their businesses whilst also having the natural talent to start and run a business. Due to tax subsidised education our Honey Farmer eventually finds employment in one of the Honey Farms set up by the other discoverers.

The Honey Farmer may wonder at this point what her life would have been if her social class had played no role in determining the distribution of resources. She may say that her limited opportunities in life at birth was an arbitrary limitation of her resources and that such a system was not necessary for those in the lower class to benefit in some way. Those in the lower class would obviously have been better off if what determined the distribution of resources was talent and natural endowments of intelligence or strength of will. Rawls may argue that this is a case where the worst off in society would be made better off if the difference principle permitted inequalities only on the basis that they are contingent. What are the contingencies in the above case? Two contingencies stand out, firstly the contingency of the Honey Farmer being born into a social class that does not value her entrepreneurial motivation, and secondly her luck at being born to parents with little wealth to bequeath.

It appears that the Honey Farmer would obviously prefer to live in a

society ordered by a difference principle that only justifies natural talent and endowment as necessary inequalities. However, Rawls's theory does not argue for an equality of outcomes. To this end inequality resulting from an open and fair competitive marketplace is just as long as it is made compatible with Rawls's two principles of justice. An inequality of talents in a fair system of cooperation would be permitted and necessary for society to produce enough goods to satisfy the varying needs and desires of its citizens. It should be noted that Rawls's conception of individuals as free and equal means that the mutually compatible interests of all citizens have equal value. This means that some inequality is inevitable given the limited resources available to society.

I believe the Honey Farmer would prefer the narrow definition of the difference principle. Under this principle the distribution of resources and opportunities according to social class would be permissible if unequal social classes were entrenched social structures arranged so that individuals of any class had equal opportunity to move between social classes. Social class in this case would not be an inequality necessary for a productive society, but rather a contingent one. Nevertheless a contingent permissible inequality so long as the arrangement is beneficial to everyone such that all individuals have the opportunity to move from one social class to another.

If the Honey Farmer's society adopted the narrowly defined difference principle then I believe the following would be the case. The Honey Farmer would discover that it is reasonably possible for her to earn enough if she is motivated enough to start her own Honey Farm in due time. For the society to be just, our Honey Farmer would receive much more support than mere subsidised education. This could include, perhaps subsidised or interest free loans, business classes, or progressive tax breaks to allow our Honey Farmer to eventually move into a higher social class and actually establish a Farm of her own.

The problem for Rawls seems solved. Social class and wealth inheritance are contingently permissible and not necessary. Nevertheless I do

not believe this solves the Distinction Problem. The narrow definition of the difference principle permits unequal social classes, but it does not permit taxing the Honey Farmer's competitors so that they have the same opportunities to establish their business as our Honey Farmer. Under the narrowly defined difference principle unequal resource distributions due to wealth inheritance are permissible so long as they help individuals move into higher social classes. But this also permits the Honey Farmer's competitors to inherit their parent's wealth as well. Even a progressive tax on inherited wealth would still permit the Honey Farmer's competitors to inherit their wealth and establish their business. This is because a confiscation of inheritances would not fund the required programs to help our Honey Farmer move into a higher social class.

Where does this leave Rawls's theory? Well, the narrow definition of the difference principle would treat wealth inheritance and natural talent differently. Unfortunately this does not solve the Distinction Problem. This is because Rawls still treats social class and wealth inheritance differently. Both are social contingencies but the first is a stratification of society from the least advantaged group to the most advantaged group, while the second is treated as a means to benefit the least advantaged group. To that end, Rawls's theory still permits wealth inheritance, as a means for individuals to gain the same opportunities as similarly talented and motivated individuals from higher social classes.

In effect, wealth inheritance is still permitted to create unequal opportunities so long as it helps individuals move into higher social classes. This seems unjustifiable to the luck intuition. This is because under the narrow difference principle any restriction of wealth inheritance would be weak enough to advantage the worst off providing them the opportunities to become better off. Those who hold the luck intuition in a liberal democracy would find restricting wealth inheritance to this extent only weakly justifiable since individuals are still held responsible for events they did not choose. Our Honey Farmer must still suffer having fewer opportuni-

ties than her fellow bee discoverers so that she can then be compensated to have an equal opportunity to move into a higher social class. Her inherited wealth is not treated the same way her social class is despite both being brute luck events. I suggest a more comprehensive solution to the Distinction Problem in Chapter 4.

2.2 The Basic Structure and Individual Responsibility

So far I have focused on the coherency of Rawls's principles of justice. But now I move to the individuals that affirm the principles and the social institutions they apply to. In this section I explicate Iris Marion Young's (2001; 2011) critique that Rawls's concept of the basic structure is too narrow and that this narrowness is caused by his implausible focus on the basic structure as the only domain to which his principles of justice apply. The conclusion I draw from Young's critique is that Rawls's theory might not be as sensitive to the normative concerns of the luck intuition as his principles of justice indicate. I believe Young's critique shows that a society operating according to Rawls's principle may still create forms of structural injustice that limit the set of choices open to individuals, without their choice. I believe the consequence of this critique is that Rawls's theory needs to be modified in some way to account for the ways wealth inheritance can contribute to structural injustice.

Young agrees with many of Rawls's motivations. She does not believe distributive justice can be captured simply by the acceptance of natural rights and moral side constraints on individual interactions in society. Young even accepts Rawls's conclusion that what is just or unjust in liberal society is not individual interactions but the basic structure of liberal society, namely its social institutions. Despite this, Young departs from Rawls's view of justice when she considers the kind of society that is left when the society adheres to all of Rawls's procedures and principles. Young

argues that Rawls's basic structure of social institutions is too narrow to account for the effect of social behaviours on the lives of individuals. One of the social behaviours we are interested in is wealth inheritance. Young's argument suggests that Rawls's restriction of wealth inheritance, even after accepting his principles, may be too weak to justify to the luck intuition. This is because wealth inheritance is one type of social behaviour that limits the set of choices open to individuals who do not inherit or inherit very little. Let us remember that the luck intuition is the conviction that certain individuals have that what matters for the justice of restricting wealth inheritance is how well it mitigates the role of luck in people's lives. This conviction is the intuitive judgement that a just society should hold individuals responsible for their choices and not for how luck has affected their lives.

I will use two contrasting cases to make Young's argument clear. First there is Young's (2011: xiii, 43) example of Sandy who is forced into homelessness by a combination of causes. Second there is Sandra, who is like Sandy in every way except she lives comfortably. Young uses her example of Sandy to separate two ways that social injustice occurs, namely singular actions of one individual violating the rights of another and the injustice of unfair or discriminatory social behaviours. In Young's example, Sandy finds herself unable to find housing because, her current flat is being converted, she finds other rental properties unaffordable, and the affordable properties inaccessible to transportation and other amenities important to her children. Young proposes that as a single mother Sandy is faced with a labour market that forces her to work the same hours as her male colleagues for less pay or in a female dominated field with lower average wages. This results in Sandy being constrained to only a small sector of the housing market.

In contrast to this, Sandra lives comfortably due to her inheritance. Sandra is unemployed, has the same natural talents and developed skills as Sandy and would be in the same socio-economic position as Sandy if

it were not for her inherited wealth. Sandra's inheritance is restricted through progressive taxation according to Rawls's principles but is able to access high return capital investments that enable her to live a comfortable but not lavish lifestyle. Sandra's inheritance helps many of the worst off in her society like Sandy through various forms of wealth redistribution. Nevertheless, Sandra's set of choices are wider than Sandy's.

Young argues that Sandy does not suffer any singular immoral action that leads her to homelessness. No one individual robs her of all her possessions and makes her unable to pay for any kind of shelter. There is perhaps one way that Sandy has been morally wronged, namely that she is paid unequally for equal work. However even this is contestable if there is a background assumption about the fairness of competitive labour markets or that despite Sandy's equal pay she would still be homeless because of the meagre pay increase. Young's argument is that what we intuitively identify as wrong about Sandy's case is not a moral wrong but structural injustice. Sandy's choices are limited because of brute luck events. These events are outside her control. She is, in colloquial language, a victim of circumstance. But importantly she is not victimised by a criminal or some lone institutional interaction. It seems entirely reasonable to question why wealth inheritance should not be restricted to increase Sandy's opportunities and decrease Sandra's? Although Sandra's inheritance is restricted, why should it not be restricted so that the choices open to Sandy are affected by the choices Sandy makes.

If Sandy and Sandra's cases are analysed from the perspective of Rawls's theory of justice there does not appear to be any clear signs of injustice. After all, the social institutions that Sandy interacts with are assumed to not violate any of her basic liberal rights or her opportunity to achieve social and economic positions. Rawls (2001: 65–66) even entertains objections to his theory that appeal to the way existing race and gender discrimination can mean individuals do not have equal opportunities to access the public goods of their society. He concludes that while unequal

access to the basic liberties could have been argued as to the advantage of women and racial minorities, we certainly do not conclude this in the present day. To this extent Sandy's case should not be seen as a form gender discrimination, but as a circumstance of cultural character or social value. Societies are different and value different ends; Sandy finds herself in a society that values male breadwinners and capital accumulation. This does not mean it is illegal for Sandy to be a breadwinner or for her not to care about accumulating capital, her choices to do so are merely limited.

Nevertheless, let us suppose that through the difference principle the inequality of opportunity in Sandy's society is of some benefit to Sandy. Perhaps the economic growth for the rich allows the government to collect taxes and provide assistance to Sandy for her food and educational needs. Young (2011: 70) argues that:

> Depending on the issue, the structural processes that tend to produce injustice for many people do not necessarily refer to a small set of institutions, and they do not exclude everyday habits and chosen actions.

Young appears to argue that injustice in a liberal society can be produced by parts of society outside the social institutions Rawls's theory is concerned with. This raises the incredulous question: what parts of society is Young referring to when she says that the injustice of Sandy's situation is not solvable by reforming the social institutions that Rawls's theory focuses on? Young seems to be looking for an injustice that does not exist. Young argues that Rawls focuses too narrowly on the basic legal and economic frameworks that regulate individual interactions in the economy and with respect to the law. Young (2011: 70) suggests that:

> Social structures are not a part of the society; instead they involve, or become visible in, a certain *way of looking* at the whole society, one that sees patterns in relations among people and the positions they occupy relative to one another.

Although Young (2011: 52–59) laments that structural injustice is hard to define, it appears that her explanation of social structures does reveal the general area she is worried about. She is concerned with what individuals value, and how these values are reflected in social behaviours that endorse certain types of behaviours over others.

If we understand social structures this way, I believe we can better understand why Sandy's example is a case of structural injustice. Sandy's situation is caused by a social behaviour within the basic structure that values men as breadwinners with a nuclear family. Sandy's situation can also be analysed through the way her society does not value assisting individuals who are disadvantaged by circumstances outside their control such as labour and property market fluctuations that may result in more wealth for some but homelessness for others. Sandy's set of choices are limited by what her society values, namely the kind of life that Sandra values: capital accumulation and capital investment.

Young argues that the way individuals interact and contribute to broader social behaviours makes them responsible for stopping the kind of injustice that Sandy faces. When comparing Sandy and Sandra, one of these broader social behaviours is clearly the effect of wealth inheritance in reinforcing the social value of capital accumulation resulting in the marginalisation of certain individuals. If individuals contribute to social practices that reinforce the valuing of one type of family above all others or one group of wealth holders above others then they are responsible for reforming or constructing new social institutions that remedy this injustice.

Young's criticism is particularly important for our purposes because it appears to show that Rawls's theory might not be able to rule out the structural injustice of wealth inheritance enough. Why? Because the domain to which his principles apply does not include the values reflected in social behaviours. Rawls's theory might not be sensitive to the injustice that occurs outside the social institutions that Rawls is concerned with,

namely the injustice of individuals being unable to effectively take responsibility for their lives. Rawls does not offer any means for a just society to reform its institutions so that wealth inheritance does not limit the set of choices open to individuals. Wealth inheritance in Sandy's case reflects her society's valuing of capital accumulation and investment in such a way that she cannot be reasonably expected to take responsibility for the choices open to her. She did not choose to limit her choices to either inadequate housing or homelessness. It seems if Rawls's theory does not provide some way for Sandy's society to redress Sandy's situation any restriction of wealth inheritance will only be weakly justifiable to the luck intuition. This is because the luck intuition is precisely the judgement that the justice of restricting wealth inheritance depends on making individuals responsible for the choices open to them.

Young's criticism shows that Rawls's theory may not be able to justify restricting wealth inheritance if it does not broaden the basic structure of society. Specifically broadening it to include social behaviours that reflect individual values about the desirable gender of the breadwinner and the desirable type of economic interaction. Wealth inheritance is one social behaviour that reflects these social values. This is the essential normative intuition captured by the luck intuition; that the justice of restricting wealth inheritance depends on the mitigation of luck in determining peoples lives. Sandy's life is affected, from her perspective, from the luck of being born into a society that values male breadwinners and capital accumulation. There appears no reason why Sandy is responsible for her homelessness when she has no control to affect or predict the rental property market, or the opportunity to earn as much as a man for equal work. Contrastingly Sandra's life is determined by the luck of wealth inheritance and the way her society does not value the restriction of wealth inheritance. Sandy and Sandra's cases are contrary to the normative concerns of the luck intuition. I offer a solution to the Structural Injustice Problem in Chapter 4.

2.3   The Road Ahead for Rawls

Where does all this leave Rawls's theory? It seems that Rawls's original theory cannot coherently justify restricting wealth inheritance to the luck and opportunity intuitions. To establish this three problems were introduced. First, the Distinction Problem, that Rawls's theory unjustifiably treats wealth inheritance as similar to natural talent and different to social class. This problem reveals that Rawls's restriction of wealth inheritance may be too weak and unjustifiable to the opportunity and luck intuition. One response to this problem was considered, namely that wealth inheritance and social class might be necessary inequalities. At that point a second problem suggested that treating wealth inheritance as a necessary inequality shows that the difference principle undermines the principle of fair equality of opportunity. In short, when justifying the restriction of wealth inheritance, Rawls's second principle of justice might not be coherent. I argued that one possible solution to this was that social class and wealth inheritance were contingently permissible and not necessary inequalities like natural talent. To this I responded that this solution only partially solves the Distinction Problem. This is because wealth inheritance would still not be restricted even if it helped benefit the worst off in such way to eliminate social class from determining a person's opportunities. The third problem was the Structural Injustice Problem. This questioned whether Rawls's theory may be too limited in its scope. The problem appears to show that Rawls's restriction of wealth inheritance is not justifiable to the luck intuition if it does not include social behaviours as part of the basic structure of society. I argued that this was important because wealth inheritance was a social behaviour that reflected the social values of society which then limited the choices open to certain individuals. Solutions to the Distinction Problem and Structural Injustice Problem will be offered in Chapter 4 as the penultimate part of the comparative analysis between Rawls and Dworkin's theories.

Chapter 3

Dworkin's Resource Luck-Egalitarianism

This chapter critically evaluates whether Dworkin's theory coherently justifies the restriction of wealth inheritance to individuals who hold the luck intuition.[1] I conclude that Dworkin cannot do this without modifying

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[1]One criticism that is not included in this chapter but features quite largely in the extant literature is Susan Hurley's (2001: 57–61) argument's against the coherency of Dworkin's theory. Hurley first questions whether the aim to neutralise the effects of luck can settle what luck-egalitarianism should redistribute. Hurley then questions whether neutralising the effects of luck can provide a justification for how to redistribute so that an equal distribution is achieved. I believe both arguments can be easily dismissed as attacking a strawman version of Dworkin's theory. Another criticism not included in this chapter is what I term Saul Smilansky (1997; 2003) and Samuel Scheffler's (2003; 2005) Free Will Objection to Dworkin's theory. The objection is that Dworkin's theory appears to assume a libertarian conception of free will that is at best controversial and at worst implausible. Smilansky and Scheffler argue that Dworkin's theory is committed to a conception of "genuine choice" that conflicts with a more scientifically supported deterministic conception of free will where an individual's action is determined by earlier physical facts. Although this objection is discussed widely in the extant literate it is not included in this thesis because it does not separate Rawls and Dworkin's theory in relation to either wealth inheritance or the three relevant intuitions. Smilansky and Scheffler arguments appear to be equally dangerous for Rawls and theory as it is for Dworkin's theory.

or reinterpreting his theory. The first criticism I discuss in this chapter questions the motivational coherency of Dworkin's theory. The second questions the coherency of the subject of Dworkin's theory and the normative ideal of equality. The third questions the coherency of the distinction between luck and choice that Dworkin's uses to justify restricting wealth inheritance.[2] The success of these criticisms would mean that Dworkin's theory is incoherent in the way it attempts to justify restricting wealth inheritance to the luck intuition. This would be a significant comparative cost for Dworkin's theory, because this thesis is focused on comparing how well Rawls and Dworkin's theories justify restricting wealth inheritance to a broad range of intuitions in a liberal democracy. I offer some responses and possible modifications to all three problems which will be assessed for their costs and benefits in Chapter 5.

The first criticism I discuss is the Harshness Problem. The Harshness Problem is that in trying to justify Dworkin's theory to the luck intuition, the theory entails the unintuitive harsh stigmatisation of the unlucky or the unintuitive harsh violation of personal dignity. I contend that the Harshness Problem attempts to show Dworkin's justification for restricting wealth inheritance as a form of brute luck is incoherent with the liberal democratic motivation to treat citizens proportionately to their injustices. After considering the extant literature surrounding the Harshness Problem I suggest a provisional solution. This solution proposes we understand Dworkin's theory as applying only to social institutions.

The second criticism I discuss is the Wrong Focus Objection. The Wrong Focus Objection is essentially the objection that insofar as Dworkin's theory justifies restrictions on inherited wealth to make a state of affairs distributively just, Dworkin's theory focuses on the wrong thing. The objection contends that Dworkin uses the normative ideal of equality

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[2]All the criticisms in this chapter are presented not in the specific exchanges that have taken place between philosophers but as distilled arguments that reflect the debate surrounding certain objections and problems. This avoids unnecessary repetition and treats Dworkin's theory and the critiques of it in a charitable but critical light.

to satisfy the luck intuition in the wrong way, namely by trying to equalise resources and not, as he should, social relations. To this I suggest a provisional solution that Dworkin's theory should be understood as holding individuals and social institutions reciprocally responsible. Further I suggest and that such a relation should exist between individuals when they are politically connected through social institutions.

The third and final criticism I discuss is Gerald Cohen's use of his theory of Equal Access to Advantage to challenge the way Dworkin distinguishes between choice and luck. This challenge argues that Dworkin justified the restriction of wealth inheritance to those who hold the luck intuition using an incoherent distinction. This is because it does not treat the effect of wealth inheritance on an individual's opportunities to fulfil their desires the same way as its effect on an individual's opportunity for welfare. This differential treatment of the effect of wealth inheritance shows that Dworkin's theory might be comparatively costly to Rawls's theory because it uses an incoherent distinction to satisfy those who hold the luck intuition. Cohen's response is to suggest that Dworkin's theory should accept at least parts of his theory to maintain a consistent restriction of wealth inheritance that accounts for unchosen preferences and circumstances.

One point to note is that the criticisms in this chapter are originally presented in the literature as arguments against luck-egalitarianism as a general normative theory of justice.[3] But a successful criticism of the general theory will also be a problem for Dworkin's theory of "equality of resources". This is because justifying restrictions on wealth inheritance

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[3]One obstacle to analysing how these arguments apply to Dworkin's theory is that there seems no unified conception for how all individuals should be equal that all luck-egalitarians agree on. It seems some, like Dworkin, are concerned with equalising resources for each individual whilst others are concerned with equalising the welfare gained by the resources. Even amongst these theories the status of responsibility also seems vastly different. Responsibility can be seen as either strictly including individual preferences and tastes or a more restricted set of just everyday choices. This is why I propose the two general normative theses.

involves equalising resources, like inherited wealth, because they are inherently forms of brute luck. Nevertheless, for scholastic clarity, I will outline some general normative theses for Dworkin's theory.

I propose two primary theses and one secondary thesis as the fundamental normative principles of Dworkin's theory. The theses express in clear terms the subject and mechanism of Dworkin's theory.

GT1: All individuals *should* be rendered equal in resources.

GT2: Only the effects of brute luck, not option luck, on an individual's social and economic state of affairs *should* be minimised as much as possible.

>   **GT2.1** All citizens should have the mutually compatible individual liberty to act as they wish and the opportunity to participate in the processes of their society that implement GT2.

It should be noted that the first thesis is specific to Dworkin's interpretation of luck-egalitarianism. Many of the problems discussed in this chapter are equally problematic to other interpretations. It is possible, to consider another more general egalitarian thesis:

Proto-GT1: Individuals *should* be rendered equal in *something*.

Proto-GT1 is the general normative thesis shared by any theory that attempts to justify an equal distribution of anything. This thesis is so general that it can even include, as Sen (2010: 291) notes, non-distributive justice theories like Nozick's libertarianism where individuals are only to be rendered equal in liberties, freedoms or natural rights. However for the purposes of examining the problems for how Dworkin's theory justifies restricting wealth inheritance, Proto-GT1 will be set aside in favour of GT1.

GT1 alone, however, is also too general and fails to specify when and how individuals should be rendered equal. GT2 is what differentiates luck-egalitarianism from all other egalitarian theories. It specifics when and how to distribute resources in accordance with GT1. Importantly GT2 refers

to "brute luck" as differentiated from "option luck". Brute luck is the luck enjoyed or suffered by individuals from events they did not choose. In short it is the competitive advantage or disadvantage that individuals bear for which they are not responsible because they did not choose to have such advantages or disadvantages (Dworkin 2000: 73–74). Brute luck is different to option luck because option luck is the luck that individuals choose to endure by either insuring against competitive disadvantage or by accepting the potential risk to enjoy the possible advantage (Dworkin 2000: 73–74). GT2 captures the notion that rendering individuals equal in resources means making them equally responsible for their choices. Dworkin (2000: 122) describes his attitude to GT1 when he says it is:

> . . . a process of coordinated decisions in which people who take responsibility for their own ambitions and projects, and who accept, as part of that responsibility, that they belong to a community of equal concern, are able to identify the true costs of their own plans to other people, and so design and redesign these plans so as to use only their fair share of resources in principle available to all.

Transforming brute luck events into option luck events by individuals choosing to insure themselves against possible disadvantage allows for a distribution of resources based on individual choice with justified inequalities. Individuals are held responsible for the outcomes of option luck events even if they mean individuals end up having unequal resources.

GT2, is the specific normative mechanism in Dworkin's theory that satisfies the luck intuition. This is because, wealth inheritance is an archetypal example of a brute luck event that must be transformed into option luck. A state usually redistributes resources by transforming as many brute luck events into option luck events through insurance schemes or tax systems. A liberal democracy enables individuals to insure themselves through a scheme that pools premiums and pays out when the events individuals have insured against occur. GT1 and GT2.1 are the normative mecha-

nisms that attempt to satisfy those who hold the opportunity and liberal intuition. This is because both theses prescribe that all individuals are to be given equal concern and that all should have equal opportunities to participate in the processes that transform brute luck into option luck. The fundamental nature of these "opportunities" is prescribed by GT2.1 as "individual liberty" because individuals must be free and under no coercion to exercise their choices when transforming their brute luck into option luck. To that end, GT2.1 is the normative mechanism of Dworkin's theory that attempts to satisfy those who hold the liberal intuition.

