

**Accepted version of paper published as:
'Just Returns?', *Political Studies Review*, 13: 2 (2015), pp. 226-38.
DOI: 10.1111/1478-9302.12081**

***Just Returns?*
Albert Weale**

I am profoundly grateful to each of the contributors to this symposium for all the effort and attention that they have put into their reviews. I owe a special debt to Dario Castiglione and Chiara Cordelli for their work in organising the workshop on *Democratic Justice and the Social Contract* (Weale, 2013) at the University of Exeter, which first brought the contributors together. E.M. Forster once said that he wrote to earn the respect of those whom he respected. Since I have a great deal of respect for the work of all the symposiasts, the elements of positive appraisal in their comments make me feel that I have gone a little way towards realising Forster's ambition. However, political theorists are not selected for their ability to pay compliments to one another. Their comparative advantage is a willingness to engage in dialectical struggle. So, in the remainder of this reply, I shall focus only on the critical themes in the reviews. Space forbids my looking at all the issues raised, but I hope I have chosen the most significant. Whether I offer just returns for many acute points that have been made is for the reader to judge.

To set the scene, it is worth noting that the principal arguments of *Democratic Justice and the Social Contract* derive tender-hearted conclusions from tough-minded premises. I use a rational choice version of social contract theory through which to develop principles of justice. Within the approach there is no appeal to an agreement motive, nor reliance on the supposition that human have a disposition to explain themselves to others. There is no veil of ignorance to soften the sense of self-interest. And there is no appeal to anything like a sense of decency, let alone an egalitarian ethos.

Yet, despite these premises, I claim that a contractarian theory of justice will yield a relatively egalitarian theory of justice and political organisation. Workers are to be secured equal access to productive capital, a highly developed welfare state will provide economic security across the fluctuations of the life-cycle, productive but unmarketable work is to be reimbursed, political competition is to be organised so that a wide variety of political opinions is represented in the legislative process and citizens should internalise a sense of justice requiring them to restrain the assertion of pure self-interest in their social interactions. Admittedly, many present day egalitarians will not find the principles endorsed by democratic contractarianism radical enough. For example, I deny that anyone has a right to a share of the product of another's labour simply as a matter of justice, I happily countenance unequal returns to productive effort, even where those returns include economic rent, and I propose that redistribution in the welfare state is not a matter of justice but of prudent collective social insurance. Yet, as contractarian theory goes, the conclusions of the argument justify what many would regard as a high level of social obligation.

In his Introduction Dario Castiglione has provided the reader not only with an excellent account of the argumentative strategies employed in the book but also a brief account of the origins of the theory in some long-standing reflections of mine about social contract theory. In particular, Castiglione is right to say that I have seen social contract theory principally as a way of addressing Sidgwick's (1907) worry about the indeterminacy of intuitionist ethics, although

my thoughts on how contract theory might provide a method of ethics have fluctuated over time. Yet, an intellectual history can only set out a preface to analysis; it cannot address the issues that Castiglione so clearly sets out.

I like to think (but who are authors to judge?) that the account of deliberative rationality that Castiglione summarises is an original contribution to thinking about the prudential, cautious and defeasible rationality of contracting parties. It is also, as Castiglione acutely notices, not solipsistic. That leads me to a point that I might have highlighted more forcefully in the book. I envisage the contracting parties as being motivated to secure certain common goods – exemplified in the conservation of natural resources – that are the necessary conditions for individual advantage. The principles of justice adumbrated in the theory are the principles that each contracting party would rationally adopt in order to participate in this common enterprise. So, principles of justice emerge as a by-product of the search for common goods. The contracting parties participate in collective intentions, whilst at the same time being the sturdy guardian of their own separate interests. In this context, the empirical method is more than a piece of window-dressing. Empirical social contract theory offers an account of the implicit logic of viable social organisation: individuals who are in competition with one another still need to cooperate if their competition is not to be mutually destructive.

Even if the logic of the argument is clear, it leads to an obvious dilemma. Anyone who ends up deriving tender-hearted conclusions from tough-minded premises is open to two lines of attack. On the one side are those who say that, given the conclusions, the premises must at some point be too tender-hearted; on the other side are those who say that, given the premises, the conclusions are implicitly too tough-minded. Both positions assert that you cannot derive the tender-hearted conclusions from the tough-minded premises.

