

Between Market and Merit.
How Unequal Should Incomes Be?

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Ph.D. in Philosophy

Submitted 2nd April 2004, *viva voce* 30th June 2004

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1 Abstract Contents

The distribution of the benefits from co-operation represents one of the central problems of distributive justice. At the core of my thesis stands an argument based on the division of labour in our society that calls for an *equal* division of these benefits.

This line of reasoning avoids the shortcomings of the two traditional approaches pursued by those who are critical of income inequalities, namely egalitarians and their more sophisticated cousins, liberal egalitarians. Straightforward egalitarianism, I suggest, turns out to be a default position once other considerations, like choice or merit, are taken into account. My disagreement with the liberal egalitarian centres on the question whether the scope of justice should encompass natural and social contingencies like talent or family background. I argue that the impact of these endowment factors on income distribution, though undeniable, is small compared to the influence of the market system in distributing income.

This position also puts me at odds with libertarians, who accept the normative authority of the market distribution. Enter the argument from division of labour. The specialisation it entails leads to a surge in individual productivity and a substantial surplus compared to the counterfactual situation of autarky. On the plausible assumption that the interdependence between the parties to the division of labour is mutual, there is a case for dividing the surplus equally. This argument, so my claim goes, severely limits the scope of the central libertarian tenet of self-ownership. In practice, surplus is produced and distributed at various levels of co-operation; my focus lies on the economy as a whole, the firms that operate in it, and the insights from imperfect competition about the connection between these two levels.

I close with some considerations about the transformation of unjust distributive structures.

6.3	The mission of moral argument	53
6.3.1	...and its divisiveness	53
6.4	The scope and the reach of justice	61
6.4.1	...“The good, the bad, and the neutral”	62
6.4.2	The strategy	60
6.4.3	The genesis of marketable skills	70
6.4.3.1	Natural endowments	71

2 Table of Contents

1	Abstract.....	2
2	Table of Contents.....	3
3	Table of Figures	5
4	Introduction.....	6
	4.1 Features of a normative discussion of income distribution	7
	4.2 Brief Outline	8
5	Egalitarians anonymous.....	10
	5.1 Two preliminaries	11
	5.1.1 <i>The egalitarian spectrum</i>	12
	5.1.2 <i>The focus on income</i>	14
	5.2 Welfare economics and (in)equality	16
	5.3 The anonymity assumption in philosophy	23
	5.3.1 <i>Rawls, utilitarianism, and prioritarianism</i>	26
	5.3.2 <i>The “currency move”</i>	31
	5.3.3 <i>The “liberal egalitarian move”</i>	34
	5.3.4 <i>Taking stock</i>	39
	5.4 The foundations of proportional justice.....	41
	5.4.1 <i>The peculiar pattern of equality</i>	41
	5.4.2 <i>Individual choice versus social choice</i>	45
	5.4.3 <i>The possibility of “distributive market failure”</i>	47
	5.5 Conclusion	49
6	Meritocracy on the back foot.....	51
	6.1 Liberal egalitarianism strikes back	51
	6.2 The mileage of moral arguments	54
	6.3 Delineating desert... ..	56
	6.3.1 <i>...and its divisiveness</i>	58
	6.4 The scope and the reach of justice	61
	6.4.1 <i>“The good, the bad, and the neutral”</i>	62
	6.4.2 <i>The strategy</i>	66
	6.4.3 <i>The genesis of marketable skills</i>	70
	6.4.3.1 <i>Natural endowments</i>	71

	6.4.3.2	Social background.....	74
	6.4.3.3	Entering the public realm.....	75
	6.4.4	<i>The human condition</i>	79
6.5		Taking stock.....	86
	6.5.1	<i>Looking ahead</i>	88
<hr/>			
7		Distributive Lessons from Division of Labour	90
	7.1	Justifying a market-based distribution of income.....	92
	7.2	Division of labour – division of economics?	97
	7.2.1	<i>Tracing the surplus</i>	103
	7.3	Weak entitlements and second-best solutions	111
	7.3.1	<i>A brief excursion</i>	112
	7.3.2	<i>Defending the Equal Surplus Principle</i>	116
	7.3.3	<i>The economy-wide surplus</i>	119
	7.3.4	<i>The intra-firm surplus</i>	121
	7.3.5	<i>The complication of cumulative effects</i>	123
	7.4	Conclusion	124
<hr/>			
8		Transforming unjust distributive structures	126
	8.1	Setting the scene	128
	8.1.1	<i>Equal respect</i>	128
	8.1.2	<i>Morality and the law</i>	129
	8.2	A dynamic approach	132
	8.2.1	<i>Shares or Rules?</i>	132
	8.2.2	<i>On the road to justice</i>	138
	8.2.2.1	Distributive justice and taxation	139
	8.2.2.2	Gradual transformation	143
	8.3	Institutional justice and the power of publicity	146
	8.3.1	<i>Justice: Individual versus institutional?</i>	147
	8.3.2	<i>Institutions as motivational bootstrapping</i>	154
	8.3.3	<i>The strange taboo of “How much are you making?”</i>	157
	8.4	Closing thought.....	160
<hr/>			
9		Between Market and Merit	161
	9.1	Economic justice from an economic perspective	161
	9.2	Some additional pieces of the puzzle.....	164
	9.3	Open questions.....	167
<hr/>			
10		Bibliography	172

2 Table of Contents

1	Abstract.....	2
2	Table of Contents.....	3
3	Table of Figures	5
4	Introduction.....	6
	4.1 Features of a normative discussion of income distribution	7
	4.2 Brief Outline	8
5	Egalitarians anonymous.....	10
	5.1 Two preliminaries.....	11
	5.1.1 <i>The egalitarian spectrum</i>	12
	5.1.2 <i>The focus on income</i>	14
	5.2 Welfare economics and (in)equality	16
	5.3 The anonymity assumption in philosophy	23
	5.3.1 <i>Rawls, utilitarianism, and prioritarianism</i>	26
	5.3.2 <i>The “currency move”</i>	31
	5.3.3 <i>The “liberal egalitarian move”</i>	34
	5.3.4 <i>Taking stock</i>	39
	5.4 The foundations of proportional justice.....	41
	5.4.1 <i>The peculiar pattern of equality</i>	41
	5.4.2 <i>Individual choice versus social choice</i>	45
	5.4.3 <i>The possibility of “distributive market failure”</i>	47
	5.5 Conclusion	49
6	Meritocracy on the back foot.....	51
	6.1 Liberal egalitarianism strikes back	51
	6.2 The mileage of moral arguments	54
	6.3 Delineating desert... ..	56
	6.3.1 <i>...and its divisiveness</i>	58
	6.4 The scope and the reach of justice.....	61
	6.4.1 <i>“The good, the bad, and the neutral”</i>	62
	6.4.2 <i>The strategy</i>	66
	6.4.3 <i>The genesis of marketable skills</i>	70
	6.4.3.1 <i>Natural endowments</i>	71

	6.4.3.2	Social background.....	74
	6.4.3.3	Entering the public realm.....	75
	6.4.4	<i>The human condition</i>	79
6.5		Taking stock.....	86
	6.5.1	<i>Looking ahead</i>	88
<hr/>			
7		Distributive Lessons from Division of Labour	90
	7.1	Justifying a market-based distribution of income.....	92
	7.2	Division of labour – division of economics?	97
	7.2.1	<i>Tracing the surplus</i>	103
	7.3	Weak entitlements and second-best solutions	111
	7.3.1	<i>A brief excursion</i>	112
	7.3.2	<i>Defending the Equal Surplus Principle</i>	116
	7.3.3	<i>The economy-wide surplus</i>	119
	7.3.4	<i>The intra-firm surplus</i>	121
	7.3.5	<i>The complication of cumulative effects</i>	123
	7.4	Conclusion	124
<hr/>			
8		Transforming unjust distributive structures	126
	8.1	Setting the scene	128
	8.1.1	<i>Equal respect</i>	128
	8.1.2	<i>Morality and the law</i>	129
	8.2	A dynamic approach	132
	8.2.1	<i>Shares or Rules?</i>	132
	8.2.2	<i>On the road to justice</i>	138
	8.2.2.1	Distributive justice and taxation	139
	8.2.2.2	Gradual transformation	143
	8.3	Institutional justice and the power of publicity	146
	8.3.1	<i>Justice: Individual versus institutional?</i>	147
	8.3.2	<i>Institutions as motivational bootstrapping</i>	154
	8.3.3	<i>The strange taboo of “How much are you making?”</i>	157
	8.4	Closing thought.....	160
<hr/>			
9		Between Market and Merit.....	161
	9.1	Economic justice from an economic perspective	161
	9.2	Some additional pieces of the puzzle.....	164
	9.3	Open questions.....	167
<hr/>			
10		Bibliography	172

3 Table of Figures

Figure 1: Illustration of a mapping.	24
Figure 2: Illustration of the hybrid mapping of liberal egalitarians.....	38

4 Introduction

Distributive justice is an emotional subject, and emotions tend to cloud our judgement. Once the distributive die is cast, we feel compassion for those who, through no fault of their own, fare worst in the division of benefits and burdens in society. The poorer they are, the louder humanitarian calls for redistribution will be. Similarly, we morally object to the distributive die being loaded with unequal opportunities in favour of some players to begin with. Contemporary egalitarian arguments aim to reduce such bias, or at least nullify its impact on distributive outcomes.

The merits of the humanitarian and egalitarian impulse as a force for good in society are beyond question. Yet, neither of them is well-suited to address the question of what constitutes a just distribution of income. As to the humanitarian thirst for economic justice, a minimal level of well-being for everyone seems sufficient to quench it. More controversially, let me assert that many forms of egalitarianism neglect the intuition that the income an individual earns should reflect the contribution she has made to society. As a result, the political left is short on the conceptual tools necessary to debate the appropriate *magnitude* of differentials in economic advantage – above all in income – between people. Of course, these claims need to be substantiated, and this will be one of my goals in this PhD thesis. Yet, if they are vindicated, the theoretical silence of the left on this central question of economic justice will emerge as not only a serious omission, but also a strategic mistake.

As an illustration, think of the phenomenon of the “working poor” – people who have a job, but whose wages fall short of furnishing them with a certain minimum standard of living. Critics from the left of the political spectrum will tell you that this state of affairs is unfair and unacceptable. They will surmise that poor education and training are partly to blame, but they will not ask *why* our system only pays these people a pittance and on what justification, if any.

Curiously, this conceptual ground is almost exclusively occupied not by those who criticise income inequalities, but by libertarians keen to justify them. To do so, they appeal to the market mechanism and maintain that the rewards it hands out to

individuals reflect the fruits of their labour or productivity. In other words, libertarians vest the market with the normative authority to determine the magnitude of relative economic benefits and burdens.

In what follows, I will challenge the libertarians' uncritical acceptance of the distributive outcome generated by what we conceive of as market interaction. My central argument will appeal to an important element of classical economics, namely the division of labour. Via the specialisation it entails, the division of labour boosts productivity and leads to the production of a vast co-operative surplus. Economic justice, so my claim goes, calls for the distribution of this surplus to reflect the interdependence between people's productivity in a way that the market mechanism neglects.

In contrast to the standard attacks on the libertarian position and the income inequalities it defends, the argument from division of labour ties the thinking about economic justice more closely to economic activity itself. John Rawls, borrowing from David Hume, states that "...the circumstances of justice obtain whenever persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity." (Rawls, 1999: 110) My framework construes the circumstances of *economic* justice more narrowly, in that it links them to the productive process in society. People's incomes should reflect their contributions to this process. The argument from division of labour I present has the advantage of engaging libertarians into a debate about the magnitude of relative slices of the co-operative surplus, and therefore challenges them on their home ground.

4.1 Features of a normative discussion of income distribution

There are various ways to determine the incomes, or shares in the distributive surplus, of individual members of society. A normative discussion probes the justifications behind these different systems. I will emphasise that the distributive outcome of the market needs to be subjected to this normative scrutiny on a par with any alternative proposal.

A normative evaluation of this kind has two main objectives. The first is conceptual and located in the domain of theoretical reason. The focus here lies on verifying whether our socio-economic theories frame and address the problem of

income distribution in a plausible manner. The second objective is to draw conclusions for public policy, an endeavour squarely located in the domain of practical reason. The link between the two levels cannot be overemphasised. Our theoretical conceptualisation of issues of economic justice, including income distribution, has a profound impact on our practical decisions in terms of institutional design and social policy. Against this background, even though the discussion of this thesis is largely conducted in the realm of theoretical reason, its ultimate aim is to affect policy.

Two features of the normative discussion that follows are worth highlighting in advance. First, as we shall see in more detail in section 5.1.2, my account of distributive or economic justice is a *partial* one. Most importantly, it is confined to the distribution of one particular kind of social advantage, namely income. This is not to deny the significance of the distribution of, say, health or education, but I believe their allocation is governed by different considerations. My partial approach, in other words, is motivated by a pluralism towards principles of distributive justice. Even within the realm of income distribution, distinctions need to be made. My argument, rooted in the division of labour that governs the productive process in society, only extends to labour income. Capital income and other sources of individual revenue have to be treated separately.

Second, as a recurring feature across all individual chapters, I will highlight the shortcomings of framing distributive problems in a *static* framework. As my proposal to tie economic justice more closely to the underlying productive process already suggests, our normative perspective on the distribution of income will be a *dynamic* one. This has significant implications for the distributive lessons we will learn.

4.2 *Brief Outline*

Sections 5 and 6 analyse why traditional egalitarian arguments fall short of posing a serious threat to the libertarian position. In section 5, I argue that the appeal of *distributive egalitarianism* rests on a controversial anonymity assumption. When this assumption is even minimally relaxed, the default position of equality becomes the exception rather than the rule. Section 6 investigates the *liberal egalitarian* position

that dominates contemporary egalitarian thinking. I mount a case against the central tenet of liberal egalitarianism, which calls for a compensation of “undeserved” inequalities, in particular of disadvantages in terms of natural endowments and social background.

Section 7 combines my criticism of libertarianism with the positive argument of the thesis. The libertarian justification of income inequalities on the basis of the argument for self-ownership neglects the fundamental dependence of individual productivity on the co-operation inherent in the division of labour. Once we take this mutual interdependence into account, there is a case to be made for distributing the co-operative surplus equally.

In section 8, we turn to the question of how to transform an unjust distributive structure. Unusually for theories of justice, the starting point of our investigation will be the resistance of those privileged under the unjust *status quo* to any change towards economic justice. The goal will be to assess when this resistance is unjustified and, if so, how it can be overcome.

Finally, section 9 provides a brief synthesis of the argument, and points to important further questions my approach raises. Last but not least, I will then be in a position to offer an interpretation of the title of this thesis.

5 Egalitarians anonymous

The way in which we conceptually phrase a problem matters. At times, the intellectual approaches to a certain issue become monopolized by one particular such phrasing. We may then speak of the debate or, on a larger scale, of the discipline as being steeped in a certain paradigm. The inherent danger of a debate governed by a paradigm conceptualisation is that it prevents us from seeing the wood for the trees. We attempt to correct shortcomings and solve inconsistencies *within* the fold of the paradigm. What is worse, certain remedies may not even be considered, since the problems they address do not show up on the paradigm agenda. In such circumstances, we need to challenge the paradigm conceptualisation of the problem itself.

I will argue in this chapter that egalitarianism of various stripes has monopolized issues of distributive justice in the above sense, at least as far as the arguments of those on the left side of the political spectrum are concerned. Hardly anyone these days objects to distributive inequalities without appealing to the ideal of equality in one way or other.

Following a number of preliminary remarks in section 5.1, I suggest that this reliance on equality in many cases lacks justification. More precisely, I will show the appeal of certain versions of egalitarianism, namely those that champion a distributive interpretation of the egalitarian ideal, to rest on a controversial assumption of anonymity.¹ Given this assumption, the evaluation of social arrangements in terms of social justice is forced to exclusively rely on distributive outcomes, while lacking the informational resources to justify any inequalities in these outcomes. Equality wins by default. As we shall see, this holds for economic analyses of inequality in particular. As far as philosophical versions of egalitarianism are concerned, though some have managed to eschew what I will call the outcome-

¹ The anonymity assumption states that our judgement about the inequality of a distribution within a certain population has to be invariant with respect to permutations of the members of this population within the distribution. Please bear with me for a more detailed discussion of this assumption and its implications.

paradigm, many of the weaker anonymity assumptions they make are still controversial.

If my criticism of certain forms of egalitarianism goes through, this does not mean that we will be left without any means to argue against distributive inequalities. Section 5.4, which contains the positive part of the chapter, outlines what to me seems the most promising route to do so. Having delineated my position from the libertarian critique of egalitarianism, I propose to adopt a maxim of “proportional” justice², i.e. “giving everyone their due” with respect to the contribution they make to the productive process in society. If our normative judgement of what counts as just in this sense conflicts with the distributive inequalities of the *status quo*, then we should question the institutional underpinnings of the latter.

Let me re-emphasize the fact that the positive part of the chapter at this stage only represents the sketch of an argument. My intention is to point to a plausible route out of the outcome-paradigm, but most of the journey and the philosophical tourist attractions along the way will be left for later chapters. Recall from my opening paragraph: Sometimes, we need to rephrase the question before giving an answer. By and large, this is the project of the present chapter.

5.1 Two preliminaries

Regrettably, there are almost as many versions of egalitarian theory as there are egalitarians. Before criticising *some* of them in virtue of a particular argument they make (sections 5.2 and 5.3), I would therefore like to impose some structure on the egalitarian debate. Laying out what I call the “egalitarian spectrum” in the first part of this section serves this purpose.

With a second set of preliminary remarks, I intend to delineate the present project from a question that has played a prominent role in recent egalitarian debates, namely “Equality of What?” (Sen, 1980). In response to this question, philosophers have disagreed about the appropriate “currency” (Cohen, 1989) of egalitarian justice, with income, resources, capabilities, and utility representing principal contenders.

² I am hesitant to use this term, since it verges on a pleonasm. Proportionality is a constituent part of the concept of justice. Why I still decided to use it should become clear in section 5.4.

For reasons listed below, I shall by and large bracket this debate and concentrate on the distribution of income, in parts even more specifically on the distribution of *wage* income.

Finally, let me make one terminological and one methodological point. As you might have already noticed, there are contexts in which my usage of the terms “equality” and “inequality” seems somewhat arbitrary. This is due to the fact that they refer to one and the same debate under the overall heading of distributive justice. Larry Temkin (1986: 107/108) observes that economists tend to phrase their debates in terms of inequality, whereas philosophers have a penchant for equality. These preferences do not point to a systematic difference. As to the methodological point, insofar as the chapter takes issue with existing literature, it necessarily involves a good deal of interpretation. I would like to emphasise that I regard the exegetical exercise to be of secondary importance relative to the systematic points being made.

5.1.1 The egalitarian spectrum

Contemporary egalitarian contributions to the theory of distributive justice can be classified into two broad kinds. The majority of theorists hold a version of what I will call “distributive equality,” interpreting justice to a significant extent as a distributive ideal. Given certain qualifications that will not distract us here, these approaches advocate the equal distribution of a certain kind of good as a constitutive element of a just society, be it incomes (welfare economists under certain assumptions), social primary goods (John Rawls, 1971), resources (Ronald Dworkin, 1981), or capabilities (Amartya Sen, 1980 and 1992).

Opponents have accused distributive egalitarians of misunderstanding the purpose of the concept of equality. A just society is not contingent on people’s actual or potential holdings of certain kinds of advantage, but instead is characterised by people living together *as equals* and free from oppression.³ Following the literature, I will present this second brand of egalitarianism as promoting “relational equality.”

³ Cf. for instance Anderson (1999) or Scheffler (2003).

The spectrum from relational to distributive equality faces a dilemma, whose force Bernard Williams (1962) saw long before egalitarianism reached the height of its popularity, and before its various conceptual ramifications were introduced. If we confine ourselves to the statement that people should be treated alike in *similar* circumstances, he reasoned, we will be saying too little. If, on the other hand, we assert that people should be treated alike in *all* circumstances, we are surely going too far. The difficulty consists in finding any firm conceptual ground to stand on anywhere in between.

On closer inspection, the two horns of Williams' dilemma can be identified as conceptual cousins of relational and distributive equality respectively. On the one hand, differential treatment in similar circumstances would surely not be compatible with a society of equals; on the other hand, equal distribution of a certain good, irrespective of certain⁴ unequal circumstances, is precisely what distributive equality is calling for. Williams' article itself embodies the search for a substantive, and defensible, notion of equality that goes beyond stating the obvious (equal treatment in similar circumstances) but stops short of claiming the absurd (equal treatment in all circumstances). Analogously, let me venture to say that, if we choose to be egalitarians, we should strive to do better than merely asserting relational equality, yet at the same time be cautious about endorsing any kind of distributive equality.

With respect to *relational* equality, backing up this assessment is fairly straightforward. After all, who would disagree with the demand that we live together *as equals* and free from oppression? As an illustration of how wide we cast our net when affirming that people in similar circumstances should be treated equally, think of the heterogeneous set of theories that would subscribe to this statement. Libertarians, utilitarians, and egalitarians would all at a sufficiently abstract level agree *that* people be treated equally; their disagreement lies in interpreting what this maxim means in practice.⁵

⁴ The need for this qualification will become obvious in the course of the chapter. Some distributive egalitarians, like Ronald Dworkin (1981), do acknowledge that differences in people's *choices* should be reflected in the distribution of advantages in society.

⁵ I borrow this comparison from Thomas Nagel (1977). Nagel goes on to specify: "The defender of rights locates [equal moral claims] in the freedom to do certain things without direct interference by others. The utilitarian locates them in the requirement that each person's interests be fully counted as a component in the calculation of utility used to decide which states of affairs are best and which acts or

The more controversial part of my proposed parallel to Williams' analysis is to suggest that *distributive* egalitarians put forward an indefensibly strong claim about the extent to which equality should govern the distribution of benefits and burdens in society. Arguing for this hypothesis represents one of the main motivations behind this chapter and will preoccupy us in sections 5.2 and 5.3.

5.1.2 *The focus on income*

People differ in their capacities to enjoy the various advantages that social co-operation offers. Some have more expensive tastes than others and therefore will require more income to attain the same level of happiness. For those fortunate enough to have an optimistic disposition, the opposite is likely to hold. Some benefit more from a good education, some less. All these and many more characteristics can be summarised under the somewhat repugnant label of 'differing rates of utility conversion.' Highlighting human diversity is one of the central assumptions as well as merits of Amartya Sen's capability approach (cf. especially 1980 and 1992).

For distributive egalitarian theories, acknowledging the basic fact of human diversity entails a significant consequence. Recommending equality with respect to one "currency" of justice necessarily implies inequality on other counts. For example, promoting equal capabilities will result in unequal levels of both income and utility. In other words, you cannot be a distributive egalitarian in two different evaluative spaces at the same time.

Against this background, the boom of the "egalitarian industry" over the last twenty-odd years comes perhaps as less of a surprise. A whole host of different currencies have laid claim to holding the key to distributive justice.⁶ Although I will only explicitly make the case against distributive equality in *one* currency, namely incomes, I will present reasons for the view that parallel criticisms could be levelled against distributive equality in other currencies. The criticism of distributive equality, so the claim goes, cuts across the currency debate.

policies right. The egalitarian finds them in an equal claim to actual or possible advantages." Cf. also Sen (1997: ix as well as 12/13). Making a similar point, Hausman (unpublished manuscript) finds a poignant way to express our reluctance to classify utilitarians or libertarians as egalitarian by calling them "perverse egalitarians."

⁶ Cf. the opening paragraph of section 5.1.1 for examples.

My motivation for concentrating on incomes is twofold. First, section 5.2 will demonstrate that the economic analysis of inequality, which is conducted in terms of incomes, offers a particularly tangible illustration of the way in which distributive egalitarians advance an indefensibly strong claim. From this perspective, focusing on incomes is a mere matter of convenience.

The second motivation behind this decision builds on the generalisation of a criticism that has recently been put forward against the “compensation paradigm” inherent in many forms of egalitarianism, i.e. the idea that people should receive financial compensation to make up for a wide range of disadvantages.⁷ The currency of redistribution, the critics urge, should always match the currency in which the disadvantage occurs. If the injustice lies in a poor education or health system, for instance, the answer should be better schools and hospitals rather than more cash for those who suffer the consequences of these inadequacies. I take Bernard Williams to hint at the same point when he declares it “a matter of logic that particular sorts of needs constitute a reason for particular sorts of good.” (1962: 123)

If you do not find such a pluralist account of justice intuitively plausible – which, if you are a distributive egalitarian, may be quite likely – I hope to enhance its credentials with the arguments put forward in section 5.4. At the same time, we can already see how acceptance of the pluralist picture would transform the task of construing a theory of justice. The search for one ‘right’ – in the sense of justice-yielding when distributed equally – currency of egalitarian justice would look misplaced. Instead, our task would consist in addressing the distribution of different sorts of goods separately. The question of what makes a particular distribution of income just, for instance, will be pursued largely independently of the evaluation of our schools, which in turn will be considered separately from the health system.

Against this background, my focus on incomes in the positive part of the chapter, i.e. section 5.4, and indeed throughout the thesis as a whole, should be regarded as a *partial* account of justice. Starting with this aspect rather than another

⁷ This criticism is put forward by Jonathan Wolff (2002). The position he attacks is typically held by so-called ‘luck egalitarian’ accounts of distributive justice and is sketched – very critically, but in this respect I believe accurately – by Elizabeth Anderson (1999: 289/290). Luck egalitarian theories aim to neutralise the impact of those events and influences on individuals’ lives, which the latter cannot be held responsible for.

can be seen as a tribute to the practical importance incomes play in our lives. We have reason to think that disadvantages in other domains, like health and schooling, are coupled with disadvantages in income. While it would be wrong to look at the question of incomes *only*, these domino effects justify looking at it *first*.

In fact, a sufficiently fine-grained theory of justice will draw distinctions even within the category of “income” as one domain of social advantage and disadvantage. Not only our tax system, but also our moral intuitions tell us to distinguish between wage income, capital income, or gifts and inheritances as different sources of disposable income, and to potentially treat them differently. I focus on wage incomes, because they represent the single most important source of income for the average person. This choice represents a second sense in which my account will have to be regarded as a *partial* account of justice.

5.2 *Welfare economics and (in)equality*

In a nutshell, the hypothesis this section and the next are meant to support can be summarised as follows: Distributive egalitarians put more weight on the egalitarian ideal than the latter can bear. The use economists make of the notion of equality illustrates this putative stretching of the concept particularly well, which is why I have chosen welfare economics as a case study to back up my claim. Having identified the assumption in economic reasoning that allows the inflated reliance on equality to pass unnoticed, I then argue that the very same assumption figures in many philosophical accounts of distributive equality.

But first, what do economists have to say on (in)equality? Cynics might find it more fitting to ask what economists *do not* have to say on the subject. If Pareto optimality were the economists’ last word on the issue, the discipline would indeed be devoid of any distributive concerns.⁸

Fortunately, this is not so. We can distinguish four different ways in which economists constructively approach the topic of (in)equality:

⁸ The Pareto condition classifies an allocation of goods as optimal if no member of the group in question can be made better off without another member being made worse off. It is easy to see that this imposes no constraints on the distribution of goods between members of the group. For an illuminating discussion on the origins of Pareto optimality and its implications, cf. Sen (1997: 6ff.).

- 1) The so-called *summary statistics* or *objective* measures of inequality:
Some examples are the variance, the standard deviation of logarithms, or the Gini coefficient, which has proven to be one of the most popular measures with practitioners.⁹ They are objective in the sense that they focus on the problem of measurement without presupposing any particular normative view on inequality.
- 2) Valuing equality as a means to *social welfare*:
The primary objective of this approach consists in maximising social welfare. However, given two auxiliary premises, assuming individual utility functions a) to be increasing and concave and b) to be the same for everyone, social welfare will be maximised by equalising incomes.¹⁰ Equality of incomes, in this framework, is not only reduced to an instrumental value, but this value is contingent on the precise form of the social welfare function. Given the strong utilitarian influence on economics, it is probably fair to say that this is the most widely held attitude towards (in)equality across the discipline.¹¹
- 3) Attributing *intrinsic* value to equality:
Realising the restrictive character of the assumption about identical utility functions under the social welfare approach, some economists have turned to valuing equality for its own sake. When two income distributions are compared using the summary statistics above, this attitude provides the normative backdrop against which the distribution exhibiting *less* inequality can be described as *better*. In attributing intrinsic value to equality, economists come closest to positions of distributive equality in philosophy.
- 4) Equality as a *default position*¹²:
This is a purely negative argument. It addresses the underdetermination in comparing distributions that we face when exclusively relying on Pareto

⁹ For a more complete list as well as a detailed discussion of the merits of individual measures, cf. once again Sen (1997).

¹⁰ The two most prominent representatives of this approach are Hugh Dalton (1920) and Anthony Atkinson (1970).

¹¹ From a philosophical perspective, this position could be criticised for both elements of its utilitarian heritage: the summing of utilities as well as the concern with welfare. The latter would bring us back to the debate surrounding the appropriate “currency” of egalitarian justice mentioned in the previous section.

¹² I would like to thank Marc Fleurbaey for pointing out this position to me.

optimality. Assume we have an income distribution (1,10). We can always construe a parallel distribution (10,1), and subsequently find that Pareto optimality does not supply a criterion to choose between them. Equal distributions, like (3,3), are preferable in that they avoid this dilemma.¹³

Why, you may ask, do I think it worthwhile to bore you with the economist's argumentative repertoire on the topic of inequality to this level of detail? Because *all* of these approaches make an assumption that significantly boosts the appeal of distributive equality with respect to incomes. The more pervasively I can show this assumption to be employed, the stronger my case against distributive equality will turn out if the assumption proves unjustified.

The assumption I am referring to is far from complicated. Suppose you are asked to evaluate two distributions of income among three individuals; distribution $X = (10,20,30)$, distribution $Y = (20,10,30)$, with the numbers presenting units of income. A condition of *anonymity* requires you to be indifferent between the two distributions.¹⁴ As already stated in a footnote to the introduction to this chapter, this is equivalent to saying that your judgement with respect to a given distribution has to be *invariant* to permutations of the members of the population within the distribution. It does not matter who of the three individuals in our example is on the lowest or highest income. Trivially, the summary statistics for distributions X and Y will coincide. For the social welfare approach, the anonymity assumption applies to utilities rather than incomes; changes with respect to whom the individual values of a given set of utilities fall to will not impact total social welfare. Similar considerations apply to cases 3) and 4) above, which also either make or at least implicitly endorse the anonymity assumption.

To see how making the anonymity assumption boosts the appeal of distributive equality, spelling out the notion of indifference proves to be revealing. Having to be indifferent between the hypothetical distributions X and Y above actually means that

¹³ A version of this argument can for instance be found in Kolm (1996: 35-38). He labels the position "equality as minimal irrationality," maintaining that in a situation where no differentiating characteristics between the individuals in question are deemed relevant, solutions other than equality are irrational. He emphasises that he considers this argument stronger than a mere "principle of insufficient reason," which would hold that there is no *a priori* reason for either equality or inequality.

¹⁴ My presentation of the anonymity assumption is modelled on Tungodden's (2003: 3) formulation. Cf. also Cowell (2003: xiv) and Nozick (1974: 153).

there are no differences between the three individuals in the group in question that are relevant to our judgements about inequality. There are *no distributively relevant differences* between people at all. This is very implausible.

There are two conceptual possibilities here. Either there are *in fact* no distributively relevant differences between the group of people we are concerned with. Using the economists' terminology, we would then say that we are indifferent between the two distributions X and Y with respect to inequality *ceteris paribus*. However, as Hillel Steiner (2002: 345) poignantly puts it in a very similar context, "*ceteris are rarely paribus*".¹⁵ Or, and this is the second conceptual possibility, there are some distributively relevant differences, but our making the anonymity assumption brushes them under the carpet. Though this may be excusable in a purely descriptive context,¹⁶ it renders our normative judgements on inequality unreliable if not arbitrary. It in effect prevents us from making a distinction between inequalities that are acceptable and those we deem objectionable.

Under the first conceptual possibility, the usefulness of our analysis of inequality will be severely limited. To illustrate the arbitrariness that will befall our normative judgements on inequality under the second conceptual possibility, think of the following variation of our previous example. Distributions W and Z refer to the holdings of two different groups of people. The distribution in one group is $W = (10,20,30)$, whereas $Z = (15,20,25)$. When asked which of these two distributions they regarded as more just, most people would choose distribution Z . Now suppose one of the two following pieces of information becomes available: a) Individuals A and C in distribution W^a are gamblers. They used to be on twenty income units, too, before they went on another trip to the casino; A lost, whereas C won. b) Individual C in distribution W^b worked hard for his 30 units of income, whereas A put in less effort and hence had to settle for 10.

¹⁵ David Schmitz (2003: 253) makes what I take to be the same point when he says that "pure distribution is rare."

¹⁶ This throws a potential lifeline to the summary statistics on inequality we saw above. Note, however, that even if we grant their measurement of inequality to be "objective" in some sense, their *use* is bound to be entangled in a normative context. Hence, they cannot be exempted from the criticism put forward here after all.

Presented with the same question as before, the naïve reaction would be to now pick W^a or W^b as more just compared to Z . Yet, a more sophisticated answer would be to withhold judgement until more is known about the distribution of income units in distribution Z , too. More importantly, let me surmise that once information about the “history” of an income distribution becomes available, the judgement about which of two distributions like W or Z is more *equal* becomes not only outweighed, but *no longer enters into our normative assessment of the situation at all*. Even without drawing on the comparison to any other distributions, we can maintain that distribution W^b is *unjust* by arguing, for instance, that the income differential between A and C exaggerates the difference in effort they put in. However, this argument relies in no way on the concept of equality interpreted as a distributive ideal. Instead, as soon as there is an argument for differential merit, the label of justice attaches to that distribution which adequately reflects this difference, rather than to equality.

As a judgement about justice, distributive equality is no more than a default position.¹⁷ This is of course entirely compatible with distributive equality appearing to be an attractive ideal, once you have assumed away all the information that could potentially cause us to abandon the default position. As we have seen, this is precisely what the anonymity assumption does. It creates the impression that the default position is the rule rather than the exception.

Incidentally, these findings also lend increased support to the fourth item on the above list of economists’ attitudes towards the ideal of equality. Valuing equality as a default position *prima facie* looked like the odd one out compared to the other views, which take a substantially stronger stance in favour of equality. Yet, it now emerges that the combination of equality as default position with an anonymity assumption is a crucial ingredient into making distributive equality a more attractive position to hold altogether. In the same way as illustrated under point 4) above, the anonymity assumption deprives us of the information necessary to evaluate

¹⁷ For another perspective on distributive equality as default position, cf. David Schmidtz’ (2003: opening sections) analysis of Bruce Ackerman’s “On Getting What We Don’t Deserve” (1983). Schmidtz uses the terms equal shares *versus* equal treatment, corresponding to my distinction of distributive *versus* relational equality. Susan Hurley (2003: 153,172) discusses the “equality-default view” as a position that aims to neutralize differences that are a matter of luck. According to this view, inequalities or departures from this baseline equality can be justified by appeal to, for instance, a notion of responsibility. We will analyse a version of this position in section 5.3.3.

inequalities, and thereby boosts the appeal of distributive equality. Given that no distributively relevant differences are allowed to influence our normative judgement under anonymity, any egalitarian positions that work on this basis naturally condemn inequalities irrespective of how they come about.

Differently put, the anonymity assumption brings in its wake an *exclusive* focus on distributive outcomes. It suppresses the possibility of appealing to any potentially distributively relevant pieces of information that are not expressed in the vectors of income distribution we are looking at.¹⁸ My criticism of the anonymity assumption in its above form is directed at this conceptually restrictive consequence; it locks the debate of distributive justice into what I propose to call the *outcome paradigm*.

To illustrate¹⁹, think of the problem of dividing up a cake between four people. Cutting it into four pieces of equal size may be an acceptable solution, but note the implicit assumption this solution has smuggled in. Either there is no other distributively relevant information, i.e. none of the four people has for instance baked the cake, none of the potential recipients is hungrier than the others or has a higher maintenance metabolism; or this kind of information is not in fact deemed distributively relevant, for instance because an equal division of the cake is regarded as customary.

The analogy is often, and misleadingly, used, but income in society is not like a cake. Information about distributively relevant differences between people with respect to income distribution is *both* available *and* it considerably influences our day-to-day normative judgements. Hence, implicit assumptions parallel to the ones in the cake example lack justification. The outcome paradigm, by making these assumptions and thereby framing justice as a purely distributive ideal, stands for a distorted picture of justice.

¹⁸ This leaves open the possibility of switching “currency” of egalitarian justice as it were, and factoring all distributively relevant differences into the variable represented by the distribution vector. The task then becomes how to choose between different possible individuations of the relative condition of individuals that is expressed by the “outcomes.” Is there a reliable criterion to determine where the distributively relevant context stops that we want to factor into the distribution vector? Despite the fact that I have explicitly bracketed the currency debate in this chapter, this set of issues is too central to leave unaddressed. We will come back to it in section 5.3.2.

¹⁹ This is a shorter and more informal restatement of the example used above.

Unfortunately, this distorted presentation of the problem of justice has, as I put it at the beginning of this chapter, almost monopolised the egalitarian debate in recent years – at least as far as versions of distributive egalitarianism are concerned. Against this backdrop, talking of a paradigm is no exaggeration.

On a lighter note, forms of distributive egalitarianism and the anonymity assumption on which they rest could be defended as having therapeutic value. However, this would presuppose that “egalitarians anonymous,” much like those who discuss their drinking problems without having to reveal their identity, could draw normative insights for what the world should be like when the anonymity is lifted. If I am right in interpreting distributive equality as a default position, this transfer breaks down. The knowledge about what a just society would look like if there were no distributively relevant differences between people is itself irrelevant in a world where such differences exist.

The natural question to ask at this stage is to wonder what will be left of egalitarianism if we relax the anonymity assumption in order to break out of the outcome paradigm. Speaking in terms of the egalitarian spectrum set out in section 5.1.1, the foregoing analysis of the anonymity assumption and its conceptual consequences has vindicated my claim that distributive egalitarians put more weight on the egalitarian ideal than it can bear. Relational equality offers itself as a natural fallback position, albeit one whose practical implications remain indeterminate.

The egalitarian project, in other words, finds itself thrown back to square one of the dilemma presented to us by Bernard Williams. Can we define an egalitarian doctrine that goes beyond the uncontroversial maxim of equal treatment defended by relational egalitarians, but that avoids overshooting the target? The bridge that distributive egalitarians have constructed to span the egalitarian spectrum has turned out to rest on shaky foundations, namely the anonymity assumption.

Before taking up the search for an alternative to distributive egalitarianism in section 5.4, I would like to investigate the extent to which philosophical versions of distributive egalitarianism are infected by the outcome paradigm we have diagnosed for the economic analysis of inequality.

5.3 *The anonymity assumption in philosophy*

The explicit nature of the anonymity assumption in economic analyses of inequality can at least partly be explained by methodological factors. A summary statistic on inequality, for instance, counts as an economic model, and economists are used to stating the assumptions of their models up front. Few theories of justice in philosophy follow this exemplary procedure. As a result, convicting a theory of justice of conforming to the outcome paradigm will require more of an interpretative effort, demonstrating its premises to be equivalent to the anonymity assumption.