GT1 and GT2 provide a clear target to which the criticisms in this chapter can be levelled. These criticisms will show that without certain modifications Dworkin's theory is motivationally incoherent when trying to justify restrictions on wealth inheritance in a liberal democracy. This is because Dworkin's theory applies GT2 in a way that violates the democratic expectation of proportionate treatment and is an incoherent realisation of the normative ideal of equality. This examination will proceed by engaging in the three distinct criticisms outlined previously. The first criticism, which has far reaching consequences for Dworkin's theory, is the Harshness Problem. Following this I will deal with a criticism that has been termed the Wrong Focus Objection that questions whether Dworkin's theory is a coherent realisation of the normative ideal of equality. The third and final criticism will analyse Cohen's challenge that his theory is better at justifying restricting wealth inheritance to the luck intuition because it uses a coherent distinction between chosen states of affairs and unchosen ones.

3.1   The Harshness Problem

Theorists that pose the Harshness Problem[4] contend that Dworkin's aim of rendering all individuals equal in resources, comes at a great cost, namely the harsh and intuitively unjust treatment of certain individuals. This "intuitively unjust" treatment is the disproportionately harsh treatment of different circumstances. And so the main contention of the Harshness Problem is that Dworkin's theory prescribes principles that are incoherent with the motivations for a theory of justice in a liberal democracy. This is relevant for our purposes because the Harshness Problem arguably raises doubts about the coherence of Dworkin's motivations and principles to restrict wealth inheritance in a society that expects individuals to be treated proportionate to their circumstances. The Harshness Problem pulls at the intuition that any plausible theory of distributive justice must not treat certain individuals disproportionate to their circumstances, as a matter of principle. Disproportionately harsh treatment if necessary for justice must be independently justifiable. I argue in this section that Dworkin's theory cannot give any such independent justification and that some modification to the original theory is needed.

The Harshness Problem is unfortunately dealt with in a confused way in the literature. The first step in clarifying the problem is to identify the nature of the problem. There are, I take it, generally two ways that scholars present the Harshness problem. One way is the Stigmatisation of the Unlucky. The other way is the Violation of Personal Dignity. What both variations of the Harshness Problem have in common is that both consider the treatment of individuals that suffer option and brute luck as disproportionate to their circumstances and actions. The problem argues that Dworkin's method for implementing GT1 and GT2 is incoherent with the motivations for a theory of justice in a democratic society. This is a prob-

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[4]The problem, was first raised by Marc Fleurbaey (1995), Jonathan Wolff (1998) and Elizabeth Anderson (1999), and then affirmed by Samuel Scheffler (2003) and Richard Arneson (2004).

lem for Dworkin's theory because it intends to justify restricting wealth inheritance to the luck intuition by compensating individuals who inherit little if they have chosen to buy insurance and not compensate them if they have not bought insurance. In this section I shall address both variations of the Harshness Problem in turn, and conclude that the existing responses are inadequate. As a solution I will offer some provisional modifications to Dworkin's theory.

3.1.1 Stigmatisation of the Unlucky

Stigmatisation of the Unlucky is the way in which a luck-egalitarian society treats individuals harshly by openly condemning an individual to suffer the consequences of bad option luck. Those that do not act but can, justify their inaction, according to Dworkin's theory, by appealing to the victim's option luck. This inaction is argued as treating the victim disproportionate to the kind of option luck they suffer. This disproportionate treatment is incoherent with the motivations for justifying restrictions on wealth inheritance within a liberal democracy. Yet the disproportionate treatment is how Dworkin's theory answers the normative concerns of the luck intuition. The two archetypal examples of this stigmatising is the condemnation of negligent victims and the discrimination amongst the disabled.

The condemnation of negligent victims essentially involves the refusal to reallocate resources to help negligent victims. These victims are found to have suffered bad option luck because they choose to undertake risky acts whilst knowing them to be risky. Anderson (1999: 288, 296–298) presents the case of the negligent driver as one example. I will use a similar example which highlights the role of wealth inheritance. Let us propose that α and β are drivers. Both make a mistake - an illegal turn - and seriously injure a pedestrian, whilst also injuring themselves. α and β do not face identical situations. α has a high paying job and is wealthy enough to take out a loan to pay for her ambulance and medical care and so is easily able to avoid the otherwise severe consequences of her

mistake. β on the other hand does not have a high paying job but lives off her inheritance. According to Dworkin's theory a just society has no obligation to either driver, but has an obligation to restrict the effect of β's inheritance on her life. β must be made responsible for her choice to drive and not for her luck in having wealthy ancestors. It would appears that Dworkin's theory advocates restricting β's ability to use her inheritance to pay for her medical costs, even if it meant she would die. Unlike the pedestrians who could not have foreseen the actions of the drivers, the drivers are responsible for the mistake they made and it is not just for society to bear the burden of their medical treatment.

The example is simplistic but suffices to encapsulate the thrust of Anderson and Marc Fleurbaey's objection. It appears that Dworkin's theory cannot be taken seriously as a coherent theory because of the disproportionately harsh way it treats the negligent drivers and the pedestrian. It appears Dworkin's theory advocates letting β face financial ruin and a life of misery for making one mistake. This seems incoherent with the liberal democratic motivation to treat individuals proportionate to their actions. Fleurbaey (1995: 41–43) concludes that luck-egalitarian theories of justice are too harsh on individuals who take risks which are a necessary part of everyday life. Anderson believes that the force of the objection derives solely from the intuitive pull of helping anyone in need regardless of their responsibility in causing certain states of affairs. The example seems to show that in its pursuit to render individuals equal, Dworkin's theory condemns individuals in need of help to suffer in a disproportionately harsh way for the kind of risky choices they make.

Anderson's (1999: 296) second example has less tragic consequences, but with the same intuitive pull. Again I will modify the example slightly from Anderson's original to highlight the role of wealth inheritance. This example assumes that even if some sort of obligation towards a minimal standard of welfare can be justified by Dworkin's theory, the treatment of individuals still seems intuitively too harsh. In the second example α, β

and the pedestrians are treated to some minimum standard of well-being, yet they still suffer irreversible blindness.

In this example, it appears Dworkin's theory compels a just society to harshly discriminate between similarly disabled individuals. α and β once again cannot be given any assistance precisely because the source of their disability are their choices. Whereas the state assists the pedestrian like any other congenitally blind individual because their disability comes from a form of brute luck. However Dworkin's theory prescribes that β should cope with her blindness without the potential help of her inherited wealth. It appears that Dworkin harshly discriminates between α and β's disabilities. This example highlights the harshness of luck-egalitarianism even in cases where the options are not life or death. Condemning and, by consequence stigmatising individuals into a life of unassisted disability purely because of one mistake they made seems intuitively disproportionate. This seems incompatible with the motivations for justifying a theory of justice in a liberal democracy. Citizens expect different unjust actions to be treated proportionately. Anderson (1999: 308) and Fleurbaey (1995: 41) conclude that GT2 must be modified such that the neutralising of luck is not the sole object of egalitarian distributive justice.

3.1.2 Violation of Dignity

The Violation of Personal Dignity is the objection that Dworkin's theory treats individuals who suffer from option luck and brute luck in a disproportionately invasive way in trying to justify restricting wealth inheritance to those who hold the luck intuition. In short the objection attempts to show that the means to implement GT2 with respect to wealth inheritance are incoherent with the initial motivations of proposing principles of justice in a liberal democracy. Citizens expect some degree of privacy or at least proportionate treatment for their mistakes. But Dworkin's theory seems to entail that no matter the circumstance of people's lives, the state must invasively examine and judge every choice that an individual has made.

Wolff (1998: 113–118; 2010: 343–346) and Scheffler (2003: 21) illustrate the objection through the example of an individual who has suffered some form of disability, but I will once again use a slightly modified example to foreground the consequences for wealth inheritance.

Let us take the case of α and β again after their respective car accidents. However this time our focus is on how a just society implements GT2, particularly how α and β are held responsible for their choices. Wolff and Scheffler argue that to plausibly implement GT2 a society that adopts Dworkin's theory must be constantly vigilant about whether individuals are disadvantaged by their own choices or by brute luck. This vigilance requires the continuous examination of any brute luck event, like inheriting wealth, and its relation to their disability to ensure that the demands of luck-egalitarian justice are met. Wolff and Scheffler contend that this constant examination is a violation of an individual's attempt to gather some personal dignity to cope with their brute or option luck. β gains the ability to cope with irreversible blindness from her inherited wealth and yet, to plausibly implement GT2, a society must uncover what advantages β gains from her inherited wealth and whether this is justifiable given her earlier choices. Even if α and β suffered the consequences of a brute luck event they would be compensated, but at the cost of having their disability distressingly examined for its causal influence and its effects. It appears that in the case of brute and option luck, individuals are required to shamefully reveal their mistakes and shortcomings in order for social justice to be achieved. Wolff and Scheffler contend that such revelation is an obstacle for individuals forming a sense of personal dignity, self-determination and worth in society.

Another example put forward by Wolff (1998: 113–114), attempts to show the same violating of personal dignity, but without appeal to any disabilities or potentially fatal risks. Let us suppose that α and β are not negligent drivers and do not fortunately suffer from any congenital disabilities or disadvantages. However, just like before α is employed and

finds her skills valued widely in her society. On the other hand β, although supported by inherited wealth is unemployed, not because she chooses to be, but because the economic conditions of the market and her society mean that her skills are not valued highly enough.

Wolff contends that Dworkin's theory requires β to be scrutinised and reveal whether her choices have caused her skills not to be valued by the economy. If an individual knowingly develops skills that they know are not valued then society is obligated to compensate the individual less resources. In this case, in order to restrict β's inherited wealth β would need to suffer a shameful revelation of how her inherited wealth has contributed to the choices she made. This is a revelation of whether she is unemployed because of or despite her inheritance. β would suffer the scrutiny into her personal life and the revelation of all the mistakes that could possibly have caused their unemployment. Wolff believes that it is a severe violation of one's personal dignity to condemn a person to unemployment without assistance because the skills they have chosen to develop and nurture are no longer valued by anyone in the marketplace. Wolff contends that the entire implementation of GT2 is humiliating and shows no respect towards an individual's dignity. As Wolff puts it:

> But think how it must feel - how demeaning it must be - to have to admit to oneself and then convince others that one has not been able to secure a job, despite one's best efforts, at a time when others appear to obtain employment with ease. This removes any last shred of dignity from those already in a very unfortunate position. (1998: 114)

One immediate objection that might be levelled at Wolff and Scheffler's objections, is that they are objecting to a possible contingent consequence of Dworkin's theory. It would seem that any violation of dignity is an irrational fear of what a society may think of one's life choices. After all no theory of distributive justice can necessarily prevent undesirable contingent consequences like individual irrationality. Wolff explains that

even if the violation of personal dignity is a contingent consequence of Dworkin's theory, the important point is that implementing GT2 has the potential to cause great shame for many individuals in a systematic way. As Wolff concludes:

> . . . even if a source of shame is contingent and even irrational it can still be experienced as a source of shame. (1998: 115)

Wolff argues it is intuitively immoral or unjust for a theory of distributive justice to demand individuals be humiliated. For β in both examples above, the revelation that inherited wealth has influenced her life would be a humiliating exercise. It seems plausible to conclude that no individual would reasonably accept Dworkin's principles of justice.

3.1.3 Solutions in the Literature

Responses to the Harshness Problem have largely followed two paths:

1. Add another thesis that regulates, minimises or modifies the scope of GT2.

2. Bite the bullet and reject outright the likelihood of the cases presented, and insist on the depth and flexibility of GT2.

This section will attempt to detail the way each option is a solution to the relevant objections in the literature and then argue that both options have significant theoretical costs.

Problems for Option 1

Alexander Kaufman, Alexander Brown and Nicholas Barry all accept, one way or another, that the Harshness Problem is a serious problem and that GT2 must be regulated by another normative thesis that emphasises a political or moral value. They suggest that an additional thesis should emphasise inter-societal respect or a minimum welfare threshold that each

individual must be kept above. One theoretical benefit of such an approach to solving the Harshness Problem is that the problem is easily solved by merely accepting Dworkin's theory in the context of other moral or political commitments. Narrowing the scope of Dworkin's theory does not require any more necessary commitments to specific luck-egalitarian theses. Rather the approach accepts that there exists a contingent pluralism about a society's other political and moral commitments that would temper and regulate the scope of Dworkin's theory.

Kaufman (2004: 833–834) suggests an additional principle that unconditionally guarantees a minimum level of welfare will ensure that the scope of the second thesis will always be very narrow and not treat individuals too harshly. Contrastingly Brown and Barry concede that GT1 and GT2 need not be the only theses to include in a theory of distributive justice. Barry (2008: 144–148) suggests there may be other normative theses that demand we apply GT2 only to genuinely chosen outcomes rather than risks. Brown (2005: 298–311) suggests additional theses that demand treating individuals according to a different egalitarian metric such as the freedom from social oppression.

There is no reason to think any of these strategies will be successful. Kaufman, Brown and Barry believe that adding an extra principle that ensures a minimum standard of welfare, or that limits what cases of option luck individuals can be held responsible for will solve the Harshness Problem. Firstly such a principle would be very hard to formulate without its own exceptions, namely cases where it appears harsh to condemn an individual to a certain welfare standard from one unfortunate option luck event. The example used earlier appears to show that individuals are treated harshly since they are restricted from using their inherited wealth to improve their circumstances after only one negligent mistake. It still appears that Dworkin's theory is compelled to discriminate between similarly disabled individuals and restrict the ability of inherited wealth to play a role in sustaining β's life above a minimum standard of welfare.

Another reason why Option 1 is an inadequate response is that it does not solve the Harshness Problem completely. If a principle that demands certain minimum welfare standards is introduced then it appears we can reconstruct cases where personal dignity is still violated or where society is required to discriminate between the disabled. This is because limiting the scope or circumstance when individuals ought to be rendered equal does not change the way Dworkin's theory prescribes individual responsibility to be scrutinised. If a principle is introduced that would solve the Stigmatisation of the Unlucky, it cannot avoid the Violation of Personal Dignity. Since the very essence of Dworkin's theory is that a judgement should be made about whether individuals are responsible for their situation due to option luck or brute luck.

Problems for Option 2

Dworkin and Knight both reject the genuine force of the Harshness Problem, by rejecting the likelihood of cases where individuals are stigmatised or have their dignity violated. A theoretical advantage of such a response is that it does not drastically modify Dworkin's theory, but only offers a correct interpretation of it. Dworkin (2003: 191–192; 2002: 115, 117–118) insists that his model of insurance schemes as a way of protecting against brute luck is flexible enough to account for the cases Anderson, Wolff, Fleurbaey and Scheffler present. Dworkin insists that α and β should have the choice to buy insurance before driving so as to protect themselves against the option luck of hitting a pedestrian. He believes that the opponents of his theory, incorrectly interpret luck-egalitarianism when describing counter examples. This is because those treated harshly should have the same opportunity as any other individuals to buy insurance for their potentially risky activities and hence transform their brute luck into option luck.

Knight (2005: 64) on the other hand insists that even if individuals were treated as harshly and unacceptably as presented then the benefits

of holding individuals responsible for their choices far outweighs the costs of the harsh treatment. This is because he believes that the benefits of compensation for suffering genuine brute luck are conflated with the social pity for certain individuals. Knight believes that conflating the disadvantage of brute luck and social pity is a misreading of luck-egalitarianism. Inequality in resources or opportunity to welfare should be corrected because the inequality is only ever just if those who suffer the inequality have chosen it. This has nothing to do with whether those with more resources feel pity for those with less.

Arguably however, Dworkin and Knight both underestimate the force of the Harshness Problem. They are both unconvinced that the Harshness Problem is an unjustifiable cost for Dworkin's theory. Both believe that any worries can be solved by understanding Dworkin's original theory in the right way. This is because Dworkin and Knight insist on the flexibility of GT1 and GT2. They both insist that in the cases of Stigmatisation, individuals simply do not have equal opportunity to purchase insurance. I believe this insistence on the flexibility of the insurance scheme misses the point of their detractors. It is precisely the failure of GT1 and GT2 to be flexible in certain cases that Anderson, Wolff, Scheffler and Fleurbaey object to. They object that Dworkin's theory treats individuals disproportionate to their circumstances when it denies assistance on principle when an individual suffers bad option luck. Those who pose the Harshness Problem ask why individuals would agree to principles that have the potential to treat individuals contrary to the motivations for creating a just liberal democracy? Individuals do not expect to be left to die or in complete poverty by a negligent mistake. Furthermore both Dworkin and Knight do not engage in any substantial way with the violation of personal dignity. Both just flatly assert that such cases are unlikely and that individuals would not feel their dignity being violated if they are justly compensated.

3.1.4 A Provisional Solution

I now want to suggest a provisional third way to analyse the Harshness Problem. My solution follows Kok-Chor Tan (2008: 675–683) in that it involves a more institutional reading of GT1 and GT2 that decreases the frequency when society compensates for brute luck or enforces insurance schemes. This is done by making GT1 and GT2 apply only to society's institutions rather than individuals. This solution involves an institution-ally maximised reading of Dworkin's theory. The solution is "institution-ally maximising" because it invokes applying Dworkin's theory to all of society's institutions instead of all its individual citizens. This means that unlike Kaufman, Brown and Barry, we need not jump straight to weakening Dworkin's theory and unlike Dworkin, and Knight we can accommodate and take seriously the concerns raised by Fleurbaey, Wolff, Scheffler and Anderson. However Tan considers this approach for a limited purpose because he does not use it as a response to the Harshness Problem itself. Despite Tan's application of an institutional reading of luck-egalitarianism, I believe Dworkin ought to accept the following set of proposals:

1. Individuals making mistakes sometimes is a form of brute luck, be-cause human beings are not perfectly rational or aware of their de-cision making process.

2. Individuals are only responsible for a particular state of affairs, if all the relevant *social institutions* have done well to educate and prevent individuals from making negligent mistakes.

3. Some level of mandatory insurance may be permissible in rare cases to ensure that human beings are insured against brute luck.

All three of these proposals, unlike the solutions mentioned so far, try to solve both the Stigmatisation of the Unlucky and the Violation of Personal Dignity. Moreover the proposals acknowledge the Harshness Problem as a problem that convincingly questions whether individuals could reasonably

accept luck-egalitarian principles. In the second proposal, "all the relevant social institutions" refers to a complete set of institutions interconnected by their counterfactual influence on how state of affairs could have turned out. The second proposal does not intend to impose GT1 and GT2 on all of society's institutions, but only complete sets of institutions that can make a difference to people's lives. As such only sets of institutions that can make a concrete difference to an individual's life by preventing brute luck events or insuring the individual against such brute luck events are compelled to adopt GT1 and GT2.

Stigmatisation of the Unlucky

Let me now address the stigmatisation examples in light of the provisional solution above. I believe Dworkin should adopt the first proposal as an answer to the cases where individuals are stigmatised for their bad option luck. This is because all the cases presented thus far show individuals making mistakes that anyone could plausibly make without explicitly desiring to make them. The examples raise the intuition that Dworkin's theory treats individuals too harshly for mistakes that anyone of us could make even though we wish never to make them. As such if insurance schemes consider human mistakes as forms of brute luck then individuals can actually buy insurance for any mistake they themselves might make in the future. This for the sole reason that humans are not machines and will make mistakes they do not wish to make.

The second proposal ensures that a society's institutions bear the responsibility for the possible consequences of individual choices and not just the individuals themselves. This would mean that the relevant institutions involved in selling and registering a vehicle in the negligent driver case would be required to educate an individual about the possible option luck they might face. Education would not ensure that drivers take out insurance for themselves but that they were informed of the potential risks as well as their society could reasonably manage. This proposal targets

the institutions concerned with individuals using public areas like roads and the inherent risks involved in such use. These two proposals I believe are sufficient to answer the majority of cases where the Harshness Problem surfaces. This is because the intuitive pull of the problem diminishes as soon as we accept that all individuals, whether negligent or not, would have been presented by the choice to take up insurance. Crucially this choice involves having the assistance of the relevant social institutions to inform citizens in a systematic way.

Nevertheless the first two proposals might not appease Dworkin's detractors entirely. It can be argued that it is still possible for GT1 and GT2 to treat individuals harshly. This is because no matter how informed an individual is or how systematically they are faced with insurance options to neutralise the effect of bad option luck, the individual may still choose not to buy insurance. Consequently, the individual would again be treated harshly in cases where they suffer bad option luck. In these limited set of cases individuals, despite being well informed about their own potential mistakes, insist on not buying insurance and consequently suffer bad option luck. At this impasse, the third proposal may help Dworkin's theory. Dworkin may argue that a society might find it more efficient to make a certain level of insurance mandatory for risky activity rather than try to educate every individual as much as possible. We should note that educating individuals would still involve treating individuals harshly in rare cases if they choose not to insure. A minimum level of mandatory insurance would ensure that in some rare cases where individuals refuse to be rationally prudent, society need not treat individuals harshly. A minimum level of insurance need not be mandatory for all possible cases of risky activity. It can be mandatory only for those activities where there is a high frequency of individuals suffering bad option luck and a high number of individuals refuse to insure themselves.

Kristin Voigt (2007: 405–406) has dismissed this imposition of mandatory insurance schemes as undermining the fundamental luck-egalitarian

motivation to give individuals the choice to lead the lives they wish without suffering the effects of brute luck. A fundamental commitment to individual choice conflicts with the coercion of an individual to buy a minimum level of insurance. Voigt contends that the basic normative mechanism of GT1 and GT2 is to give individuals the choice to transform brute luck into option luck. Not, as my solution proposes, to coerce individuals to protect themselves from the effects of brute luck. I believe Voigt misunderstands the purpose of mandatory insurance schemes. The mandatory insurance schemes only operate to protect individuals in very rare cases. Specifically in cases where the frequency of bad option luck is high and the consequence of bad luck are very damaging not just for the individual undertaking the activity but also for any bystanders. Not all risky activities would require mandatory insurance, but only those activities with the long lasting consequences of highly frequent bad option luck. In such cases individuals can be coerced to buy insurance perhaps at a subsidised cost.

Consequently, the case of potentially denying α and β emergency hospital care is mistaken. α and β would in fact be made to insure against such an emergency because of the potentially damaging consequences not only for the driver but for any other individuals. This does not mean that the individual responsible would be eligible for compensation for the rest of their lives. Perhaps merely that they would have to insure themselves against at least acute emergency services, and perhaps not against vehicle damage, or long term disabilities resulting from their mistake. For certain activities such as driving on public roads, it appears a more efficient use of available resources is to impose a mandatory insurance scheme as opposed to educating and attempting to convince ultimately unwilling individuals to buy insurance.

The Violation of Personal Dignity

Let us now turn to how the provisional solution engages the cases of violating personal dignity. I believe Dworkin can appeal to the first and second

proposal in cases where implementing GT2 violates the personal dignity of individuals. The first and second proposals clarify the aim of Dworkin's theory. The cases presented by Scheffler and Wolff should be understood not as cases of revealing all aspects of an individual's life, but only aspects which can genuinely be considered a cause for that individual's state of affairs.

It is impossible for individuals to both know all the required facts about the market and also compute them to make prudent choices. To compensate for brute luck should be seen as a responsibility absolving act. To be compensated for one's bad brute luck is not to pity or reveal every possible mistake, but to absolve them of moral responsibility for their state of affairs. In accordance with the second and third proposals a just society should arrange all the relevant social institutions in such a way to offer intensive education or a minimum level of mandatory insurance against the possible fluctuations of the market. Another way in which the provisional solution solves the violation of personal dignity is if social institutions consider the investigation of an individual's mistakes itself as a form of brute luck event that the individuals cannot control. If GT1 and GT2 are applied in this way then individuals might be entitled to redress if the actions of social institutions are so invasive that they cause individual long-term disadvantages for accumulating, bequeathing and inheriting resources.