I shall use this supposed dilemma as the organising principle of my reply. Thus, Matt Matravers thinks that I can only derive my conclusions by illicitly softening the ostensibly tough-minded premises of the construction. Jeff Howard and Chiara Cordelli, by contrast, think I need more tender-hearted premises to get to the conclusions that I favour or I risk ending up endorsing unjust practices. Ian O’Flynn complements this critique with the claim that I fail to take seriously the need for common deliberation to underscore the principles of a great society. Only having looked at these criticisms will I consider Chris Bertram’s argument that both premises and conclusions get off on the wrong foot completely, a more forceful echo of Castiglione’s ‘friendly fire’. So, I shall organise my reply as an answer to three questions. Have I been too tender-hearted in my premises? Alternatively, have I been too tough-minded in my premises? And should I have started somewhere else anyway?

Too Tender-Hearted?

Matt Matravers, writing as a contractarian constructivist, suggests that my reliance on the assumption of equal power among the participants to a social contract sneaks in ‘a commitment to equality as intrinsic to justice’ and that this pre-constructivist ‘commitment to the equality of the equality of the parties to the bargain’ ends up meaning that I am a *faux* constructivist, despite my protestations to the contrary. This is because an authentic as distinct from a *faux* constructivist tries to avoid reliance on moral terms within the construction. On this analysis, if you posit equal bargaining power in the contract, it will not be surprising if you end up with tender-hearted conclusions. A hard-headed constructivist will want an account of justice that is consistent with the parties to a social contract having unequal power, and constructivists of this stripe should be prepared to embrace the conclusion that the weak will be outside the protection of justice, which was Gauthier’s (1986: 286) conclusion from his ‘hard cases’.

Matravers is right to say that the equality of power assumption is crucial. He raises the question of whether I am entitled to use the assumption, and whether, in doing so, I am violating the requirement that moral terms should not be employed in a constructivist theory. However, in reply, note that there is an important distinction between moral terms as they occur in the theoretical construct (of which there should be none) and moral terms that one is trying to explicate by means of the construct, a distinction between the terms of the theory (non-moral) and the domain of the theory (moral). The concept to be analysed is 'justice', which is a moral notion, and the contractarian construct is there to explicate that concept. Equal bargaining power is the non-moral notion within the construct, used to characterise the relation of persons to one another, that is the equivalent to the relations of persons who accept the requirements of justice. Such an approach is reductionist. Just as the kinetic theory of heat conceives heat in terms of the movement of molecules within a gas, so the contractarian theory of justice seeks to define justice by through an understanding of what principles agents would accept were they to have equal power with respect to one another.

In the book, I cite (more than once) John Stuart Mill's (1869: 478) observation that it was in the ancient republics that the idea of a community grounded in some law other than that of force arose because those communities were ones formed of persons 'of not very unequal strength'. I also cite Denyer's (1983) analysis of social contract theory in the classical Greek and Hellenistic worlds as resting on equality of power. However, it is perhaps too heavy-handed to invoke these distinguished precedents. The idea that injustice is about the abuse of power is pretty primitive in our thinking about the notion, and is to be found in many cultures. That people will not abuse their power if they anticipate a reply adversely affecting their own interests is also a reasonable generalisation.

If one is interested solely in Sidgwick's (1907) problem of indeterminacy, this line of argument will be sufficient to turn away Matravers' criticism, provided that the construction really does some independent work in clarifying the content of justifiable principles. I think it does do such work, not least by throwing into doubt the assumption implicit in many contemporary theories that we should think of the problem of justice as defining the decision strategy of a benevolent central planner capable of allocating resources according to a pre-defined principle, what Scheffler (2003: 81-2) calls holistic theories of justice. However, Matravers is really insisting on another point, namely that the contractarian tradition has been concerned with the issue of the motive for justice, most notably in modern theory in the work of Gauthier (1986). Can agents be given a reason for adopting justice as their motive of behaviour rather than simple self-interest? Matravers suggests that simply assuming a bargaining situation of equal power implausibly avoids the hard version of this problem. He proposes that a true contractarian ought to show how, *within the construction*, the motive to justice is grounded the prudential rationality of the contracting parties. This requirement akin to the condition in modern game-theory that pre-play agreements in a game are not allowed in the specification of the model unless they are supported by the incentive structure of the game.

