Equality, Resources and Primary Goods

Ronald Dworkin and John Rawls on the Currency of Egalitarianism

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Abstract

In this thesis I compare the work of Ronald Dworkin and John Rawls within the context of the `equality of what?' debate. I argue that the Rawlsian paradigm offers a much more flexible defence of a resourcist approach to egalitarianism than Dworkin's theory of `equality of resources'. I argue that Dworkin's fundamental distinction between persons and circumstances is flawed because it involves commitment to a view of the person which belongs in the realm of `comprehensive moral doctrines', rather than in the realm of a political theory of justice. I also argue that an alternative distinction between choice and luck, expressed in the `luck-neutralising aim' of egalitarianism, is inappropriate since it too involves transgressing political constraints on theories of justice. Rawls's utilisation of primary goods in his theory of justice is supported by considerations derived from the work of Thomas Scanlon. The schematic picture of relative urgency which Scanlon advances provides the rationale for the use of primary goods, and also allows us to discriminate between compensation for handicaps and compensation for expensive tastes. Scanlon's schematic picture also frees the utilisation of primary goods from criticisms raised by Amartya Sen. Lastly, I discuss arguments advanced by Susan Hurley which enable an interpretation of Rawls's original position device which is independent of the luck-neutralising aim. Her arguments are extended as a criticism of Dworkin's hypothetical insurance market.

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"The question we must keep in mind is,
equality or inequality in what sort of thing?"

Aristotle
The Politics, III, xii

1. Equality of What?

In his Tanner Lecture on Human Values in 1979, Amartya Sen asked the question, "equality of what?" What is it that egalitarians seek to equalise: some conception of welfare, derived from the utilitarian tradition, Rawlsian primary goods, or, alternatively, some other notion such as Sen's own concept of `capabilities'? What, to use G.A. Cohen's phrase, is the currency of egalitarian justice? This ostensibly simple question can be broken down into two separate parts: firstly, with what things are we concerned in theories of distributive justice, and, secondly, in which of these things should people be equal?

Since Sen proposed this question a debate has emerged within contemporary political philosophy. Answers to the `equality of what?' question centre around two different poles. On the one hand is the welfarist position, where welfare is understood to be some subjective feature of a person's situation; her level of utility.[1] Utilitarianism, for instance, is a welfarist doctrine, although it is not an egalitarian doctrine since it seeks to maximise, rather than equalise, utility. On the other hand is the resourcist position, where resources are some list of the objective things which a person has at her command. In between these two poles there are various other proposals. Sen's `capabilities` are, roughly, a person's ability to transform resources into welfare. Cohen proposes an `equal access to advantage' standard of justice, where `advantage' includes both resources and welfare.

[1] Throughout this thesis I regard `utility` and `welfare` as synonyms.

The two dominant theorists who adopt a resourcist position are John Rawls and Ronald Dworkin. In his *A Theory of Justice*, Rawls advanced a powerful critique of utilitarianism. This critique focused on many aspects of utilitarianism, for instance its consequentialism and superficial concern with the individual. More particularly, Rawls argued that a theory of justice was not concerned with the utility levels of people, but rather with their stocks of 'primary goods': briefly, their liberties, opportunities and income. In his "What is Equality?" articles, Dworkin reaches a similar conclusion: we should have equality of resources instead of equality of welfare. The similarities between Rawls and Dworkin are often understood to be so extensive, that many contributions to the 'equality of what?' debate assume that they are arguing for the same, homogenous position. Rawls is seen as the revolutionary advocate of resourcism, Dworkin as its developer.

In this thesis I am concerned with debunking this assumption of resourcist homogeneity. Although there are extensive similarities between Rawls's regime of primary goods and Dworkin's equality of resources, there are also crucial differences. These differences do not simply indicate that the resourcist position is more complex than may at first be thought. Rather, they highlight important aspects of egalitarianism which are often ignored or simply assumed in the 'equality of what?' debate. Ultimately I argue that the Rawlsian paradigm offers a much more sophisticated approach to egalitarian justice than Dworkin's equality of resources. If we understand Rawls in the appropriate way, we can develop a much more attractive and practical theory of egalitarianism.

Although I discuss criticisms of both Dworkin and Rawls which have been advanced by other contributors to the 'equality of what?' debate, I do not attempt to construct a thoroughgoing critique of any of their own theories of egalitarianism. The aim of this thesis is restricted to an assessment of the work of Dworkin and Rawls, rather than an all-encompassing defence of a resource-orientated conception of equality. I assume sympathy with some sort of resourcist approach to equality and proceed to ask whether such a position is best developed by Dworkin or Rawls. Furthermore I do not

attempt to defend egalitarianism against non-egalitarian theories, such as libertarianism or meritocratic conceptions of justice.

There are four problems, or areas of concern, or 'dimensions', which overlap and interrelate in this thesis. The first dimension is the resourcism-welfarism spectrum. This is the most obvious feature of the 'equality of what?' debate, since answers to the question involve adopting a position somewhere within this dimension. Rawls and Dworkin adopt a similar position at this level, although I argue that Rawls's theory of justice, suitably understood, is more flexible in its identification of important concerns.

The second area is the problem of dealing with expensive tastes and handicaps. This problem is used as 'testing ground' for answers to the 'equality of what?' question. Welfarism, resourcists object, involves special treatment for those people with expensive tastes, since they require additional resources to reach the same level of welfare as everybody else. But since compensation for expensive tastes is intuitively unfair, welfarism is flawed. On the other hand, welfarists object that a simplistic concern with the resources which a person has at her disposal would not warrant compensation for people with handicaps. But such compensation is intuitively appropriate. A theory of equality must be able to provide a 'cut' between the two cases.

The third area of concern is the most crucial. It is imperative to come to grips with the fundamental intuitions, distinctions and aims which underwrite egalitarianism. For instance, egalitarianism can be seen to involve a basic commitment to eradicating the effects which bad brute luck has on the distribution of material resources. Or a theory of equality could be characterised as 'ambition-sensitive' and 'endowment-insensitive'. An explicit commitment to some such fundamental distinction and aim provides the motivation for adopting positions in the first two areas of concern. I compare three distinctions. Firstly, between luck and choice, or brute luck and option luck. Secondly, Dworkin's

distinction between persons and circumstances. Thirdly, Scanlon's distinction, or rather continuum, between central and peripheral concerns. I argue that the third is superior and can be seen to motivate Rawls's use of primary goods.

The fourth main problem concerns what Susan Hurley terms `perspectives of justice'. For instance Rawls's original position is a perspective of justice; a device for deciding moral questions. Although this is the area with which I am least concerned, there are differences in the perspectives of justice which Rawls and Dworkin use. I argue that Dworkin's `hypothetical insurance market' is flawed, since it is improperly motivated; an answer to the wrong question. The original position, suitably interpreted, is not subject to these flaws.

2. Dworkin on Resources

In this chapter I discuss the theory of equality of resources advanced by Ronald Dworkin. Since 1981 Dworkin has developed his account of equality in numerous articles. The initial two are concerned with questions of distributive equality aside from the distribution of liberties and political power.[1] Dworkin distinguishes between two imperatives: firstly, we can treat people *as equals*, by showing them equal concern and respect, and, secondly we can treat people *equally*, for instance by giving them equal amounts of money.[2] His problem in the first two articles is, as such, one of determining which manner of distributing material resources in a society really treats people as equals: one which leaves them equal in resources, or one which leaves them equal in the welfare they enjoy. In "Equality of Welfare", Dworkin criticises the equality of welfare approach. In the second article, on the other hand, he outlines his conception of equality of resources.

I. Equality of Welfare

Dworkin's criticism of equality of welfare consists of two broad lines of argument. In the first he outlines and criticises particular conceptions of equality of welfare. In the second he assumes that even

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[1] Dworkin (1981a) and (1981b)

[2] Dworkin (1981a), p.185

if some initially viable conception of equality of welfare could be developed, it would still be unable to avoid the problems associated with expensive tastes and handicaps.

Conceptions of Equality of Welfare

Dworkin distinguishes between the 'relative' and 'overall' success a person may have with her personal preferences.[3] Relative success is the success she has in achieving particular goals, whereas overall success is the success she has in making her life, as a whole, valuable. Once this distinction is made, equality of welfare is faced with a dilemma. Either it is based on an equality of relative success, or it is based on an equality of overall success. But since neither is satisfactory, no particular conception of equality of welfare can be endorsed.

The problem with relative success is that people value it differently. Some choose the life where they will have easy goals, because they believe relative success to be important. Others choose lives where they have difficult goals, because for them the value lies in the challenge rather than the achievement, or the goals are perceived to be worth the risks involved. An equality of relative success would compensate those with difficult goals, since they will, presumably, have less success in achieving their ends. But part of the initial appeal of equality of welfare is that it makes people equal in what really matters: their welfare, as opposed to the resources which they use to attain goals. But with equality of relative success we may generate an inequality of overall success. The overall value of the lives of the

[3] Dworkin also distinguishes between three classes of welfare theories: 'conscious state' theories which claim that welfare is some aspect of a person's subjective experiences, such as happiness; secondly 'success' theories which claim that welfare is a matter of preference-satisfaction; thirdly, 'objective' conceptions of welfare which assert that welfare is determined by some objective feature of a person's situation. (Dworkin does not discuss this last category in depth, and for the purposes of this thesis I regard welfare to be some subjective feature of a person's situation.) His criticisms apply to each type of theory. Equality of welfare is flawed whether welfare is preference-satisfaction or hedonistic experience. He distinguishes, furthermore, between the personal and the impersonal and political preferences which a person may have, and argues that only the former are the appropriate subject of a welfarist theory. 'External' preferences have no moral weight.

challenge-seekers may, as a consequence, be higher than that of the prudent. This seems to defeat the purpose of having a theory which makes people equal in what really matters, or is of value to them.

The problem with an equality of overall success is that we require some independent standard of success by which we can make interpersonal comparisons about the overall success of different people's lives. For instance, Jack and Jill may have equal resources and be roughly similar in every other manner with the exception that Jack, because of his philosophical beliefs, believes his life to be full of value, whereas Jill does not. But different philosophical beliefs constitute no basis for redistribution from Jack to Jill. What is needed is some sort of judgement which neutralises the differences in philosophical outlooks which people may have. Dworkin suggests that the most plausible such standard of overall success is what a person can reasonably regret. The idea of reasonable regret must be normative in that it will include assumptions of fairness. But this means that a theory of fair distribution must already be assumed by an account of overall success, so for the purposes of developing an account of egalitarianism, overall success is redundant. So, since an equality of welfare theory must be committed to equalising the relative or overall success which people have with their personal preferences (or the enjoyment derived from this success), and since neither is satisfactory, equality of welfare cannot be the appropriate conception of equality.

Expensive Tastes and Handicaps

The second line of criticism is independent of the first. Even if it is true that some initially reasonable and consistent conception of equality of welfare could be developed, it will still be unable to cope with the problems of expensive tastes and handicaps. Briefly, equality of welfare needs to find some reason for avoiding the compensation of expensive tastes, but cannot do this without contradicting, as opposed to compromising, itself. Secondly, equality of welfare requires compensation for handicaps but advocates such compensation in the wrong manner.

Dworkin offers the example of Louis, who whilst living in a society dedicated to equality of welfare, deliberately sets out to develop a taste for plovers' eggs and pre-phylloxera claret.[4] "Can Louis be denied extra wealth ... without contradicting the ideal of equality of welfare that his society has embraced?"[5] The first thing Dworkin notes is that Louis must have some conception of value which differs from the conception of welfare used by his community. If this were not true then his decision would make no sense. Given the amount of resources which Louis has at his disposal, he will achieve less welfare according to the conception used by society, since his tastes are now more expensive. If this is his own conception of value then he is deliberately lowering his success in achieving what he values. If society were to compensate him, then they would only compensate him to the extent that he had the same level of welfare as everybody else. But since resources will be taken from others to compensate him, their level of welfare will decline (albeit minimally), so Louis will also have a small decline in welfare.[6] Dworkin claims that we need some reason to deny compensating Louis for his expensive tastes, but it cannot simply be because his conception of well-being differs from society's conception of welfare. Others may have much greater success in achieving what they value than Louis.

It may seem unclear why an equality of welfare approach would require that Louis be compensated if his conception of value differs from the standard of welfare used in the egalitarian calculus. The following example may clarify Dworkin's point. At time t_1 Louis has an enjoyment level of 50 units, as does everyone else (I am presuming that the chosen conception of welfare is enjoyment). He also values pursuing lifestyle X. However at t_2 Louis generates a taste for lifestyle Y, such that he values Y over X. Since Y is an expensive lifestyle, he requires more resources for the pursuit of Y than for X. Now, if Louis is unable to pursue Y, then, since his level of enjoyment is dependent upon the pursuit of what he values, his level of enjoyment declines to 40 units. If at t_3 resources are transferred to him then the level

[4] This example of an expensive taste was first used in Arrow (1973), p.254

[5] Dworkin (1981a), p.229

[6] Dworkin does not explicitly use this argument, but I assume it is what he means.

of welfare of Louis and all other people in society declines to a point of equilibrium at, say, 48 units. Louis is prepared to accept this decline in enjoyment from t_1 to t_3, since he values Y over X, and what he values is independent of the enjoyment it yields for him. In this case equality of welfare would demand the transfer of resources to Louis, whereas intuitively such a transfer is unfair.

Dworkin considers two arguments which aim to emancipate equality of welfare from the problem of expensive tastes. The first argument claims that the utilitarian principle of average utility justifies restricting the resources of someone with expensive tastes. The principle asserts that the welfare of people should be as high as possible. Since expensive tastes concentrate resources in the possession of a few people, the average utility in society decreases. So here the principle of average utility would compromise the principle of equality of welfare. Dworkin rejects this argument since he claims it only explains why compensating expensive tastes is inefficient, whereas "the compromise intuitively demanded by the problem of expensive tastes is not ... a compromise between efficiency and equality [but rather] a compromise within the idea of equality [itself]."[7] This is a troubling argument. Certainly the principle of efficiency is different from the principle of equality, and certainly we would intuitively wish to avoid compensating people with expensive tastes. However the first premise of Dworkin's argument is that it is the principle of equality, considered in itself, which excludes compensation for expensive tastes. This is troubling since it is difficult to see how Dworkin can claim that it is equality, *per se*, which implies this. We might just as well have the intuition that expensive tastes ought not be compensated precisely because it would be inefficient to do so, or indeed, for some other reason. Be this as it may, I do not consider any arguments which exclude compensation for expensive tastes on the grounds of efficiency.[8]

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[7] ibid. p.235

[8] Although Narveson argues that welfarism might escape Dworkin's remarks on external preferences and expensive tastes if 'maximum equal welfare', rather than simply 'equal welfare' is the aim of the theory. See Narveson (1983), pp.5-7.

The second argument claims that expensive tastes can be excluded from the principle of equality of welfare if the distinction between option luck and brute luck is drawn. As I discuss in the next section, Dworkin uses this distinction in his development of equality of resources, so it could seem unfair if he does not employ it in his rejection of equality of welfare. If the distinction is drawn, equality of welfare could exclude deliberately cultivated tastes because equality demands we should only be compensated for the deleterious effects of brute luck, i.e. events beyond our control or decision.[9]

Dworkin's reply to this objection is that although we deliberately set out to pursue what we value, we do not *choose* to value what we do; we do not choose to believe that a certain life is more valuable than another:

> "I do not mean that beliefs are afflictions ... that people find that they have and are stuck with. People reason about their theories of what gives value to life in something of the same way in which they reason about other sorts of beliefs. But they do not choose that a life of service to others, for example, ... be the most valuable sort of life for them to lead, and [they] therefore do not choose to believe that it is. We may still distinguish between the voluntary decision someone makes to become a person with certain tastes, ... and his discovery of tastes and ambitions that he just has. But the distinction is less important than is sometimes thought, because that decision is rarely, if ever, voluntary all the way down."[10]

Again this is a troubling argument. Firstly, our intuition that expensive tastes should be excluded from egalitarian considerations may well be grounded in the belief that we are to be held accountable for them since preferences are deliberate, or within our control. But if preferences are rarely 'voluntary all the way down', our intuition that we should not be compensated for them may be shaken. Certainly there

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[9] Option luck, on the other hand, consists in those cases where we deliberately take a gamble. If I lose at the races, my option luck is bad. If a meteorite hits me, my brute luck is bad.

[10] Dworkin (1981a), pp.232-3

are those who believe that we should be compensated for some expensive tastes for precisely this reason, as I shall discuss in forthcoming chapters. Secondly, if decisions about what we value are not entirely voluntary, it remains to be seen which decisions are. The distinction between option luck and brute luck may prove to be vacuous if none of our decisions is voluntary all the way down.[11]

With regard to the problem of handicaps, Dworkin notes that although this case seems to provide initial support for equality of welfare, it is not necessarily true that only equality of welfare could account for our intuition that handicapped people should be given extra resources. Indeed the support that equality of welfare seems to provide for the compensation of the handicapped is illusory.

Firstly, we may have a few individual handicapped people who have greater welfare than others. An equality of welfare approach would, it would seem, avoid compensating such a person, whereas it is intuitive to think that this person should be compensated just as much as any other handicapped person. Secondly, there may be the case of someone who is so severely and incurably handicapped, that even if the entire set of resources in society, apart from those required to keep everyone else alive, were transferred to this person, she would still have less welfare than everyone else. If we adopt equality of welfare, and such a transfer leaves people more equal in welfare than before, then it would follow that we would assert the transfer to be warranted. However it seems highly counter-intuitive that the transfer is required by the principle of equality. Thirdly, Dworkin considers the case of someone who is handicapped, and who has less welfare than others, but who can be provided with some equipment, at large expense, to increase his welfare. According to equality of welfare such a transfer would be required. "But he is an excellent and dedicated violinist, and he replies that he would rather have a superb Stradivarius which he could purchase with the same funds."[12] Equality of welfare provides no reason why such a request could be refused. Welfare is being generated at a much cheaper rate than it

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[11] See footnote 15 below.
[12] ibid, p.243

would have been if the funds were spent on the medical equipment. But it seems highly inappropriate that funds redistributed from others in order to relieve someone of their handicap should be spent on something else, even if the handicapped person desires it himself. What seems troubling is the handicap itself, and not the low welfare which is its consequence.

II. Equality of Resources

Dworkin's theory of equality of resources needs to find some basis to exclude the transfer of resources to people with expensive tastes, but also needs to have reasons why handicaps should be compensated. The distinction between persons and circumstances provides Dworkin with the required 'cut' between the two cases. A theory of equality, according to Dworkin, needs to be 'ambition-sensitive' but 'endowment-insensitive': it should allow inequalities which arise from a person's ambition, but not those inequalities which are generated by endowments. Dworkin begins by discussing how an equal division of resources may be achieved, independently of the problem of handicaps and expensive tastes.

The Auction

> "Suppose a number of shipwreck survivors are washed up on a desert island which has abundant resources and no native population, and any likely rescue is many years away. These immigrants accept the principle that no one is antecedently entitled to any of these resources, but that they shall instead be divided equally among them. ... They also accept ... the following test of an equal division of resources, which I shall call the envy test. No division of resources is an equal division if, once the division is complete, any immigrant would prefer someone else's bundle of resources to his own bundle."[13]

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[13] Dworkin (1981b), p.285. Dworkin cites Varian (1974) and D. Foley "Resource Allocation and the Public Sector", *Yale Economic Essays* v7 (Spring 1967) in reference to the idea of the envy test.

Taken by itself, the envy test could not guarantee a fair division of resources. If one person were appointed to divide all the resources on the island into bundles and allocate them amongst the immigrants, it may be the case that nobody envies anybody else's bundle. But if the distributor had somehow managed to convert the island's stock of resources into pre-phylloxera claret and plover's eggs (through trade with a neighbouring island), then, if one of the immigrants hated claret and eggs, she would not envy anybody's bundle but would nevertheless still feel unfairly treated. Even without such a conversion of indigenous resources, the particular manner of dividing the resources into bundles may cater to some tastes rather than others. Here one person may not envy another's bundle, but would have preferred that the bundles had been composed differently.