With respect to Scheffler and Wolff's counterexamples, I would contend that it is impossible for an average worker to be attuned to every movement in the market. From the perspective of the worker large volatile changes in the market that result in unemployment should be treat as a form of brute luck. This would be the case even though market changes might be caused by choices made by CEOs or consumers. What is more, other social institutions such as educational centres should assist in the mitigation of brute luck by helping to retrain individuals for new skills. With respect to the cases of shameful revelation, the first and second proposals insist that GT1 and GT2 should be applied to a set of connected social institutions.

So that any cases of shameful revelation can be prevented and individuals can still be absolved of any responsibility for unchosen states of affairs. An institutional reading places the responsibility of applying GT1 and GT2 on powerful social institutions that limit the cases of shameful revelation, since having one's past mistakes revealed can also be a form of brute luck. Therefore social institutions must apply GT1 and GT2 in ways that do not violate GT1 and GT2. Taxing or confiscating inherited wealth would be unjust if doing so was so invasive that itself was a form of brute luck event that the individuals could not control.

3.1.5 Conclusion

I have offered three proposals that may solve the Harshness Problem so Dworkin's theory can coherently justify restricting wealth inheritance to the luck intuition. The three modifications attempt to minimise the theoretical costs of modifying GT1 and GT2 to an arbitrary set of cases or in shifting too far from the initial motivations of proposing principles of justice in a liberal democracy. The three proposals attempt to decrease the frequency when GT1 and GT2 are enforced by limiting the scope of the theses to complete sets of social institutions that are interconnected. This may avoid the problems faced when Dworkin's theory appears implausibly harsh when applied to particular circumstances. However, the cost of adopting my three modifications might be that Dworkin's theory appears to weaken its definition of moral responsibility too much. If individual mistakes are classified as brute luck events then it appears there is almost nothing individuals can be held responsible for. This would appear to be a significant cost to a theory of justice that attempts to balance the demands of holding individuals responsible and yet equalising resources in a just way. These costs will be discussed further in Chapter 5.

3.2 Wrong Focus Objection

Another problem posed against Dworkin's theory is that it is a theory of egalitarian justice that intends to equalise the wrong thing. I argue the objection shows that the way Dworkin's original theory uses the normative ideal of equality to satisfy the normative concerns of the luck intuition is incoherent with the subject of Dworkin's theory. The objection entails that Dworkin's theory should not restrict wealth inheritance as a resource, but rather that the theory should focus on equalising social relations. This is directly contrary to GT1 and the aims of Dworkin's theory. In response I suggest some modifications that resolve the objection and hence allow Dworkin to justify restricting wealth inheritance without any incoherencies.

Wolff (1998; 2010), Anderson (1999) and Scheffler (2003; 2005) pose the Wrong Focus Objection in two ways. Sometimes they argue that the aims of Dworkin's theory are better achieved by equalising something other than resources. On the other hand sometimes they argue that Dworkin's version of luck-egalitarianism should not be considered as an "egalitarian" theory of justice because it focuses on equalising the wrong thing. This thesis deals with the latter version of the Wrong Focus Objection.

The way the Wrong Focus Objection is problematic for Dworkin's restriction of wealth inheritance is best illustrated by an example. Let us take α and β once again. They are individuals who are similarly talented and have the same relevant skills that would help in their chosen lives. However this time let us propose that α is poorer in her material resources than β. α is not destitute but relative to β she has considerably less wealth and has considerably fewer opportunities and choices on how to lead her life. This inequality is due to β's luck of being born into a wealthy extended family who allow her access to a large trust fund which she is able to invest and live comfortably. In such a case Dworkin's theory attempts to justify the restriction of β's ability to inherit her abundance of material resources for the purpose of redistribution. This redistribution is to

allow α to have the opportunity to acquire the same range of choices in her life as β. If the Wrong Focus Objection is successful, it would entail that Dworkin's theory should equalise resources by restricting α's ability to inherit only if it ensures that α and β treat each other as individuals of equal social standing. This means that if the only way that β treats α as a social equal is if β is allowed to inherit vast amounts of wealth, then Dworkin's theory would not be justified in restricting wealth inheritance. Rather society should adopt an egalitarian theory of justice that equalises α and β's relationship in the relevant way, but not with regards to resources like inherited wealth.

Wolff is perhaps one of the most equivocal proponents of the Wrong Focus Objection. Wolff argues that to understand a general idea like equality is to develop an egalitarian ethos. Wolff defines an egalitarian ethos as a set of political values related to equality. Wolff (2010: 342) describes these values when he says:

> ...egalitarianism starts from a collection of values, not principles, and, as I suggested in my earlier papers, those values include fairness and respect.

These values are intended to be social values that groups of individuals use to regulate their behaviour and to form social behaviours. It seems Wolff rejects a methodology that starts from normative principles. Nevertheless Wolff is concerned specifically with the second social value. While he acknowledges the contribution of Dworkin to the understanding and formulation of normative principles around the value of fairness, he nevertheless believes:

> ...that there is more to a society of equals than a just scheme of distribution of material goods. There may also be goods that depend on the attitude people have toward each other. (Wolff 1998: 104)

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Wolff understands egalitarianism as the normative idea of promoting respectful social relations and attitudes. On the other hand an egalitarian theory like the one proposed by Dworkin is concerned with the distribution of resources and the opportunities these resources provide. The consequence of Wolff's argument is that the distributional theory proposed by Dworkin is incoherent with the normative ideal of equality. Such a theory does not give an account of how to equalise social standing and respectful relations between individuals. Such a theory would also not justify restricting wealth inheritance in the way that Dworkin's theory intends.

Unlike Wolff, Anderson and Scheffler are more direct in their criticism. Both start from a conception of what makes a theory egalitarian and what real world injustices egalitarians should care about. As Anderson (1999: 308) explains:

> Egalitarianism ought to reflect a generous, humane, cosmopolitan vision of a society that recognizes individuals as equals in all their diversity. It should promote institutional arrangements that enable the diversity of people's talents, aspirations, roles, and cultures to benefit everyone and to be recognized as mutually beneficial.

The "institutional arrangements" that Anderson believes an egalitarian theory of justice should promote amounts to an arrangement that recognises individuals as diverse and different as possible but with equal social standing. For Anderson these institutional arrangements are the essence of what an egalitarian theory should be, even though these arrangements may have implications for distributive justice. But, in Anderson's view Dworkin's theory is divorced from what egalitarian theories should be focused. Anderson (1999: 311) describes Dworkin's luck-egalitarianism, under the term "equality of fortune", as a theory that:

> . . . assumes atomistic egoism and self-sufficiency as the norm for human beings. It promises equality only to those who tend only to their own self-interest, who avoid entering into relationships.

We can see that Anderson objects to the inability of Dworkin's theory to value the equality of human relationships as opposed to the equality of resources. On this basis Dworkin's theory is not the egalitarian theory it aims to be because it focuses on equalising the wrong thing in society in the pursuit of restricting wealth inheritance.

Scheffler (2003: 23) takes up Anderson's attack when he describes the focus of GT1 and GT2:

> ...unless distributive egalitarianism is anchored in some version of that ideal, or in some other comparably general understanding of equality as a moral value or normative ideal, it will be arbitrary, pointless, fetishistic: no more compelling than a preference for any other distributive pattern.

The "general understanding" that Scheffler refers to is a conception of egalitarianism grounded in a social or political ideal that accepts the inherent value of human relationships. This understanding of egalitarianism is clearly contrary to GT2. As Scheffler (2003: 23) says:

> ...many people accept what I have called the social and political ideal of equality. That ideal does not support the ambition of purging the influence of brute luck from human relations...

Scheffler (2005: 19) argues that the basic notion of any egalitarian theory is that "to live in society as an equal among equals is a good thing in its own right," and therefore an egalitarian theory must provide principles that show how individuals can live and create institutions in a society of equals. To this end Scheffler (2003: 34) argues that Dworkin's theory is too administrative and does not express "a normative ideal of human relations".

Scheffler (2005: 7) argues that Dworkin's theory is proposed as an egalitarian theory of justice grounded in a "principle of responsibility".[5]

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[5]Scheffler (2005: 7) borrows this term from Brian Barry.

This principle, according to Scheffler, judges inequalities as just if they arise from causes that individuals can be held responsible for. This principle is different to GT2 since GT2 is about what society should do to mitigate social and economic inequalities rather than conditionally describing when states of affairs are just. However the principle of responsibility can be understood as a justification for GT2 since the reason to minimise the effects of brute luck is to absolve individuals of responsibility in some cases and hold them responsible in others. Scheffler (2005: 24) concludes that neither GT1 or GT2 conceives of egalitarian distributive justice completely when he says:

> The basic point is this. A conception of distributive justice, whether egalitarian or non-egalitarian, cannot be just a self-standing distributive formula. It must be part of a larger normative vision of society.

In summary, the Wrong Focus Objection argues that Dworkin's theory should not be considered as an egalitarian theory of justice. The primary reason given for this is that egalitarianism and the normative ideal of equality is about social relations in a society of equals and not solely about a just system of distribution. This is particularly troubling for our purposes because Dworkin justifies the restriction of wealth inheritance to those who hold the luck intuition by arguing that his theory is the best way of realising the normative ideal that a society should show equal concern for all its citizens. This is incoherent with realising the normative ideal of equality by equalising social relations instead of resources like inherited wealth. It would seem that a restriction of wealth inheritance would have to be analysed against the normative ideal that social relations should be equal.

3.2.1 Responses in the Literature

Defenders of Dworkin's theory and luck-egalitarianism respond to the Wrong Focus Objection in at least two ways. Either they dismiss the concerns of their objectors or attempt constructive engagement to modify Dworkin's theory accordingly. Dworkin himself attempts the former whilst Richard Arneson and Kok-Chor Tan attempt the latter. Dworkin (2003: 195) is explicitly dismissive when he responds to Scheffler's argument that Dworkin's theory is focused on the administration of distributive equality as opposed to the "traditional heart of egalitarian theory". Dworkin (2003: 195) describes Scheffler's argument as literary criticism:

> ...calling attention to an author's images and examples and arguing that these betray a hidden agenda...

I believe Dworkin's argument is unjustified. While Scheffler and Anderson make use of appeals to intuitions to stress the inability of GT1 and GT2 to account for social relations, they do clearly outline what they believe egalitarian theories should focus on. It appears Dworkin does not critically engage with this proposal at all to justify why his theory argues for a system of just distribution and not for a system that equalises social relations.

Dworkin (2003: 198) attempts to justify the focus of his theory by referring to the intuitive injustice of some individuals having extra opportunities to "make their lives much more exciting, productive, varied or interesting than others could". Dworkin seems to misunderstand the force of the Wrong Focus Objection. The objection does not question the consistency or intuitive appeal of minimising the effects of brute luck so that individuals can be held responsible for states of affairs they have actually chosen. The objection focuses on whether the focus of his theory adequately captures the normatively significant ideas of egalitarianism and theories about constructing a society of equals. On this front Dworkin does not seem to adequately defend why his theory should focus on the distribution of resources like inherited wealth.

Arneson approaches the Wrong Focus Objection with a more concilia-tory proposal. Arneson accepts that GT1 and GT2 with its focus on luck and individual responsibility may not be capturing the entire gamut of normative concerns about equality. Arneson proposes that GT1 and GT2 be modified to focus on the equality of well-being. Arneson's proposal is to modify GT1 so that society focuses on equalising individual well-being such that individuals are as responsible as possible for improvements and decreases in their well-being. Arneson (2000: 342) argues that under his proposal human relationships would be the focus while still justifying some unequal distributions:

> If we were to institute relationships of perfect equality accord-ing to some measure of relational equality, but people ended up living avoidably miserable and blighted lives, then we should institute some inequality in relationships, in order to improve the quality of people's lives and the fair distribution of this aggregate well-being.

Arneson's response to the Wrong Focus Objection is to modify GT1 and GT2 so that they capture Wolff, Anderson and Scheffler's notions about what an egalitarian theory should be. To this end, Arneson's proposal narrows the focus of GT1 and GT2 in order for Dworkin's theory to qualify as an egalitarian theory that coherently interprets the normative ideal of equality. Arneson's proposal would likely entail that Dworkin would need to justify restricting wealth inheritance by analysing wealth inheritance as a contributor to an inequality in welfare.

In contrast to Arneson, Tan argues to limit the scope of GT1 and GT2, rather than to modify its focus. Tan argues that Dworkin's theory must be understood as an egalitarian theory about society's institutions. Tan (2008: 686) argues that:

> . . . luck egalitarianism is not blind to the inherently social and relational quality of equality. On the contrary, it recognizes

that the motivation of distributive justice is to secure the relationship among persons that best reflects their equal status vis-a-vis each other.

Tan believes Dworkin's motivation for theorising a system of just distribution is recognised when we consider his institutional reading of luck-egalitarianism. Before I explain Tan's proposal it is important to note that Tan believes Dworkin's theory must be understood as a theory of distributive justice. This means it should focus on the distribution of goods, services, and opportunities to accumulate and dispose goods and services. Tan (2008: 669–670) makes it clear that the theory is not a theory of political justice, or justice in the maintenance of law and order when he states that the purpose of luck-egalitarianism:

> . . . is to explain and justify why distributive equality with respect to economic goods and burdens, over and above those that persons need for basic subsistence, is required as a matter of justice.

Now that the type of justice Tan accepts as luck-egalitarian is clear, we can begin to understand his proposed solution to the Wrong Focus Objection. Tan's (2008: 671) proposal is that Dworkin should modify the scope of his concern to focus on the way a society's institutions deal with the effects of brute luck. Tan argues that modifying the scope in this way enables luck-egalitarians like Dworkin to order a system of just distribution with a particular focus on how the system creates equal social relations. Tan's (2008: 686) response to the Wrong Focus Objection is that:

> . . . if luck egalitarianism takes the institutional form I am recommending, and its task is acknowledged to be that of regulating the background social conditions of ownership, it cannot but have a social dimension.

Tan's proposal to resolve the Wrong Focus Objection is to maintain the focus of GT1 and GT2 on distributive justice but limit its scope only

to include the way institutions redress or exacerbate the effects of brute luck. This solution would follow the solution Tan offers for the Harshness Problem so that Dworkin's restriction of wealth inheritance is justified in an institutional context. This would mean that inherited wealth would be restricted not on a case by case basis but only when individuals are engaged in socially connected activities.

3.2.2 Troubles for Arneson and Tan

While Dworkin's solution was shown to be unjustifiably dismissive of the Wrong Focus Objection, Arneson and Tan's solutions seem more plausible. If successful it appears Dworkin can justify restricting wealth inheritance by either appealing to its ability to have implications for social relations when individuals have equal opportunities for welfare or equal treatment by social institutions. Nevertheless, I believe Arneson and Tan's proposed solutions invite their own objections. In this section I argue that both plausible solutions do not actually solve the problem posed by the Wrong Focus Objection. Both solutions do not respond to the essential complaint that as a supposedly egalitarian theory, Dworkin's theory focuses on the effect of brute luck in apportioning moral responsibility rather than the social relations between individuals.

Arneson's solution narrows the focus of GT1 to equalising opportunities for welfare. This proposal would depart significantly from Dworkin's theory and would in many ways be contrary to almost all of Dworkin's arguments against equalising welfare (Dworkin 2000: 21–42, 48–62). Even if these concerns were put aside I believe that by limiting the equalisandum, Arneson misunderstands the Wrong Focus Objection. The objection does not question whether an egalitarian theory focused on social relations will have consequences for individual welfare. Rather the objection questions how Dworkin's can be considered an egalitarian theory when it has no concern for the way social relations may be unequal.

For example, in a society with a welfare system that attempts to miti-

gate the effects of brute luck by establishing a social safety net and a fair market of goods and service, it appears individuals do have equal opportunity for welfare. Yet, Wolff, Anderson and Scheffler would still argue that such a society, if it is supposedly organised under luck-egalitarian principles, would not ensure that individuals stand as social equals. They would argue that the Wrong Focus Objection would still hold, because the luck-egalitarian principles would ensure only that individuals were held morally responsible for their choices not that individuals treated each other with equal respect and moral worth.

Arneson's solution would also mean that Dworkin's theory would have to analyse wealth inheritance with respect to its role in giving individuals the opportunity to change their well-being. This would fundamentally shift the focus of Dworkin's theory from resources to welfare. Such a departure would invariably mean that Dworkin's theory could not justify restricting wealth inheritance in the way he hopes. In fact Gerald Cohen's version of luck-egalitarianism would be more suited. However as I flagged in the Introduction I will not be evaluating how Rawls and Dworkin's theories justify their normative position to an intuition about the consequences of restricting wealth inheritance for welfare.

On the other hand, Tan's solution seems more promising. Tan's focus on social institutions attempts to target GT1 and GT2 on the parts of society where individuals interact and are affected by the actions of other individuals. These "parts" are social institutions like the voting system, the hierarchy of government bodies, the press, the social welfare system, and perhaps most importantly the market. Tan's solution appears to modify the scope of GT1 and GT2 to deal with the effects of brute luck when individuals interact with the institutional structure of society.

However, the problem for Tan's solution is evident in his own argument. Tan insists that Dworkin's theory should be understood as a theory about the distributive justice of social institutions that might have consequences for the social relations between individuals. Wolff, Anderson and Scheffler

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object to this marginalisation of social relations in favour of distributive justice. This is because egalitarianism for Wolff, Anderson and Scheffler must provide some account of how the social relations between individuals are made equal. If social relations are not the primary focus then according to Dworkin's theory a conflict between creating distributive justice and equal social relations will have to be resolved by promoting distributive justice at the expense of equal social relations.

3.2.3 A Provisional Solution

I suggest a provisional solution to the Wrong Focus Objection that deals with social relations as opposed to individual well-being or social institutions alone. The responsibility based solution I suggest uses Tan's proposal about the scope of Dworkin's theory, but expands on how GT1 and GT2 should apply to society's institutions.[6] In effect the solution tries to internalise the concern for making social relations equal into Dworkin's conception of egalitarian distributive justice.

I propose that luck-egalitarianism should be understood not just as a theory about distributive justice but also as a theory about political equality. To this end I believe Dworkin should accept the following proposals:

1. Individuals are only responsible for a particular state of affairs, if all the relevant *social institutions* have done well to educate and prevent individuals from making negligent mistakes. (Proposed in response to the Harshness Problem)

2. Responsibility is a reciprocal relation between individuals and social institutions.

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[6]Daniel Markovits (2008) proposes a solution similar to this without the use of social institutions. Given that paper is outside the scope of this thesis I will not discuss the merits of Markovits's solution here, other than to say that I do not believe it modifies Dworkin's theory enough to solve the Wrong Focus Objection.

(a) Social institutions hold individuals responsible for their choices through the analysis of brute and option luck, and insurance schemes.

(b) Individuals hold social institutions responsible for the way they treat other individuals.

Firstly Dworkin's theory should accept Tan's proposal to apply GT1 and GT2, not to every interaction between individuals, but only those that affect individuals when they interact with social institutions. Consequently, GT1 and GT2 would also apply to the behaviour of social institutions and the way they affect the lives of individuals. This would mean that Dworkin's theory would apply to the social structures of a liberal society where individuals were connected in political and economic relationships. This would mean that restricting wealth inheritance would be the responsibility of institutions like the tax system, the welfare system, the public health system and the insurance markets.

Secondly, and more important for resolving the Wrong Focus Objection, Dworkin's theory should be concerned with whether the actions of society's institutions reflect the choices that individuals make as opposed to arbitrary facts about them. This means that social institutions not only hold individuals responsible for their own choices, but also for the actions of the institutions themselves. Understood this way luck-egalitarian principles *disseminate* responsibility throughout a liberal democratic society. This means that responsibility is conceived as a reciprocal relation between individuals and society's institutions. By focusing on social institutions Dworkin's theory can have the social dimension that its objectors argue it requires and it can still be a theory about holding individuals responsible for their individual choices.

For example, the way the tax system is used to restrict wealth inheritance is the responsibility not just of those few individuals who work for it, but all the individuals who pay taxes or received benefits from tax receipts. Understood this way individuals are responsible for reforming a tax system

that restricts wealth inheritance inefficiently or unjustly. Similarly the voting system should also operate in a way that holds individuals responsible for genuine choices and not choices affected by inherited wealth or other forms of brute luck. However voters, should also be held responsible for both the outcome and the way the voting system behaves. In both our examples responsibility for the outcome and operation of social institutions does not reside with only one individual, but it is disseminated between every individual that participates in the given institution. Understood this way social institutions are the subject of GT1 and GT2 and the structures that hold individuals responsible.

If we understand luck-egalitarianism in the way I suggest, then the implications for social relations are more central to Dworkin's theory than in Dworkin's original account. GT1 and GT2 are intended to outline the principles for distributive justice. The Wrong Focus Objection questioned whether this was really an egalitarian theory since it did not provide an account of how social relations were to be equalised. However if the individuals who interact, manipulate and manage social institutions are responsible for the way those institutions behave, then GT1 and GT2 apply to the way individuals treat each other through social institutions.

For example, a system of social hierarchy that codifies relations of contempt for those who do not inherit wealth and respect for those who do is not the responsibility only of those individuals who show contempt and respect. It is also the responsibility of every individual who cooperates within that system. This does not mean that individuals should not treat individuals with contempt or respect under any circumstance. Clearly there are acceptable conditions for these kinds of relations. My solution only proposes that social relations cannot be unequal because of brute luck events such as the luck of being born to wealthy parents. To live in a society of equals, as interpreted by Dworkin's theory, is for all the citizens of a society to be reciprocally responsible for the actions of, and to reform the institutions they partake in according to GT1 and GT2. Equal social

relations are then created by a reciprocal responsibility for our democratic choices both in actions of direct influence and actions of indirect influence on other individuals.

3.2.4 Conclusion

Taking stock for a moment, the purpose of this section was to evaluate the Wrong Focus Objection and its impact on Dworkin's theory. To this end I considered three responses and argued that they were inadequate. Dworkin's response was implausible because of its dismissal of the seriousness of the objection. Arneson's response was judged as departing too far from Dworkin's theory and by doing so misunderstanding the Wrong Focus Objection. Tan's response was also judged to misunderstand the force of the Wrong Focus Objection, because the objection is not that Dworkin's theory has no consequences for equalising social relations. But that the normative ideal of equality is incoherent if it is not primarily fulfilled by equalising social relations. Because of the way the Wrong Focus Objection showed an incoherency in the way Dworkin justifies restricting wealth inheritance and the inadequacy of the existing response, I suggested an alternative solution. I suggest a modification to expand Tan's institutional understanding of luck-egalitarianism to incorporate the reciprocal responsibility of individuals for the actions of social institutions. I suggested that this reciprocal responsibility means that responsibility for the operation of social institutions is disseminated throughout society. Consequently, insofar as individuals participate in a system of politically related institutions, then all the individuals in that system would be equally responsible for the way all individuals treat each other. In this way Dworkin's theory can claim that social relations and resources like inherited wealth are the subject of GT1 and GT2.