I will divide my analysis into three subsections, reflecting different ways in which the anonymity assumption manifests itself in the theories under investigation. First, we will look at a set of different theories of justice to illustrate how relaxing the anonymity assumption diminishes the appeal of distributive equality. Both the second and the third subsection evaluate what can be seen as conceptual remedies, designed to save distributive equality of some sort. In particular, the second scrutinises the possibility of changing the “currency” of justice, exemplified by Amartya Sen’s capability approach; the third sets out the “liberal egalitarian move” to limit the application of egalitarianism to undeserved inequalities.

One preliminary point. To be able to navigate the conceptual space in which all of these theories are located, I will adopt the following representation of what a theory of justice actually consists in. Theories of justice depict and regulate a *mapping* between a variably thick description of the individuals comprising the group in question on the one hand, and their relative shares in the distribution of a currency of justice on the other.²⁰ Let me explain. The description of an individual can potentially make reference to as diverse a set of features as height, sex, skin colour, utility conversion rate, various dimensions of desert or merit, or choice, to name but a few. The more idiosyncratic the description in terms of such features, the *thicker* it becomes. So much for the input-side of the mapping. As to the output-side, potential currencies of justice include utility, social primary goods – one of which is income – capabilities, or equal opportunity for welfare (Arneson, 1989). Any particular mapping between inputs and outputs then specifies the level of the

²⁰ I am grateful to Richard Bradley for setting me off on this train of thought. Needless to say, any inconsistencies in the *use* of the idea of a mapping are mine.

currency of justice in question that individuals should receive, given what the theory deems the distributively relevant individual characteristics.²¹

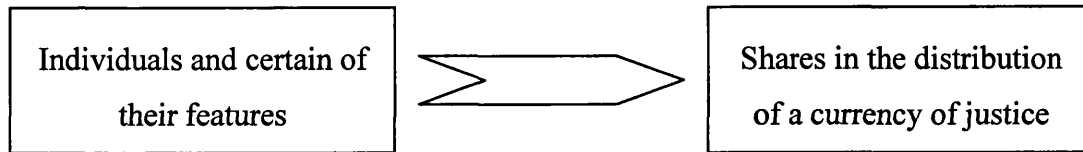


Figure 1: Illustration of a mapping.

Thinking of theories of justice as a mapping of this sort enables us to reiterate the effects of the anonymity assumption. First, if a theory opts for a sufficiently thin description of individuals that *excludes* all the characteristics that we would think distributively relevant, it will recommend an equal distribution of the currency in question *by default*. Second, and conversely, if a theory opts for a thick description of individuals that *includes* all the characteristics we would think distributively relevant, it is very unlikely that even two individuals, let alone all of them, turn out to be alike in all these respects – the currency of justice will be split up unevenly between a diverse set of people. Making the anonymity assumption amounts to opting for the first of these possibilities.

Compared to the presentation of anonymity in section 5.2, the concept of a mapping reveals another important aspect of anonymity. As soon as we move beyond a minimally thin description of individuals or, in other words, as soon as we let at least *some* differences between people bear on our distributive judgements, we have to make choices as to *which* differences to admit. Clearly, differences in the distribution of the currency of justice should *not* map onto variables like height, sex, or skin colour. This suggests the plausibility of the anonymity assumption to be

²¹ Given the wide-spread use of the notion of mappings in social choice theory, this is an appropriate point to draw a parallel between my project in this chapter and a recent paper by Marc Fleurbaey (2003). As Fleurbaey points out, “[t]he standard social choice problem is the determination of a mapping which defines social preferences over a given set of alternatives as a function of the profile of preferences of a given population.” (2003: 349) He then appeals to social choice theorists to widen the informational basis of their discipline from preferences to other characteristics of individuals like their utility functions or talents.

In a similar vein, the arguments I will present in this section can be understood as an evaluation of the informational basis used in the distribution of income.

aspect-dependent. Even if we want to relax anonymity with respect to distributively *relevant* differences between people like differential merit or individual choices, we will want to uphold the assumption with respect to what we deem distributively *irrelevant* differences. The delineation of these two categories is likely to provoke some debate, yet I hope to have illustrated in section 5.2 that, at least with respect to the distribution of income, there clearly are *some* distributively relevant differences between people.²²

Drawing on the insight of the previous paragraph, I will call an anonymity assumption *strong* if it suppresses *all* differences between people that are potentially distributively relevant. In contrast, *weak anonymity* allows at least *some* differences, sensibly those deemed distributively relevant, to influence the distribution of the currency of justice. As we shall see, a move to weak anonymity suffices to undermine the outcome paradigm and the artificial appeal of distributive equality it entails.

Notice also that drawing a distinction between strong and weak versions of anonymity forces us to qualify its formulation in terms of indifference as presented in section 5.2. A normative judgement about the inequality of a distribution will only have to be invariant with respect to permutations of the members of the group in question if the inequality cannot be traced to that or those distributively relevant variable(s) which the weak anonymity assumption admits. Say weak anonymity admits individual choice as one, and the only, distributively relevant difference between people. If, and only if, the disparities in income units in the distributions $X = (10, 20, 30)$ and $Y = (20, 10, 30)$ cannot be traced to individual choices, then we will still be required to be indifferent between the two distributions. (cf. also footnote 24 further down)

This formulation is obviously clumsy. The concept of a mapping allows us to state anonymity in simpler terms. Anonymity can be described as the *filter* of a mapping from individuals to their share of the currency of justice. Distributively relevant differences between people are allowed to impact on the distribution of the currency of justice in question. Distributively irrelevant differences are filtered out.

²² The validity of this statement for other currencies of justice will be addressed in subsection 5.3.2.

5.3.1 Rawls, utilitarianism, and prioritarianism

Prima facie, comparing the views of such heterogeneous a set of views seems a tall order, and my objective is correspondingly limited. Elements of John Rawls' theory, so my claim goes, are representative of distributive egalitarianism in philosophy, and are based on a strong anonymity assumption. Both utilitarianism and prioritarianism can be interpreted as putting forward a minimal relaxation of this strong anonymity, albeit in different ways. The fact that both of them subsequently abstain from advocating distributive equality, I suggest, has to be interpreted as circumstantial evidence that its appeal is indeed contingent on *strong* anonymity.

If there is a prototype of the anonymity assumption in political philosophy, it will have to be John Rawls' (1971) *veil of ignorance*. In their deliberations about what makes a just society, people are held in the dark about their own personal characteristics, insofar as these might influence the distribution of benefits and burdens in society. Unsurprisingly, the principles that will be selected under such circumstances in the first instance call for an *equal* distribution of what Rawls labels social primary goods – equality is adopted as a default position. Only subsequently do we learn that departures from equality are justified if they are in the interest of the least advantaged in society. This justification of inequalities by appeal to the difference principle is responsible for turning the default position of distributive equality from the rule into the exception in Rawls' framework. Note, however, that nothing prevents us from detaching the difference principle from Rawls' egalitarian fallback position. Conceptually, the two are distinct and therefore have to be justified independently.²³ In contrast to the many critics who have taken issue with the difference principle, I am already sceptical, for the reasons expressed in section 5.2, about the prior move of adopting distributive equality as a default position.

Recall the two conceptual possibilities of reading the anonymity assumption that I outlined back then. Either it implies there are no distributively relevant differences between people, or it sweeps them under the carpet. Whereas in the

²³ David Schmitz (2003: 254) to me seems to conflate the justification of these two steps when he takes Rawls' "signature contribution" to be the following: "...even if we stack the deck in favour of egalitarianism, we still find substantial room for unequal shares,...". Schmitz is sympathetic towards Rawls' justification of certain inequalities in shares, but this appears to blind him towards the possibility that the initial "stacking of the deck in favour of egalitarianism" might itself prove questionable.

economic analysis of inequality, the second option could conceivably be regarded as a by-product of making the measurement of inequality practicable, taking this route in a philosophical context is explicitly normative. Again, Rawls' theory furnishes the prime example. Natural and social inequalities are classified as "arbitrary from a moral point of view" (1999: 14) and should not be reflected in the distribution of social primary goods. This amounts to a *strong* anonymity assumption or, expressed in terms of the mapping, a *block* rather than a *filter* between differences in individual characteristics and the distribution of social primary goods. Let me again refer you to the arguments presented in section 5.2 where I assert that such a position is very implausible. Some aspects of human diversity filtered out by Rawls' veil of ignorance, as well as by his "nullifying" attitude towards natural and social inequalities, clearly do enter into our normative judgements about distribution of social primary goods, and rightly so.

'Rawls minus the difference principle', if you permit this conceptual truncation, represents the philosophical parallel to the economic versions of distributive egalitarianism we saw in section 5.2.

The second member of my unlikely trio, utilitarianism, would usually be regarded as the epitome of an outcome-oriented view. The outcome that utilitarians are concerned with is "the greatest good of the greatest number." If, for convenience, we define utilities as a function of income, this doctrine calls for that distribution of income that *maximises* the sum of individual utilities. To identify the "optimal" income distribution in this sense presupposes information about precisely one feature of, and potential difference between, individuals: their utility functions, i.e. the rate at which they can transform income into utility. Utilitarianism, in other words, is based on a *weak* anonymity assumption – the mapping filters out all aspects of human diversity *but* the utility functions. Therefore, and perhaps surprisingly, the outcome paradigm as I defined it – namely, the framing of justice as a purely distributive ideal – is compromised in utilitarianism. The distribution of utilities, as mediated by incomes, *is* responsive to a difference between people, even though a very narrowly defined one.²⁴ Think of our cake example. Utilitarianism does not think of dividing

²⁴ This can also be seen by looking at two alternative distributions $X = (10, 20, 30)$ and $Y = (20, 10, 30)$ among the same group of people, where the numbers this time refer to "utils" rather than income

up the cake as a problem of “pure distribution,” but takes into account who will take most pleasure in eating a given portion.

Two features of the utilitarian position are noteworthy in the context of this chapter. First, note how a minimal relaxation of the anonymity assumption and the resultant departure from the outcome-paradigm are sufficient to break the spell of distributive equality. Given the opportunity to do so, utilitarians favour aggregative considerations instead. Even if one wanted to say that, for an intrinsically valued currency of justice like utility, aggregation is a relatively more plausible strategy than for an instrumentally valued entity like income, the utilitarian intuition at the very least demonstrates the contingency, if not inherent instability, of distributive equality once strong anonymity is relaxed. Second, as I have mentioned in passing when discussing the social-welfare-inspired approach to equality in economics, utilitarianism can be shown to call for distributive equality if we make one additional, empirical assumption. Given identical utility functions for all individuals, the sum of utilities will be maximised by distributing income equally. This hypothetical situation presents a nice illustration of the descriptive and the normative variant of the anonymity assumption in operation at the same time. On the one hand, one may take issue with the *empirical* claim of, in this case, human uniformity as far as utility functions are concerned. On the other hand, and paralleling the accusation levelled against Rawls above, one may criticise utilitarians for filtering out too many aspects of human diversity that do enter into our *normative* judgements about matters of distribution – like for instance the choices that individuals make.

Finally, let us turn to prioritarianism. First expressed in Derek Parfit’s Lindley Lectures in 1991, this doctrine is frequently presented as addressing the shortcomings of both distributive egalitarianism and utilitarianism. In contrast to the former, prioritarianism does not regard inequalities as bad in themselves and therefore escapes the so-called levelling down objection.²⁵ In contrast to the latter,

units. Note that this information on its own is *not* sufficient for the utilitarian to establish whether he is indifferent between the two distributions. If, for instance, the underlying income that is necessary to produce the total of 60 utils was higher in *X* than in *Y*, the latter would be preferable from a utilitarian point of view. It would be an indicator that the underlying distribution of income in *X* does not equate the marginal utilities of the individuals.

²⁵ Cf. the following characterisation of the levelling down objection by Bertil Tungodden (2003: 6): “A reduction in inequality can take place by harming the better off in society without improving the

prioritarians maintain that “it is more urgent to help [the worse off] even if they are *harder* to help” (Parfit, 1995: 100, Parfit’s italics), i.e. even when doing so fails to maximise aggregate well-being.

Importantly in our context, prioritarianism, like utilitarianism, works on the basis of a minimal relaxation of the anonymity assumption. Here, the one difference between individuals admitted to our distributive judgements is their current level of well-being, whereas all other aspects of human diversity are explicitly filtered out.²⁶ The current level of well-being is most plausibly interpreted as an indicator of need. Expressed in terms of our cake example, prioritarians do not think of the division as a problem of “pure distribution,” but take into account factors like how hungry the eligible recipients are, or how much cake they have had already.

Much like in the case of utilitarianism, then, the minimal relaxation of the anonymity assumption and the departure from the outcome paradigm are sufficient to topple distributive equality as the dominant normative intuition. If my characterisation of distributive equality as a default position is correct, its appeal even vanishes *altogether* once we depart from the outcome paradigm.²⁷ It has been the main motive of this subsection to demonstrate that both the utilitarian and the prioritarian positions lend support to this hypothesis.

Incidentally, and probably more controversially, the fact that Rawls obviously felt the need to significantly depart from a position of distributive equality by complementing it with the difference principle may be read as another indicator of its instability as a normative position.

situation of the worse off. But this cannot be good *in any respect*,... Hence, according to the objection, inequality cannot be intrinsically bad.”

²⁶ Parfit’s own reasoning (1995: 82) on this point is illuminating. Having set out the way in which entitlement- or desert-based theories justify distributive arrangements, he goes on to say: “These objections we can here set aside. We can assume that, in the cases we are considering, there are no such differences between people. No one deserves to be better off than anyone else; nor does anyone have entitlements, or special claims. Since there are *some* cases of this kind, we have a subject.” [Parfit’s italics] In other words, he employs the *descriptive* variant of the anonymity assumption, resting his case – like those utilitarians positing identical utility functions for people – on an *empirical* case rather than a normative one.

This is open to the criticism. To use Steiner’s phrase, situations where “*ceteris*” in terms of deserts and entitlements really are “*paribus*” are extremely rare. This undermines the relevance of Parfit’s approach.

²⁷ Distributive equality as a default position is to be contrasted with an interpretation that continues to count distributive equality as *one* objective among others in a pluralist web of values.

Before moving on to the next section, it seems appropriate to clarify the relation between my position in this chapter and the arguments recently put forward by Bertil Tungodden (2003) in his excellent paper on “The Value of Equality.” Tungodden suggests we can identify a rough division of labour between economists and philosophers when it comes to the analysis of (in)equality. Faced with the task of comparing various distributions of well-being on the basis of what is called a *betterness relation*, economists take normative intuitions like the appeal of distributive equality and formulate them as restrictions on this betterness relation. The task of justifying the normative intuition itself, Tungodden points out, is mostly left to philosophers.

Tungodden himself follows the economist’s route. He consciously takes the intrinsic value of distributive equality for granted.²⁸ The same holds for the aggregative concerns of utilitarianism and the concerns for the worse off implicit in prioritarianism. One major contribution of Tungodden’s paper consists in showing that, and to what extent, these different restrictions on the betterness relation may be combined. What we get, if you like, is an axiomatic approach to rank distributions of well-being based on egalitarian, utilitarian, and prioritarian intuitions.

By now, you might see where my approach differs. In contrast to Tungodden, I have argued that taking the intrinsic value of distributive equality at face value is *not* justified. Its appeal is contingent on making a strong anonymity assumption.²⁹ Related arguments could, I believe, be produced to undermine the appeal of utilitarian and prioritarian intuitions. My discussion of these positions suggests that their plausibility rests on a less than complete, but still objectionable, filtering out of what we consider distributively relevant differences between people. Yet, I do not pursue these arguments further here.

²⁸ Tungodden (2003: 4) acknowledges that he “should like to see a further defence of the badness of inequality. As I see it, the most promising approach would be to take the idea of equal moral status of people as a point of departure, and then argue that an equal distribution is valuable because it captures this fundamental equality in at least one important dimension.” The difficulties we encounter in pursuing this approach are expressed in the dilemma Bernard Williams formulates for egalitarianism, and they form the topic of this chapter.

²⁹ Unsurprisingly, Tungodden also makes the anonymity assumption in his analysis. In fact, my initial formulation of the assumption is borrowed from his paper.

5.3.2 The “currency move”

Have we perhaps been too quick in condemning distributive equality? The remedy Amartya Sen proposes in his capability approach suggests so. Sen’s strategy to defend distributive equality relies on a different argument than the one we have criticised so far in this chapter. This subsection is devoted to establishing whether Sen is more successful than others in building a bridge across the egalitarian spectrum.

The implausibility of an equal distribution of income, Sen would claim, should lead us to question the *domain* in which the equality is located rather than the ideal of equality itself. More generally, Sen attacks what he sees to be the two prevalent “evaluative spaces” of political philosophy for missing out on crucial aspects of what makes up people’s relative advantages and disadvantages in society.³⁰ The space of utilities, on the one hand, unduly focuses our attention on the *level* of people’s achievements, neglecting potential differences in the *freedom* to choose between various such achievements. The Rawlsian notion of social primary goods, on the other hand, fails to see the distinction between the *means* to freedom and the *extent* of freedom; human diversity, which we already mentioned as one of the fundamental pillars of Sen’s position in section 5.1.2, implies that people differ in the *use* they can make of certain liberties, or of income and wealth. Theories of justice, so Sen claims, need to be responsive to these differences.

Against this background, the contingency of the appeal of distributive equality we have exposed in previous sections of this chapter may be due to simply getting wrong the “space” for evaluating social benefits and burdens. It is the search for the “right” evaluative space that explains Sen’s emphasis on the question “Equality of What?” and that motivates his *capability approach* as the appropriate answer. No doubt Sen has a point when he argues that capabilities capture important dimensions of social advantage that incomes or utilities fail to pick up. The question, however, is how much conceptual mileage this insight can really give us towards underpinning an ideal of distributive equality. It is important to disentangle two closely related

³⁰ I take *Inequality Re-examined* (1997) to offer, among substantive arguments of its own, a useful synopsis of Sen’s vast contribution to the literature on (in)equality in both economics and philosophy.

issues here. First, is Sen right in attributing special status to capabilities? Second, what makes *equality* of capabilities an attractive ideal?

Let me suggest that Sen fails to come up with a convincing reply to the second question, and that this has important implications for how we answer the first. Sen's argument in favour of equality consists of two steps (cf. Sen, 1997: 12-19). First, he points out that "every normative theory of social arrangement that has at all stood the test of time seems to demand equality of *something*." (*ibid.*: 12, Sen's italics) Sen acknowledges both that this says very little³¹ and that a common practice still needs defending, however widely shared it may be. Yet, our expectations towards Sen's second step, which supposedly sets out this defence, are disappointed when he announces that "equal consideration at some level – a level that is considered important – is a demand that cannot be easily escaped in presenting a political or ethical theory of social arrangement." (*ibid.*: 18)

With this statement, Sen finds himself back to square one of the dilemma for egalitarianism set out by Bernard Williams, which we used to set up the "egalitarian spectrum" in section 5.1.1. If all Sen wished to postulate in the passage just quoted were equal consideration *tout court*, i.e. equal treatment in similar circumstances or relational equality as I called it, there would be no controversy. However, Sen's aim is a more ambitious one. When he speaks of "equal consideration *at some level*" (my italics), the presentation of capabilities as a sophisticated alternative to incomes and utilities gives us good reasons to believe that he is referring to a *distributively* interpreted ideal of equality. In this case, the innocuous "demand that cannot be easily escaped" not only becomes controversial, but it takes for granted precisely what has to be shown: that there exists a defensible interpretation of equal consideration *tout court*, which takes the form of equal *distribution* in some evaluative space. Sen's reasoning conflates these two levels. As John Kane (1996) has poignantly put it, Sen's approach rests on an unjustified principle of *presumptive* equality.

The same point can be made more forcefully by looking at Sen's theory of justice as a mapping. In the accounts of distributive equality we have seen in

³¹ Cf. also footnote 5.

previous sections, the support for equality in the currency of justice was enhanced by denying either the existence or the distributive relevance of differences between people. In the latter case, the conceptual work lay in designing the right *filter* between human diversity and distributive outcomes. In contrast, Sen's crucial move takes place on the *output*-side of the mapping, where he substitutes capability for income as the currency of justice. Relative to Rawls' social primary goods, the notion of capabilities is presented as a more inclusive measure of social (dis)advantage.³² Indeed, if Sen is successful in identifying what may be described as a kind of master category of social (dis)advantage, capabilities will have to be regarded as *complete* in the sense that they capture all the socially determined ingredients to leading a successful life.

Here is the puzzle: If capabilities are a more inclusive measure of social (dis)advantage, how can the signature of human diversity, of which Sen is so acutely aware, fail to show in their distribution? The thought that the appropriate evaluative space for social arrangements is one that is not responsive at all to differences between people is absurd. Surely, to take up some of our previous examples, reckless gambling or below-average work effort may compromise an individual's claims to social advantage. A clear tension emerges between Sen's emphasis of human diversity and his call for *equality* of capabilities. The only way to defuse this tension is to interpret the master category of social (dis)advantage at a sufficiently general level; capabilities, on this reading, are a mere placeholder for a version of relational equality. As we have seen, Sen's intentions are likely to be more ambitious. The capability approach bears all the hallmarks of an ideal of *distributive* equality. In this case, however, it lacks justification. The *presumption* of distributive equality, in effect, is equivalent to a strong anonymity assumption claiming that no aspects of human diversity are relevant to the distribution of capabilities. Distributive equality by presumption or by default – the result is the same.

In sum, Sen's "currency move" is guilty of conforming to the outcome paradigm. Capabilities do indeed paint a more sophisticated picture of social (dis)advantage than incomes or utilities, yet this does not provide any support for

³² This, I presume, is how we are to interpret Sen's distinction of the *extent* versus the *means* of freedom (cf. 1997: 81). Whereas Rawls' social primary goods, which he uses as comparison, only capture the latter, the notion of capabilities encapsulates the former, too.

equality of capabilities as a *distributive* ideal. On the contrary, taking seriously the phenomenon of human diversity makes it even less likely, if there is anything like a master currency of distributive justice,³³ that it should be distributed equally. On this basis, I believe it reasonable to conclude that my criticism of distributive equality cuts across the currency debate.

In fairness to Sen, I should add that the capability approach can avoid the criticism brought forward here when presented as a partial approach to justice. When international organisations like the World Bank or the International Monetary Fund allocate a given pot of money among people in developing countries, for instance, a lot can be said in favour of the capability approach. In such contexts, it has been used very successfully in practice. Understood in this way, the capability approach is compatible, indeed complementary, to the partial account of justice in the realm of labour income that I concentrate on.

5.3.3 *The “liberal egalitarian move”*

Some readers may think that my bad marks for distributive egalitarianism are hardly surprising, since I have so far been attacking nothing more than a straw man. After all, state-of-the-art egalitarianism today no longer advocates unqualified distributive equality of whatever currency of justice it happens to endorse. Instead, rectification of inequality is exclusively called for with respect to those disadvantages that individuals incur *through no fault of their own*. Obviously, the challenge consists in identifying such disadvantages. Proponents of this brand of egalitarianism invariably approach the task negatively, namely in contrast to a notion of personal responsibility. Hence, social (dis)advantages are regarded as unobjectionable as long as they result from individual choices; all other inequalities should be rectified. This combination has led to the label “liberal egalitarianism,” with the “liberal” referring to element of choice and the “egalitarianism” representing the condemnation of all undeserved inequalities.³⁴

³³ As already indicated in section 5.1.2, I am sceptical about a one-dimensional approach to distributive justice. Social benefits and burdens take different forms, and both our conceptual framework and our policies to address social disadvantage should reflect this variety.

³⁴ Advocats of liberal egalitarianism include Richard Arneson, Gerald Cohen, Ronald Dworkin, Thomas Nagel, Erik Rakowski, and John Roemer. I borrow this list from Anderson (1999: 290). Inevitably, such classifications are both imperfect and controversial. In the literature, liberal

Making distributive outcomes, of income say, responsive to individual choices no doubt represents a fundamental relaxation of the strong anonymity assumption we saw in traditional forms of egalitarianism. Justice is no longer conceived of as a purely distributive ideal, which suffices to undermine the appeal of distributive equality. A glimpse at our recurrent examples of gambling and reduced work effort lends credence to this claim. By choosing this path of action over another, individuals forfeit legitimate complaints about the distributive outcomes that may result from it.

In this subsection, I will argue that the liberal egalitarian proposal to relax the anonymity assumption does not go far enough. In short, the egalitarian element in liberal egalitarianism still lacks justification. I introduce Ronald Dworkin's version of liberal egalitarianism for illustrative purposes, but most of my subsequent points apply to liberal egalitarianism in general.³⁵

In his "Equality of Resources," Dworkin (1981) proposes to draw the line between responsibility and luck by holding individuals accountable for their ambitions and tastes, but not for their natural endowments. This 'endowment-insensitivity,' as Dworkin calls it, is intended as an improvement on Rawls' effort to shield the distributive outcome from influences considered "arbitrary from a moral point of view." In Dworkin's eyes, Rawls' difference principle lets those natural and social contingencies as well as their distributive influence in through the back door. Dworkin's proposed remedy figures an intricate insurance mechanism to compensate for any such undeserved inequalities.

For a start, coming up with a clear-cut delineation of ambition from endowment – or, more generally, of responsibility from luck – poses a formidable challenge to Dworkin and liberal egalitarians at large. Yet, our present concern is not with the practicability of the theory, but with the justification of why the distribution of income should be endowment-insensitive. The liberal egalitarian needs to

egalitarians have in fact been the prime target of critiques made against "distributive egalitarianism," cf. especially Anderson (1999) and Scheffler (2003). In this context, the liberal egalitarians' extension of the notion of undeserved inequalities to cover instances of misfortune has also earned them the label "luck egalitarians." (cf. also section 6.4.1)

³⁵ G.A. Cohen credits Dworkin with first merging liberal principles and egalitarianism in one and the same conceptual framework: "Dworkin has, in effect, performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility." (1989: 933)

convince us, first, that income differentials due to natural endowments are undeserved, and second, that undeserved inequalities should be rectified.

Let me suggest that the liberal egalitarian intuitions on both of these counts are far from unquestionable. The statement that our natural endowments are undeserved in the sense that we are not *responsible* for them is trivial. On the other hand, the statement that the social benefits, like income or self-respect, we obtain thanks to our natural endowments are undeserved is highly controversial. In fact, our meritocratic intuitions strongly pull in the opposite direction. The liberal egalitarian might object that merit only extends to differences in acquired abilities and effort, which can be traced to nurture rather than nature, but this again is controversial. There are plenty of examples for social institutions that recognize and promote forms of excellence, which are to a significant extent based on *natural* endowments. No one would question, for instance, that an arts scholarship be given to the most creative candidate. Or think of the reward some tall people receive for putting a ball into a small basket high above the ground; although some, maybe even most of us, would object to the magnitude of the salary of basketball professionals, the reward in itself raises no eyebrows. In sum, deserving social benefits that are due to natural endowments seems possible even though we are not responsible for holding these assets. As Robert Nozick (1974: 225) puts it, “the foundations of desert do not themselves have to be preserved all the way down.”³⁶

The liberal egalitarian debate manages to mask the controversial character of its perspective on natural endowments by presenting it as intrinsically linked to a widely shared attitude towards undeserved inequalities. Who, for instance, would dare to object to the humanitarian impulse of helping the victims of an earthquake? By extension, liberal egalitarians argue, we have an obligation to support the disabled, namely to nullify the impact their condition has on the distribution of social benefits. Yet this step involves a considerable leap in the argument. There is a gap between a humanitarian concern towards the disabled and defending a position of endowment-insensitivity of the distribution of social benefits. Of course any decent society should help its disabled members. But stopping short of a *nullification* of the distributive impact of natural endowments does not amount to saying that they

³⁶ For a more detailed, and illuminating discussion of these issues, cf. Hurley (2002).

deserve their unfortunate position, and is entirely compatible with humanitarian motives. Without further justification, the liberal egalitarian nullification-strategy towards natural endowments overshoots the target.

This brief discussion does not yet do justice to the liberal egalitarian stance, but it provides a sufficiently detailed background to substantiate my hypothesis that liberal egalitarianism makes too strong an anonymity assumption. A look at the liberal egalitarian mapping from individuals *cum* characteristics to their shares in the currency of justice, i.e. income, reveals a more complicated picture than for any of the other theories of justice we have seen. For distributive egalitarianism, be it with respect to incomes or capabilities, as well as for utilitarianism or prioritarianism, there is never more than one principle governing the distribution of the currency of justice – equality, maximisation of utility, and priority to the worse off respectively. In the case of liberal egalitarianism, there are two. Those individual characteristics people are *not responsible* for, i.e. their natural endowments, get filtered out by a weak anonymity assumption. On this basis, the first principle calls for distributive equality or, more precisely, for the nullification of the distributive *inequality* that results from differential natural endowments. However, the anonymity assumption is merely a weak one, since distributive inequalities are not regarded as legitimate when caused by those characteristics individuals *are* deemed responsible for. The notion of responsibility is standardly assumed to supervene on choice, which represents the second principle governing distribution. Note that, in contrast to again all other principles of distribution we have looked at, a distribution that tracks choice is the first one to leave the actual distributive outcome *indeterminate*.³⁷ This turns the liberal egalitarian principle of distributive justice into a strange hybrid between a strong regulative principle of distributive equality and a non-interventionist delegation to individual choice.³⁸

³⁷ To pre-empt confusion, let me highlight the distinction between a *determining factor* and a *determinate outcome*. Choice is indeed the determining factor of the distributive outcome. At the same time, the distributive outcome is left indeterminate in the sense that our mapping does not specify it, but leaves this task to individual choice. For an illuminating account of the concept of indeterminacy and of how many modern social theories underestimate its importance, cf. Russell Hardin (2003).

³⁸ In this sense, the liberal egalitarians' ability to produce a clear-cut, practicable, delineation of responsibility from luck is relevant to our focus, after all. It is a necessary condition for an unambiguous separation of the domains of the two principles.

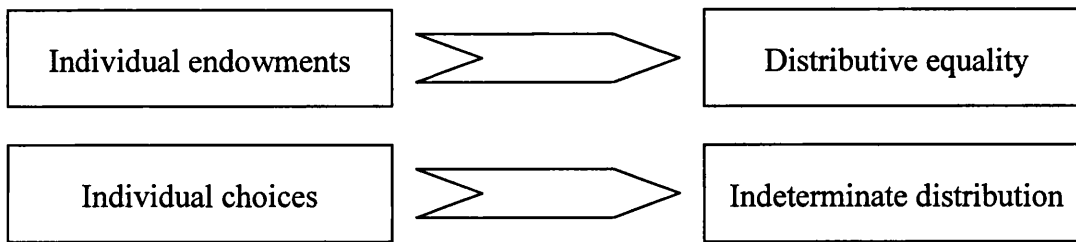


Figure 2: Illustration of the hybrid mapping of liberal egalitarians.

As far as the overall distribution of income is concerned, the symptoms of distributive equality have indeed vanished. Yet, given the distributive indeterminacy introduced by choice, this is not surprising. The overall inequalities distract from the necessity to justify the position of distributive equality that liberal egalitarians defend with respect to the other component of their hybrid theory. Two of the most pressing questions in this context I have already pointed out above: The liberal egalitarian needs to convince us, first, that income differentials due to natural endowments are undeserved, and second, that undeserved inequalities should be rectified. I have voiced doubts that she will be able to do so. These doubts express the conviction that variables other than choice enter into our distributive judgements and should be regarded as an acceptable source of income differentials. The weak anonymity assumption made by liberal egalitarians filters out these aspects of human diversity as distributively irrelevant.

There is a sense in which the remarks of this section should be put into perspective. When introducing the notion of weak anonymity at the beginning of section 5.3, I acknowledged that the delineation of distributively relevant and distributively irrelevant characteristics is likely to be controversial. No acceptable theory of justice will let characteristics like height, sex, or race impact on the distribution of the currency of justice. At the other extreme, the liberal egalitarian emphasis of choice as a distributively relevant factor seems so eminently plausible that it is hard to see how an attractive account of distributive justice could do without it. The real debate will take place in between, focusing on issues like, indeed, the role of natural endowments. In contrast to some of the other versions of egalitarianism we have seen, liberal egalitarians do engage with this important debate. I do not take my

arguments above to have refuted the liberal egalitarian position – that would obviously involve a much more detailed investigation, which we will turn to in section 6. Instead, I have so far done two things. First, I have registered disagreement with the way liberal egalitarians draw the line between distributively relevant *versus* irrelevant characteristics of individuals. Second, I have pointed out that their way to draw that line gives a prominent, albeit disguised, role to distributive equality – a role that is insufficiently justified.

5.3.4 *Taking stock*

In the course of section 5.3, we have investigated the role that the anonymity assumption plays in various theories of justice, as well as the question to what extent these theories can be said to conform to the outcome paradigm. I am aware that my presentation of a number of intricate theoretical constructs has been one-dimensional in its focus on this set of issues, yet I see no reason why our conclusions should not enter a wider assessment of the theories in question. In fact, I take it to be an asset rather than a liability that an analysis informed by the concept of anonymity is possible across the theoretical board.

Here is a brief rehearsal of the main insights of this section:

- Some theories of justice, parallel to the economic analysis of inequality, make a strong anonymity assumption. John Rawls' veil of ignorance represents the prime example for such an approach.
- Both utilitarianism and prioritarianism feature a minimal relaxation of this assumption, which leaves them with a weak anonymity assumption. As a result, they are no longer forced to look at justice as a purely distributive ideal. The fact that distributive equality does not enter into their considerations at all under these circumstances confirms the suspicion that it represents nothing more than a default position.
- Amartya Sen's capability approach explores the possibility that distributive equality will be plausible once we employ a sufficiently inclusive definition of social disadvantage. Yet, a fundamental tension emerges between acknowledging a level of human diversity that will provide a satisfactory definition of social disadvantage on the one hand, and an outcome of

distributive equality on the other. Sen's failure to address this tension can be traced to his conflation of the two endpoints of the egalitarian spectrum, relational *versus* distributive equality. In effect, advocating equality of capabilities as a distributive ideal is equivalent to making a strong anonymity assumption.

- On closer inspection, the liberal egalitarians' mapping from individual characteristics to shares in the currency of justice turns out to be a *hybrid*. The egalitarian component calls for the distributive outcome to be endowment-insensitive, whereas the liberal component defends the indeterminate influence of individual choice on distributive outcomes. I have suggested that the weak anonymity assumption of the egalitarian component is too strong and hence filters out some individual differences that we do deem to be distributively relevant.

These points serve to illustrate how formidable a challenge it is to build a sustainable conceptual bridge across the egalitarian spectrum. All the approaches we have surveyed either make assumptions that boost the appeal of distributive equality and mask its fragile character as a default position, or they resort to an outright presumption of the indisputable value of distributive equality. At this stage, one may be inclined to agree with Harry Frankfurt (1987) in viewing the preoccupation of political philosophers with equality as fetishistic – at least as far as its distributive interpretation is concerned. This, I believe, would be an overreaction. What has been said so far does leave open paths to argue for distributive equality, albeit more arduous ones than previously thought. I see two principal options. The first is to present an equal distribution of one's currency of justice as *instrumental* towards achieving an independently valuable social objective.³⁹ The second path sets out a more limited strategy. Instead of arguing for equality, it proposes to take issue directly with the *inequalities* in society we find morally repugnant. Such arguments will take two basic forms. On the one hand, one can argue that the inequalities in the

³⁹ As examples for such a position, cf. McClennen (unpublished manuscript), or Scanlon (2000: 41): "I find that my reasons for favouring equality are in fact quite diverse, and that most of them can be traced back to fundamental values other than equality itself. The idea that equality is, in itself a fundamental moral value turns out to play a surprisingly limited role in my reasons for thinking that many of the forms of inequality which we see around us should be eliminated." The discussion of equality as an instrumental value is bracketed here.

distribution of the currency of justice, say income, are disproportionate relative to the difference in characteristics between the individuals who receive those incomes. On the other hand, one can attempt to identify distributively relevant similarities between people that call for a “locally” equal income distribution, where local refers to the aspect(s) in which individuals are similar.

As the final section of this chapter will make clear, my inclinations lie with the second option. This is the kind of project that will lie at the heart of section 7 of this PhD thesis. An account of proportional justice, so my claim goes, can adequately capture the concerns underlying positions of distributive equality while avoiding their shortcomings. The verdict on my contribution will ultimately depend on whether I can defend this *positive* claim. It is relatively easy to criticise a theory, now the time has come to produce a viable alternative.

5.4 The foundations of proportional justice

My analysis of the anonymity assumption might be interpreted to play straight into the hands of a libertarian-style entitlement theory. This section acknowledges a considerable overlap between Robert Nozick’s (1974: chapter 7) attack on *end-state* principles of justice and *patterned* distributions on the one hand, and my position on the other. Yet I also hope to show that not all ways out of the outcome paradigm, i.e. ways to relax anonymity, lead to libertarianism. In particular, section 5.4.2 will take issue with the libertarian belief that the market produces a just distribution of income. Finally, if there are discrepancies between our normative judgements about distributive arrangements and the distributive outcomes of the market process, evaluating and counteracting these discrepancies becomes the prime task of distributive justice, both in theory and in practice.⁴⁰

5.4.1 The peculiar pattern of equality

Two distinctions are fundamental to understanding Nozick’s position. First, he delineates *historical* principles of justice from *end-result* or *end-state* principles, and goes on to condemn the latter for excluding the possibility that “past circumstances

⁴⁰ Throughout this section, I shall take Nozick’s position to be representative of libertarian views.

or actions of people can create differential entitlements or differential deserts to things.” (1974: 155) Second, within the class of historical principles, Nozick distinguishes *entitlement* principles from *patterned* principles. Whereas a patterned principle of distribution “specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions” (1974: 156), entitlement principles are free from such constraints.

To advocate a patterned principle of distribution conflicts with the libertarian credo of the inviolability of individual choice. To see why, suppose someone decided to gamble half his money away and give the other half to charity. The distributive outcome of these actions would inevitably diverge from the one determined by the patterned principle, and hence call for redistribution. Nozick’s entitlement principle amounts to giving individual choice and liberty priority over any patterned principle, and thereby breaks this redistributive bias. Although Nozick acknowledges the role patterned principles play in determining the distribution of holdings in society,⁴¹ their combination with the entitlement principle will obviously not lead to a patterned distribution – choice trumps patterns, if you like.

This is a suitable moment for setting out the relation between Nozick’s position and my criticism of the outcome paradigm. In a nutshell, my objective has been to undermine the case for a subset of patterned principles of justice as comprehensive or even partial determinants of distribution, namely those advocating a form of distributive equality. But let me run through the similarities and differences between Nozick’s approach and mine in somewhat more, albeit still selective, detail.