Matravers himself offers three possible ways of introducing the relevant specifications into the motives of the parties: through a concern for legitimate stability; through a prudent risk-aversion; and through a recognition of vulnerabilities arising from inter-dependence. Gauthier (1998: 124) has accepted the first argument, and there is much to be said for this approach. To be sure, anticipating some remarks of Howard and Cordelli, it might still be possible to argue within the model that the motive of stability would simply lead the rich and powerful to seek to control the political process so as to suppress movements for social justice. Yet, under some

circumstances, at least, the concern for stability will lead to political reform, as in Bismarck's introduction of social insurance at the end of the nineteenth century in imperial Germany.

Considerations of prudent risk-aversion can also help address the motivational question, particularly when supplemented, as Castiglione notes, by considerations of caution. Both considerations of prudence and caution can then be combined with a central move in democratic justice, namely shifting the focus of distribution to comparisons over the course of the life-cycle. What we call 'need' is typically occasioned by the frailties of human over their life-cycle, as even a superficial reading of *King Lear* shows. In my view much writing by political theorists on the redistributive role of the welfare state is vitiated by not noticing this fact, and therefore not seeing that welfare state embodies a form of collective prudence. Such prudence can be grounded in the cautious and defeasible prudence of individuals. Similar remarks can also be applied to Matravers' third set of considerations, vulnerability. Health cost inflation in the United States damages many right across the income spectrum and prudence dictates some form of collective control. I even hope that this approach, once fully developed, will render all of Gauthier's 'hard cases' tractable.

Of course, to note these possibilities is simply to note the need for further work. In *Democratic Justice* I mainly took my task as being that of addressing Sidgwick's indeterminacy problem. But Matravers is right to say that the conscience of a contractarian ought not to be clear until a connection is made between the requirements of justice and the motives of rational agents. His suggestions as to how this might be done point valuable ways forward.

Too Tough-Minded?

Matravers' worries that my premises are insufficiently tough-minded are mirrored in reverse by Jeff Howard's criticism that, in being so tough-minded, I am open to the objection that theory of democratic justice is intrinsically limited in scope, applying only to societies that exhibit a rough equality of power. Howard also alleges that democratic justice lacks stability in application, providing no reasons for the rich and powerful to abide by its requirements of justice. He suggests introducing the principle of human dignity as an expression of an equality according to which all persons are of equal value with their own lives to lead. Here Howard has rightly identified a potential problem in democratic contractarianism, namely if the empirical method is so dependent on understanding the principles of a particular sub-set of societies in which participants enjoy roughly equal power, how can it provide an account of justice for the majority of societies in which the condition of equal power does not obtain? In the final chapter of *Democratic Justice* I claimed that a worthy society is one whose citizens have internalised the sense of democratic justice acting on the relevant principles, even when it is sometimes in their interests not to do so. It is this answer that Howard finds unsatisfactory.

Howard is careful to reconstruct many features of my argument, but before I consider the terms of that reconstruction, I shall note one puzzling feature, to my mind, of his own positive proposal. He says that what is needed to secure stability and applicability is to put 'at the proper heart of our normative political theory' a sense of human dignity and the equal worth of all persons. I am unclear whether the 'heart' here is the contractarian construction or the way we reason in everyday political life. If it is the former, it is hard to see how ascribing these beliefs to *the contracting parties* addresses any more satisfactorily than democratic contractarianism the issues on which the latter is said to be deficient. Suppose, for example, that I am seeking to convince the rich and powerful that they have obligations of justice to the weak and disadvantaged. If I say that they have these obligations, because the parties to a social contract would act on the principles of dignity and equal human worth, the reply might

simply be: what is that to me? Of course, if putting dignity and autonomy at the heart of our normative theory means that we are allowed to invoke them in everyday political discourse, then much of the problem (barring hypocrisy) is solved, provided we are allowed to assume that 'we' living in a society do in fact regard others as of equal worth. But, then, we are back to a type of communitarian argument – of the form 'this is just the way we think around here' – about which both Howard and I are sceptical. So, Howard's challenge to democratic contractarianism is not resolved by bringing in strongly moralised premises.