Dworkin's solution is to supplement the envy test with a form of market procedure: the auction. The auction is divided into three stages. Firstly, the auctioneer divides all the items on the island into different lots. The immigrants may notify the auctioneer of an intention to bid for part of some lot, in which case the parts become discrete lots. Secondly, the auctioneer proposes prices (measured in terms of clamshells which are divided equally amongst the immigrants) for each lot. If more than one person indicates an intention to pay the proposed price for any particular lot, the auctioneer will propose new prices until only one person is willing to bid for it. In such a case the set of prices will 'clear all markets'. These two stages of the auction will be repeated until an equilibrium is attained, i.e. until all immigrants are happy with the division of lots and the price for each lot. The third stage will be the fairly mechanical sale of each lot to the immigrants. Once equilibrium is attained after the first two stages, only one person will bid for any given lot.

Such a procedure passes the envy test, since if any immigrant envies the bundle of resources to be allocated to another immigrant, then she can bid for whichever lots in the bundle she envies. It would be impossible to reach an equilibrium if anybody envied anybody else's bundle. Secondly this procedure avoids the problem of the potential arbitrariness and unfairness of a unilateral division, since if anybody

is unhappy with any lot, they can propose that it be subdivided. Such a person could then construct her own bundle by bidding for the particular lots which she desires. Of course it may be the case that some of the immigrants will be unhappy whatever the distribution, since they may not want anything which happens to be on the island. In this case though, it will be impossible to satisfy them, so talk of unfairness could not arise. They are simply unlucky they did not land on an island which had more of what they want.

Another manner in which an immigrant may view herself as unlucky or lucky is if her tastes and preferences were common (or alternatively uncommon). This would be lucky if economies of scale operated in the production of the desired good, or unlucky if the good was scarce. In equality of resources, though, the contingent facts of raw material and the tastes of others are simply 'background facts' which cannot be incorporated into an egalitarian distribution. If we are to have an *equality* of resources, we need some manner of determining the value of resources. But it is precisely these background facts which determine the value of particular resources. If the immigrants were to compensate those who are disadvantaged by the distribution of preferences and raw materials, they would have no fixed reference point to determine the value of the resources in question. And hence no way to determine an equal distribution of resources.

Luck and Insurance

Although the auction may satisfy the envy test immediately after it takes place, once the immigrants begin trading amongst themselves and producing goods from their bundles of resources, it is unlikely that nobody will envy another's bundle of resources. Some will be more adept at making a profit, other may simply not desire to work for increased wealth. "Some will stay healthy while others fall sick, or

lightning will strike the farms of others but avoid their's."[14] It is important to discuss the effects such developments have on the ideal of equality of resources.

As has been mentioned above, Dworkin distinguishes between brute luck and option luck. "Option luck is a matter of how deliberate and calculated gambles turn out - whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined - [whereas] brute luck is a matter of how risks fall out that are not in that sense deliberate gambles."[15]

Inequalities which result from different option luck are consistent with Dworkin's equality of resources. Within the initial auction we could propose that lottery tickets, in addition to the indigenous resources, are up for sale. To deprive people of the life of a gambler, which would be the case if we did not tolerate inequalities generated through option luck, would be to deprive people of an equal position in the construction of the different lots to be sold in the initial auction. The envy test can be modified to incorporate this insight. "We may say that in computing the extent of someone's resources over his life, for the purpose of asking whether anyone else envies those resources, any resources gained [or lost] through a successful [or unsuccessful] gamble should be represented by the opportunity to take the gamble at the odds in force."[16] The consistency of option luck inequalities with equality of resources assumes that everyone has the same gambles available to him or her. If one, adventurous, person has not had the opportunity to participate in a gamble in which others have participated, then she would envy their set of resources.

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[14] ibid, p.293

[15] ibid. Dworkin does claim that the difference between the two forms of luck is a difference in degree. If my agricultural business is ruined by drought, is that bad option luck, or bad brute luck? In chapter 6, section II, "Metaphysics and the Subordination of Political Philosophy", I shall argue that problems of this sort undermine the usefulness of using the distinction between choice and luck in political philosophy.

[16] ibid, p.295

Whether or not inequalities generated by different brute luck are consistent with equality of resources is another matter. Intuitively they are not. Dworkin proposes that the idea of insurance provides a link between option luck and brute luck. Suppose the immigrants all have an equal chance of being blinded, for instance, in an accident. Suppose also that they are able to purchase insurance against catastrophes in the initial auction. Now if two people, one who had insured and one who had not, were both blinded in an accident, we would not need to take resources from the one to compensate the other. This is because "the availability of insurance would mean that, though they both had brute bad luck, the difference between them was a matter of option luck."[17]

However catastrophes are not the only form of bad brute luck. There are those handicaps with which we are born, or which we have some genetic disposition to develop. In these cases the immigrants are not in a situation of equal antecedent risk, since some will already have the handicaps, or will already have the genetic disposition to acquire them. Dworkin's response to these inherited handicaps is to develop the idea of the insurance scheme:

> "Suppose we could make sense of and even give a rough answer to the following question. If (contrary to fact) everyone had at the appropriate age the same risk of developing physical or mental handicaps in the future (which assumes that no one has developed these yet) but that the total number of handicaps remained what it is, how much insurance coverage against these handicaps would the average member of the community purchase? We might say that but for (uninsurable) brute luck that has altered these equal odds, the average person would have purchased insurance at that level, and [we would] compensate those who do develop handicaps accordingly, out of some fund collected by taxation or other compulsory process."[18]

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[17] ibid, p.297. In some cases of catastrophe, it seems that people are not in a position of equal antecedent risk. For instance people living on the San Andreas fault have, *ceteris paribus*, a greater chance of suffering from a catastrophe than those living elsewhere. Although Dworkin does not discuss such cases, it seems appropriate that they should be handled in the same way as handicaps, discussed below.

[18] ibid, pp.297-8. Dworkin adds that the idea of the average member of the community is not essential. Some other criterion may be appropriate. For instance if we had detailed information which would enable us to

One alternative to this scheme, which may avoid the practical political problem of state bureaucrats speculating about counterfactual claims, is if we simply consider the mental and physical powers of someone as part of their set of resources. Someone who is handicapped would, *ceteris paribus*, have less resources than others, so compensation would be required in order to maintain an equality of resources. Dworkin concedes that these mental and physical powers can be considered resources in that are used with material resources to fulfil the different aims and goals which people have. But the suggestion suffers from a problem similar to that encountered by equality of welfare's treatment of handicaps. Some people are so handicapped that no amount of resources will be able to compensate them for their handicap, or bring them into a situation of equality with others. However it would be unfair on others to transfer the maximum amount of resources we could to these handicapped people in order to come as close to equality as is possible.

> "Though powers are resources, they should not be considered resources whose ownership is to be determined through politics in accordance with some interpretation of equality of resources. ... They [unlike material resources] cannot be manipulated or transferred ... . So in this way it misdescribes the problem of handicaps to say that equality of resources must strive to make people equal in physical and mental constitution so far as this possible. The problem is, rather, one of determining how far the ownership of independent material resources should be affected by differences that exist in physical and mental powers, and the response of our theory should speak in that vocabulary."[19]

A third case of brute luck, aside from catastrophes and handicaps, is constituted by those accidents and contingencies which affect our preferences and ambitions. As is the case with inherited handicaps, we are not in a position of equal antecedent risk of developing expensive preferences. Does equality of

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determine how much each handicapped person would have paid for insurance in the hypothetical auction, we may structure the amount of compensation accordingly. In the absence of such information, the idea of what the average person would have bought remains a reasonable second best.

[19] ibid, p.301

resources need a hypothetical auction, identical to the one used in the case of handicaps, to compensate people with brute luck expensive tastes? Dworkin obviously replies that it doesn't, but offers two different reasons for his answer.

> "A short answer is available. Someone who is born with a serious handicap faces his life with what we concede to be fewer resources, just on that account, than others do. This justifies compensation, under a scheme devoted to equality of resources, and though the hypothetical insurance market does not right the balance ... it seeks to remedy one aspect of the resulting unfairness. But we cannot say that the person whose tastes are expensive, for whatever reason, therefore has fewer resources at his command."[20]

Dworkin has a second answer which uses "a certain view of the distinction between a person and his circumstances, and assigns his tastes and ambitions to his person, and his physical and mental powers to his circumstances."[21] We are not responsible for the circumstances which we find ourselves in, but, since our tastes, preferences and ambitions are not afflictions like handicaps, they are not part of our circumstances, however involuntary the acquisition of them has been. Rather they are part of someone's person, and one cannot buy insurance against the possibility of being the person one is. Hence the effects which they have on the possession of material resources can be ignored by equality of resources.

Dworkin qualifies his rejection of tastes and preferences by discussing those cases where we have a preference which we would rather not have. For instance someone may crave nicotine but prefer that they were not an addict. In this case we would not consider the (first-order) preference for nicotine as part of the addict's person, but rather of her circumstances. Her real (higher-order) preference, i.e. the one with which she identifies, is not to smoke. Such cravings can be considered to be handicaps, and we

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[20] ibid, p.302

[21] ibid.

therefore need to consider how much insurance the average person would have bought in the hypothetical insurance market to cover the possibility of acquiring such a craving. If no such insurance would be bought, as would probably be the case with cultivated cravings such as nicotine addiction, then no compensation is warranted.

Ambition and Talent

The fourth case of brute luck which Dworkin discusses is that of talents. To a large extent our talents are determined by things beyond our control, so we are not always entirely responsible for the talents which we have. Before discussing what equality of resources has to say about inequalities in talents, Dworkin considers what equality of resources implies in a situation where talents are equal. He discusses the case of two immigrants, Adrian and Bruce, who have an equal share of the island's resources after the auction, and an equal talent to utilise the resources productively. "Adrian chooses resources and works them with the single-minded ambition of producing as much of what others value as possible."[22] Bruce, on the other hand, uses his allocation of land to build a tennis court. Now although immediately after the auction neither will envy the other's bundle of resources, over a period of a few years when Adrian has had the opportunity to acquire great wealth, Bruce may well envy Adrian's larger bundle. But given that talents are equal, equality of resources condemns any redistribution of wealth from Adrian to Bruce. Although Bruce may envy Adrian's stock of material resources, the envy test should be applied, not simply to resources, but also to a person's occupation. We need to look at a person's entire 'balance sheet' of resources on the one hand, and occupation on the other:

> "[I]f we look at envy ... as a matter of resources over an entire life, and we include a person's occupation as part of the bundle of his goods, then no one envies Adrian's bundle, and the

[22] ibid, p.304

distribution cannot be said to be unequal on that account. Surely we should take [this] synoptic point of view."[23]

Talents are rarely, if ever, equal. Since talents do differ, one person could envy the entire balance sheet of occupation and resources of another. Even if the envy test is applied synoptically, it would still fail to be met. "So if we continue to insist that the envy test is a necessary condition of equality of resources, then our initial auction will not insure continuing equality, in the real world of unequal talents for production."[24]

Dworkin notes that a lack of skill is, in some ways, very similar to a handicap. Someone who cannot play basketball like Wilt Chamberlain suffers from an especially common handicap. "We may capitalise on the similarities between handicaps and relative lack of skill to propose that the level of compensation for the latter be fixed, in principle, by asking how much insurance someone would have bought in an insurance sub-auction ... against the possibility of not having a particular level of skill."[25]

If it is possible to answer this counterfactual question then it will be possible to begin to construct a tax and redistribution scheme for the less talented. One manner in which the question can be framed is to suppose that the immigrants are ignorant of their skills. This suggestion is similar to the Rawlsian idea that people in the original position are unaware of their talents. Dworkin, however, wishes to reject this suggestion. Ambitions and skills are too closely connected for us to be able to make sense of the idea that someone will know that they have certain ambitions, without them knowing what skills they have. Although there is a similar indeterminacy in the case of handicaps and ambitions, it "is manageable in the case of ordinary handicaps, because generalisations are nevertheless possible."[26] But in the case of

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[23] ibid.

[24] ibid, p.307

[25] ibid, p.315

[26] ibid, p.316

skills, "if we suppose that no one has any idea what talents he has, we have stipulated away too much of his personality to leave any intelligible base for speculation about his ambitions, even in a general or average way."[27]

Equality of resources needs to be ambition-sensitive and endowment-insensitive. We tolerate inequalities which arise from differences in ambition but not those inequalities which arise from differences in endowments. Since talents are not simply inherited, but are often nurtured and developed in accordance with the ambitions and values of a person, talents and ambitions are too closely intertwined to allow a simple redistribution of proceeds from talents, and talents only, and not proceeds from ambitions. In this talents differ from ordinary handicaps. We cannot simply develop out of ordinary handicaps, in accordance with our ambitions, in the way in which we can develop out of a lack of skill. So the manner in which equality of resources accounts for differences in talents cannot be identical, although it may be similar, to the manner in which it accounts for handicaps.

Instead of supposing that the immigrants are unaware of their skills, Dworkin proposes that they are unaware of the level of income which they can generate with their skills. This could be achieved by supposing that the immigrants are unaware of the tastes, skills and ambitions of the other immigrants. If there were some computer on the island which, unlike the immigrants themselves, possessed all the relevant data about the immigrants' talents and tastes, as well as data about the resources and technology available, we could imagine that the computer would be able to project the income structure, with each immigrant at a particular level of income, which should arise once production and trade commence after the auction.[28]

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[27] ibid.

[28] This is not quite the way Dworkin describes the computer projection. He stipulates that the computer should have all the relevant data about the ambitions and attitudes to risk of each immigrant, as well as the data concerning initial talents and tastes. However it seems to me that the purpose of the exercise is to generate a hypothetical equal distribution when we suppose that ambitions are the same. Even though ambitions are not the same in the real world, since equality of resources needs to be ambition-sensitive (i.e. allow differences that

Now if the immigrants were aware of the general shape of this income structure, but not their particular place in it, we could ask how much insurance the average person would purchase against being placed by the computer at some level of income. One possibility is that the average person would insure against being placed at anything but the highest percentile of income. But to take out insurance at this level would not be a good bet. The chances of winning would be very high, hence the number of payouts which would have to be made would also be high. But this then means that the premiums on such insurance would be very high as well. The net gain that a person would make after the loss of the premium was subtracted from the gross gain of the insurance dividend, would be very small. Furthermore those who are not eligible for the dividend, i.e. those who the computer places at the highest percentile, would receive no return on a large premium.

Be this as it may, the lower the income level insured against, the more sense such insurance makes. If we insure against being in, say, the lowest decile of income on the computer projection, the number of payouts would be small, hence the premium would be small. But a small premium would be an insignificant loss for those with earning potential over the lowest decile. Furthermore the dividend paid out to the members of this lowest group should be a highly significant amount of money, given that they could be facing financial disaster if they had not insured.[29]

An alternative to the hypothetical insurance market in the case of talents is similar to the alternative to the hypothetical insurance market in the case of handicaps. We could count the labour-power of people as part of the set of resources which are to be sold in the initial auction. But just as we should not consider the physical and mental powers of a person as resources for the sake of developing an account of equality of resources, we should not consider talents and labour-power to be resources which are up

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result from ambition), we should not factor ambitions into the hypothetical insurance market. The purpose of the insurance is to compensate people for their lack of talent, not their lack of ambition.

[29] The rationality of insuring at a low level as opposed to a high level assumes the notion of marginal declining utility. A small amount of money is far more significant for someone with less money than it is for someone with more.

for sale. Such a situation would lead to the 'slavery of the talented', in that, since each person would presumably wish to secure the right to their own labour, the talented would have to pay far more for their highly-valued abilities than would the untalented. To cover the costs of this purchase the talented would be forced to follow the most productive occupation possible. A range of occupations will be open to the untalented for them to raise the income to repay society for their cheap labour. But since the costs of the labour of the talented is so much higher, their range of possible occupations will be much narrower. Unlike the untalented, the talented will not be able to spend their time realising an ambition to write 'indifferent poetry'. Just as people should not be penalised for a lack of talent, so too should they not be penalised for being talented.

Persons and Circumstances

It is important to be clear on the fundamental distinction which animates Dworkin's theory, and provides his 'cut' between expensive tastes and handicaps. There are three distinctions which are possible candidates:

a. the distinction between resources and preferences.

b. the distinction between option luck and brute luck (or more simply between choice and luck).

c. the distinction between persons and circumstances (of which the distinction between ambition and endowment is a variation).

The first distinction gains some plausibility from Dworkin's 'short answer' to why the contingencies which affect preferences and ambitions should not be the subject of compensation. Simply whereas the physical and mental powers of a person are resources, preferences are not. So an equality of resources standard does not take them into account. But this answer seems to contradict Dworkin's rejection of the alternative to the hypothetical insurance market for handicaps. This alternative suggested that we

consider physical and mental powers as resources. But Dworkin rejects this alternative and chooses *not* to describe physical and mental powers as resources for the purposes of his conception of equality of resources. So the distinction between resources and preferences could only be a crude simplification of Dworkin's cut.

The second option is easier to dismiss. Although the distinction between option luck and brute luck is central to Dworkin's theory, it is not fundamental. He explicitly claims that he does not accept compensation for some types of bad brute luck. A person may be unlucky in that they find themselves to have certain tastes which are difficult to satisfy. But if she identifies with the tastes, even though they may not be 'voluntary all the way down', then they are part of her person and one cannot insure against being the person one is. The question of compensation for expensive tastes only arises if the person does not identify with the taste, and regards it as a handicapping addiction.

So the third distinction, that between person and circumstance, constitutes Dworkin's cut between expensive tastes and handicaps. A person's ambition and preferences are part of her person, whereas her physical and mental powers are part of her circumstances, her endowment. In his "Foundations of Liberal Equality", Dworkin claims that his theory of liberal equality "depends on a sharp and striking distinction between personality and circumstance".[30] This is one of the four "leading and most controversial ideas" of liberal equality, the others being the concentration on resources instead of welfare, a commitment to an equality of resources, and belief in tolerance and the ethical neutrality of the state.[31]

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[30] Dworkin (1988), p.39

[31] ibid. It should be noted that the theory of equality of resources is part of Dworkin's broader theory of 'liberal equality'. These theories can be crudely contrasted with Rawls's regime of primary goods and his broader conception of justice as fairness.

3. Responses to Dworkin

In this chapter I discuss some of the major criticisms of Dworkin's theory of equality of resources. Larry Alexander and Maimon Schwarzschild criticise Dworkin's auction, and his contention that we could not insure against having expensive tastes. John Roemer argues that the hypothetical insurance market can lead to perverse consequences, and, more importantly, that any appropriate resource-equalising mechanism must also equalise welfare. Gerald Cohen criticises Dworkin's exclusive concern with resources and his use of the person-circumstance distinction in place of the luck-choice distinction. I also raise an objection which claims that Dworkin's distinction exceeds the limitations of a political conception of justice.

I. Alexander and Schwarzschild

Alexander and Schwarzschild's ultimate aim is to argue that the common conception that liberalism is based on a fundamental principle of neutrality is flawed. Instead of characterising liberalism as impartial towards various conceptions of the good, they "suggest that liberalism and its respect for autonomous choosers is better seen as a component of a (non-neutral) theory of the Good rather than as a principle prior to any theory of the Good."[1] They argue this by examining existing approaches to the problem of "how a person's resources are to be measured for purposes of assessing whether the proper

[1] Alexander & Schwarzschild (1987), p.87

pattern [of distribution] has been fulfilled."[2] In particular they examine and reject Dworkin's conception of equality. Importantly the two authors are not concerned with defending equality of welfare against equality of resources. They concur with Dworkin's rejection of equality of welfare. Instead they argue that since there is no neutral way in which Dworkin can prevent equality of resources from collapsing into equality of welfare, Dworkin's theory cannot be a form of liberalism based on neutrality.[3]

The Aggregation of Preferences

The first problem which they pose for Dworkin's theory is that of the aggregation of bids which can be illustrated as follows: Suppose Arthur, Martha and Maud value hurting a fourth immigrant, Leroy. They know that Leroy craves coconuts, or, even worse, because of his unique physiology he requires coconuts in order to survive. Being the particularly vindictive people they are, Arthur, Martha and Maud form a syndicate to outbid Leroy in the auction. Leroy is prepared to bid 98 of his 100 clamshells on coconuts (with the remaining 2 to be bid on, say, land.) Arthur, Martha and Maud pool 33 clamshells each to enter a bid of 99 clamshells for all the coconuts on island. Since their bid is higher, their bid will win. Alexander and Schwarzschild believe that Leroy has been unfairly treated, in the same way that "the aggregation dimension of utilitarianism - its failure to take seriously the ultimacy of the individual - cause many to reject its notion of equality as a counterfeit."[4]

However, Alexander and Schwarzschild have misunderstood the nature of Dworkin's auction. The first two stages of the auction are not one-off events. Rather they are to be repeated until an equilibrium is reached and all markets are cleared. In particular they overlook the important stipulation in Dworkin's

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[2] ibid.