Prima facie, Nozick’s condemnation of *end-state principles* in his critique of Rawls closely resembles our observation that a *strong anonymity* assumption leads to the outcome paradigm. “A procedure that founds principles of distributive justice on what rational persons who know nothing about themselves or their histories agree to,” Nozick elaborates, “guarantees that end-state principles of justice will be taken

⁴¹ Cf. Nozick (1974: 157): “Heavy strands of patterns will run through [the distribution of holdings]; significant portions of the variance in holdings will be accounted for by pattern-variables.”

as fundamental.” (1974: 198-99)⁴² Similarly, one might suspect a *patterned principle* of justice to correspond to a *weak anonymity* assumption. Yet, neither of these parallels is perfect. For example, Nozick classifies utilitarianism as an end-state principle, whereas we have only attributed a weak anonymity assumption to it, because it takes into account variations in individual utility functions. While this first observation might be dismissed as an irrelevant glitch in categorisation that can be ironed out without loss of content, the following one points to a more fundamental difference in emphasis.

Recall our representation of theories of justice as a mapping from individual characteristics to distributive shares in the currency of justice. It is worth pointing out that both patterned and entitlement principles of justice will figure in what is likely to be, as Nozick rightly emphasises, a multi-dimensional such mapping.⁴³ The difference between patterned and entitlement-based mappings lies in the determinacy and indeterminacy respectively of the distributive outcome they result in. The libertarian’s trademark concern, as we have seen, is to underpin the legitimacy of the entitlement-based component. The outcome of an overall mapping that contains an indeterminate component, as a matter of logic, will also be indeterminate. Note that this leaves two important questions open. First, nothing has been said about the justification of *determinate* components of the mapping. Second, we need a criterion to determine where and when patterned and entitlement principles of justice should *apply* respectively. I believe that this chapter has made a contribution to the first of these issues; and I shall argue in the next subsection that opposition to libertarian views is often connected to their stance on the second issue.

Let me briefly pick up on the first aspect, before I venture deeper into the second. Put simply, Nozick focuses on the message that patterned principles are not everything. This chapter has demonstrated the justification for some of these patterned principles, namely those advocating distributive equality, to be shaky at best. The analysis of liberal egalitarianism in section 5.3.3 illustrates how this project

⁴² For the sake of completeness, I should point out that Nozick classifies welfare economics as advocating a special kind of end-state principles, namely *current-time slice* principles of justice (cf. 1974: 154).

⁴³ This shows *how* the parallel between a weak anonymity assumption and patterned principles of justice is imperfect (cf. last paragraph). Weak anonymity makes room for both patterned *and* entitlement principles of justice. Cf. also footnote 41.

reaches into territory not covered by the libertarian critique. The liberal egalitarian move of incorporating the indeterminacy of choice into their mapping has earned them praise from libertarian quarters (cf. footnote 35). But is the resulting indeterminacy of the distributive outcome sufficient to justify this outcome? Surely not. Liberal egalitarians are aware of this predicament and propose to complete the justification of the distributive outcome by appeal to a principle of distributive equality. Provided my case against patterns of distributive equality goes through, their justification fails. This leaves us with a substantial research programme to pursue. We need to come up with alternative justifications for any patterns we think the distributive outcome in our society should respect.

Incidentally, Nozick's picture of "heavy strands of patterns running through the distribution of [holdings]" (1974: 157) also favours a pluralist picture of justice of the kind sketched in section 5.1.2. Social disadvantage occurs in many different forms and, as we asserted, the currency of redistribution should plausibly match that of the disadvantage. Along these lines, patterned principles of justice will, for instance, characterise the distribution of health care or schooling we envisage in our society. In contrast to what most egalitarian theories of justice suggest, both the currency and the pattern may vary between different domains of social life. There is, if you like, a *principle of institutional subsidiarity*.

In what follows, we will focus on the appropriate principle of justice for *one* of these domains, namely the distribution of wage-income. I believe that this is where libertarians stake their second, and more controversial, trademark claim. In delineating the domains of entitlement and patterned principles respectively, libertarian theory subsumes any kind of market activity under the former. Since market activity is based on the voluntary exchanges between people, imposing any pattern on the distribution of wage income would imply a severe constraint on liberty. Just as much as you are entitled to spend your money as you like, you are entitled to receive what others are prepared to pay for your services. Should we agree to these stipulations?

5.4.2 *Individual choice versus social choice*

Robert Nozick summarises his entitlement conception as follows:

“From each according to what he chooses to do, *to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they’ve been given previously (under this maxim) and haven’t yet expended or transferred.*” (1974: 160, my italics)

The non-italicised part refers to straightforward decisions by individuals about what to do with their holdings. Speaking in budget terms, it regulates the *expenditure* side if you like. The italicised part, in contrast, sets out the principle to regulate individual *revenues*. Here, the signature of the market mechanism leaps to the eye. Personal holdings are to be determined by the supply of, and demand for, individuals’ services. In other words, my personal holdings are viewed as the result of an interaction between two kinds of individual choices – my own decision about what kind of services to offer and how much of them, and the countless decisions by all other individuals whether and how highly to value these services. Evidently, the distributive outcome of this interaction is indeterminate. And, according to libertarians, imposing a pattern of any sort on the distributive outcomes of market interaction would severely curtail individual freedom.

It is this expansion of entitlement principles of justice from the expenditure to the revenue side of individual budgets that renders libertarian views as controversial as they are.⁴⁴ I will focus on two potential sources of disagreement. First, and contrary to conventional wisdom, unrestrained market interaction also imposes considerable limits on individual choices.⁴⁵ Second, whether or not to accept the normative force of the distributive outcome of unrestrained market interaction is a contingent decision.

As to the first point, think of a decision that many of us are faced with at some point in time. Where do I want to take my professional life? Do I, for instance, want to train as a lawyer or a craftsman, work for a charity or become a doctor?

⁴⁴ Cf. Nozick’s criticism of theories of recipient justice (1974: 168). Whereas this criticism is well taken when applied to individual expenditure, it is unclear how much purchase it has on the revenue side.

⁴⁵ For a lucid discussion of why libertarianism does not offer real freedom, cf. van Parijs (1995).

Obviously, some professions pay better than others. (Philosophy, anyone?) And though we are relatively free to choose between them, we have virtually no influence on the pay-off structure. To put it in economic terminology, we are *price-takers* with respect to the wages the various professions pay. Think of the analogy to a game⁴⁶: Your choices are the pieces you have to play with, but the context of these choices is set by the rules of the game. In our example, though you may have a considerable degree of freedom in choosing your profession, the reward structure of the different professions is largely beyond your influence. From the perspective of a *particular* individual, then, whether the rules of the game happen to be the unintended consequence of an interaction of individual choices – as opposed to, say, the outcome of a democratic decision process – is neither here nor there. Individual freedom is restricted in both cases.

This leads us straight to the second potential source of disagreement with the libertarian position. There are two principal ways to “set” what we have called the rules of the game. As laid out before, libertarians take the choices made by individuals to confer legitimacy on the distributive outcome that results from their interaction. In this case, the rules are set implicitly, in the sense that they are generated by the system of market interaction itself. Libertarians praise this arrangement for its neutrality towards individual desires and preferences.⁴⁷ The alternative approach takes a more active stance towards institutional design. Assume we all have a conception of what a fair set of rules of the game would look like. Provided we can agree on or devise a decision procedure to determine what should count as such a fair set of rules for our economic interactions, we should fashion the rules of the game according to our values. In this case, the rules are set explicitly and doing so necessarily involves a normative judgement by the community in question or their elected representatives.

The choice between the two approaches can be presented as a question of *direction of fit* between our institution(s) of distributive justice on the one hand, and our normative judgements about what constitutes a just distribution of holdings on the other. For libertarians, the direction of fit runs from the former to the latter; in

⁴⁶ I borrow this metaphor from Jonathan Wolff (2002: 4).

⁴⁷ Incidentally, this is one of the ways in which one may interpret libertarians to call for a form of equal treatment (cf. section 5.1.1).

virtue of its respect for *individual choice*, the market is vested with the ultimate normative authority. In contrast, giving priority to our normative judgements opens up some scope for a *social choice* between alternative institutional arrangements, including restrictions on the operation of the market mechanism. I believe there exist decisive reasons to believe that the second direction of fit is preferable.

5.4.3 The possibility of “distributive market failure”

Consider the market as governing the allocation of resources in society more generally, as opposed to the narrower context of the determination of wage incomes we have been concentrating on. Any economist will acknowledge the existence of both circumstances in which the resource allocation of the market is unsatisfactory, and circumstances in which it needs to be regulated to “function properly.” The classic examples for the first category are public and merit goods. If left to the unrestrained operation of the market, levels of defence and infrastructure spending, where the barriers to free-riding are particularly weak, would be drastically lower than at the *status quo*. Expenditure on education as the prime example of a merit good would equally fall short of what we deem desirable. To illustrate the second kind of market failure, think of the way in which anti-trust policies set a limit to the tendency towards concentration of industries. Furthermore, a whole host of publicity norms, for instance requiring publicly listed companies to meet certain standards of information towards their shareholders, are accepted as a necessary lubrication of the market mechanism. The list could go on. In all these cases, the outcome of the operation of market forces diverges from our normative judgement and we have decided to give priority to the latter. Why should the labour market be any different?

It is vital to distinguish two issues here. First, the immense literature on informational asymmetries in economics, a substantial part of which relates to the labour market, suggests that the latter might be even more prone to fail than other markets. Second, even if the labour market functioned properly, it would be possible for the reward structure of the various professions to diverge from what we think it should be. If we take the direction of fit to run from our normative judgements to institutional arrangements, statements like “I think the gap in income between the lawyer and the charity worker is too big.” become intelligible.

To see why the distinction between the two issues is so important, suppose you *start* with the statement just made about the relative income of a lawyer and a charity worker. This leaves open the question whether the magnitude of the gap between their incomes is due to the distributive consequences of the market *or* to the distributive consequences of a form of market failure *or* to the distributive consequences of an existing regulation of the market. Let us call the first of these three the *possibility of distributive market failure*. The other two explanations for an unsatisfactory distribution of wage income should remind us not to prematurely blame the market mechanism as soon as our normative judgements diverge from the distributive inequalities of the *status quo*.

Independently of the explanation of why a particular structure of wage incomes diverges from our normative judgement, a direction of fit that runs from the latter to the former always presupposes that such a judgement is made in the first place. In this respect, the direction of fit I am advocating is more demanding than the libertarian alternative. Making normative judgements sometimes involves tough calls, and disagreement with the decisions taken and policies pursued will be the order of the day. When judgement errs, statements like “Government intervention has made matters worse.” might indeed be justified.⁴⁸ Getting the design of our distributive institutions right requires a thorough understanding of the relevant social interactions. And yet, the need to make normative judgements is as evident as the fact that we do get some of them right. This, I believe, is all we can hope for. Reversing the direction of fit as proposed by the libertarian amounts to dodging the responsibility of institutional design.

Yet, towards the end of this chapter, we seem to be left with preciously few reliable normative judgements to guide us in our institutional design. Patterned principles of distributive equality have been shown to put more weight on the concept of equality than it can bear. The suitability of entitlement principles of justice to determine the distributive outcomes of market interaction have been drawn into severe doubt. Let me venture to suggest a solution. We need to develop an account of proportional justice that reflects our normative judgements as to what it is

⁴⁸ Cf. our third possible explanation for a discrepancy between our normative judgement and the *status quo* in the previous paragraph. The discrepancy may be due to an existing, but misguided, regulation of the market.

to “give everyone their due” with respect to the contribution they make to the productive process in society. In other words, we need to revisit our mapping from individual characteristics to shares in the currency of justice, in this case the amount of wage income to be paid. The task will be to produce a more sophisticated mapping not only in the sense that it pays tribute to all aspects of human diversity we deem relevant, but also in the sense that it takes a stance on the *magnitude* of the distributive differentials that certain individual differences justify.

Note that there might well be situations in which “giving everyone their due” turns out to call for an *equal* distribution of the currency of justice, at least within a certain domain. Yet, such “locally” equal distributions of income – as we called them at the end of section 5.3 – will have to be the result of a substantive normative judgement, rather than an appeal to an inflated ideal of distributive equality. Candidate starting points for substantive normative judgements of this kind are similarities between people that we deem to be distributively relevant. *Prima facie*, the chances of identifying such similarities appear to vary between different domains of distributive justice. Arguably, people are relevantly similar when it comes to the distribution of a basic level of schooling and health services. On the other hand, a parallel case for the structure of wage incomes seems harder to make. We will take up this challenge in section 7.

Finally, closing the loop back to the very beginning of the chapter, a notion of proportional justice emerges as not merely compatible with the moderate end of the egalitarian spectrum, but even required by it. As David Schmidtz has put it, “a lack of proportion is one kind of unequal treatment.” (2003: 246) With hindsight, this insight makes the quest to build a conceptual bridge across the egalitarian spectrum and thereby underpin a version of distributive equality look rather hopeless to start with. The task, inspired by Bernard Williams, to spell out the distributive consequences of relational equality still stands. Yet one may wonder whether the characterisation of this project as an “egalitarian” one is slightly misleading.

5.5 Conclusion

This chapter has argued that the foundations for various versions of distributive equality are shaky. The appeal of such views is contingent on making a strong

anonymity assumption, disguising any distributively relevant differences between the individuals about whose holdings we are making a judgement. However, once we relax the anonymity assumption and look at people as they are, the appeal of distributive equality vanishes – it reveals its character as a default position.

Once we relax the strong anonymity assumption, two questions arise. First, *which* aspects of human diversity should the distribution of our currency of justice be responsive to? In the case of liberal egalitarianism, for instance, I suggested that it does not pull back the veil of anonymity far enough. Second, *to what extent* should the distribution of a currency of justice be responsive to relevant differences between people? To answer this question, we need to develop an account of proportional justice. Note that this approach remains firmly committed to the non-distributive interpretation of the egalitarian ideal. In fact, the objective of proportional justice is co-extensive with working out what equal treatment calls for in *different* circumstances.

These considerations suggest that egalitarians have not done their cause a service by focusing on the quest for a sustainable version of distributive equality. Disguising a certain human characteristic behind an anonymity assumption, be it a strong or a weak one, automatically puts one in conflict with those who *do* regard this particular characteristic as a legitimate determinant of distribution. For egalitarianism to regain ground, it needs to engage in a debate on the magnitude of inequalities.

6 Meritocracy on the back foot

“Liberalism has [...] come under increasing attack in recent years, on the ground that the familiar principle of equal treatment, with its meritocratic conception of relevant differences, seems too weak to combat the inequalities dispensed by nature and the ordinary workings of the social system.” (Nagel, 1973: 353)

6.1 *Liberal egalitarianism strikes back*

I would like to think that you will turn over the page from the previous chapter in a state of at least partial agreement. At the same time, I would not be surprised if this agreement were undermined by a feeling of puzzlement. In fact, I expect you to be puzzled. One vital upshot of section 5 is to advocate a principle of distribution that makes income a function of distributively relevant individual characteristics. The proportional differences in income that result from this “mapping,” as I called it, were presented as not only compatible with a maxim of equal treatment, but even required by it.

At this point, liberal egalitarians are likely to complain, and not without justification, that my argument has failed to appreciate the full force of their position. The differences in individual characteristics on the left-hand side of our mapping are partly due to natural and social contingencies and are therefore undeserved. As we have seen, liberal egalitarians have inherited this line of argument from John Rawls, who classified natural and social contingencies as “arbitrary from a moral point of view.” These undeserved differences are not unjust in themselves, but they have an unjust consequence, in that they introduce a bias into the *opportunity sets* of different people to earn a good income. If you are born talented or into a rich family, you are given a head start in the race on the labour market that determines personal income. Since this objectionable inequality of opportunity feeds into our mapping from individual characteristics to income, the mapping has to take it into account in order to retain legitimacy. The “meritocratic conception of relevant differences” espoused by liberalism, to put it in Thomas Nagel’s words quoted above, will need to be modified. Left unchecked, a mapping of the sort I propose will not only be too weak

to “combat the inequalities dispensed by nature and the ordinary workings of the social system,” but it will in fact exacerbate them.

The liberal egalitarian challenge to my position does not stop there. It also draws into question my strategy of addressing the question of distribution of income in isolation, of presenting a *partial* theory of distributive justice as it were (cf. section 5.1.2). If evaluating the distribution of income turns out to be inextricably linked to the distribution of other social advantages at a prior stage, then a partial analysis looks doomed to fail from the start.

Even with respect to the final point made in section 5, namely my call for giving our normative judgements priority over the distributive arrangements of the market, the liberal egalitarian has a ready answer. When pressed on the distributive justice of the market mechanism, libertarians frequently acknowledge the qualification of a level playing field. The market outcome will only ever be as just as the initial holdings of the participants who enter into the exchange. My suspicion about the existence of distributive market failure, the liberal egalitarian will point out, stems from the fact that the libertarian rider of a level playing field is incomplete. But once we move from the standard formulation of this rider in terms of wealth or *financial* capital to a wider conception that extends to *human* capital, so the liberal egalitarians point out, the market can indeed be a distributively just institution. Bringing natural and social contingencies within the fold of justice will make for a system that, short of abolishing the inequality of opportunity itself, at least compensates those situated in the uphill section of the playing field. This, I take it, is the motivation behind Ronald Dworkin’s auction mechanism at the beginning of his seminal article “Equality of Resources.” Against this background, one may credit Dworkin not only with rendering a service to egalitarianism,⁴⁹ but it seems libertarians should be equally grateful. The liberal egalitarian argument acquits them from the charge that the market mechanism is incompatible with justice. In fact, Dworkin even considers the market to be pivotal in implementing equality of resources, since it makes individuals pay for the opportunity costs their choices generate for other members of society. So, if spelling out what I mean by

⁴⁹ Cf. footnote 35 in section 5 for the remark made to this effect by G.A. Cohen.

“distributive market failure” should boil down to a worry about inequality of opportunity, the key once again lies with liberal egalitarianism.

Adding all these charges up, has my attack on distributive egalitarianism boomeranged? Does my way out of the outcome paradigm lead us into a conceptual *cul-de-sac*? If anything, it seems clear that what I consider to be a meritocratic conception of income distribution is on the back foot, and that I have my work cut out in brightening its prospects again. *The principal task, I believe, consists in showing why, or better when, it is justified to divorce claims about desert from claims about equality of opportunity.* In other words, I plan to defend the validity of a mapping from individual characteristics to income that gives positive weight to certain characteristics even if they are undeserved. Given the considerations just set out, the burden of proof is squarely on me. I owe liberal egalitarians an explanation why I believe it justified to not only tolerate but to endorse the income effects of natural and social contingency.⁵⁰ However, if my argument succeeds, this will also serve to rehabilitate my project of presenting a partial account of justice that evaluates the distribution of income in isolation from other domains of justice.

To set the scene for this undertaking, the next two sections of this chapter outline two preliminaries. First, for reasons that will become obvious, I rehearse the familiar insight that moral arguments draw on both empirical and moral premises. Second, I feel the need to spell out the desert-based principle of distribution that stands behind my meritocratic conception, and that has been taken for granted in section 5. Subsequently, we will turn to the central issue of this chapter, investigating if and how natural and social contingencies should influence our normative judgements about the distribution of income. The question is embedded in the more fundamental debate on the appropriate *scope* of justice. My argument for situating natural and social contingencies outside this scope will be informed by an investigation into the precise nature of the influence that inequality of opportunity exerts on the distribution of income. Finally, assuming that my desert-based principle of distribution survives the liberal egalitarian onslaught, we will come back to its relation to a market-based distribution of income. Although the intervening argument

⁵⁰ Note that I acknowledged in section 5.3.3 that the role of natural assets in particular in our normative judgements on income distribution is controversial. The above objections make it necessary to reopen this debate.

will illustrate that the worry about “distributive market failure” cannot be allayed by a liberal egalitarian levelling of the playing field, it will not yet serve to make the notion precise either.

6.2 *The mileage of moral arguments*

The conclusion of a moral argument will almost invariably be based on both moral and empirical premises. Take the example of making a promise. The moral premise ‘You should keep your promises.’ combines with an actual act of promising to give rise to a moral obligation. Judging by examples like this one, where the moral premise holds almost irrespective of context, the work done by the empirical premise is often underestimated.

In more complex situations, however, the formulation of the empirical premises of a moral argument can have just as decisive an influence on its conclusion as the moral ones. To illustrate, I borrow partly from Thomas Pogge, who has drawn my attention to this point. In some of his recent work, Pogge (2002) assesses the obligation of the developed world to assist poor, disadvantaged countries. He compares his argumentative strategy to that of Peter Singer, who is similarly inclined to argue that this obligation to assist is indeed substantial. Singer (1972) likens the question of development aid to a situation where someone notices a child in danger of drowning in a pond. Pogge criticises this analogy as misleading, since it neglects an important empirical premise to the moral problem in question. The relation of the developed to the developing world, he plausibly suggests, is not that of an “innocent bystander,” for we have actively contributed to the current predicament of many developing countries, through colonialism and other selfish and/or irresponsible policies.

Note the difference between the two strategies. For Singer, most of the work still remains to be done, namely to present a *moral* premise – in his case a utilitarian one – that calls for development aid. He still has to convince the bystander why *he* should save the drowning child rather than someone else. Pogge, on the other hand, has already got substantial mileage for his moral conclusion built into his descriptive account. From establishing that we are partly responsible for the plight of the developing world, it is not a long way to deducing an obligation to help.

This comparison highlights the possibility of shifting the burden of a moral argument between its moral and empirical premises. To maximise the mileage of our moral arguments in terms of their persuasive power, we are well advised to shift the burden to the less controversial of the two.⁵¹ In the example just given, it turns out to be the empirical premise, and I agree with Pogge that realising this increases the power of his argumentative strategy. Note, however, that shifting the burden of a moral argument to its empirical premises also bears risks, since it limits your control over the conclusion of the overall moral argument. This is particularly true when the legitimacy of the empirical premise depends on a future event rather than on past evidence or a well-established fact. Think, for instance, of a situation where the justification for the invasion of a country is premised on this country's disposal of weapons of mass destruction.

In terms of the use I plan to make of the above insights, the example of development aid is imperfect in that the conclusion *that* we should assist developing countries, I take it, is quite uncontroversial – the question here centres on the *magnitude* of the obligation. For my argument in subsequent sections, it is important to see how the empirical assumptions can change the conclusion of a moral argument altogether by influencing its scope, i.e. the domain of its application. Playing on the responsiveness of our intuitions to current affairs, think of the following, highly idealised, example from just war theory:

Empirical premise 1:	Dictator X of country Y has weapons of mass destruction (WMD) at his disposal.
Moral premise 1 ⁵² :	WMD in the hands of a dictator pose a threat to international security.
Moral premise 2:	Pre-emptive strikes are justified against countries that pose a threat to international security.
Conclusion:	A pre-emptive strike against country Y is justified.

⁵¹ For a similar point made in a different context, cf. Amartya Sen's (1981) reflections on the distinction between positive and normative economics. Though Sen concedes that the distinction between the two may not be a sharp one, he recommends we uphold it in practice, since it is easier to attain political agreement on economic "facts" as opposed to normative principles.

⁵² You might question the *moral* nature of this premise. Both here and with respect to arguments of the same format used further down, I agree that some instances in my category of moral premises might be more appropriately labelled "evaluative" premises. Since the substance of the arguments is not affected, I bracket this distinction for simplicity's sake.

Suppose, despite not being opposed to pre-emptive strikes against countries as a matter of principle, you remain unconvinced by this argument on moral grounds. You agree that dictator X has WMD at his disposal, but you regard moral premise 1 as too lax to warrant the conclusion. Surely, the threat to international security depends on the likelihood of the WMD actually being deployed. In order to convince you, then, a hawkish representative of the defence ministry modifies the argument in the following way (cf. italics):

Empirical premise 1:	Dictator X of country Y has weapons of mass destruction (WMD) at his disposal.
<i>Empirical premise 2:</i>	<i>Dictator X is willing to deploy his WMD.</i>
<i>Moral premise 1:</i>	<i>WMD in the hands of a dictator, who is willing to use them, pose a threat to international security.</i>
Moral premise 2:	Pre-emptive strikes are justified against countries that pose a threat to international security.
Conclusion:	A pre-emptive strike against country Y is justified.

By limiting the scope of the argument, the defence hawk increases his work load to produce evidence – he now has to demonstrate not only that dictator X has WMD but also that he is willing to deploy them – but he also ups his chances of securing your agreement to his moral conclusion. Needless to say, you may still disagree with the argument on grounds bracketed here.

In sum, then, we note that the conclusion of a moral argument can vary with its domain of application. The latter is constrained by the level of specificity of its empirical premises.

6.3 *Delineating desert...*

This is the time to reveal my colours with respect to the nature of the distributive principle I am advocating. After all, normative judgements about income distribution can be based on a variety of criteria, ranging, to name the most prominent examples, from equality, via utility, or need, all the way to desert.⁵³ The first of these, equality, I have discounted as a satisfactory principle of distribution in section 5, on the basis

⁵³ For an insightful survey of the latter three candidates, cf. Dick (1975).

that it is either too strong (distributive equality) or too weak (relational equality). As to a utilitarian principle of distribution, I also believe its shortcomings to outweigh its strengths, but choose to refer you to the familiar critiques of utilitarianism (e.g. Rawls (1999), Sen (1980), Sen and Williams (1982)) instead of arguing against it myself. I acknowledge that the criterion of need represents a serious contender. It is a motivating force behind two prominent contemporary approaches to questions of distributive justice, namely prioritarianism as well as the capability approach. I will briefly come back to why I bracket the criterion of need in the concluding section 9.

As has been implicit in section 5 and in my mapping of income onto the diverse characteristics of individuals, my account of a just income distribution rests on a notion of desert. More specifically, I hold that incomes are deserved in virtue of the contribution individuals make to the productive process, which in turn is a function of the scarcity of their skills. Yet again, this is a conscious choice at the expense of other potential ramifications of the concept of desert. As Miller (1976) points out, desert may also be construed as a function of effort or of compensation for the costs one incurs through working.⁵⁴ Of these two, desert-based principles that rely on effort have enjoyed a significant following among political philosophers, who have argued that those with the potential of making a substantial contribution to society via the productive process should be set the appropriate financial incentives to do so. With respect to compensatory justice, let me just add one brief remark why this idea seems counterintuitive from a market perspective. Given the costs in terms of inconvenience or risk that are attached to the jobs in question – think of the task of a dustman or a miner – people will by and large try to do something different if they can. If a fair number of these jobs are done for lack of alternative, the result is likely to be a buyers' market favouring the employers. The supplier of labour could only extract compensation from the employer if he had some leverage through a credible exit option. Then again, if he had that option, he would probably not have chosen his present job in the first place.

Finally, let me add a positive reason for adopting contribution to the productive process as my basis for desert. If we adopt a Rawlsian perspective on society and

⁵⁴ For accounts defending the latter, cf. Lamont (1997) or Dick (1975). Carens (1985), on the other hand, presents convincing arguments why the notion of compensatory justice is flawed.

regard it as a co-operative venture for mutual advantage, which I find plausible, a return proportional to one's contribution to this venture seems appropriate.

Having situated my position in the theoretical landscape, two clarifications are necessary. Rawls himself did not opt for a desert based criterion of distribution, because individual contributions depend on natural and social contingencies that he deemed "arbitrary from a moral point of view." It is one of the main goals of this chapter to evaluate the merits of this position. Quite independently, however, Rawls weakens the stand of a desert-based criterion of distribution by presenting it as a moralised notion. If *moral* desert were our distributive criterion, justice would indeed be "happiness according to virtue." (Rawls, 1999: 273). I agree with Rawls in discarding this position, but this leaves plenty of room for an unmoralised notion of desert. For someone to deserve a certain income in virtue of her contribution to a co-operative venture, whether or not she is a good person is beside the point.

The second clarification concerns the contribution to the productive process as the proposed desert base of my distributive principle. You might object that such a maxim leaves out in the rain those, who are unable to contribute to this process in a meaningful way, like the severely handicapped. Recall, however, that my proposal should not be understood as a complete theory of distributive justice. The distribution of income represents but one aspect of distributive justice, and I believe the concerns of groups like the severely handicapped fall outside it. There is no question a decent society should look after whom many regard as its most disadvantaged group. Yet, I believe this obligation is either one belonging to a different aspect of justice, like the distribution of health care, or one that falls under the heading of compassion or charity rather than justice. The attempt to address these issues and the question of income distribution simultaneously has, in my opinion, led to more confusion than insight.

6.3.1 ...and its divisiveness

"The influence of nature can be seen in two directly opposed ways: as a factor for which *individuals* are not responsible and whose inequities society must therefore correct, or as a factor for which *society* is not responsible and whose unequal results it can therefore accept." (Nagel, 1997: 305)

A society that endorses a desert-based principle of distribution, which rewards people for their contribution to the productive process, is what I will call a *meritocratic* society. As we saw at the outset of this chapter, liberal egalitarians are sceptical of the foundations of such a conception of meritocracy since some of these foundations are arbitrary from a moral point of view. Natural and social contingencies do not count among the legitimate bases of desert, so the claim goes, and therefore justice requires us to compensate people for the disadvantages caused by them. The rationale behind compensation, if you like, is to create a society that is similar to the counterfactual one in which the inequalities in opportunity do not exist in the first place.

What is more, liberal egalitarians intend to perform this operation without forsaking allegiance to meritocracy. Dworkin's position in "Equality of Resources" is exemplary in this respect. His distinction between endowments and ambitions is designed to separate the legitimate bases of desert from the illegitimate ones. Whereas he wants our distribution of income to be endowment-insensitive, sensitivity to ambitions is presented as a constitutive element of what it means to respect a person and therefore of our conception of justice. If Dworkin can drive a wedge between those two sets of individual characteristics, then he will in effect have performed the task formulated by the Nagel-quote that opened this chapter. He will have modified the notion of meritocracy by limiting its scope to a subset of individual ambitions, namely those we deem the individual to be responsible for.

My strategy in this chapter is to claim that this amounts to a watering down of the notion of meritocracy in a way that does not cohere with our intuitions. Dworkin and other liberal egalitarians, in other words, cannot have their cake and eat it, too. If I can convince you that taking natural and social contingencies out of the set of legitimate bases of desert is *costly* in terms of jeopardising our notion of meritocracy, then my desert-based principle of distribution will at least be back in the game. The task then becomes to weigh the costs of inequality of opportunity in my proposal against the costs of jeopardising meritocracy incurred by the liberal egalitarian.

Note that the interpretation of meritocracy also marks the parting of the ways between liberal egalitarians and libertarians. As we already saw in section 5.3.3, Robert Nozick (1974: 225) holds that "the foundations of desert do not themselves have to be preserved all the way down." Of course, individuals do not have any

control over contingent natural and social influences on their lives, otherwise they would not be contingencies. Yet it does not follow that social advantages that flow from them, like income, are undeserved. Libertarian theory expresses this conviction in the concept of *self-ownership*, which states that the individual is entitled to her person and all the fruits of her labour. The concept of self-ownership, which will occupy centre stage of my analysis in section 7, represents the second big tenet of libertarianism next to the emphasis on individual choice. Given this background, my charitable interpretation of the liberal egalitarian contribution to the libertarian cause in the opening section of this chapter looks misplaced. The libertarian idea of a level playing field for market participants *does not* extend to human capital. On the contrary, this liberal egalitarian proposal renders its advocates just as likely to be confronted with the charge of ‘slavery of the talented,’ which Nozick originally levied against Rawls.⁵⁵ If we believe the talented to be entitled to what they earn, then redistribution will be regarded as a serious infringement of their liberty.

The crucial point of disagreement, formulated for our context of income distribution, can be restated as follows: Are those income premiums that derive from undeserved natural and social contingencies legitimate? There is widespread agreement that “talent and excellence attract recognition” (Nagel, 1991: 113). Yet opinions are divided as to whether this recognition should be reflected in income differentials, insofar as it is based on undeserved inequality of opportunity. I follow libertarians in arguing that it should, whereas liberal egalitarians disagree. As it stands, we seem to lack any independent grounds to defuse this stand-off. In the next section, I will suggest that we can overcome this predicament by embedding the dispute in the more fundamental debate about the appropriate *scope* of justice.

Before turning to this issue, though, let me stress one important point about the nature of my disagreement with liberal egalitarians. A standard criticism of their proposed split between endowments and ambitions points to the fact that this distinction loses its bite *in practice*. It is impossible to neatly separate those features of individuals they are responsible for from the others, because the two categories are causally interdependent. Crudely put, your endowments partly steer your ambitions,

⁵⁵ This charge represents a combination of Nozick’s condemnation of taxation as forced labour (1974: 169) and his criticism of the Rawlsian system in section II of chapter 7 of *Anarchy, State, and Utopia*.

and your ambitions partly influence the development of your endowments. In contrast, my criticism of liberal egalitarianism is *conceptual*: Even if we could identify the distributive effects of endowments, justice would not call for their rectification. In fact, attacking liberal egalitarians on grounds of practicability to my mind amounts to a rather cheap shot. Dworkin, for one, seems acutely aware of the difficulties of disentangling the effects of endowments and ambitions.⁵⁶ The fact that he is forced to capitulate in the face of causal interdependence between endowments and ambitions does not render his normative statement about them unintelligible. It is just that I do not agree with this normative statement.

6.4 The scope and the reach of justice

To ensure an unambiguous reference point, let me schematise the dispute over the question of desert in the following way:

Empirical premise 1:	Natural and social contingencies contribute to income differentials.
Moral premise 1:	Income differentials due to natural and social contingencies are (un)deserved.
Moral premise 2:	Undeserved inequalities should be rectified.
Moral premise 3:	In the case of natural and social contingencies, rectification should take the form of compensation.
Conclusion:	People should receive compensation for income differentials that are due to natural and social contingencies.

The disagreement, as outlined in the previous section, turns on the set of parentheses in moral premise 1. Liberal egalitarians insist they should be dropped – read “undeserved” – and the conclusion of the argument accepted, whereas I believe the parentheses are necessary – read “deserved” – and the conclusion should therefore be rejected. For the moment, let us assume agreement on all the other

⁵⁶ “It might be helpful, [...] if we were able to find some way of identifying, in any person’s wealth at any particular time, the component traceable to differential talents as distinguished from differential ambitions. ... But we cannot hope to identify such a component, even given perfect information about people’s personalities. For we will be thwarted by the reciprocal influence that talents and ambitions exercise on each other.” (Dworkin, 1981: 313)

premises.⁵⁷ The upshot of the previous section was to present us with a choice between my position and its associated costs in terms of tolerating the effects of an objectionable inequality of opportunity on the one hand, and the liberal egalitarian position with its associated costs in terms of jeopardising the meritocratic ideal of our society on the other. The following sections will attempt to facilitate our making this choice by setting it in the context of the appropriate *scope* of justice.

6.4.1 “The good, the bad, and the neutral”

Conceptions of justice, Thomas Nagel tells us, differ in “the way they assign systematic influences on how people fare under a social system to three categories: the good, the bad, and the neutral” (Nagel, 1997: 313). There tends to be agreement at the extremes of the spectrum. Most plausible theories of justice will classify discrimination on racial, religious, or gender grounds as a “bad” systematic influence that needs to be uprooted. Similarly, most plausible theories of justice will classify free choice into the category “good,” regarding it as a legitimate influence on the way people fare. An interesting distinction can be drawn concerning the ground in between these extremes. “Minimalist” conceptions make heavy use of the “neutral” zone, reflecting the view that many of the events of this world simply have to be accepted as given. “Expansive” conceptions, on the other hand, represent a more demanding view of justice. Omitting to rectify inequalities on the part of society, they maintain, is as bad as acting to bring them about. Consequently, one might say, the luck of the draw becomes a moralised notion under expansive conceptions. As Nagel poignantly observes, this “is the thought that brings class, natural endowments, and handicap within the range of objectionable causes of inequality in life prospects.” (Nagel, 1997: 313) Expansive conceptions of justice favour a wider scope of justice than minimalist ones.

The dispute between me and liberal egalitarians set out in the argument above can be described as one between minimalist and expansive conceptions of justice. Against the background of this distinction, Nagel himself changed his view

⁵⁷ This assumption will be relaxed later. With respect to moral premise 3, section 6.4.4 will scrutinise what has been criticised as the “compensation paradigm” (cf. Wolff, 2002). And in section 8, we will implicitly question moral premise 2. The argument will be that rectification should be limited to cases where the legal framework, under which the undeserved advantages have been obtained, falls foul of a minimal threshold of justice.

concerning natural endowments. Whereas he used to firmly hold the liberal egalitarian position (cf. for instance 1973, 1991), he now (cf. 1997) advocates a minimalist position; at least as far as *natural* contingencies are concerned.⁵⁸ In what follows, I shall push the case for a minimalist conception of justice even further, and argue that it should lead us to accept certain *social* contingencies as part of the given, too. Incidentally, I suspect that it is partly his liberal egalitarian heritage and his deep distrust of libertarianism that stops Nagel from following his argument through in a similar way. I hope that these claims will lose the radical ring, which they no doubt have for some readers at this point, as my argument proceeds.

Before setting out my reasons to favour a minimalist conception of justice, I would like to add two sets of remarks concerning the conceptual implications of holding an expansive conception. The first refers to the way in which expansive conceptions incorporate what might be described as elements of fate into the scope of justice. Note that what we have called the neutral zone is being encroached upon from two different angles, and that it might in the extreme even turn out to be empty. Liberal egalitarians are not only more demanding towards *society* in compensating for various kinds of misfortune, but the weight shifted onto the notion of *individual* responsibility also becomes considerably heavier. Provided individuals are in a position to assess the expected impact of various kinds of misfortune on their lives, liberal egalitarians will let them decide to what extent they want to expose themselves to the effects of these contingencies. The decision over the scope of justice is transformed from a social choice into an individual one. This explains the pivotal role insurance schemes play in liberal egalitarian accounts like Dworkin's.⁵⁹ And it underlines how liberal an agenda liberal egalitarianism stands for when it takes this extreme form. Put harshly, but I believe adequately, everyone is invited to play their personal gamble on the contingencies of life, and society is under no obligation to assist the losers.

⁵⁸ I will refer to "the early Nagel" and "the later Nagel" to capture this difference.

⁵⁹ For a similar view of how Dworkin *can be* interpreted as limiting the "neutral zone," cf. van der Veen (2002, 60): "This view seeks to artificially extend the scope of responsible choice into the domain of circumstance." I italicise "can be," since van der Veen helpfully distinguishes two, partly conflicting, interpretations of Dworkin's equality of resources.

How real these considerations are can be confirmed by a look at the current political agenda. A case can be made that several of the policies pursued by the British government, for instance, stand for a more expansive conception of justice that does indeed delegate the choice over its precise scope to the individual. Proposals that give individuals more responsibility over how they fare in matters of education or health, like university top-up fees or foundation hospitals, are two examples. School vouchers, which are popular in the United States, are another. Taking out a loan to pay one's top-up fees is like taking out an insurance against the contingencies that might prevent you from earning a certain income later in life. The interest one pays on the loan corresponds to the premium of a standard insurance policy, and the pay-out consists in not having to repay the loan in case one does indeed fall short of a certain income. At the same time, policies that roll back the *social* responsibility include, for instance, the means-testing of unemployment benefits. Only time and the unfolding consequences of these policies will tell whether this faith in the individual is justified or whether perhaps additional conditions may have to be fulfilled to justify it. This is not the place to speculate. Yet, two observations can be made independently. First, delegating such vital questions to individuals should presuppose both that they have an adequate range of choices to select from and that they actually have the informational and financial means at their disposal to do so effectively. Second, the alternative to increasing individual responsibility would presumably be a substantial increase in the government spending on items like education and health, an idea whose costs politicians naturally shy away from.⁶⁰

But let us return from this digression into practical matters to the conceptual issue at hand. In the case of natural and certain social contingencies, reliance on individual responsibility is obviously not an option. At birth, individuals are not yet in a position to make judgements about which level of insurance it would be prudent to take out against being born untalented or into a family where the only breadwinner has alcohol problems. Besides, it would already be too late, since, by assumption, the

⁶⁰ When I say "substantial," I mean more substantial than the increases we currently see in Britain.