All forms of contract theory have a 'constitutional' character in the sense that the reasoning they exhibit does not primarily concern the calculus of decision making confronting a particular individual in a particular situation of decision, but rather the specification of rules within which individuals have to act across a range of decisions. This feature was nicely caught by Grice (1967: 100), in his unjustly neglected *The Grounds of Moral Judgement*, when he argued that moral obligations comprise those duties it would be in the interest of everyone to make a contract with everyone else to perform. Thus, to take an example from a typical common-property resource regime, whilst on any particular occasion it may be advantageous for individual producers to exceed their quota of harvestable resources, if they could get away with it, it would not be in their interests to make a contract with everyone else for all to exceed their quota of harvestable resources, even when they could escape detection and punishment. From this perspective, obligations are a form of self-restraint that all enter into in order to secure the general conditions for anyone pursuing their own interests.

The strategy of democratic contractarianism is thus to avoid driving too sharp a wedge between self-interest and moral obligation, between 'inclination' and 'duty' in Kantian terms (Kant, 1948: 64). Instead, the idea is to enlarge the sense of self-interest, so that individuals see their reasons for acting as embedded in systems of inter-dependence that secure the conditions of their own flourishing. In this context, democratic contractarianism in its theory of economic justice is *less*, nor *more*, demanding than Gauthier's theory. Gauthier (1986: 273) holds that economic rent, the difference between what workers receive and what they would accept as the minimum for doing the same job, is properly the subject of redistribution according to a socially agreed principle. Democratic contractarianism does not impose this requirement. Since all intra-marginal workers receive rent, the scale of redistribution on Gauthier's approach is potentially very large, given that economic rent is the benefit derived from living in a prosperous economy in which people are not constantly anxious about whether they would be better off doing some other job. And it is hard to find in the logic of a rationally negotiated social contract why rent should be subject to redistribution.

However, it is just at the point at which the contractarian seeks to blunt the difference between moral principle and enlightened self-interest, that Howard makes the challenging claim in the form of his alienation objection. He says that, inasmuch as people are committed to the deontic character of their relations, they 'will be alienated by the idea that their commitment not to rape, murder and enslave their fellow persons is, at root, justified by their own naked self-interest.' On this view, the contractarian understanding of the basis of justice is at odds with the moral consciousness of civilised persons.

Yet, should one find it alienating that moral restraint stems from an understanding of enlarged self-interest? I suggest 'no'. If I am addressing the question of on what issues I would find it in my interest to make a contract with everyone else to accept certain social obligations, the 'deontic' relations to which Howard refers would be obvious candidates. The harms that rape, murder and slavery impose are such clear and present dangers to human interests that I would

recognise it advantageous to have a contract to forbid them and also anticipate that others will think the same. We have a common interest in protection against these harms. Moreover, the contractarian construction goes beyond this insight, helping us, for example, to understand why we distinguish between killings that are ‘murder’ and killings that are ‘manslaughter’. If I unintentionally kill someone, it is not in my interest to be treated as a murderer any more than it would be in the interests of anyone else to be treated as a murderer should they unintentionally kill me. Whenever we need to specify our deontic relations in particular ways the contractarian construction can be invoked to clarify how this might be done.

Chiara Cordelli echoes Howard’s charge that a contractarian theory of justice is inapplicable outside of situations in which there is equal bargaining advantage. I hope I have already done enough to ward off this complaint in its simple form. Although democratic contractarianism is developed by reference to situations of equal bargaining advantage, it is applicable where there is unequal advantage and, indeed, explicates the character of the injustice that is involved. However, Cordelli also draws attention to questions of inclusion and exclusion and in so doing highlights what I now see as some ambiguity in the presentation of the theory.