[3] One could object that Dworkin does not consider his liberalism to be based on neutrality either. See Dworkin (1985), ch.9: "Why Liberals Should Care about Equality", where he contrasts liberalism based on neutrality with liberalism based on equality, and argues for the superiority of the latter. See also the discussion of Dworkin's "Foundations of Liberal Equality" below. I do not assess the authors' claim that liberalism should be seen as part of a comprehensive conception of the good, although I disagree with it and assume the contrary. The debate about the value commitments of liberalism covers too large an area to engage in for the purposes of this thesis.

[4] Alexander & Schwarzschild (1987), p.93

auction that any immigrant may inform the auctioneer of an intention to bid for part of a lot, in which case the parts become discrete lots.

Assume that there are 1000 coconuts on the island. In the first step of the auction these coconuts are to be sold as a single lot, and the syndicate's bid for this lot exceeds Leroy's. But this does not mean that the coconuts are now to be sold to the syndicate. Leroy can propose that the lot be divided into, say, 10 lots of 100 coconuts each. He can now use his 100 clamshells to bid for any of these lots. If Arthur, Martha and Maud wish to deprive Leroy of coconuts, they need to bid on each and every one of the lots. But the syndicate cannot possibly hope to 'cover all bases', i.e. consistently outbid Leroy on each and every one of lots. If they are committed to spending, say, 240 clamshells on six of the ten lots, they only have 60 clamshells left to purchase the others. Leroy, on the other hand, still has his 100 clamshells. The syndicate simply do not have the unlimited number of clamshells to ensure that Leroy is unable to purchase any coconuts. The ability of the immigrants to divide the lots seem to render the formation of syndicates redundant.[5]

Even if I am wrong and the formation of such syndicates will leave Leroy worse off than he would otherwise have been, and that this is unfair, Dworkin's auction is not necessarily rendered useless. Dworkin could disallow syndicates, thus ensuring that the auction remains a purely individualistic enterprise. Alexander and Schwarzschild reject this option since they believe that "it is silly to disallow aggregation of preferences in the initial auction if aggregation is allowed immediately thereafter."[6] But this would only be true if aggregation of preferences *after* the auction resulted in unfairness similar to that (it is assumed) which results from the aggregation of preferences *in* the auction. Suppose Leroy bids 31 clamshells on all the coconuts, thus outbidding the 30 clamshells that Arthur, Martha and Maud

[5] This can be illustrated another way: say the syndicate bids on three lots of coconuts. However many lots Leroy bids on, it makes no difference whether Arthur, Martha and Maud bid as a syndicate or as individuals: they will still be spending y clamshells each on z amount of coconuts. This suggests that the appropriate formula for an immigrant in Leroy's position to adopt when faced with a syndicate, is to divide the desired good into x amount of lots, where x is greater than the number of individuals in the syndicate.

[6] ibid.

each bid independently. Leroy now owns the coconuts. After the auction the three form a syndicate to acquire the coconuts from Leroy.

> "[Leroy] can sell back the right to the coconuts to the ... syndicate for a price between 90 and 31 clamshells, say 70 clamshells. [Leroy] now has 39 clamshells more than he began with, though he has lost a right worth only 31 clamshells, one that would have left him with only 69 clamshells had he exercised it. It looks as though [Leroy] has been treated better than equally."[7]

The obvious problem with this argument is that although Leroy has been treated very well in the exchange, he has been treated very well by Arthur, Martha and Maud, who therefore have no grounds to complain of unfairness. They chose to purchase the coconuts for a ridiculously expensive price, so they cannot object that Leroy now has more clamshells than they do. The conclusion one can draw is that in the market after the auction, aggregation of preferences does not lead to unfair results. Hence it is not 'silly' for Dworkin to disallow aggregation of bids *in* the auction, *if* such aggregation leads to unfair results.[8]

Expensive Circumstances and Background Facts

A more pressing problem which Alexander and Schwarzschild mention concerns Dworkin's use of the distinction between persons and circumstances to exclude compensation for expensive tastes. Dworkin uses the idea of insurance to account for catastrophes, handicaps and a lack of talents. He argues that the immigrants could not insure against the contingencies which affect their tastes and preferences,

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[7] ibid.

[8] One natural exception to this possible stipulation is the formation of syndicate which represents all the immigrants, i.e. some form of state, or community chest. Such a community chest could compete with individuals in the auction to acquire goods which the immigrants can then utilise as public resources.

because that would be insuring their personalities, as opposed to insuring against the circumstances in which they find themselves.

> "Dworkin appears to assume that insuring against expensive tastes is insuring against becoming a different person. But while that assumption appears to be plausible if one has in mind acquiring new tastes, it misconceives the problem of having tastes that later become expensive. To insure against present tastes becoming expensive is in no way to insure against becoming a different person."[9]

To put the problem another way, there are two components of an expensive taste: its being a taste, and its being expensive. The latter component, whether or not a taste is expensive, is determined by the circumstances in which we find ourselves, rather than the persons we are.

Dworkin's response would be to claim that the distribution of raw materials and other people's tastes, although not part of somebody's personality, constitute the 'background facts' which are required in order to determine the value of particular resources. But there are two problems here. Firstly if we cannot incorporate these background facts into an insurance market, then they are circumstances for which we cannot be compensated. This may not be counter-intuitive, but it does indicate that Dworkin's fundamental distinction between person and circumstance is not doing what it is supposed to be doing: providing a cut between the appropriateness of compensating handicaps and the inappropriateness of compensating people with expensive tastes.

Secondly, and more dangerously, these background facts determine not only whether or not someone has an expensive preference, they also determine whether or not someone has a particular talent. If I am very good at cultivating potatoes, but there are no potatoes on the island, or perhaps nobody wants to

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[9] ibid, p.99

eat potatoes when they can consume coconuts instead, then I do not have a productive talent. But in equality of resources a lack of talent is to be compensated. Dworkin discusses a *laissez-faire*, equality of opportunity conception of equality, which would criticise his claim that we ought to compensate the untalented. Dworkin, the objection argues, is moving too close to the claim that we should not envy other people *per se*, rather than simply their bundle of resources. Dworkin responds:

> "Adrian [the talented farmer] has two things that Claude [an untalented person] would prefer to have which belong to Adrian's circumstances rather than his person. The *desires and needs of other people* provide Adrian but not Claude with a satisfying occupation, and Adrian has more money than Claude can have [my italics]. Perhaps nothing ... can be done ... to erase these differences ... . But this provides no argument against schemes ... that would redistribute some of Adrian's wealth to [Claude], and we could fairly describe these schemes as aiming to remove Claude's envy of what Adrian has rather than of what Adrian is."[10]

So it seems as though Dworkin tolerates incorporating background facts into the insurance mechanism, in so far as these facts determine talents, but he does not tolerate such incorporation in so far as they determine the expensiveness of preferences. But this seems to be *ad hoc*. Indeed, talent-determining and price-determining facts would not even have to be different circumstances. The single background fact of a large number of people desiring impressionist paintings determines both that a taste for such paintings is, *ceteris paribus*, expensive, *and* that someone who can paint like Monet has a productive talent. In Dworkin's hypothetical insurance market for talents, the immigrants would be unaware of this fact, and may insure against the possibility that it does not obtain. But why is it only the artists who can insure against it, and not the art collectors? If Dworkin is to escape this dilemma, and provide the appropriate cut between expensive tastes on the one hand and handicaps and talents on the other, he needs to either sophisticate his person-circumstance distinction, or adopt a different distinction.

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[10] Dworkin (1981b), p.308

II. Roemer

John Roemer's critique of Dworkin's equality of resources consists of two main theses. Firstly, he argues that the insurance mechanism which Dworkin outlines can behave perversely. More importantly, he argues that the only mechanism which an equality of resource approach can adopt to equalise resources is one which also equalises welfare. Hence "equality of resources implies equality of welfare". This second thesis is potentially the most damaging, since if it is only the particular mechanism of the hypothetical insurance market which is flawed, then a resourcist approach may modify it to avoid the relevant problems. If however there is no coherent distinction between equality of resources and equality of welfare, Dworkin's project has been in vain.

The Insurance Mechanism

Roemer compares the insurance mechanism for equalising resources, with the alternative which Dworkin himself considers and rejects, i.e. the 'equal division' mechanism where each person has an equal right to the labour of all people in society. Dworkin argues that the equal division model leads to the 'slavery of the talented' since the talented will have to pursue the most lucrative careers in order to pay the costs of the rights to their own labour. Roemer uses two arguments against the superiority of Dworkin's insurance mechanism (although, importantly, he is not advocating the equal division model). Firstly, he argues that in some situations the insurance mechanism will leave the talented worse off in terms of utility than the untalented. Secondly, he argues that, in other situations, the insurance mechanism can leave the initially resource-poor worse off than they would otherwise have been.

Why does the insurance mechanism leave the talented worse off in terms of welfare than the untalented? Roemer assumes the expected utility model of insurance which stipulates that a rational decision for an agent in a position of risk is to choose the option which maximises their utility over various possible

outcomes. He assumes a society where everybody has the same utility function $u(C,l)$, where 'C' represents corn and 'l' represents leisure. His argument can be paraphrased as follows.[11] Assume two types of people in society: the talented (T) and the untalented (U). T's can produce 1.5 units of corn from 1 unit of (labour) time, whereas U's can only produce 0.5 units. Assume, initially, that from every unit of corn consumed, and from every unit of (leisure) time consumed, everybody derives 1 unit of welfare. The solution to this insurance problem states that utility will be maximised in a situation where the T's spend 100% of their time producing, and the U's spend 100% of their time at leisure. The T's produce more utility through working, the U's more through relaxing. Given 100 T people, 100 U people, and 10 units of time, we derive a situation where:

a. (100 people x 10 units of time x 1.5 =) 1 500 units of corn have been produced.

b. T's have derived no utility from leisure

c. U's have derived (100 people x 10 units of time =) 1 000 units of utility from leisure.

The purpose of the insurance mechanism is to determine how much transfer of corn from the talented to the untalented is warranted. With the present assumptions it makes no difference to overall utility how the corn is distributed. Importantly, once the idea of declining marginal utility is introduced, the result that everybody should have an equal amount of corn, post-insurance, is derived. Since everybody has the same utility function, their marginal utility will be equal when they have the same amount of corn. Thus the most efficient distribution of corn is an equal distribution. But in this case everybody has 7.5 units of corn, hence the same utility from corn, but the untalented have a further amount of utility derived from their leisure, an amount which the talented do not share. Hence "all agents end up with the same amount of corn; ... the higher one's talent, the more one works; [hence] the higher one's talent, the lower one's final utility."[12] Of course marginal declining utility will have an effect on the amount of

[11] For the precise expected utility calculations which Roemer uses, and which it would be meaningless to repeat, see Roemer (1985), pp.185-6. I believe that my discussion captures the essentials of his argument.

[12] Roemer (1985), p.164

time each class works: the talented will have some time off, the untalented will do some work. Yet this effect will not equalise the time each group works, since the talented remain more efficient producers of utility through working than the untalented.

A second example which Roemer uses to discredit the insurance mechanism does not use talent as an example of a resource or endowment, but rather the possession of endorphins.

> "Imagine Andrea and Bob, who have preferences for one good, corn (C). Andrea's utility function is $v(C)$ and Bob's utility function is $w(C)$. ... The agents will insure themselves so each ends up with one-half the corn. Now suppose ... we discover endorphins [`G', which account for a greater pleasure Andrea derives from corn], and view the problem as one of allowing Bob and Andrea to insure themselves with respect to the distribution of corn and endorphins, where their utility functions are $u(C,G_1)$ and $u(C,G_2)$. ... Then the marginal-utility-equalising distribution of corn awards more corn to Andrea than to Bob. That is, Bob would have been better off had we not extended the insurance mechanism to try to compensate him for his unlucky draw of low endorphins in the birth lottery."[13]

Again the insurance mechanism generates a perversity since "with equality-of-resource ethics we redistribute resources equally, not without any regard to welfare, but because we are motivated to improve, at least somewhat, the welfare of those who began with few resources."[14] But if this is true the insurance mechanism is inconsistent with the aim of equality of resources. Even if Roemer is wrong in believing that resourcist egalitarians are motivated to improve the *utility* of the resource-poor, we should still be disturbed by what seems to be a systematic disadvantage to being talented, or low in endorphins. The results Roemer obtains are simply not, intuitively, egalitarian distributions.[15]

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[13] ibid, pp.174-5

[14] ibid, p.173

[15] It may be objected that there is a disadvantage to being talented, only when we have particular assumptions about the utility functions of the people in the society. But since these utility functions may differ from person to person, the talented may not necessarily have lower welfare than the untalented. But Roemer's postulated utility function should

Equality of Resources Implies Equality of Welfare

The above two examples constitute Roemer's thesis that the insurance mechanism which Dworkin outlines is flawed. Roemer claims that this "may suggest that we continue to search for a satisfactory resource-equalising mechanism which respects the divide between resource equality and welfare equality [but such] a search would be in vain."[16] He argues in "Equality of Resources Implies Equality of Welfare" that if "one takes the view that resources include internal traits of people which influence their welfare", the only resource-equalising mechanism which satisfies certain requirements, is one which also equalises welfare.[17] Hence there is no real distinction between the two conceptions of equality.

> "Suppose two people have different preferences over a list of *n* goods. There must be a reason. ... [I]s it not because [they] have different levels of endorphins, different patterns of synaptic connections, ... and so on? If we list a sufficient number of such `resources', then [they] can be represented as having the same preferences - [they] differ only in ... consumption of different vectors of resources. ... The theorem thus implements a reductionist, determinist program. ... [W]hat initially appears as a difference between people for which they must bear responsibility (i.e. preferences) becomes a difference for which they do not bear responsibility (i.e. resources). Where does one draw the line on this slippery slope, which separates ... preferences from ... resource endowment?"[18]

Again we have a problem with the person-circumstance distinction. Whereas Alexander and Schwarzschild note that `external' circumstances can determine whether or not a preference is expensive, Roemer is noting that `internal' circumstances can determine whether or not we have the preference in the first place. If the physical and mental powers of a person can be incorporated into the

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be read as a *ceteris paribus* claim. We have no reason to think that the talented have a different utility function, so it is reasonable to assume an identical one for all people, although in practice this will not necessarily be the case.

[16] ibid, p.176

[17] Roemer (1986), p.755

[18] Roemer (1985), pp.178-9

resourcist balance-sheet, why not include the physical constitution of a person? But if we do this, then it seems as though we are incorporating anything which could possibly cause us to have different preferences, and hence different levels of welfare.

III. Cohen

G.A. Cohen, in an excellent survey article of the 'equality of what?' debate, claims that Dworkin's equality of resources theory is untrue to the basic motivation which underlies egalitarianism. Briefly, Cohen claims the "primary egalitarian impulse is to extinguish the influence on distribution of both exploitation and brute luck."[19] Since Dworkin's equality of resources condemns compensation for the deleterious effects of some forms of brute luck, it needs to be replaced with Cohen's 'equal access to advantage' approach, where advantage is understood to include both welfare and resources.

Tiny Tim and the Plurality of Egalitarian Concerns

Cohen does not accept Dworkin's exclusive focus on resources. Given that the egalitarian is committed to neutralising the effects of brute luck, we should be concerned with disadvantages which result from brute luck, whatever their form. He provides the example of Tiny Tim who suffers from two distinct disadvantages. Firstly, Tiny Tim's legs are paralysed. On this account he suffers from a handicap: crudely, a resource-deficiency. However Tiny Tim is not at all perturbed by the handicap; it does not detract from his welfare one iota. Cohen's intuition is that egalitarians would be motivated to transfer resources to Tiny Tim to compensate for the handicap, but if they do this they are not purely welfarist. Secondly, Tiny Tim suffers from severe pain whenever he moves his arms. His capacity to move his

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[19] Cohen (1989), p.908. Cohen does not discuss the idea of eradicating exploitation in his article. Nor do I discuss whether egalitarianism needs to incorporate this Marxist concern, although I do believe that a theory of egalitarianism should not rule out the possibility that exploitation should be eliminated in the interests of equality.

arms is in no way diminished. Even psychologically he is robust enough to ignore the pain, so it is not an impediment to his physical resources or powers. Here Tiny Tim suffers only from a detraction of welfare which again, Cohen believes, should be compensated by the egalitarian. Since egalitarians are, as such, concerned with both resources and welfare, Dworkin's exclusive focus on resources is flawed.

It seems that Tiny Tim's pain is morally significant. It is possible, although not necessarily true, that in some situations an egalitarian regime may provide Tiny Tim with the resources necessary to relieve his pain. I argue below that this intuition is best reflected in Scanlon's discussion of urgent concerns, rather than any all-encompassing formula of 'equal access to advantage'.[20] Be this as it may, I do not believe that Cohen has offered a strong critique of Dworkin with his example of the doubly disadvantaged Tiny Tim. The fundamental distinction in Dworkin's theory is that between person and circumstance, not that between resources and welfare. Dworkin's concern with resources instead of welfare stems from the idea that one's possession of resources is often determined by one's circumstances, and that one's level of welfare is generally a function of one's personality. It is a misreading of Dworkin to claim that since Tiny Tim does not suffer a resource-deficiency in his arms, Dworkin's equality of resources could not compensate him. For Tiny Tim's pain is part of his circumstances and is, as such, as much a handicap as his immobility, even if we do not choose to describe it as a resource-deficiency.

The Irrelevance of Identification

The second premise in Cohen's criticism of Dworkin is that he has ignored the fundamental aim of egalitarianism, i.e. to eliminate the effects of brute luck. If this imperative is recognised as basic, then it follows that all disadvantages which result from brute luck ought to be neutralised, including detractions from welfare. Dworkin replaces the choice-luck distinction with the person-circumstance distinction. For Dworkin what distinguishes person from circumstance is whether the person identifies with the

[20] See also chapter 5, footnotes 8 and 24.

relevant preference. In those cases of expensive preferences where the agent does not identify with the preferences (i.e. it is a craving or addiction), Dworkin is happy to conclude that they are part of her circumstances. If such addictions would have been insured against in the hypothetical market (which Dworkin doubts), then they warrant compensation.

For Cohen, on the other hand, "identification and disidentification matter for egalitarian-justice only if and insofar as they indicate presence and absence of choice."[21] For instance a person who develops an expensive taste innocently, and who is offered free therapy to rid her of the preference, should have such therapy whether or not she "says farewell to [her] taste with unmixed relief or, instead with a regret which reflects some degree of identification."[22] According to Cohen, what egalitarians look for is not the level of personal identification with a preference but rather whether the preference is voluntary.

Dworkin could say that the simple fact that the person chooses the therapy indicates that she does not identify with the preference (which is therefore part of her circumstances rather than person). There is no purpose in speculating about different levels of regret or identification once the person has made her choice, since to do so would be an arbitrary, unverifiable procedure. So here choice would be relevant in so far as it indicated identification or disidentification. Secondly, Dworkin could claim that whether or not the person acquired the addiction in an altogether voluntary manner is not, in itself, relevant for the purposes of compensation or state assistance. What really matters is whether the immigrants on the island would have insured against having the addiction. Those addictions which are usually cultivated by the person herself would more than likely not be insured against. For instance it would be irrational to insure against nicotine addiction, since I gain nothing I could not gain simply by being prudent, and I lose the taxes required to pay for the rehabilitation of other people. So an egalitarian regime would

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[21] ibid, p.927

[22] ibid. If the person chose to develop the expensive taste, then this is a disadvantage for which they are responsible and compensation is not required.

probably not offer withdrawal therapy for *any* smoker, whether she was forced to start smoking by sadistic school prefects or merely decided, on the spur of an anti-social moment, to begin smoking.