“natural draw” has already taken place at this stage.⁶¹ Hence, if natural endowments and certain social contingencies are to be squeezed out of the neutral zone, as expansive conceptions of justice advocate, the choice about the extent to which they should be allowed to impact on individual lives will necessarily have to be a social one.⁶²

My second set of remarks comments on the label of “luck egalitarianism” that has become a fashionable characterisation of liberal egalitarians who advocate a particularly expansive conception of justice. To me, the pejorative connotations of the term, coined by Elizabeth Anderson, seem unjustified. Unless, as Anderson wants to suggest by quoting an unpublished paper from Richard Arneson, “the concern of distributive justice is to compensate individuals for misfortune” (Anderson, 1999: 289) *simpliciter*, even expansive conceptions of justice will assign some residual forms of luck to the given, or the neutral zone. Indeed, most liberal egalitarians would shy away from a claim as strong as the above quote, and classify certain kinds of misfortune as irrelevant from the point of view of justice.⁶³ Once they do that, however, it becomes clear that the question as to what extent one’s conception of justice incorporates luck into its domain is a matter of degree. Two hundred years ago, it would have been regarded as part of the given for women (as well as many men) to be born into a society in which they had no political vote; today, we regard it as discrimination. The question at the core of this chapter, whether we should bring natural endowment and certain social contingencies within the realm of justice, which liberal egalitarians raise, is a genuine and important question. The pejorative connotation of the label “luck egalitarianism” lies in pretending that it is not.

⁶¹ Dworkin, for instance, acknowledges this dilemma when he says that “[s]ome people are born with handicaps, or develop them before they have either sufficient knowledge or funds to insure on their own behalf. They cannot buy insurance after the event.” (1981: 297)

⁶² It is these *social* judgements as to which individual characteristics should be compensated for, and to what extent, that lead Elizabeth Anderson (1999) to criticise liberal egalitarianism as a stigmatising approach to justice. It is disrespectful, so her accusation goes, to pick out certain members of society as falling short of what would inevitably be regarded as a standard of normality in terms of natural talents or immediate social environment. I agree with Anderson on this point, but my present argument against liberal egalitarianism is independent and different from hers.

⁶³ Cf. for instance Thomas Nagel (1991: 107): “...there can be no possible objection to some people’s naturally enjoying immunity to certain diseases or perfect health or sunny dispositions, even though this makes them much better off than those who are constitutionally sickly or depressed. Better is simply better, in such cases, because no inequality of treatment is implied.” (Nagel, 1991: 107) We will come back to the issue raised in this quote in section 6.4.3.1.

Despite this drawback, the term ‘luck egalitarianism’ invites us to focus on an interesting question. Suppose we decided to indeed include natural endowments into the realm of justice. Is a non-arbitrary distinction into relevant and irrelevant kinds of misfortune at all possible? Can we, for instance, plausibly maintain that being born blind is a relevant handicap, and at the same time believe that some people’s sunnier disposition is not? Or may we be thrown onto a slippery slope that forces us to equate any inequality that systematically influences how people fare with injustice? We will come back to this question in section 6.4.3.1.

6.4.2 *The strategy*

Recall that both a minimalist and an expansive conception of justice vis-à-vis natural endowments and social contingencies are associated with costs. In the present case, the costs of my minimalist desert-based principle of distribution in terms of inequality of opportunity have to be weighed against the costs of the expansive liberal egalitarian conception in terms of jeopardising meritocracy. I will argue that, given certain conditions, it may be permissible to discount the costs in terms of inequality of opportunity. Under these circumstances, a minimalist conception of justice will be preferable. To sustain this reasoning, I propose to modify our argument from the beginning of section 6.4 in the following way:

Empirical premise 1:	Natural and social contingencies contribute to income differentials.
<i>Additional emp. premises:</i>	???
<i>Moral premise 1:</i>	Income differentials are deserved if...
	a) society has made the utmost effort over time to make up for disadvantage in terms of natural and social contingencies by providing complementary opportunities.
	and b) they reflect people’s different contributions to the productive process.
Moral premise 2:	Undeserved inequalities should be rectified.
Moral premise 3:	In the case of natural and social contingencies, rectification should take the form of compensation.
<i>Conclusion:</i>	???

Several things have changed compared to our original version of the argument. Moral premise 1 has been widened and narrowed at the same time. It has been widened in that it now makes a statement about income differentials in general, not only about the subset of income differentials caused by natural and social contingencies. The sense in which it has been narrowed becomes clear from an interpretation of condition a). Like the old moral premise 1, this condition passes a judgement on the acceptability of income differentials due to natural and social contingencies. Acknowledging that endowments and background are not the only determinants of an individual's marketable skills, the condition makes it a *necessary* condition for income differentials to be classified as deserved that special attention be given to the provision of opportunities affecting the other determinants.⁶⁴ Add condition b), and the two conditions are proposed to be *sufficient* to legitimise income differentials as deserved.

We will make the meaning of the new moral premise 1 and its elements more precise as we go along, but one thing is already clear. To derive the conclusion of the new argument, we will need some additional, partly empirical information. First, we need a criterion to determine what the "utmost effort" to provide complementary opportunities requires. Presumably, this presupposes a more thorough understanding of how natural and social contingencies as well as other opportunities translate into income differentials in the first place. To this end, section 6.4.3 will tell an idealized story about the genesis of marketable skills. The second piece of information is similarly structured. We need a criterion to delineate what people's contribution to the productive process consists in. Then, in a further step, we can assess whether income differentials reflect these contributions.

My strategy here is parallel to the arguments we saw in section 6.2. I am trading the prospect of converting some sympathisers of the liberal egalitarian view to a (comparatively) minimalist conception of justice for an increased burden of proof that lies at least partly in the empirical realm.⁶⁵ If the "deal" is accepted, the

⁶⁴ This goal is to be achieved by what I have labelled "complementary opportunities" – please bear with me for an illustration of what these stand for.

⁶⁵ One might object that the criteria I will propose when defining the notion of "utmost effort" and delineating people's contribution to the productive process smuggle in further *normative* assumptions. I concede that the line between the descriptive and the normative here is a very thin one. Then again, the same is true in our example about WMD in the hands of a dictator, where we will also need a

way will be cleared for my desert-based principle of distribution. The strategy relies on two prongs, addressing different kinds of considerations that might motivate one to hold the liberal egalitarian position on natural and social contingencies.

First, one's concern about the acceptability of income differentials may centre on the *inequality of opportunity* to earn a given income, which the diversity of natural endowments and social background entails. This, indeed, is the interpretation we have attributed to the liberal egalitarian in this chapter so far. The deal proposed to this kind of liberal egalitarian, let us call him 'Deon,' is contained in condition a) and has already been set out above. The proposal is to level the playing field for the game of earning a given income, by providing complementary opportunities to the disadvantaged. This first prong of my strategy will preoccupy us in section 6.4.3.

Second, one's concern about the acceptability of income differentials may focus on the *results* from inequality of opportunity, in our context inequality of incomes themselves. More specifically, it is the *magnitude* of income differentials that this kind of liberal egalitarian, let us call her 'Conse,' finds morally repugnant. Such a judgement is likely to be based on observations of income inequalities in practice, underpinned by a theory of how they come about. Note that condition a) already imposes a first check on the magnitude of income inequalities. But if the possibilities of levelling the playing field via complementary opportunities turn out to be limited, Conse may still bark at income inequalities even when a) is fulfilled. This is where condition b) comes in. If it turns out that an income distribution reflecting people's contribution to the productive process is *less* unequal than the real-world inequalities Conse resents, then this condition will again increase the likelihood of her accepting income inequalities as deserved. We will begin to address this second prong in section 6.4.4, but the jigsaw will remain incomplete until section 7.

Before taking up the investigation into the facts which I have saddled myself with, let me insert one observation regarding the type of moral argument advanced by the two prongs of my strategy. When Nagel introduces the distinction between minimalist and expansive conceptions of justice, he prefaces it with some reflections

criterion to assess his likelihood to use them. Still, I believe, we are happy to classify the likelihood itself as an empirical notion.

on its relation to deontological and consequentialist standards of justice respectively (cf. Nagel, 1997: 303-6). Whereas the former evaluate a social system “on the basis of the intrinsic character” of the “procedures that confer legitimacy on any particular allocation,” the latter judge by “the kinds of results [the system] tends reliably to produce.” (*ibid.*: 304)

As we have seen, Nagel defines the distinction between minimalist and expansive conceptions of justice by appealing to the evaluation of “systematic influences on how people fare.” Depending on whether you lay the evaluative emphasis on the “systematic influences” or on “how people fare,” you can anchor the question about the scope of justice in deontological and consequentialist thinking respectively. Nagel chooses the former route, but he acknowledges the latter as an alternative and points out that deontological and consequentialist standards are not mutually exclusive, but that they “may be combined in the evaluation of a system.” (*ibid.*: 304)

As you might have guessed from the names of my two liberal egalitarians, Deon and Conse, my strategy to defend meritocracy against liberal egalitarianism is intended as such a combination. Whereas condition a) of moral premise 1 is dominated by deontological thinking, condition b) is primarily responsive to consequentialist concerns. Admittedly, condition b) does not wear its consequentialist nature on its sleeve. To achieve that, it would have to read, for instance, “Income differentials are justified if they are not too big.” But this criterion feels rather *ad hoc*. Too big compared to what? Well, I think the answer has to be too big compared to whatever we consider to be just. And I will propose that the adequate reference point here are people’s contributions to the productive process.

Such a co-existence of deontological and consequentialist standards is I think common in our everyday judgements about *specific* moral problems. It would be surprising if it were absent from our choice of *moral codes*. The institutional structure to regulate the distribution of income is one example for such a code.

6.4.3 *The genesis of marketable skills*

So what are the income effects of natural endowments and social background, and to what extent can they be mitigated by providing complementary opportunities?⁶⁶ The missing link in the causal chain from the input in terms of one's initial opportunity set to the output of eventually earning an income is the development of talents into marketable skills. In addition to natural and social factors, and as individual agency develops, these marketable skills are increasingly subject to more or less intentional choices as a third influence.

We will now consider each of these three influences in turn. Given that I agree with liberal egalitarians on the legitimacy of choice as a determinant of income, the focus will at first be on natural endowments and social background.

It is worth noting that some liberal egalitarian accounts differ from our tripartite distinction between natural, social, and individual factors in that they collapse it into a binary one. Dworkin's distinction between ambitions and endowments is one example. As we shall see, treating social influences as a separate category serves to avoid serious pitfalls.⁶⁷

Equally, we should remind ourselves (cf. end of section 6.3.1) that the cutting power of the tripartite distinction between natural, social, and individual influences is confined to the conceptual realm. In practice, any attempt to trace a particular skill to its three constitutive parts would be a hopeless undertaking. Think of a Wimbledon tennis champion. To what extent should her success be attributed to innate talent, encouragement and instruction by her parents and coach, and determined training respectively? Not only is the causal nexus from these influences to the final outcome too complex for us to disentangle, but the picture is complicated even further by interdependencies between the various categories. The disciplined attitude towards

⁶⁶ Our focus on *income* differentials is not to deny the existence of costs in terms of other kinds of social advantage. Given the unpleasant stickiness of social stigma even across generations, I am here thinking in particular of repercussions on status and recognition. Yet, on a more speculative note, I believe that the considerations we would enter in evaluating these other effects of unequal opportunities are by and large parallel to the case of incomes.

⁶⁷ Cf. Steiner (2002: 349) for some interesting observations about the tendency among liberal egalitarians to neglect the social realm as source of both advantages and disadvantages for individuals. Thomas Nagel, I should add, is an exception to this rule. My own reliance on the tripartite distinction was largely inspired by Rosenberg (1987).

training may for example be largely due to factors in early socialisation as a child, giving the allegedly individual impetus of motivation a decidedly social colouring.

6.4.3.1 Natural endowments

The royal path to undermine the position that natural endowments unjustly affect the distribution of income would be to show that they have no *systematic* influence on the latter at all.⁶⁸ Simply put, the claim is that the better endowed do not on average end up with a higher income. Note that this is in principle compatible with the interdependencies between natural, social, and individual determinants of income highlighted in the last paragraph. Of course, natural endowments interact with the social environment and with choice to influence income, but – so the claim goes – their influence is not systematic.

On the face of it, this thought seems rather far-fetched. But since I believe the precise reasons for why it falls short to be very insightful, I will consider it nonetheless. The following presentation is inspired by Alexander Rosenberg's argument (1987), which I interpret to advocate a position of this kind.⁶⁹

People do not enter the market at birth. They are born with a set of natural endowments, which are then transformed into talents under the influence of socialisation as well as the active pursuit of one's own goals. It is the skills that stand at the end of this process of development that fetch a reward on the labour market, not the natural endowments fed into it. But, you might object, the fostering and training of talents surely *builds* on endowments, and therefore some of the credit should fall back on them. Granted, endowments do stand at the beginning of the causal chain that finally results in marketable skills which people receive their paycheque for. However, this causal chain is too long and subject to too many other contingent or intentional influences for the natural endowments to have any

⁶⁸ This position has to be distinguished from the, in my opinion, highly implausible claim that inequalities in natural endowment do not really exist, but are a social construction. This strategy is pursued, for instance, by Jacobs (2004: chapter 3) and will not be considered here.

⁶⁹ Using his own terminology, Rosenberg's argument is perhaps best summarised as follows: Combining the principle that earned advantages are not unfair with the factual claim that most economically significant talents and disabilities are earned, the question whether we should compensate unearned disabilities and charge unearned talents becomes academic.

systematic influence on the portfolio of marketable skills that an individual will hold fifteen, twenty, or even more years after birth.

To see why this argument fails, we have to disentangle two factors at work here. First, we need to take into account that the return on a particular skill is crucially dependent on the demand for it, too. Assuming a perfect functioning of the market,⁷⁰ the higher wage of a lawyer compared to a craftsman does not necessarily mean that the lawyer boasts a higher level of qualifications. Some perhaps significant share of the income differential is will be due to the scarcity of trained lawyers compared to trained craftsmen. Income differentials of this sort are inevitable in a highly specialised society, where the fact that people need to be trained for their tasks means that supply will always be slow in responding to demand. One might object that this can still not be the whole story, since we would expect lawyers' wages to exceed those of craftsmen only temporarily rather than permanently. This is indeed an important interjection. We will come back to this point in section 7, but I want to bracket it here.

The argument that questions a systematic income effect of natural endowments has a point insofar as there is nothing that enables us to predict at birth whether someone will end up in a well-paying profession or not. It makes preciously little sense to say that someone has an innate talent to be a lawyer or a craftsman. However, jumping from here to the conclusion that natural endowments do not systematically influence income would miss the second factor at work here. More intelligent people will on average do better than others at whatever they do. Hence, they will earn higher wages than their peers, and have a higher chance of being promoted. And intelligence, scientists tell us, is to a significant degree genetic. This example not only signals why the attempt to dissociate natural endowments and income ultimately fails, it also teaches us an important fact about the appropriate usage of the term talent. *Talent is generic*. It refers to general characteristics that will help those who hold them independently of what they do. Intelligence is indeed the paradigm example. Other features confer perhaps less than universal, but still wide-ranging advantages. Think of physical dexterity or co-ordination as factors that give

⁷⁰ Investigating the plausibility of this assumption lies at the core of section 7.

people an edge in the world of sports, one domain of our lives where the notion of talent is regularly invoked.⁷¹

At this point, we conclude that intra-professional wage disparities are one manifestation of the systematic influence of natural endowments on income. So what about our intention to level the playing field with respect to these innate advantages? The insight that talents are generic reveals how limited our possibilities are here. If talent is not a skill that you can teach, then it is hard to see how the systematic advantage of those who have more of it could be mitigated. Put differently, intelligence and other talents are inalienable and not something that one can redistribute. I am assuming the current limits of biotechnology, and do not intend to open the ethical can of worms that opens up when these limits expand.

Before moving on to social background as the second influence on marketable assets, let me use this opportunity to illustrate why portraying liberal egalitarians as “luck egalitarians” is so tempting. Suppose we did choose to adopt an expansive conception of justice vis-à-vis natural endowments, where would we draw the line as to which natural endowments lead to relevantly unequal opportunities? The case of intelligence, I presume, is uncontroversial. Beyond that however, as the early Nagel for instance suggests, “there can be no possible objection to some people’s naturally enjoying immunity to certain diseases or perfect health or sunny dispositions, even though this makes them much better off than those who are constitutionally sickly or depressed. Better is simply better, in such cases, because no inequality of treatment is implied.” (Nagel, 1991: 107) Well, is this really so? Surely, to take up one of Nagel’s examples, a sunny disposition will be an asset to people in whatever they do, since it helps to make them popular among their colleagues and managers, and makes a work ethic more likely. So maybe we should include a sunny disposition on our list of

⁷¹ Traces of the debate over specific *versus* generic talents can already be found in Adam Smith and David Ricardo, two of the most prominent classical economists. Both attributed much significance to the division of labour in society and the specialisation it brings with it – an aspect of their theories, incidentally, that will preoccupy us in section 7. Yet, they modelled talent in different ways. Smith “proposed what is now referred to as the concept of endogenous comparative advantage, which implies that economies of specialization and division of labor may exist even if all individuals are *ex ante* identical, and that the differences in productivities between various specialists are consequences rather than causes of the division of labour.” (Yang, 2001: 44) Ricardo, in contrast, relied on a notion of exogenous comparative advantage, which amounts to the view that marketable skills are to a significant degree fixed by natural endowments. Our above considerations suggest that Ricardo’s model captures generic talents, whereas Smith’s approach is more congenial to specific talents.

relevant advantages. But then, how far is it from here to picking up the statistical link between exposure to sunlight and depression, and to the claim that people in Scandinavia or Canada will on average do worse in terms of income and should be compensated? The absurdity of the lower reaches of this slippery slope highlights the necessity for advocates of any *plausible* expansive conception of justice to dig their heels in somewhere before sliding all the way. I emphasise this to forestall the objection that I am attributing an implausible position to the liberal egalitarians whom I disagree with.

6.4.3.2 Social background

“By the time they get to school, it’s too late. The realisation that neglectful parents in a child’s earliest years can ruin its chances for life is shaping a new, expensive and interventionist approach to families in Britain.” Thus reads the opening passage of an article in *The Economist* from December 2003.

The family is the second source of inequality of opportunity in our society. As in the case of natural endowments, the family does not furnish individuals with readily marketable skills. And as in the case of natural endowments, the talents whose development is crucially dependent on a close parent-child relationship can be described as generic talents. The affection one receives during early childhood is thought to have a significant influence on the development of personal traits. There is no doubt that what is sometimes referred to as ‘social intelligence’ again gives people a systematic advantage at whatever they do, and therefore exhibits a correlation to income similar to that of natural endowments.

Against this background, it is not surprising that political philosophers have enjoyed a conflicting relationship with the institution of the family. John Rawls, for instance, observes that “the family may be a barrier to equal chances between individuals,” (Rawls, 1999: 265) and even briefly entertains the idea of abolishing it (cf. *ibid.*: 448). At the same time, the goal in this context clearly cannot be to achieve equality by levelling down, i.e. by eradicating the positive to make the negative look less bad. On the contrary, the aim has to be to step in when parents fail to fulfil their role properly, to “level up” if you like. The policies referred to in the above quote show that the awareness of the need for such intervention is growing.

So in contrast to the case of natural endowments, at least the possibility exists to do something towards levelling the playing field concerning family background. However, this possibility comes with an important note of caution. It is very difficult for even the most dedicated outsider to replicate the social environment that loving parents can provide. Nothing binds as well as the bonds of blood. Policies to help kids whose family background leaves much to be desired clearly belong to those complementary opportunities I refer to in my condition a), but in providing them, we have to be aware that they will always be a second-best solution.

One potential objection at this point will accuse me of painting too narrow a picture of what it means to come from a disadvantaged background. The first thought that comes to the mind of many in this context are the doors that open up to the children of well-to-do parents but remain closed to their peers from poorer homes. The reason why I believe that the financial aspect of children's background has to be treated separately will become obvious in the next section. For now, let me concede that, insofar as poverty limits the parents' possibilities to have as close a relationship to their children as is desirable – through the necessity for both parents to work even shortly after birth, for instance – the objection is well taken.

6.4.3.3 Entering the public realm

In this section and the next, I will argue for two claims. The first of these requires us to continue our idealized story about the genesis of marketable skills by analysing the role education plays in this process. Before individuals enter the labour market, I will suggest, there are indeed ways for society to provide complementary opportunities to those who are disadvantaged by natural endowment or social background – to fulfil condition a) in other words. At the same time, we will see that pursuing this goal will have to be balanced against another important objective. Eventually, the resulting perspective on the nature of opportunities will enable us to substantially undermine the position of Deon – our liberal egalitarian who finds unequal opportunities due to natural and social contingencies morally repugnant.

The preparation of an individual for her role in the productive process can be described as a private-public partnership. Once children enter the public realm by attending kindergarten or going to school, the education at home is complemented by

the efforts of these institutions. In our context, there is one important similarity and one fundamental difference between these two kinds of education.

They are similar in that public education also conveys generic skills. It equips children with the tools needed in later life, irrespective of what they will do, and teaches them not so much specific skills but the way to acquire them. This is true at least until teenagers begin to specialise towards more or less specific professional careers.

The fundamental difference between private and public education is this. Parents, on the one hand, are naturally partial towards their own children. In fact, as the previous section lays out, we will consider them to neglect their duties if they are not partial enough. Schools, on the other hand, are caught in a tricky balancing act between two kinds of impartiality. Teachers are encouraged to respond to a child's ability to learn. If a child is talented, it will learn more quickly than others. What is required here may be called 'impartiality towards the ability to learn.' At the same time, though, teachers are encouraged to pay special attention to those whose learning process is held back by a natural or social disadvantage of the kinds discussed above. This special attention is precisely what is meant in our condition a) by providing complementary opportunities. Let us call this 'impartiality towards the need to learn.'

The tension between these two kinds of impartiality is an illustrative instantiation of the double-edged character of the concept of equality of opportunity itself. We want children to not fall behind others in their development, but at the same time we do not want to hold any of them back when they can dash ahead. Similarly at a later stage in life, we do not want anyone to enter the market less qualified than others, but at the same time we give jobs to those with better qualifications.

Given that learning is a cumulative process, those better equipped to deal with this process will naturally get the most out of it. On average, the more intelligent and those with a solid social background will do better at school. They will on average do better, in other words, at picking up the generic skills that school teaches them. This, in turn, will on average give them an edge when it finally comes to entering higher education or the labour market. I add the qualifier "on average" on each occasion

here to avoid sounding deterministic. I do not want to deny that disadvantages can be made up for and obstacles overcome, by sheer determination, discipline, or luck for instance. Similarly, opportunities can be squandered. Statistically, however, the systematic influence of inequality of opportunity is beyond question.

If my idealized story is not too far off the mark, the requirement of providing complementary opportunities expressed in condition a) in effect urges us to fight a losing battle. Those better equipped with the generic talents provided by nature and social background are always likely to be a step ahead. In fact, the gap in terms of knowledge and skills will tend to widen, given that we reject the possibility of levelling down. However, this does not mean that the battle of complementary opportunities is not worth fighting. One measure of its success is the *level* of discrepancies in opportunities when individuals finally enter the labour market. Surely, the design of our education system can make a difference here.

The idealized story about the genesis of marketable skills is not yet complete, but I would like to draw two lessons at this stage. First, the picture that has emerged so far suggests that it is essential to see opportunities in a *dynamic* framework. This is already implicit in the ordinary meaning of the word. An opportunity is something awaiting to be seized and realised in the future. If you have an opportunity today, this means you can do something tomorrow. During the years of education, opportunities today frequently consist in acquiring more opportunities tomorrow. Metaphorically speaking, generic talents like intelligence help individuals to come out of this learning process with relatively more opportunities under their belt. Simultaneously, as individual agency develops and children begin to set themselves their own goals and objectives, the usefulness of these opportunities becomes apparent – even if, in some cases, this insight is delayed by adolescent rebellion. Opportunities in terms of skills and knowledge are not merely instrumental in achieving one's objectives, but they also increase the options of which goals to pursue next. Opportunity, in other words, confers choice. And one of the important choices in our context presents itself when individuals enter higher education or the labour market. This link between opportunities and choice will be pivotal to my argument further down.

The second lesson involves a double concession on my part. First, the call for complementary opportunities in condition a) breaks with my maxim to provide a partial theory of justice that addresses income distribution alone. In effect, condition

a) makes the justice of the distribution of income dependent on a just education system. Given the crucial role education plays in shaping and pursuing life plans and therefore in determining income, neglecting this connection would be a serious omission.

Note that with regard to the scope of justice, my position represents a compromise between a minimalist and an expansive conception of justice. I will propose that we can be minimalists with respect to income *provided* we have done the maximum to level the playing field at the gates of the labour market by being expansionists with respect to education. This explains why, in setting out my strategy in section 6.4.2, I declared to aim at a (relatively) minimalist conception of justice.

The second concession recognises that passing the buck to the design of our education system is not enough, for more would have to be said on what a just education system looks like. I bracket this question here, but I would like to point out that this is the context in which the impact of financial background on the quality of education will resurface. If we are committed to the maxim of not holding anyone back in the development of their talents, we should not object to parents investing into the future of their children. On the other hand, such investments obviously undermine the public efforts to level the playing field as much as possible. There is hope in the performance of UK grammar schools in the 1980s, since they show that state education can be of equal or even better quality than private education. (Policies to all but abolish them dampen this hope, of course.) The conflict of private *versus* public education becomes even more pressing at university level, since the costs of higher education tend to exceed those of primary and secondary school education, and money can therefore make a bigger difference. In sum, a balance needs to be struck between the partiality of parents and the goal of an impartial public education system.

I would like to emphasise, however, that the question of financial background can by and large be separated from the question of natural and social endowment. Barring cases where poverty leads to the neglect of children, it is doubtful that Daddy's bank account has any influence on a child's intelligence or its emotional environment in early socialisation.

6.4.4 *The human condition*

It is time for an interim report on the dispute over the scope of justice between my approach and the position of Deon, our liberal egalitarian with deontological inclinations. As just outlined, I propose to combine minimalism in the space of incomes with an expansive conception in the space of education. Deon, on the other hand, favours an expansive conception with respect to incomes, entailing *compensation* for any unfavourable income effects based on natural endowments or social background.

Perhaps unexpectedly, the argument I will presently put forward to undermine Deon's position centres on the one issue on which there seemed to be agreement between us. Both liberal egalitarians and my desert-based principle of income distribution tick off individual choice as a legitimate influence on how people fare. Our idealized story about the genesis of marketable skills suggests, so I will claim, that doing so creates a serious problem of consistency for Deon.

Think back to the distinction between intra-professional *versus* inter-professional wage differences. The generic character of the advantages furnished by natural talent and social background led us to conclude that they play a role in *intra*-professional differences. We are now in a position to say more about their relation to *inter*-professional differentials, too. One of the main upshots of our investigation into how the influence of natural endowments and social background actually works has been the necessity to see opportunities in a dynamic framework. As I put it, generic talents help individuals to come out of the education process with more opportunities under their belt than their peers. Crucially in our context, holding more opportunities at the gates to the labour market means having a wider range of professions to choose from. Assuming that some professions offer a higher expected financial return than others, this suggests another *potential* effect that natural endowment and social background can have on income. One way to put it is to say that the talented hold an option on the jobs in the more lucrative professions. However, the link from endowments and background to inter-professional wage differences is contingent, insofar as it depends on a significant number of the talented in fact exercising this option. If they happened to be profit-maximising individuals, for instance, there would indeed be a significant correlation.

Fortunately, my argument does not rely on any speculation about individual motives or behaviour. The crucial insight is that opportunity confers choice. If this is so, then the *range* of choices open to a particular individual is positively correlated to the natural endowments and the social background the individual started out from. The number and variety of choices open to an individual throughout a lifetime form a constitutive part of the notion of freedom – a point Amartya Sen repeatedly and forcefully makes (cf. for instance 1992, 2003). Note that such a difference in the extent of one's freedom would be significant even if the talented did not exercise their option on the more lucrative jobs.

These considerations pose the following problem for Deon. Given his concern about the inequality of opportunity that natural endowments and social background entail, he should be indifferent about the domain in which its effects manifest themselves. If Deon considers inequality of opportunity illegitimate in the realm of incomes, then he should do the same in the realm of choice. Comparing the role of choice in determining people's ends to the instrumental nature of income, one might even make the case that unequal opportunities with respect to choice are the more worrisome of the two. Can any of this be reconciled with Deon's liberal egalitarian commitment to choice as a legitimate influence on how people fare? If so, how?

Deon, I believe, has three options. The first of these is as radical as it is ineligible. Deon could bite the bullet, condemn the influence of natural endowments and social background on choice as unfair, and call for compensation in the form of restrictions on choice. Clearly, Deon could no longer call himself a liberal under this scenario. Although I expect this reason on its own to be decisive for Deon not to go down this route, I would like to draw your attention to another reason, which I believe goes to the heart of the minimalist *versus* expansive conception of justice controversy.

When defending their expansive conception of justice, liberal egalitarians of Deon's kind are adamant to stress that they do not consider differences in natural endowment and social background as unjust in themselves. Such a claim would amount to defending a notion of cosmic injustice, which is considered implausible. The injustice, so they maintain, lies in the impact these differences have on how people fare in our society. Yet, our investigation of the nature of this impact suggests that it is hard to drive a wedge between these two statements. The generic character

of the advantages based on endowment and background not only means that the talented will on average do better with respect to income, range of choices open to them, and presumably many other dimensions of life,⁷² but just as significantly, it is very hard to imagine a human society in which this was not the case. There is no conceivable human society in which the intelligent will not on average do better. Neither is there a conceivable human society whose offspring do not rely on close ties to someone – parents or someone else – in their early socialisation. Those who are lucky with respect to these ties will on average do better than the others. These differences are part of the human condition.⁷³ Complaining about their impact on the way people fare comes dangerously close to endorsing the kind of cosmic injustice liberal egalitarians want to steer clear of.

At this point, someone might raise the following objection. Though generic talents will inevitably confer advantages to their holders, why should a manifestation of this advantage in the realm of income be inevitable? Surely, this seems to be stretching the notion of the human condition a little too far. As we shall see, I partly agree. Deon's third option in responding to his dilemma will bring us back to this point.

Before, though, let us look at his second option. Deon could recognize that for an expansive conception of justice with respect to natural endowments and social background, the *reach* of justice will always fall short of its *scope*. As we have seen, in the absence of interference with choice and levelling down in other respects, the generic nature of talents implies they will inevitably create differential social advantage of various kinds. It is this inevitability, which I refer to as part of the human condition, that drives a wedge between the scope of justice on the one hand, and its reach on the other. Equality of opportunity turns out to be an elusive ideal.

Normally, Deon at this point would have suggested extending the reach of justice via compensation.⁷⁴ Yet, this option is made to look less attractive by the

⁷² Happiness, I cannot resist to speculate, being an important exception.

⁷³ I understand Nagel (1997: 316-20) to make an argument of this kind with regard to the inequality of the sexes, when he classifies the 'disappearance of gender' as an unrealistic hope. In contrast to the inevitability of social advantage due to natural endowment or social background, I would not want to commit myself either way on this tricky issue.

⁷⁴ Cf. the moral premise 3 in my argument set out in sections 6.4 and 6.4.2.

inequality of opportunity in the realm of choice. Even if, for argument's sake, we agreed to compensation with respect to incomes, the idea of compensating people for a smaller range of choices in life seems unacceptable. As already hinted at, there is a categorical difference between choice and income in that the former governs people's ends whereas the latter belongs to the realm of means. A lack of options in life is not something that money can pay for.⁷⁵ At the same time, continuing the former policy of compensating in the domain of incomes, but taking inequality of choice as given, would look decidedly half-baked. To the extent that inequality of choice in fact contributes to inter-professional wage differentials, such a policy could be criticised for merely addressing the symptoms of inequality of opportunity, but leaving the causes unaddressed.

However, while the bad news for Deon is that the reach of justice is bound to fall short of the scope he has in mind, the good news is that this reach may still be extended somewhat by means other than compensation. During the years of education, there is ample room for society to make a difference by "levelling up" the opportunity set of those disfavoured by natural endowment and social background.⁷⁶ Institutional structure and policy matter, in the education sector in particular, when it comes to minimising the gap in the range of choices open to people when they enter the labour market. Given Deon's resentment towards inequality of opportunity, exhausting the institutional possibilities to counterbalance them seems his best bet.⁷⁷ As you will have noticed, Deon's second option amounts to accepting the dynamic perspective on opportunities I have provided, and in particular to endorsing condition

⁷⁵ Cf. Robert Goodin's (1991) distinction between "means-substitution" compensation and "ends-displacement" compensation. My point here is that there are some ends in life which compensation cannot make up for.

⁷⁶ Policies of this kind, I take it, are close to the spirit of Jonathan Wolff's criticism of the compensation paradigm when he declares that "the ultimate aim of social policy should not be so much to compensate for disadvantage, but to create circumstances in which there is no disadvantage that calls for compensation." (2002: 208)

Incidentally, I believe that John Rawls' focus on the "basic structure" of society is motivated by similar reasoning, but there is no room to go into this question here.

⁷⁷ There are passages in Rawls which suggest that he in fact held a similar position. Cf. for instance (1999: 87): "The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts." There is an important difference between seeing the justice or injustice of natural (or social) contingencies in their impact on how people fare – as Deon would – *versus* locating it in the way our institutional structure handles this impact – as Rawls suggests here. The former, as I pointed out above against the background of what I called 'the human condition,' is dangerously close to asserting a notion of cosmic injustice.

a): “Income differentials are deserved if the utmost effort is made to over time make up for disadvantage in terms of natural and social contingencies by providing complementary opportunities.”

Given the nature of Deon’s two options so far, one being utterly implausible and the other collapsing his position into mine, you might accuse me of agenda setting. Should there really be no position that allows him to simultaneously recognise the constraint of the human condition on the reach of justice, and deplore the impact natural endowments and social background have on the way people fare? Yes, there is, and this is Deon’s third option. He could question the underlying mechanism that translates advantage in terms of natural and social endowment into how people fare. In the case of income, this underlying mechanism is the labour market. Granting that generic talents mean that labour market returns will be different, Deon now insists that there is still the question of *how* different they should be.⁷⁸

In order to take a stance with respect to this additional question, Deon will need to appeal to some kind of criterion of what magnitude of income differentials he considers just. Yet, such a procedure is not typical for Deon at all – it is overtly consequentialist. Deon’s third option, it turns out, amounts to converting to Conse’s position. As I put it in section 6.4.2, the emphasis of the concern about inequality of opportunity would now be on the magnitude of income differentials it leads to, rather than on the fact *that* it leads to them.

Is this a more promising strategy for the liberal egalitarian in her fight for an expansive conception of justice with respect to natural endowment and social background? The answer to this question partly turns on empirical issues. Natural endowment and social background are not the only factors contributing to income inequalities. Even if we agreed with liberal egalitarians, now represented by Conse, that a given distribution of income was unjust, the question remains to what extent

⁷⁸ This comes back to the objection raised towards the end of discussing Deon’s first option: Is it not stretching the notion of the human condition too far to say that income differentials are inevitable? Yes and no. No, in the sense that short of an outright equal distribution of income, the top end of the distribution will always be likely to be occupied by those better endowed with generic talents. Yes, in the sense that this does not yet tell us anything about the *magnitude* of income differentials. The latter, once again, seems to be crucially dependent on institutional design.

natural endowment and social background contribute to this injustice, and therefore warrant an expansive conception of justice.

The liberal egalitarian framework, at least in the form defended by most of its current advocates, to me seems ill-equipped to comprehensively address this question for the following reason. Liberal egalitarians classify social advantage and disadvantage into two kinds. Either the individual can be held responsible for doing better or worse than others, in which case the inequality is deserved; or she cannot be held responsible for the inequality, and should be compensated. We have met this binary scheme before in a different guise, when I referred to Dworkin's distinction between endowments and ambitions as determinants of people's marketable skills (cf. section 6.4.3). To explain income inequalities in practice, such a binary scheme is too restrictive. It precludes the possibility that society could have arranged the distribution of advantages and disadvantages so that a particular disadvantage would not have occurred in the first place, or at least would have been mitigated. It precludes, in other words, a notion of what Thomas Nagel calls *negative responsibility* of society "for failing to arrange things differently in ways that it could." (Nagel, 1991: 100)

What Conse would need to develop, and I do not see any reason why such a move would not be compatible with liberal egalitarian thought, is a tripartite distinction. When someone is at a disadvantage in society, there are three different explanations for it, grounded in natural, individual, and social factors respectively.⁷⁹ Adapted to the context of incomes, the explanation that one person earns more than another can appeal to natural endowments and social background, to personal choices, or to the institutional structure by which differences in these first two categories translate into income differentials.⁸⁰

⁷⁹ Jo Wolff can be interpreted as calling for a distinction along these lines when he asserts that "where someone suffers a disadvantage which we believe calls for action we have to decide whether the source of that disadvantage is the person or the world." (2002: 217) Yet, note that "the world," in this formulation, runs together the natural and the social.

On the other hand, when Elizabeth Anderson suggests that "[t]o change the person rather than the norm insultingly suggests that the defect lies in the person rather than in society," (1999: 336) the natural as an explanation of disadvantage seems to fall flat altogether.

⁸⁰ My use of the natural *versus* social terminology here needs clarification. Since I see diversity with respect to both natural endowments and social background as part of the human condition, they are subsumed under the category of the natural here. The social, on the other hand, in the present context

Several threads of my argument come together at this point. The institutional structure just referred to corresponds to the mapping from individual differences to income differentials in section 5. And the criterion I propose to govern this mapping is expressed in condition b) of our reformulated moral premise 1 in the argument above (cf. section 6.4.2): “Income differentials are deserved if they reflect people’s different contributions to the productive process.” Condition b), in other words, serves as reference point for our negative responsibility to ensure a just distribution of income.

And there is another *déjà vu*. My advice to Conse to take on board the institutional structure of our society as a further determinant of income differentials mirrors my criticism against libertarians at the end of section 5. Let me explain. There is a good explanation why Conse’s liberal egalitarian peers do not question the institutional influence on income differentials, namely their deep-rooted trust in the market mechanism. Prices are determined by supply and demand. On the labour market, the price of labour, i.e. income, is determined by one’s supply of marketable skills and the demand for them. If we are prepared to accept the distributive outcome of market interaction, no further question of institutional structure arises. The market, in this case, is our institution of choice, and the mapping from individual skills to income differentials is governed by demand.