The ambiguity arises in relation to my discussion of procedural democracy. In her discussion of the boundaries of the demos, Cordelli quotes me as saying that inclusion requires that all those within the authority of collective self-determination *should* have the same standing as to how that self-determination is exercised, and she suggests that this advances a moralised notion within the contract. Clearly, I was not careful enough to state the logic of the argument at this point, so I will now try to clarify. One central tenet of *Democratic Justice* is that a theory of justice should be democratic, that is to say, it should understand justice as constituted through the practice of democratic procedures. Since the theory is a procedural theory, this implies that the relevant conception of democracy ought to be procedural. What I aimed to do in Chapter 2 was to show how one accepted theory of procedural democracy, namely that of Robert Dahl (1998), could be modelled by reference to common-property resource regimes. Since procedural democracy is an institutional practice, it will inevitably be characterised by the norms that define the practice, including a norm of inclusion. However, such norms are to be understood as institutional norms, not moral norms independent of the practice. Many people argue that procedurally defined democracies can end up favouring unjust policies. The burden of my argument is to say that this will not be so in situations in which all relevant actors have approximately equal power. So the work in the argument is still being done by the non-moralised notion of rough equality of power.

However, Cordelli can argue that, even if I am allowed to assume equality of power within the boundaries of a polity, the problem of inequality of power arises between different polities. For example, what can the contractarian make of cases of asymmetrical pollution, where one country is downwind or downstream of another? In replying to this question, it is tempting to say that the counterfactual of equal power helps define the scale and character of the injustice in such cases. Unequal relations among societies are like unequal relations among persons within a society. This would be too simple, however, in the light of the literature on common-property resource regimes. One central finding from that literature is that communities can solve their common goods problems, but they typically require to establish clear boundaries between insiders and outsiders (Ostrom, 1990: 90). Many natural resources need to be managed in a spatially specific way, and the need to draw boundaries, excluding some who may be affected by collective decisions, is inevitable.

Cordelli thinks that the way around this problem is to give those adversely affected by asymmetric pollution voting rights in the polluting country. I am sceptical of this approach, despite its appeal to a number of theorists. In part my scepticism is motivated by practical concerns. There are so many potential cross-boundary effects from any one country to others that the voting rights solution will end up having a multiplicity of different voting groups depending on the issue with no requirement to produce consistent decisions. However, the scepticism is as much conceptual as practical. If we admit that common goods problems require political institutions, then what is needed is negotiation between the representatives of affected societies over their respective collective interests. More generally, where cross-boundary spill-overs are general and pervasive, what is needed is the establishment of international regimes that can develop a normative order within which the conduct of individual societies can be monitored and regulated. Thus, the democratic contractarian looks for a way of identifying among existing international regimes those whose members have approximately equal power as a way of determining what fair rules of international cooperation might involve.

That brings me to the topic raised by Cordelli on which I wish I had more to say, namely inter-generational justice. There is clearly an asymmetry of power between present and future generations. A democratic contractarian says that principles of the allocation of burdens and benefits across generations ought to be ones that would be negotiated were inter-generational power equal. Yet, the proponent of the empirical method is then stuck with a problem. What examples of bargaining can we find that simulate equal bargaining advantage across generations? So the problem is not one of motivation but of determining the content of the relevant principles. I confess that the only point to which I have got with this problem is to note that generations are overlapping and that with major inter-generational problems, for example climate change or resource depletion, those who stand to be harmed are already alive, so that some semblance of a relevant bargaining situation might be found.

So far I have said little about how those with equal power might negotiate with one another. It is at this point that Ian O’Flynn lodges his objections. He argues that if I am to adequately characterise the negotiations that underlie just political systems, especially those in great societies, I need to give a greater place to democratic deliberation, which has a different logic from that of bargaining. He accepts that my account of individual rationality is a deliberative one, but he holds that, formulated as it is in *Democratic Justice*, deliberative rationality is compatible with political associates only entering into arrangements of mutual advantage based on bargaining, whereas some account of common deliberation is necessary for fairness. For this reason, although bargaining and deliberation are hard to disentangle in practice, they are analytically distinct and deliberation ‘needs to be treated as more fundamental’. Whereas bargaining only allows for agreement to mutual benefit from separate interests, democratic deliberation involves arriving at a common view about what is best having engaged in thoughtful listening.

O’Flynn’s challenge goes to the heart of the relationship between the principles of justice and the principles of democracy. As he rightly notes, within a contractarian framework, the principles of justice emerge as a by-product of agreement to mutual advantage rather than their being the substance of the discussion themselves. So, the question is well put as to whether this does not so attenuate the role of reason-giving in deliberation so that no place is left for fairness. Once again, tough-minded premises seem to give rise to insufficiently tender-hearted conclusions.