But there are two responses one could make to this Dworkinian move. Firstly, if the pivotal question is whether or not the immigrants would have insured against having a certain preference, then the distinction between persons and circumstances does not provide the cut that was needed. For we required some distinction which would enable us to argue that compensation was appropriate for one form of disadvantage, but not for another. Since an egalitarian regime would not, presumably, compensate smokers with state-funded withdrawal therapy, not only does it not matter whether a person acquired the habit voluntarily or not, it does not matter whether a person views a preference for nicotine as part of her circumstances or part of her person.

The second response one could make to a Dworkinian reply to Cohen would argue that the question of what the immigrants on the island would have insured against is not an appropriate question to ask in deciding whether compensation for a particular disadvantage is warranted or not. For it may have been rational for the immigrants to insure against a particular disadvantage which we would not consider at all pressing. As I shall argue in chapter 6, the appropriate question to ask is simply whether or not the disadvantage is particularly urgent or significant. The position of equal antecedent risk in which Dworkin places the immigrants expresses the inappropriate 'luck-neutralising aim', albeit in a qualified manner, and is therefore flawed as a 'perspective of justice'.

IV. A Rawlsian Objection

All of the above critics have cast some doubt on the appropriateness of Dworkin's fundamental distinction between personality and circumstance. A further objection relies on Rawls's idea of the

political conception of justice. Briefly liberal principles of justice must tolerate the plurality of reasonable conceptions of the good and comprehensive moral doctrines. But importantly, the *justification* of these principles cannot presuppose any particular moral doctrine; the principles must be 'freestanding' and the subject of an 'overlapping consensus'. To illustrate: In *A Theory of Justice*, Rawls argued that one of the justifications of his principles of justice was that they expressed the Kantian concern with autonomous agents, treated as ends in themselves. Now although Kantians, even Rawls himself, may wish to endorse justice as fairness for reasons such as this, justice as fairness can no longer be described as a Kantian conception of justice. Rather, in *Political Liberalism*, it is advanced as a 'political' conception.[23] Although justice as fairness may find support from within various religious and ethical doctrines, it cannot rely on these doctrines. There must be some purely political justification.

It seems that Dworkin's distinction between person and circumstances exceeds the limitations of the political conception of justice. People with different ethical, religious and metaphysical beliefs will have different ways of drawing the line between the two. Some will not accept that a person's talents are part of their circumstances, or that their preferences constitute part of their personality. The proletarian's preference for consumer goods is part of a false consciousness - an alienation from her true being. Alternatively the blind person's handicap is a manifestation of her bad karma, hence a central indication of who she really is. Yet people who hold such beliefs may be inclined to accept some type of egalitarian theory. One would not want to dissuade them by contradicting their views on human nature when it is unnecessary to do so.

Dworkin does not intend his distinction between person and circumstance to be uncontroversial or purely political. In his "Foundations of Liberal Equality", he distinguishes between two strategies to achieve a reconciliation between ethics and political philosophy. There is a tension between liberalism's

[23] Where 'political' is contrasted with 'metaphysical' comprehensive moral doctrines. See also Rawls (1985).

tolerance of various beliefs about values in the personal sphere, and the belief that citizens should set aside their convictions about what constitutes the good life, in the political sphere. The first strategy is that of 'discontinuity' which attempts to justify the distinction between the personal realm of ethics and the political sphere of justice. Rawls's justice as fairness is an example of this approach. The second strategy, that of 'continuity', attempts to show how a commitment to state neutrality and tolerance can be grounded in a 'liberal ethics'. "It appeals to people who want a more integrated moral experience, who want their politics to match their convictions about what it is to live well, rather than requiring them to set these convictions aside, to check them at the voting-booth door."[24] Dworkin adopts the second strategy and proceeds to discuss how his theory of liberal equality can be seen to have foundations in a particular view of ethics. The 'sharp and striking' distinction between person and circumstance is thus based upon Dworkin's own philosophical view of ethics.

Be this as it may, it seems that if one can avoid resorting to the continuity strategy in constructing an account and defence of the political regime of egalitarianism, one should do so. This, of course, does not prevent the possibility that people may develop 'liberal ethics'. The stability of Rawls's political conception of justice requires that there is an overlapping consensus on the principles of justice. Citizens recognise both a purely political justification for the democratic regime, and a coherence between the principles and their own conceptions of the good. So if Dworkin has a liberal conception of ethics, this merely reinforces the overlapping consensus. One may be committed to egalitarianism because, like Dworkin, one assigns tastes and ambitions to the person, and talents and handicaps to circumstances. But if we can develop some distinction which cuts between handicaps and expensive tastes, and which does not presuppose any particular philosophy of the person or comprehensive moral doctrine, then this distinction has at least a *prima facie* claim to be a more appropriate basis for egalitarianism.

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[24] Dworkin (1988), p.20

Furthermore, not only should a theory of distributive justice avoid dependence upon any particular comprehensive moral doctrine, it should also avoid assuming particular positions regarding metaphysical questions more generally. This is a claim which I shall return to in chapter 6, where the distinction between luck and choice used by Cohen, Roemer and others, is criticised.[25]

In summary, Dworkin's distinction between persons and circumstances is simply too weak to be utilised in an egalitarian theory. It does not provide a cut between compensation for expensive tastes and compensation for handicaps, nor does it constitute a determinate distinction between resources and welfare. Thirdly it is impossible to distinguish between persons and circumstances without being commited to a particular philosophy of the person, and hence without moving beyond political constraints on the justification of egalitarian theories. In addition, Dworkin's hypothetical insurance market can lead to inegalitarian results in certain situations. As a 'perspective of justice' it needs to be either sophisticated or rejected.

[25] Although I accept and use Rawls's idea of the political conception of justice, my argument here rests only on a weak statement of one of the central tenets of 'political liberalism': that we should avoid making controversial metaphysical and ethical assumptions, in so far as possible, when we construct principles of justice. Even if Rawls's political conception is ultimately flawed, it seems that this claim is reasonable. Alternatively one could interpret this thesis as, *in part*, a hypothetical problem: if Rawls's claim that a theory of justice should be political rather than metaphysical is appropriate, what implications does this have for the 'equality of what?' debate?

4. Rawls on Primary Goods

In this chapter I outline Rawls's theory of justice as fairness and the role that primary goods play within the theory. I claim that if Rawls is to have a satisfactory 'expensive tastes' objection against welfarism, then a tension between his views on responsibility for ends and the arbitrariness of natural endowments needs to be resolved.

I. Justice as Fairness

In his seminal *A Theory of Justice*, John Rawls outlined an alternative to utilitarianism which rejects the use of utility information in considerations of justice. Instead justice as fairness relies on a list of 'primary goods', which are defined as those "things that every rational man is presumed to want."[1] Rational persons want primary goods, "whatever else they want."[2] There are two types of primary goods: natural and social. Natural primary goods include things such as health, intelligence and vigour which, "although their possession is influenced by the basic structure, ... are not so directly under its control."[3] Social primary goods, on the other hand, are under the control of the basic institutions of society. The list which Rawls uses is as follows:

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[1] Rawls (1971), p.62
[2] ibid, p.92
[3] ibid, p.62

"a. basic rights and liberties ...;

b. freedom of movement and free choice of occupation against a background of diverse opportunities;

c. powers and prerogatives of offices and positions of responsibility in the political and economic institutions of the basic structure;

d. income and wealth; and finally,

e. the social bases of self-respect."[4]

Primary goods have two main roles within justice as fairness. Firstly, they are the things which motivate the people in the original position. Without something to motivate them, some standard of advantage or disadvantage, these rational agents would be incapable of determining which principles of justice were in their interest. Hence without something playing the role which primary goods fulfil, the original position would be an empty thought experiment. Secondly, primary goods are used as the standard of relative advantage in the just society. The two principles of justice are expressed in terms of primary goods. The first principle states that all citizens are to have an equal set of liberties.[5] The second states that there is to be a fair equality of opportunity, and that differences in power and income are justified to the extent that they are in the interests of the worst-off.[6]

In this chapter I ask two broad questions. Firstly, what arguments does Rawls advance for the use of primary goods in his justice as fairness? Secondly, what are the arguments and assumptions Rawls uses for an *equality* of primary goods? These two questions mirror the two basic questions of the 'equality

[4] Rawls (1993), p.181. In this chapter I discuss Rawls's theory from the point of view of his most recent work, *Political Liberalism*.

[5] The principle of equal basic liberties is modified in *Political Liberalism*. In *A Theory of Justice* it reads "each person is to have an equal right to the *most extensive* basic liberty compatible with a similar liberty for others." (p.60, my italics). In the later work the principle states that we are to have "an equal right to a *fully adequate scheme* of equal basic liberties ..." (p.291; my italics).

[6] My intention in this thesis is not to assess the somewhat controversial difference principle, or the rationality of the maximin criterion which Rawls uses in the original position argument for the principle.

of what?' debate, i.e. with which things should we be concerned in a system of distributive justice? Secondly in which of these things should we be equal?

II. The Idea of Primary Goods

Rawls needs to defend using primary goods in both the roles which they have in his system. This means that he needs to argue that it would be rational for people in the original position to be motivated to attain primary goods, and that it is appropriate to use primary goods in the principles of justice which are to regulate the 'well-ordered society'.

The Rationality of Primary Goods

In justice as fairness principles of justice outweigh the conceptions of the good which citizens may endorse. The right is prior to the good. This priority is particularly apparent in Rawls's political conception of justice, where he rejects the use of controversial comprehensive moral doctrines in the political justification of the principles of justice and public policy.[7] This does not imply that Rawls is unable to use any ideas of the good in his system. On the contrary, there are five such ideas which he uses: "the idea of goodness as rationality; the idea of primary goods; the idea of permissible comprehensive conceptions of the good; the idea of the political virtues; and the idea of the good of a well-ordered (political) society."[8]

The idea of goodness as rationality is used in Rawls's system in two ways: "first, it helps us to identify a workable list of primary goods, and second, relying on an index of these goods, it enables us to both

[7] Although there must also be an overlapping consensus on the principles of justice.
[8] Rawls (1993), p.176

specify the aims (or motivation) of the parties in the original position and to explain why those aims (or motivation) are rational."[9] Rawls cites Allen Buchanan's "Revisability and Rational Choice" as an accurate discussion of the rationality of being motivated to attain primary goods.[10] In this article Buchanan notes that since any conception of the good which a person may endorse must be viewed as revisable, "one ought, *ceteris paribus*, to maintain an attitude of critical revisability towards one's own conception of the good ... and of openmindedness toward competing conceptions."[11] Furthermore one ought also "attempt to provide for the implementation of those new or revised conceptions of the good which one may develop."[12] Since the primary goods which Rawls outlines can be characterised as "conditions for the pursuit of ends in general", or as "maximally flexible assets", or as requirements for "rationally formulating, criticizing, and revising one's life plan or conception of the good", it is rational to want primary goods, whatever else you want.[13] The right to freedom of association, for instance, is generally required for the pursuit of one's conception of the good, whatever that conception of the good may be. Similarly the possibility of *revising* one's ends usually requires that one is able to associate with whomsoever one pleases. So it is rational to want this right to further one's ends and to provide for the possibility that one's conception of the good may change.

It may be objected that Buchanan is unjustifiably supposing that all people ought to maintain an attitude of critical revision towards their own conception of the good. Some conceptions of the good, the objection argues, require the central tenets to be accepted on faith, and faith alone. To reason about them would be to sully the Zen, or mysticism, or James Dean aesthetic of the lifestyle. Moreover, some conceptions of the good explicitly reject particular primary goods. Given her lifestyle, the Tolstoyan pastoralist does not want to participate in the capitalist system, and hence does not want any money. Given the thin theory of good which Rawls is committed to, one cannot assess the rationality of the final

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[9] ibid, p.178
[10] Rawls (1982), p.165, footnote 6.
[11] Buchanan (1975), p.399
[12] ibid, p.402
[13] ibid, pp.402-3

aims which people may have. The rational Tolstoyan would not want income and wealth, precisely because of something else she wants.

This objection misses the mark. Rawls outlines his conception of primary goods in the context of his discussion of the original position, where people are behind a veil of ignorance. From the point of view of someone ignorant of their conception of the good, and who, as such, cannot presume that they will be a Tolstoyan, or Zen Buddhist, or Rebel without a Cause, it is rational to desire primary goods, and it is reasonable to assume that the parties in the original position act rationally. Importantly, Rawls asserts that "it may turn out, once the veil of ignorance is removed, that some [people] for religious or other reasons may not, in fact, want more of these goods."[14] In "Fairness to Goodness" Rawls claims that his assumption that people are motivated to attain primary goods "holds only for the parties in the original position: they are to deliberate *as if* they prefer more rather than less primary goods [my italics]".[15] That everybody in a society would want all primary goods to fulfil their objectives is explicitly not what is meant by the claim that it is rational to want more primary goods to less. What is meant is that it is rational to want them from behind a veil of ignorance.

There are two further ways in which Rawls's reliance on primary goods may seem to be unwarranted. Firstly, it could be objected that although it is rational to want primary goods from behind the veil of ignorance, it would also be rational to maximise one's level of utility.[16] Rawls's discussion ignores this possibility, and hence, in so far as Rawls has an answer to the `equality of what?' debate, his answer begs the question. Secondly, it may be objected that Rawls jumps from the claim that it is rational to

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[14] Rawls (1971), p.142

[15] Rawls (1975), p.543

[16] Rawls, it must be remembered, is not the originator of the idea of the idea of a veil of ignorance. "The veil of ignorance is so natural a condition that something like it must have occurred to many. The closest express statement of it known to me is found in J.C. Harsanyi [1953]. Harsanyi uses it to develop a utilitarian theory ..." (Rawls, 1971, p.137, footnote 11). The veil of ignorance which Harsanyi uses is one which prevents people from knowing their relative position in society. According to Harsanyi, it would be rational for such people to choose a situation of maximum average utility, ie. a welfarist solution.

want primary goods, to the claim that primary goods should be used in the principles of justice. The original position, it may be claimed, is too artificial a construct to determine what concepts should be used in the expression of the principles of justice. These two objections can be summarised as follows: the rationality of the people in the original position being motivated by primary goods does not establish the appropriateness of using primary goods, or only primary goods, in the egalitarian distributive system.

Although I discuss more sophisticated objections to Rawls's use of primary goods in the next chapter, Rawls does have a response to these objections. There are independent reasons why it is appropriate to use primary goods as the 'currency of egalitarian justice' and not welfare or utility; reasons which do not depend on any argument from the original position. The present objection assumes, incorrectly, that Rawls depends on the idea of what it would be rational to want from behind a veil of ignorance to determine whether or not particular things should be employed in the principles of justice.

Primary Goods as the Basis of Appropriate Claims

Rawls's thesis in "Social Unity and Primary Goods", is that whereas justice as fairness remains true to the liberal presupposition that there is a plurality of rational conceptions of the good, utilitarianism (or welfarism more generally) does not. Although welfarism appears to accept a wide diversity of conceptions of the good, "this appearance is misleading and arises from the special subjective nature of [its] view of the rational good."[17] Before discussing his reasoning for this claim, it is appropriate to discuss his defence of primary goods.

> "[A] feature of a well-ordered society is that there is a public understanding concerning the kinds of claims which it is appropriate for citizens to make when questions of justice arise,

[17] Rawls (1982), p.160

> and this understanding involves a further understanding as to what can support such claims. These understandings are necessary in order to reach agreement as to how citizens' claims are to be assessed and their relative weight determined. The fulfilment of these claims is accepted as advantageous for citizens ... for purposes of justice. An effective public conception of justice presupposes a shared understanding of what is advantageous in this sense. Thus the problem of interpersonal comparisons in justice as fairness becomes: given the different and opposing, and even incommensurable, conceptions of the good in a well-ordered society, how is such a public understanding possible? The notion of primary goods ... rests on the idea ... that a *partial* similarity of citizens' conceptions of the good is sufficient for political and social justice."[18]

Not only does the notion of primary goods rely on a partial similarity of conceptions of the good, it also relies on a conception of the citizen, and of social unity.[19] The citizen is viewed "as a moral person moved by two highest-order interests, namely the interests to realise and exercise the two powers of moral responsibility: ... the capacity for a sense of right and justice ... and the capacity ... to pursue a conception of the good."[20] The social unity of a well-ordered society is based on a "social division of responsibility", where society takes responsibility for the index of primary goods which a citizen has, and where the citizen takes responsibility for the pursuit of her conception of the good, given her bundle of primary goods.[21]

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[18] ibid, p.161

[19] In his "Social Unity and Primary Goods", Rawls refers to a certain conception of the person, and not of the citizen. In his later work, however, Rawls avoids making claims about persons, as such, since this may involve undue metaphysical or ethical assumptions. Rather he refers to citizens, ie. persons as political beings.

[20] ibid, pp.164-5. It may be thought that Rawls's reliance on the idea that citizens are motivated by two highest-order moral powers retains an element of Kantianism in his system, and hence a dependence on a particular comprehensive moral doctrine. Rawls uses this idea of highest-order moral interests extensively in his description of the political conception of justice as fairness, especially in his argument for the priority of the principle of equal liberties. I do not attempt to defend Rawls in this regard, nor do I attempt to defend the priority of liberty. However, it does seem uncontroversial that citizens can be motivated by their conception of the good and their sense of justice, whether or not these are their highest interests. These two moral powers may be incorporated, somewhere, within the schematic picture of human life which Scanlon draws, which I discuss below. So, even if Rawls remains unduly Kantian, the use of primary goods, *per se*, should not be prejudiced by this oversight. Again, I do not wish to assess any particular principle of justice, but rather the arguments for particular egalitarian `currencies'.

[21] ibid, p.170

If primary goods are to be used as the basis for the appropriate claims which citizens may make, they need to be purely political goods, as well as rational from the point of view of the original position. That primary goods are political, ie. that they do not presuppose any particular conception of the good, can be seen from the partial similarity of the conceptions of the good which citizens usually endorse. The primary goods which Rawls outlines can be used, as Buchanan argues, for the widest variety of ends. Given that we require some notion of what is advantageous for citizens, primary goods are the least controversial. By using primary goods, Rawls is not committed to the claim that it is fitting or proper for citizens to devote their lives to the pursuit of income or wealth, or political power. Instead he is claiming that *most* conceptions of the good require primary goods, at least as means to a multitude of ends.

"The thought behind the introduction of primary goods is to find a practicable basis of interpersonal comparisons based on objective features of citizens' social circumstance open to view."[22] Not only do we need to develop a conception of justice which is independent of any comprehensive moral doctrine, we must also "respect the constraints of simplicity and availability of information to which any practicable political conception is subject."[23] Primary goods are practical in that, rather than being subjective features of a person, they are "features of institutions or of the situation of citizens in relation to them."[24] Our liberties, for instance, are constituted by the provisions of a constitutional bill of rights, together with the appropriate judicial system. Although it may be difficult to assess the relative standing of citizens with regard to their bundle of primary goods, especially in the case of the opportunities which they have, it is "in principle a publically decidable matter." In this respect, the use of primary goods is superior to welfarist approaches to egalitarianism.[25]

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[22] Rawls (1993), p.181

[23] ibid, p.182

[24] Rawls (1982), p.163

[25] ibid. The notorious impossibility of interpersonal comparisons of utility has received widespread discussion in the literature on economic and social choice theory (Sen 1987, provides a lucid and comprehensive account of this issue in welfarist approaches to economics and politics). Although I believe that the impossibility of interpersonal comparisons of utility (in the political sphere) is an insurmountable problem for welfarism, I do not incorporate it into

Fundamental Preferences and the Plurality of Goods

Not only is the utility an impractical basis for distributive justice, the notion, despite appearances, relies on an illiberal rejection of the plurality of rational conceptions of the good. Rawls notes Kolm's claim, in the latter's *Justice et Equite*, that interpersonal comparisons in questions of justice rely on one of two kinds of identity of preferences. Either preferences are restricted to those things which all people are presumed to want, for instance primary goods, or we reduce the ultimate ends which people may have to common '*preferences fondamentale*'. That is, we either establish some similarity in the means to ends which people adopt, or we attempt to establish a similarity in the ends themselves. Rawls translates Kolm as follows:

> "At bottom, individuals have the same tastes, the same desires. ... If two persons have preferences which appear to differ, there is a reason for this, there is something which makes them different from each other. Let us place this 'something' within the object of the preferences which we are considering, thereby removing it from the parameters which determine the structure of these preferences. The preferences of these two persons defined in this way are necessarily identical. ... [T]hat which discerns this common preference is at bottom 'human nature'."[26]

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this thesis as an argument against welfarism, since I am concerned only with discussion and criticism of the resourcism of Dworkin and Rawls. In the next chapter I do, however, argue that there is a flaw in the typical distinction which welfarists make between ideal political theory and their approach to practical social institutions. This point is important in so far as it illustrates the need for *any* political theory to be rooted in practice, rather than simply as a critique of welfarism. I include the phrase 'in the political sphere' in the above paragraph since, as Davidson argues in his "Judging Interpersonal Interests", we continuously make unproblematic interpersonal comparisons of utility in the *private* sphere. For instance we could say that Mtobi is happier than Billy. Such claims presuppose, according to Davidson, judgements about what we consider to be of value in life, and are not simply "factual propositions based on certain principles of inductive logic." (Harsanyi, 1955, p.320; quoted in Davidson, 1986, p.199). In this claims about happiness, as an example of a possible conception of welfare, are akin to claims about virtue, or 'grooviness', or existential authenticity. So interpersonal comparisons of utility in the political sphere face two problems which are not encountered by such comparisons in the private sphere: firstly, they are unverifiable and potentially arbitrary; secondly, they seem to presuppose normative assumptions which should not be included within a political conception of justice.