Against this background, Conse is likely to regard my condition b) as redundant. She will maintain that we do not need a measure of people’s contribution to the productive process that is distinct from the market. My line of attack against this position is the same as against the libertarian in section 5: Why should we accept the market to have any normative authority with respect to the distribution of income in our society?⁸¹

The success of this attack (still) depends on my ability to drive a wedge between the market distribution of income and our normative judgements. In other words, I have to make a plausible case for the possibility of “distributive market

is reserved for our institutional framework that maps differences in individual characteristics or decisions into income differentials.

⁸¹ Amartya Sen (1985: 7) concludes that “[i]t is hard to argue that the value of the market can be divorced from the value of its results and achievements.” Though this argument is usually made in the context of the allocative efficiency of the market – this is also the context in which Sen makes it – it seems equally applicable to the market’s distributive performance.

failure” (cf. section 5.4.3). In this chapter, we have not made any progress on this front. I have merely specified that I intend to formulate our normative judgements in terms of a desert-based principle of distribution, based on people’s contribution to the productive process. The actual argument remains to be construed.

For now, let me concentrate on how these considerations bear on the dispute about the adequate scope of justice. Conse, by definition, is concerned about income inequalities in our society. Income inequalities, as we have just rehearsed, have three main determinants, namely natural endowments and social background, personal choices, and the institutional structure. Now, since Conse is committed to the legitimacy of personal choice and at the same time puts her trust into the market as a distributively just institution, it is only natural that she will direct her blame towards natural endowments and social background. Given her other normative commitments, this category is left over as the only possible culprit for objectionably large income differentials.

However, if we managed to undermine one of these commitments, namely her trust in the market mechanism as a distributively just institution, the situation would change. With the possibility of distributive market failure, a second potential culprit enters the scene. Some of the blame previously heaped onto natural endowments and social background would now be shifted to the market mechanism. If this shift is big enough, Conse might consider compromising on her expansive conception of justice.

In sum, the dispute over a minimalist *versus* an expansive conception of justice indirectly hinges on my case for the possibility of distributive market failure. I am putting all my eggs in one basket, in that my arguments against both the libertarian and the liberal egalitarian depend on mounting this case. Only at the end of section 7 will we know whether it succeeds.

6.5 *Taking stock*

Although the verdict about the appropriate scope of justice has to be deferred until later, it is time to sum up the arguments made in this chapter. I will concentrate on sections 6.4.2 to 6.4.4, since this is where the actual work has been done. Our starting point, remember, was my dispute with liberal egalitarians as to whether natural endowments and social background should be deemed an illegitimate influence on

the distribution of income, or whether their impact should be taken as part of the given. My strategy has been two-pronged, reflecting the fact that a liberal egalitarian's concern about income inequalities due to natural endowments and social background may rest on two different motivations. The impression of injustice may be triggered by the inequality of opportunity to earn a certain income itself or, alternatively, by the results of this inequality of opportunity in terms of income differentials.

The insights we have gained in trying to adjudicate between a minimalist and an expansive conception of justice can be grouped into three categories:

- 1) Both prongs of my strategy rely on a detailed investigation into *how the influence of natural endowment and social background on income inequalities actually works*. This influence takes two principal forms. First, the generic nature of talents leads to *intra*-professional wage differentials. Second, since opportunity confers choice, the talented have a better chance to get the more lucrative *kinds* of jobs, too.

The point to note in this dynamic picture of opportunities I sketched is that generic talents will impact on the distribution of social advantages in any conceivable human society. The human condition is such that if we extend our *scope* of justice to bring these influences within its realm, the *reach* of our system of justice is bound to fall short.

However, the dynamic picture equally highlights the possibility of “levelling up” the opportunity set of those who start out at a disadvantage before they enter the labour market.

- 2) *For the deontologically motivated liberal egalitarian*, the picture sketched under 1) acts as a severe constraint. Given the pervasiveness of the effects of inequality of opportunity, in the realm of choice in particular, consistency requires Deon to either bite the bullet and extend his compensation paradigm or drop it altogether. Since the former option is unattractive, Deon's best bet to express his concern about inequality of opportunity consists in adopting an expansive conception of justice concerning education (condition a), and thereby levelling the playing field as much as possible. Yet, Deon's prospects of justifying an expansive conception of justice in the realm of incomes itself look slim.

- 3) *As to the liberal egalitarian inclined towards consequentialism*, Conse, her case for an expansive conception of justice depends on two factors. First, the judgement that income differentials are objectionably big; and second, the empirical assumption that differences in natural endowments and social background substantially contribute to these income differentials. I agree with the first point, and we have seen that some influence of the kind asserted in the second is inevitable. This, however, leaves open two questions. First, is the influence of natural endowments and social background substantial? Second, why assume that all other determinants of income differentials are legitimate?

Addressing the second question, my suggestion has been that the liberal egalitarian trust in the market as a just institution of income distribution is misplaced. If I can substantiate this point, this might be sufficient to exculpate natural endowments and social background, and hence strengthen the case for a minimalist conception of justice in the space of incomes. The strategy, to be pursued in the next chapter, will consist in driving a wedge between the market distribution of income and one that reflects people's contributions to the productive process (condition b).

In sum, the job is half done. Deon's position looks decisively weakened, but Conse's case for an expansive conception of justice remains in contention. Meritocracy is still on the defensive, but we now have a clear strategy to secure its comeback.

6.5.1 *Looking ahead*

Against the background of a political spectrum, it might seem curious that I now find myself fighting libertarians and liberal egalitarians on the same front. The explanation lies in the fact that, despite their various other disagreements, both camps accept the market as our institution of choice for the distribution of income.

To pre-empt misunderstanding, I should stress at this point that I am not about to launch a fundamental critique of the market. In particular, I do not want to question the enormous value of the price system in processing vast amounts of information, a feat that centralised planning is unable to replicate.⁸² Yet, as pointed

⁸² Cf. the classic argument along these lines by Friedrich von Hayek (e.g. 1936).

out in section 5.4.3, there are contexts, like the provision of public or merit goods, where we decide not to rely on the market mechanism. Similarly, in the case of distributive questions, I am not saying that we should now make all normative judgements about people's incomes "manually" so to say. At the same time, the market as the central institution governing the distribution of income in our society should certainly be subject to moral scrutiny. And if our normative judgements about what constitutes a just distribution of income significantly diverge from the market outcome, priority should be given to the former.

As a second note of caution, I should add that unqualified reference to "the market mechanism" can be highly misleading. As we shall see in what follows, the reality of income distribution is a far cry from the tidy picture suggested by economic theory.

To anticipate the direction, in which the next chapter will take us, let me once again compare the liberal egalitarian position with my own. We agree that current income inequalities are excessive, a belief that unites us against the libertarian. Yet, there are two different ways to look at these excessive income differentials, blaming individual differences or the market system respectively. As we have seen, the liberal egalitarian reaction is to blame individual differences and, insofar as they are undeserved, call for compensation.

My reaction, on the other hand, is to question whether the enormous leverage that the market system grants these individual differences is justified. Expressed in terms of the mapping introduced in section 5, I will in section 7 identify a distributively relevant similarity between people to suggest that the answer to this question is negative.

7 Distributive Lessons from Division of Labour

“That’s one small step for a man, one giant leap for mankind.” Sceptics today still mutter that Neil Armstrong set foot on the well-constructed stage of a secret Pentagon film studio rather than the moon. Their conspiracy theories point to an alleged waving of the US flag in the nonexistent lunar wind, as well as other details “unearthed” by pedantic investigations. Those who only have a selective memory of the wild 1960s feel deprived of one of the few certainties to cling on to.

Let me make matters worse by suggesting that even that famous quote, which accompanied Armstrong’s “landing,” is not as straightforward as it sounds. After all, from the point of view of an individual, does it not seem a giant leap indeed to set foot on the moon? At the same time, given the co-operative effort of the thousands of people who worked to make this dream possible, is it really such an amazing achievement from the perspective of mankind? On this view, Armstrong should rather have said: “That’s one giant leap for a man, one small step for mankind.”

Whereas the actual quote focuses on the contribution the individual makes to the social venture, my modified version emphasises the individual achievement made possible by social co-operation. Both are legitimate and important perspectives, and both must have played a role in Adam Smith’s mind when he identified the division of labour as the principal engine behind the wealth of nations. On the one hand, projects like landing on the moon only become possible through the division of labour and the specialisation as well as collaboration it entails; the result, the “giant leap for mankind,” represents far more than the sum of what the individuals would have been able to achieve in autarky. On the other hand, when the *co-operative surplus* that has been produced in this way is distributed, the result is a “giant leap for the individual” in relation to what he would have achieved on his own. Given the benefits to be reaped from co-operation for the individual, no wonder Adam Smith saw the division of labour as the engine of growth.

However, it is plainly obvious that the co-operative surplus is by no means handed out evenly in our society today. The Armstrongs of this world get a larger share than those who clean the NASA offices at Cape Canaveral. Despite the significance its founding father attributed to the division of labour, the discipline of

economics has paid little attention to the questions of how the benefits of co-operation are and should be distributed.

This chapter intends to bring these questions into focus. Its conclusion, namely the argument for an *equal* distribution of the co-operative surplus, is not new, yet I present a new and stronger case for it.⁸³ One advantage of my approach, so I hope to convince you, lies in combining arguments about distributive justice with an analysis of the economic activity they refer to.

In section 7.1, taking the division of labour seriously is shown to have substantial consequences for the justification of what may be called a “market-based” distribution of income. The case for tolerating inequalities of income on the basis that they reflect a scarcity in people’s skills is not refuted, but it is seriously reduced in its scope.

We then, in section 7.2, turn to one of the perennial questions of economic theory: How can it be that the division of labour, at the heart of the theory put forward by the discipline’s founders, has been all but marginalised in neo-classical economics? The standard answer to this question lies in the incompatibility between the increasing returns that are characteristic of division of labour on the one hand, and the perfect competition equilibrium models that have come to dominate the discipline on the other. In economic reality, in contrast, surplus à la Smith abounds. We will try to establish in whose hands this surplus ends up under the economic arrangements of contemporary societies. The question of distribution will be addressed on two, closely related, levels: economy-wide as well as within firms.

Finally, section 7.3 tackles these two distributive problems from a normative perspective. As far as the economy as a whole is concerned, we rule out the taxing away of the entire co-operative surplus as a policy option, since its costs in terms of economic disincentives would be too high. Second, and here lies the focus of this last section, we spell out the case for employees having an equal share in company profits. As we shall see, one crucial limitation of this proposal lies in its inability to

⁸³ Cf. the comparison to David Gauthier’s argument in section 7.3.1. For another argument for equal shares in the social surplus, cf. John Baker (1992). In contrast to my position, Baker views income as a compensation for the costs incurred in doing one’s job, rather than as reflecting one’s contribution to the productive process (cf. the distinctions I introduced in section 6.3).

address already existing inequalities in income that represent the cumulative effect of an unjust distribution of surplus in the past.

7.1 Justifying a market-based distribution of income

Views on what distributions of income should count as just can be represented as lying on a spectrum ranging from a strictly egalitarian doctrine at one extreme, to a position prepared to tolerate substantial inequalities in income at the other. The standard criterion of adjudication between the various theories on this spectrum is to examine how well they are able to underpin their intuitions about justice with substantial arguments.

Towards the egalitarian end of the spectrum, there is a strong sense that equality of income, if not an end in itself, will be instrumental in providing people with an equality of opportunity, of capability, or of some other measure of human flourishing considered to be of independent value.⁸⁴ Towards the other end, a defence of inequalities based on the market mechanism and its functioning is usually regarded as the strongest horse in the stable. People are entitled, it is claimed, to the reward the market pays them for their respective talents and skills – even if those talents and skills vary widely and hence lead to differential remuneration. In this section, I hope to demonstrate that the concept of division of labour seriously limits the scope of this latter argument.

To begin with, it is essential to identify more clearly the intuition that hides behind the above argument for accepting market inequalities. It is true that the central distributive mechanism of our society, the market, rests on foundations that are at least partly inegalitarian. Its assignment of exchange-value functions according to the principle of scarcity, i.e. the relation between usefulness and availability of goods and services. In the context of income distribution, the scarcity of people's marketable skills determines their remuneration on the labour market. The diversity of human beings and their skills, combined with considerable differences in the perceived usefulness of certain work roles in society, is bound to result in an unequal

⁸⁴ We have discussed the merits of what I called distributive egalitarianism in section 5.

distribution of income. In previous chapters, we have used the notion of a mapping to picture this relationship.

The intuition that is called upon to legitimise these differential rewards is captured by the notion of *self-ownership*. The concept has its origins in the political philosophy of John Locke. Although it represents a cornerstone of libertarian theories of justice like Robert Nozick's, it is also endorsed by most liberal theories of the left and even by Marxist ones.⁸⁵ The concept can be usefully divided into two separate propositions:

- a) Each person is the morally rightful owner of herself and, in particular, of her productive capacities.
- b) People are entitled to the fruits of their labour.

Throughout this chapter, I will refer to component a) as the autonomy claim, and to component b) as the “transmissibility argument,”⁸⁶ which holds that entitlement is transferred from natural to other assets. In what follows, the argument is not that either of these components of the self-ownership thesis is implausible, but rather that their intuitive force only extends to a very limited proportion of the income to be distributed in society. The division of labour is key to understanding this constraint.

One of the prime virtues of the market, its advocates tell us, is the impersonal or atomistic character of the exchanges taking place – people trading *means* that they subsequently use to pursue their diverse, and in many cases even conflicting, *ends*. The benefits of this feature of the market are indeed hard to overestimate, since the price mechanism that regulates these exchanges processes an amount of information dispersed throughout the economy, which no central administrative authority could possibly match. This is the classic Hayekian argument in favour of the market.

⁸⁵ In his multi-faceted analysis of self-ownership, G.A. Cohen recognises the concept as “the organising centre of libertarianism.” (1995: 12) Cohen lays particular emphasis on the implications of the self-ownership thesis for the appropriation and ownership of external resources, thereby addressing what is widely considered to be one of the most controversial planks of the libertarian position. Our focus here is a different one, namely to assess the role of self-ownership in justifying a market-based distribution of income.

⁸⁶ I borrow this term from Stephen Perry (1997). The transmissibility argument is equivalent to the position that Amartya Sen (1985) discusses, and rejects, under the name “personal production view.”

However, it is plain to see that people's ends do in many cases overlap or coincide, even when interacting on the market. For instance, people co-operate by dividing tasks into the various parts needed to accomplish them. As Adam Smith has told us, this division of labour and the specialisation it entails increase productivity and lay the foundations for the wealth of the nation. If one does not want to make the strong claim that division of labour implies the pursuit of a *common* end, it is sufficient to postulate an *interdependence* both between the productivity of the participants in this co-operative endeavour and between the individual ends they can pursue on the basis of this productivity. This interdependence highlights the fact that the achievement of the individual is contingent on an external factor, namely the co-operative effort implicit in the division of labour. To put it bluntly, Neil Armstrong would not have made it to the moon by himself.

This interdependence considerably undermines the status of the concept of self-ownership as a comprehensive distributive principle. In fact, we will presently distinguish two different ways in which it does so.

If there is any controversy surrounding the concept of self-ownership, it usually concerns the transmissibility argument, whereas the autonomy claim enjoys widespread acceptance. Under closer scrutiny, this seems surprising. When we assert that each person "owns herself," where do we draw the line to delineate the mental and physical powers – or productive capacities – this statement refers to? Surely, we do not want to limit ourselves to the innate gifts bestowed upon us in the form of rational agency and muscle power. We rather want to say that the powers we acquire in the process of growing up are equally constitutive of our "self." To stick with our example, Neil Armstrong fully owns his capacity to make the necessary calculations on board of Apollo 11, as well as the knowledge of how to use the force of its rocket engines to steer it through space.

At this point, the concept of ownership becomes ambiguous. After all, neither did Armstrong invent calculus nor can he claim to have designed the first spacecraft. We should distinguish between 1) A *practical* sense of ownership, which acknowledges these skills – using calculus and steering a ship through space – as constitutive elements of the self and protects the individual's freedom to deploy them as he sees fit, and 2) a sense of ownership that reflects the *origins* of the skills in question. In the context of entitlements to the income that will be generated as soon

as these skills are put to use, the second notion seems more relevant. This second notion of ownership is also what underlies, for instance, patent laws.

These considerations underline the fact that many things we do, and probably most things we do with the intention to earn a living, presuppose an enormous stock of social capital in the form of knowledge and technology. Armstrong's solving of a mathematical problem or exploiting the power of rocket engines can thus at least partly be regarded as an *intertemporal* division of labour between past generations, who supply the tools, and Armstrong, who contributes the effort of applying these tools to the task at hand. Needless to say, this picture represents a substantial qualification of his achievement.

Let me add a qualification regarding this argument about intertemporal division of labour. The contingency of my achievements on a substantial stock of social capital may indeed be used to draw into question *my* entitlements, but then what? Apart from the fact that past generations have already been remunerated for their inventions and discoveries we now use, they are no longer around to collect any royalties on our use of "their" social capital. In other words, the intertemporal division of labour, though it may be instrumental in highlighting the limits of the concept of self-ownership, will hardly help us in addressing normative distributive questions today.

In addition to the intertemporal division of labour, there is the *classic, Smithian* version of the phenomenon. The dividing up of a task, particularly in a context of manufacturing, has an enormous, positive impact on productivity. This second of our two challenges is made to the transmissibility argument of the self-ownership thesis. Although we are not questioning a person's entitlement to the fruits of her labour, this leaves open the issue of what should count as such in the first place. It appears that the scope of the transmissibility argument diminishes drastically in the face of division of labour.

Suppose the co-operation of others were taken away from me. I would have to manufacture or provide all goods and services I intend to consume or use myself. Obviously, I would not be much good at any of these tasks, since my autarky would force me to switch from a deep knowledge of one specialised area to a shallow

knowledge of many.⁸⁷ Had Armstrong been faced with the project of flying to the moon by himself, he most likely would have never even got to the stage of constructing his spacecraft. As emphasised before, individual productivity in a specialised economy is contingent on this interdependence between the various professions.

The notion of division of labour can refer to a diverse range of levels of co-operation. Already back in Adam Smith, we find the classic example of the pin factory alongside references to the beneficial effects of an economy-wide division of labour. Parallel arguments may also be construed at intermediate levels of co-operation like industries, or for units smaller than firms like households. In subsequent sections of this chapter, we shall be preoccupied with the *economy-wide* or, as one might say, *social* division of labour as well as with the *intra-firm* division of labour.

So, to sum up this section, how does the presence of division of labour limit the applicability of the concept of self-ownership to the distribution of income? Self-ownership, as we have seen, postulates the individual's full ownership of her productive capacities as well as of the rewards that flow from putting these capacities to use. Division of labour, via the specialisation it entails, makes possible a multiplication in the productivity of these capacities. If my achievements are in this sense contingent on the co-operation of others, I claim, it only seems plausible that my entitlements that flow from this co-operation are contingent on the claims of others, too. We have identified two kinds of division of labour that put into perspective the extent to which individuals can claim credit for the contributions they make to society. They are able to build on an immense stock of existing social capital accumulated by past generations, and they can draw on the co-operation of others through the division of labour, both of which boost their productivity.

The concept of self-ownership rests on the same individualistic foundations that advocates of the market praise as one of its great virtues. Yet, it is precisely this

⁸⁷ Note that this is different from what may be called an argument from an 'economic state of nature.' In the counterfactual economic state of nature, not only do I live in autarky, but I also lack the social capital that has been built up by previous generations. In the context of income distribution, the counterfactual of autarky is more relevant, for the simple reason pointed out above that it does not make sense to assign entitlements to members of past generations.

atomistic character that renders self-ownership an inadequate conceptual tool to tell us anything about how the co-operative surplus should be distributed. Its usefulness as a basis for entitlements is limited to that part of total income *not* generated by the productivity gains through division of labour. The above arguments give us reason to think that under what we have called a market-based distribution, this proportion will be very small indeed. Granted, the market preserves the intuition of self-ownership, but the incomes it allocates by far overshoot the entitlements this concept legitimises.⁸⁸ Against this background, attempts to justify significant inequalities in income by appealing to the combination of the principle of scarcity with self-ownership are ill-founded.

Adam Smith, it emerges, was not exaggerating: Surplus abounds under a system of division of labour. One reason why I chose the example of mankind's first mission to the moon is its nice illustration of both the possibilities that co-operation through the division of labour opens up and of the size of the surplus thereby created. Anticipating section 7.3, the crucial question now becomes: Who is entitled to this surplus? Entitlements based on individual achievements that are due to external factors like the co-operation of others should be somewhat *weaker* than those based on the intuitively very strong, but as we have seen rather narrow, grounds of self-ownership. More importantly, on the plausible assumption that the level of interdependence between different economic activities does not vary a great deal, there is a case for distributing these weak entitlements *equally*. In order to spell out these arguments in more detail though, it is instrumental to gain a better understanding of the economics of the division of labour first.

7.2 *Division of labour – division of economics?*

The purpose of this section is twofold. The first is linked to the composition of my target audience. Under the best case scenario, the political philosopher will accept the limitations of the self-ownership concept presented above, while the economist is

⁸⁸ In their recent book, *The Myth of Ownership*, Liam Murphy and Thomas Nagel investigate this phenomenon from the slightly different angle of taxation. "The natural idea that people deserve to be rewarded for thrift and industry," they critically observe, "slides into the much broader notion that all of pretax income can be regarded as a reward for those virtues." (2002: 36) My argument from the division of labour can be interpreted as *one* reason why this broader notion is unacceptable.

likely to be sceptical: For a start, surpluses in neo-classical economics are much less *en vogue* than they were in Smith's day; besides, the market forces of supply and demand seem to handle their distribution just fine. Under the worst-case scenario, of course, the economist has stopped reading already. But if you have made it to this point, I am confident of keeping you on board until the hopefully not too bitter end, and of showing that the above scepticism is unfounded. The second, more substantial, purpose of this section is to set out the theoretical insights of economics into the phenomenon of division of labour and the mechanism by which it generates a surplus. Both the genesis and the actual distribution of the surplus are bound to influence the extent to which normative considerations can be put into practice. And both are best understood in economic analysis.

To put the suspicion of economists into context, we need to add a bit of jargon that I have so far only used implicitly. In economics, the productivity rise that division of labour and the parallel process of specialisation make possible is usually referred to as the phenomenon of *increasing returns*. As we have seen, Adam Smith saw increasing returns from division of labour as the main engine of economic growth. Curiously, one of the assumptions of the standard model in today's neo-classical paradigm, namely the perfect competition equilibrium model, is the *absence* of increasing returns. The powerful proof of the existence of a unique equilibrium in this model depends on this assumption. How has the discipline manoeuvred itself so far afield from the views of its founding father? Which of the two views is correct, provided this is even the right question to ask?

These questions invite a brief excursion into the history of the increasing returns debate, which, at times, has been conducted with considerably more vigour than today.⁸⁹ To pre-empt ambiguities, it is essential to mention an important distinction between two kinds of increasing returns up front.

The first kind represents what may be called increasing returns *to scale* and captures the straightforward idea that bigger operations will yield both technical advantages and the ability to spread fixed costs over a larger output. Exploiting these

⁸⁹ One valuable contribution to reverse this trend is the anthology *The Return to Increasing Returns*, edited by James Buchanan and Yong Yoon (1994). It contains several of the articles cited in this chapter, and has proved particularly helpful in assembling the material that is presented over the next few paragraphs.

economies of scale generates a surplus, but one that is based on the higher return on capital rather than on the benefits of specialised labour. To delineate it from the co-operative surplus due to the division of labour, I will call this the *capital surplus*.⁹⁰ There is no obvious connection between economies of scale and the division of labour, but we shall see that the incentives for firms created by economies of scale do play a role in the *distribution* of the co-operative surplus. The converse concept, namely diminishing returns to scale, refers to the decreasing effect of using more of one factor of production while keeping the others constant. While an adequate tool for analysing the use of land when interest in agricultural questions dominated economics, this concept owes its prominence in contemporary economics textbooks to the prevalence of static equilibrium analysis. Diminishing returns play no role in this chapter.

The second kind of increasing returns corresponds more closely to what Adam Smith had in mind. In short, the bigger the market, the more sophisticated the division of labour in society will be.⁹¹ The specialisation inherent in this division of labour yields higher productivity or *economies of division of labour*. In contemporary economic literature, this kind of increasing returns is frequently referred to as *network effects*. Note that a process of economic growth initiated by such network effects will, in one respect, have the *opposite* effect of economies of scale. Whereas the latter result in industrial concentration and large-scale production, economic growth à la Smith is characterised by industrial differentiation into the supply of ever more fine-grained intermediate goods. As the market grows and, simultaneously, as new technologies become available, more new enterprises become profitable that cut across the existing range of commodities. To take a contemporary example, *one* reason why the development of fuel cells is taking off is that their use is now expected to be profitable in a wider range of applications than previously.

⁹⁰ I am not saying that this is the only way in which capital contributes to the creation of surplus. Of course, it also does so by making the division of *labour* more productive through technological advances and new machinery. However, as we will see in discussing the second kind of increasing returns, this effect is not dependent on the *scale* of production we are concerned with here, but on the overall size of the market.

⁹¹ Cf. the third chapter of the first volume of *The Wealth of Nations*. Here, this insight is presented in the form of a theorem that simultaneously heads the chapter: "That the Division of Labour Is Limited by the Extent of the Market."

The debate surrounding increasing returns is at times both confused and confusing, which makes it essential to keep in mind this distinction between economies of scale on the one hand, and economies of division of labour on the other. At the same time, it has to be acknowledged that delineating the two concepts in practice can often be difficult. There appears to be a mutually reinforcing effect between specialisation of labour and sophistication of technology, extending to the benefits that flow from them.

Now back to our historical excursion itself. I hope to stir up a minimum of controversy when postulating that increasing returns as viewed by Smith on the one hand, and competitive pressures on the other, represent two central phenomena of a market economy. Given the period of unprecedented economic expansion of the late 18th as well as the better part of the 19th century, it is not surprising that Smith as well as his successors were preoccupied with the phenomenon of economies of division of labour. When the unsustainable growth rate of industrialisation slowed towards the end of the 19th century, the equally plausible theoretical response was to give more weight to the aspect of competition, resulting in the so-called marginal revolution and the development of equilibrium models. These provided a framework to address questions of resource allocation, an aspect which classical political economy had not been preoccupied with. However, constructing a comprehensive theory of allocation came at a cost on two counts.

First, in order to make the assumptions of perfect competition and profit-maximisation consistent with one another, one had to assume linear production functions and therefore, rather implausibly, an absence of increasing returns *to scale*. In an attempt to avoid this unattractive choice, Alfred Marshall (1920) postulated the constant returns to scale required by competitive markets *within* the firm, while at the same time allowing what he called “external” economies across industries or in the economy as a whole. Marshall was trying, one might say, to have his cake and eat it. However, the notion of external economies was controversial from its inception, and several attempts were made to rescue the common sense idea of economies of scale within firms. The conceptual challenge of this project lay in coming up with an explanation why increasing returns of this kind would not automatically lead to industries being dominated by monopolies. Piero Sraffa (1926) is generally credited with the most fruitful reply to this challenge. A multi-firm competitive equilibrium

was possible, so he argued, because customers are not indifferent between the products of the various firms.⁹² Abandoning this assumption of product homogeneity paved the way for the formulation of the theories of imperfect and monopolistic competition in the early 1930s (Robinson and Chamberlin respectively, both 1933). The new theories could accommodate both internal and external economies as characterised by Marshall, and so the old conflict between perfect competition and increasing returns seemed resolved in favour of the latter. Unfortunately, however, attempts to formulate either of these new theories in a *general* – as opposed to partial – equilibrium framework to date have failed. Many economists believe that such a formulation is possible in principle, but it is *this* failure which explains why perfect competition equilibrium models still function as the benchmark in economics today, and which is at the origin of the conflict set out at the beginning of this section.⁹³ Rather than saying that increasing returns to scale have been neglected in economics, it seems more appropriate to see them as a sacrifice on the methodological altar of a discipline that values formalisation more than empirical adequacy. People disagree about which is worse.

Let us now look at the second sense in which pursuing the neoclassical preoccupation with questions of resource allocation has proved costly. The notion of *economies of division of labour* also turned out to be a conceptual casualty of the shift in paradigm. Alfred Marshall's equilibrium model of supply and demand and, in particular, his notion of "external" economies could not accommodate the emphasis on specialisation and the division of labour that had been constitutive of classical economics. Since Marshall was himself heavily influenced by classical economic thought, this side-effect of his progress on resource allocation in the neoclassical spirit might have been unintended, but for that it has been no less consequential for the development of the discipline ever since. Only on rare occasions have theorists attempted to revive the tradition of classical political economy to emphasise *economic development* through time rather than allocative questions in a static framework. The *locus classicus* here is Allyn Young (1928), who recapitulates Adam

⁹² This implies that not only industries, but also firms face downward-sloping demand curves. Support for this view is provided by the argument that invading the market of a competitor usually is costly.

⁹³ The entry on "perfectly and imperfectly competitive markets" in the *New Palgrave* dictionary of economics puts it rather poignantly: "... the dominance of perfectly competitive methods should probably be viewed as a reflection of the weakness of imperfectly competitive analysis."

Smith's message that the economy-wide increasing returns based on the division of labour represent the engine of growth. Young explicitly criticises Marshall's concept of "external" economies as an at best incomplete representation of economies of division of labour. One essential extension of this revival of economies of division of labour is Nicholas Kaldor's suggestion (1972) that *this* kind of increasing returns undermines the use of equilibrium models in economics altogether.⁹⁴ Given the dynamics set in motion by increasing returns in the form of a constant search for new markets, does the idea of opposite forces balancing out in some optimal point not suggest far too static a picture of the economy? It is no exaggeration to say that this question has generated as much controversy in economics as the conflict between increasing returns *to scale* and the doctrine of perfect competition. The whole school of Austrian economics, for instance, counts among the dissenters, who give an affirmative answer to this question.

What are the lessons to be learnt from this historical flashback? Most importantly in our context, when economists postulate the absence of both kinds of increasing returns we have discussed, we have seen that they are making a *methodological* choice in full awareness of the associated costs in terms of empirical adequacy. Economies of scale are sacrificed for the comprehensive formalisation offered by the perfect competition equilibrium model. The dynamics of economies of division of labour are pushed in the background by the general focus on equilibrium models.

However, methodological choices always have to be made with an eye on the task that the theory in question is designed to solve. When the focus is on allocative questions, the assumptions of neo-classical economics are not uncontroversial, but they are defensible. In contrast, when the issue at stake is distribution, the cards will have to be reshuffled. In fairness to neoclassical theory, it should be added that its proponents do not claim their models to be appropriate tools to analyse normative, distributive questions. To caricature slightly, when contemplating how the co-operative surplus is and should be distributed, it is not advisable to rely on a theory

⁹⁴ An interesting conceptual alternative to Kaldor's position is to give up the idea of a *unique* market equilibrium. What if there is not only one set of prices, but a whole range that support an equilibrium of clearing markets? As we shall briefly see in section 7.3.2, this idea becomes eminently plausible in an economic framework that attributes more prominence to the division of labour than the neoclassical one (cf. Yang, 2001).

that denies the existence of such a surplus. Instead, any sensible normative statements about distribution will have to rely on as accurate a descriptive theory of distribution as possible. In the following subsection, I sketch the basic elements of such a theory.

This brings me to the second sense in which the above, admittedly very selective, historical diversion is important to this chapter. By disentangling and explicating the concepts of division of labour, economies of scale, economies of division of labour, as well as their relations to various forms of competition, we have set the scene for their hopefully unambiguous use in the beginnings of a theory of distribution, which I will now turn to.

7.2.1 *Tracing the surplus*

We now have all the tools in place to account for where the co-operative surplus due to the division of labour actually goes after its creation. Note that what I will say in the remainder of the chapter should not be regarded as a full-fledged theory of distribution for two reasons. First, the discussion concentrates on the distribution of the co-operative *surplus*. At the same time, we shall see that it is not only impossible, but would also be misleading, to bracket entirely the antecedent issue of pre-surplus income. The second qualification makes a normative point. The entitlements that flow from the transmissibility argument of self-ownership and the complementary principle of surplus distribution, which I will suggest in the next section, have one feature in common. They are both assigned on the basis that the individual in question *deserves* them in virtue of the economic contribution she has made. I have outlined my arguments for a desert-based criterion of distributive justice in section 6.3.

My descriptive account of the distribution of surplus can be summarised in the following statements:

- 1) The division of labour produces surplus, exploiting *economies of division of labour*. This process occurs at various levels, including both
 - a) an economy-wide division of labour, and
 - b) a division of labour within firms, where the surplus created under b) represents a subset of the surplus created under a).

- 2) The more competitive the industrial landscape of an economy, the more of the co-operative surplus will be passed on to consumers in the form of lower prices.
- 3) *Economies of scale* provide firms with an incentive to grow. Exploiting these scale economies generates *capital surplus*, contributing to a bigger overall surplus. At the same time, bigger companies will have more market power and make for a less competitive environment.
- 4) The distribution of the so appropriated surplus *within* the firm can be characterised as a bargaining game in which managers tend to outplay ordinary employees.

Let us investigate these statements in more detail. Not much more needs to be said about the creation of economy-wide co-operative surplus, which has been a central theme of the chapter so far. I have also mentioned that the notion of division of labour can refer to a diverse range of levels of co-operation, including the firm. It is conceptually possible, for instance, to distinguish the productivity gains of the employees of a car factory based on their dividing up the various tasks of producing cars on the one hand, from the productivity gains of these same employees based on the overall division of labour in society on the other. The fact that one employee moulds the chassis, say, while another is specialised in applying the paint results in what we might call an *intra-firm* surplus of the first kind, whereas the fact that neither of them has to bake their own bread but can buy it at the corner store produces a surplus of the second kind. Note two things, however. First, despite the possibility of this conceptual differentiation, the widest, i.e. economy-wide or global, division of labour is an encompassing concept. When we arbitrarily zoom in on a lower level of co-operation, like the firm in the present case, referring to the intra-firm co-operative surplus merely means delineating it from the remainder of the overall co-operative surplus, which does not directly arise out of division of labour within the particular firm in question. There exists, in other words, only one co-operative surplus to be distributed. Second, given that a firm has made a profit, we do not have the knowledge to causally attribute this surplus to firm-specific versus general division of labour. Obviously, this epistemic limitation will play a role when asking the question who should be entitled to this surplus. We will come back to this aspect in the next section.

Now to the second item on our list. Whereas the first point concerned the origin of the co-operative surplus, we are now investigating where it ends up. An important clue to the answer lies in the *extent* of competitive pressure on firms. Economic theory offers us a spectrum of scenarios to choose from, ranging from perfect competition on the one hand, to a monopoly with perfect price discrimination on the other. Under perfect competition, prices are driven down to marginal costs, so that the entire generated surplus is passed on to the consumer in the form of lower prices. This scenario represents one of the best illustrations of the intuition set out at the very beginning of this chapter. Division of labour not only results into a “giant leap” for humanity, but the step is equally huge for the individual who receives a slice of the resulting surplus. At the other end of the spectrum of competition, a price-discriminating monopolist would be able to bite off a sizeable slice of the surplus, provided two preconditions hold. First, to be able to charge prices above marginal costs, he needs to put up effective barriers to entry. Second, price-discrimination requires the possibility of partitioning the market into isolated segments.

Needless to say, neither perfect competition nor the extreme case of monopoly exist in practice. Instead, reality is probably closest to the intermediate concepts of imperfect and monopolistic competition. As these names suggest, both competitive and monopolistic elements are constitutive of actual markets. Whether a particular situation tends more towards the one or the other depends on how much of a wedge firms are able to drive between the exchange value on the market and the cost of production.

This takes us up to point three on the list, where things get significantly more complicated. Assume, realistically, that in imperfectly competitive markets, firms do have some market power vis-à-vis both their competitors and their customers, and that firms do make profits. Market power vis-à-vis buyers manifests itself through inelasticities of the demand curve facing the firm, reflecting the fact that the firm has managed to bind customers to its products rather than someone else's. This allows firms to charge a premium over the actual costs of production. Market power vis-à-vis competitors is based on effective barriers to entering both the firm's own market and the industry as a whole. Whereas one might see the first element of this conjunction as roughly corresponding to the ability of firms to generate customer

loyalty in the way mentioned above, one classic example of barriers to entry protecting an entire industry is the exploitation of economies of scale. If large-scale production allows an insider to lower average costs significantly, any potential intruder into the market is faced with the dilemma of either producing at higher cost or not being able to sell all his output in the face of an overall downward-sloping demand curve.

We have acknowledged before that scale economies do not directly influence the size of the co-operative surplus, but that they affect its distribution. Now we see how this process works: The prospect of acquiring market power and making more profits gives firms an incentive to grow and exploit increasing returns to scale. This generates what we have called *capital* surplus. At the same time, it makes for a less competitive industrial landscape and, as a consequence, firms are able to siphon off more of the *co-operative* surplus before it is passed on to the consumer. The question of how to compare and weigh up these two developments will be addressed in the following section concerned with normative aspects of distribution.

To avoid confusion, here is a brief summary of the relations between the two kinds of increasing returns, the surpluses they generate, and the competitive landscape: *Economies of scale* generate capital surplus; as the name suggests, these economies and the size of the surplus depend on the scale of production and hence the size of the firm. *Economies of division of labour* generate co-operative surplus; the size of the surplus depends on the degree of division of labour and therefore, indirectly, on the size of the overall market or economy. Exploiting economies of scale and reaping the capital surplus they generate provides firms with a means to acquire market power and secure profits, reducing the degree of competition across the industry in the process. The reduced downward pressure on prices in a less competitive environment means that a smaller proportion of the *co-operative* surplus is passed on to the consumer.

Finally, addressing the last item on the above list, what happens to the part of the surplus that is not being passed on to the consumer? Who gets to keep a firm's profits? Anticipating the project of the next section, namely to discuss entitlements to the co-operative surplus from a normative point of view, it is clear that our present "tracing" of this surplus in the real world cannot stop short of the individual level.

Since we have not addressed the question of intra-firm distribution of surplus so far, we need to take a step back and see what economic theory has to say on this issue.

The firm can be divided into three groups of stakeholders, namely employees, managers, and shareholders. In order to keep the topic of this chapter within manageable bounds, I at this point have to submit a further disclaimer of incompleteness with respect to the theory of distribution I put forward. The financial contribution and willingness to bear risks of shareholders is certainly to be regarded as one of the vital ingredients to the functioning of a firm. Hence, shareholders clearly do have some claim on the co-operative surplus, too. At the same time, their contribution to the co-operative venture is categorically different from that of employees and managers – most importantly in our context, shareholders do not supply their *labour* to the firm. On this basis, I have decided not to open the Pandora's box of including shareholders in the both descriptive and normative perspectives on surplus distribution that will preoccupy us for the rest of the chapter. Instead, we will focus on the relative entitlements of employees and managers *ceteris paribus*.

We would be guilty of a more serious case of myopia if we pretended to be able to evaluate entitlements to surplus in isolation from the antecedent issue of pre-surplus income.⁹⁵ As a preliminary question, then, we need to understand what determines the wages – which I will take to stand for pre-surplus income – of employees and managers.