Among the elements of deliberative rationality offered in *Democratic Justice* reflective distance, as O’Flynn notes, plays an important role. Without reflective distance, agents caught in dilemmas of collective action would not be able to devise novel solutions to their joint problems. O’Flynn points out that, with reflective distance, agents might be able to walk away from agreements that were not to their advantage. Of course, given the character of social contract theory, the choices that agents could in principle make on any one occasion are not going to be decisive in theoretical terms, but O’Flynn is onto something important here. Even so, democratic contractarianism is superior to the antecedently moralised conception of deliberative democracy that he favours.

As I pointed out in *Democratic Justice* (Weale, 2013: 122-3), even seemingly straightforward coordination problems, like traffic regulations, can have a complex structure, in which careful attention needs to be paid to the weight of different considerations. Given limited altruism and bounded rationality, different people, including those orientated to the common interest, may exhibit persistent disagreement on the best course of action in such situations. Of course, careful listening and common deliberation may reduce these differences of opinion, but it is surely not plausible to think that all such differences will be eliminated in a social consensus. When political actors find themselves in good faith disagreements about a possible common course of action, reflective distance should at least enable them to step back from those disagreements to ask whether a common rule is needed at all, and, if such a rule is needed, the same reflective distance may enable actors to see the shape of a possible compromise. Secularists may not like the state funding of religious schools, but they may face a religious group that will not agree to public funding at all unless some denominational schools are allowed (Weale, 2013: 187-8). In other words, rather than see deliberation as part and parcel of a Habermasian search for social consensus, we can see it as underlying attempts to come up with creative compromises around which agreement can form in the presence of persistent differences of interest or opinion.

O’Flynn’s worry about this line of argument may be that, without an emphasis upon mutually sympathetic deliberation in which political partisans are encouraged to seek agreement on a common viewpoint, the conditions for fair bargaining will not exist. But why is not the following line of argument a fair one for someone to use: ‘You and I differ about what policy to adopt. Even if you had the power to block my preferred outcome, you would not do better than the compromise I am proposing. Therefore, do you not have reason to accept it?’ If I were on the receiving end of such an argument, I would want to test the validity of its premises, but it would certainly give me pause for thought, and a reason for thinking the agreement was fair.

Should I Have Started Somewhere Else Anyway?

Chris Bertram is the most sceptical of the commentators. As he notes in his analysis, the main principle of economic justice that democratic contractarianism endorses is that workers are owed the full fruits of their labour, provided that they have roughly equal access to the means of production. Something like this principle operates in common property regimes and I conjectured in *Democratic Justice* that its underlying logic is that producers would not give up more of their product than would be needed in order to secure cooperative agreement (Weale, 2013: 74). Bertram thinks that the full fruits principle only seems a principle of justice because I have chosen a particular empirical model – common property regimes in which there is not an extensive division of labour – and in any case he doubts that the principle can be transposed in an operationally meaningful way to large-scale market based economies, or what I call ‘great societies’.

On the choice of empirical model, there is one sense in which Bertram is entirely right. Societies in which there is an equal distribution of power may well fix on principles other than those of the full fruits principle where this is required by the mode of production, as illustrated in his example of hunter-gatherer societies. However, rather than being a criticism of the empirical approach, this is one of its merits. Circumstances do make a difference in answering the question of what principles of distribution are right for different societies. Hunter-gatherer bands, close to the margins of subsistence and with some division of labour, may well find that it is collectively advantageous to implement a ‘shared fruits’ principle in which the kill is equally divided. Similarly, in time of war it may be just to institute labour conscription, a practice that in peace time would be contrary to justice. Even in some common property resource regimes, as I noted (Weale, 2013: 71), there is enforced sharing of economic product so as to ensure conservation. So the theoretical issue is not whether there is one canonical model for the democratic social contract – there is not – but rather whether we can find a model in which there is equal power with some resemblance to the problem of justice as we confront it today in great societies. This means that we need societies in which individuals have both separate and shared interests. Where securing the shared interest is necessary for individuals to realise their separate interests in a meaningful way, then we have an empirical instance that can serve as a model for us. Common property regimes have the advantage that they have been extensively studied, not just by Ostrom (1990), and that the principles they exhibit show up in a wide variety of cultural context, suggesting that they embody structural requirements of economic organisation (see, *inter alia*, Berkes, 1985, 1986, 1989; Netting, 1981; Wade, 1988).