3.3 Equal Access to Advantage

In this section I outline Gerald Cohen's argument that his theory of "Equal Access to Advantage" is better than Dworkin's theory at justifying restrictions on wealth inheritance because he uses a coherent distinction to decide when inherited wealth should be restricted and when it should not. Cohen argues that unless some modification is made to Dworkin's theory, Dworkin should adopt, parts of his theory to resolve the incoherent distinctions. This is important for our purposes because adopting parts of Cohen's theory would give Dworkin's theory a comparative cost for departing significantly from Dworkin's original principles. Cohen's (2008; 2011: 14)[7] first argument is that Dworkin's theory does not coherently satisfy the opportunity and luck intuition, because it makes an unjustified distinction between preferences and circumstances.[8] Cohen then argues that his theory of Equal Access to Advantage is a better alternative because it treats preferences, opportunities and resources consistently and therefore answers the normative concerns of the opportunity and luck intuition without making an incoherent distinction.[9]

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[7]All references to pages 3–43 from Cohen (2011) are from Cohen (1989)

[8]What about the liberal intuition you may ask? Well, although Cohen's theory treats all other concerns such as equal opportunity or equal resources as antecedent to a concern for welfare, it is concerned to some degree with individual freedom. Cohen does not argue for a principle like Rawls's first principle of justice but rather as a universal value that any form of egalitarianism must "make peace with"(2008: 214). Cohen argues that the personal freedom to bequeath private property as one desires should be unrestricted. Nevertheless, Cohen does believe that egalitarian principles should restrict the personal freedom to inherit private property.

[9]This does not mean that Cohen's theory should be a genuine candidate for our purposes, because it does not attempt to justify its normative prescription to all three relevant intuitions. Cohen's theory at best attempts to justify restricting wealth inheritance to those who hold the opportunity intuition and luck intuition. Cohen's theory gives no account of how the restriction of the right to dispose private property can be justified to bequeathers and inheritors. However Cohen's theory does attempt to satisfy the opportunity and luck intuitions by restricting wealth inheritance by equalising any

I will discuss Cohen's challenge in §3.3.1 and §3.3.2. §3.3.1 explains what Cohen finds so troubling about Dworkin's theory and the application of GT1 and GT2. Cohen presents three examples to highlight how Dworkin's theory does not actually make the distinction between luck and choice, but between preference and circumstance. Cohen's argument is that Dworkin's theory is unable, as a matter of principle, to account for unchosen preferences. §3.3.2 explains Cohen's solution for Dworkin's theory in light of the three examples he presents. Cohen's solution will be that we should adopt his theory of Equal Access to Advantage because it treats all forms of unchosen states of affairs consistently, whether they are preferences, opportunities or resources.

3.3.1 Distinguishing Preferences and Circumstances

Cohen borrows his first example from Dworkin to establish a contrast class of cases where Dworkin's theory appears to work well. Cohen cites the case of Louis who deliberately chooses to cultivate an expensive preference for plover eggs (Dworkin 2000: 49–51). Cohen argues that a just society is not obligated to compensate Louis if he cannot fulfil his expensive tastes. Louis is held responsible for the choices he makes, and for the disadvantage in resources or well-being that he has because he cannot afford plover eggs. Dworkin and Cohen agree that a just society should not redistribute wealth to allow Louis to buy plover eggs. This case is easily imaginable in different ways and will service as an example that contrasts against Cohen's next example. Cohen's next example shows how Dworkin's theory makes an unjustified distinction between unchosen circumstances and unchosen preferences, and not as Dworkin claims between choice and luck.

Cohen's (2011: 20) second example involves two individuals, Paul who loves photography, and Fred who loves fishing. Cohen further supposes that Paul's passion is expensive and difficult to pursue, whereas Fred's passion is cheaper. Cohen then supposes that circumstances in society are

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access to advantage that individuals have that does not result from their choice.

such that Paul can no longer pursue his passion and as result his life is comparatively worse off to Fred's. Cohen (2011: 20) states his approach to this problem clearly:

> I think the egalitarian thing to do is to subsidize Paul's photography. But Dworkin cannot think that.

Cohen even supposes that Paul and Fred's case passes the envy test with both Paul and Fred having the same opportunity to pursue their passions. Both individuals have also chosen without coercion to pursue their own ends. Although the costs to pursue photography and fishing are different, the costs are consistent for both Paul and Fred; the market does not discriminate based on who chooses to pursue either passion. It appears all the criteria for an equal distribution in society are met.

Nevertheless, Cohen argues there is a problem. Paul suffers from a disadvantage he has not chosen, namely the preference or "passion" for photography. Cohen argues that since Paul has not chosen to acquire his preference for photography, he is not responsible for his diminished well-being. Paul suffers from the brute luck of being born with an expensive preference. It appears that Dworkin's theory is inconsistent in its treatment of Paul's unchosen expensive preference and Fred's unchosen inexpensive preference.

How are these contrasting cases relevant to the project of this thesis? Because we can easily imagine how wealth inheritance can be used to help Louis cultivate expensive tastes and for Paul to pursue photography. In the first example Dworkin and Cohen would agree that a just society cannot justify restricting wealth inheritance no matter how disadvantaged Louis is from cultivating expensive tastes. This is because Louis is responsible for his choice to cultivate a taste for plover eggs, but his ability to inherit is not a choice but a form of brute luck that must be transformed into option luck. Both Dworkin and Cohen would agree that a just society can justify progressive inheritance taxes on Louis to fund an insurance scheme for those who do not inherit. In the second example Dworkin

would again advocate restricting wealth inheritance even if it means Paul cannot pursue photography. But Cohen would prescribe fewer restrictions on wealth inheritance for Paul because it is not his choice to have expensive preferences.

Another way to understand the implications of Cohen's argument is to modify his example of Paul and Fred. For example, Fred receives an inheritance that allows him to pursue his passions without much difficulty. However Paul is unable to pursue any of his preferences because they are unaffordable. Although Dworkin would endorse restricting Fred's wealth inheritance he would not endorse compensating Paul. Cohen argues that this would be inconsistent, because Dworkin's theory treats Paul's unchosen preferences differently from Fred's unchosen circumstance of inheriting wealth. Furthermore, Cohen argues that Paul's inability to pursue his expensive preferences diminishes his well-being. Although Fred's wealth inheritance is restricted he has a greater opportunity to increase his well-being by fulfilling his inexpensive preferences. Cohen argues that this inequality of opportunity for welfare is what should concern Dworkin's theory when restricting wealth inheritance.

What accounts for Cohen and Dworkin's similar normative judgements in the first example but different judgements in the second? Cohen concludes that Dworkin's theory implicitly makes the wrong distinction and incoherently advocates restricting wealth inheritance for Paul and Fred when Paul's inherited wealth should be restricted less or not at all. Cohen argues that Dworkin mistakenly categorises some instances when individuals appear to choose an expensive life, when in fact they are motivated by unchosen preferences. Consequently a just society should identify such an instance as a form of brute luck rather than option luck. Cohen (2011: 27) explains his view when he says:

> A person in possession of his faculties always chooses (within the constraints he faces) what career to pursue, but he does not always choose what career to prefer, and the latter fact may

reasonably restrict his responsibility for choosing to pursue an expensive one.

Cohen argues that Dworkin's distinction between choice and luck does not actually distinguish or separate the states of affairs for which individuals are responsible and the states of affairs for which they are not responsible. Cohen (2011: 19–20) argues that Dworkin actually makes a distinction between preferences and circumstances. Cohen concludes that we must be consistent in our treatment of all unchosen states of affairs whether they are preferences or circumstances. To this end, he argues that to not compensate individuals for possessing unchosen preferences ignores the way unchosen preferences cause an inequality of opportunity for welfare. The consequence of this is that if Dworkin's theory makes an unjustified distinction between unchosen preferences and unchosen circumstance, then it does not coherently answer the normative concerns of those who hold the opportunity and luck intuition. This is because restricting wealth inheritance when inherited wealth makes the lives of those who suffer from unchosen preferences better is contrary to equalising opportunities or only holding individuals responsible for their choices. The next section will analyse Cohen's solution to this supposed incoherency. Cohen proposes his theory justifies restricting wealth inheritance coherently to the opportunity and luck intuition.

3.3.2   Cohen's Alternative Theory of Justice

Cohen's motivations for his theory are similar to Dworkin's. The normative judgement of holding individuals responsible for their choices and not events and circumstances they cannot control motivates Dworkin's theory. This is the central judgement of the luck intuition. Cohen (2011: 13) states that "Equal Access to Advantage" is guided by the distinct intuitive pull:

> . . . to eliminate involuntary disadvantage, by which I (stipulatively) mean disadvantage for which the sufferer cannot be held

responsible, since it does not appropriately reflect choices that

he has made or is making or would make.

It is clear that Cohen's theory uses aspects of Dworkin's theory, but diverges in one crucial way. Cohen (2011: 14) does not believe that his theory should only equalise resources. Rather it should equalise all types of advantages that arise from brute luck. Cohen achieves this by mitigating involuntary disadvantage. With "disadvantage" being broadly understood as unequal opportunities or unequal resources to achieve a desired level of well-being (Cohen 2011: 4–5). Using the distinction between brute luck and option luck, like Dworkin, Cohen's theory judges individuals to be either morally responsible or morally absolved for their access to advantages (Cohen 2011: 14). Individuals are responsible for their access to disadvantages or advantages so long as they chose to act in a way that gave them this access. This distinction means that a just society should equalise the effects of unchosen opportunities for welfare and resources.

Cohen (2011: 15–18) illustrates his theory by using the example of 'Tiny Tim'. I will use a modified version of this example using 'Tiny Tim' and 'Sheila'. My example starts with Sheila whose legs are paralysed and so she requires a wheelchair to move. Sheila's paralysis is caused by brute luck that she could not have foreseen or chosen and she is born with a very minimal capacity to fare well. Cohen contrasts Sheila's case with the case of Tiny Tim who has a similar affliction to Sheila, however, he was born with the abundant capacity and opportunity to fare well.

Cohen believes that Dworkin's theory would judge that a just society should give Sheila and Tiny Tim a wheelchair each. Sheila and Tiny Tim lack a certain resource through no fault of their own and so the equalising of resources demands that they be given a wheelchair. After being compensated for his paralysis Tiny Tim fares much better than before. Sheila on the other hand, despite being compensated, does not achieve any greater level of well-being. It is because of this different capacity for welfare that Cohen disagrees with Dworkin's theory. Cohen believes that a just society

should compensate Sheila more because of her different opportunity for welfare. Dworkin disagrees even though brute luck affects Sheila and Tiny Tim's opportunities. Dworkin's theory judges that Sheila and Tiny Tim should only have resources through their transformation of brute luck into option luck.[10]

Cohen argues that the example shows Dworkin's theory is insensitive to differences in unchosen opportunities. This is because the effect of brute luck on the opportunity to increase one's subjective well-being cannot justifiably be treated differently to an unchosen resources disadvantage. Cohen argues that Sheila's inability to fare well after being compensated the same resources as Tiny Tim is not Sheila's choice. Therefore to treat all forms of unchosen advantage consistently, a just society would give Sheila her pain medication or subsidise it so it was less costly.

To return to wealth inheritance Cohen's theory would justify restricting wealth inheritance as a form of access to advantage that must be equalised. According to Cohen's theory wealth inheritance is an advantage that an individual can use to grow their opportunities for increasing their welfare. But Cohen justifies restricting wealth inheritance differently to Dworkin. Cohen argues that a just society should not restrict, or weakly restrict, wealth inheritance when it allows an individual with unchosen preferences to equalise their opportunities to increase their welfare. An individual with more costly preferences should have their inheritance taxed less or receive more benefits because their unchosen expensive desires are a form of brute luck not option luck. On the other hand, Dworkin argues a just society

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[10]At this point Cohen (1989: 919) accepts that his example can be seen as "fanciful". How could Sheila, despite having the same affliction as Tiny Tim and given the same resources as compensation, have fewer opportunities to increase her welfare? It seems that if Sheila is compensated the same as Tiny Tim she would use her resources to better herself in the same way. To clarify this Cohen presents other examples where cold weather affects the elderly or disabled more adversely than other individuals. Cohen argues that like these individuals Sheila is disadvantaged in a way Dworkin would incorrectly term "expensive tastes".

should restrict wealth inheritance if it allows individuals to have unequal resources, or opportunities through no choice of their own.

Let us look at another example that clarifies how Cohen's restriction of wealth inheritance differs from Dworkin's. Let us suppose that there are two groups of millionaires, α and β, who inherit most if not all of their wealth. α and β differ in one crucial way, namely that the millionaires of α are born with expensive preferences. These preferences and tastes are expensive in the sense that they require a lot of resources to fulfil and to not fulfil them severely diminishes the well-being of the millionaires. The millionaires of β are fortunately born with relatively inexpensive preferences and tastes which are easily satisfied by their wealth.

Dworkin's theory prescribes that what should concern us is that the members of α and β possess wealth that is entirely the result of brute luck. Consequently they have no moral responsibility for their wealth and the unequal opportunities that their wealth gives them. Dworkin's theory is clear that a liberal democratic society should restrict the inherited wealth of α and β to redistribute that wealth to those who have little wealth. In contrast Cohen's theory prescribes that we should restrict the wealth of α less than β because the members of α did not choose to have expensive preferences. However this does not mean that α are exempt from inheritance taxation, but that they will be taxed less than the members of β, because they do not have an equal access to the advantage of inexpensive preferences and tastes. Cohen's theory justifies restricting the inherited wealth of β because they are more easily able to achieve their desired level of welfare than the members of α. Cohen argues his theory justifies its treatment of α and β to the opportunity and luck intuition better than Dworkin's theory because it does not commit itself to an incoherent distinction between unchosen advantages. Cohen treats advantages, whether resource based or opportunities based, the same because both can be unchosen.

Cohen's theory challenges Dworkin's theory by treating unchosen circumstance and unchosen preferences the same way. Cohen does this because he believes it is the only coherent way to justify restricting wealth inheritance to the opportunity and luck intuition. In doing this Cohen's theory is able to balance the concerns of the luck and opportunity intuition without prioritising the mitigation of brute luck above equalising opportunities for welfare or resource accumulation. I believe Cohen's argument is persuasive and demands some response from Dworkin, because if Cohen's challenge is not resisted then there is good reason to modify Dworkin's theory to adopt some of Cohen's principles. This is important for our purposes because it would place a great comparative cost on Dworkin's theory if it were to be modified so radically from its original formulation. In short this section has seemingly established that Dworkin should either adopt some of Cohen's theory or respond in some way to avoid this costly departure from his original theory.

3.4   The Road Ahead for Dworkin

This chapter has established that Dworkin's theory cannot justify restricting wealth inheritance coherently to a broad range of intuitions in a liberal democracy without some modifications. This was achieved by raising three problems for Dworkin's theory.

Firstly, in response to the Harshness Problem I suggested that Dworkin's theory must be reread as focusing on social institutions. This is opposed to Dworkin's original focus on individual transactions. Applying GT1 and GT2 to social institutions means that wealth inheritance would be restricted only when it affects the lives of others. This would mean that Dworkin's attempt to satisfy those who hold the luck intuition would not be incoherent with proposing a theory of distributive justice in a liberal democracy.

Secondly, in response to the Wrong Focus Objection I suggested that

the focus on social institutions would mean that Dworkin's theory would also hold individuals responsible for the way they were connected in political relationships. To that end I suggested that Dworkin's theory should adopt an understanding of responsibility as a reciprocal relation between individuals and social institutions. This would mean that Dworkin's focus on equalising resources, like inherited wealth, would not be incoherent with the normative ideal of equality because Dworkin's principles would also apply to the social relationships between individuals.

The final criticism considered was Cohen's use of his theory of Equal Access to Advantage to challenge the coherency of Dworkin's justification for restricting wealth inheritance. I argued it was incoherent for Dworkin to restrict wealth inheritance when resources were unequal but choose not to when unchosen opportunities for welfare were unequal. Cohen's argument is that Dworkin makes an unjustified distinction between preferences and circumstance. Cohen argues that his theory is better than Dworkin's because it does not require this distinction to answer the nominative concerns of the opportunity and luck intuition coherently. Cohen argues that only by equalising all types of unchosen disadvantages can a restriction of wealth inheritance be consistent. To that end, Cohen's challenge has shown that Dworkin must either reinterpret his theory or adopt parts of Cohen's theory to avoid arbitrarily discriminating between cases of brute luck disadvantage.

Some of the costs for adopting an institutional interpretation included the potential for Dworkin's theory to weaken its conception of moral responsibility too much and that to compensate a robust theory of democracy may be required.[11] It also appears that according to Cohen, Dworkin's theory needs to justify why resources are worthy of being equalised instead of

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[11]It appears that only a theory of democratic political institutions would realise the solution and that a distributive theory alone cannot. Another cost is that if Dworkin chooses to adopt a robust theory of democracy, then luck-egalitarianism may appear to be indistinguishable from Anderson's conception of "Democratic Equality" which forms an important part of a distinct theory of relational-egalitarianism.

opportunities for well-being. Although these solutions and their costs will be examined in Chapter 5, it is clear that Dworkin's restriction of wealth inheritance cannot be justified without modification.

Chapter 4

Solutions for Rawls and Dworkin

The last three chapters steadily raised issues for using Rawls and Dworkin's theories to justify restrictions on wealth inheritance. Chapter 2 targeted Rawls's theory and Chapter 3 targeted Dworkin's theory. While I already offered solutions to four of the problems raised in Chapters 2 and 3, in this Chapter I offer solutions to the remaining problems. In the next chapter I will use the solutions I suggest below to analyse the comparative costs and benefits for Rawls and Dworkin. The analysis will conclude that Dworkin's theory is better suited to the task of justifying restrictions on wealth inheritance than Rawls's theory.

I offer solutions in this Chapter to establish the best versions of Rawls and Dworkin's theories to use in the comparative analysis in Chapter 5. If the problems I discuss in this Chapter are left unanswered they will be significant theoretical costs to Rawls and Dworkin. These costs include, being motivationally incoherent, making incoherent distinctions, the inability to answer all three normative intuitions in some way and the inability to give equal weight to each of the three intuitions. The last two costs are especially troubling because they attack the central reason for including Rawls and Dworkin as candidates. As I outlined in the Introduction, Rawls and

Dworkin expect to justify their theories to a range of intuitive concerns in a liberal democracy. Rawls and Dworkin do not expect their theories to reveal metaphysical truths about justice. They expect their theories to describe a system of normative principles which are justifiable to a broad range of intuitive normative judgements.

The problems I discuss in this Chapter appear in an order of priority. This means that I will first offer solutions to the two internal problems against Rawls's theory and then to the most significant challenge against Dworkin's theory. To that end I begin by offering a solution to the Distinction Problem that I raised in Chapter 2. The Distinction Problem is that Rawls's theory does not give a coherent justification for treating wealth inheritance similar to natural talent but different to social class. I offer a solution to avoid the comparative cost of an incoherent justification. This comparative cost means that the way Rawls's theory justifies restricting wealth inheritance to those who hold the luck intuition would be incoherent. This would be a comparative disadvantage over Dworkin's theory. The normative judgement that grounds the luck intuition is that a just society should not hold individuals morally responsible for being born into a high social class or having wealthy bequeathers. Rawls must justify why he chooses to treat these two events differently when they are both judged identically by those who hold the luck intuition.

The second problem I offer a solution to is the Structural Injustice Problem I introduced in Chapter 2. This problem is that Rawls's theory does not answer the normative concerns of the luck intuition because it permits wealth inheritance to contribute to social behaviours that limit the choices open to individuals. Permitting wealth inheritance in this way is contrary to the intuitive judgement made by those who hold the luck intuition that individuals should not be held responsible for how unchosen social behaviours and values disadvantage them. This means that those who hold the luck intuition will not find Rawls's restriction of wealth inheritance justifiable. I offer a solution to avoid this comparative cost because

a theory that cannot justify itself to one of the three normative intuitions cannot claim to be broadly justifiable in a liberal democracy.

The third problem I propose a solution for is Cohen's use of his theory of Equal Access to Advantage to challenge Dworkin's theory. Cohen's challenge is that the coherent way to justify restricting wealth inheritance is by restricting all forms of brute luck and not just unchosen circumstances. Cohen argues this because it seems Dworkin's theory restricts wealth inheritance without taking into account the effect of restricting wealth inheritance for individuals with other unchosen passions or capabilities for well being. This would be a comparative cost because it is incoherent with the normative judgement of the luck intuition that individuals should not be held responsible for the disadvantages of unchosen phenomena. Cohen argues the only way to avoid this is to adopt, at least in part, Cohen's theory of equalising access to advantage instead of resources. I offer a solution to avoid the comparative cost because it involves a large conceptual departure from Dworkin's original arguments and motivations. All three of the problems I have outlined demand either a response that reinterprets or modifies Rawls and Dworkin's original theories.

But before exploring the solutions, let us remind ourselves of how Rawls and Dworkin set out to justify restricting wealth inheritance. This outline will include the solutions I offered in Chapters 2 and 3 to Cohen's Distilled Arguments, the Harshness Problem and the Wrong Focus Objection.

Rawls (2001: 42, 51–53) justifies restricting wealth inheritance by proposing that unrestricted wealth inheritance violates his two principles of justice. Wealth inheritance violates the second principle of justice because it allows similarly talented and motivated individuals to have unequal opportunities to attain social and economic goods. However, wealth inheritance should only be restricted insofar as it is most beneficial to the least advantaged in society. Rawls (2001: 42, 114) answers the liberal intuition using his first principle of justice which does not permit a society to completely restrict a bequeather's freedom to dispose of their private

property. This is because the freedom to accumulate and dispose property is a primary good that all free and equal people desire when endorsing a fair system of social cooperation.

Rawls (2001: 43) then answers the opportunity intuition using his second principle of justice which entails that wealth inheritance should be restricted because it does not give all individuals an equal opportunity to attain social and economic goods. For Rawls, equality of opportunity is more than the formal equality of allowing all individuals to participate in the market or treating them as equal citizens. It is the equal *chance* for all individuals regardless of their social class to compete against others. Inequalities of opportunities are only permitted when they are to the greatest advantage for the worst off. Rawls's theory answers the luck intuition by specifying the types of things that contribute to unequal opportunities, namely social contingencies that individuals should not be held responsible for. These contingencies include lucky events that affect an individual's prospects in life. Wealth inheritance is one such contingency that provides some individuals significantly more capital in their lives than others and hence more opportunities.

Nevertheless, Rawls's original theory prioritises the opportunity intuition because the difference principle sets out the limits for equalising opportunities. One consequence of Cohen's argument in Chapter 3 was to modify Rawls's theory from treating inequalities as necessary to treating inequalities as contingently permissible. As a consequence opportunities should not be equalised at all costs because an inequality can be permissible if it is of the greatest advantage to the worst off. This is because Rawls (2001: 62–63) believes that the best way for all individuals to have an equal chance to attain the primary goods that all free and equal people desire is to have a productive society. According to Rawls a society can only be productive enough to advantage those in the lowest social class if individuals have an incentive to be productive. This incentive includes the ability to accumulate more resources than others and the ability to

further the lives of their descendants through inherited wealth. Therefore an emphasis on equalising opportunities does not mean neutralising or confiscating all instances of inherited wealth but only restricting wealth inheritance to the extent that it benefits the least advantaged most.

On the other hand Dworkin's original theory prioritises the luck intuition by proposing the abstract egalitarian principle and the principle of abstraction (2000: 128, 147–148). The general normative theses - GT1, GT2 and GT2.1 which I introduced in Chapter 3 - codify a general conception of Dworkin's principles and the means to implement them. Dworkin's theory entails that a just society should restrict wealth inheritance because it is a form of brute luck that distributes resources unequally through a process that individuals do not choose. Dworkin justifies his claim on the basis that wealth inheritance violates both GT1 and GT2. To this end, Dworkin answers the luck intuition primarily through GT2, because GT2 specifies that the effects of brute luck, not option luck, on an individual's social and economic state of affairs *should* be minimised as much as possible. Since wealth inheritance is an instance of brute luck, this means that it should be converted as efficiently as possible into a form of option luck. This is because wealth inheritance is an unchosen advantage that individual's cannot be held responsible for.