[26] Kolm, S.C., *Justice et Equite* (1972), pp.79-80; translated in Rawls (1982), p.174. The similarities between this passage and Roemer's theory that equality of resources implies equality of welfare are marked.

Utility theory is an example of the second approach. We can construct a utility function which expresses the fundamental preferences of everybody in a society, such that:

$$w = u(x,y)$$

where w represents the welfare of a person, x represents a list of the person's external circumstances, and y represents all the features of a person which may affect their preferences. Can this utility function, which all citizens are presumed to have, serve as the basis for interpersonal comparisons in questions of justice? Rawls claims that it cannot for "in the circumstances of justice citizens' conceptions of the good are not only said to be opposed but to be incommensurable."[27] The incommensurability of the conceptions of the good implies that there is no common basis from which to decide what the utility function looks like. Different conceptions of the good are not merely different means to the same end, but rather involve the adoption of different ends and values. So citizens will not be able to agree whether a particular activity in a particular situation maximises a person's welfare, since they will have different conceptions of what is good for the individual. Furthermore, since the particular values and ethics which citizens adopt are part of the y vector, assuming that citizens do accept the utility function, they will view their conceptions of the good as variables to be modified according to how they affect the final calculation of utility. "[T]he notion of a shared highest-order preference implies that ... persons have no determinate conception of the good to which they are committed, but regard the various desires and capacities of the self as features to be adjusted in the quest for the highest possible place in the *public* ranking defined by the function u."[28] For instance if people in a society accepted some fundamental utility function, then a person may recognise that in some situations her utility is maximised by being a Christian, but in others it isn't. Such a person would then adjust her Christian conception of the good accordingly. But this denies both the conception of the

[27] Rawls (1982), p.179
[28] ibid, p.180

citizen as a moral being with two highest-order *moral* powers which is basic to justice as fairness, and the idea that there is a plurality of rational conceptions of the good. If a particular utility function is regarded as the fundamental preference of all people, this means that the maximisation of utility is the sole rational good. The conceptions of the good which are espoused in the welfarist society are merely means to an end, hence not ends in themselves, hence only superficially and artificially conceptions of the good. It seems that the only possible strategy to adopt is the first one: to limit our notion of advantage to those things which all people can reasonably be expected to want.

It may be thought that there is a tension between Rawls's rejection of the use of utility in interpersonal comparisons in a well-ordered society, and the possibility that it may be rational to maximise one's expected utility from behind a veil of ignorance. The answer to this is that although it may be rational to want something from behind veil of ignorance, this is not sufficient to show that people in the original position are moved by it. Primary goods are part of the 'background' for the experiment. The people in the original position are *stipulated* to be motivated only by primary goods. The reasoning behind this relies on the appropriateness of using primary goods in the principles of justice. It is considerations of the well-ordered society, rather than the original position, which establish the regime of primary goods in the first place, although the original position is used to establish an *equality* of primary goods.[29]

III. The Argument for Equality

One implication of the two principles of justice which Rawls advocates is that people are not to be compensated with extra resources if they have expensive tastes. There is no room in justice as fairness for the state to look beyond the primary goods which people have to see whether or not they are actually

[29] This point will be pertinent in the discussion of one of Dworkin's criticisms of Rawls's justice as fairness which will be discussed below.

successful in their preferences and desires. On the other hand the difference principle asserts that people should be compensated with primary goods if they do not have the talents and skills to succeed in economic activity. Inequalities in income and wealth are only justifiable if they are to the benefit of the worst-off.

Natural Abilities as a Common Asset

One objection to the difference principle is that it does not recognise "that those better situated deserve their greater advantage whether or not they are to the benefit of others."[30] Rawls has two interrelated arguments against this view. Firstly, he uses what Sandel terms the argument from arbitrariness. The distribution of natural endowments is arbitrary: no one can claim responsibility for their natural abilities, so no one deserves these natural talents. Furthermore the "assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit."[31] The second argument Sandel terms the argument from the precedence of institutions.[32] Simply the idea of what we deserve makes sense only in the context of an institutional system which we have already decided is just. Desert is not a 'pre-institutional' moral notion; we cannot evaluate principles of justice on the basis of whether they reward the most deserving, because we cannot know who deserves what unless we have established a background of justice. No person "possessing certain talents has any claim that ... prior to the establishment of the principles of justice, the institutions of society should reward these particular talents in any particular way."[33]

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[30] Rawls (1971), p.103

[31] ibid, p.104. The partial arbitrariness of ambition constitutes a point of tension between Rawls and Dworkin. For Dworkin equality must be ambition-sensitive, whereas Rawls claims that differences in ambition do not necessarily justify inequalities.

[32] Sandel (1982), p.77

[33] Kernohan (1990), p.26. Kernohan argues against those who claim that, in arguing for the 'collective ownership of natural abilities', Rawls has denied the traditional liberal commitment to 'self-ownership'. He invokes Honore's discussion of eleven 'incidents', or features of ownership, and claims that in restricting only one of these incidents, ie. the right to all the benefits that can be derived from the resource, Rawls has not denied the freedom of the person,

The argument from arbitrariness seems to suppose that if we are not causally responsible for something, then we cannot be held morally responsible for it (where moral responsibility encompasses ideas of desert, or blameworthiness, or so forth). Indeed, people who are untalented, since the distribution of natural abilities is beyond human control, are to be compensated. Rawls seems to be espousing the 'luck-neutralising' aim, that is, the claim that the effects of bad brute luck, such as being untalented, are to be eradicated in an egalitarian system. This interpretation gains support from the idea that since from behind the veil of ignorance the people in the original position are unaware of their relative standing in society; they therefore have an equal chance of being placed in any particular group or class.

I will argue below that this is a misinterpretation of Rawls, or, at least, a system of distributive justice based on primary goods should reject the luck-neutralising aim as one of its fundamental motivations. Like the idea of desert, the idea that we should be compensated for the deleterious effects of events beyond our control is not 'pre-institutional'.

Responsibility for Ends

Although those who lack skills and talents are compensated in justice as fairness in terms of the difference principle, there is no room for the compensation of expensive tastes. This is a common resourcist claim; one that Rawls shares with Dworkin. Since the principles of justice are expressed in terms of primary goods, justice condemns providing those with expensive tastes with a greater share of resources. Rawls considers an objection to this implication:

> "It may be said that when we take the two principles of justice in their simplest form, so that income and wealth is the only primary good with which the difference principle is concerned,

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much less instituted a regime of mutual slavery. See Honore, A.M., "Ownership", in Guest, A.G. (ed), *Oxford Essays in Jurisprudence* (1961). See also Nozick (1974), p.228; Sandel (1982), p.70; and Cohen (1986), p.79, for arguments that Rawls has denied 'self-ownership'.

> this principle cannot be reasonable or just. This can be shown, one might argue, by ... the variation of preferences between persons. The economist's utility function is designed to cope with cases of this kind; but when the difference principle relies on income and wealth alone, it clearly fails, the objection continues, to make a reasonable or just allowance for citizens' different ... preferences."[34]

But it is not, claims Rawls, in itself an objection to the use of primary goods that we do not compensate those with expensive tastes.

> "One must argue in addition that it is unreasonable, if not unjust, to hold such persons responsible for their preferences and to require them to make out as best they can. But to argue this seems to presuppose that citizens' preferences are beyond their control as propensities or cravings which simply happen. Citizens seem to be regarded as passive carriers of desires."[35]

As it stands this is not a particularly good argument. The objection that a primary goods standard does not compensate those with expensive tastes does not need to assume that we are passive carriers of desires any more than the argument which Rawls uses against a desert principle needs to suppose that we can have no role in developing and cultivating our skills and talents. The argument against desert assumes that the distribution of initial talents is morally arbitrary. Not only this, but the endowments of character which affect our ambition and discipline in realising our talents are also socially influenced. But it is certainly true that we can assume responsibility for the development of our skills; we are not passive carriers of talents. Similarly the endowments of "foresight" or "self-discipline" which may

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[34] Rawls (1982), pp.167-8. Rawls notes that the objection was initially raised in Arrow (1973), pp.253f. This seems to imply that Arrow was actually objecting to Rawls's primary goods partially because they do not account for expensive tastes. But Arrow only notes discrepancies in the welfare of people with different preferences. "If this comparison seems facetious," he continues, we should compare two people with different health needs who have the same bundle of goods (p.254). Arrow nowhere claims that expensive tastes should be compensated; he merely claims that Rawls should add health to his list of primary goods.

[35] Rawls (1982), pp.168-9

prevent us from developing expensive tastes, may also be socially influenced.[36] Indeed it seems that these are the same characteristics which may affect our possession of goods in the *laissez-faire* system which Rawls criticises.

There are two related problems here which should be noted. Firstly, there may be an inconsistency in Rawls's work. On the one hand, he claims that those features of our characters which may influence our possession of material goods, our talents, are morally arbitrary, and hence compensation is warranted for the untalented. On the other hand, he claims we are responsible for those features of our character which determine our preferences and tastes. But these features may be the same. This potential inconsistency needs to be resolved. Indeed, if we interpret Rawls as an advocate of the luck-neutralising aim, then it seems that he should be committed to eradicating the effects of any bad brute luck, including the contingencies which affect our preferences and tastes.

Secondly, if an argument which claims that expensive tastes need to be compensated does *not* rely on the claim that we are passive carriers of desires, then Rawls has not completely closed the door on expensive tastes. For instance it may be claimed, as Cohen claims, that expensive tastes should be compensated to the extent that they do not reflect the independent choices of the people in question. Since we are sometimes responsible for our preferences, we must sometimes suffer them. But not all preferences are chosen. Those which are not should be compensated. There is, as such, a lacuna in Rawls's argument which needs to be filled.

[36] ibid, p.169

5. Responses to Rawls

In this chapter I discuss the equal opportunity for welfare approach of Richard Arneson, and the capabilities approach of Amartya Sen, in so far as these approaches rely on criticisms of the Rawlsian primary goods standard of distributive egalitarianism. I do not attempt to construct any systematic criticisms of the work of these two theorists as a whole. The aim of this thesis is restricted to an assessment of the work of Dworkin and Rawls within the context of the 'equality of what?' debate, rather than the development of a complete answer to that question. I also discuss remarks Dworkin makes with regard to the differences between equality of resources and Rawls's justice as fairness. I argue that Arneson's critique of Rawls is inconsequential, although Rawls needs to accommodate some of Sen's insights into his theory.

I. Arneson

Arneson develops an 'equality of opportunity for welfare' approach, which he contrasts with the equality of welfare approach criticised by Dworkin. He argues that Dworkin, in his criticism of welfarism, overlooks the possibility that welfarism may be restricted to *opportunity* for welfare, rather than simply some standard of welfare measured in terms of overall or relative success in the satisfaction of preferences. In this section I am not concerned with Arneson's criticisms of Dworkin, but rather with his criticisms of Rawls. Much of what Arneson has to say about Dworkin is included within Cohen's

equal access to advantage criticism.[1] Furthermore there is also an overlap between Arneson and Cohen in their response to Rawls, in that both recognise the tension between Rawls's views on responsibility for ends and his views on the arbitrariness of talent. This overlap is not surprising since both subscribe to the luck-neutralising aim. Be this as it may, Arneson's discussion of Rawls is more extensive than Cohen's.

Arneson's theory is presented as an example of what he terms "distributive subjectivism", that is "the position that for purposes of a theory of distributive justice the correct account of nonmoral value is one according to which the good for a person is the fulfillment of his (corrected) tastes and values."[2] The term `distributive subjectivism' is derived from the contrast which Scanlon draws between objective and subjective criteria of relative well-being. Scanlon claims that objective criteria, that is criteria which provide "a basis for appraisal of a person's level of well-being which [are] independent of that person's tastes and interests", are the ones which we actually use, and ought to use, in moral and political practice.[3] This seems to be one way of distinguishing between welfarist and non-welfarist theories of distributive justice, assuming welfare to be some function of the satisfaction of an individual's tastes and interests.[4]

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[1] Indeed Cohen claims that his "criticisms of Dworkin were conceived without knowledge of Arneson's partly parallel ones, but it was reading Arneson which caused me to see what positive views my criticisms implied, even though that view is not the same as Arneson's." (Cohen, 1989, p.906, footnote 1).

[2] Arneson (1990c), p.159

[3] Scanlon (1975), p.658. I discuss Scanlon's conception of objective criteria in the next chapter.

[4] Note that the idea of `well-being' is contrasted with the idea of `welfare'. A person's well-being, for the purposes of our theory of distributive justice, may or may not be that person's welfare, depending on which approach we adopt. The idea of `well-being', at least in a political sense, seems to be that which determines the relative standing of citizens, or, as Rawls would say, the basis of the appropriate claims they may make on others. Primary goods would then be an objective standard of well-being. Scanlon's notion of `well-being' is broader than that of `primary goods' in so far as we can make claims about well-being which have nothing to do with political theory or with the basic institutions of a society. But such uses of the notion of `well-being' are not pertinent to this thesis. See chapter 4, footnote 25, where the claim that Mtobi is happier than Billy can be understood to be an interpersonal comparison of well-being which cannot, for a Rawlsian, be interpreted as a statement about the appropriate political claims that Mtobi or Billy could make.

Arneson begins his criticism of primary goods by noting what he terms the Nagel-Schwartz objection, after Thomas Nagel and Adina Schwartz, who first stated it.[5] The objection states that even if the primary goods which Rawls lists are desired by all people, whatever else they want, they may still be "differentially useful to people depending on their final aims."[6] "Thus it would appear that we are faced with a dilemma: to secure unanimity [in the original position], we must not only exclude morally relevant information but introduce a general desire for primary goods that improperly biases the original position towards some conceptions of the good."[7]

The Nagel-Schwartz objection can be understood in two different ways. Firstly, it could mean that the list of primary goods which Rawls uses is incorrect, either because it is incomplete, or because some of them are not actually primary goods. Or, secondly, it could mean that even if we have the correct list of primary goods (that is all and only those things which all rational people want whatever else they want), a primary goods standard is still an inappropriate, or even unfair, basis for a theory of distributive justice. This second objection is more pressing. Rawls agrees that the list of primary goods which he outlines may be incomplete. In "The Priority of Right and Ideas of the Good" he suggests that leisure be included in the list of primary goods, so as to avoid the problem of counting those who choose an unproductive lifestyle, such as "those who surf all day off the coast of Malibu", being counted amongst the worst-off.[8]

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[5] See Nagel (1973) and Schwartz (1973). Rawls responds to both in Rawls (1975). The original suggestion is that Rawls's list of primary goods is more favorable to those with individualist goals than to those with communalist goals. Whether or not this particular point is true is irrelevant, since the debate is, even if such points are true, whether they constitute an objection to primary goods.

[6] Arneson (1990a), p.429

[7] Rawls (1975), p.536

[8] Rawls (1988), p.257, footnote 7. Rawls also suggests that "certain mental states such as the absence of physical pain" might be included in an expanded list of primary goods (ibid, footnote 8). This second idea originated in Scanlon (1991), p.39. (Scanlon's paper was originally presented in April 1987). If Rawls does adopt this suggestion, then Cohen's example of Tiny Tim would not be an objection to the use of primary goods. I discuss, briefly, Rawls's suggestion that leisure be included amongst the list of primary goods below.

> "To see how [the second objection] might hold, consider a simple world in which each of three different persons wants above all to play a different game. All three of these games require a playing field; two require a ball; one also requires a net. Nothing else would be needed for fulfillment of the three persons' aims. ... In the situation as described, playing fields are primary goods and nets and balls are not. The complaint that it would be unfair for a principle of justice to evaluate person's resource holdings solely in terms of their primary goods shares rests on the idea that getting primary goods will enable only one of the three to fulfil his aims."[9]

An immediate problem with this example is that it rests on two misunderstandings of Rawls's conception of primary goods. Firstly, primary goods are not simply those things which everybody wants, whatever else they want. Rather this definition needs to be understood in the context of Rawls's discussion of the veil of ignorance. Primary goods are those things which people would want from behind a veil of ignorance (and which can be used in principles of justice). Given a veil of ignorance, it would seem plausible that fields, balls *and* nets would be wanted. Once the veil of ignorance is lifted, the athlete, as Rawls explicitly mentions, may not, in fact, want the primary goods of nets and balls.

This misunderstanding can be reformulated. The problem is not, if we follow Arneson's conception, that a primary goods standard of justice will lead to unfair results, but rather that it will lead to no result at all. Consider a fourth person who does not require a field for her activity. She wants a chessboard, and a chessboard only. In this case, following the detached, context-independent, understanding of primary goods which Arneson is assuming, *nothing* counts as a primary good. But if nothing counts as a primary good, we have no Rawlsian principles of justice, and this obviously indicates that something is wrong with the way we are interpreting the notion of primary goods. More generally, for any putative primary good, X, following this line of thought, we can always define a conception of the good "not X",

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[9] Arneson (1990a), p.430

or "do not have any X". But a rational person, for instance the Tolstoyan discussed in the previous chapter, who adopts this conception of the good will not want X, precisely because of something else she wants, that is, the realisation of her ethic.[10]

The second misunderstanding cuts deeper still. In the previous chapter I noted that what determines the list of primary goods to be used in principles of justice, is not any isolated consideration of what it would be rational to want from behind the veil of ignorance, but rather, fundamentally, considerations of the well-ordered society. The rationality requirement is a necessary but not a sufficient criterion for the primary goods which we use in principles of justice. Part of the background of the original position is the list of primary goods. The list is not, as it were, drawn up in the original position. It may be rational to want ancient Chinese pottery, large quantities of inedible fruit, or the complete works of Martin Heidegger, if we were ignorant of our final aims and conceptions of the good. But this is no reason for us to use such things as the content of the principles of justice. Now in Arneson's example it is impossible to say what should be used as the basis of the appropriate claims his people may make. Indeed it is difficult to know whether the idea of justice would even be applicable, or what the basic structure of such a society would be like. What this indicates is that the notion of primary goods is not a purely formulaic notion, applicable to any hypothetical scenario. Rather it is inextricably bound to its role in providing principles of justice for contemporary, pluralistic, democratic societies. Arneson's world is plainly not such a society.

Arneson claims that a "principled refusal on the part of government to look behind primary goods distributions to the welfare distributions resulting form them would be callous."[11] This claim is

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[10] Given the thin theory of the good which Rawls uses, the rationality of the ends which citizens endorse cannot be assessed. For instance the people in the original position cannot presume that a Christian lifestyle is not good, because the existence of God cannot rationally be shown or believed, or because it conflicts with some higher-order rational interest of the person.