Can the principles developed in such societies be transposed to great societies, so as to show that producers are owed their marginal product? As Bertram notes, although standard neo-classical economic theory states that workers do receive their marginal product in a market, this is not my view. The reason is that the term ‘market society’ is a misnomer. All so called market societies contain hierarchical organisations – firms - in which the principle of distribution is not that of marginal product. Alfred Marshall (1920: 520) noted this many decades ago and referred to the ‘composite quasi-rent’ of the firm being determined ‘by bargaining, supplemented by custom and by notions of fairness’.

If this is so, why do I want to say that the marginal product principle is relevant to great societies? The simple answer is that the principle can be a useful critical tool. Take the pay of chief executives. (I will not pick out only university vice-chancellors!) It is always a good question to ask of any chief executive’s pay whether it corresponds to the contribution that the person makes compared to the contribution that would be made by the next best candidate. The argument is that the value of products should belong to producers, provided that they have paid their necessary dues to maintain the fabric of society, since the products would not have existed without their efforts. Conversely, when people are rewarded above their marginal product, then the question arises as to whether their earnings are properly due to someone else.

Bertram is also sceptical about the full fruits principle, because he thinks that marginal product cannot be estimated in a complex economy. Of course, it can be hard to estimate. However, the argument that such estimation is impossible is too strong, ruling out any form of economic calculability. When a university department puts forward a business case to its administration for investing in new staff or a new degree scheme, its calculations may be rough and ready and may sometime be wrong, but the situation is one where a sensible decision can be made about whether or not costs are going to be covered by revenue. Economic calculability is central to

the allocation of resources, and, when it completely breaks down, as under National Socialism and Communism, the misallocation of resources is rife.

However, there seems to be a deeper moral reason why Bertram is sceptical of the marginal product principle, namely that it presupposes a notion of economic desert incompatible with Rawls's argument about the morally arbitrary distribution of natural talents. Underlying Rawls's difference principle is an assumption about the common ownership of natural talents ('an agreement to regard the distribution of natural talents as in some respects a common asset', Rawls, 1999: 87). Bertram objects to my gloss on this when I said that this meant that 'the labour of each was owned by all' (Weale, 2013: 85). However, what I was doing in the relevant section was contrasting two interpretations of the difference principle found in passages in Rawls that vary significantly between the first and second editions (Rawls, 1972: 104 and Rawls, 1999: 89). In particular, I argued that, if the difference principle were regarded as an end-state principle, according to which it was the duty of society to bring the maximum holding of primary goods of the least advantaged, this would justify forcing people to work to bring about that end-state. On my understanding, in the revised edition of *Theory*, Rawls recoiled from that possibility, giving the more advantaged a right to their natural assets – a right that has similar moral force to the full fruits principle. Moreover, since the publication of Rawls's undergraduate dissertation, *A Brief Inquiry into the Meaning of Sin and Faith* (Rawls, 2009), we now know that the anti-meritorian element in Rawls has its origin in a particular brand of protestant theology. Without that intellectual background, it is hard to make the argument work (Adams, 2009: 89). If I am the beneficiary of a natural lottery, why not just bank the proceedings?

None of this means that redistribution in the welfare state is contrary to principles of justice. As I spent some time arguing in *Democratic Justice* (Weale, 2013: 204-20), there are good arguments for compulsory redistribution across the life-cycle, including the socialisation of the financial responsibility of children. I agree with Bertram that the democratic contractarian needs to say much more in policy terms about the issues around the ownership of capital assets and, I would also add, the development of corporate hierarchies. But that is the task of working out the ongoing policy programme of democratic contractarianism, not a criticism of its principles.