Dworkin answers the opportunity intuition using GT2 and GT2.1 which prescribe that a just society should equalise resources and the freedom for individuals to use their resources. For Dworkin (2000: 77–78, 128, 147–148), the transformation of brute luck into option luck means giving all individuals an equal chance to use their social and economic freedoms. This entails the freedom to use their resources to make choices about leading their lives. In short, the formal equality of political and economic freedoms combined with transforming brute luck into option luck using insurance schemes ensures that all individuals have an equal opportunity to lead a life for which they can be held responsible. This does not mean that equality of opportunity is the primary concern for Dworkin. Dworkin's theory

allows gross inequalities in opportunities, even to the extent that it makes the worst off even more disadvantaged, so long as the inequality is a result of a direct choice or option luck. Dworkin answers the liberal intuition using GT2.1 because it prescribes that all individuals should have the personal freedoms that are compatible with the efficient running of insurance schemes and markets. This can include an individual's right to bequeath since bequeathing is a choice, even though inheriting is not. Therefore inheritors must bear the true opportunity cost of lucky circumstances like being born to wealthy ancestors.

Unlike Rawls, Dworkin's original theory prioritises the luck intuition. This is evident in the way he approaches the concept of distributive justice. Dworkin starts from a desire to equalise the power individuals derive from their private ownership of resources. Dworkin's initial motivation is to legitimise an equal division of resources. For this he relies on the envy test and the auction (2000: 67–69). Both of these devices ground the legitimacy of equal resource distributions in the moral responsibility that individuals have to bear the costs of their choices. Wealth inheritance is one act that violates this responsibility because it does not present individuals with a choice. Therefore individuals cannot be held responsible either for its advantages or its disadvantages. Dworkin's initial link between choice and equality is what makes him prioritise the luck intuition above the opportunity and liberal intuition.

Nevertheless Dworkin's theory has been modified slightly from his original account to solve the Harshness Problem and Wrong Focus Objection. These changes modify GT2, by specifying in more detail when and what parts of a just society should hold individuals responsible for their choices. Three changes are made. First, that social institutions hold individuals responsible for their choices by educating them about the potential risks of their choices. Second, that some level of mandatory insurance is permissible to ensure that individuals understand the inevitable risks of their choices for other people. Third, that responsibility is a reciprocal relation

between social institutions and individuals. While the consequences of the first two changes are obvious, the third change suggests a more developed conception of moral responsibility. This developed conception means making all individuals equally responsible for their social interactions through society's institutions.

In the following sections I develop Rawls and Dworkin's theories further from the way I have outlined them so far. In §§4.1–4.2 I offer solutions to resolve internal problems about the coherency of Rawls's normative machinery. In §4.3 I offer two defences of Dworkin's theory against Cohen's challenge.

4.1 The Distinction Problem

The Distinction Problem is the worry that Rawls's theory cannot justify treating wealth inheritance differently to social class and therefore is unjustifiable to the luck intuition. I argued that to maintain Rawls's different treatment of wealth inheritance and social class is incoherent because it involves treating two relevantly similar social contingencies in different ways. In turn this internal incoherency shows Rawls's theory ignores the considered intuitive judgements of an entire group of individuals. At the very least this would mean that Rawls cannot coherently justify his restrictions on wealth inheritance to those who hold the luck intuition in an impartial way. This is a significant comparative cost and leads to the conclusion that Rawls's theory is not the best way to justify restricting wealth inheritance in a liberal democracy.

The problem arises, as I argued in Chapter 2, because Rawls's theory entails that a just society should restrict wealth inheritance only when it contributes to inequalities of opportunity between similarly motivated and talented individuals (Rawls 2001: 43–44). Rawls's justification for this judgement is the second principle of justice which all individuals who desire the same primary goods would accept behind a veil of ignorance and

through reflective equilibrium. As Rawls (2001: 44) writes:

> In all parts of society there are to be roughly the same prospects
> of culture and achievement for those similarly motivated and
> endowed.

But the pertinent question that arises from Rawls's second principle of justice is what is the metric of opportunity? I argued in Chapter 2 that the answer Rawls (2001: 46) provides is "social class". Rawls uses social class or similar life-prospects as an indicator of whether there is an equality of opportunity in a liberal society. To this end, Rawls treats wealth inheritance as a brute fact about individuals and families that is no more inherently unjust than the genetic inheritance of natural talent. This is because if someone's social class of origin determines their fewer opportunities then *this* inequality of opportunity is inherently unjust (Rawls 2001: 40, 44). Rawls separates the injustice of an individual's social class of origin determining her prospects in life from lucky events, like wealth inheritance, that might determine their social class later in life. The Distinction Problem questions how Rawls can separate these two injustices.

But what does the Distinction Problem imply about Rawls's aim to justify restricting wealth inheritance to the luck intuition? It seems to imply that even though Rawls (2001: 55) identifies wealth inheritance as a social contingency, he only treats it as instrumentally involved in creating unequal opportunities over an individual's lifetime. What do I mean by this? I mean that Rawls's theory is concerned with how efficiently lucky events like wealth inheritance create unequal life prospects. As Rawls (1999: 245) says in his revised edition of *A Theory of Justice*:

> The unequal inheritance of wealth is no more inherently unjust
> than the unequal inheritance of intelligence. It is true that the
> former is presumably more easily subject to social control; but
> the essential thing is that as far as possible inequalities founded
> on either should satisfy the difference principle. Thus inheri-
> tance is permissible provided that the resulting inequalities are

to the advantage of the least fortunate and compatible with
liberty and fair equality of opportunity.

Rawls appears to argue that a society becomes unjust when wealth inheritance is too efficient in creating unequal prospects in life for individuals of equal talent and motivation but different social classes. Rawls's judgement that wealth inheritance is not inherently unjust also shows he does not believe its affects on social class are significant for distributive justice. For Rawls (2001: 59) the difference amounts to the reasonable expectations or life-prospects for attaining primary goods. On this view wealth inheritance is a social instrument that might cause different life-prospects for those who are similarly talented and motivated. But the question that arises is why we should consider wealth inheritance as a social contingency distinct from social class of origin when wealth inheritance is as lucky an event as being born into a higher social class? If this question is not answered then Rawls's theory directly contradicts the normative concerns of the luck intuition. This is because the intuitive judgement of the luck intuition is that we should not discriminate between the luck of being born to parents with a high income and the luck of having a wealthy bequeather.

4.1.1 Wealth Inheritance as Constitutive of Social Class

In the previous section I explained what the Distinction Problem is and how it is problematic for Rawls's theory. As a response to the Distinction Problem I suggest that Rawls's theory already has the tools to answer the normative concerns of the luck intuition without making an unjustified distinction between social class and wealth inheritance. I suggest that Rawls's second principle of justice can solve the Distinction Problem if it is modified so wealth inheritance is understood not like natural talent but as an indicator of social class. This means that wealth inheritance should not be understood as a resource equivalent of genetic inheritance but as a

constituent element of what stratifies a society into different social classes.[1] On this view, wealth inheritance not only causes unequal opportunities, but is caused by unequal opportunities. Individuals stratify into groups of similarly talented and motivated individuals because of wealth inheritance not in spite of it. This is different from understanding wealth inheritance as a resource equivalent of genetic inheritance, because the way genetic inheritance stratifies individuals is not sensitive to any individual's social class of origin.

This solution primarily works by not proposing any extra principles or extra fundamental concepts, but by redefining who the "least advantaged" are in Rawls's theory. Rawls (2001: 59) originally defines the least advantaged as that group of citizens who have the lowest expectations for attaining the primary goods that Rawls thinks all free and equal people would desire. But my solution treats wealth inheritance as both an act that stratifies society into social classes and one that is only possible because an individual has significantly higher access to the primary goods. Both consequences of wealth inheritance occur because it creates unequal opportunities for individuals to attain primary goods. Understood this way, wealth inheritance is first and foremost a lucky event for an inheritor who gains an advantage over others because she has more opportunities to attain the primary goods she desires. However, wealth inheritance is also a lucky event for a bequeather because it indicates that she is lucky enough to be born into a social class that allows her to accumulate enough private property to bequeath.

By accounting for how wealth inheritance can be a lucky event for the

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[1]This is not an entirely novel idea. Christopher Lake (2001: 85–86) suggests that to understand the link between concerns about equality and responsibility, we should acknowledge that "entrenched inequalities" like inherited wealth should be seen as both a cause and effect of the interests of some dominating the interests of others. For our purposes this means that inherited wealth should be seen as both a cause and effect allowing some individuals to exploit their inherited wealth ad natural talent for the sake of productivity and to benefit the worst off.

bequeather and the inheritor, my solution tries to strengthen the justifiability of Rawls's theory to the luck intuition. This is because the solution appeals to the way the principle of fair equality of opportunity requires individuals to be less constrained by their social class when competing for social and economic positions. This is not to say the solution forces Rawls to compensate individuals who inherit nothing or very little to such a degree that they are materially equal to an individual who inherits a fortune. By treating wealth inheritance as an indicator of social class Rawls's theory can apply its normative principles to cases where individuals are less motivated or have fewer opportunities to exercise their talent. This is because these cases are understood to be an effect of someone being born into a social class that inherits very little wealth. This modification allows Rawls to understand wealth inheritance as a social contingency that plays a role in stratifying individuals into groups of different talent and motivation. Without the modification, those who hold the luck intuition would reasonably ask why an individual should be held responsible for being unlucky to not have inherited the resources to improve their talent and motivation?

To make clear how the solution works let us return to the example of the Honey Farmer used in Chapter 2. The example supposed a Honey Farmer receives two inheritances in her life. First, when she and other individuals discover lethal but productive bees, so that she can set up her honey farming business. Second, when she has to fight a court case to protect her business. I argued in Chapter 2 that Rawls's theory prescribes that a liberal democracy should tax the Honey Farmer's inheritance in both cases. But I also argued that the restrictions on her inheritance in the first instance would be unjustifiably limited. This is because Rawls's theory does not permit taxing the Honey Farmer's initial inheritance to the point that her opportunities to open a business are equal to her fellow bee discovers whose social class of origin prevents them to improve their talent and motivation. Our Honey farmer is permitted to use her inherited

wealth to have more opportunities than her fellow bee discovers from a lower social class only if the influence of her inherited wealth is slowly eradicated. This is how understating wealth inheritance as a constituent element of social class allows Rawls's theory to permit inherited wealth contingent on restricting it so it slowly loses its influence as a productivity incentive.

On the other hand Rawls's theory takes a different approach with regards to the court case where the Honey Farmer and the Plaintiff are differently talented and motivated in fighting the court case. Rawls believes it is just to redistribute wealth to allow both the Honey Farmer and the plaintiff to have equal opportunities to defend themselves in court.

In the solution I suggest, Rawls's theory would prescribe a tax on the Honey Farmer's initial inheritance so that eventually wealth inheritance no longer stratifies society into social classes. Nevertheless, Rawls's theory would still not advocate restricting the Honey Farmer's inheritance so that she had the same opportunities as those who were less talented or motivated. Even when we consider wealth inheritance as constitutive of what it means to belong to a social class, the restriction of wealth inheritance should satisfy the difference principle. Rawls's theory would still permit wealth inheritance as a contingently permissible inequality so long as it was to the greatest benefit to the least advantaged and helped slowly eradicate the influence of wealth inheritance. In the context of the Distinction Problem the least advantaged are individuals from a social class who can bequeath very little property. However, restricting the Honey Farmer's initial inheritance so she has the same opportunities as her less talented and motivated bee discoverers does not seem to be of any advantage to those in the lowest social class. This means the Honey Farmer's inheritance should be restricted to allow only enough inherited wealth sufficient to advantage the worst off. But this does not permit restricting the Honey Farmer's inheritance to allow the less talented and motivated to develop their skills and motivate themselves to start a honey farming business.

The final question to answer is whether my solution helps Rawls coherently justify restricting wealth inheritance to the luck intuition? I believe it does because it allows Rawls to treat wealth inheritance the same way he treats social class. He need not make a distinction between two equally lucky events. Rawls's theory can justify restricting wealth inheritance as an indicator of an individual's unequal opportunities to accumulate and bequeath private property. Rawls can prescribe this because wealth inheritance is a form of luck that is made possible by an individual's luck to be born into a particular social class. This allows Rawls's theory to answer the normative concerns of the luck intuition by treating wealth inheritance as a form of brute luck that causes class differences which in turn allows individuals like our Honey Farmer to bequeath more wealth. In short, wealth inheritance can be treated as a lucky event in the same way that social class is and can be restricted in a way that caters to the concerns of those who hold the luck intuition. I discuss the potential costs and benefits of my solution in further detail in Chapter 5.

4.2 Structural Injustice Problem

In the last section we explored a suggestion that Rawls can incorporate wealth inheritance into his conception of social class to coherently justify restricting wealth inheritance to the opportunity and luck intuition. This leads us to consider how Rawls can respond to the contention that his theory is not actually justifiable to those who hold the luck intuition even after his principles are implemented. This is the central contention of the Structural Injustice Problem. This problem is that it appears Rawls defines the scope of his theory too narrowly to account for the ways individuals suffer from states of affairs they cannot control or have not chosen. This is significant because if Iris Young's argument is left unanswered it shows Rawls does not answer the normative concerns of those who hold the luck intuition with enough strength. In turn this would mean Rawls's restriction

of wealth inheritance was not broadly justifiable and impartial towards the three conflicting intuitions.

Those who hold the luck intuition will disagree with Rawls's principles as a guide for just action. This means individuals will not only disagree on how to restrict wealth inheritance under Rawls's theory, they will also disagree about his principles of justice. They will disagree because Young's argument entails that wealth inheritance is one way in which social behaviours can perpetuate and be disadvantageous to an individual without their choice. This is contrary to the intuitive normative judgement of those who hold the luck intuition, namely that the role of luck in people's lives should be neutralised.

The striking question that follows from Young's argument is: what are social behaviours and why do they matter once Rawls's normative principles and conception of background justice is implemented? Young (2001: 70) argues that social behaviours are "structural processes" that reflect what a society values and what is a culturally and socially endorsed way of life. Young suggests that the subject of Rawls's principles are too narrow because they apply only to a basic legal and economic framework that governs individual interactions. For Young the subject of justice should be broader, it should include the interactions themselves. As Young (2011: 70) says:

> Depending on the issue, the structural processes that tend to produce injustice for many people do not necessarily refer to a small set of institutions, and they do not exclude everyday habits and chosen actions.

I believe we can consider wealth inheritance as one kind of chosen action or everyday habit that reflects a social value for accumulating capital and bequeathing it for future generations. In Chapter 2 I used a modified version of Young's example of Sandy, who is forced into homelessness, to illustrate what Young's argument entails for wealth inheritance. In the example I compared the case of Sandy and Sandra. Sandy is a mother of two who

works in a male dominated field for a less than average wage. As a result she finds herself choosing between housing that is inadequate for raising two children or homelessness. On the other hand, Sandra who is as talented and motivated as Sandy in the relevant ways inherits a vast amount of wealth which is restricted through taxation to pay for welfare policies that help Sandy. Nevertheless, Sandra's inheritance is not restricted completely because it would not be of the greatest benefit to Sandy's social class.

Young's argument is that even though Rawls's principles are applied coherently, it still seems unjust for Sandy to have fewer choices in life than Sandra. Sandy is not the victim of one recognisable immoral act, but she simply does not value wealth accumulation and bequeathing to the same extent as Sandra. In fact Sandy's valuing of her children's education and adequate housing is probably not something particular to Sandy, but common to many in her situation. If Sandra was in Sandy's situation she would also value her housing and children's education higher than accumulating and bequeathing capital.

Despite the restriction of Sandra's wealth inheritance, it appears that Sandy is at a disadvantage because her values are contrary to the values of her society. She is not a male breadwinner and does not have enough savings to own a home. It seems that Young's argument entails that a just society should not treat wealth inheritance as a social value of capital accumulation and property transfer that excludes individuals with different values from having the same choices as others. None of this is to say that Rawls is unaware of the effects of wealth inheritance. But only that, contrary to Young (2001: 70), he does not include the "patterns in relations among people and the positions they occupy relative to one another" when some individuals inherit wealth and others do not, within the basic structure. At this point those who hold the luck intuition can reasonably object that what Young's argument shows is that Rawls's theory can still permit lucky events like wealth inheritance to limit Sandy's opportunities in life

without her choice. This objection seems to suggest that Rawls's theory does not answer the normative concerns of the luck intuition because it permits wealth inheritance to determine the choices open to individuals.

It seems that if we take Young's argument about structural processes seriously, then the most theoretically economical response from Rawls is to offer a slightly different interpretation of the basic structure. To that end Rawls could include individual behaviours that contribute to a collective behaviour of valuing wealth accumulation in his conception of the basic structure of society. This would mean that the social processes that lead to a society valuing capital accumulation and male breadwinners above affordable housing or female breadwinners should be reshaped so they are of the greatest benefit to the least advantaged. One way to achieve this is by restricting wealth inheritance further so it does not perpetuate society's valuing of capital accumulation above other types of everyday habits. Another way might involve restricting the use of inherited wealth to an individual's desires about one's own life. This would exclude wealth inheritance from playing a role in funding philanthropy or political parties or other activities that allow structural processes and social values to emerge out of individual choices and individual labour.

Nevertheless, the suggestion to include wealth inheritance as a social behaviour in the basic structure would be motivationally incoherent. This is because Rawls's motivation for defining the basic structure of society as social institutions is to avoid a case by case moral judgement of individual behaviours and aggregate social behaviours. As Rawls (2001: 10–12) clearly states:

> We view justice as fairness not as a comprehensive moral doctrine but as a political conception to apply to that structure of political and social institutions.

> No attempt will be made here to deal systematically with local justice.

Rawls's theory avoids what he calls "local justice" or prescribing the just

internal relations of associations and individual transactions. To then include wealth inheritance as an act that reflects a social value for accumulating capital and bequeathing seems contrary to Rawls's motivations for a unified general theory of distributive justice. Even to include a few unplanned individual behaviours that are disadvantageous because they run contrary to the everyday habits of some individuals is contrary to Rawls motivations. For example, a society would consider market fluctuations that cause homelessness or unemployment as unplanned individual behaviours that are caused by collective social behaviours in the market. Rawls's theory can then mitigate the effect of unplanned behaviours by insisting that the intentions of the second principle of justice is to counter social contingencies. Nevertheless, even this small departure from Rawls's theory is motivationally incoherent with the first principle of justice and Rawls's conception of pure procedural justice. The motivation for Rawls's principles is the idea that they will be arrived at through a widely acceptable process of fair and impartial deliberation. This process does not permit cherry picking certain social behaviours that we judge to be obviously unjust or immoral.

Furthermore the example I use is not a rare case about a highly improbable scenario. It is a comparison of two individuals; one who benefits from her society's valuing for accumulating and bequeathing capital and another who is priced out of the housing and labour markets by it. The example is within Rawls's framework of a property-owning democracy and the social conditions prior to the acceptance of the principles of justice. To include particular individual behaviours that are caused by wealth inheritance within the basic structure of society, would necessarily violate the first principle of justice. This is because Rawls's theory would have to curb the equal basic rights of some citizens to dispose or accumulate wealth to avoid the type of unplanned individual behaviours that worry Young.

So what can be said in response to the Structural Injustice Problem? One response that Rawls can make is that the Structural Injustice Problem

does not suggest his theory completely ignores the concerns of the luck intuition. Rather the problem only suggests that his theory might not answer the concerns as strongly as initially thought. I will discuss this response in further detail and its costs and benefits in Chapter 5. For now it is safe to assert that Rawls's theory will have some difficulty in responding to the Structural Injustice Problem. This leads us to assert that Rawls cannot answer the normative concerns of the luck intuition with sufficient strength to justify restricting wealth inheritance equally to all three intuitions.

4.3   Equal Access To Advantage

I have so far discussed two problems that remained outstanding for Rawls's theory. This section furthers the discussion by now turning our attention to the last remaining problem for Dworkin's theory. I argued in Chapter 3 that Cohen's theory of "Equal Access to Advantage" can plausibly claim to be better at justifying restrictions on wealth inheritance to the opportunity and luck intuition than Dworkin's theory. Let us remind ourselves that the purpose of this thesis is to judge whether Rawls or Dworkin are better at justifying wealth inheritance. This means that if Dworkin cannot mount a successful defence of his theory, then the theory should be heavily modified to adopt Cohen's normative principles. An idea of the parts of Dworkin's theory that should be changed include, but is not limited to:

- Changing the focus of Dworkin's theory from resources to "advantage"

- Changing Dworkin's theory to include "equal opportunity for welfare" even though it is contrary to his arguments against it (Dworkin 2000: 21–42, 48–62).

In the context of comparing Rawls and Dworkin's theories these changes would be a theoretical cost because they entail that Dworkin's theory

should depart significantly from its original formulation and motivations. Dworkin's original formulation is strictly about resources, because he believes other measures of equality are incoherent and equalising resources is the best realisation of the abstract egalitarian principle (Dworkin 2000: 62, 121, 128). I suggest two ways to defend Dworkin's theory as he originally formulates it. The first defence, which I call the Subsumption Defence, is that most of Cohen's examples of expensive tastes and unequal access to advantage can be solved by Dworkin's theory. This is because "equal access to advantage" is merely another way of referring to unequal resources. The second defence, which I call the Actuality Defence, is that Dworkin's theory uses a conception of individuals that more closely corresponds to how individuals actually behave in a liberal democracy than Cohen's theory.

Before I discuss my defence of Dworkin's theory let us remind ourselves of how Cohen's theory challenges Dworkin's theory. Cohen makes two inferences. First he infers from the counter examples he presents that Dworkin's theory is incoherent in the way it attempts to justify restricting wealth inheritance because it makes an inconsistent distinction between unchosen preferences and unchosen circumstances. Second he infers from this that a better way to justify restricting wealth inheritance is to treat all forms of unchosen states of affairs the same way. Cohen argues that this involves adopting, at least in part, his theory of Equal Access to Advantage.

Cohen's (2011: 20) first inference involves the example of Paul and Fred. Paul has a preference for photography, which is expensive, while Fred has a preference for fishing, which is cheap. None of these preferences are cultivated. Paul is at a disadvantage compared to Fred because if both are not compensated, Paul is forced to have a lower level of well-being through no choice of his own. Cohen (2011: 20–21) argues that Dworkin's theory entails that a just society should not compensate Paul for his disadvantage. But Cohen believes that a just society should compensate Paul for his unchosen disadvantage. Cohen's judgement entails that if Paul and Fred were to inherit wealth, a just society should restrict Paul's wealth

inheritance less than Fred's because the effect of having his wealth inheritance restricted is worse for Paul. Paul is disadvantaged by a lower level of well-being that he has not chosen and so requires more of his inheritance to achieve the same level of well-being as Fred.

Cohen believes the example shows that Dworkin tries to treat the effect of restricting wealth inheritance on unchosen preferences and unchosen circumstance differently even though both are unchosen. This is directly contrary to the normative judgement of those who hold the luck intuition that individuals should not be held responsible for unchosen lucky events of any kind. For Cohen (2011: 19) the correct distinction is between unchosen access to advantage and chosen access to advantage. Any other distinction is incoherent because it treats unchosen preferences differently to unchosen circumstances.