There are two principal ways to conceptualise how wages are set. The standard microeconomic story holds that wages are equivalent to the value of marginal product, whereas the macroeconomic picture sees wages as a reflection of the contribution individuals make to the co-operative venture. If we take both scale economies and the division of labour seriously, the former approach becomes implausible for two reasons. First, under perfect competition, all factors of production including labour are remunerated according to the value of their marginal product, since competitive pressures would force anyone out of the market who consistently paid higher wages. Allowing for increasing returns to scale, a

⁹⁵ The case for taking seriously the interconnectedness of the two issues will be made in more detail in section 7.3.5.

straightforward point of arithmetic shows that this mechanism breaks down. Given scale economies, marginal product by construction is bigger than average product, and it is not at all clear how remuneration according to marginal product is meant to work here. If interpreted literally, we would end up distributing more than we actually have. Whereas this challenge could still be met by reverting to a distribution of income *proportional* to people's marginal product, the notion of marginal product remuneration has a second, and more fundamental, flaw. It optimistically suggests that we are able to apportion the output of a complex process of co-operation to its individual participants. Managers, so the claim, are more productive than the average worker. Let me emphasize that the problem with this procedure is not merely an epistemic one. Even if we had a much better understanding of the causal nexus behind, say, the production and sale of a car, it would be misleading to claim that the marketing manager is responsible for x-times more of the firm's turnover than the factory floor worker spraying the paint on the chassis. Section 7.1 argued why this is so. A substantial part of the productivity of the employees of a car firm is due to the way they have divided up their overall project into specialised tasks, rather than being attributable to individual achievements. Expressed in the terminology used back then, remuneration according to marginal product takes the normative concept of self-ownership beyond the context in which it legitimately applies.

In contrast, the macroeconomic account of wage determination manages to avoid the misleading concept of marginal product, while at the same time preserving the intuition that individual contributions to the co-operative venture can vary and should receive differential remuneration. Roughly speaking, the difference in wages is explained by reference to inputs rather than outputs. Wages are set by the interplay of the demand for these inputs, i.e. skills, on the labour market on the one hand, and their availability on the other. Suppose, as I believe is fairly realistic, there are three basic determinants of any given wage: hours, qualifications, and the level of responsibility of the job. The first two are straightforward. The more someone works, and the more time she has spent acquiring the skills necessary to do the job, the more she will get paid. As to the third item, let us further assume that responsibility is concentrated in the management functions of a firm. What precisely is the rationale behind managers' paycheques being more generous than those of ordinary employees? Managers are generally said to fulfil two functions within the firm, co-

ordination and motivation. Co-ordination, first of all, is meant to ensure that the overall task at hand, producing cars say, is divided up in the most effective manner so as to maximise the potential surplus of the firm. To realise this potential, managers need to motivate their employees to actually work hard for their money. As Armen Alchian and Harold Demsetz (1972) have pointed out, the importance of this supervisory function increases under conditions of so-called team production, when individual employees have the opportunity to “shirk,” i.e. camouflage their own slack attitude to work behind the achievement of the team. One way to explain the special responsibility inherent in the tasks of co-ordination and motivation makes reference to their impact on the performance of other members of the firm. The management function influences the production function in a way that does not hold *vice versa*. It is this asymmetry that attracts higher wages.

In sum, then, pre-surplus wage differentials can be traced to people working longer hours, having a longer or better suited list of qualifications and set of skills, and bearing more responsibility in their job. Contrary to the logic suggested by marginal product remuneration, however, acknowledging these differential *inputs* to the co-operative venture does not readily translate into the attribution of differential *outputs*.

Now, suppose there is some surplus to be dished out between employees and managers. Alchian and Demsetz (1972), again, argued that the only way to effectively solve the shirking problem is to give the entire surplus to managers. Whereas the moral hazard of workers to free-ride would persist even if they received part of the profit, maximising the incentive for managers to supervise employees *will*, so their claim, reduce slack. I disagree with their conjecture on empirical grounds, which ultimately represent the appropriate basis to evaluate this kind of claim. The trend in recent decades has unequivocally been towards “employee ownership,” supporting the idea that more widespread, albeit smaller, incentives yield increased benefits for the firm. Besides, too big an incentive might tempt an executive into neglecting the long-term interests of the firm for his own short-term benefit, or even into inflating company profits artificially and illegitimately – recent evidence abounds.

Alchian and Demsetz’ approach is widely regarded as the most sophisticated attempt to give an *a priori* reason for awarding management a larger share of the

surplus than ordinary employees. A far more plausible rationalisation of the *de facto* inequalities in the distribution of surplus, to my mind at least, is to see the stakeholders – and again, we ignore shareholders – as being involved in a bargaining game over company profits. Not surprisingly, most of these accounts identify managers as more powerful than employees.⁹⁶ On this view, the managers' bigger share of profits is due to an opportunity to exploit their operational decision-making power for distributive purposes. Note that the hypothesis of income being distributed according to bargaining power implies that there is more than one distributive outcome that supports a market equilibrium. In other words, the constraints imposed on distribution by considerations of allocative efficiency are not as strict as one might have suspected. We will come back to this issue.

At this point, one last piece in the puzzle of the intra-firm distribution of profits remains to be put on the table. How is the bargaining game just sketched compatible with the idea of wages of both employees and managers being determined on external factor markets? Again, recall that under perfect competition, these external factor markets would push everybody's wages down until they equal the value of people's marginal product. On the real world labour market, which is notorious for being particularly prone to "market failure," this downward pressure on wages is not only weakened, but it combines with a phenomenon that may actually cause wages to rise in particular circumstances. Naturally, every employer would like the best-qualified individuals to work for him. Now suppose one firm, for whatever reason, puts up the wages of *one group* among its employees. Rather than going out of business, as perfect competition would predict, the firm will soon face employees of competitors cueing to work for it. This in turn forces these competitors to match the wage hike in order to keep their employees in the job category in question. In labour market terminology, they need to match the increase in the *reservation wage* of their employees. At times when the metaphor of war is used very readily, business journals like to call this process the "war for talent." Evidently, this competition for the most qualified workforce will be exacerbated for those jobs that are particularly important to the success of a firm, i.e. management.

⁹⁶ Cf. Aoki (1984) as one example as well as for a comprehensive overview of this literature.

Combine this with another specificity of the labour market, and it will become clear where my argument is going. Once wages have risen, labour market theorists tell us, they rarely fall; the price of labour is unusually “sticky” compared to other prices. People simply hate to see their paycheques shrink.

Let us now close the loop back to the issue of the distribution of surplus: If a company makes a profit, the bargaining power of managers means that they are the most likely beneficiaries. Add the “war for talent,” and this wage hike is likely to spread to other firms. Finally, given the stickiness of wages, it is reasonable to expect the wage hike to become permanent. Admittedly, this effect can be prevented to some extent by explicitly severing bonuses from regular pay. Yet, as I will aim to show in section 7.3.5, even *some* occurrence of this effect can over time lead to significant inequalities in income, of a kind that cannot be squared with the demands of distributive justice.

7.3 Weak entitlements and second-best solutions

In section 7.1, we established that the division of labour significantly compromises the ability of the concept of self-ownership to justify a market-based distribution of income. To the extent that individual achievements depend on the co-operation of others, entitlements to the so generated surplus need to be based on an additional argument. The function of section 7.2 was both to elucidate the treatment of the concepts of division of labour and increasing returns in economics, and set out in detail the mechanism behind the *de facto* distribution of the co-operative surplus. On the basis of understanding the underlying economics, we are now not only in a position to suggest a normative principle governing the distribution of surplus, but we will also be able to assess the feasibility of putting this principle into practice.

As anticipated at the end of section 7.1, the normative principle defended here calls for an equal distribution of the co-operative surplus. Let us call this the *Equal Surplus Principle*, or ESP. One corollary of ESP is the somewhat weaker status of the entitlements it governs. In contrast to the concept of self-ownership, which justifies an independent and hence stronger entitlement, individual entitlements under the ESP are as interdependent as the generation of the surplus itself.

7.3.1 *A brief excursion*

Prior to defending ESP, this is an opportune moment to delineate my position from the main advocate to date of an equal division of the co-operative surplus, namely David Gauthier in his *Morals by Agreement* (1986). The purpose of the present section is twofold. First, I will identify overlaps and differences between Gauthier's argument and my own. Second, I will claim that my proposal has an answer to the criticism recently voiced by Barbara Fried (2003) against Gauthier and the idea of dividing the co-operative surplus equally.⁹⁷ The actual substantiation of this claim will spill over into section 7.3.2.

As should be obvious from this chapter so far, I share with Gauthier the conviction that the distribution of the co-operative surplus represents one of the central problems and tasks of distributive justice. We indeed argue for the same solution, namely an *equal* division of this surplus. But the respective lines of reasoning to arrive at this conclusion differ significantly.

To see this difference, it is important to put Gauthier's proposal in the context of his overall project in *Morals by Agreement*. Gauthier argues "that the rational principles for making choices, or decisions among possible actions, include some that constrain the actor pursuing his own interest in an impartial way." (Gauthier, 1986: 3) One substantial plank, then, of "The Gauthier Enterprise," as James Buchanan has labelled it, consists in the "attempt to ground cooperative behaviour in rational choice." (1988: 75) The choice to co-operate with one's fellow citizens emerges as the paradigm example of Gauthier's doctrine that it is rational to be moral. As a way of conceptualising the emergence and maintenance of a social order, Gauthier's enterprise represents a philosophical tradition that reaches back to Thomas Hobbes. In our context, the most significant feature of Gauthier's approach is his normative stance towards the division of the co-operative surplus. The just division, so he argues, is determined by a bargaining process among the parties involved in producing the surplus.

⁹⁷ The main attack of Fried's paper is in fact directed at an aspect of Gauthier's proposal that we shall bracket here, namely the link between the division of co-operative surplus and proportionate taxation. My comments will be limited to the two prior questions of what constitutes co-operative surplus in Gauthier and how he justifies its equal distribution.

Here lies the fundamental difference to my approach. True, I also characterise the division of the co-operative surplus as governed by a bargaining process, in the case of intra-firm surplus one between managers, employees, and the here discarded shareholders. In contrast to Gauthier, however, my use of this bargaining process is purely descriptive. My goal is precisely to develop a criterion that allows us to evaluate the outcome of the bargaining process from a normative point of view. For Gauthier, on the other hand, the normative authority rests within the bargaining process itself. *Prima facie*, it might seem puzzling how Gauthier gets from this starting point to advocating an equal division of the co-operative surplus. To see how he does so, and to bring out the contrast to my argument more sharply, it is useful to borrow Barbara Fried's (2003) way of breaking up Gauthier's argument into separate steps.

First, there is the question of *what counts* as the co-operative surplus that is to be distributed. Gauthier's answer (cf. 1986: 270-77) is based on the notion of economic rent, equating the co-operative surplus to the sum of that portion of people's market value that represents rent. Using the example of hockey legend Wayne Gretzky to illustrate his point, Gauthier argues that Gretzky's income far outstrips – well, far outstrips what? As Fried highlights, there is more than one way to define economic rents. The rent paid to a factor of production can be conceived of as the difference between its price and the next best price offered – say Gretzky would have been a decent, but not as outstanding, football player, too; alternatively, rent can be taken as the extramarginal producer surplus paid in non-competitive markets, i.e. that amount by which the price exceeds the one that would obtain in a competitive market – given the scarcity of Gretzky's skill, the premium under this reading would probably be relatively small;⁹⁸ finally, one might say that any amount in excess of the costs of supply of a factor of production constitutes rent, which would extend the notion to the inframarginal producer surplus – in this case the rent would depend on a very subjective factor, namely the minimum amount of money Gretzky would be prepared to play hockey for (cf. Fried, 2003: 224). Fried suggests that Gauthier oscillates between these three interpretations of the notion of economic

⁹⁸ Dan Hausman even goes as far as to claim that there will be no Wayne Gretzkys in a competitive market, "because there must be many buyers and sellers to eliminate the possibility of bargaining." (1989: 325) This once again highlights the constraining assumption of perfect competition.

rent. However, she remarks that his argument would also support a fourth, broader definition of rent, namely as including “the entire market return to individuals above what they could have gotten in autarchic production.” (2003: 226; cf. also Buchanan, 1988: 88) *This* is the notion of co-operative surplus that I have been using in this chapter. Instead of drifting into an interpretative exercise about which notion of economic rent Gauthier meant to use, or should have used, I want to draw two lessons from all of this. First, even if it may not be clear that Gauthier and I are talking about the same co-operative surplus, our analyses on this first issue at least seem compatible. Second, given that Fried’s criticism of Gauthier’s conclusion about how to distribute the surplus is independent of which definition of rent is employed, it would seem to affect my proposal, too.

So, and this is the second step, how does Gauthier argue for an equal distribution of the co-operative surplus, and on what grounds does Fried object to this argument? The bargain between the co-operators, Gauthier suggests, will obey the principle of *minimax relative concession*. The idea is the following. Entering into a co-operative venture, each person will put forward a claim on the co-operative surplus. Since these claims will exceed the surplus available, they will be adjudicated by equalising the concessions across individuals – the maximum relative concession will be minimised. It is easy to see that this procedure will yield an equal division of the co-operative surplus if, and only if, the initial claims are equal, too. This is where the controversy lies. Gauthier assumes that “each person must claim the co-operative surplus that affords him maximum utility.” (1986: 143) This means that each co-operator will lay claim to marginally less than the entire surplus, leaving just enough spoils on the table to make it worthwhile for the others to participate in the joint venture. The combination of all co-operators claiming just short of the entire surplus and minimax relative concession results in an equal distribution of the surplus.

Fried’s objection is directed at this crucial assumption of Gauthier’s bargaining process. The idea behind an equal claim to the surplus, namely that each co-operator is equally responsible for making the surplus available, she derides as plainly implausible. Fried asserts that such a position is subject to an “attack from libertarian quarters for being sentimentalised, communitarian mush,” (2003: 230) and she sounds as if she believes this criticism to be justified. Instead, so her suggestion, each co-operator’s share in the surplus should somehow reflect the assets he brings to the

table. The division *of* the surplus, in other words, should reflect contributions *to* the surplus.

For completeness' sake, I should mention that Gauthier, albeit briefly, does address Fried's worry in his example about Ms Macquarrie, the pharmaceutical chemist, and her assistant, Mr O'Rourke. "When as a result of her experiments, Ms Macquarrie discovers a wonder drug that makes her a millionaire, must she divide her royalties with O'Rourke? Of course not." (Gauthier, 1986: 153) Gauthier's comments on the example, and his contrasting example about Sam McGee and Grasp, the banker, suggest that the claim of co-operators is in some way dependent on the extent to which they are replaceable. Since Ms Macquarrie could have hired someone other than O'Rourke as assistant, he does not have an equal claim. Two comments on this. First, this represents a heavy qualifier for Gauthier's advocacy of an equal distribution of the co-operative surplus. Since cases where co-operators are irreplaceable seem rare, it is tempting to think that an equal division of the co-operative surplus will in fact be the exception rather than the rule in a Gauthierian world. Second, despite the fact that one would have expected Gauthier to elaborate on these examples, it has to count as a serious omission of Fried's paper not to mention them.

I do not intend to take a stance on this dispute between Fried and Gauthier here. The central question in our context is whether Fried's criticism undermines the *Equal Surplus Principle*. Should the co-operative surplus be distributed proportionately rather than equally? For instance, if the banker is seen to fulfil a more vital role in society than the baker, and the manager deemed more critical to the company's success than the ordinary employee, should the distribution of the co-operative surplus in the respective cases of society and firm not reflect this?

The next section will assess this objection in more detail, but let me anticipate my answer in order to round off the digression into how my approach differs from David Gauthier's. His position on people's relative claims to the co-operative surplus might be taken to suggest that their contributions to this surplus are equal. In contrast, I do not question the fact that these contributions are different. My argument from division of labour comes in at a prior stage. It is only thanks to the specialisation entailed by the division of labour that people's individual contributions in their final form become possible. The argument for ESP, in other words, rests not

on the indisputably unequal *outputs* of the specialisation process, but on the insight that each co-operator's ability to produce this output is equally contingent on the division of labour in the first place.

Where does this leave me vis-à-vis Gauthier and Fried respectively? I have already mentioned that I am sceptical of Gauthier's move to vest the bargaining process between co-operators with normative authority. But even if we accept such a notion of justice for a moment, measuring the co-operators bargaining power via their individual contributions to the common venture would be misleading. These contributions already presuppose the co-operation, i.e. the division of labour, itself. Recall the argument from section 7.1 that the scope of the flagship libertarian argument of self-ownership is more limited than widely thought. Vis-à-vis Fried, if my putting in perspective of the libertarian position is justified, this will undermine its ability to criticise ESP for being "sentimentalised, communitarian mush."

7.3.2 Defending the Equal Surplus Principle

Note that we had already touched upon the idea of *proportionate* distribution of the co-operative surplus twice before the comparison to David Gauthier's argument. First, recall what we said about the principle of scarcity. The diversity of human beings and their skills, combined with considerable differences in the perceived usefulness of certain work roles in society, is bound to result in an unequal distribution of income. Second, in our brief analysis of the determinants of wages, we acknowledged that people should indeed receive a higher income if they work longer hours, if they are better qualified, or if their job brings with it more responsibilities than others. The catch-phrase here is "the perceived usefulness of certain work roles" in society as a whole or within a company, which is a different way of expressing that some jobs bear more responsibility for the success or failure of the co-operative venture. This statement reminds us of the fact that the concept of self-ownership is not the only route to legitimise inequalities of income – albeit the one most frequently relied upon, which gained it the prominent place in section 7.1. Whereas in the case of self-ownership, the argument flows from people's skills *per se*, we are here concerned with the *work roles* in which these skills are put to use. The difference can be easily illustrated by the fact that a highly talented person is likely to earn more as a doctor than cleaning the street. To use the most

straightforward of analogies, self-ownership concentrates on the supply-side of people's contribution to society, whereas we are now faced with an argument about demand.

The argument for a differential remuneration of work roles is a valid one. However, just like its counterpart based on self-ownership, its power fails to extend to the phenomenon of surplus. Recall the core lesson Adam Smith teaches us about the division of labour and the increasing returns that flow from it. Specialisation is the driving force behind the productivity surge. The specialisation in more highly valued work roles is just as contingent on the division of labour as that in others. The fact that the doctor and the street-cleaner may be said to differ in the depth of their levels of specialisation is beside the point. Their interdependence in terms of the *possibility* to specialise is mutual and of equal status. On this basis, I argue for equal entitlements to the co-operative surplus. The objection we have just addressed merely extends to pre-surplus income.

Even so, it points to a potential lacuna in the overall argument of the chapter. Whereas the division of labour undermines the justification of significant income inequalities by reference to the concept of self-ownership, it is not clear that it provides an argument against the differential, pre-surplus, remuneration of work roles, too. As yet, we have an unsatisfactory understanding of the magnitude in income differentials legitimised by such differences in work roles. In the intra-firm case, we can at least point to the above list of determinants of wages – including hours worked, qualifications, and responsibility – even though the task of interpreting these criteria remains formidable. Across society, however, as for instance in the comparison between the doctor and the street-cleaner, the nature of the various jobs seems too diverse to compare them on the basis of criteria of this kind. More thought needs to be devoted to this question.

Let me add a brief comment on the corollary of the ESP, namely that entitlements to the co-operative surplus are *weaker* than those to what, counterfactually, individuals would have achieved independently. Strictly speaking, one might expect the interdependence of individuals in producing the surplus to give rise to some kind of collective entitlement rather than equal individual claims. However, in a society like ours that not only functions on the basis of individual property rights, but also believes that this institution is highly advantageous for the

functioning of the community, a collective entitlement of the magnitude implied by the above arguments seems undesirable. At the same time, it would be misleading to attribute the same status to entitlements referring to independent *versus* interdependent achievements respectively. It is for this reason that I characterise entitlements to the co-operative surplus as weaker than those to the counterfactual product of autarkic individual labour. The former is governed by ESP, the latter by the concept of self-ownership.

Having spelt out ESP in some more detail, there are likely to be two basic challenges to the principle. First, despite the fact that ESP is underpinned by an intuition about the *economic* contributions to the co-operative venture in question, its dominant motivation is one of *justice*. Might we not, therefore, be turning our back on the market when implementing ESP?⁹⁹ To see why this is not necessarily so, think of a basic Ricardian trade model. Let us use Robinson and Man Friday on their remote island. Even though Robinson is better at both fishing and plucking coconuts than Man Friday, his *comparative* advantage at fishing is a sufficient argument for specialisation. However, the price of fish in terms of coconuts, which determines who will get the gains from specialisation and trade, cannot be determined on the basis of “the market” alone. Due to specialisation, there is no unique solution tangential to both Robinson’s and Man Friday’s production possibility frontiers, but there is a whole range of relative prices of fish and coconuts, and hence a whole range of distributions, in conformity with the market. Economists refer to such a situation as a *corner solution*.¹⁰⁰

This example nicely illustrates the conceptual alternative to Nicholas Kaldor’s outright criticism of equilibrium analysis mentioned at the end of section 7.2. Instead of declaring the dynamic effects of the division of labour incompatible with equilibrium analysis, we can say that more than one set of prices supports an

⁹⁹ I am indebted to Ulrich Müller for drawing my attention to the issue discussed in this paragraph as well as for the example I use.

¹⁰⁰ Yang (2001: 8) defines a corner solution “to an optimisation problem” as “a solution that involves upper and / or lower bound values of some decision variables.” In a society like ours with a sophisticated division of labour, the kind of situation depicted by a corner solution is the rule. This establishes an important link to section 6, where we sought to undermine the liberal egalitarian claim that there is a strong link between differentials in natural endowments and social background on the one hand, and inequalities in income on the other. If situations of the kind described here prevail, this vindicates our criticism that the strength of the stipulated link is contingent on our social arrangements.

economic equilibrium.¹⁰¹ Note, however, that this leaves open the possibility that ESP calls for a distribution that *does not* support an economic equilibrium. This would for instance be the case if our theory of distribution outlined in section 7.2.1 neglected some market forces that put an upper or lower bound on certain wages. However, I see no *prima facie* reason to believe that this is the case.

The second challenge to ESP is likely to be pragmatic rather than conceptual. Arguments from the division of labour suggest that the size of the co-operative surplus as a proportion of total income is considerable. Presumably, the discrepancy between the actual distribution of the surplus and the demands of ESP is so big that the latter will simply be dismissed as infeasible. In spelling out what I see as the practical implications of ESP in the remainder of the chapter, I make considerable concessions to this objection. However, these concessions take the form of a trade-off between distributive justice and other values that the *de facto* division of the surplus needs to respect. Therefore, instead of capitulating up front in the face of a seemingly insurmountable task, my suggestion is to implement ESP as far as we can. In this process, compromises or what one may call second-best solutions from the perspective of justice will have to be accepted on two, by now familiar, levels: the economy as a whole and the firm.

7.3.3 *The economy-wide surplus*

The thought experiment of putting ESP to the test of implementation, which is conducted presently, draws on the resources of economic analysis presented in section 7.2.1. Having “traced” the dispersion of the co-operative surplus throughout the economy and within the firm, where is ESP likely to run into serious difficulties?

Starting with the case of society as a whole, we unexpectedly come across an old acquaintance: the theory of perfect competition. Thanks to the competitive pressure on prices to fall to the level of marginal costs, perfect competition represents a scenario where the entire co-operative surplus is passed on to the consumer in the form of lower prices, and is hence distributed evenly. With this in

¹⁰¹ Yang (2001) can be read as providing an economic theory compatible with such an underdetermination of economic equilibrium. Interestingly, his account puts the same emphasis on the classical insights about the division of labour as this chapter does. The specialisation characteristic of the division of labour entails the widespread existence of corner solutions of the sort outlined in the Robinson Crusoe example.

mind, one can hardly resist a feeling of irony when many egalitarians loathe the neo-classical paradigm in economics and condemn the market as the source of intolerable inequality. In fact, perfect competition is *the only* such scenario where an equal distribution of the surplus represents the – hypothetical – market outcome and not the result of some government intervention. This can be interpreted as an argument for competition not from the usual perspective of efficiency, but from the point of view of distributive justice.

Does this mean we should join economists in deploring that perfect competition does not exist in practice? Not so fast. The presence of increasing returns *to scale* associated with imperfect competition reduces costs and therefore makes the overall surplus even bigger – by complementing the co-operative surplus with what we have called capital surplus. To what extent this additional surplus will be passed on to consumers, or to what extent prices may in fact rise as a result, depends on the level of market power that firms manage to obtain. But even if the direct benefit to consumers from the lower average costs of large-scale production were smaller compared to the downward pressure on prices under perfect competition, this would not warrant a decision to forego a bigger overall surplus – unless one was, implausibly, committed to the ideal of equality for its own sake.

Well, you might say, can we not have our bigger cake and eat it? The most radical proposal would be to levy a 100% tax on corporate profits and evenly redistribute the revenue to consumers. Unfortunately, there is at least one considerable problem with this idea. It would have a devastating effect on incentives. The strife for markets and profits represents the most important single motivation behind economic activity, and it needs to be respected. If Adam Smith was right in identifying the division of labour as the *engine* of growth, the incentive to make profit appears to be the *ignition* of this engine. More generally, and as already indicated in section 5.4.3, it will be prudent to heed one of the elementary lessons of the public choice literature in our present context: Market failure, in this case from the perspective of distributive justice, is no *a priori* argument for government intervention, since it might turn out to make matters worse.

Still, I would say, ESP warrants a policy mix that contains both some taxation of corporate profits and an effective anti-trust regulation. The taxation should be subject to the restriction that the corresponding spending be earmarked for projects

that benefit everyone in society. Putting a cap on firms' market power while preserving their incentives, on the other hand, should be welcomed unconditionally. For the proportion of surplus that firms manage to siphon off even after tax, we will have to find a second-best solution. ESP can help us in doing so.¹⁰²

7.3.4 *The intra-firm surplus*

Allowing firms to internalise some of the co-operative surplus may seem like a considerable compromise on ESP. Let me venture to argue that the net increase in the overall inequality of income might in fact be negligible compared to the, distributively speaking, ideal case of perfect competition; provided, that is, ESP is respected *within* the firm.

One way to go would be to call for the co-operative surplus to be handed out evenly to shareholders, whilst at the same time promoting as wide a shareholder basis as possible in society. It seems fair to say that this has always been part of the intention behind a shareholder structure, but that the management of companies has successfully wrestled away more and more claims to profits from shareholders. Given my decision to by and large bracket considerations concerning shareholders, I will not go further down this route.

Rather, the option we will examine here is to hand out equal shares of the surplus to all working members of the firm, i.e. management and employees.¹⁰³ In fact, there is a sense in which the case for ESP may be even stronger within the firm than when applied to society as a whole. To the extent that the division of labour within the firm involves so-called team production, individual achievements are not only interdependent, but the end product can frequently not even be traced back to individual contributions. In other words, even if we wanted to – in contrast to what we said about the inadequacy of remuneration according to marginal product –, attributing differential outputs to individuals would in some cases prove impossible.

¹⁰² I am aware that much more could be said about the various policy options concerning the economy-wide surplus, but doing so would lead us too far away from the core questions of this chapter.

¹⁰³ Incidentally, the fact that they are the ones directly – i.e. by supplying their labour – involved in producing surplus within the company provides sufficient grounds for *some* entitlement even when shareholders are included.

Admittedly, the proposed application of ESP within the firm represents not only a second-best solution, but also an approximation. It is a second-best solution, because we allowed firms to siphon off some of the co-operative surplus one stage earlier. It is an approximation, because we are handing out a surplus to people who are, strictly speaking, not entitled to it. Recall the epistemic limitation with respect to the origin of the surplus, mentioned in section 7.2. We are in no position to divide the profits of a company into the part that is due to the division of labour *within* the firm, as opposed to what is due to the overall division of labour in society. It nevertheless seems safe to assume that the latter source of surplus outweighs the former in importance, hence the expression of companies “siphoning off” co-operative surplus. Why then should an equal division of company surplus within the firm be approximately just? We are here exploiting the fact that managers and employees turn into consumers when they go home. Given this double identity of economic agents, handing out equal entitlements to the intra-firm surplus approximates the ideal case of a society-wide equal division of the co-operative surplus. By distributing surplus evenly within the firm, any remaining inequalities in the distribution of the overall surplus will be due to some firms making more profits than others.

A distribution of income that respects ESP within the firm along the lines just set out would, I submit, be a considerably more equal one than we see in most countries at the moment. I deliberately do not want to speculate on the magnitude of legitimate inequalities in income that remain when ESP is respected. There clearly exists a correlation between the complexity of an enterprise and the “responsibility gap” between ordinary employee and executive, and hence the management premium should indeed depend on the size of the firm. However, any definitive judgement on this gap bears a danger of moral hazard. Say, for instance, up to a company size of ten thousand employees, the chief executive officer is not entitled to more than forty times the lowest salary in his firm. This raises a tempting question: “What if I can earn significantly more simply by hiring a few more people?” Avoiding complications of this sort, I would instead like to concentrate on getting across the following message: The *current* division of profits in most firms is a stark violation of ESP.

7.3.5 *The complication of cumulative effects*

Before closing this chapter, let me mention one more argument why respecting ESP within the firm is of particular importance from the perspective of distributive justice. Simultaneously, this argument will point to a significant limitation of ESP. Recall the three-step story at the end of section 7.2.1, designed to shed some light on the processes underlying wage hikes. Assumption one states that managers can exploit their power within the firm to pocket a substantial share of profits. Assumption two postulates a “war for talent,” which means that other companies will have to match these benefits; the hike in management wages spreads. Assumption three is wage “stickiness.” Now consider the dynamic effects of this process on remuneration within the firm. Distributing the surplus in favour of the managers *in one period* will raise reservation wages on the market and, assisted by the stickiness of wages, turn the temporary distribution of surplus into a permanent increase in pay. However, this means that for the same revenue, there will be less co-operative surplus to distribute in *subsequent periods* in the first place. Not respecting ESP will, in other words, increase the discrepancy between top and bottom wages within the firm in the long run.

This chain of argument highlights once more why treating the distribution of the co-operative surplus in isolation from the issue of pre-surplus income would be myopic. If there is something to the scenario outlined in the previous paragraph, this amounts to an assertion that pre-surplus income can, over time, lose touch with its fundamental determinants of hours worked, qualifications held, and responsibility of the job in question. As long as the co-operative surplus is distributed equally, this raises no worries. If, on the other hand, the shares of surplus that are “internalised” into the pre-surplus wages of subsequent periods are unequal, this will lead to an entrenchment of unjustified inequalities in income. I suspect that this process, which builds on the stickiness of wages, can account for a significant part of the income inequalities we observe today.

Notably, this implies that even if, optimistically, we succeeded in substituting ESP for the current distribution of company profits, a residual injustice would remain. After all, some of the present differences in *income* are the result of unequal and hence illegitimate distribution of *surplus* in the past. ESP provides no clue as to

whether, and how, righting these past wrongs should take place. This issue needs to be addressed separately, and our next chapter will attempt to do so with an assessment of the merits of retributive justice. The focus of ESP lies on a just distribution of surplus today, in order to prevent a further accumulation of income inequalities in the future.

7.4 Conclusion

- 1) The inequalities of a market-based distribution of income are often explained and allegedly justified by the combination of scarcity of skills with the concept of self-ownership. We have shown that the presence of division of labour severely compromises the scope of the argument from self-ownership. A different normative principle is needed to justify entitlements to the co-operative surplus. On any plausible account of the division of labour, this co-operative surplus makes up a considerable proportion of total income.
- 2) The neo-classical paradigm in economics conflicts with two kinds of increasing returns. The theory of perfect competition assumes the absence of increasing returns to scale; equilibrium economics finds it hard to digest the increasing returns derived from a more and more sophisticated division of labour in the economy. These methodological choices may be acceptable when preoccupied with allocative questions, yet they seem inadequate to address problems of distribution.
- 3) The imperfectly competitive markets of the real world have two features that prove of particular importance in the context of distribution. First, firms have an incentive to grow and exploit economies of scale. Second, the bigger firms grow and the more market power they acquire, the larger the share of the co-operative surplus they will be able to siphon off before it gets passed on to the consumer.
- 4) I have proposed the *Equal Surplus Principle* as a normative guideline to the distribution of the co-operative surplus. On the assumption that the interdependence between the parties to the division of labour is mutual, i.e. that each individual's specialisation is contingent on the co-operation of others to the same extent, there is a case for dividing the resulting surplus equally.

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- 5) In implementing ESP, compromises need to be made. On the level of society as a whole, there exists a trade-off between obtaining a bigger overall surplus and distributing it equally. Letting firms grow to exploit the economies of scale lowers costs, but it also gives them the power to siphon off a larger share of the surplus. However, respecting ESP when distributing profits within firms can still approximate an equal overall distribution by exploiting the identity between the workforce and consumers. Crucially, there is a justified fear that repeated unequal distributions of profits accumulate over time in the sense that they are transformed into permanent wage hikes. ESP can prevent this problem from arising in the future, but it cannot erase its past effects.
- 6) Overall, this leaves us with a pluralistic, normative approach to the distribution of income. An individual's labour income, on my account, is composed of an equal and an unequal component. Inequalities in income can be justified in two ways. First, on a very limited scale, by considerations of self-ownership. Second, on the basis of differential economic contributions of individuals based on the hours they work, the qualifications they hold, or the responsibility their job entails. However, to the extent – which this chapter suggests to be substantial, and which is ignored by neoclassical economics – that people's productivity is contingent on the division of labour, the co-operative surplus so generated should be distributed equally.

8 Transforming unjust distributive structures

As illustrated in previous chapters, you do not have to be an egalitarian to agree that the inequalities of income in our societies are to some extent unjust. There are good reasons to expect that efforts to mitigate this injustice will face an obstacle frequently ignored by theories of justice: From the point of view of those privileged by an unjust distribution in the real world, bringing this distribution in line with the demands of justice will necessarily be disadvantageous. The transformation of unjust structures, in other words, is almost guaranteed to meet stiff resistance. This chapter asks two questions. First, to what extent might this resistance in fact be justified? Second, to the extent that the resistance is *unjustified*, how can it be overcome?

Whereas traditional theories of justice mostly build on the assumption that people are supposed to follow the theory rather than the other way round, the present focus on the phenomenon of resistance leads us to lay particular emphasis on the requirement of motivational feasibility of our theory. This aspect will receive special attention in section 8.3. Inevitably, this feature of our inquiry means that we will tread on both sides of the thin line between the moral and the pragmatic. However, let me highlight up front that the principal objective is to give a moral account of how to approach processes of transformation, and that I will clearly flag instances where pragmatic aspects enter into our considerations.

It is also worth explicating that my focus lies on the process of reducing income inequalities, rather than on the evaluation of distributions of income in the first place. Therefore, my considerations should be relevant independently of one's choice of criterion to evaluate human flourishing – be it income, capabilities, or resources more generally speaking.

The chapter is organised around the two questions stated above. To prepare the ground, section 8.1 will set out two preliminaries. First, it is crucial to explicate the background moral theory that I will assume throughout this chapter. Second, given the central role that some kind of institutionalisation of the demands of justice is likely to play in the transformation of any unjust structure, we will rehearse the principal features of the relationship between morality and the law.

Subsequently, we will turn to the core issues of the chapter. First, to what extent might the resistance of the privileged be justified? The criterion I will propose to answer this question builds on a disambiguation of the notion of “unjust distributive structure.” Put crudely, we can take this term to refer either to people’s relative holdings or shares of the *distribuendum* – in our case income – or we can interpret it as characterising the rules that govern the allocation of income. On the former reading, we are more likely to adopt a retributive approach to distributive justice, whereas the latter interpretation naturally leads to a forward-looking approach. I will argue that the latter is preferable from a moral point of view and that, in addition, it improves the prospects of transforming unjust structures of income distribution. However, this conclusion will be qualified in two ways. First, it will be required that a certain threshold justice has been met by past arrangements. Second, since any transformation is bound to be gradual in nature, elements of retributive justice will be justified temporarily. This last aspect is particularly helpful in clarifying the role redistributive taxation plays in my account of distributive justice.

Second, to the extent that the resistance is unjustified, how can we overcome it? The obvious candidate is legislation. *Prima facie*, the problem with this approach seems equally obvious. In the procedures of a democratic society, the proposed reform will meet the same resistance from the privileged that we encountered above. However, closer scrutiny of the interplay between moral demands and institutionalised demands reveals that legislation can and should play an important role in overcoming unjust distributive structures. To be effective, I will suggest, it needs to be used in careful combination with informal institutional structures in a process I will call *motivational bootstrapping*. One concrete example from public policy of how to put the idea of motivational bootstrapping into practice is a publicity requirement for labour income.

8.1 *Setting the scene*

8.1.1 *Equal respect*

Moral theories put forward interpretations of what it means to treat people equally. (cf. section 5.1.1) Such interpretations become significantly harder when the circumstances of the people in question diverge. The *status quo* of an unjust structure is a paradigm case for diverging circumstances. To ensure that our proposed transformation treats people equally, instead of remedying one injustice with another, it is essential to spell out in advance what background moral theory we will use as a criterion to assess the justice of the transformation.

So what does it mean to treat people equally? As a first but sufficiently accurate approximation, it requires balancing the values of impartiality and respect towards the individual. As far as impartiality is concerned, no one should be treated any better or worse than anybody else; as to the notion of respect, any treatment that fails to take into account the personal circumstances of the individual in question can be criticised for treating him or her as a means only. Pure consequentialist theories, which admit only *agent-neutral* reasons to morality, usually neglect the value of respect towards the individual. Pure individual rights theories, on the other hand, tend to score low on impartiality with their evaluation of conduct on the basis of its conformity to certain *agent-relative* reasons (cf. Nagel, 1991: 49).

One proposal to reconcile impartiality and respect, and to thereby overcome the weaknesses just mentioned, has been put forward by Thomas Nagel in his book *Equality and Partiality*. His moral theory acknowledges both the personal and the impersonal viewpoints as constitutive parts of morality. You might already see how such a theory offers a more promising approach to the question of transforming unjust structures. Whereas a purely consequentialist account would recommend a radical redistribution and ignore the individual circumstances of the better-off in the process, a pure individual rights approach would imply a heavy bias towards the *status quo* and thereby over-protect the better-off. Nagel's moral theory, in contrast, allows us to ask the more sophisticated question of *to what extent* imposing the disadvantages of transformation on the better off is compatible with equal respect. If this is a legitimate question to ask, it supports the view that the resistance of the better off raises not merely pragmatic issues, but moral ones, too.

The comprehensiveness of Nagel's theory does come at a cost. As Nagel acknowledges, it may not always be possible to strike a balance between agent-neutral and agent-relative considerations. He gives the example of an extreme inequality between rich and poor, where it is conceivable that *any* proposal can be reasonably rejected either by the poor as insufficiently generous or by the rich as too demanding (cf. Nagel, 1991: 50). A parallel drawback holds for the transformation of unjust structures in general, but I shall by and large bracket this issue here.