[11] Arneson (1990a), p.435. The reasoning behind this claim is, in part, that "rational and moral persons will view their government as a device for helping them achieve their goals, subject to the constraints of fairness." (ibid, pp.433-4). I take this claim to be simply false.

ambiguous. It may be possible to agree that it would be callous, or unfair, for a government to rely solely on primary goods in all its deliberations and policy decisions. But this claim, which I think is true, does not commit one to the claim that governments must assess welfare distributions, as a matter of justice. Arneson is relying on a false dichotomy between primary goods, or resources, on the one hand, and welfare or utility on the other. We may, for instance, incorporate Sen's capability approach, which I discuss below, into a complete theory of egalitarian public policy, thus moving beyond primary goods without being committed to any claims about the final distribution of welfare. So a third misunderstanding of Rawls's primary goods evident in Arneson's work is the belief that Rawls cannot tolerate a government using information about things other than primary goods, because this would commit him to using utility information, which he expressly rejects.[12]

Equal Opportunity for Welfare

One example which Arneson uses to illustrate what he means by equal opportunity for welfare, and which is presumably intended to demonstrate the intuitive attractiveness of the principle is as follows:

> "[S]uppose that you and I have exactly two life options. Each of us could become either a banker or a missionary. The welfare we could expect from each of these options is the same for both of us, and known with certainty. If you become a banker and I become a missionary, you gain (say) high welfare and I gain low welfare, but equality of opportunity for welfare is satisfied, whichever choice either of us makes. But suppose instead that under your missionary option, you can choose Alaska (no mosquitos) or Africa, whereas all of my missionary options involve mosquitos and there are no other relevant differences between

[12] It should be remembered that there is a four stage sequence in Rawls's theory (which Arneson acknowledges). The first stage is the original position where the principle of justice are chosen. After the original position the veil of ignorance is steadily lifted in the constitutional, legislative and judicial stages. The principles of justice apply to the basic structure of society only. The public policy which is adopted in the legislative stage can move beyond the principles of justice, provided that such policy does not unjustly alter the basic structure, and that it is compatible with the idea of public reason, which Rawls outlines in *Political Liberalism*, lecture VI.

> your missionary options and mine. In this case, equality of opportunity for welfare is violated, because on our second-best option path you have the option of mosquito-free missionary life, which I lack."[13]

But it is highly implausible that anybody could have any sort of even *prima facie* claim to assistance from the state if they were in this situation. Governments are simply not in the business of providing relief from mosquito bites, and our political theory ought not suggest otherwise. Indeed the example Arneson provides seems to act more as a *reductio ad absurdum against* the idea of using welfare information, than an argument *for* doing so. Mosquito bites are insignificant. They only become significant as a health risk. But this is precisely because we can have some objective basis for recognising malaria and realising that it is detrimental to people's well-being, as opposed to the subjectivist basis Arneson endorses for matters of distributive justice.

It may be objected that the only reason why Arneson's example is implausible is because it would be extremely impractical for public policy to administer to such situations. In principle, however, the person without the opportunity to go to Alaska does have at least a *prima facie* claim to assistance, even though in a real situation nobody would bother to make such a claim.

> "In actual political life under modern conditions, distributive agencies will be staggeringly ignorant of the facts that would have to be known in order to pinpoint what level of opportunity for welfare different persons have had. .... Nonetheless, I suppose that the idea is clear in principle, and that in practice it is often feasible to make reliable rough-and-ready judgements .... We may insist that governments have regard to primary good equality or resource equality as rough proxies for the welfarist equality that we are unable to calculate. To test our allegiance to the rival doctrines of equality we may need to consider real or hypothetical examples of situations in which we do have good information regarding welfare

[13] Arneson (1990c), p.178

prospects ... and consider whether this information affects our judgements as to what counts as egalitarian policy."[14]

There are three manners in which this project could be objected to. Firstly, we could say that we could never have the requisite information about welfare prospects. But although this claim may be true, it does not respond to the fundamental inadequacy in Arneson's work. We could, secondly, claim that even if we could sometimes gather the information, in principle we would not wish to move beyond some objective list of a person's resources or physical and mental powers to decide matters of distributive justice. This approach seems intuitively right, but there is still an issue which it leaves unaddressed. To leave the matter there may seem to be begging the question, or simply expressing a contrary opinion to Arneson with no suggestion as to how the difference may be resolved. The third manner of response is to claim that there is something wrong with the principle-practice distinction which Arneson relies on. In Scanlon's reply to Roemer's "The Mismarriage of Bargaining Theory and Distributive Justice" he remarks:

"At the end of his paper, Roemer remarks, `My concern here has not been with institutions which will implement the just allocation, ... but simply with what allocation is desirable. This is first-best normative analysis. Before one begins to compromise, it would be nice to know what the goal would be, if everyone knew everything' (p.110). I believe, on the contrary, that the terms in which it is appropriate to argue about justice inevitably reflect `nonideal' features of our world, such as our lack of full knowledge and the kinds of agreement, disagreement, and conflict which are common among us. In particular, it seems to me that institutions are not a matter of `compromise' but have a fundamental place in determining which outcomes are just."[15]

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[14] Arneson (1989), p.87
[15] Scanlon (1986), p.117

Scanlon is sketching a picture of what we are doing in political philosophy which I believe is appropriate. There is a metaphorical and a theoretical way to illustrate this picture. Firstly, our political principles should be evident in the 'centre' of our political practice, rather than simply in one or two exceptions along the 'edge'. If we claim that there is a principle of justice which infuses our entire political life, but which only operates in exceptional cases, and is compromised or ignored in all other cases, we would soon cease to regard it as an important or fundamental principle of distributive justice. Secondly, in the Rawlsian paradigm, principles of justice are applicable to the basic structure of society. If Arneson concedes that a primary goods standard may be applicable as a general rule, and if the idea that the basic structure is the appropriate initial subject of justice is acceptable, then Arneson has conceded more than he thinks. He has eliminated his principle of equal opportunity for welfare from the debate about distributive justice. The implications of these considerations are not limited to a critique of Arneson's welfarism. Any egalitarian theory must recognise that it must be concerned, from the start, with the institutions of real political societies. If egalitarianism is to have any 'bite', it cannot postulate its principles as ideals which one expects to be compromised in the day-to-day of political life.

II. Sen

One of the major differences between Dworkin's equality of resources and Rawls's justice as fairness, is that the former explicitly takes into consideration the physical and mental powers which people have, whereas the latter seems to concentrate exclusively on the resources at their disposal. This apparent neglect of variations between people in justice as fairness is the basis of Sen's extensive criticism of Rawls.

Sen's writings on distributive justice constitute an attractive and persuasive theory which warrants detailed examination in its own right. In several books and articles he has outlined his 'capability'

approach, not only as a response to Rawls's primary goods approach, but as part of an increasingly general picture of ethics, political philosophy, economic theory and public policy (especially policies concerning economic development). Unfortunately much of Sen's philosophy is tangential to the purpose of this thesis.

Capabilities and Primary Goods

In "Equality of What?", Sen notes that although the difference principle will exclude the compensation for expensive tastes which would occur under a regime of `total utility equality', it will also view someone who is crippled and someone who is not, and who both have the same amount of primary goods, as equally advantaged. But since the handicapped person will presumably need to spend more income on a wheelchair, or so forth, than the other, there seems to be a morally relevant inequality between the two, an inequality which it would be unfair to ignore.

> "Indeed, it can be argued that there is, in fact, an element of `fetishism' in the Rawlsian framework. Rawls takes primary goods as the embodiment of advantage, rather than taking advantage to be a relationship between persons and goods. ... Even if utility is not thought to be the right focus for the person-good relationship, to have an entirely good-orientated framework provides a peculiar way of judging advantage."[16]

The appropriate account of advantage, Sen argues, focuses on the `capabilities' of a person. Our capabilities are our ability to achieve `functionings', where functionings are regarded as the various `doings and beings' of a person, such as "being adequately nourished, being in good health, ... achieving self-respect or being socially integrated."[17] At any given moment a person will have a number of

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[16] Sen (1982), p.366. "Equality of What?" was originally published in *The Tanner Lectures on Human Values* v1 (1980), and reprinted in *Choice, Welfare and Measurement* (1982).

[17] Sen (1993), p.31

different functionings, which can be grouped together as a `functioning vector'. One may be in good health and at the same time be in love, walking to a lecture, thinking about artichokes, enjoying the sunlight and eating a sandwich; all of which will be included in one's functioning vector. The capability set of a person is, as such, the collection of functioning vectors which she can achieve.

The capability set of a person differs from both her resource holdings and her utility. Two people may have the same amount of food (and all other resources), yet, because of a particular physiological constitution, the one is not as nourished by the food as the other. Similarly their utility levels may be identical, since the undernourished person may have "a jolly disposition ... [or because] his heart leaps up whenever he sees a rainbow in the sky."[18] The contrast between primary goods and capabilities can be rephrased as a contrast between `means' and `freedoms'. Primary goods are various means we may have access to in order to do various things. "In the capability-based assessment of justice, individual claims are not to be assessed in terms of the resources or primary goods the persons respectively hold, but in terms of the freedoms they actually enjoy to choose between different ways of living that they can have reason to value."[19]

Rawls's Response

Rawls responds to Sen's criticism in *Political Liberalism*. "I agree with Sen that basic capabilities are of first importance and that the use of primary goods is always to be assessed in the light of assumptions about these capabilities."[20] But this does not warrant a departure from using primary goods as the content of the principles of justice since "variations [in capability] as a result of illness and

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[18] Sen (1982), p.367

[19] Sen (1990), p.5. The term `freedom' may be confusing since liberties are part of Rawls's list of primary goods. However the contrast between Rawls and Sen is not a debate about rights (although Sen draws connections between rights and capabilities in "Rights and Capabilities"), but rather the `economic' problem of the distribution of material resources. In Sen's (possibly inappropriate) terminology these resources can provide us with differing levels of `freedom'.

[20] Rawls (1993), p.183

accident ... can be dealt with ... at the legislative stage when the prevalence and kinds of these misfortunes are known, and the costs of treating them can be ascertained and balanced along with total government expenditure."[21] It should be remembered that health is one of the natural primary goods which Rawls mentions.[22] Natural primary goods are not included in the principles of justice since they are not so directly under the control of the basic institutions of society as the social primary goods. But this does not warrant ignoring the natural primary goods completely. They become appropriate objects of public policy as soon as we can determine the extent to which social institutions can affect them.

In the original version of Sen's "Equality of What?" he "gives a misleading impression of the content of [Rawls's] argument [about handicaps]" which he rectifies in the reprinted version in *Choice, Welfare and Measurement*:

> "Rawls is, in fact, justifying postponing the question [of handicaps] rather than justifying ignoring it. ... However ... I believe that a substantial theory of justice cannot sensibly postpone this question in developing the basic structure of the theory. Need differences ... are pervasive, and they deserve a more central place in a theory of justice such as Rawls's."[23]

If in a Rawlsian well-ordered society the handicapped are to be provided, when possible, with wheelchairs and so forth, there does not seem to be a substantive moral difference between Rawls and

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[21] ibid, p.184

[22] I take it that at least some of the most pressing discrepancies in capabilities which Sen notes, including the capability to derive nourishment from a given amount of food, can be translated into differences in the health of people, although others may not. This is somewhat crude but it should usually be possible to extend the list of natural primary goods (or perhaps even the types of primary goods) to achieve a measure of equivalence between at least some of Sen's capabilities and Rawlsian primary goods, at least in so far as the capabilities (or functionings) are political goods and not part and parcel of a comprehensive moral doctrine or conception of the good (for instance the capability to be bask in the greater glory of God) or morally insignificant (eg. the capability to appreciate the strategic subtleties of the Sicilian or King's Indian defence). Be this as it may, I do not suggest, nor do I need to suggest, that a defence of the Rawlsian paradigm requires such a translation of morally significant capabilities and functionings into primary goods. An egalitarian regime may move beyond primary goods.

[23] Sen (1982), pp.365-6, footnote 28.

Sen. But Sen may still be right in objecting that capabilities or "need differences" are not sufficiently central in Rawls's theory.

If there is no substantive moral difference between Rawls and Sen, why should Rawls's principles of justice include prescriptions concerning the capabilities of people? It cannot simply be because need differences are pervasive. Utility differences are pervasive (assuming that utility is a coherent notion), and neither Rawls nor Sen believe that utility information needs to be included in principles of justice. If Rawls is right to postpone the question of capabilities to the legislative stage it must be because they, like welfare or utility, are the wrong sorts of things to include in principles of justice (although utility is the wrong sort of thing to include anywhere in a theory of distributive justice). Rawls excludes the natural primary goods from the principles of justice because they are not directly under the control of social institutions. A further reason why these primary goods are inappropriate as the content of principles of justice is that it is difficult to know what 'formula' should be applied to them. For instance the formula, in justice as fairness, to be applied to the basic liberties is absolute equality and the formula applied to income and wealth is maximin. The importance of a person's income level or constitutional rights is relative to other people's bundles of these goods in a way which the importance of a person's health is not.[24] We can decide, at a level of abstraction suitable for the development of principles of justice, that we should have equal liberties. But we cannot develop an equality of capabilities principle of justice at this level of abstraction, because we cannot demand, from behind a veil of ignorance, that social institutions be arranged so as to fulfil the principle. We cannot predict all

[24] This very vague claim can be illustrated by discussing Cohen's example of Tiny Tim, who suffers from paralysed legs and a persistent pain in his arms. Cohen claims that egalitarians will be concerned to relieve the pain in Tim's arms, with which I agree. This, he argues, indicates that we should be committed to an equality of access to advantage, and not just an equality of resources or opportunity for welfare. But an egalitarian concern with pain does not translate into advocating 'equality of pain'. If everybody else in Tiny Tim's society suffered an incurable pain in their legs (which Tiny Tim does not feel since he is paralysed), we would not wish to relieve him to the extent that he felt an equivalent amount of pain as everybody else. To do so would be a callous over-utilisation of the principle of equality. A reasonable approach to Tiny Tim's pain would ignore the pain of other people, whereas a reasonable approach to his level of income, for example, cannot. This does not exclude the possibility that a state may concentrate more resources on the eradication of widespread diseases than on an obscure and minor ailment. What it does exclude, however, is the idea that egalitarians must advocate an equality in whatever concerns them.

the relevant contingencies, nor would we necessarily wish to equalise all capabilities. Sen himself does not advocate that we should adopt a principle of justice which requires an equality of capabilities. His conclusion is simply that egalitarians ought to be concerned with information about capabilities.[25]

Even if Rawls is right to postpone the question of interpersonal variation in capabilities to the legislative stage, rather than adopt a capabilities principle of justice, there is, I want to argue, a measure of cogency in Sen's objection. This is because the link between why we should adopt Rawls's principles of justice and why public policy should compensate the handicapped, is not sufficiently strong. There seems to be a measure of the *ad hoc* in Rawls's response to Sen. What *Rawlsian* reason is there for the members of the legislative body to bother compensating the handicapped, or relieving the pain of Tiny Tims? Why should concerns about natural primary goods and significant capabilities enter into public policy decisions? We need to unite our motivation to adopt Rawlsian principles of justice with our intuitions about particular disadvantages which we believe ought to be rectified.

III. Dworkin

In the remainder of this chapter I wish to discuss some remarks Dworkin makes in discussing the contrast between his equality of resources and Rawls's justice as fairness. There are two possible manners in which the two theories can be compared:

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[25] This is a potentially contentious interpretation of Sen. Certainly he does refer to an 'equality of basic capabilities' in his earlier articles, as a superior alternative to an 'equality of primary goods', and this may seem to suggest that he is advocating an alternative principle of justice. One of his latest contributions, on the other hand, is concerned with the "informational bases of justice ... [i.e.] the factual territory over which considerations of justice ... apply." (Sen, 1990, p.1). As I interpret Sen, to include x amongst one's 'informational bases of justice', as an egalitarian, does not imply advocating an equality of x. To talk about capabilities as opposed to simply primary goods need not, therefore, be a debate about the *principles* of egalitarian justice, although it would be a debate about the *'currency'* of egalitarianism. In my introduction I claimed that the question, 'equality of what?' can be separated into two different parts: with what things should egalitarians be concerned; and in which of these things should we be equal? Answers to the first question need not the same as answers to the second.

"First, how far do the arguments in favor of equality of resources ... follow the structure of argument which Rawls deploys? How far do they depend, that is, on the hypothesis that people in the original position Rawls describes would choose the principles of equality of resources behind the veil? Second - and independently - how far are the requirements of equality of resources different from the two principles of justice that Rawls suggests people in the original position would in fact choose?"[26]

Chosen Inequalities and the Difference Principle

Dworkin does note some differences between his conception of equality and Rawls's difference principle, but claims that it "is impossible to say, *a priori*, whether the difference principle or equality of resources will work to achieve greater absolute equality in what Rawls calls primary goods."[27] One difference which Kymlicka notes in his discussion of Rawls and Dworkin, is that the latter's theory is much more sensitive to people's choices than the former. The difference principle advocates maximising the position of the worst off, whether or not, it seems, the worst off have had any responsibility for being in that position. "When inequalities in income are a result of choices, not circumstances, the difference principle creates, rather than removes, unfairness."[28] Kymlicka illustrates this claim by using Dworkin's example of Adrian, the industrious gardener, and Bruce, the imprudent tennis-player. Over a period of time, Adrian will have more resources than Bruce. Given that both Adrian and Bruce have the same talents and an equal initial bundle of resources, this inequality is the result of their choice of occupation. But the difference principle, claims Kymlicka, would advocate a redistributive tax (or other form of compensation) from Adrian to Bruce, since Bruce is worse off, in terms of the social primary good of income and wealth, than Adrian. This may seem to be one aspect where Dworkin's equality of resources is clearly superior to Rawls's difference principle.

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[26] Dworkin (1981b), pp.338-9
[27] ibid, p.341
[28] Kymlicka (1990), p.75

Kymlicka notes that "Rawls does not wish to make the gardener subsidize the tennis-player [since] ... his conception of justice is concerned with regulating inequalities that affect people's life-chances, not with inequalities that arise from people's life-choices, which are the individual's own responsibility."[29] But Kymlicka's interpretation of Rawls's difference principle is misleadingly crude. As has been noted above, Rawls considers the possibility of incorporating leisure into the index of primary goods. Bruce would be in the same position as the Malibu surfers.[30] Although he may not have as much income as Adrian, he has more leisure. Hence he is not necessarily a member of the worst-off group, and hence the difference principle would not necessarily compensate him for his choice of life-style.

One problem with the suggestion that leisure should be considered a primary good is that it seems to imply that those people who cannot find gainful employment, at least have their leisure, and are, as such, not necessarily part of the worst off group. But there seems to be a significant difference between those who choose to surf instead of work, and those who play chess all day because they have no possibility of employment. Both, it seems, have the same amount of leisure.[31] An alternative resolution to the problem of chosen inequalities is similar to Rawls's response to Sen. Firstly, it should be noted that the difference principle is applicable to the basic structure of society, rather than each and every individual case. Secondly, at the legislative stage, it would be possible to pass laws that stipulate that those who forego productive careers to play tennis or surf should not be considered amongst the worst-off group. This could be achieved by stipulating that people who are eligible for state compensation (through, for example, unemployment insurance) should be unable, rather than unwilling, to find employment. Just as the difference principle may be modified to accommodate those with handicaps, so too can it be modified, at the legislative stage, to exclude surfers and tennis-players.[32]

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[29] ibid.

[30] See footnote 8 above.

[31] The original suggestion was that leisure should be equal to the difference between twenty-four hours and a standard working day. See Musgrave, R.A.: "Maximin, Uncertainty, and the Leisure Trade-Off", *Quarterly Journal of Economics* (Nov. 1974) and Rawls's "Reply to Alexander and Musgrave", same journal.

[32] Although I do not need to argue that the difference principle should be qualified in this manner. I merely claim that it can.

The second type of difference Dworkin notes between Rawls's theory and his own concerns the utilisation of the original position as a justificatory device. He notes two differences between his method and the original position. Firstly, in the hypothetical insurance scheme, the veil of ignorance which he uses is very thin. The only things which people do not know are their handicaps, and the relative position which they could be expected to achieve with their talents. Rawls's veil of ignorance, on the other hand, is very thick. The people on the original position, do not know anything about themselves, other than that they are rational and will be living in some sort of modern democratic society. I will argue below that Hurley's argument against the luck-neutralising aim and her interpretation of the original position, reveal this, perhaps counter-intuitively, to be a flaw in Dworkin's work. The second difference Dworkin notes between his theory of equality of resources and Rawls's original position is as follows:

> "[M]y arguments are constructed against the background of assumptions about what equality requires in principle. [They are] not intended, as Rawls's [original position] argument is intended, to establish that background. ... I think any such project must fail; ... that it is misconceived, because some theory of equality, like equality of resources, is necessary to explain why the original position is a useful device ... for considering what justice is. [The original position] requires a deeper theory beneath it, ... that explains why [it] has the features that it does. ... The force of the original position as a device for arguments of justice ... depends, in my view, on the adequacy of an interpretation of equality of resources that supports it, not vice versa."[33]

[33] Dworkin (1981b), p.345. Dworkin refers the reader to his discussion of the original position in chapter 6, "Justice and Rights, of Dworkin (1977).