The first inference then leads to a second inference, namely that the best way to justify restricting brute luck events like wealth inheritance is by adopting wholly or in part Cohen's theory of Equal Access to Advantage. In Chapter 3 I used the example of 'α and β' to illustrate this inference. This example presents two groups of millionaires. Both groups inherit all or most of their wealth. However, the members of α are different because they are born with more expensive preferences than the members of β.

According to Cohen (2011: 21), a just society should compensate, if needed, the members of α because they are at a welfare and resource disadvantage. This is because they require more resources to extract and achieve the same level of welfare as the members of β. This means that a liberal democracy that attempts to justify restricting wealth inheritance, should restrict α's inheritances less because α have fewer opportunities for welfare and should not be held responsible for the luck of being born with expensive preferences. Not doing so would mean that the restriction of wealth inheritance wholly, or in part, is unjustifiable to those individuals who hold the opportunity and luck intuition. Cohen's theory overcomes this issue by treating unequal access to any kind of advantage, whether

welfare, resources or opportunities, with equal weight. Cohen argues that by adopting his theory a just society can actually be egalitarian because it makes the distinction between choice and luck in relation to all forms of advantage.

As I mentioned earlier, I suggest two defences for Dworkin's theory. The first is the Subsumption Defence, the second the Actuality Defence. The Subsumption Defence involves the basic claim that we can interpret most of Cohen's examples as forms of resource inequality. Let us first deal with Cohen's example of Paul and Fred. Cohen contends that it is inconsistent for Dworkin to not restrict Paul's wealth inheritance less which would allow Paul to pursue his expensive preference for photography. Dworkin's theory entails that Paul should not have his inheritance restricted less because Paul *chooses* to pursue photography instead of a cheaper passion like fishing. Cohen argues that this is incoherent because it ignores the way restricting wealth inheritance affects Paul's opportunity for welfare when he cannot fulfil the preferences he did not choose to have.

However, I suggest that Cohen's argument is misguided. His example can be translated and subsumed into the normative commitments of Dworkin's theory without any issues. This is achieved by understanding that Paul's unchosen expensive preferences are what cause him to have a diminished opportunity for welfare compared to Fred. To equalise opportunities and neutralise brute luck, I believe Dworkin's theory should restrict wealth inheritance in such a way to give Paul the same opportunities as any other individual to pursue photography. This answers the normative concerns of the opportunity and luck intuition without any recourse to the distinction between circumstances and preferences. Dworkin's theory is not concerned with adjusting the market price of pursuing certain individual preferences. Paul and Fred are born with preferences that require different resources to fulfil them. Dworkin's normative commitments then depend on whether Paul and Fred have unequal resources to fulfil their preferences because some brute luck or option luck event prevents them

from accumulating the resources they need. Neither Paul nor Fred faces such a brute luck or option luck event. Therefore Cohen is misguided because he seems to argue that Dworkin restricts wealth inheritance as a way to equalise opportunities for welfare. As I have argued, Dworkin's theory is actually equalising the opportunities for individuals to pursue their preferences by restricting wealth inheritance.

Another example that differentiates Dworkin's theory from Cohen's theory is Cohen's (2011: 22–23) example of Jude who has cultivated "cheap expensive tastes". Jude has cultivated resource expensive preferences, which are also cheap because he is able to extract a greater amount of well-being with every unit of resource than his contemporaries. Jude is able to extract the same amount of well-being from the same preference as some one else by using less resources. Cohen argues, just as he does in Paul and Fred's case, that Dworkin's theory is incoherent if it justifies restricting wealth inheritance as a brute luck event but not compensating Jude by restricting his inheritance less. Cohen's argument is that Dworkin's theory is not sensitive to Jude's choice to have more opportunity for welfare by consuming fewer resources. Jude uses fewer resources and leaves more for others to fulfil their preferences.

As I argued in the case of Paul and Fred earlier I believe Dworkin's theory can account for the way Jude is seemingly disadvantaged. An insurance scheme would determine if Jude is owed compensation because brute luck events have limited his capacity to accumulate resources. Jude either chooses to pursue his "cheaper expensive tastes" or he chooses to pursue other tastes. Dworkin's theory applies to Jude's case only when wealth inheritance affects the choices and the acts entailed by his previous choices. The translation of Jude's case into the language of Dworkin's theory is that Jude *chooses* to pursue a cheap expensive preferences. Dworkin's normative commitments depend on whether brute luck events like wealth inheritance affect Jude's opportunities to fulfil his preferences.

At this point let us consolidate how the Subsumption Defence works. In both the examples above, I argued that Dworkin's theory is able to subsume the concerns raised by Cohen's arguments. I argue this by highlighting the specific disadvantages Paul, Fred and Jude face and that these disadvantages can be made sense of in the language of resources and so can be accounted for in Dworkin's theory of resource egalitarianism. Therefore, Dworkin's theory is not incoherent when justifying restrictions on wealth inheritance to the opportunity and luck intuition because we can translate the disadvantage of unequal opportunity for welfare into the disadvantage of unequal resources. Once we make this translation the rest of Dworkin's theory follows as before by transforming brute luck into option luck. This is because any case of unequal opportunity for welfare is analysed as a case where individuals either choose to have the resources they need to pursue their preferences or they do not. In the latter case Dworkin's theory restricts any brute luck event, like wealth inheritance, that prevents individuals from choosing to accumulate the resources they need to pursue their preferences.

One small problem that may still persist is that my response ignores Cohen's claim that Dworkin's theory treats the brute luck of being born with expensive preferences different to the brute luck of inheriting wealth (Cohen 2011: 31–32). The worry might be that Dworkin's restriction of wealth inheritance is incomplete in not accounting for the way wealth inheritance can cause unequal distributions of resources that can then make opportunities for welfare unequal. Why should we treat unchosen opportunities for welfare any differently than unchosen resources? To answer this question I respond with the Actuality Defence.

The Actuality Defence is the claim that Dworkin's theory recognises individuals as they actually are as opposed to how Cohen believes we should ideally conceive of them. Richard Arneson (1989: 79–80) suggests a similar response to Cohen's arguments, but stops short of arguing that Dworkin's theory treats individuals as they actually conceive their preferences. Ar-

neson (1989: 80) argues that in relation to compensating individuals:

> ...that we are responsible for our preferences is compatible with the claim that an appropriate norm of equal distribution should compensate people for their hard-to-satisfy preferences at least up to the point at which by taking appropriate adaptive measures now, people could reach the same preference satisfaction level as others.

However, my defence is not concerned with "preference satisfaction levels" or in compensating individuals for their preferences. My defence avoids any of these commitments and attempts to defend Dworkin's theory without any concessions to Cohen's arguments.

My defence suggests that Dworkin's theory recognises individuals as either citizens that do not consider their preferences as brute luck advantages and disadvantages, or as individuals who have control over their preferences regardless of whether they cultivate them or not. The first disjunct involves the claim that actual individuals who hold the liberal, opportunity or luck intuition do not conceive of their congenital preferences as advantages or disadvantages in themselves because preferences are contingencies internal to the individual. This is different to the way the resources required to satisfy the preferences are affected by external social contingencies.

The distinction between internal and external contingencies is not between those contingencies that occur internally or externally to the individual. If the distinction were like this, then handicaps and physical illnesses would also be internal contingencies. This would be inconsistent with Dworkin's theory. Rather the distinction I make is between contingencies that are internal to an individual's agent centred intentions towards the world and those that are external to these intentions. The former includes contingencies that are intrinsic to an individual's intentions because they shape what the intentions are and how they are directed. The latter includes contingencies that are extrinsic to an individual's intentions because

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they only help an individual to act on their intentions.

On this view preferences are internal, perhaps even necessarily so, to an individual's intentions and attitudes about their own agency towards the world. Physical illnesses, handicaps, social contingencies like wealth inheritance and social relations are instrumentally related and not intrinsically related to how an individual sees themselves as a creature in the world with agency and intentions. The first disjunct of the Actuality Defence is that individuals do not consider unchosen preferences, despite being unchosen, as brute luck disadvantages because they are internal to the intentions and conception of agency that actual individuals have. Actual individuals consider their unchosen preferences and desires not as separate from their identity but as part of a framework of intentions and beliefs about themselves. Unchosen preferences do not require compensation because individuals do not consider them to be disadvantages that make it difficult for individuals to efficiently fulfil their desires.

The second disjunct involves the claim that actual individuals have a high degree of control over whether they choose to satisfy their preferences. I argue that this high degree of control is independent of whether the preferences are cultivated or not. Individuals are in control of their preferences to such a degree that they can reorder them to have less expensive tastes and preferences. Cohen's argument appears to assume that an individual cannot change their unchosen preferences no matter what. Using the Actuality Defence requires Dworkin's theory to compensate individuals if they don't have the resources to change their preferences in virtue of how expensive they are. This does not commit Dworkin to compensate individuals to *satisfy* the preferences in virtue of how expensive they are.

The Actuality Defence works by explaining why unchosen preferences can be treated differently to unchosen circumstances like wealth inheritance. It offers a disjunction that states either unchosen preferences are contingencies internal to an individual's conception of themselves and their

intentions or they are controllable to a high degree. If the first case is true then, pace Cohen, the way Dworkin justifies restrictions on wealth inheritance to the opportunity and luck intuitions is coherent. This is because actual individuals do not conceive their unchosen preferences as contingencies that cause unjust disadvantages either in the form of unequal opportunities or unequal resources. Therefore, Dworkin's theory need not restrict wealth inheritance less when individuals have unchosen preferences. If the second case is true then Dworkin's theory is coherent because actual individuals have a high degree of control to reorder their preferences. Therefore individuals can choose what they prefer even if they are born with expensive preferences.

I believe the Subsumption Defence and Actuality Defence are sufficient to defend Dworkin's theory against Cohen's theory of "Equal Access to Advantage". The Subsumption Defence argues that on closer analysis, Cohen's examples and cases of unequal opportunities for welfare can be subsumed into Dworkin's theory as inequalities of resources. The Actuality Defence argues that Dworkin's theory can justify treating unchosen preferences differently to unchosen circumstances like wealth inheritance. This is because Dworkin's theory analyses preferences in the way that individuals actually conceive of their own preferences.

4.4   Conclusion

This chapter has attempted to resolve the problems that were left outstanding in Chapters 2 and 3. To that end, I suggested that to solve the Distinction Problem Rawls's theory should accept that wealth inheritance is a constituent element of social class. This means that wealth inheritance is accepted as a social contingency that causes class distinctions and is perpetuated by class distinctions. This allows Rawls's restriction of wealth inheritance to be justifiable to the luck intuition since wealth inheritance is analysed as a social contingency different to natural talent

but similar to being born into a family of high social position. In doing this the supposed incoherency in treating wealth inheritance and social class differently is avoided.

I then suggest that to solve The Structural Injustice Problem Rawls's notion of the basic structure should be broadened to include social behaviours caused by wealth inheritance, that limit the range of choices open to other individuals. The Structural Injustice Problem proposes that even after implementing Rawls's theory, a liberal democracy could still permit social behaviours, influenced by social values that limit the choices open to an individual. I concluded by suggesting that Rawls's theory cannot include such social behaviours in its basic structure because it would be contrary to Rawls's motivation to not cherry pick certain individual interactions as morally bad or unjust. Rawls's aim is to make social institutions and not individual interactions that reflect social values, the subject of his theory.

The final solution I offered was a way for Dworkin to resist Cohen's theory of Equal Access to Advantage. I first suggested that we can translate all of Cohen's examples of inequality of opportunity to fulfil preferences into the language of resource inequality using the Subsumption Defence. As a consequence I considered that Cohen could potentially argue that Dworkin's theory still seems to make an unjustified distinction between unchosen preferences and unchosen circumstances. This is despite Dworkin's theory considering inequalities of opportunity for welfare to be inequalities in resources to fulfil one's preferences. As a final response I argued Dworkin could respond by using the Actuality Defence to argue that his theory treats individuals as they actually analyse their preferences and not how Cohen thinks individuals should analyse their preferences.

The next chapter will analyse the solutions I have summarised above and formulate a comparative analysis to compare whether Rawls or Dworkin is better at justifying restrictions on wealth inheritance to a broad range of intuitions in a liberal democracy. I believe this comparative anal-

ysis will show that Dworkin's theory has fewer costs and more advantages than Rawls's theory.

Chapter 5

Incurred Costs and Benefits Gained

This thesis has so far explained, criticised, and suggested solutions to the way Rawls and Dworkin's theories justify restricting wealth inheritance in a liberal democracy. In this Chapter I consolidate these criticisms and solutions into a comparison of whether Rawls or Dworkin's theory is better suited to the task of justifying restrictions on wealth inheritance. I do this by assessing the costs and benefits of the modifications and defences of Rawls and Dworkin I have argued for in Chapters 2, 3 and 4. I weigh the comparative advantages and disadvantages of the solutions according to three metrics. First, I judge how the modifications solve incoherencies or maintain a coherent normative theory. Second, I judge whether the modifications are justifiable to the liberal, opportunity and luck intuitions. Third, I judge how the modifications help Rawls and Dworkin justify their theories equally to all three intuitions. I believe this comparative analysis will show that Dworkin's theory is better suited to the task of justifying restrictions on wealth inheritance in a liberal democracy than Rawls's theory.

Some of the terms used above require explanation. To judge how a modification solves an incoherency is to judge whether a solution to a

particular problem maintains the coherency of the theory or is incoherent with the normative claims or the initial motivations of the theory. For a modification to be incoherent with a theory's normative claims means that the way it solves a problem is inconsistent with another normative claim that the theory is committed to. For example, a solution that requires adopting a new principle may be beneficial in solving the problem but also inconsistent with the rest of the theory. But what does it mean for a solution to be incoherent with the initial motivations of a theory in the context of this thesis? I shall take it to mean two things.

First, it can mean that a modification to Rawls or Dworkin's theory emphasises one of the dimensions of wealth inheritance over the other. For example, a modified principle might force the theory to focus on the synchronic relation and ignore the diachronic relation of wealth inheritance. As I detailed in Chapter 1, for both candidate theories to completely analyse the implications of restricting wealth inheritance they should analyse both the synchronic and diachronic relations of wealth inheritance.

Second, it can mean that the modification to Rawls or Dworkin's theory is incoherent with the general motivations of proposing a broadly justifiable theory in a liberal democracy. This means that a modification could violate liberal democratic intuitions about impartiality and proportionate treatment. For example, a theory that adopts a principle that treats inheritors as inherently inferior to bequeathers would be incoherent with the motivation to treat all individuals impartially as equal citizens. As I detailed in the Introduction these motivations are important because they represent our concern for justifying the restriction of wealth inheritance in a liberal democracy and not a benevolent dictatorship, or a society organised according to Pareto efficiency. These motivations situate the domain of this thesis in the kinds of societies that interest Rawls and Dworkin.

This thesis will not decide the validity of these motivations but only assume that these motivations are important and must be coherent with a successful theory. Given the intrinsic importance of coherency, a solution

that makes a theory incoherent will have a significant cost. This cost will either rule out the modification or make the modification an option of last resort.

Let us now turn our attention to the second metric. To say that the modifications are justifiable to the relevant intuitions is to say that the solutions help Rawls and Dworkin to answer the normative concerns of the three intuitions. By this I mean that the solutions either strengthen or weaken how justifiable a theory is to a particular intuition by either answering or ignoring the associated concerns of the intuitions in question. For example let us consider the Distinction Problem. The problem states that Rawls's theory treats wealth inheritance similar to natural talents but different to social class, and that this is contrary to the normative concerns of the luck intuition. The solution I suggest proposes the existing principles of Rawls's theory are sufficient to solve the worry if they consider wealth inheritance as both a cause and an effect of social class. This solution attempts to answer the normative concerns of the luck intuition by incorporating the inherent luck of inheriting wealth into Rawls's conception of social class. With all other things being equal, I would consider this solution as a benefit for Rawls's theory. This is because the solution allows Rawls to answers the normative concerns of the luck intuition with greater strength.

Finally let us consider the third metric. To say that a modification helps Rawls or Dworkin justify restricting wealth inheritance equally or broadly to all three intuitions, is to say Rawls and Dworkin give the normative concerns of all three intuitions equal weight when answering them. For example, a solution might involve prioritising the normative concerns of one intuition vastly more than the other two intuitions. In such a case the theory would be less broadly justifiable and I would judge the solution as a cost. If a solution helps a theory give roughly equal weight to our three intuitions this will be judged as a benefit. This is because the solution helps the theory to impartially justify restricting wealth inheritance as the

citizen of a liberal democratic society expects.

I do not suggest that Rawls and Dworkin should give equal weight to all three intuitions with mathematical precision. Rather I suggest that a theory that proposes principles of justice that could possibly be accepted by all reasonable citizens of a liberal democracy should give roughly equal consideration to all the relevant intuitions. As I argued in the Introduction I use "possible reasonable acceptance" as a minimal definition of justifiability because I do not believe my argument entails committing to a position in the debate about what counts as democratic justification. Possible acceptance by individuals who participate in a decision making process that treats all individuals as equal participants captures an important thought. The thought that those who hold the liberal intuition can possibly accept principles that order society in such a way that answers their normative concerns as well as the normative concerns of those who hold the opportunity and luck intuition.

We can make an important distinction between a solution that is justifiable to the relevant intuitions and one that is equally or broadly justifiable. We can imagine a modification that forces a theory to ignore all three intuitions would still be equally justifiable to all three intuitions simply because it includes none of them. In such a case the theory would satisfy the third metric but not the second. Conversely a theory may attempt to be justifiable to all three intuitions but prioritise one intuition vastly above the others. In such a case the theory would satisfy the second metric but not the third.

One other idea that must be explained before I begin the comparative analysis is the concept of democracy used in this thesis. As I stated in the Introduction, I do not take any definite position on what the true account of democracy and democratic justification is. I do not believe the conclusion that Dworkin's theory better justifies restricting wealth inheritance in a liberal democracy commits me to a certain view on the true democratic theory. Yet, one of the metrics which I use in this chapter is

about justifying Rawls or Dworkin's theories equally to the liberal, opportunity and luck intuition which are held by individuals who live in a liberal democracy. To that end, some account of democracy must be assumed to make sense of the kind of justifiability I discuss in the following comparative analysis. In this thesis I understand democracy as a form of collective decision making that is legitimate because of the fairness of the decision making procedure.[1] This understanding frames this comparative analysis in the context of comparing how Rawls and Dworkin can prescribe restricting wealth inheritance in a way that is impartial to the relevant intuitive judgements. We care about the justifiability of Rawls and Dworkin's theories because we accept a link, even if it is tenuous, between democracy as fair procedures and the legitimising of normative principles by justifying them to others in a democracy.

One impact of this understanding of democracy to the following comparative analysis is that I will be holding the intuitions as fixed as possible. This means that if a modification to Rawls or Dworkin's theory does not answer the normative concerns of one of the intuitions, I will first look to revising the modifications rather than the intuition. I will be giving more weight to the theoretical cost of a modification not answering the normative intuitions than for the normative intuitions to be easily answerable. This is because the intuitions are pre-theoretic judgements that individuals hold about the justice of wealth inheritance that theories of justice should cater to.

I now take the three metrics and the idea of democracy I have explained above, and apply them to a comparative analysis in two stages. First I

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[1]As I explained in the Introduction I endorse a decision making process that acknowledges democratic pluralism and attempts to be acceptable to all who participate. This is the same kind of democratic pluralism that Joshua Cohen (2003), Thomas Christiano (2003) and David Estlund (2003) endorse. This means that the outcomes of the process should be justifiable to the normative intuitions that individuals hold because the process is acceptable to all. In this way the process is impartial towards the normative intuitions of those who participate.

examine the costs and benefits of the proposed solutions. In the last stage I compare the costs and benefits and suggest that Dworkin's theory is better at justifying restrictions on wealth inheritance in a liberal democracy than Rawls's theory.

5.1 Costs and Benefits for Dworkin

In this section I analyse the costs and benefits in two categories. First I shall consider the costs and benefits of solutions that resist problems and objections without modifying Dworkin's theory. Second I will consider the costs and benefits of solutions that require Dworkin's theory be modified or enriched by additional theses. The categories are divided in the following way:

Solutions without Modifications for Dworkin:

1. Cohen's argument that because Dworkin makes an inconsistent distinction between unchosen preferences and circumstances, the best way to justify any restrictions on wealth inheritance is to equalise all access to advantage. I argued that Cohen's theory can be resisted by the Subsumption Defence and Actuality Defence of Dworkin's theory.[2]

Solutions with Modifications for Dworkin:

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[2]Let us briefly outline these solutions in the light of the current chapter. The Subsumption Defence was the argument that Dworkin's theory could avoid the costs of endorsing an incoherent distinction by subsuming Cohen's analysis into the analysis of equalising resources to cater to the concerns of the opportunity and luck intuition. In doing this, Dworkin need not commit himself to any further principles but merely show how Cohen's arguments about Dworkin's incoherent distinctions were not problematic but a misguided way of interpreting cases of unequal resources. On the other hand the Actuality Defence worked by answering any lingering doubts by arguing that Dworkin's theory was more preferable than Cohen's theory. This was because Dworkin treats individuals as they actually conceive of their preferences whereas Cohen treats individuals as he believe they should hypothetically conceive their preferences.

1. In response to the Harshness Objection[3], I suggested that Individuals should be considered responsible for a particular state of affairs, if it was caused by individual choice and if the relevant *social institutions* attempted to educate and prevent individuals from making negligent mistakes. In addition I suggested (a) Some level of mandatory insurance may be permissible in rare cases to ensure that human beings are insured against brute luck and (b) Individuals making mistakes sometimes is a form of brute luck, because human beings are not perfectly rational or aware of their decision making process.

2. In response to the Wrong Focus Objection[4], I suggested that 'Responsibility' should be understood as a reciprocal relation between individuals and social institutions. I argued this means that (a) Social institutions hold individuals responsible for their choices through the analysis of brute and option luck, and insurance schemes and (b) Individuals hold social institutions responsible for the way they treat other individuals.

I begin with the solutions without modifications because they require the least amount of additional theoretical commitments and so inevitably have a higher chance of success.

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[3]As I argued in Chapter 3, the Harshness Problem is the objection that Dworkin's theory tries to restrict wealth inheritance in ways that violate an individual's liberal democratic expectations for proportionate treatment. I argued this was a form of motivational coherency because the problem shows Dworkin's theory could not justify restricting wealth inheritance in a way that treats individuals proportionate to their circumstances and choices. In short mistakes, no matter how trivial, were treated too harshly.

[4]To remind ourselves briefly let us rehearse the Wrong Focus Objection. I argued in Chapter 3 that some theorists objected to Dworkin's theory on the grounds that his theory does not coherently justify restrictions on wealth inheritance to the luck and opportunity intuition because he does not coherently realise the normative ideal of equality. Specifically the objectors argue that Dowerin's ignores social relations and hence cannot capture the ideal of equality within a purely distributive theory of justice.

5.1.1 Equal Access to Advantage

I believe there are few, if any, costs and significant benefits to my solution for Gerald Cohen's challenge against Dworkin's theory. This is because my solution to Cohen's challenge uses the normative tools already within Dworkin's theory. But let us briefly remind ourselves of Cohen's arguments. Cohen (2011: 19–20) first argues that Dworkin's theory makes an unjustified distinction between unchosen preferences and unchosen circumstances. It is unjustified because it is a distinction that is inconsistent with the way Dworkin answers and prioritises the normative concerns of the luck intuition. As Cohen (2011: 27) says:

> A person in possession of his faculties always chooses (within the constraints he faces) what career to pursue, but he does not always choose what career to prefer, and the latter fact may reasonably restrict his responsibility for choosing to pursue an expensive one.