Conclusion

Towards the end of his Introduction Dario Castiglione invokes a moral order, made up of mutual respect and mutual service, as the basis for the imaginary of a modern society, in which equality and functional differentiation are balanced. With mutual trust equal individuals enjoy sociality. This is a noble vision, but it is beyond what Hume (1751: 180), rightly, called the 'cautious jealous virtue' of justice, which turns on questions of 'mine and thine'. Injustice is so prevalent that it is tempting to think that if societies could be just, all would be well. But a great society – one worthy of admiration as O'Flynn puts it – requires virtues beyond justice: forgiveness, reconciliation, the readiness of groups and persons to show self-restraint in the pursuit of their rightful claims, munificence in public works, generosity in relation to other societies, respect for learning, care for its cultural and natural heritage and the encouragement of diverse human achievements. I doubt that any theory of the social contract can rationalise these virtues. I think it enough if it can supply a way of thinking about how to apportion power and prosperity rightly.

References

Adams, Robert Merrihew (2009) 'The Theological Ethics of the Young Rawls and Its Background' in John Rawls, *A Brief Inquiry into the Meaning of Sin and Faith, with "On My Religion"*, edited Thomas Nagel (Cambridge, Mass.: Harvard University Press), pp. 24-101.

Berkes, Firket (1985) 'Fishermen and "The Tragedy of the Commons"', *Environmental Conservation*, 12: 3, pp. 199-206.

Berkes, Firket (1986) 'Local-level Management and the Commons Problem: A Comparative Study of Turkish Fisheries', *Marine Policy*, 10: 3, pp. 215-29.

Berkes, Fikret (ed.) (1989) *Common Property Resources: Ecology and Community-Based Sustainable Development* (London: Belhaven Press).

Dahl, Robert A. (1998) *On Democracy* (New Haven and London: Yale University Press).

Denyer, Nicholas (1983) 'The Origins of Justice' in Giovanni Pugliese Carratelli (ed.), ΣΥΖΗΤΗΣΙΣ. *Studi sull'Epicureismo Greco e Romano: Offerti a Marcello Gigante* (Napoli: Gaetano Macchiaroli Editore), pp. 133-52.

Gauthier, David (1986) *Morals by Agreement* (Oxford: Clarendon Press).

Gauthier, David (1998) 'Mutual Advantage and Impartiality' in Paul Kelly (ed.), *Impartiality, Neutrality and Justice: Re-reading Brian Barry's Justice as Impartiality* (Edinburgh: Edinburgh University Press), pp.120-36.

Grice, Russell (1967) *The Grounds of Moral Judgement* (Cambridge: Cambridge University Press).

Hume, David (1751) *Enquiry Concerning the Principles of Morals*, reprinted in *Essays, Moral, Political, and Literary by David Hume*, edited by T. H. Green and T. H. Grose (London: Longmans, Green, and Co., 1889), pp. 167-287.

Kant, Immanuel (1948) *Groundwork of the Metaphysics of Morals*, in H.J. Paton, *The Moral Law* (London: Hutchinson University Library).

Marshall, Alfred (1920) *Principles of Economics*, (London and Basingstoke: Macmillan, eighth edition reprinted 1979).

Mill, John Stuart (1869) *The Subjection of Women*, reprinted in John Gray (ed.) *John Stuart Mill On Liberty and Other Essays*, (Oxford: Oxford University Press, 1991).

Netting, Robert McC. (1981) *Balancing on an Alp: Ecological Change and Continuity in a Swiss Mountain Community* (Cambridge: Cambridge University Press).

Ostrom, Elinor (1990) *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press).

Rawls, John (1972) *A Theory of Justice* (Oxford: Oxford University Press).

Rawls, John (1999) *A Theory of Justice* (Oxford: Oxford University Press, revised edition).

Rawls, John (2009) *A Brief Inquiry into the Meaning of Sin and Faith, with "On My Religion"*, edited Thomas Nagel (Cambridge, Mass.: Harvard University Press).

Scheffler, Samuel (2003) 'Distributive Justice and Economic Desert', in Serena Olsaretti (ed.), *Desert and Justice* (Oxford: Clarendon Press), pp. 69-91.

Sidgwick, Henry (1907) *The Methods of Ethics*, with Foreword by John Rawls (Indianapolis and Cambridge: Hackett Publishing Company, reprint 1981).

Wade, Robert (1988) *Village Republics: Economic Conditions for Collective Action in South India* (Cambridge: Cambridge University Press).

Weale, Albert (2013) *Democratic Justice and the Social Contract* (Oxford: Oxford University Press).