The above paragraph is somewhat ambiguous. It could mean that the original position cannot establish a *resourcist* theory of justice. But the original position is not intended to establish the use of resources, as opposed to welfare, in a theory of justice. The list of social primary goods to be used in principles of justice is developed through considerations of the well-ordered society, as I argued in the previous chapter, not just through any consideration of what people would want from behind a thick veil of ignorance.

In *Taking Rights Seriously*, Dworkin argues that the original position, if it is to have justificatory potential, must presuppose that people have a right to be treated as equals. This may be his objection to the original position. But there are two responses to this claim. Firstly, in his extensive discussion of Rawls's process of wide reflective equilibrium, Norman Daniels notes that Dworkin is postulating rights in the wrong place. The original position is developed from what can be termed 'procedural assumptions', that is, a set of considered moral judgements about how moral principles should be developed. For instance, we claim that no manner of developing principles of justice can treat people unfairly, or deny that they ought to be represented as equals. These 'procedural assumptions' are, importantly, independent of the moral principles which we establish, and an original set of *other* considered moral judgements about what would be right or wrong in practice.[34] Talk of rights, according to Daniels, arises in the original set of considered moral judgements and in the set of moral principles, but not in the set of procedural assumptions.[35] So if Daniels is right, then the original position does not rely on the claim that people have a *right* to be treated as equals, although it certainly does presuppose the notion that citizens are to be regarded as free and equal. This rather technical issue

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[34] A fourth set of judgments, which can be termed 'feasibility conditions' include claims about the nature of society and human nature. The moral principles which are agreed upon in the original position must be tested against these feasibility conditions. Scanlon's argument that institutions are not a matter of compromise, can be restated as the claim that the egalitarian principles must be tested against acceptable feasibility conditions before they warrant our support. If we could not intend that the institutions of society be regulated according to the relevant principle, then that principle fails to satisfy the process of wide reflective equilibrium.

[35] See Daniels (1979) for his principal overview of the process of reflective equilibrium, and Daniels (1980a), pp.96-8, for his criticism of Dworkin. The terms 'procedural assumptions' and 'feasibility conditions' are my own, rather than Daniels's.

can be rephrased as follows. Rawls wishes to defend a rights-based system of justice. His defence is stronger if he can argue that such a system is implied by general considerations of equality and fairness, than it is if he argues that it is implied by the idea that people have a right to be treated as equals. The idea that people have certain rights is an idea which needs to be justified, rather than simply assumed. If the original position presupposed rights, Rawls could not use it as a justification for a rights-based theory, in an argument with, for instance, a Benthamite utilitarian.

The second manner of responding to Dworkin is that even if Daniels is wrong and the original position does presuppose a right to be treated as an equal, this does not show that the original position relies on some interpretation of equality of resources. For even though Dworkin's arguments for an equality of political rights, in parts III and IV of "What is Equality?", evolve out of his conception of equality of resources, the postulation of a right to equality is simply not the same thing as Dworkin's equality of resources.

The original position is an artificial device which is used to express a number of judgements about fairness and equality. It is not the fundamental starting point in Rawls's system; indeed there is no such point which is self-evidently true. In the coherentist project, judgements and principles are brought into equilibrium with each other; none of them is sacrosanct. The original position does not have any privileged `background-establishing' role, it is merely a rather central junction in the Quinean web. Rawls, somewhat controversially, `rigs' the original position so as to achieve appropriate principles of justice. Dworkin's objection seems to be directed at a target which does not exist: an omnipotent original position.

6. Scanlon on Significance

I have argued that there are two gaps in Rawls's theory. Firstly, there is a tension between his claim that we are to be held responsible for our ends and preferences, but that we are to be compensated for a lack of skills, talents, and even ambition. Cohen objects that we may sometimes have expensive preferences which we did not choose to have, and which are, as such, as morally arbitrary as our natural endowments. This gap needs to be filled if Rawls is to have an adequate expensive tastes objection to welfarism.

Secondly, I argued that there was a hint of the *ad hoc* in Rawls's reply to Sen, that differences in capabilities, particularly concerning the handicapped, could be accommodated at the legislative stage. This suspicion of an *ad hoc* reply can also be extended to the discussion of compensating those people who choose to follow unproductive lifestyles. What, importantly, are the underlying moral intuitions which direct us to make these qualifications to the difference principle? It may seem like Rawls is relying on a Cohenesque luck-neutralising aim, or alternatively on a Dworkinian person-circumstance (ambition-endowment) distinction.

In this chapter I present arguments for three positions. Firstly, I claim that Scanlon's considerations of urgency and siginificance underwrite Rawls's use of primary goods and provide the rationale for his response to Sen. Secondly, in section II I provide two arguments against the 'luck-nutralising aim' as

an alternative reading of Rawls. In section III I discuss a third argument against the luck-neutralising aim and claim that this argument implies that Dworkin's hypothetical insurance market is flawed as a 'perspective of justice'.

I. Preference and Urgency

In his "Preference and Urgency", Scanlon concerns himself with discussing criteria of well-being. "[C]riteria of relative well-being and relative sacrifice ... have a central place in any moral theory that does not start with a system of rights taken as standing in no need of defence."[1] By well-being, Scanlon does not mean welfare, where welfare is equivalent to a person's utility, but rather, it seems, something like Rawls's bases of appropriate claims citizens may make on each other.[2] Standards of well-being translate into standards of relative advantage or disadvantage. He distinguishes between subjective and objective criteria of well-being and advances the thesis that we should use objective criteria in moral theory.

Subjective and Objective Criteria

"By a subjective criterion I mean a criterion according to which the level of well-being enjoyed by a person in given material circumstances or the importance for that person of a given benefit or sacrifice is to be estimated by evaluating those material circumstances or that benefit or sacrifice solely from the point of view of that person's tastes and interests."[3] Objective criteria, on the other hand, are independent of an individual's tastes and interests, "even as they would be if rendered consistent,

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[1] Scanlon (1975), p.655
[2] Although the idea of 'well-being' has moral uses beyond the political domain. See chapter 5, footnote 4.
[3] ibid, p.656

corrected for factual errors, etc."[4] Welfarism would involve the utilisation of subjective criteria of well-being, whereas the resource-based approaches would use objective criteria.[5]

Scanlon illustrates the appropriateness of objective criteria with two examples. Firstly, objective criteria can recognise the appropriateness of compensating the handicapped, yet refrain from providing extra resources to those with expensive tastes. A handicap is not simply some subjective feature of a person's situation, but can be recognised as an objective disadvantage. Subjective criteria, on the other hand, involve at least a *prima facie* commitment to providing resources to those who have unusually difficult to satisfy tastes.[6] Secondly, the "strength of a stranger's claim on us for aid in the fulfillment of some interest depends upon what the interest is and need not be proportional to the importance he attaches to it."[7] For instance, Dworkin's handicapped violinist who would rather acquire a Stradivarius instead of medical aid for his handicap does not have a greater claim to the violin because that is his stronger preference.[8] Such interests and preferences, whether or not they have any strength at all as the basis of moral claims, do "not have the weight of a claim to aid in the satisfaction of a truly urgent interest."[9]

Relative Urgency and the Schematic Picture

Scanlon proceeds to discuss what he means by the notion of `urgency' which he employs in the above argument. . As an example, health is generally taken to be more urgent, or important, than amusement.

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[4] ibid, p.658

[5] See the discussion of Arneson and `distributive subjectivism' in the previous chapter.

[6] Assuming the subjective criteria to be part of some sort of egalitarian theory. Utilitarianism, as a form of welfarism, and hence as a form of `distributive subjectivism', would advocate providing extra resources to the more, rather than less, efficient producers of utility.

[7] ibid, p.659

[8] See Dworkin (1981a), pp.243-4, and chapter 2, section I, "Expensive Tastes and Handicaps".

[9] Scanlon (1975), p.660

This does not imply that health concerns always take precedence over entertainment. Rather we need to establish the extent, or level, to which health needs, and other general concerns, have been satisfied. The combination of the levels of satisfaction in each of the various general concerns which a person has, represents her particular level of well-being. "The relation of urgency, then, will be a relation between various increments and decrements along one or more of these scales."[10]

When we compare the weight of two conflicting interests, we do not compare the strengths of the person's preferences, but rather look at why the interests in question are considered important. To do this we need to place the reasons why a person could want the relevant benefit or avoid the relevant sacrifice under `familiar general categories'.

> "These reasons might, for example, concern material comfort, status, or security; or they might concern health, or protection against injury. An alleged benefit which we could not understand as falling under any familiar category of this sort and which was not regarded by the person as having the arbitrariness typical of something `he just happened to take an interest in' would be totally opaque to us. But once we can understand the desirability of a benefit in this way we can begin to place it in a rough hierarchy of relative urgency."[11]

The urgency of a benefit will not depend entirely on the importance of the category within which it is placed. One needs to assess whether the benefit is an efficient means to fulfilling the interest, how well off the person would be in respect to the interest without the benefit, and the alternatives open to the person if the benefit was not provided to her.

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[10] ibid.
[11] ibid, pp.660-1

"An account of the various concerns that may move people, of the ways in which a person's interest in these concerns may originate and change, and of the various forms of activity people may undertake in pursuit of these interests would constitute a schematic picture of the range of variation of normal lives. Within such a picture some concerns and some pursuits will appear as relatively peripheral - as things a person might or might not be moved by depending on his choices or on chance factors in his life and upbringing. Other interests will appear as more central - as things virtually anyone must be concerned with."[12]

The Argument Against Expensive Tastes

Scanlon notes an argument which Rawls employs against compensating expensive tastes, and hence against welfarism, in "A Kantian Conception of Equality":

"We are assuming that people are able to control and to revise their wants and desires in the light of circumstances and that they are to have responsibility for doing so ... Persons do not take their wants and desires as determined by happenings beyond their control. We are not, so to speak, assailed by them, as we are perhaps by disease and illness so that wants and desires fail to support claims to the means of satisfaction in the ways that disease and illness support claims to medicine treatment."[13]

This argument is similar to the one which Rawls uses in "Social Unity and Primary Goods", and suffers from a similar defect.[14] We are not 'assailed' by our talents; we have some control over the

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[12] ibid, p.661

[13] Rawls, J., "A Kantian Conception of Equality", *Cambridge Review* (February 1975), p.97, quoted in Scanlon (1975), pp.663-4.

[14] See chapter 4, section III, "Responsibility for Ends" above. In "Social Unity and Primary Goods", Rawls does claim that he intends his account of primary goods to be consistent with Scanlon's discussion in "Preference and Urgency". Be this as it may, I do not think that Rawls is explicit about the extent to which his use of primary goods relies on Scanlon's discussions in "Preference and Urgency".

development of our skills. Yet Rawls considers the endowment of talents to be morally arbitrary. Similarly, although we presumably identify with most of our preferences and desires, we do not have complete control over them. We do not always choose to have the preferences which we do. Scanlon recognises the tension between Rawls's views on talents and his views on responsibility for preferences, although, unlike Cohen and Arneson, he develops Rawls's argument, rather than criticising the primary goods standard of justice.

If the force of Rawls's argument cannot lie in the 'contemporaneous choice' of preferences, it may lie in their malleability. There may be a concern that people will develop expensive tastes so as to have a claim to extra resources. "But if this were the whole basis for [Rawls's] objection one would expect that, at least in principle, the actual genesis of a person's preferences would be relevant to the strength of their claim to be satisfied."[15] We do not distinguish between those expensive tastes which a person choose to develop and those tastes which a person simply found herself with. No expensive taste can form the basis of a claim to assistance, however it developed.

By using his schematic picture of normal human lives Scanlon can develop Rawls's argument in the appropriate way. Simply, that there may be a question whether or not someone's expensive taste was developed as a matter of choice, indicates that it is the sort of interest that the person might not have had. But if it is an interest which the person might not have had, it is not something with which all people must be concerned. Hence, according to Scanlon's schematic picture, it is a peripheral, rather than a central, interest. Since it is peripheral, it lacks, *ceteris paribus*, urgency. Hence compensation for expensive tastes is unwarranted because the interests which the tastes represent are unimportant, or insignificant, or idiosyncratic. To illustrate: no matter how vehemently Arrow's epicure may desire pre-phylloxera claret and plover's eggs, we do not recognise on any objective standard of well-being that the

[15] ibid, p.664

satisfaction of this taste is at all important.[16] What is important is that the person has an adequate diet, since nutrition is one of our 'familiar general categories'. But the point of the expensive tastes example is to contrast the particular desire for eggs and claret, with the more general interest of having something to eat. An objectively decent diet is not 'good enough' for the person in question, so we need to postulate the separate category of consuming pre-phylloxera claret and plover's eggs. But this is obviously a very peripheral concern and, consequently, of no urgency for the purposes of distributive justice.

Compensation for the Handicapped

I mentioned in the previous chapter that Rawls's justice as fairness, although it advocates some form of compensation to those with handicaps, seems to lack any obvious rationale for this compensation. It is difficult to see how a primary goods based account of justice extends itself to viewing those with natural handicaps, or low capabilities, as worse-off than those without. I have not claimed that there is any inconsistency in Rawls's response to Sen, rather only that Rawls is not explicit in the underlying moral intuition behind his response.

Not only does Scanlon's schematic picture of normal human lives provide the Rawlsian system with an adequate response to expensive tastes, one which does not rely on the claim that people choose their preferences, it can also be seen as providing the underlying motive for *both* the use of primary goods and the inclination to compensate the handicapped. Scanlon notes that the idea of a schematic picture of the 'range of variation of normal human lives' seems to be implied in any argument for or against "Rawls's claim that his primary goods are 'socially strategic', ie. that if they are fairly distributed, then

[16] Although the desire may be regarded by the person in question as particularly central, especially if she is willing to forego a number of other interests in its pursuit, it is not regarded as central on the objective picture.

the claims of the various needs and interests people have will have been fairly met."[17] According to Rawls, the argument in favour of the use of primary goods relies on the 'partial similarity' of conceptions of the good. All people require roughly the same things in pursuit of their ends, however diverse these ends may be.

It seems that this idea of a partial similarity of conceptions of the good translates into Scanlon's schematic picture. People have the same general interests and concerns, some of which may be considered more important than others, whatever their particular pursuits may be. But if this is the picture which underlies the use of primary goods, it is not a picture which warrants the exclusive use of primary goods. Simply people have concerns aside from their stock of liberties, opportunities and material wealth. These include an absence of handicaps or disease, companionship and caring relationships, education and cultural participation. These can be included as 'familiar general categories' within the schematic picture, whether or not such interests are to be accommodated at the level of the principles of justice. Thus the same picture of importance or urgency which motivates us to use primary goods in the principles of justice would also motivate us to be inclined towards compensating people with handicaps.

These considerations can be applied to the case of people who choose to become members of the lowest economic group. In effect these people would be asking for subsidies to pursue their lifestyles, if they were to demand compensation under the difference principle. But whereas a handicap is a particularly important concern, playing tennis or surfing off Malibu is not. Their claim to aid lacks the urgency of the person who is confined to a wheelchair. We would only say that their lack of wealth was urgent if they had no reasonable alternatives open to them. But the point of the example is that they do.

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[17] ibid, p.661

II. The Significance of Choice

The distinction Scanlon draws between peripheral and central concerns, with the latter usually being more urgent than the former, differs from the distinction which Dworkin uses between persons and circumstances. Furthermore it is different from the distinction between choice and luck, where this distinction is taken to be central to the 'luck-neutralising' aim. I argued in chapter 3 that Dworkin's distinction relies too heavily on what may be controversial metaphysical assumptions about the person. There seems to be no clear-cut distinction between person and circumstance which cannot reasonably be rejected or disputed. Hence it seems that Dworkin's endowment-insensitive and ambition-sensitive theory fails, at least if one recognises political constraints to the justification of theories of distributive justice.

Metaphysics and the Subordination of Political Philosophy

The luck-neutralising aim faces problems similar to those encountered by Dworkin's distinction between person and circumstance. If were are to eradicate the effects of events beyond the control of a person, or which happen independently of her genuine choice, then we seem to have two problems. Firstly, we have a scientific problem: we need to determine the causal ancestry of, for example, particular expensive tastes. A person may have chosen to cultivate an expensive taste, or she may simply find herself, because of her physical constitution or social environment, to have the taste in question. Determining which of these is the case may be a very difficult task. Perhaps more importantly, the luck-neutralising aim faces a philosophical problem: the free will-determinism dispute. If we have tracked the genesis of a desire, we may still be undecided about whether or not the desire reflects the genuine choice of a person. Compatibilists and non-compatibilists about free will and determinism would be divided by whether a certain feature of a person was a matter of luck or choice. But it seems

that whatever disputes we may have in political and philosophical matters, these disputes should, as far as possible, be independent of one another. Just as Dworkin's distinction between person and circumstance relies too heavily on metaphysical assumptions, the luck-neutralising aim depends too much on answers to scientific and philosophical problems. Cohen notes this objection to the luck-neutralising aim:

> "Replacing Dworkin's cut by the one I recommended [it may be objected] subordinates political philosophy to metaphysical questions which it may be impossible to answer. To that expression of anxiety I have one unreassuring and one reassuring thing to say. The unreassuring thing is that we may indeed be up to our necks in the free will problem, but that is just tough luck. It is not a reason for following the argument where it goes. ... [T]he reassuring point [is that] we are not looking for an absolute distinction between presence and absence of genuine choice. The amount of genuineness that there is in a choice is a matter of degree, and egalitarianism redress is indicated to the extent that a disadvantage does not reflect genuine choice."[18]

The `reassuring' point is not very reassuring. Whether or not we are looking for an absolute or partial presence of genuine choice, the luck-neutralising aim is still tied to metaphysical questions. Indeed, the very idea that a choice may be only *partially* genuine is itself contentious. The unreassuring point is deeply unreassuring. If these metaphysical questions seem impossible to answer, especially from a political point of view, this seems to be a very good reason for not `following the argument where it goes'.

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[18] Cohen (1989), p.934

This point can be illustrated as follows. Alexander and Schwarzschild criticise Roemer in that they argue his criticisms of Dworkin rely on "a very controversial determinism with respect to tastes."[19] This detracts from the force of his criticism since "Dworkin's version of liberalism - and liberalism generally - rests on a rejection of a thoroughgoing determinism with respect to tastes."[20] But if Roemer's determinism is controversial then an egalitarian theory should not assume it to be true, or, importantly, assume the contrary. A theory of distributive justice should not rely on controversial metaphysical claims, for we would not want a situation where commitment to the political regime of equality is dependent upon the metaphysical or scientific commitments of a person.

Responsibility and the Argument from Institutional Priority

One objection to the argument which I am developing is that it seems to ignore the obvious moral relevance of choice. According to Scanlon's thesis, whether or not someone chose to develop a preference is irrelevant to the question of whether or not they have a claim to aid. It may be granted that Cohen's luck-neutralising aim is an inappropriate basis for egalitarianism, because of its subordination of political philosophy to metaphysics, yet objected that Scanlon's considerations of urgency cannot be appropriate either. They leave choice out of the picture altogether. In the rest of this section I wish to argue that this objection misses the mark by discussing Scanlon's Tanner lectures on "The Significance of Choice".