The consequence of Cohen's argument is that Dworkin's restriction of wealth inheritance ignores the brute luck of individuals having expensive unchosen preferences and therefore the inequality of opportunity for welfare. If Cohen's challenge is successful, then it seems Dworkin's theory does not answer the normative concerns of the opportunity and luck intuition. This is because it permits inequalities of opportunity for welfare and holding individuals responsible for unchosen aspects of their lives. This in itself is a significant cost because it shows Dworkin's theory is unjustifiable to those who hold the opportunity and luck intuition.

However, Cohen (2011: 14) suggests that to solve the problem, we should heavily modify Dworkin's theory to equalise "access to advantage" and not merely resources. The purpose of Cohen's theory is to implement Dworkin's insurance schemes, without making a distinction between unchosen preferences and unchosen circumstances. To that end, Cohen's theory shows a different way to answer the normative concerns of the op-

portunity and luck intuitions. In the example I used in Chapter 3, Cohen's theory entails that we should limit the restrictions on wealth inheritance for millionaires if they are born with preferences that are expensive to fulfil. Cohen believes that only his theory correctly holds individuals responsible for their choices without making individuals bear the costs of their unchosen preferences or unchosen opportunity for welfare. Cohen achieves this by categorising inequalities of opportunity for welfare and the affects of brute luck as unequal accesses to advantage. If Cohen's argument holds then it seems we have good reason to adopt, at least in part, Cohen's alternate theory. This would be a significant departure from Dworkin's original theory because it would involve changing what Dworkin chooses to equalise and the way it should be equalised. Changing Dworkin's theory to that extent would no longer result in a legitimate comparison between Rawls and Dworkin because Dworkin's theory would no longer follow his initial motivations.

To avoid these costs I respond to Cohen's arguments with the Subsumption and Actuality Defence. The defences suggest that Dworkin's theory can overcome Cohen's first argument and show his alternate theory need not be adopted. This is achieved by translating Cohen's example into the language of Dworkin's theory and by analysing how actual individuals conceive of their unchosen preferences instead of how Cohen believes they should conceive of them. In the Subsumption Defence I argue that Cohen's examples of the disadvantage of unchosen preferences can be translated into examples of individuals having unequal resources to choose to act on their unchosen preferences. When translating Cohen's examples, Dworkin's theory need not worry that individuals might not choose to *have* unchosen preferences, but only worry about whether they choose to pursue their chosen or unchosen preferences. However as I argued in Chapter 3, Cohen (2011: 31–32) may still argue that even the Subsumption Defence does not justify Dworkin treating preferences and circumstances differently even though both are unchosen. It seems Cohen is reasonable to argue that

Dworkin's theory is not just about mitigating the role of wealth in determining resources distributions but about holding individuals responsible for their choices.

As a final response I suggested the Actuality Defence. This defence proposes that either individuals do not conceive their unchosen preferences as disadvantages because they are an integral part of their identity and intentions, or that individuals have a high degree of control to re-order and change their preferences. The response works by proposing that Dworkin's theory is more preferable to Cohen's theory because it understands how individuals actually conceive and control their preferences, instead of how Cohen believes individuals should conceive and control their preferences. Since we are concerned with the intuitions individuals hold in liberal democracies I take it that a theory that understands individuals as they actually behave is more preferable to a theory that assumes how individuals should hypothetically behave. It is preferable because focusing on how individual actually behave does not require any independent justification for asserting that individuals should conceive their preferences as immovable and unchangeable. To that end Dworkin's different treatment of unchosen preferences and unchosen circumstances like wealth inheritance, is justified. This is because actual individuals conceive and control their unchosen preferences very differently from their unchosen circumstances.

I believe the comparative costs and benefits of my response to Cohen's challenge are clear. Both the Subsumption and Actuality Defences are benefits because they allow Dworkin to answer the normative concerns of the opportunity and luck intuition without a commitment to inconsistent distinctions. The defences allow Dworkin to avoid the charge that his theory uses incoherent distinctions to justify restricting wealth inheritance to the opportunity and luck intuition. The Subsumption Defence is a benefit because it allows Dworkin's theory to satisfy individuals who prioritise the opportunity and luck intuition by subsuming Cohen's analysis into Dworkin's theory. It allows Dworkin to translate Cohen's worrying

counter examples about unchosen preferences or inequalities of opportunity for welfare into cases where individuals lack the resources to act on their preferences.

The Actuality Defence is also a benefit because it points out that even if worries about unchosen preferences and circumstances persist Dworkin's theory can justify treating unchosen preferences differently to unchosen circumstances. This is because Dworkin's theory understands individuals as they actually think and behave as opposed to how Cohen argues they ideally should think and behave. This means that Dworkin can answer the normative concerns of those who hold the opportunity and luck intuition by stating that holding individuals responsible for their expensive preferences but not their inherited wealth is justified. It is justified because actual individuals consider their unchosen preferences to be an integral part of their intentions and identity. Moreover individuals have a high degree of control in reordering their preferences to change and shape their intentions.

Both defences also have few, if any, costs. This is primarily because both defences reuse the normative tools that Dworkin employs in his theory. The Subsumption Defence tries to incorporate Cohen's examples into Dworkin's analysis without any extra commitments. Similarly the Actuality Defence attempts to highlight something about what Dworkin and Cohen are both focused on, namely how actual individuals would behave in liberal democracies. Given the scope of this thesis it seems entirely appropriate that a theory that better captures how individuals actually understand their preferences in liberal democracies is more preferable than a theory that prescribes how individuals should ideally understand their preferences.

5.1.2 Harshness Problem

Let us now deal with the Harshness Problem. The problem charges that Dworkin's theory is motivationally incoherent when justifying restricting wealth inheritance in a liberal democracy. The problem specifically ques-

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tions the coherency of treating individuals who inherit wealth harshly with the democratic expectation to be treated proportionate to one's circumstances.

Elizabeth Anderson (1999: 288, 296–298), Marc Fleurbaey (1995: 41–43), Jonathan Wolff (1998: 113–118; 2010: 343–346) and Samuel Scheffler (2003: 21) present examples where they allege Dworkin's theory either stigmatises the unlucky or violates an individual's personal dignity. The allegation is that for Dworkin to justify restricting wealth inheritance to those who hold the luck intuition, he is committed to two intuitively unacceptable consequences. First that a just society should only compensate individuals for brute luck and not option luck no matter how harsh the consequences. Second, that those who suffer brute luck and option luck should accept invasive investigation into their life to determine whether they are responsible for their mistakes.

Anderson and Fleurbaey's examples entail that when Dworkin advocates the restriction of wealth inheritance either by taxation, or complete abolition, this can leave bequeathers and inheritors to potentially suffer from their mistakes when their inherited wealth would have helped. Wolff and Scheffler's examples entail that for Dworkin to adequately implement restrictions on wealth inheritance, the state must invasively investigate an individual's mistakes and choices to determine whether they are responsible for their inherited wealth. In both types of cases the central problem is that Dworkin's theory seems to violate the expectation of proportionate treatment that individuals hold in a liberal democracy. Individuals believe that all choices do not have the same moral status and so should be treated differently. It seems Dworkin's theory cannot fulfil its aim of justifying restrictions on wealth inheritance to those who hold the luck intuition if it violates their democratic expectations.

In response I suggest that we should modify Dworkin's theory to adopt the following theses (which I summarised at the start of this section):

1. Individuals making mistakes sometimes is a form of brute luck, be-

cause human beings are not perfectly rational or aware of their decision making process.

2. Individuals are only responsible for a particular state of affairs, if all the relevant *social institutions* have done well to educate and prevent individuals from making negligent mistakes.

3. Some level of mandatory insurance may be permissible in rare cases to ensure that human beings are insured against brute luck.

The first and second theses aim to narrow the scope of Dworkin's theory to minimise the instances where it would be applied. This minimises the cost of adopting a theory that seems to be intuitively too harsh in bringing about a just state of affairs. The theses entail that individuals would not be held responsible for any advantage or disadvantage if the relevant social institutions sufficiently educate and help prevent negligence. This means a just society should restrict wealth inheritance only when institutions like the tax system and legal system had done enough to educate individuals against depending on their inheritances or bequeathers. This means institutions educating individuals about brute luck and the consequences of individual responsibility.

The first, second and third thesis also reduce the instances and provide greater justification for the state to investigate an individual's mistakes and how responsible they are for their state of affairs. While Dworkin's theory requires some level of invasive judgement, it need not be as prolific and widespread as Dworkin's original theory seems to entail. The benefit of the solution is that Dworkin's theory can respond to Anderson, Fleurbaey, Wolff and Scheffler's examples by limiting when restricting wealth inheritance is permissible. This solution is preferable to biting the bullet because to bite the bullet would suggest that Dworkin's theory is not justifiable to individuals who live and carry expectations of proportionate treatment in a liberal democracy. Given this is one of the metrics of my comparative analysis, it would be a significant cost.

Nevertheless the solution does have a cost, namely that the third thesis weakens the conception of individual responsibility in Dworkin's theory. This is costly because one strong motivation for Dworkin's theory is to accommodate a conception of individual responsibility with an egalitarian theory of justice. To concede that we need some level of mandatory insurance scheme for some activities is to raise the threshold for holding individuals responsible for their choices. Individual responsibility is weakened because by adopting the solution I suggest Dworkin's theory treats individuals as beings that inevitably make mistakes. We should tally this small cost against avoiding the larger cost of justifying restrictions on wealth inheritance to the luck intuition by violating the democratic expectation of proportionate treatment. The small cost of weakening Dworkin's theory seems preferable to the larger cost because it still allows Dworkin's theory to justify its principles to those who hold the liberal, opportunity and luck intuition without violating their democratic expectations. This satisfies the first metric of our comparative analysis. If Dworkin's theory did not satisfy the first metric because of a costly modification it would already be ruled out.

5.1.3 Wrong Focus Objection

Let us remain on the topic of individual responsibility by turning to the Wrong Focus Objection. The Wrong Focus Objection, if successful would be costly for Dworkin's theory because it would show Dworkin's theory as internally incoherent. According to the objection it is incoherent for Dworkin's theory to be motivated to correctly express the normative ideal of equality and also justify restrictions on wealth inheritance by focusing on the mitigation of luck. Wolff (1998: 104), Anderson (1999: 311) and Scheffler (2005: 24), propose that the aim of equalising resources in Dworkin's theory is incoherent with the motivations for an egalitarian theory of distributive justice. What is the motivation for an egalitarian theory of justice? Anderson, Scheffler and Wolff propose that it is the motivation

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to formalise the normative ideal of equality and to use this ideal to express what a just distribution of resources is. The objectors argue that this ideal is about treating individuals as equals and therefore about social relations. Not as Dworkin originally claims about individual responsibility or equalising resources. To that end, the objectors conclude that Dworkin's theory focuses on the wrong thing when trying to justify restrictions on wealth inheritance.

The cost of the Wrong Focus Objection is that it shows Dworkin's normative principles are incoherent with the normative ideal of equality. This is a significant cost because Dworkin believes using his principles to equalise resources by mitigating the effects of brute luck is the best way to realise the normative ideal of equality. The Wrong Focus Objection concludes that Dworkin's use of the normative ideal of equality to answer the normative concerns of those who prioritise the opportunity and luck intuition is incoherent. This is because he mistakes what the normative ideal of equality entails by disregarding social relations.

I respond to the Wrong Focus Objection by proposing that Dworkin's theory should be modified to adopt the following theses (which I summarised at the start of this section):

1. Individuals are only responsible for a particular state of affairs, if all the relevant *social institutions* have done well to educate and prevent individuals from making negligent mistakes. (Proposed in response to the Harshness Problem)

2. Responsibility is a reciprocal relation between individuals and social institutions.

    (a) Social institutions hold individuals responsible for their choices through the analysis of brute and option luck and insurance schemes.

    (b) Individuals hold social institutions responsible for the way they treat other individuals.

The first thesis above plays much the same role as it did in my response to the Harshness Problem. It narrows the scope of Dworkin's theory and so reduces the instances where restrictions on wealth inheritance would need to be justified. Although this weakens Dworkin's theory it also narrows the gamut of cases where the Wrong Focus Objection can be raised. The second thesis counters the Wrong Focus Objection by adopting a reciprocal interpretation of responsibility in Dworkin's theory. This interpretation also entails a more complete institutional interpretation of Dworkin's theory than was already adopted in response to the Harshness Problem. The second thesis proposes that responsibility is a reciprocal relation between individuals and social institutions. This means that we should include social relations between individuals in Dworkin's theory because social relations, like an individual's wealth should reflect the choices that individuals make. Social institutions hold individuals responsible for the choices they make, and individuals hold social institutions responsible for the way they treat individuals. This reciprocal relationship means that Dworkin's theory can be both an egalitarian theory about distributive justice and still focus on treating individuals as political equals.

Let us look at an example that shows how the second thesis is supposed to work and how it solves the supposed incoherency between Dworkin's principles and the normative ideal of equality. Let us suppose a society S that is generally understood as a liberal democratic state by its members. S contains two groups, W and P. W is a group defined by a common cultural history that values education and wealth inheritance. Most if not all members of W value the education of their children, the accumulation of wealth and the bequeathing of that wealth within descendants of their family. On the other hand P is a group defined by a common cultural history that values farm labour and as a consequence an indifference to the accumulation and inheritance of wealth.

How would Dworkin's theory operate in S once we modify it to include the second thesis? I believe Dworkin's theory would judge that wealth

inheritance should be restricted. This is because the members of W and P do not choose to be born into either W and P and so their inheritances do not reflect their choices. The second thesis allows Dworkin's theory to focus on equalising social relations and resources. The thesis makes the members of S, whether as members of W or P, equally responsible for their genuine choices and for the way social institutions treat the members of W and P. This means that if the members of P have less opportunity to participate in the political process than the members of W through no choice of their own, then all the members of W and P are responsible for the way the social institutions of S make W and P socially equal. One reason the members of P might have fewer opportunity to participate in the political process could be that they do not inherit enough property to influence the elections in S. Therefore restricting wealth inheritance in S would be justifiable to the opportunity and luck intuition. This is because Dworkin's theory attempts to equalise resources so that individuals can have the same opportunities to participate as social equals in a democracy. I believe this would satisfy Dworkin's objectors because giving individuals an equal opportunity to participate as social equals in a democracy is an important aspect of equalising social relations. By adopting the second thesis, Dworkin can incorporate the normative ideal of equality that his objectors hold into a coherent theory that uses the distinction between choice and luck to equalise resources and social relations.

One benefit of my response for Dworkin's theory is that it allows Dworkin to include what Anderson, Scheffler, Wolff think is the correct analysis of the normative ideal of equality into his analysis of egalitarian justice. In doing this Dworkin need not concede any ground to his objectors or give any independent reason why his theory chooses to ignore social relations. Rather he can employ theses 2(a) and 2(b) from my response to give an account of how individuals can be responsible for social relations and resources. This means that Dworkin's principles about the transformation of brute luck into option luck can apply consistently to resources

and social relations. This would avoid a significant cost for Dworkin's theory and allow it to satisfy the first metric of our comparative analysis.

One cost of my response could be that the extra theses weaken Dworkin's theory and change his theory too much. After all, my response requires Dworkin to slightly change his conception of individual responsibility so that it is a reciprocal relation between individuals instead of a singular relation of responsibility from individuals to their social institutions. Although I believe this is a minor cost, it should be tallied against avoiding the larger cost of an incoherent theory. Nevertheless my response will be considered to have a minor cost because it requires Dworkin to modify a central part of his theory to solve the Wrong Focus Objection.

5.2 Costs and Benefits for Rawls

Let us now turn to Rawls's theory. In this section I analyse the comparative costs and benefits of my modifications to Rawls's theory. The analysis follows from solutions that require fewer modifications to solutions that require more modifications and are most costly for Rawls's theory. The solutions are ordered in the following way:

1. In response to Cohen's Distilled Arguments against the coherency of the fair equality of opportunity principle and the difference principle, I suggest modifying the difference principle so unequal opportunities caused by wealth inheritance are contingently permissible but not necessary to benefit the least advantage.

2. In response to the Distinction Problem, I suggest a constitutive element of belonging to a social class is to have bequeathed or inherited property.

3. In response to the Structural Injustice Problem, wealth inheritance should be considered a special social contingency that requires special deliberation to restrict.

Unlike my solutions to Dworkin's theory, my solutions in this section do not divide into categories of solutions that modify the candidate theory and those that do not. Nevertheless I examine the solutions in the order of least costly to most costly. To that end I begin with my response to Cohen's Distilled Argument that if unequal opportunities are necessary to benefit the least advantaged, then the principle of fair equality of opportunity and the difference principle are motivationally incoherent.

5.2.1 The Distilled Argument: Equality of Opportunity to the Difference Principle

In Chapter 2, I presented Gerald Cohen's Distilled Argument that attacked the motivational coherency of the principles Rawls uses to justify restricting wealth inheritance. The argument entails that Rawls's attempt at using the difference principle to answer the associated concerns of the luck intuition is incoherent with the motivation to equalise opportunities in the market place by restricting wealth inheritance. It seems that the aim to satisfy those who hold the opportunity intuition undermines the aim to justify holding individuals responsible for an unequal distribution of opportunities. I suggest that to avoid those theoretically costly incoherencies Rawls's theory should be modified so that an inequality of opportunity is understood as continently permissible and not necessary. This means that inequalities of opportunity caused by wealth would be permissible only when it helps to advantage the worst off. Before we assess the comparative advantage of this solution for Rawls's theory let us briefly remind ourselves about how the Distilled Argument and my solution to it works.

Cohen's (2011: 246) argument is in response to what he sees as Rawls's (2001: 64, 76–77) suggestion that inequalities in opportunities caused by wealth inheritance are necessary inequalities. Cohen begins by questioning how Rawls can justify his principle of fair equality of opportunity and the difference principle when they have conflicting aims. Individuals who hold the opportunity and luck intuition are expected to endorse a principle

that aims to equalise opportunities for social and economic positions by restricting wealth inheritance and endorse a principle that permits unequal opportunities because of inherited wealth.

Rawls (2001: 55, 64) responds that the difference principle balances the normative concerns of those who hold the opportunity and luck intuition with those who hold the liberal intuition. The difference principle justifies some level of wealth inheritance and hence unequal opportunities to allow all individuals to access the equal basic liberties for accumulating capital and bequeathing it to better the lives of their descendants. The difference principle has an inherent egalitarian purpose to regulate the principle of fair equality of opportunity so it satisfies the first principle of justice. Cohen then questions why individuals who hold the opportunity and luck intuition would endorse the difference principle and its purpose to justify inequalities of opportunities? This question essentially asks why Rawls's theory would be comparatively better than Dworkin's when it proposes principles that have conflicting aims.

Rawls (2001: 64, 76–77) argues that the contradictory aims of his principles are resolved when we consider what a liberal democratic society needs to permit to guarantee a regime of equal basic liberties to satisfy the fair equality of opportunity. Rawls argues that inequalities in opportunity caused by differences in talent and good fortune, like wealth inheritance, must be permitted because there must be enough incentives for individuals to be productive. This entails that a just society should permit some individuals to have more opportunities than others because wealth inheritance is a necessary incentive for individuals to be productive at the level needed for the least advantaged to benefit.

In turn, Cohen argues that if unequal opportunities are permitted because they are incentives for individuals to be productive, then the difference principle undermines the motivation for the principle of fair equality of opportunity. This is because Cohen (2011: 246) believes the difference principle permits individuals not to truly endorse and implement the

principle of fair equality of opportunity. Rather it permits individuals to exploit their natural talents and inheritances to the extent that it still benefits the worst off more than if they could not exploit their natural talents and inheritances. But the principle of fair equality of opportunity is proposed precisely to limit the way natural talent is amplified by social contingencies like wealth inheritance to create unequal opportunities. The principles are intended to restrict wealth inheritance as a contingency that individuals can exploit.

Cohen's conclusion suggests that Rawls's theory suffers from a major cost compared to Dworkin's theory. The principles Rawls uses appear to be motivationally incoherent because they aim to do two things. First they aim to satisfy individuals who hold the opportunity and luck intuition by equalising opportunities and not holding individuals responsible for their unchosen social class. Second they aim to permit inequalities in opportunities caused by wealth inheritance as an incentive for productivity.

In response to Cohen's arguments I argued in Chapter 2 that Rawls's theory can be modified without cost. This is achieved by considering wealth inheritance as a contingently permissible incentive for productivity to benefit the least advantaged and not a necessary incentive. This means that the alleged motivational incoherency of Rawls's principles is resolved by asking those who hold the opportunity and luck intuition to endorse a difference principle that permits the effects of wealth inheritance as a productivity incentive in a limited capacity.

The response works by changing the difference principle from a broad definition to a narrow one. The broad difference principle defines social class, good fortune and natural talent as necessary inequalities. The narrow difference principle defines social class, good fortune and natural talent as contingently permissible inequalities. They are contingent on whether permitting them helps the least advantaged to compete with equal opportunities with the better off. This means that the opportunity and luck intuition can be satisfied by permitting wealth inheritance only to the ex-

tent that the restrictions on it help individuals with fewer opportunities to increase their opportunities by developing their talents and skills. The restrictions would include taxing those in higher social classes to fund others to move into the higher class. In sum, wealth inheritance is permissible insofar as the incentive to bequeath wealth allows Rawls's theory to redistribute resources to equalise opportunities and mitigate lucky events. The intention in this is to restrict wealthy inheritance so that the incentive to bequeath wealth is eventually not required for a productive society.

The benefit of my solution is that it allows Rawls to justify some inequalities of opportunity through wealth inheritance while still trying to equalise opportunities. This allows Rawls to avoid Cohen's charge of motivationally incoherent principles. Wealth inheritance is permitted so long as it allows the society to slowly eradicate inequality of opportunities and ensure that all individuals have access to a scheme of equal basic liberties.

According to my solution, Rawls's theory need not weaken or reject the difference principle but change the principle slightly to ensure that permitting inequalities is contingent on whether it helps equalise opportunities. Wealth inheritance and other incentives for production can play a role in giving all individuals equal chance to attain social and economic positions given that there is always an inevitable inequality in natural talent. The solution I propose allows Rawls to maintain a coherent set of principles that restrict wealth inheritance without any conflicting aims and goals. This means Rawls's theory can still claim to be a broadly justifiable theory and hence a more advantageous theory for a liberal democratic society to follow than Dworkin's theory.

Nonetheless my modification to the difference principle does have a minor cost. The cost is that it departs slightly from Rawls's original formulation of the difference principle. But I do not believe my solution breaks or changes Rawls's theory too much. My solution aims at limiting the alleged overreach of the difference principle by limiting when it permits inequalities of opportunity. It does not change the focus of the principle

or its scope of application. In sum the benefit of my solution outweighs the cost of weakening the difference principle. It allows Rawls's theory to justify restricting wealth inheritance to the opportunity and luck intuition without using motivationally incoherent principles.

5.2.2 Distinction Problem

In this section let us turn to the costs and benefits of my solution to the Distinction Problem. The Distinction Problem is more problematic than Cohen's Distilled Argument because it attacks the general distinction that Rawls appears to make between wealth inheritance and social class. In the last section I suggested that we should modify Rawls's difference principle so that unequal opportunities like social class and wealth inheritance are only contingently permissible if they help neutralise inequalities of opportunities or ensure all individuals can access their equal basic liberties. But this does not help Rawls (1971: 277–278) justify the distinction between social class and wealth inheritance.