8.1.2 *Morality and the law*

“What will progress towards the better yield for humanity? Not an ever increasing quantity of *morality* in attitude, but an augmentation of the products of its *legality* in acts of duty, independent of the motivations behind those acts,...” (Kant (1789), section 9, my translation¹⁰⁴)

The concept of law occupies centre stage in this chapter, since it can both be used to justify part of the resistance of the privileged and play an instrumental role in overcoming this resistance. The present clarification of the relationship between morality and the law is a precondition to the first of these exercises, and provides a useful background to the second. More particularly, we are interested in the relationship between justice, i.e. that part of morality concerned with the interactions of people, and the law. My intention in this section is limited to explicating my position on this relationship and putting it into the context of philosophy of law; a more detailed defence of the position I take lies beyond the scope of the chapter.

The philosophy of law contains a spectrum of perspectives on the connection between morality and the law; a brief characterisation of the two extremes on this spectrum offers a convenient starting point for our purposes. On the one hand, we find what is called the tradition of *natural law*. On this conception, law should “seek to inculcate habits of good conduct” (Simmonds, 1998) or, differently phrased, set incentives to pursue actions that do not conflict with our moral standards. This already suffices to establish that the natural law tradition postulates an intimate relationship between morality and the law. The natural law tradition goes back to

¹⁰⁴ The original reads: “Welchen Ertrag wird der Fortschritt zum Besseren dem Menschengeschlechte abwerfen? Nicht ein immer wachsendes Quantum der *Moralität* in der Gesinnung, sondern Vermehrung der Produkte ihrer *Legalität* in pflichtgemäßen Handlungen, ...”

Aristotle and Thomas Aquinas, elements of it are also found in German idealism; one example for the latter is the quote by Immanuel Kant at the beginning of this section, which clearly identifies the promotion of morality as one of the principal tasks of the law.

At the other extreme, *legal positivism* claims that “law is to be identified solely by reference to the form it takes or the source from which it comes, with no built-in restrictions as to content or purpose.” (Attwooll, 1998) This emphasis on a formal rather than substantive account of law is, among other things, a response to the difficulties encountered by natural law theorists in trying to agree on *one* substantive morality, i.e. to spell out what precisely the “natural” in their doctrine stands for.

Indisputably, both the natural law tradition and legal positivism possess features that are desirable for any system of law. On the plausible assumption that laws will always render the pursuit of some actions more attractive relative to others, it seems in the interest of any society to promote moral actions rather than immoral ones. This link between morality and the law emerges as an advantage of natural law theory. At the same time, legal positivism recognises that in the face of disagreement about morality, the force of law needs to derive from something else in order to be effective. Hence, it is fair to say that the formal account of law favoured by legal positivists is a precondition for the practicability of any system of law.

Unsurprisingly, given that both doctrines bear advantages, reconciliation between them has been suggested before. The particular route of mediation I would like to pursue here reminds us to take seriously the distinction between *law as it is* and *law as it should be*. Whereas it seems vital for the latter to indeed be informed by considerations of morality, it is essential for the former to possess the formal force stipulated by legal positivism. Note that there will always be a gap between both morality and *law as it should be*, and between *law as it should be* and *law as it is*. First, the demands of even an ideal system of law will always fall short of the demands of morality or justice. This is due to the simple fact that, preferably, the demands of morality will be met through inner commitment rather than through

legal, and hence external, enforcement.¹⁰⁵ For some kinds of actions, like supererogatory ones, it would even defeat their nature if they were performed out of compliance to a law. Second, there will always be a gap between *law as it should be* and *law as it is*; in short, we just do not live in an ideal world. The actual passing of legislation is subject to severe political pressures, which contribute to the suboptimal character of existing legislation in two ways. On the one hand, imagine a situation in which it would be desirable to have a law, but there is no majority for it. On the other hand, imagine a situation where the political process has passed a law that in fact conflicts with the demands of morality.

When we talk about “unjust distributive structures,” this can refer to both of the two scenarios just sketched. The injustice can lie in a *lack* of legislation or in *inadequate* legislation from the perspective of justice. This distinction will play an important role later on. In both cases, the project of transforming unjust distributive structures may be described as making *law as it is* more like *law as it should be*.

The scenario of an injustice based on inadequate legislation deserves further comment, partly because it is often seen as the more important source of injustice in our societies today. Thomas Pogge finds a poignant way to formulate this impression: “At least in the modern era, injustice appears in official clothing, under the name of justice, openly before the eyes of the world. It subverts not merely what is right, but the very idea of right, and leaves its victims without any recourse or appeal.” (Pogge, 1989: 276)

To recognise the importance of “injustice in official clothing,” it is important to point out, amounts to acknowledging that the principal weakness of legal positivism is beginning to haunt us. We naturally resent the idea that the “official clothing” should protect injustices from the recourse of their victims. Consequently, when these injustices take the form of particular laws or even of the entire legal system, we start asking the question whether injustice does at some point begin to undermine legitimacy. In other words, are there content-based restrictions on the formal force of *law as it is* after all? We want to answer both yes and no. We want to answer no,

¹⁰⁵ For an illuminating discussion of the relative benefits of internal commitment and external enforcement as alternative sources of rule-governed behaviour, cf. Edward F. McClennen (unpublished manuscript, especially chapter 9).

because legal positivists have a point when they cite the procedural aspect of legislation as its prime source of force. We want to answer yes, because we have a strong intuition that civil disobedience is justified in extreme cases. Whatever approach to the transformation of unjust structures we choose, it will have to take a stance on this issue.¹⁰⁶

So much by way of the general relationship between morality and the law. My characterisation of the theoretical spectrum between natural law theory and legal positivism has admittedly been rudimentary, particularly in bracketing the many modern ramifications of these positions.¹⁰⁷ Yet, until we replace the notion of law by a more encompassing notion of institutions including informal social structures in section 8.3, the present framework will suffice.

8.2 *A dynamic approach*

Intuitively, our verdict on the conservative attitude of the privileged will depend on the nature of the concrete reform efforts that are being proposed. If they represent an appropriate remedy to the injustice in question, resistance to change is objectionable and should be overcome. If, on the other hand, the proposed reform amounts to righting one wrong by committing another, this will lend legitimacy to the voice of the privileged.

In this section, I will argue that reform efforts, in order to be justified, should be informed by a forward-looking approach to distributive justice. As we shall also see, however, the case for such a forward-looking approach rests on several, quite restrictive, conditions.

8.2.1 *Shares or Rules?*

The term “unjust distributive structure” is ambiguous, allowing for two different interpretations of the task facing distributive justice. In order to bring out the

¹⁰⁶ Cf. also John Rawls, who acknowledges the issue of priority between justice and the law as “one of the tangled questions of morality.” (1999: 51-2)

¹⁰⁷ The most prominent representative of legal positivism in the contemporary debate is probably still H.L.A. Hart, who grounds legal rules in social practices in a way heavily influenced by the philosophy of language. An important example for an off-shoot from natural law theory, on the other hand, is John Finnis, who is eager to rescue a standpoint from which a critique of the legal system and its rules is possible.

distinction, I propose to modify the frequently invoked example of dividing up a cake. In its basic version, the division of a cake is a misleading illustration in our context, since it does not reflect the injustice of the *status quo*.

To see the first possible sense of an “unjust distributive structure,” suppose that the distribution of the cake is not a one-off, but that there are in fact several cakes being distributed in regular intervals. A just distributive structure is one that not only correctly identifies the special claims that individuals have each time a cake gets distributed, but that also consistently recognises the same kind of special claims across the sequence of distributions. Conversely, an unjust distributive structure is one whose rules of distribution do not match our judgement of what kinds of claims are normatively relevant, or which does not apply them consistently, or both. Let us call this the *rules problem* of distributive justice.¹⁰⁸

Secondly, what we mean by an “unjust distributive structure” can refer to the cumulative distributive outcome of past distributions of cake. Here, the term characterises a situation where we judge a given distribution of total cake to be unfairly skewed in favour of some. The natural remedy to an unfair distribution in this sense is *re-distribution*, taking from those whose slice of the cake is judged too big and giving to the others. Let us call this the *shares problem* of distributive justice.

It is tempting to think of these two perspectives as deontological and consequentialist in nature respectively. Yet, I am hesitant to commit myself to such a classification, since I believe that the two problems characterised above can in principle draw on both of these modes of moral reasoning. What we consider to be a just set of distributive rules may in part be influenced by the distributive outcome they are likely to lead to; and our sensitivity to the magnitude of inequalities in shares can vary depending on how the discrepancy in question has come about.¹⁰⁹ Hence, I prefer to steer clear of the classic labels of moral reasoning here.

¹⁰⁸ You will notice that this approach to distributive justice chimes with the notion of a mapping from individual characteristics to income shares, which we introduced in section 5. As we pointed out then, it is very unlikely in the context of income distribution that special claims should be altogether absent – distributive equality emerges as an unlikely default position.

¹⁰⁹ As we saw in section 5, a strong anonymity assumption would block any such information about the genesis of income inequalities to enter our distributive judgements in the first place.

The distinction I draw between the rules problem and the shares problem already suggests that the two also propose different kinds of remedies to address distributive injustices. From the point of view of the shares problem, distribution is conceived of as a zero-sum problem in a *static* framework. This conceptualisation automatically turns the remedy into an instrument of *retributive* justice, taking the position that the accumulated effects of the unjust structure need to be at least partially reversed. In contrast, if we evaluate the justice of a distributive structure by looking at its rules of distribution, our remedy will naturally be *forward-looking*. Focusing on the future dynamics of income distribution in this way emphasises the *dynamic* character of distributive justice.

It is evident that those privileged by the unjust structure in the past stand to lose a lot more under the first approach. Hence, it is reasonable to expect their resistance to a transformation in the vein of retributive justice to be significantly stronger compared to a forward-looking approach.¹¹⁰ If our criterion was to “choose the path of least resistance,” we might be prepared to accept this as an argument in its own right in favour of the forward-looking approach. Needless to say, in the present context, the choice of such a criterion would be *ad hoc* and unacceptable, since it bears no relation whatsoever to the question of which of the two approaches is preferable from the perspective of *justice*. Fortunately, advocates of a forward-looking approach to distributive justice can go beyond a purely pragmatic argument of this kind in two ways. Both of them build on what we have said in previous sections and suggest that the privileged would be (partially) justified in resisting a retributive approach to justice.

The first argument is a moral one. Following Nagel’s position set out in section 8.1.1, we should take into account not only the impersonal, but also the personal viewpoint when assessing the demands of justice. A retributive approach to justice limited to the impersonal viewpoint would recommend a redistribution of the differential between the *status quo* and the counterfactual distribution that would have resulted under a just distributive structure. When taking the personal viewpoint

¹¹⁰ Quite independently of the size of the adjustments that the two approaches would call for, there exists a growing body of evidence that people are more reluctant to lose something they already have, than they are eager to gain something of equivalent value in the future. Experiments have confirmed this *endowment effect*, which is one of the central tenets of what has become known as prospect theory in economics.

into account, such a proposal appears not only radical, but also disrespectful of the better off. Even if, plausibly, we assign *some* negative responsibility for a systemic injustice to all members of society, and to the privileged in particular, the personal accountability implied by the radical, retributive approach clearly overshoots the target. In addition, it severely disrupts the life-plans of the privileged. Whereas this will to some extent be inevitable when transforming unjust structures, the radical approach goes too far, precisely because personal considerations of this kind do not enter into its evaluation of justice. So what does taking the personal viewpoint into account change? From a *moral* perspective, it does not condemn a retributive approach to justice as such, but merely calls for the redistribution away from the privileged to be somewhat mitigated. We are reminded not to remedy the past injustice with a new injustice, this time biased against the previously privileged.

Whereas the first argument puts a retributive approach to justice under a constraint of sorts, the second, legal, argument draws it into question altogether. A particular system of income distribution may be unjust, yet people still hold a legitimate entitlement to the incomes they have earned under this system. Drawing these entitlements into question conflicts with the legal principle of protecting the expectations that people form about being able to dispose of their possessions. Note that, by adopting this position, I am implicitly answering the question posed at the end of section 8.1.2: At what point does injustice begin to undermine legitimacy? The position I have just adopted implies a radical answer. An unjust structure of income distribution in the past *does not* undermine the legitimacy of the entitlements obtained under this structure. In line with legal positivists, this position in effect amounts to endorsing a priority of the law over justice. Yet, this seems to contradict our previous emphasis on the intuition that civil disobedience does seem justified in extreme cases, i.e. that there are cases in which legitimacy is undermined.

To reconcile these two perspectives, let me add a proviso to the proposed priority of the law over justice. The legitimacy of entitlements gained under an unjust distributive structure takes priority over considerations of justice *only if the system under which these entitlements have been obtained passes a minimum threshold of justice*. Beyond this threshold, it indeed is defensible to give the formal force of the law priority over considerations of justice. Why? The rule of law is too central to the functioning of our society to *in retrospect* question its force when conflicts with

justice arise. Note three things. First, this does of course not absolve us of the duty to address these conflicts in future, a task that is not only compatible, but even constitutive of the forward-looking approach to justice promoted here. Second, if we accept that it is utopian to ever live in an ideal society in the sense that it is free of injustices, we have to dig our heels in at some point in order not to undermine the force of the law altogether. Third, the proviso does not rule out retribution in principle. However, when the proviso is fulfilled, the burden of proof lies squarely with the party calling for retribution.

As it stands, my proposed proviso is rather vague. To make it somewhat more tangible, let me give you one possible, albeit imperfect, way to flesh out the notion of threshold justice. We could, for instance, require that for past entitlements to override considerations of justice, they need to have been obtained in a democratic society. The presumption underlying this condition is that the legislative procedures of a democracy already put certain substantive constraints on potential legislation. Unfortunately, the problem of vagueness proves to be quite persistent. A lot more would have to be said about what counts as a democracy in the first place, and about the precise link between democratic procedures and distributively just outcomes. With respect to the former issue, for instance, is there a point at which a system ceases to be a democracy, because it is influenced by campaign financing from vested interest groups? Independently of its vagueness, a more serious drawback of a democratic proviso is its silence on two areas viewed by many as the source of considerable distributive injustice. Neither the international economy nor the distribution of income and profits within companies are subject to democratic procedures. What should count as a minimum threshold of justice in these contexts? Against the background of section 7, which suggests that questions of intra-firm distribution are a substantial contributor to income inequalities and injustice, these shortcomings of a democratic proviso seem all the more troubling. One objective of the next section will be to reflect on when and how considerations of this kind might force us to compromise on the forward-looking approach to distributive justice.

Note that, even if we accept a proviso of some sort, it will not guard us against injustice “in official clothing,” as Thomas Pogge put it. It merely imposes a dress code, making the priority of the law contingent on the procedure by which it has been passed. Let me emphasise again that this provides no justification whatsoever to

extend the unjust legislation into the future: We are, in other words, legal positivists with respect to the past, but legal idealists – in sync with the natural law tradition, which takes the law to be informed by considerations of morality – with respect to the future.

To sum up, the legal argument against a retributive approach to distributive justice offers the privileged considerable protection. It establishes the legitimacy of entitlements obtained under social arrangements that fulfil certain minimal requirements of justice. Our argument limits the plausibility of viewing distributive justice as a shares problem to contexts where this proviso does not hold. This is a significant conclusion, since thinking of distributive justice in terms of shares is widespread in contemporary political philosophy. We conclude instead that the transformation of unjust structures should focus on the distribution of future entitlements. Whereas the resistance of the privileged against retributive justice can be justified on moral and, more comprehensively, on legal grounds, they will have a harder time searching for arguments to extend an unjust distributive system into the future.

One potential objection to this conclusion could be that people form plans not only on the basis of their present holdings, but also take into account expected future ones. Therefore, cutting future incomes may still represent a disrespectful interference with their plans for life. I am inclined to reject this appeal on the basis that there is a categorical difference between taking something that people already have, and “taking” something people are expecting to get. We have – finally, some might say – reached the point where the resistance of the privileged to the transformation of unjust structures becomes objectionable.¹¹¹

A forward-looking approach to the transformation of unjust structures is preferable. Whereas those privileged by an unjust *status quo* can cite moral and, mainly, legal reasons to resist a retributive approach to distributive justice, any resistance to the demands of a forward-looking approach lacks such justification. To

¹¹¹ This is not to deny that we are bound to encounter difficulties in turning the proposed asymmetry between past and future entitlements into policy. Think, for instance, of someone on a high salary, who has taken out a substantial mortgage, and who would be thrown into financial turmoil by a recalibration of the remuneration structure in society. Should his transition to the new scheme be cushioned or not?

rehearse the disaggregation of the resistance by the better-off again systematically: Resistance is *morally justified* when the proposed transformation has to be regarded as remedying one injustice with another; this is most likely to occur when the underlying moral assessment of the situation neglects the fact that the privileges of the better-off need to be taken into account in determining what it means to respect them as persons. Resistance is *legitimate* when the proposed transformation undermines entitlements that have been obtained under social arrangements that pass a certain threshold of justice. Finally, however, resistance to a proposed transformation is *objectionable* if it is neither morally justified nor legitimate; this is most likely to be the case if directed at attempts to bring the future distribution of income in line with the demands of morality.

8.2.2 *On the road to justice*

There is an alternative, more controversial, presentation of the difference between retributive and forward-looking justice. Loosely speaking, retributive justice addresses inequalities in *wealth*, whereas I advocate working for a just future distribution of *income*. Phrasing the upshot of the previous section in this fashion is likely to provoke two reactions. First, some people will observe that this is hardly a revolutionary proposal. After all, wealth taxes appear decidedly unfashionable with today's governments. Even their intergenerational variant, the inheritance tax, is falling out of favour with some, as the Bush administration's effort to abolish it demonstrates. Should my argument turn out to be a mere buttressing of the distributive *status quo*? Second, and partly based on the first reaction, my proposal will draw resentment from the left of the political spectrum. To many, inequalities in wealth are as unacceptable as inequalities in income, if not worse.

At least the first of these reactions is based on a misunderstanding of my stance, and therefore calls for clarification. In what follows, I make explicit that my advocacy of a forward-looking approach to distributive justice is *conditional* on actually meeting our standards of justice in the future. Unfortunately, it is unlikely that this condition will be fulfilled. Yet, so I shall maintain, this does not disqualify it as an objective worth striving for. In order to make these points, though, we first need to take a step back and look at the standard way to address distributive injustices.

8.2.2.1 Distributive justice and taxation

The traditional language of distributive justice is taxation. Taxation has two primary functions, namely to secure funding for the provision of public goods on the one hand, and to influence the distribution of benefits and burdens in society on the other (cf. Murphy and Nagel, 2002: 76). Though the first of these can also, under certain conditions, have redistributive effects, we are here primarily concerned with the second. When taxation is used to this end, it in effect represents an instrument of social policy. Through a progressive income tax rate, differential consumption taxes with higher rates on luxury goods, or straightforward wealth or inheritance taxes, the state takes from the relatively well-to-do and, on the expenditure side, supports those in a less favourable position in society. Taxation unmistakably is a form of retributive justice.

You will have noticed that even before advocating a forward-looking approach to distributive justice in the last section, my argument has not been phrased in the language of redistribution via taxation. In fact, the concern has not been one of *re-*distributing at all. Rather, my critique of the market distribution of income is conceptually prior to considerations of taxation. It addresses the way in which income gets distributed in the first instance, i.e. pre-tax. The market remuneration of skills, so I have argued, fails to take into account the fact that individual productivity is fundamentally dependent on the co-operation of others. Correcting for this omission, by endorsing the *Equal Surplus Principle* advocated in section 7, would call for a substantially less unequal distribution of income.

Against the background of these observations, it seems obvious that the normative status of any tax system depends on the underlying distribution of income it faces. The more unjust the pre-tax distribution of income, the more redistributive a tax system will be warranted, other things being equal. Surprising as it may be, this maxim has frequently been ignored in the past. To some degree, entrenched political positions may be to blame, with the right of the political spectrum presenting progressive taxation as a form of expropriation of the rich, while the left has championed the cause of the indigent. As a result, issues like wealth or inheritance tax are likely to provoke very strong reactions from people independently of the distributive structure of the society they are meant to apply to. The philosophical debate of distributive justice has not succeeded in avoiding such polarisation either,

with libertarian views pitted against the different versions of distributive egalitarianism that I have sketched and criticised in section 5.

Fortunately, this polarisation is beginning to be addressed. A recent book by Liam Murphy and Thomas Nagel (2002) acknowledges that the normative status of taxation in our overall theory of justice requires a more sophisticated treatment than it has received to date. What the authors identify as the dominant theme running through their book, appropriately entitled *The Myth of Ownership*, deserves to be quoted at length: “Private property is a legal convention, defined in part by the tax system; therefore, the tax system cannot be evaluated by looking at its impact on private property, conceived as something that has independent existence and validity. Taxes must be evaluated as part of the overall system of property rights that they help to create. Justice or injustice in taxation can only mean justice or injustice in the system of property rights and entitlements that result from a particular regime.” (*ibid.*: 8)

Two claims are being made in this statement. First, Murphy and Nagel deny the possibility of an evaluation of tax systems in isolation. This corresponds to the point I made above that taxation is a form of retributive justice. The distributive correction it brings about presupposes that we have ascertained the pre-tax distribution to be unjust in a particular way. The second claim is even more fundamental. Private property, Murphy and Nagel tell us, is a legal convention.

Though it is the first of these claims that concerns us in the context of this chapter and will preoccupy us in the subsequent section, it is worth pausing over the second claim for a moment. The position Murphy and Nagel want to distance themselves from by highlighting the conventional character of property is a libertarian one. My objective here lies in illustrating to what extent their criticism of libertarianism overlaps with my own, which I have expressed in previous chapters. This will serve to bring the features of my position into sharper focus.

Murphy and Nagel’s disagreement with libertarianism has two facets. The first specifically addresses the intuitions behind the two dominant variants of contemporary libertarian theory, i.e. a rights-based and a desert-based approach respectively. The former “insists that each person has an inviolable moral right to the accumulation of property that results from genuinely free exchanges,” whereas the

emphasis of the latter lays on proclaiming that “the market gives people what they deserve by rewarding their productive contribution and value to others.”

(*ibid.*: 31/32)

On the desert-based variant, Murphy and Nagel take a liberal egalitarian line. The legitimacy of market outcomes is not warranted, since they are partly determined by morally arbitrary factors like genetic or social luck. As we have seen in sections 5 and 6, I disagree with this liberal egalitarian position. Instead of relying on unwarranted bases for desert, according to my hypothesis the libertarian goes wrong in assuming that market incomes actually reflect the productive contribution made by individuals.

On the rights-based variant, Murphy and Nagel do not provide an explicit argument for their disapproval. Yet, their overall position suggests that they regard the inviolable moral rights invoked here as the kind of natural rights that Jeremy Bentham famously dismissed as “nonsense on stilts.” If one takes the plausible view that our legal system should be informed by our moral judgements, and that these vary with social circumstances, then one will indeed be inclined to agree with Bentham.

Elements of the latter criticism also feed into the second facet of Murphy and Nagel’s disagreement with libertarianism, which is more fundamental. Libertarian theory defends a position of no or minimal government interference with the distribution of resources produced by free exchange, i.e. by the market. Nagel and Murphy rightly point out that “[t]here is no market without government and no government without taxes; and what type of market there is depends on laws and policy decisions that government must make.” (*ibid.*: 32) In other words, the functioning of the market presupposes a regulatory framework that defines the property rights of the parties taking part in this system of exchange. The label “free” exchange is a misnomer, insofar as it is constitutively bound by this regulatory framework. From this line of reasoning, Murphy and Nagel conclude that “[t]he logical order of priority between taxes and property rights is the reverse of that assumed by libertarianism.” (*ibid.*: 33)

I have the impression the authors put more weight on this statement than it can support. Think back to the two functions of taxation mentioned at the beginning of

this section. The provision of a regulatory framework for the market counts as a public good, and requires a certain level of taxation to finance its setting up. It is quite a jump from here to asserting that taxation in its second, redistributive, role is logically prior to property rights, which is what Murphy and Nagel assert. If we think of redistributive taxation as a *corrective* of whatever pre-tax distribution of income obtains, putting the two stages in this logical order seems odd at best. The explanation for Murphy and Nagel's downplaying of pre-tax property rights lies in the way they think distributive structures in society should be assessed from a normative point of view. Recall the last sentence from the extensive quote above: "Justice or injustice in taxation can only mean justice or injustice in the system of property rights and entitlements that *result* from a particular regime." (my italics) This statement advocates a purely consequentialist evaluation of post-tax income. Murphy and Nagel's version of it suffers from two important drawbacks. First, it is not clear to me that they provide us with a criterion for this kind of post-tax evaluation other than a variant of distributive egalitarianism. As I have tried to show in section 5, theories of distributive egalitarianism leave much to be desired. Second, as Murphy and Nagel acknowledge (cf. *ibid.*: 34), it is psychologically very hard to convince people that their pre-tax income is not really theirs. In fact, this is precisely the difficulty that has motivated this chapter – once people have, or believe to have, certain advantages, they will be very reluctant to give them up.

The idea at the bottom of this PhD thesis, once implemented, would clear both of these hurdles. A desert-based criterion informed by people's contribution to the productive process, as spelt out in previous chapters, does provide us with a normative benchmark for *pre-tax* incomes. The task then consists in adjusting the institutional framework to ensure that actual income distribution conforms to this normative benchmark. As long as it does not, a correction through redistributive taxation will indeed be necessary – we will come back to this issue in the next section. Yet, once the conformity is achieved, in the language of our preliminary section in this chapter, once the *law as it is* reflects the *law as it should be*, the corrective force of redistributive taxation is no longer required. Under these circumstances, people's sense of entitlement to their pre-tax income, which Murphy and Nagel perceive as problematic, would be entirely legitimate. However, as this chapter emphasises, those privileged under the distributive *status quo* will strongly

resist any political moves towards transforming our distributive structure towards this ideal – hence the qualifier “once implemented” in the opening sentence of this paragraph.

Bringing the comparison to Murphy and Nagel to a close, two conclusions stand out. First, it is hard to overestimate the service *The Myth of Ownership* has rendered political philosophy by bringing issues of taxation within the conceptual fold of distributive justice, where they belong. At the same time, I hope to have shown why I believe that even though a tax system always has to be evaluated in conjunction with an underlying distribution of benefits and burdens, the reverse does not hold: We can usefully apply normative judgements to the pre-tax distribution of income and employ institutional design to change it.¹¹² The corrective force of redistributive taxation should only come in when our efforts regarding institutional design fall short.

8.2.2.2 Gradual transformation

Where does this leave my case for a forward-looking approach to distributive justice? The answer straightforwardly depends on how successful our efforts to reform institutional structures are. And here, realistically, we find ourselves once more thrown back to the recurring theme of this chapter, the resistance from those privileged under the *status quo*. If, and this is a big if, they agreed to bringing the way income gets distributed in line with our normative judgements, and adequate institutional reforms were put in place, then the forward-looking approach to distributive justice would be warranted. If, on the other hand, reform is blocked, then re(dis)tributive taxation of various kinds is indeed called for.

In short, my case for a forward-looking approach to distributive justice is *conditional* on a just distribution of income, where ‘just’ refers to the rules of distribution. And given my normative judgements about a just distribution of income set out in previous chapters, in particular the *Equal Surplus Principle* of section 7, the condition turns out to be a very stringent one. This qualifier should be sufficient

¹¹² I have always thought that this primary institutional framework governing the distribution of income in society forms a constitutive part of the “basic structure” of society. Yet, this is neither the time nor place to investigate whether employing this Rawlsian notion in the proposed sense is compatible with Rawls’ own use of it.

to refute the charge that my proposal has the effect of buttressing the *status quo*. Given the market distribution of income prevalent in most countries today, the above condition is certainly not fulfilled. Corrections to the distribution of income in the form of progressive income taxation as well as wealth and inheritance taxes are not only justified, they are even a requirement of justice.

Let me conclude with two comments on the qualifier I have just added to my position. First, the prospects of comprehensive institutional reform might seem so dim, the chance of breaking the resistance of the privileged by means of persuasion so remote, that one may wonder why it is worth making the case in favour of a forward-looking approach to distributive justice at all. The answer lies in the insight that the alternative is only a second-best solution. Achieving a just distribution of income thanks to the corrective influence of redistributive taxation is simply not as attractive as having an institutional structure that has a fair shot at distributing income in a just manner in the first instance. It is tempting to identify a *redistribution paradigm* in the context of taxation, similar in character to the *compensation paradigm* we repeatedly came across in section 6. Both have established a firm grip on the language of distributive justice, yet both underexploit the potential of changing the institutional structure that leads to the objectionable distributive outcome to start with.

My initially unqualified support for a forward-looking approach to distributive justice was too optimistic with respect to the possibilities for change. In fact, it fell squarely within the tradition of ideal theory – which I distanced myself from at the beginning of this chapter – by assuming that once the path to justice had been marked out, people would actually follow the theory. This idealising assumption is unwarranted. The messy transformation of the real world is gradual,¹¹³ and therefore the forward-looking approach will have to be compromised on the road to justice. At the same time, precisely because institutional reform does not happen overnight, it is important not to lose sight of the fact that institutional change is preferable to redistributive taxation.

¹¹³ Cf. also Wolff (1998: 112).

Second, what about the resentment of inequalities in wealth alluded to before? To be sure, this sentiment is not hard to understand. According to the Economic Policy Institute, the wealthiest 1% of US households in 1997 controlled 39.1% of the wealth – up from 33.8% in 1983. In contrast, the share of the bottom 80% of households was below 20% of wealth (cf. Economic Policy Institute, 1999). Despite the condition imposed on the forward-looking approach to distributive justice in this section, and despite the proviso from section 8.2.1, these figures might lead some people to reject my proposal altogether.

To bring out the divisive issue here as clearly as possible, let us turn for a moment to the hypothetical case in which a sweeping institutional reform of the distribution of *income* is indeed adopted. Would this not simply render the injustice in the distribution of wealth all the more obvious? Two issues need to be disentangled here. First, we need to take into account the link between wealth and income. The capital income produced by investments of wealth clearly have to be factored into the equation of justice in the distribution of *income*. So even though, under the hypothetical scenario, the distribution of labour income might meet our normative judgements, the distribution of capital income is likely to still require a correction through redistributive taxation. Nothing I have said so far is incompatible with a dual tax system, imposing a higher rate on capital income. Such a proposal might seem appealing from the perspective of justice, but it has serious drawbacks from an economic perspective since it deters investment. We cannot devote more time to this trade-off here. This leads us to the second issue, and thorn in the eye of those critical of wealth inequalities. Even if the benefits from an unequal distribution of wealth could be spread out more widely through a relatively high tax on capital income, so they will object, the fact that some people enjoy more riches than others is objectionable in itself. At this point, I am prepared to dig my heels in. True, the fact that a society is polarised in terms of wealth may be deplorable, but the privileged do not have an obligation of justice to give away part of their property. I have argued for this priority of legitimacy over justice, given certain conditions, in section 8.2.1. Incidentally, and on a more speculative note, under a scenario where *income* is distributed justly, and considerably more equally, an inability to meet the maintenance costs of their assets would force many of the rich to downsize their

property anyway. A convergence of wealth would result in the long-term. The transformation, however, would again be gradual.

8.3 *Institutional justice and the power of publicity*

The problem introduced at the outset of this chapter still stands. The beneficiaries of the *status quo* will resist the transformation of the unjust distributive structure. So far, we have merely specified under what conditions this resistance is unjustified and hence problematic. If our attempt at transformation is to be successful, resistance of the objectionable kind will have to be overcome. How can this be done?

Legislation might seem a quick and effective fix. Yet, the general appeal of this idea is as evident as its limitations. After all, legislation needs to be passed, and unless the unjustly privileged are significantly outnumbered,¹¹⁴ the legislative proposal will run into the same kind of resistance we have faced all along. One might at this point deplore the fact that we do not live under a benevolent dictatorship. Under such a scenario, legislation could be introduced by force, in order to change the pay-off structure for the privileged in ways that made compliance with just distributive principles attractive. By transforming the “active demands” of morality into “passive demands”¹¹⁵ of the legal system, incentives would be set that favour moral behaviour – a process in the spirit of the Kantian quote in section 8.1.2. In a democratic society, however, it seems as if a legislative approach to transforming unjust distributive structures to a significant extent begs the question.

This opinion chimes well with a position that has gained increasing support in the literature in recent years, arguing that justice crucially depends on individuals’ willingness to act in the interest of the community. Just laws, according to this view, have to be complemented by a *social ethos* in order to be effective. It is a constitutive feature of a social ethos that members of society to a significant degree internalise its

¹¹⁴ I add this qualification here to allow for the fact that the privileged, for several reasons, are likely to have a relatively strong hold on the legislative process. First, when imbalances of power exist, they tend to apply across different domains of social life. Though I by and large bracket these coupling effects, this is one of the instances where they need to be mentioned. Second, there is empirical evidence that the disadvantaged are less likely to exercise their political power – through voting, for instance – in the first place, which again tilts the balance in favour of the privileged.

¹¹⁵ I borrow this terminology from Liam Murphy (2000: 47-50).

content. In this respect, such an approach to justice imposes more exacting, “active,” demands of morality on individuals.

In the present section, I will argue that in order to overcome the resistance of the privileged, we have to strike a balance between institutional and individual justice. Counteracting some of the critical fire that the concept of institutional justice has been under, I will attempt to rehabilitate it as a necessary ingredient to overcoming the above resistance. At the same time, I will spell out a crucial precondition for its effectiveness.

We will approach the issue via a discussion of two recent criticisms (Cohen (1997) and Murphy (1999)) of institutional justice. Our concession to the critics will be that a plausible account of institutional justice has to be based on a notion of institution that comprises informal as well as formal social structures – this is where a purely legislative approach falls short.¹¹⁶ However, instead of concluding that this undermines the importance of institutional justice, we will maintain that the opposite is true, and particularly so under an unjust *status quo*. In section 8.3.2, I will present my account of institutional justice that emerges from this discussion, which I call *motivational bootstrapping*. We will close with an example of what motivational bootstrapping could look like in practice.

8.3.1 Justice: Individual versus institutional?

As is the case with so many debates in contemporary political philosophy, the question of what kind of institutional structure, if any, needs to be in place for a society to be just can be traced back to the work of John Rawls. The point of contention here is not primarily the content of Rawls’ two principles of justice, but their domain. “Justice,” the first sentence of *A Theory of Justice* famously states, “is the first virtue of social *institutions*.” (1999: 3, my italics). The institutional focus of Rawls has proved tremendously controversial. In what follows, I shall distinguish two critiques of this aspect of the Rawlsian system. The first, formulated by G.A. Cohen (1997), questions Rawls’ emphasis on a *formal* institutional structure to promote justice in society. Moreover, Cohen can be interpreted as belonging to a

¹¹⁶ This insight, it is worth noting, will also lead us revisit the relationship between law and morality set out in section 8.1.2. Where institutions are informal in character, they significantly overlap with morality.

family of views which, contrary to Rawls, defend a *continuity* between individual and institutional principles of justice. The second critique, put forward by Liam Murphy (1999), highlights the shortcomings of the Rawlsian framework when extended to non-ideal theory, i.e. when there exists a problem of non-compliance. This establishes an important connection with the overall theme of this chapter, to wit, the resistance of the privileged to give up their advantages. My objective in analysing these critiques is not primarily exegetical, but rather to gain insight into the interplay between individual and institutional justice. Rawls' theory and the critiques by Cohen and Murphy are stepping-stones in this exercise.

Start with Cohen. At the outset of the relevant paper, he helpfully summarises his qualms with Rawls' position in the slogan that "the personal is political," and then proceeds to spell out that he will use this slogan to argue that "principles of distributive justice [...] apply, wherever else they do, to people's legally unconstrained choices." (1997: 3) It is worth emphasising, as Cohen does, that these legally unconstrained choices obviously fall outside the realm of compliance, where the latter is defined as conformity to the law. If Cohen were correct in identifying this formally unregulated realm of choice as an important, perhaps even the principal, "site" of distributive justice, this would undermine Rawls' presentation of justice as primarily a virtue of institutions. The status of just institutions would be downgraded from being a sufficient condition to address problems of distributive justice to forming one necessary, but potentially minor, ingredient into a broader mix of factors.

Cohen's argumentative strategy is to present Rawls with a dilemma. If you want to limit the subject of justice to "the basic structure" of society, you will face the following choice. You can either restrict the notion to coercive, i.e. legal, institutions, or you can extend it to encompass the informal structure of society, which relies on convention and usage. The former, so Cohen reasons with an argument that I bracket here, results in an arbitrary notion of justice, whereas the latter inevitably incorporates the aforementioned legally unconstrained choices into the realm of justice. Cohen himself is sympathetic to this second option and suggests

that formally unconstrained choices need to be informed by an *ethos* of justice.¹¹⁷ To illustrate his point, Cohen applies his argument to Rawls' difference principle, which holds that income inequalities are justified as incentive payments to the talented if they are to the benefit of the most disadvantaged group in society. In this context, the dilemma takes the following form. Either the talented do not affirm the difference principle in their market behaviour, which represents one principal instance of a legally unconstrained context of choice. In this case, the society in question would no longer qualify as just measured by Rawls' own standards. Or the talented do endorse the difference principle as well as the egalitarian ethos it encapsulates, but then it is no longer clear why the incentive payments to them are necessary in the first place.¹¹⁸

This tension inherent in Rawls' difference principle uncovers a general puzzle for any modern liberal society. When asked to name the defining features of such a society, many would place the negative liberty it grants people in their private and professional lives near the top of the list. Yet, at the same time, the functioning of a liberal society builds on the continued political support of its citizens for an institutional framework which, in any given instance, might well ask them to subordinate their private interest to the well-being of others in the community. To some observers, reconciling these two aspects of liberalism requires people to perform a motivational split that borders on schizophrenia. As Murphy and Nagel poignantly put it, "does it really make sense – is it psychologically coherent – for people to be acquisitive, competitive, and dedicated to advancing the interests of themselves and their families in their personal lives while being impartially concerned with the interests of all, and with reducing inequalities between families,

¹¹⁷ To pre-empt confusion, let me point out that the notion of a social ethos has also been used in a second, different, sense. Jonathan Wolff (1998: 104), in calling for an *egalitarian social ethos*, asserts that "there is more to a society of equals than a just scheme of distribution of material goods." What he has in mind is a plurality of egalitarian values that includes not only fairness, but also respect for the individual. Wolff is concerned with the content of the ethos, whereas Cohen emphasises the contrast to formal institutional structures.

Expressed in terms of the terminology of section 5, Wolff is critical of a purely distributive version of egalitarianism.

¹¹⁸ For an excellent illustration of the contingency of the incentives needed to elicit a certain contribution to the productive process from individuals, cf. Carens (1981). Suppose economic activities were driven less by a rationale of profit-maximisation, and more by a moral incentive to perform one's duty to society. Under such a scenario, Carens argues, our current social arrangements of the productive process would be compatible with a considerably less unequal distribution of the benefits from this process.

in their political choices – choices, for example, to support taxes on themselves for the benefit of others?” (Murphy and Nagel, 2002: 72) Incidentally, this explains why liberals of all stripes cherish the institution of the market, in its idealized form. Under the mechanism of the “invisible hand,” as presented by Adam Smith, objectives pursued for private gain are assumed to generate public benefits. In other words, the problem of the motivational split vanishes. Unfortunately, as we have seen at several junctions in previous chapters, the idealized market does not exist in practice.