Rawls, to take a step back, employs two arguments against a purely meritocratic theory of justice. Firstly, he claims that the distribution of natural endowments is morally arbitrary, so no-one can be said

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[19] Alexander & Schwarzschild (1987), p.103

[20] ibid, p.108. This claim should be contrasted with Cohen's discussion of Nozick, who "creates the impression that Rawls is presenting a familiar egalitarian determinist doctrine." (Cohen, 1989, p.915). Although Cohen claims that Nozick's reading is a misreading, the idea of a 'familiar egalitarian determinist doctrine' does not seem to be a natural part of a theory which rejects 'thoroughgoing determinism with respect to tastes'.

to deserve their particular talents. Secondly, he argues that the notion of desert is not pre-institutional. We cannot demand that institutions be structured so as to reward those with greater talents because they deserve the proceeds of their talents. What people deserve is determined by the structure of the just institutional regime in which they find themselves. As Scheffler phrases the point: "the idea that social institutions should be designed in such a way as to ensure that people get what they deserve makes about as much sense as the idea that universities were created so that professors would have somewhere to turn in their grades, or that baseball was invented in order to ensure that batters with three strikes would always be out."[21]

Scanlon's discussion in "The Significance of Choice" can be understood to be making a similar point.[22] Moral claims about assuming responsibility for one's choices are not pre-institutional. We cannot claim that we are not morally responsible for those things which are beyond our control and then demand that social institutions be arranged to reflect this intuition. What we are to be held morally responsible for is determined by considerations of what a fair and just basic structure of society would be. Within the framework of this social system we may consider that a person is morally responsible for what they choose to do. For example a person may choose to forego leisure and relaxation, and thus become wealthier, through her hard work, than others. However, even though she may be said to deserve her better position (since it was a result of her choice rather than some morally arbitrary feature of her circumstances), she will still be taxed in accordance with, say, Rawls's difference principle. Choice has significance in this example, but a significance which is limited in scope. Another person may find herself with expensive tastes for which she is not causally responsible. Yet if the basic structure of society has provided her with her fair share of primary goods, then she has no claim to extra resources.

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[21] Scheffler (1992), p.306

[22] Although Scanlon's aim in the lectures is, more broadly, to argue how choice has moral significance, in a variety of contexts, even if the `causal thesis', the claim that all our actions are caused, is true.

> "[T]he distinctive significance which choice appears to have is in part an artifact of the position from which we typically view it. This is a position internal to institutions, and one in which choices have special salience because they are the last justifying elements to enter the picture. When the relevant background is in place - when conditions are right, necessary safeguards have been provided, and so on - the fact that a person chooses a certain outcome may make that outcome one that he or she cannot reasonably complain of. But choice has this effect only when these other factors are present."[23]

Even given the background of just social institutions we would not unconditionally claim that people should be compensated if they are harmed by events beyond their control. Scanlon provides an example of a person who is harmed by the removal of toxic waste, despite an extensive campaign on the part of the authorities to warn people of the danger of walking near the site. The person in question simply did not hear about the danger, and so did not choose to risk their health. But the person is simply unfortunate, and has no *special* claim to compensation from the town officials. Even though he was harmed in a significant manner by events beyond his control, the town officials have provided those 'background' conditions which would reasonably be expected of them. Of course such a person may make a claim on some sort of state health service, but this is simply because he has been injured, not because he has been injured by events beyond his control. Drunk drivers would also benefit from such a service. They should not be denied the same subsidised medical treatment as anyone else.[24]

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[23] Scanlon (1988), pp.189-90

[24] A less contentious example is to be found in John Irving's *The World According to Garp*. In the story a group of feminists, the Ellen Jamesians, cut out their tongues in solidarity with a rape victim who suffered a similar fate. Unlike drunk drivers, these people did not break any law, so we have no confusing intuition that they be punished. Even though they caused their handicap, it would be callous to deny them the same medical treatment extended to people who did not choose their handicaps. Intuitively they would have the same claim to antibiotics, pain-killers, and so forth, as people who lose their tongues in car crashes or freak industrial accidents. Which is not to claim that our reactive attitudes of sympathy or criticism towards these groups of people may not differ.

The conclusion of this discussion is two-fold. The luck-neutralising aim is not pre-institutional. We cannot demand that institutions be established to compensate us for each and every disadvantage caused by brute luck. Choice has significance only given the context of just background conditions. Secondly, even within this well-ordered society we do not necessarily think that any 'objective' disadvantage should be compensated to the extent that the harm reflected brute luck. Cohen, and other advocates of the luck-neutralising aim, may be accused of a false generalisation from the cases where we would compensate for brute luck, firstly to all particular cases of brute luck in a society, and secondly, to the level of pre-institutional moral considerations.

III. Hurley on Justice without Luck

In this chapter I have discussed Scanlon's schematic picture of human interests and how it can be used to provide the underlying rationale for both the use of primary goods and compensation for handicaps. This account of urgency has been contrasted with the luck-neutralising aim which makes the question of choice central to issues of compensation. I have offered two arguments against the latter picture: firstly, it unduly subordinates political philosophy to metaphysics, in a manner similar to Dworkin's distinction between persons and circumstances. Secondly, the moral intuition that we should not be held responsible for brute luck disadvantages is not a pre-institutional intuition. In the rest of this chapter I wish to discuss Susan Hurley's arguments which claim that the luck-neutralising aim cannot do a good job of underwriting egalitarianism in particular. This third argument can be extended as a critique of Dworkin's hypothetical insurance market.

In his discussion of Sen's capabilities approach, Cohen claims that his alternative 'equal access to advantage' theory does not, unlike Sen's, imply that genuine choice actually exists. "Instead, it implies that if there is no such thing - because, for example, 'hard determinism' is true - then all differential advantage is unjust."[25] This claim can be understood as the target of one of Hurley's arguments:

> "Now egalitarians may tend to assume that the global defeat of responsibility by luck provides a universal equal baseline for egalitarianism to build on. But this assumption is unjustified. If no one is responsible for anything, it doesn't follow that we all have equal claims. That no one is responsible for anything itself provides no reason to regard equality as a default position or normative baseline. If we neutralise the effects of luck, but ultimately everything is among those effects, then we are not left with a baseline of equality but rather with indeterminacy."[26]

It is important to note that Hurley's argument does not assume that there is no such thing as genuine choice. Her target is the claim that distributions which are not a result of genuine choice should be equalised. But that they are a matter of luck provides no reason in itself to believe that they should be equalised. It may be objected that the above point may be granted, but since an equal distribution is the only non-arbitrary distribution, we should have an equal baseline. But this move transforms Cohen's

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[25] Cohen (1993), p.28. I think that this passage reveals a major problem in Cohen's theory. If there is no genuine choice, and no differential advantage is justified, we are presumably to have a situation of absolute equality. But Cohen's theory does not answer the basic question: equality of what? Advantage, where advantage includes resources, capabilities (or what Cohen terms 'midfare'), and welfare cannot be an answer, since we would be unable to decide whether someone with more resources but less welfare than another person was more advantaged or not. Unless Cohen's theory is to collapse into an equality of welfare, resources or capabilities, he needs some way in which he can compare stocks of resources with levels of welfare. But such a quantifiable standard of advantage seems impossible: resources and welfare are incommensurable. I shall not pursue this objection since I am concerned only with assessing the contributions of Rawls and Dworkin as resourcist theories of equality.

[26] Hurley (1993), p.185

argument into one with two independent premises: firstly, that we should neutralise the effects of luck, and, secondly, that we should have an equal baseline where distributions are not a matter of choice. But here the egalitarian premise is independent of the luck-neutralising aim. Hurley's target is the Cohenesque view that the luck-neutralising aim provides the underlying rationale for egalitarianism. Wherever we get support for egalitarianism from, we do not get it from the luck-neutralising aim.

Not only is the egalitarian impulse independent of luck-neutralising or responsibility-tracking endeavours, the two aims may conflict. "In the absence of an equal baseline ... we've got to say not just that some people are *not* responsible for what they have actually got; we've got to go further an specify some other possible state of affairs they *would* be responsible for."[27] But firstly, "our real-world judgements of responsibility do not extend this far", hence the indeterminate baseline mentioned above.[28] Secondly, and more importantly, if we did have some theory of responsibility which could make this kind of counterfactual judgement, it is exceedingly implausible that it would advocate a necessarily egalitarian distribution. An equal distribution may be just as much a matter of luck as any other. A successful theory of counterfactual responsibility may be advocate a highly unequal distribution.

Uncertainty, Risk and Dworkin's Insurance Market

Instead of the luck-neutralising aim, Hurley advocates a `bias-neutralising' aim. "Biases are influences that distort the relationship of our beliefs about what should be done to any truths there may be about what should be done, ... they distort the relationship of belief to truth in a way that prevents belief from attaining the status of knowledge."[29] Corresponding to the distinction between these two aims, is the

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[27] ibid, p.189

[28] ibid.

[29] ibid, p.193. Hurley describes this as a `cognitivist' alternative to the luck-neutralising aim, in line with cognitivist, coherentist account of the objectivity of ethics which she develops in *Natural Reasons*. It seems that it is unnecessary to advocate cognitivism if one wishes to neutralise bias, since one can recognise moral bias without believing that moral claims can be true or false. Indeed if one accepts Rawls's argument that the

distinction between uncertainty aversion and risk aversion. Uncertainty can be characterised as a situation of unknown risk, as opposed to known risk. A gambler, for instance, may be risk-prone, yet uncertainty-averse. She is willing to bet when the probabilities are against her, yet would not bet if she did not know the probabilities. Rawls does not assume that the people in his original position are risk-averse, since no one knows "his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism."[30] Importantly for Hurley's purposes, this does not rule out the possibility that the people in the original position are averse to *uncertainty*. To claim that people are averse to uncertainty is to claim merely that as rational agents they prefer acting with more information to less:

> "To prefer to act without information and hence without reasons would be to prefer not to act intentionally at all, but rather merely to react or lurch blindly. ... Other things equal, it's reasonable to assume that intentional agents prefer more information to less. ... [But] a little uncertainty aversion may go a long way from the perspective of justice characterised in terms of radical ignorance."[31]

A further corresponding distinction, alluded to in the above quotation, is between the equal chance and the ignorance characterisations of what Hurley terms 'perspectives of justice', ie. a framework for generating positions on matters of justice, such as Rawls's original position. People in the original position may be characterised as having an *equal chance* of becoming anybody in society, or they may be *ignorant* of the probability of finding themselves in any particular place. Rawls favours the latter interpretation. In his critique of the principle of average utility, he rejects the appeal to Harsanyi-like

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method of political constructivism which is essential to the political conception of justice does not make any claim about the truth (rather only the reasonableness) of principles of justice, then one ought not advocate cognitivism - at least at this level. (See Rawls, 1993, lecture III, especially p.94). Furthermore, although I accept Hurley's bias-neutralising aim for the purposes of illustrating why Dworkin's hypothetical insurance market is flawed, my arguments do not depend on the acceptability of Hurley's alternative, cognitivist or not.

[30] Rawls (1971), p.137

[31] Hurley (1993), pp.196-7

expected utility maximisation by claiming that "there seems to be no objective grounds in the [original position] for assuming that one has an equal chance of turning out to be anybody."[32] Hence the people in the original position "discount likelihoods arrived at solely on the basis of ... the principle of insufficient reason ... [which assigns] probabilities to outcomes in the absence of any information."[33] This is one way in which Rawls's `perspective of justice' differs from Dworkin's. The hypothetical insurance market assigns each person, not only knowledge of her talents, preferences and conception of the goods, but also an *equal chance* of suffering from a handicap, or of being assigned by the computer to a particular level in the projected income structure. The motivation for the hypothetical insurance market, as opposed to settling for the actual practice of insurance, is that people are not in a position of equal antecedent risk of suffering from a handicap or lack of talent. Dworkin's aim is to construct the hypothetical market so that they are.

Hurley's thesis is to argue that the ignorance characterisation of the original position, and an assumption of uncertainty aversion on the part of the people in the original position, lend themselves to a bias-neutralising rather than luck-neutralising interpretation of justice as fairness. Firstly, the veil of ignorance can be seen to have a function apart from putting the people in the original position in a position of equal antecedent risk. Simply the veil of ignorance is "appropriate for modelling the perspective of justice, not because it is `morally arbitrary' or a matter of luck that you are constituted as you are, but because uncertainty about who and what you are can have an essentially epistemic function in relation to deliberation about the right distributive principles [in that] radical uncertainty rules out many biasing influences on deliberation and on the formation of beliefs about what should be done."[34] Although Hurley's cognitivism is excluded, for political rather than philosophical reasons, by Rawls's

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[32] Rawls (1971), p.168. In Harsanyi's earlier use of an idea similar to the original position, rational agents who are ignorant of their particular place in society will choose the principle of highest average utility, since this will maximise their expected utility. See Harsanyi (1953).

[33] ibid, pp.168-9

[34] Hurley (1993), p.199

method of political constructivism, the essential point remains. The point of the veil of ignorance is to eliminate factors which may generate *unreasonable* or biased principles. Secondly, if Rawls's underlying motivation was the luck-neutralising aim, then it would seem that the most natural manner of describing the original position would be as a position of equal antecedent risk of being talented, handicapped or so forth.

My criticism of Dworkin extends Hurley's considerations to the notion of the hypothetical insurance market. The equal chance rather than uncertainty characterisation of the market, as well as Dworkin's explicit claim that insurance "provides a link between brute luck and option luck, because the decision to buy or reject ... insurance is a calculated gamble" indicate that he is characterising equality as, at least partially, the eradication of brute luck.[35] Even though Dworkin does not want to compensate for the effects of all brute luck, his 'perspective of justice' is firmly tied to what is a dubious and unnecessary basis for egalitarianism

If the uncertainty characterisation of the original position is intended to remove biasing distortions on the deliberation which takes place, why cannot Dworkin's stipulation of an equal antecedent risk fulfil the same function, despite Dworkin's description of insurance as a link between luck and choice? Firstly, the accepted principle of rational choice in a position of equal risk is expected utility maximisation. In the context of Dworkin's insurance market this principle can lead to perverse, non-egalitarian consequences, as illustrated in Roemer's "Equality of Talent" discussed in chapter 3. Secondly, if Dworkin were to reject this principle of choice, and stipulate some other principle (for instance the maximin principle), he would require strong assumptions of risk avoidance to generate an egalitarian result.[36] But he cannot assume that the immigrants on the island, or people in society, have

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[35] Dworkin (1981b), p.293

[36] Alternatively Rawls is free to use the maximin principle because the people in the original position, unlike Dworkin's immigrants, do not know their attitudes to risk. Be this as it may, I do not claim that the maximin principle and the difference principle are appropriate. I assume that something like them is.

the required level of risk aversion. For all *he* knows the immigrants could either be a group of risk-prone gamblers, prepared to risk everything for material gain, or they may be radically risk-averse, prepared to buy insurance for even the most insignificant of disadvantages (such as the possibility of living in mosquito-infested Africa). But, importantly, the *immigrants* will know their level of risk aversion. Since the immigrants are not in a position of *unknown* risk or uncertainty, he cannot argue that Rawls's people in the original position are faced by the same problems. The thicker veil of ignorance used in the original position seems to be required to exclude this wide range of possible levels of risk aversion, and hence wide range of possible distributions of resources.

The central dilemma for Dworkin's insurance market is this: either he defines equality of resources after the initial auction in terms of what people would have chosen in a situation of equal antecedent risk, and is prepared to suffer the consequences of intuitively non-egalitarian distributions; or he has some prior idea of what egalitarianism requires. But this latter alternative implies that we do not need to utilise the insurance market at all, simply because the question of what people would have chosen in a position of equal antecedent risk becomes redundant. And this only means that we are not concerned with distinction between choice and luck at the level of constructing principles of egalitarian justice.

The alternative account of egalitarianism which I advance involves, firstly, some idea of what things are particularly significant in the lives of people in contemporary society; things such as income, liberties, health and opportunities. Secondly, it involves the idea of what would be a reasonable way to generate the principles of justice which are to regulate the basic structure of society. The first aim is answered by Rawls's primary goods and Scanlon's schematic picture of urgent concerns. The second aim is answered by Rawls's original position and Hurley's bias-neutralising interpretation of it.

7. Distributive Egalitarianism

Dworkin uses the distinction between persons and circumstances to underwrite his egalitarianism. I have argued that this distinction is inappropriate for a number of reasons. Firstly, it does not adequately distinguish between compensation for handicaps and low skills, and compensation for expensive tastes. Secondly, the question of whether a person identifies with a preference, and hence whether it is part of her personality or her circumstance, does not seem to be a pertinent question to ask when debating possible compensation. Thirdly, the distinction involves a commitment to a certain philosophy of the person which belongs in the realm of comprehensive moral and philosophical doctrines, rather than in that of contemporary egalitarian political philosophy.

Cohen, Roemer and Arneson are explicitly committed to the distinction between choice and luck, and the related desire to eradicate the disadvantageous effects which luck has on people. I have argued that this 'luck-neutralising aim' is an inappropriate foundation for egalitarianism. Firstly, it subordinates political philosophy to metaphysical questions. Secondly, the claim that people should not be held responsible for events beyond their control, whilst intuitively attractive, cannot be used as a fundamental principle of an egalitarian regime. Ideas of desert and responsibility are not pre-institutional. Thirdly, the eradication of the effects of luck does not, in itself, generate egalitarian distributions. In the absence of genuine choice the assumption of an equal 'baseline' is unwarranted.

The last two criticisms can be extended as a criticism of Dworkin's hypothetical insurance market. Dworkin is making the question of what people would have chosen in a position of equal antecedent risk fundamental to his conception of equality of resources. But firstly, this assumes that choice has a significance which is pre-institutional, in that the idea of choice, albeit hypothetical choice, is used to define a regime of equality. Secondly, the hypothetical insurance market leads to indeterminate, and potentially non-egalitarian results. Dworkin cannot assume any particular level of risk aversion amongst his immigrants, and hence cannot assume that they will agree to any recognisably egalitarian distribution. Since it is necessary to develop an egalitarian distribution independently of this insurance market, the question of what hypothetical individuals would have chosen in a position of equal antecedent risk becomes redundant. The social contract tradition should be understood, instead, as a loosely epistemic, bias-eradicating endeavour.

A theory of distributive egalitarianism needs to be explicit about the those things which are important in people's lives. From the most basic liberties and issues of wealth, to questions of health, education and opportunities, we construct a schematic picture of relative urgency. Rawls's list of primary goods can be understood as an attempt to express the central 'general categories' of this picture. Importantly though, a theory of distributive egalitarianism will be able to move beyond primary goods as the need arises. This use of this idea of relative urgency should not be seen as an attempt to construct a complete picture of what constitutes a good life. Firstly, it should be understood as a political issue on which people from a plurality of ethical, religious and philosophical backgrounds can reach agreement, in the same way that Rawls and Buchanan argue that it will be rational for people to want primary goods, whatever else they want. Secondly, it is not intended to constitute a complete and definitive picture of what counts as advantageous for citizens. On the contrary, it is a pragmatic device which reflects the flexibility of political practice and debate. We continually tinker with the schematic picture, as new arguments and new situations present pressing concerns. Incompleteness in this context is a virtue.

I have argued that the Rawlsian paradigm provides a better framework for a theory of egalitarianism than Dworkin's equality of resources, if we follow the considerations of Scanlon and Hurley. A distinction between central and peripheral concerns constitutes a more efficient cut between handicaps and expensive tastes than the distinction between person and circumstance. Furthermore the original position is not tied to the idea of the eradication of luck in the way in which Dworkin's hypothetical insurance market is. The original position is an artificial device for developing reasonable and unbiased principles of justice. The thick veil of ignorance and the position of uncertainty which the people in the original position find themselves in, insulate the original position from the potentially non-egalitarian principles of reasoning which could characterise Dworkin's insurance market. The original position is constructed so as to achieve an egalitarian result. It is not meant to define what such a distribution would be.

The 'equality of what?' debate consists of two main questions: firstly, with what things should egalitarians be concerned? Secondly, in which of these things should we be equal? These questions can be answered as follows: egalitarians are concerned with urgent concerns according to a broad objective picture of human life. These will usually be resources, liberties and opportunities, but will often be questions of health, mobility and even perhaps recreation. In which of these things should we be equal? From an appropriate level of abstraction, we can construct principles of justice which dictate that we are to be roughly equal in the most basic of these concerns: Rawls's primary goods. But these principles must be flexible enough to permit redress for those things which we consider urgent, things such as handicaps, pain, past racial discrimination, low nutritional levels and so forth, in a practice of fair and reasonable public policy. A concern with such things does not commit us to any all-encompassing formula: equality of advantage or capabilities, or equal opportunity for welfare, or even equality of resources. Egalitarianism cannot be summarised in this way.

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