As I argued in Chapter 2, Rawls's theory appears to make an unjustified distinction between wealth inheritance and social class with respect to equalising opportunities. I believe Rawls makes this distinction because he understands wealth inheritance as a phenomenon external to social class. What does this mean? It means that Rawls (2001: 53, 160–161) sees wealth inheritance as a form of income equivalent to a high paying job that should be taxed to benefit the least advantaged. He does not see it, at least not originally, as a social contingency like an individual's social class of origin. As Rawls (1971: 277–278; 1999: 245–246) says:

> The unequal inheritance of wealth is no more inherently unjust than the unequal inheritance of intelligence. It is true that the former is presumably more easily subject to social control; but the essential thing is that as far as possible inequalities founded on either should satisfy the difference principle.

The Distinction Problem questions how Rawls justifies his general distinction between the luck of inherited wealth and the luck of being born into a particular social class. As I argued in response to Cohen's Distilled Argument earlier, we should modify the difference principle to separate the contingent permissibility of wealth inheritance and the necessity of inequality in natural talents. In the Distinction Problem I argue that Rawls cannot justify separating social class and wealth inheritance if he wants to coherently justify restrictions on wealth inheritance to the opportunity and luck intuition. This is because the way Rawls answers the normative concerns of the opportunity intuition are incoherent with the way he answers the normative concerns of the luck intuition. Rawls argues (1971: 277–278; 1999: 245–246) that restrictions on wealth inheritance are necessary because it is not unjust for individuals to exploit the luck of being born to wealthy parents in the same way they might exploit their natural talents. Nevertheless a just society should restrict the exploitation of inherited wealth and natural talent so it is compatible with the difference principle. This is unlike the attitude towards social class. But in answering the normative concerns of the opportunity intuition, Rawls (2001: 44) argues that individuals should have an equal chance of attaining social and economic positions "regardless" of their social class of origin. This requires a just society to introduce measures that make the effect of social class irrelevant. Despite this Rawls's theory does not have the same attitude towards wealth inheritance. Even though there is no describable difference between the luck of being born into a particular social class and the luck of being born to parents that can bequeath property.

In response to this I suggested in Chapter 4, that Rawls's theory should modify its understanding of social class. This modified understanding solves the Distinction Problem by making wealth inheritance an internal constitutive element of a social class. This understanding still allows Rawls's theory to consider how wealth inheritance can be used to create social classes. The only addition is that my understanding accepts that

wealth inheritance is an effect perpetuated by social class and a cause that stratifies individuals into social classes. Wealth inheritance is treated as a synchronic relation between contemporaries that reflects differences in social class and not only as something that is caused by social class. The consequence of treating wealth inheritance this way is an acceptance that wealth inheritance unjustifiably makes it easier for individuals to utilise their talents and improve their motivation to increase their life prospects. This solution strengthens the justifiability of Rawls's theory to the luck intuition because it combines its target for equalising opportunities with its target for mitigating the role of luck. By understanding wealth inheritance as a phenomenon that is an effect of social class and a cause of social class, Rawls's theory can answer the normative concerns of the opportunity intuition and luck intuition at the same time. On this view a just society should restrict wealth inheritance so it, like an individual's social class of origin, should over time play no role in stratifying and perpetuating class differences.

The primary benefit of my solution is that it allows Rawls to coherently justify restricting wealth inheritance to the opportunity and luck intuition by resolving the different treatment of equally arbitrary social contingencies. Without the solution Rawls's theory would be ignoring the normative concerns of the luck intuition because it would be treating wealth inheritance, like genetic inheritances, as an inevitable fact about families and personal relationships. My response helps Rawls's theory shift from treating wealth inheritance as a contingently permissible form of income inequality, to treating it as a social contingency that perpetuates class differences. This shift allows Rawls to justify restricting wealth inheritance more harshly than his theory might originally suggest. This helps Rawls answer the normative concerns of the luck and opportunity intuition with equal weight. Rawls can restrict wealth inheritance to equalise opportunities and to mitigate the role of luck with equal severity.

One of the costs of my solution is that it calls for changes to one of

the central concepts in Rawls's theory. Social class of origin, is a concept that Rawls uses repeatedly to describe the stratification of society in to groups of differently advantaged individuals. Unlike my response to Cohen's Distilled Argument where I advocated a slight weakening of Rawls's interpretation of the difference principle, this changes the meaning of what it means for individuals to belong to a certain social class. However, we should tally this cost as a minor one against avoiding the much larger cost of maintaining an unjustified distinction between the luck of wealth inheritance and social class. My solution allows Rawls to restrict wealth inheritance for the purpose of eradicating class difference, instead of tolerating wealth inheritance as a permissible inequality required for the benefit of the least advantaged. By changing his understanding of social class to include the phenomena of wealth inheritance, Rawls can restrict it so it plays little to no role in perpetuating class differences. This coherently answers the concerns of those who hold the luck intuition by treating wealth inheritance and social class the same way, with an unjustified distinction. This does not mean that Rawls's theory will eradicate all class differences. Rawls's theory will still permit some individuals to have more opportunities if they have a greater natural talent or if they have cultivated new talents.

5.2.3   Structural Injustice Problem

Now let us consider what I believe is the most costly problem for Rawls's theory: The Structural Injustice Problem. I argued that the problem shows Rawls's theory cannot justify restricting wealth inheritance to individuals who hold the luck intuition. This problem alleges that Rawls permits a society to hold individuals responsible for disadvantages caused by unchosen social behaviours. To hold individuals responsible for the way their choices are limited by other individuals inheriting wealth runs directly contrary to the associated concerns of the luck intuition.

The Structural Injustice Problem is the most costly problem for Rawls

because on the second metric of the comparative analysis, Rawls does not justify his theory to all three of our normative intuitions. I believe Rawls's theory can claim to justify restricting wealth inheritance to the liberal intuition, through the first principle of justice and the opportunity intuition, through the second principle of justice. But the Structural Injustice Problem shows that Rawls's theory either ignores or, at best, only weakly answers the normative concerns of the luck intuition. As a result, Rawls's theory suffers a comparative disadvantage over Dworkin's theory because Rawls's restriction of wealth inheritance cannot claim to be impartial towards and acceptable by those individuals who hold the luck intuition.

In short, the Structural Injustice Problem alleges that Rawls's theory gives no good reason why an individual who finds themselves in the lowest social class should accept the principles he offers. This is because Young argues the principles permit wealth inheritance to reinforce the social values of capital accumulation and bequeathing over the social values of short-term saving and expenditure. The conclusion of Young's argument seems to be that those who hold the luck intuition cannot accept principles that allow wealth inheritance to fluctuate utility, housing and commodity markets which disadvantages individuals without their choice. According to Young (2011: 70) this is because the subject of Rawls's theory - society's institutions - is too narrow to restrict wealth inheritance in a way that is justifiable to the luck intuition. I outlined the comparative cost of this, but let us briefly illustrate it here using the examples I used in Chapters 2 and 4. I used a comparison between Young's example of Sandy and my own example of Sandra (2011: xiii, 43). Sandy is a female breadwinner who is forced to choose between unaffordable housing or homelessness because she is priced out of the housing market.

Sandy does not have the choice to get higher pay for her labour because her society values male breadwinners and capital accumulation as opposed to capital consumption. In turn, Sandy has a limited set of choices about the location and quality of housing for herself and her children. Sandy

as a female breadwinner is not wronged by one person, but suffers from a structure of social rules that limit her choices. Sandra on the other hand has the same talent and motivation as Sandy but was able to use her inheritance, despite its taxation, to buy a house and live more comfortably than Sandy. In fact buyers like Sandra price Sandy out of the housing market. The example shows, not that Sandra's inheriting in particular was responsible for Sandy's limited choices but that economic institutions like housing and rental markets limit Sandy's choices. This is because Sandra's purchase raises the price of a house and increases demand in the rental market. As Young (2011: 95) says:

> A lack of availability of decent affordable housing for large numbers of people, for example, occurs as a normal aspect of most housing markets. The dynamics of these markets is affected by investment incentives, developers' imaginations, expertise, and financial capacity, cultural assumptions concerning housing preferences, and local planning policies, among other factors.

The salient aspects of Sandy's life for a market within a liberal democratic society are that she is not a male breadwinner, nor is she interested in saving capital. Rather she is interested in affordable rental accommodation close to education and healthcare facilities. It seems the way wealth inheritance limits Sandy's choices in the housing market is exactly the kind of disadvantage that those who hold the luck intuition are concerned about. Yet, according to the Structural Injustice Problem Rawls's restriction of wealth inheritance is consistent with permitting wealth inheritance to limit the choices open to some individuals if it benefits the least advantaged.This means Rawls permits the structure of a just society to limit the choices open to an individual by valuing certain social behaviours, like wealth inheritance, above other social behaviours. This is directly contrary to the normative judgement of the luck intuition which is that wealth inheritance, no matter how valued should have as little a role as possible in determining an individual's life. In sum, it seems Rawls's theory can,

under certain conditions, ignore the normative concerns of those who hold the luck intuition. As it stands this is a clear disadvantage for Rawls's theory.

In response I suggested that Rawls's theory should consider wealth inheritance a special social contingency that requires special deliberation to restrict. This deliberation would include investigating and calculating how wealth inheritance affects different social institutions and then how these institutions affect the range of choices individuals have. This inherently means that Rawls's principles should be applied in a more fine-grained way than Rawls original intends. This might mean prescribing that social institutions should influence and change what individuals value in order to give all individuals the most complete range of choices possible. This requires a more prescriptive approach to social institutions than originally intended by Rawls. Rawls (1999: 242–244) believes procedural fairness will mean that social institutions will not seek to actively change social values but keep them in a reflective equilibrium with the demands of the first and second principle of justice. My solution suggests that a just society should deliberate about wealth inheritance as a social contingency that contributes to limiting the choices individuals have despite wealth inheritance being to the advantage of the worst off. We can imagine that Sandy would be materially worse off if Sandra's wealth inheritance was restricted more harshly. Nevertheless, those who hold the luck intuition will judge it to be unjustified that Sandy's choice should be limited by the way her society's institutions behave. This is because if Sandy's choices are limited and she is not compensated for this limitation she is effectively being held responsible for her poor choice of housing or her homelessness.

A significant cost for my response, which I mentioned in Chapter 4, is that it is entirely ad-hoc. To deliberate restricting wealth inheritance as a special contingency is incoherent with the aim of proposing a theory of justice that is accepted by consensus through an impartial procedure. My solution requires Rawls's theory to be partial towards restricting wealth

inheritance more than other social behaviours. My response departs from Rawls's commitment to a procedural justice process without any principled justification but solely to solve the Structural Injustice Problem. There appears no reason why society should not deliberate about other specific social behaviours like valuing athletic talent or physical fitness even though we think it is acceptable to hold individuals responsible for these behaviours.

For example let us take the case of physical fitness. A society that values physical fitness would probably organise labour and wages in such a way that favoured those talented and motivated to achieve a high level of physical fitness. In such a society an individual could find themselves continually struggling to compete in a labour market despite having the same opportunities to find employment as those who are similarly talented and motivated. Why is this? Because she might be part of a minority of individuals with similar talent and motivation for activities other than physical fitness. The choices open to her will not reflect her previous choices but reflect the collective behaviour of other individuals who are talented and motivated to be physically fit. This case mirrors the case of Sandy and Sandra, and shows that the values that matter in the Structural Injustice Problem need not be irrational discriminatory values or even values that a liberal democracy would reject as illiberal. According to my solution, for Rawls's theory to justify restricting wealth inheritance to the luck intuition entails that he should also restrict any social behaviour that limits an individual's choices when finding employment, housing or an education. This task seems impossibly difficult and without any guiding principle.

In short, it seems accepting my solution overcommits Rawls's theory to deliberate about other social behaviours that are unrelated to wealth inheritance. My solution appears too ad-hoc in its pursuit to make Rawls's theory justifiable to the luck intuition. There seems no principled justification to treat wealth inheritance as a special case that Rawls's principles

must necessarily consider, other than for the reason that this dissertation is concerned with wealth inheritance. The target of Rawls's two principles should be determined by the content of the principles or by some other principle that determines the scope of the first and second principles. Since my response is neither, my solution seems too costly for the potential benefit of solving the Structural Injustice Problem.

Where does this leave Rawls's theory? It seems Rawls's theory must either choose to suffer the cost of restricting wealth inheritance in such a way that ignores the normative concerns of the luck intuition, or deliberate about every social behaviour in an unmotivated and unjustified way. However, I believe this might be overstating the cost of the Structural Injustice Problem. Given the modifications I proposed in response to the Distinction Problem and Cohen's Distilled Arguments it would be incorrect to argue that Rawls's theory explicitly ignores the normative concerns of the luck intuition. Rawls's theory does make some effort to satisfy concerns about holding individuals responsible for the disadvantage of their social class. Rawls's principle of fair equality of opportunity and difference principle do not abolish wealth inheritance, but they prescribe restricting it to the extent that it does not play a role in determining an individual's life-prospects or future social class. As a result I believe a fair assessment of the costs of the Structural Injustice Problem is that Rawls does not completely ignore the associated concerns of the luck intuition. Rather it shows Rawls's theory seems to *prioritise* the concerns of the those who hold the opportunity intuition slightly above those who prioritise the luck intuition. This means that Rawls's theory is comparatively more costly than Dworkin's theory on the third metric of our analysis, namely the metric of equal justifiability.

On the third metric Rawls's theory is not impartial enough to give the normative concerns of those who hold the luck intuition the same moral weight as the concerns of those who hold the liberal or opportunity intuition. The Structural Injustice Problem highlights this imbalance and

shows that Rawls's definition of the basic structure permits wealth inheritance to sometimes play a role in limiting individual choices.

It is reasonable to conclude that Rawls's theory is primarily concerned with the way wealth inheritance creates unequal opportunities by stratifying individuals into social classes. These are the concerns of the liberal and opportunity intuition. It is only then subsequently concerned with how wealth inheritance can contribute to social behaviours that limit an individual's choices in life – this is the concern of the luck intuition. Therefore Rawls seems to prioritise the concerns of the opportunity and liberal intuition above the luck intuition.

5.3 The Final Tally

In the previous sections we have examined the advantages and disadvantages of each solution I presented in Chapters 2, 3 and 4. In this section I shall now conclude my comparative analysis by suggesting that Dworkin's theory fares better than Rawls's in terms of the metrics outlined earlier. To explain this conclusion let us look at the metrics of the analysis one at a time.

First let us consider the internal coherency of Rawls and Dworkin's theories. I believe it is safe to conclude that both Rawls and Dworkin are internally coherent with respect to justifying restrictions on wealth inheritance in a liberal democracy. In Rawls's case, only Cohen's Distilled Arguments raised the objection that the principle of fair equality of opportunity and the difference principle were motivationally incoherent. I believe my response to Cohen's Distilled Arguments resolves this supposed incoherency with little cost. I proposed that inequalities of opportunities caused by wealth inheritance should be considered as contingently permissible rather than necessary for the benefit of the worst off.

In Dworkin's case, Cohen's theory of Equal Access to Advantage, the Harshness Problem and the Wrong Focus Objection raise the objection

of incoherency of justifying restrictions on wealth inheritance to the luck intuition. Despite this, I believe I have shown how these problems can be resolved. My defence of Dworkin's theory against Cohen's theory is that Dworkin can translate Cohen's examples into the language of Dworkin's theory. The solution allows Dworkin to emphasise that Cohen's theory relies on a conception of how hypothetical individuals should think as opposed to how they actually think. I argued that Dworkin's theory was more preferable because it conceives preferences in the way individuals actually conceive them. However, Dworkin can resist the charge that his theory is incoherent because it makes an inconsistent distinction, by employing the normative tools already at his disposal. This means that my solution is not a theoretical cost that prescribes additional commitments or radical changes to Dworkin's original theory.

On the other hand, my solution to the Harshness Problem does carry some costs since it requires additional normative theses. The solution commits Dworkin to change the subject of his principles and weaken his conception of individual responsibility. But I believe both these costs are unavoidable and minor when weighed against the potential incoherency between Dworkin's principles and the liberal democratic expectation to be treated proportionate to one's costly choices. Similarly, my response to the Wrong Focus Objection was a clear benefit with a minor cost. It was beneficial because it resolves the worry that the way Dworkin answers the normative concerns of those who hold the luck intuition was misguided and focused solely on resource distribution instead of social relations. My solution suggested that Dworkin should change the subject of his principle to include social institutions, and change his understanding of responsibility to "reciprocal responsibility" between institutions and individuals. These changes allow him to restrict wealth inheritance so that individuals are not held responsible when they do not choose to have unequal social relations and unequal distributions of resources. Like my response to the Harshness Problem, this solution has a minor cost in that it commits Dworkin to ad-

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ditional theses and to modify one of his central concepts. Again I believe this cost is affordable for Dworkin because of the benefits it gives. My solution does not depart too far from Dworkin's original aims. My suggested changes keep Dworkin's basic analysis of holding individuals responsible for choices and option luck events but not holding them responsible for brute luck events. Wealth inheritance is still restricted in order to satisfy the intuitive concern for only holding individuals responsible for the choices they make. With respect to internal coherency, I believe Rawls and Dworkin are on an even footing because both manage to overcome the allegations of incoherency but with slight modifications to their original principles.

On the metric of justifiability, or in other words the ability to answer the normative concerns of the luck, opportunity and liberal intuition, I believe Dworkin's theory is comparatively more advantageous than Rawls's theory. This is primarily because of the costs and benefits of my solutions to the Distinction Problem and Structural Injustice Problem for Rawls's theory. My response to the Distinction Problem has both a clear benefit and minimal cost. The Distinction Problem questioned the way Rawls treated wealth inheritance differently to social class. It alleged that Rawls's theory ignored the normative concerns of those who judge inheriting wealth and being born into a particular social class as the same kind of lucky event. My response was that Rawls should change his understanding of social class to include wealth inheritance as both an effect of being born into a particular social class and also as an act that stratifies society into classes. With my response Rawls can satisfy individuals who hold the luck intuition by restricting wealth inheritance to the extent that it plays little to no role in perpetuating social class differences. This means that Rawls can justify restricting wealth inheritance to all three of our intuitions. He can justify his restrictions to the liberal and opportunity intuitions with his first and second principles of justice, while slightly changing his concept of social class so that the second principle can also satisfy the luck intuition.

The one minor cost of my solution is that it requires departing from Rawls's original concept of social class. Once again, like my response to the Harshness Problem and Wrong Focus Objection this cost is affordable because it does not involve changing too much of Rawls's theory in contrary to his original motivations. Changing the concept of social class does not jettison any of Rawls's earlier commitments but just adds one more. I believe the advantages of my solution out weight the costs. Primarily because my solution mitigates and does not excuse the role of inherited wealth in determining an individual's social class. This is a greater benefit for Rawls's aim to justify restricting wealth inheritance to the opportunity and luck intuition than the cost of departing from Rawls's original theory.

However the cost for Rawls is most significant when we consider the Structural Injustice Problem. The Problem, as argued by Young (2011) questions the extent to which Rawls's theory can satisfy individuals who hold the luck intuition. Young raises examples where Rawls's theory holds an individual responsible for their choices when the choices open to them have been limited by social values and collective patterns of behaviour like wealth inheritance. This runs directly contrary to the normative judgements of those who hold the luck intuition. However, as I analysed earlier in this chapter, my solution to this problem merely trades one cost for another. My solution involves singling out wealth inheritance as a social behaviour that values capital accumulation and bequeathing above renting and spending capital. A society that endorses Rawls's theory should then investigate the effects of wealth inheritance on limiting the choices open to individuals.

However, this response is too ad-hoc and without independent justification. Moreover the response entails that an entire host of intuitively acceptable collective behaviours should also be investigated. It seems that Rawls's theory is left between two unacceptable options. Either Rawls should concede his theory holds individuals responsible for choices they did not make, or it should investigate a multitude of social values and col-

lective behaviours to determine which specific behaviours limit the choices open to individuals. In the wake of these options I concluded that the first option, although a significant disadvantage, is less severe than it first appears. I argued that it would be incorrect to assert that Rawls's theory as a whole cannot justify its restrictions on wealth inheritance to the luck intuition. Rather we can conclude that it seems to unjustifiably prioritise the normative concerns of the luck intuition below the liberal and opportunity intuitions. To that end, in my judgement Rawls's theory falls slightly behind Dworkin's theory.

However this only shifts the comparative disadvantages of Rawls's theory to the third metric of our comparison: broad justifiability. By "broad justifiability" I mean how well Rawls and Dworkin justify restricting wealth inheritance by giving equal weight to the normative concerns of each intuition. The most significant point of difference between Rawls and Dworkin on this metric is that Rawls has no adequate answer to the Structural Injustice Problem. It seems Rawls can only concede that his theory does permit, on certain occasions, for individuals to be held responsible for choices they did not make. It seems Rawls can only answer the Structural Injustice Problem with either ad-hoc restrictions of wealth inheritance or an ever increasing list of collective behaviours which should be restricted for the sake of consistency. On this view I believe the large cost of prioritising the normative concerns of those who hold the luck intuition below the liberal and opportunity intuition outweighs the accumulative benefits of modifying some concepts and principles.

On the other hand Dworkin balances the importance given to the liberal intuition by allowing free markets, and extensive property rights so bequeathers can efficiently accumulate and dispose of their wealth. He then answers the associated concerns of the opportunity and luck intuition by analysing unequal opportunities as an effect of unequal resource distributions. Dworkin is acutely concerned with the way resources are distributed unequally by lucky events like wealth inheritance. This is dif-

ferent to Rawls who in order to make use of inherited wealth as an incentive for productive activity permits it to influence what individuals value and how they behave in a liberal democratic society. This means that unlike Dworkin, Rawls cannot give the normative concerns of the luck intuition the same priority as the opportunity intuition, because lucky events play a role in helping Rawls equalise opportunities and satisfy the opportunity intuition.

But where does this place Rawls and Dworkin's theories in an over all comparison? As I see it, the above comparative analysis suggests that Rawls's theory falls behind Dworkin's when we take into account all three metrics.

The simple reason why I believe Rawls's theory falls slightly behind Dworkin's is because of the accumulative costs of the Structural Injustice Problem and my responses to the Distinction Problem and Cohen's Distilled Arguments. The costs show two things. First, that Rawls's theory requires changes to some concepts and must adopt new principles to remain coherent. These modifications allow Rawls to treat wealth inheritance as a contingently permissible inequality that is a constitutive element of social class. Both changes allow Rawls to propose internally coherent principles and a theory that is coherent with the initial aim of proposing a theory that operates in a democratic society. However the costs of the Structural Injustice Problem also show that Rawls's theory cannot give the normative concerns of the those who hold the luck intuition the same priority as the concerns of those who hold the liberal and opportunity intuition. This is because Rawls's theory uses lucky events like wealth inheritance as a mechanism to equalise resources and allow all individuals access to a scheme of equal basic liberties. In short, it is because Rawls prioritises the luck intuition below the opportunity and liberal intuition that he can justify restricting wealth inheritance in such a way that satisfies the opportunity and liberal intuitions.

On the other hand Dworkin's theory is only costly because of the ac-

cumulated costs of modifying concepts and adopting principles to solve the Harshness Problem and Wrong Focus Objection. These costs, although somewhat worrying, are outweighed by their benefits. They allow Dworkin's theory to apply, just as Rawls's theory does, to society's institutions and hence quell any worries about internal coherency. In sum, Dworkin's theory does better on the second and third metrics of our comparative analysis. In other words, Dworkin's theory is more beneficial and less costly when answering the normative concerns of each intuition and answering them with equal weight than Rawls's theory.

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