Thomas Nagel’s moral theory outlined in section 8.1.1 recognises the importance of the motivational split by stipulating the co-existence of the personal and impersonal viewpoints as constitutive parts of our moral make-up. The relationship between the two perspectives is bound to be a strenuous one under any circumstances. Crucially in our context, however, the tension will be exacerbated even further given the injustice of the distributive *status quo*. Expressed from the perspective of the privileged, the more unjust the *status quo*, the bigger the concessions they will have to make when acting on their impersonal point of view.¹¹⁹ This insight will take centre stage later in our argument.

Opinions are divided about how best to conceive of morality in the face of this motivational split. Rawls and Cohen fall on opposing sides of this divide. On the one hand, the *discontinuity* view holds that there are indeed two different sets of principles of justice. Whereas individuals may be partial in their actions, the conduct of the state and its representatives has to be governed by an impartial concern for all citizens. The only constraint imposed on individuals is that they are required to support the impartial public institutions. This, essentially, is the picture we are presented in Rawls’ theory of justice. The *continuity* view, on the other hand, insists that the same principles of justice apply to both individuals and institutions. However, advocates of the continuity view accept that a “division of labour between social institutions and individual responsibility is the most effective way to promote the ends of morality.” (Murphy and Nagel, 2002: 71) Note that one plausible division of labour between individuals and institutions might assign the task of impartial

¹¹⁹ Incidentally, an unjust *status quo* widens the motivational split for the disadvantaged as well. In their case, discounting the impersonal viewpoint can partly be understood as an act of reciprocity, sanctioning the lack of impartial concern on behalf of the privileged. Besides, the personal viewpoint of the disadvantaged is of course a force for change, rather than an obstacle to it.

institutional design to the latter and compliance with this institutional framework to the former. Under such a scenario, the continuity and discontinuity view become indistinguishable in terms of their practical consequences.¹²⁰

It is not my intention here to take sides in the continuity-discontinuity debate, but I want to remain agnostic with respect to questions of moral ontology. Instead, let me suggest that we can draw a conclusion from what seems to be the common denominator between continuity and discontinuity theorists, namely that there is and needs to be a division of labour between individuals and institutions in the promotion of distributive justice. Since institutions are not independent entities, but are made up of individuals, this division of labour is subject to the motivational split we identified before. Now, it is plausible to assume that when this motivational split becomes too wide and hence too demanding, people's allegiance to the institutional framework will give way. This brings us back to the aspect of Cohen's position we started off with, namely the idea of a social ethos. Such an ethos can be instrumental in narrowing the motivational split in two ways. Suppose, to make its implications more tangible, the social ethos requires people not to walk past a homeless person on the street without giving them some change. For this maxim to be a true social ethos, members of society have to internalise its content at least to some degree, which will furnish *internal* reasons to give change to a homeless person when they see one. At the same time, the social ethos functions as a device of institutional justice itself, in that the social stigma attached to violating it provides people with *external* reasons to conform. People will not walk past a homeless person because it triggers too costly a social reaction from others. Both sets of reasons taken together, it would seem, increase the likelihood of people to either comply with or even vote for *formal* institutional structures which encapsulate the spirit of the ethos. In our example, this might be taxation to fund accommodation and reintegration projects for the homeless.

¹²⁰ For completeness' sake, I should mention that the continuity-discontinuity debate has also been conducted at a different, perhaps even more fundamental, level. Ronald Dworkin's (1990) case for continuity has the ambitious goal of finding an ethical foundation for liberalism. Similar to Cohen, the target of Dworkin's arguments is also John Rawls, in this case his project of defending liberalism as a political doctrine (which later finds expression in his *Political Liberalism* (1993)). This debate is enriched by adding, and giving centre stage to, another variable in the political process, namely the possibility of moral disagreement between members of the community. My inclination is to side with Rawls, but we cannot pursue this question further.

These considerations reveal two things.¹²¹ First, the difference between formal and informal institutional structures is really only one of degree.¹²² Formal institutional structures like laws *tend* to rely on external reasons to exert compliance, whereas informal institutional structures like a social ethos *tend* to rely on internal reasons for their effectiveness. Yet, it is quite clear that our legal structure would collapse if people did not, at least to some extent, identify with it. Correspondingly, the more a social ethos draws on the undesirable consequences that ensue in case one violates it, the more it looks like a law and becomes itself subject to a motivational split. When the support for them crumbles, both laws and a social ethos either change or collapse.¹²³

Second, institutional justice is well advised to draw on both its formal and its informal elements. In fact, from a public policy point of view, the more we can rely on informal structures and the internal reasons they furnish, the better. They provide the “glue” that promotes and maintains social cohesion. Unfortunately, the resistance to change by those privileged under the unjust *status quo* is a clear indicator of the *absence* of a social ethos fostering cohesion. The natural question to ask at this point is: Can we create or at least encourage the establishment of a social ethos?

Before we pursue this question further, let us turn to the second critique of Rawls’ institutional focus. Liam Murphy (1999) describes Rawls’ approach as

¹²¹ A third aspect, which I ignore here, could be to reassess Cohen’s critique of Rawls’ difference principle in light of the above considerations. For a defence of Rawls, cf. Andrew Williams (1998). Another possibility would be to say that, whether or not the motivational split that the difference principle demands from people is too wide, is an empirical matter. Finally, and this is the line I would like to take here, one might say that the difference principle cannot be judged in isolation, but has to be evaluated as part of a comprehensive assessment of the Rawlsian system. Cf. for instance my criticism of Rawls’ baseline of equality in section 5.

¹²² Cohen implicitly acknowledges this possibility in the endnote to his article (1997), by conceding that behaviour is constitutive not only of informal social structures, but of formal or coercive ones, too.

For a contribution to the literature which, similar to my argument here, softens the distinction between institutional framework and ethos from a categorical one to one of degree, cf. Joshua Cohen (2002).

¹²³ This paragraph also draws our attention to the possibility that the content of a social ethos, much like that of a law, may *conflict* with justice. Such a situation is particularly likely to occur under an unjust *status quo*, with the ethos in question only being endorsed by a subgroup of the population, namely those who benefit from the injustice. This comes close, I believe, to Cohen’s interpretation of the role of incentives in Rawls’ difference principle. Can the *attitude* or *ethos* of the privileged to demand incentive payments to make their contribution really be justified from a perspective of justice? I think Cohen has a strong point here.

In our context, the presence of an unjust ethos will mean that the ethos itself becomes a source of resistance to change towards economic justice.

dualistic, given its bifurcation of the normative realm into principles governing institutions versus ones directed at personal conduct.¹²⁴ Murphy, like Cohen, concludes that limiting the subject of social justice to the institutional level is inappropriate, yet his reasoning to arrive at this conclusion is different. Murphy's principal worry is that a theory with different standards of justice for the institutional and individual level "will yield an implausible account of what people should do in *nonideal* circumstances." (1999: 279, my italics) Murphy acknowledges that Rawls explicitly limits the scope of his theory of justice to ideal theory,¹²⁵ but he rightly insists that the value of this ideal theory will stand and fall depending on how informative it proves in tackling problems of injustice in the real world. Given an unjust situation, Murphy questions the Rawlsian idea that we should prioritise the moral demand to push for institutional reform over the moral demand to alleviate the injustice in a more direct way. Murphy gives the example of people living in extreme poverty in developing countries. Rather than adopting the abstract and distant goal of promoting just international institutions, one should consider giving my resources to humanitarian aid agencies instead (cf. 1999: 281).

You might already guess what my two principal reservations towards Murphy's position are. First, the moral demands on individuals are firmly rooted in thinking of distributive justice in terms of the shares problem, which we encountered in section 8.2.1. I have already expressed my qualms with retributive justice of this kind. Admittedly, the above case of international justice is one where my proviso of a certain threshold justice in the past is unlikely to be fulfilled. But even if we apply Murphy's argument to cases where retribution is justified, there is a second, deeper, worry. The individual in Murphy's example is motivated to alleviate poverty, and wonders about how best to achieve this aim. As my emphasis on the resistance to change by the privileged documents, I believe this is a highly idealistic assumption. The more unjust the distributive *status quo*, the wider the motivational split between the personal and impersonal viewpoints, and the more of a gamble it becomes to rely

¹²⁴ As far as I can see, the dualism *versus* monism debate significantly overlaps with the continuity *versus* discontinuity debate.

¹²⁵ Cf. "Obviously the problems of partial compliance theory are the pressing and urgent matters. These are the things we are faced with in everyday life. The reason for beginning with ideal theory is that it provides, I believe, the only basis for the systematic grasp of these more pressing problems." (Rawls, 1999: 8)

on individual motivation to do something about the injustice. In fairness to Murphy, I should emphasise that he is acutely aware of this problem. His way of expressing it is to say that in non-ideal theory, i.e. when some members of society are not complying to the principles of justice, the moral demands on the other members will be excessive (cf. 2000, and 1999: 291) But instead of acknowledging the need for an institutional solution to tackle the problem of non-compliance, Murphy focuses his attention on modifying the moral demands on those who do comply. I think he is putting his money on the weaker horse.

In sum, and contrary to Murphy, I believe that as we move further away from ideal theory, to wit, as the distributive structures of a society become more and more unjust, institutional change becomes more rather than less important.

8.3.2 *Institutions as motivational bootstrapping*

Justice does not have to choose between individuals and institutions for its promotion. It necessarily relies on both.¹²⁶ The interaction between the two levels can be pictured as a process of *motivational bootstrapping*.

In order to unpack this metaphor, let us take a step back and see whether the discussion of the past section yields any progress in terms of weakening the resistance of the privileged. The following case can be made that it does not. We started out by establishing, if you recall, that unless the privileged are in the clear minority, they will shrug off any legislative attempts to recalibrate the distribution of advantage in society. This weakness of a legislative approach led us to consider two attacks on formal institutional justice, of which the law is the main representative. One of the conclusions from this exercise has been to broaden the notion of institutional justice to encompass informal social structures. We saw that informal social structures, which can for instance take the form of a social ethos, are likely to be a preferable vehicle to promote social cohesion. The internal reasons that a social ethos speaks to, open the door to the motivation of individuals, and by extension to

¹²⁶ Incidentally, the criticisms presented in the previous section notwithstanding, I believe Rawls was well aware of this. Cf. for instance: "An institution may be thought of in two ways: first as an abstract object, that is, as a possible form of conduct expressed by a system of rules; and second, as the realisation in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules." (1999: 48) Besides, his notion of a *sense of justice* can be interpreted as a concept very similar to that of a social ethos.

their resistance to change, in a way the external reasons relied upon by laws rarely do. Here is the snag. The problem at the root of this chapter, the resistance of the privileged, is evidence that no such ethos exists in the situation in question. Otherwise, the transformation of unjust distributive structures would not pose a problem.

Yet, this pessimistic conclusion would be premature. If we can find ways to *establish* a social ethos of the required kind, the resistance might begin to crumble. The delicacy of this task can be illustrated by the fact that even our hypothetical benevolent dictator would scratch her head at it. The resistance of the better off to reforming the unjust structure cannot be steamrolled, but has to be softened by persuasion.

Let me suggest that our starting point in this exercise should not be the shortcomings of institutional justice, but rather what it can achieve. Few people would deny that even formal structures like laws can have a significant formative influence.¹²⁷ In fact, this feature is co-extensive with our assertion that, though laws *tend* to provide external reasons, internal ones are not out of their reach as a matter of principle. Why, we need to ask then, does this attempt to capture people's internal reasons obviously fail in our case of transformation, as documented by the resistance of the privileged? The answer, I surmise, is an overstretch of the motivational split. As we have seen, there always exists a tension between people's personal motives and the duties asked of them for the benefit of others in the community. Given that even the authority of existing institutions, be they formal or informal in nature, will be undermined if this tension grows too strong, it is not surprising that the motivational split also acts as a severe constraint on the feasibility of new institutions.

We can now define *motivational bootstrapping*. The idea is to pursue incremental institutional change, which delivers the benefits of formative influence

¹²⁷ Unsurprisingly, this idea is prominent in the thought of John Rawls. He finds a poignant formulation for it when he says that "what sort of persons we are is shaped by how we think of ourselves and this in turn is influenced by the social forms we live under." (1975: 300) Joshua Cohen (2002: 377-80) provides a tangible illustration of the policy implications that taking the formative influence of institutions seriously is likely to have. For instance, if a consensual as opposed to majoritarian form of democracy delivers better results for the least advantaged in society, should we not have a preference for the former from the perspective of justice?

without overstressing the motivational split, thereby gradually expanding the realm of the politically feasible. The secret of transforming unjust distributive structures, according to this view, lies in “managing” the motivational split. Sure enough, the better off will resist sweeping reforms that would erase their privileges overnight. Yet, might we not be able to find policies that will be both palatable to them and, over time, lead them to accept more fundamental change? In this abstract form, the goal might sound utopian, but I hope my concrete proposal in the following section will dispel these doubts to some extent.

Before, however, let me make a few comments on the notion of motivational bootstrapping. First, the advantage of conceptualising institutional justice in this way is that it captures both its power and its limits. Institutional design, if conducted carefully, indeed represents a potent instrument to foster social consensus. The transformation of an unjust structure is particularly unlikely to succeed without capitalising on this feature. At the same time, we have seen that the feasibility of institutional reform is bound by the motivational split. The latter must not be overstretched for institutional justice to be effective. If we do the boot up too tightly, i.e. if the demands of the formal and informal institutions in society are too far removed from people’s personal motives, the lace will rip.¹²⁸

Second, the notion of motivational bootstrapping suggests that what people perceive as acceptable policy in the name of justice varies with circumstances. In a society with a social ethos of sorts, the set of feasible policies to promote economic justice will be larger than in a comparable society that lacks this ethos. This, one might object, is evidence that motivational bootstrapping is not a moral concept, but essentially a pragmatic one. But recall Thomas Nagel’s approach set out in section 8.1.1. In what is widely accepted as a *moral* theory, the personal viewpoint of individuals will necessarily be influenced by the situations they find themselves in, too.

Third, consider a couple of admittedly very general examples for motivational bootstrapping in practice. It has been successfully applied in Scandinavian countries, for instance, where citizens express a preference for the relatively large welfare state

¹²⁸ I hope this talk of overstressing does not extend to my metaphor itself. If so, apologies.

operated by their governments. Attempts to significantly gear up the welfare state overnight in other countries, where no corresponding social ethos exists, would be an uphill struggle, because it would overstretch the motivational split. Moreover, consider the economic transition of Eastern European countries during the 1990s. Their teething troubles suggest that the functioning of the market requires both people's acquaintance with, and their support of, its institutions – features that clearly take time to develop.

This leads me to a final remark. Unfortunately, the social glue that motivational bootstrapping tries to create is much like a ligament. Ripping it is a matter of an instant, rebuilding takes time. The management of this long-haul process is not made easier by a political system that is governed by election-cycles rather than political leadership.

8.3.3 The strange taboo of “How much are you making?”

The challenge posed by the previous section is to come up with policies that actually implement the idea of motivational bootstrapping. In this section, I will propose one such policy. Let me emphasise up front that I consider what follows a mere sketch, which would need to be defended in more detail before becoming practicable.

There are few secrets that people guard more anxiously than their pay details. Even among work colleagues, open discussion about the size of their paycheques is the exception. A proposal tabled by the British government in early 2003, which required bosses “to reveal the pay details or salary ranges of employees doing comparable work,” (The Economist, February 15th 2003: 36) was considered revolutionary. This strange taboo surrounding earnings, not only within companies but in general, is both puzzling and it arguably presents a serious obstacle to distributive justice. If one's income is a fair reflection of one's contribution to the productive process, why be protective about this information?

Consider the effects of a legal requirement to make all information on labour income public. I see two basic, idealised scenarios here. Under the first, optimistic one, we assume that the unjustly privileged, from the impersonal viewpoint, would have conceded all along that the distribution is unfairly tilted in their favour. Yet, since they could get away with it, the personal viewpoint prevailed motivationally,

and they did not act on their instinct of justice. Bringing income information out in the open is bound to give the impersonal viewpoint more prominence in the motivations of the privileged. In other words, the mere fact of publicity will provide them with some – or, relatively speaking, stronger – internal reasons to agree to change.

The second, perhaps more realistic scenario works on the presupposition that the privileged not only resist change because it would hurt them financially, but because they actually regard the *status quo* as just rather than unjust. They believe that current pay differentials are deserved. In this case, the minimum that publicity will achieve is to bring out the moral disagreement between the different sections of society more starkly. To the extent that the moral antennae of the privileged will be exposed to more open signals of resentment by the disadvantaged, this in itself might provide the privileged with some external reasons to accept change. But even if it does not, publicity and the spotlight it shines on the moral disagreement in society is sure to encourage a debate between the various positions.¹²⁹ Provided the debate produces at least some agreement and hence succeeds in widening the common ground between those positions, the mechanism described under the first scenario will kick in.

Reality lies somewhere in between the two scenarios. Whatever the precise configuration of diverging personal interests and moral disagreement turns out to be, the publicity requirement shows significant promise to make the impersonal viewpoint more prominent in people's motivational profile. It is unlikely that it will be sufficient on its own to lay the basis for a social ethos, but, in the spirit of motivational bootstrapping, it pushes back the boundary of political feasibility to promote economic justice in the future.

A publicity requirement for labour income is bound to face the objection that this kind of information is private and should be protected. This claim is unfounded. Contributing to the productive process of society is a paradigm example of a public

¹²⁹ The theory of distributive justice I have defended in this PhD thesis, arguing for an equal division of the co-operative surplus, does not maintain that all current pay differentials are undeserved, but that the magnitude of differences is exaggerated.

activity.¹³⁰ If anything, a right for people to know what their relative reward is in this enterprise seems more plausible than a right to disclose this information from others. This is one of the places where my argument will need to be substantiated further. For the time being, let me confine myself to pointing out that my call for publicity is nothing new in political philosophical thought. Prominent precedents have been set by, amongst others, John Stuart Mill and John Rawls. Mill presents a strong case in favour of public voting, emphasising the fact that other members of society take a justified interest in this important public duty to be performed diligently.¹³¹ Rawls points out that the public recognition of a conception of justice is crucial in making it stable, by bringing about the corresponding sense of justice (cf. Rawls, 1999: 154). It is interesting to see how this aspect of Rawls' work fits with our two scenarios distinguished a few paragraphs back. Very generally speaking, I think it is fair to say that scenario one adopts the perspective of *A Theory of Justice*. Assume a well-ordered society that has agreed on a particular set of principles of justice. The public recognition of these principles serves to ensure that people's sense of justice actually matches the principles. Here, Rawls' notion of a sense of justice corresponds to what I have called internal reasons. Scenario two, on the other hand, takes seriously the problem of moral disagreement that takes centre stage in Rawls' *Political Liberalism*. In this context, the primary function of publicity can be interpreted as that of a catalyst to maximise the common ground between conflicting positions.

If I am correct in thinking that the idea of making income information public is as powerful as it is simple, then one might wonder why it has not long been implemented. One explanation, you might already guess, points out that the privileged, from their current point of view, are likely to anticipate the negative

¹³⁰ Note that my argument is limited to labour income. Civil rights groups might have a firmer stance when it comes to revealing information about wealth rather than income, but I do not have to enter into this argument here.

¹³¹ "In any political election, even by universal suffrage (and still more obviously in the case of a restricted suffrage), the voter is under an absolute moral obligation to consider the interest of the public, not his private advantage, and give his vote, to the best of his judgment, exactly as he would be bound to it if he were the sole voter, and the election depended on him alone. This being admitted, it is at least a *prima facie* consequence that the duty of voting, like any other public duty, should be performed under the eye and criticism of the public; every one of whom has not only an interest in its performance, but a good title to consider himself wronged if it is performed otherwise than honestly and carefully. Undoubtedly neither this nor any other maxim of political morality is absolutely inviolable; it may be overruled by still more cogent considerations. But its weight is such that the cases which admit of a departure from it must be of a strikingly exceptional character." (Mill, 1865: 201-2)

consequences such a policy would have for them. Hence, they would strongly resist such a proposal, which in turn makes it a very explosive subject for any politician to touch. Implementing motivational bootstrapping in practice may turn out to be an uphill struggle.

8.4 Closing thought

We started out by thinking about the resistance to change from those privileged under the *status quo*. This resistance is as defining and depressing a landmark on the road to justice as it has been in this chapter. Yet there is reason for optimism. Human history provides many examples of injustices overcome. If the theoretical considerations set out in this chapter are not sufficient to persuade the advantaged to negotiate some of their privileges, they should keep in mind what the alternative to gradual transformation has been in the past: revolution. It would seem that all parties have an interest to avoid that alternative.

9 Between Market and Merit

Merely restating the main conclusions we have reached would be plainly boring, yet at the same time not picking up some of the loose ends of the individual chapters would count as a serious omission. To reconcile these *desiderata* for the concluding section, I propose to do three things. First, and without aiming at completeness,¹³² I will give a brief synopsis of the main argument of this PhD thesis. Second, we are now in a position to establish several key connections between the various chapters, as well as to add some clarifications of points made within them. Third, and I believe most importantly, I will highlight two questions that my analysis has *not* addressed.

9.1 *Economic justice from an economic perspective*

The story of this PhD thesis can be told in two different ways. The shorter one is more effective in demonstrating where the emphasis of my argument lies. The standard libertarian justification of income differentials is undermined by taking seriously the phenomenon of division of labour. Given the symmetric interdependence between the economic agents involved in producing the co-operative surplus, the latter should be distributed equally. In contrast to traditional opponents of libertarianism, this argumentative strategy has the advantage of producing a case for limiting inequality that argues not *against*, but *with* economic theory. Given how vast a proportion of total income the co-operative surplus represents, the *Equal Surplus Principle* will in practice have to be weighed against the differential remuneration that a “market-based distribution” would call for. In other words, we will have to strike a balance between the unequal and the equal components of income. We will come back to this point in section 9.3.

The longer story is more effective in *justifying* the emphasis of my argument, and reflects the structure of the thesis in more detail. Looking to undermine the legitimacy of income inequalities in their present magnitude, the first arguments we

¹³² For the details of the argument, let me refer you to the interim summaries provided at the end or in the course of the individual chapters. Cf. especially sections 5.5, 6.5, and 7.4.

are inclined to turn to, are of broadly egalitarian denomination. Sections 5 and 6 make the case that the standard egalitarian accounts disappoint our hopes in them.

First, we saw that distributive egalitarian theories put more weight on the notion of equality than it can bear. They either make a controversial anonymity assumption that artificially boosts the attractiveness of the default position of distributive equality, or they stipulate an outright presumption in favour of equality. Once these moves are discredited, the challenge consists in filling the conceptual void by presenting an argument of proportional justice – represented by the concept of a mapping from individual characteristics to income shares. In contrast to notions of distributive equality, this approach succeeds in engaging libertarians into a debate about the *magnitude* of income differentials. We concluded by establishing the possibility of “distributive market failure” – to wit, a situation in which the distributive outcome of the market significantly diverges from our normative judgement about what would constitute a just distribution, and where normative authority is to rest with the latter. The missing link at the end of section 5 is an argument to substantiate this case for distributive market failure.

Second, in section 6, we doubled up on a potentially significant loophole in the argument thus far. Might liberal egalitarians – representing the most prominent strand in contemporary egalitarian thought – be right after all in upholding a qualified case of distributive equality in the realm of natural and social contingencies? Given my background intention to base the mapping of proportional justice on a desert-based principle, an argument undermining natural endowments and social background as legitimate bases for desert would pose obvious difficulties. Our strategy to exclude this possibility or, in other words, to divorce desert claims from the equality of opportunity requirement posited by liberal egalitarians, consists of two steps. First, we frame the problem as one concerning the appropriate scope of justice; the expansive scope endorsed by liberal egalitarians includes natural and social contingencies, whereas the minimalist approach I favour does not. Second, based on an analysis of how the influence of natural and social contingencies on income distribution actually works, a dilemma opens up for the liberal egalitarian. *Either* she casts her objection to unequal opportunities due to endowments or background in a deontological mould; I show that in this case she faces a second-level choice between an absurd extension of her compensation paradigm to the realm

of choice on the one hand, and conceding a minimalist scope of justice with respect to incomes on the other. This horn of the dilemma proves a dead end for the liberal egalitarian. *Or* she travels down the consequentialist route, and objects to unequal opportunities on the basis that the income inequalities they lead to are excessive; in this case, our disagreement lies not in condemning this excessiveness, but in identifying the culprit behind it. Crucially, liberal egalitarians at this point take a central page from the libertarian book by endorsing the market mechanism as a legitimate distributive process. This leaves them no conceptual option but to blame the unequal opportunities with which people enter the market for those excessive income inequalities. Somewhat surprisingly, given the many disagreements between libertarians and liberal egalitarians, the missing link at the end of section 6 coincides with that of section 5. If we manage to substantiate the case for distributive market failure, the consequentialist liberal egalitarian will have to acknowledge this as a second potential culprit for income inequalities. As a consequence, her case for an expansive scope of justice – read, for compensation schemes to nullify the distributive effects of natural and social contingencies – will be considerably weakened.

The common missing link of sections 5 and 6 both sets up and underlines the significance of the opening question of section 7: Can the market-based distribution of income be justified, and if so, how? Enter the argument from division of labour, which I stated above and will not repeat here.

Compared to the intricate connections between sections 5 to 7, my considerations on “Transforming Unjust Distributive Structures” are relatively independent. Yet, given the radical reforms that even a partial implementation of the *Equal Surplus Principle* would call for, their relevance to section 7 is obvious. We need to heed two lessons in particular. The first concerns my case for a forward-looking approach to distributive justice. The radical nature of the reforms necessary to implement *ESP*, even partially, suggests a gradual and prolonged transformation process, in which the qualifier on our forward-looking approach comes into play. Even on the most optimistic and probably hopelessly idealistic readings, redistributive taxation as an instrument of retributive justice will be with us for the foreseeable future. Second, keeping in mind the dangers of overstressing the motivational split between personal interests and institutional demands, it is clear

that merely establishing *ESP* on the conceptual map and calling for adequate legislation cannot be enough. The idea needs to prove its merits in the unyielding forum of public reasoning. Only once it is backed by a certain threshold of persuaded followers, institutionalising its demands will become possible. In the case of *ESP*, the fact that the model of perfect competition in economic theory not only neglects the implications of division of labour, but is even incompatible with them, has to be considered a serious obstacle to its more widespread acceptance. Nothing short of a paradigm shift is required here.

Let me emphasise once again that the present section is not intended as a comprehensive summary. In fact, it brackets many of the arguments we spent most time on in the individual chapters. What I hope to have achieved is to pull together in one place the thread that runs through the thesis as a whole.

9.2 *Some additional pieces of the puzzle*

1) One central plank of our criticism of distributive equality in section 5 was to point out the implausibility of the *strong* anonymity assumption made by views of this kind. If our distributive judgements do not take into account any differences in individual characteristics between people at all, it is hardly surprising that the default position of equality prevails. We also saw that even a slight relaxation of the anonymity assumption is sufficient to undermine the attractiveness of distributive equality; the information about individual utility functions or people's current welfare admitted by utilitarianism and prioritarianism respectively are examples.

Any plausible theory of justice makes a *weak* anonymity assumption of some sort, and my argument from the division of labour is not an exception. In this case, our mapping is sensitive to the differential contributions people make to the co-operative venture of the productive process. Let me make two comments on this characterisation. First, why should my weak anonymity assumption be preferable over others, like the utilitarian or prioritarian alternatives? Think back to my justification for a desert-based principle of justice in section 6.3. Adopting the Rawlsian perspective on society as a co-operative venture for mutual advantage, a criterion of justice that is sensitive to people's contributions to this venture seems eminently plausible. In contrast to utilitarian and prioritarian

approaches, this PhD thesis incorporates both the interpersonal nature of co-operation – through the interdependence of productivity under division of labour – and the economics that underlie it – by analysing the distributive implications of imperfect competition.

As to the second comment, despite my criticism of distributive egalitarianism, my weak anonymity assumption also leads me to a decidedly egalitarian conclusion in the form of *ESP*. How do these two elements fit together? In contrast to egalitarianism, either as a default position or based on presumption, *ESP* represents the conclusion rather than the premise of a moral argument. We have identified a distributively relevant similarity between people, namely their mutual interdependence in a productive process governed by division of labour, which calls for a *local* equality in incomes on the right-hand side of our mapping. I describe this equality as local, because it only captures part of the mapping. It coexists with the distributively relevant differences emphasised by the principle of self-ownership. As indicated at the end of section 5, I find it more appropriate to think of the combination of self-ownership and *ESP* as the demands of *proportional* rather than *egalitarian* justice.

- 2) In section 6.3, we acknowledged that *need* represents a plausible alternative to *desert* as a criterion for our principle of distributive justice. Though, unsurprisingly, we still lack a knockdown argument in favour of *desert*, it should be obvious why *need* appears as a lesser concern in light of the reasoning of section 7. *If*, and this is admittedly a big if once again, *ESP* were implemented, the distribution of income would be significantly more equal. The phenomenon of the “working poor,” for instance, would be unlikely to persist. Just like our consequentialist liberal egalitarian in section 6 would welcome the reduction in inequality that *ESP* calls for, someone who regards the elimination of deprivation as the primary objective of justice will appreciate the contribution of *ESP* towards this goal.

At the same time, it is quite clear that my argument in this PhD thesis only extends to those who get an opportunity to participate in the productive process. It does not address the problem of unemployment, which represents a more and more important facet of economic justice in our societies. In this context,

considerations of need do and should play a prominent role.¹³³ In sum, let me limit my defence of a desert-based criterion of justice to the distribution of those benefits that count as remuneration for people's contribution to the productive process. I believe this to be one of the most important issues of economic justice, perhaps even the single most important one. Yet, in the spirit of a pluralist approach to distributive justice defended from the very beginning of this thesis, my position does not preclude the existence of other, complementary, principles of justice based on a criterion of need.

- 3) In section 8, we saw that the gradual nature of a transformation process towards economic justice calls for temporary compromises to be made regarding the principle of a forward-looking approach to distributive justice. We can draw a parallel to the question of compensation for natural and social contingencies at issue in section 6. Recall that in order to count as deserved, income inequalities had to pass a double test, implicit in conditions a) and b) of our argument in section 6.4.2.¹³⁴

Section 7 spells out the considerations we have to take into account in order to fulfil condition b). More needs to be said on what is required in order to claim with a clear conscience that we have fulfilled condition a). Independent of the precise criteria one might suggest here, it is far from difficult to cite real-world examples of violations of condition a). As long as, for instance, 25% of Britain's working population lack basic literacy and numeracy skills¹³⁵, or as long as the

¹³³ An important alternative approach is to break, or at least weaken, the link between participation in the productive process of society and disposable income in the first place, by introducing an unconditional basic income. Advocates of basic income (cf. van Parijs (1992 and 1995)) present the choice about whether to participate in the productive process and, if so, to what extent, as a central element of individual freedom. As long as one's disposable income is as strongly tied to work as it is in our society, so their argument runs, the exercise of this freedom is severely curtailed.

As I have made clear, my account of economic justice does indeed work on this assumption of a strong link between participation in the productive process and disposable income. However, if my proposal were complemented with a welfare system for those who would like to work, but are unable to find a job, I suspect the distributive outcomes of my approach and one structured around an unconditional basic income would not lie far apart.

¹³⁴ "Income differentials are deserved if a) society has made the utmost effort over time to make up for disadvantage in terms of natural and social contingencies by providing complementary opportunities, and b) they reflect people's different contributions to the productive process."

¹³⁵ Cf. "Skills filled," *The Economist*, 7th February 2004, 32: "Only half Britain's school population gain basic qualifications in maths and English by the age of 16. A further quarter manages to catch up

quality of American high-schools induce the parents of two million children to opt out of state-education and teach their kids at home,¹³⁶ it would seem preposterous to claim that, as a collective, we have done our utmost to provide complementary opportunities to those disadvantaged by natural or social contingencies. As long as conditions such as these prevail, I find it difficult to deny that advocates of the compensation paradigm have a point. However, whereas liberal egalitarians tend to present compensation as making up for natural and social contingencies, my conditional acceptance of compensation is strictly limited to the *effects* these factors have in our particular social arrangements. In other words, we may under certain conditions compensate for the disadvantages generated by a system that we have ourselves designed. Yet, it is important not to lose sight of the preferable path, which has to be the one that leads to a scenario in which compensation is no longer necessary.

9.3 Open questions

1) *Between market and merit*

Section 7 closes with the suggestion to look at income as consisting of two components. On the one hand, there is an *unequal* component justified by both the principle of self-ownership and, mainly, on the basis of differential individual contributions to the productive process. The latter in turn are approximated by the hours people work, the qualifications they hold, and the responsibility their job entails. On the other hand, we stipulate an *equal* component of income in the spirit of the *Equal Surplus Principle*. The obvious question at this point is to ask how one would go about fixing the relative magnitude of these two components.

As already hinted at towards the end of section 7.3.4, I choose not to speculate about the magnitude of income inequalities that *ESP* licenses. Instead, my objective here is to clarify how this component-view of income relates to the terminology of “distributive market failure” we used in sections 5 and 6. This term, recall, was intended to pick out situations where our normative distributive judgements diverge

later. That leaves a quarter of the potential workforce unable, say, to read safety instructions or enter data in a computer.”

¹³⁶ Cf. “George Bush’s secret army,” *The Economist*, 28th February 2004, 52.

from the distributive outcome of the market. In contrast to the libertarian, I suggested that normative authority should rest with our judgements rather than the market. The insights from section 7 suggest that this conceptualisation of the debate is dangerously simplistic. Under conditions of imperfect competition, there are multiple market equilibria.¹³⁷ Put differently, the distributive outcome of the market is underdetermined.¹³⁸

Already in section 5, we cautioned against prematurely blaming the market for certain distributive outcomes, because they might in fact be the result of some misguided government intervention instead. This note of caution now receives a significant extension. In a situation where the distributive outcome of the market is underdetermined, criticising a given distributive outcome always implies a criticism of the contingent social arrangements that have led to this particular distributive outcome. For instance, as our “tracing” of the surplus in section 7.2.1 illustrated, the current distribution of surplus within firms is less a reflection of economic necessities than of the power structure between the various stakeholders. From the perspective of distributive justice, the conceptual allowance for multiple market equilibria should be welcomed as good news. It means that we can choose a more equal distribution without necessarily interfering with market forces, where ‘choosing’ stands for imposing a set of regulative constraints on the distributive decisions made.

These considerations are reflected in the title of this PhD. If perfect competition were a descriptively accurate theory, and there existed a unique market equilibrium, the title would have read “Market *Against* Merit,” since our distributive lessons from division of labour obviously conflict with such a scenario. I suspect that at least some of the controversy surrounding libertarianism is due to the fact that it is usually assessed against the background assumption of perfect competition. There is room for interesting clarifications here.

So why “*Between* Market and Merit”? From what I have said in this section, it should be clear that I do *not* mean to map the unequal and equal components of

¹³⁷ In order to keep at least some firm conceptual ground to stand on, I at this point bracket the fact that the network effects of division of labour draw into question the plausibility of equilibrium economics altogether (cf. section 7.2).

¹³⁸ Cf. the comments on corner solutions in section 7.3.2.

income onto the notions of market and merit respectively. Instead, the title is meant to emphasise the scope for judgement that exists between the workings of the market forces and a particular distributive outcome. I have argued that these judgements should be informed by considerations of merit. The relative weight given to the unequal and equal components of income respectively can be interpreted as the choice of one particular market equilibrium among many. As I have indicated in section 7.3.2, there is a possibility that giving significant weight to *ESP* will call for a distribution that does *not* support an economic equilibrium. In other words, certain wages might be subject to an upper or lower bound. There is certainly more to be said here, but I am not aware of having neglected or violated any obvious constraints of this kind.

Let me add two final comments to what I think is the single most important section of this conclusion. First, the contribution of this PhD thesis consists not in suggesting a particular mix of the unequal and equal components of income, but in putting the argument for an equal component of income onto the theoretical map in the first place. As section 7 documented, neither the model of perfect competition nor the libertarian tenet of self-ownership pay heed to the distributive lessons from division of labour, or even have any conceptual room to do so.

Second, my intention can be brought into sharper focus by briefly describing a very similar idea recently put forward by Lesley Jacobs (2004). In setting out what he calls a “three-dimensional model of equal opportunity as a regulative ideal” (Jacobs, 2004: 4), Jacobs distinguishes three kinds of fairness: procedural, background, and stakes fairness. He illustrates the three notions by considering the example of a boxing match (Jacobs, 2004: 14-15). Procedural fairness, for instance, bars the competitors from punching below the waist. Background fairness is reflected in the classification of competitors according to weight. Stakes fairness refers to the relative prizes for winner and loser, customarily fixed in boxing at 75% and 25% respectively. The notion of stakes fairness represents Jacobs’ innovative contribution, and the one that interests us here. For ‘boxing match,’ read ‘labour market;’ for ‘winner and loser,’ substitute ‘more and less attractive jobs in the economy.’ The message of my thesis is that the relative attractiveness of jobs in terms of their pecuniary returns is underdetermined by the market, and is subject to distributive choices that economic agents make. These choices should either be informed by

normative judgements or be constrained in a way that reflects our normative judgements. At present, the stakes on the labour market are too spread out. A plausible theory of justice needs to address this issue. The open question, at least at the end of this PhD thesis, is *by how much* the stakes should be pulled together.

2) *Capital income, entrepreneurship, and corporate profits*

This thesis only gives a partial answer to the question “How Unequal Should Incomes Be?” Wage income represents a sizeable, but falling, proportion of the average person’s overall income. Although the central role that work plays in the organisation of our society certainly underwrites the significance of the present analysis, it needs to be complemented by a normative analysis of other kinds of income.

Two main lines of inquiry come to mind in this context, the first of which we have broached at several points: How should *capital income* be distributed? To some extent, this is a derivative question of the underlying distribution of capital or wealth. Section 8.2 took a stance on this issue by presenting a case for a forward-looking approach to distributive justice, albeit a heavily qualified one. However, we also indicated that questions concerning the *taxation* of capital income can in principle be separated from the underlying distribution of wealth. A lot more needs to be said about the determinants of a just taxation scheme for capital income. Keeping in mind the lesson from Murphy and Nagel that a tax scheme can only ever be evaluated as part of the overall distribution of benefits and burdens in society, the issues of capital income and labour income will eventually have to be addressed jointly. Among other things, this will mean relaxing the simplifying assumption made regarding the role of shareholders in section 7. It is clear that they too should receive a slice of the co-operative surplus, particularly given the risk that their financial investment carries. The risk attached to financial investments and to entrepreneurial activity in general introduces an additional variable into considerations of distributive justice.

The second line of inquiry focuses on the question how much “surplus skimming” by companies our social arrangements should tolerate. As we have seen in section 7, market power allows companies to retain an important part of the co-operative surplus in the form of profits, rather than pass it on to consumers in the

form of lower prices. Two main instruments of economic policy aim to either curb this market power or to mitigate its distributive effects. Anti-trust regulations put a cap on market power, whereas corporate taxation redistributes some of the surplus towards the provision of public goods or other projects whose benefits are spread more widely. Arguably, national corporate taxation schemes are no longer fit to fulfil this second job in the face of multinational companies, who have become experts at arbitraging between different tax schemes and minimising their bills to governments. The challenge here, I believe, is fundamentally institutional.

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