

Political Equality, Firm Size and
the Choice of Social System:
A Rawlsian Recovery of a
Neglected Ideal-Type?

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Declaration

'I, **John Wilesmith** confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.'

Abstract

Recent years have seen a resurgence of interest in the evaluation of models of political economy in normative political theory. These debates raise questions of both a substantive and a methodological nature. On the substantive side, an important question is 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of justice?' From a methodological standpoint, a central question is 'How should we conceive of the choice between different types of political economy or social system?'

These are the two main questions that I shall address in this thesis, offering my answers in three parts from a broadly Rawlsian perspective. In Part I, I address the methodological question and defend a flexible approach to evaluating social systems that allows for 'recombinant possibilities'. In Parts II and III, which make up the bulk of the thesis, I turn my attention to the substantive question. In Part II, I set out the theoretical underpinnings of my argument. I argue that Rawlsians should include a principle of political equality within a lexically prior principle of justice, and then specify some constraints that this places on constitutional design.

In Part III, I build on these arguments to make the case that the very existence of large firms poses a threat to the realisation of political equality, and therefore justice, regardless of whether they are owned by many small shareholders (as in a property-owning democracy) or controlled by their workers (as in a liberal socialist society). This concern about large firms has been largely overlooked by Rawlsians. Accordingly, I end with some suggestions as to how these theorists might usefully supplement their existing institutional recommendations by combining them with a neglected model of political economy.

Table of Contents

Declaration	2
Abstract	3
1. Introduction: Rawlsians and the ‘Choice of Social System’	7
1.1. A Broadly Rawlsian Perspective	9
1.2. Rawls, Rawlsians, the ‘Choice of Social System’ and the Firm	15
1.3. The Terms of the ‘Choice of Social System’	20
<u>PART I: METHODOLOGY</u>	30
2. Ideal-Types, Idealism and Ideal Theory	31
2.1. Introduction	31
2.2. Weber, Ideal-Types and the Rawlsian ‘Choice of Social System’	34
2.3. Idealist vs. Empirical Ideal-Types of Existing Social Systems in the ‘Choice of Social System’ Debate: The Implausibility Case Against the Former	37
2.3.1. Rawls, Rawlsian Loyalists and Idealist Ideal-Types of Social Systems ..	38
2.3.2. Rawlsian Defectors and Empirical Ideal-Types of Social Systems	41
2.4. The Normative Case Against Idealist Ideal-Types of Existing Social Systems in the ‘Choice of Social System’ Debate	45
2.5. Descriptive vs. Normative Ideal-Types: A Place For Idealist Methodological Assumptions and Idealist Methodological Assumptions in Their Place	52
2.5.1. Descriptive vs. Normative Ideal-Types	53
2.5.2. Abstract Descriptive Ideal-Types, Normative Ideal-Types and Acceptable Idealism	56
2.6. Descriptive Ideal-Types, Normative Ideal-Types and Ideal Theory	60
2.7. Conclusion	68
<u>PART II: THEORY</u>	70
3. The Priority of a Principle of Political Equality	71
3.1. Introduction	71
3.2. Political Equality, Priority and the Fair Value Proviso	74
3.3. The Politics of a Well-Ordered Society	80
3.4. Evaluating Three Rawlsian Arguments for the Fair Value Proviso as Grounds for the Priority of Political Equality	87

3.4.1. An Original Position for a Democratic Society	87
3.4.2. The Self-Protection Argument.....	90
3.4.3 The Epistemic Argument.....	93
3.4.4. The Status/Self-Respect argument	99
3.5. Constitutions and Policy Experts	108
3.6. Conclusion	110
4. What Would It Mean for a Well-Ordered Society to Realise Political Equality?: Some Necessary Principles of Constitutional Design	112
4.1. Introduction	112
4.2. Four Stages of Politics in a Well-Ordered Society	115
4.3. Political Equality and the Vote	118
4.4. Populating the Agenda	128
4.5. Social Deliberation: Before (and After) the Vote	132
4.6. Conclusion	142
<u>PART III: INSTITUTIONS</u>.....	145
5. How Might Resource-Rich Firms Compromise Political Equality in a Well-Ordered Capitalist Democracy?: Taking Resource Power Seriously	146
5.1. Introduction	146
5.2. The Idea of a Well-Ordered Capitalist Democracy.....	149
5.3. Six Ways in Which The Presence of Firms Might Violate Political Equality in a Well-Ordered Capitalist Democracy	151
5.4. Business Power and Beyond: Power-Over, Power-To and Political Equality	155
5.4.1. Business Power-Over	156
5.4.2. Resource-Rich Firms, Power-To and Political Equality	159
5.5. Taking Resource Power Seriously in a Well-Ordered Capitalist Democracy: The Possibility of Economic Actors Being Motivated by Egoism in Politics	168
5.6. Conclusion	178
6. Why Firm Size Matters: The Limits of Widespread Ownership and Democratic Control	180
6.1. Introduction	180
6.2. Large Firms.....	183
6.3. The Idea of a Well-Ordered Property-Owning Democracy.....	185

6.4. The Logic of Large Corporations as Resource-Rich Political Actors in a Well-Ordered Property-Owning Democracy	186
6.4.1. The Logic of Collective Action.....	186
6.4.2. The Appeal of the Large Corporation to Small Investors	190
6.5. The Limits of Widespread Ownership: The Large Corporation vs. Political Equality in a Well-Ordered Property-Owning Democracy	193
6.5.1. The Large Corporation vs. Small and Medium Sized Firms.....	194
6.5.2. The Large Corporation vs. Non-Economic Interest Groups	200
6.5.3. The Managers of Large Corporations vs. the Shareholders of Large Corporations.....	204
6.6. The Limits of Democratic Control: The Large Democratic Firm vs. Political Equality in a Well-Ordered Liberal Socialist Society	209
6.6.1. The Large Democratic Firm vs. Small and Medium Sized Democratic Firms	210
6.6.2. The Large Democratic Firm vs. Non-Economic Interest Groups.....	212
6.7. Beyond Olson: Some Unintended Consequences of Egalitarianism?	215
6.8. Conclusion	218
7. Conclusion: A Rawlsian Recovery of a Neglected Ideal-Type?.....	220
7.1. Summary.....	220
7.2. Implications: A Rawlsian Recovery of a Neglected Ideal-Type?	224
7.3. Further Research	232
Bibliography.....	236
Acknowledgements	253

1. Introduction: Rawlsians and the 'Choice of Social System'

'The main problem of distributive justice is the choice of social system' (Rawls 1999a, p.242).

'The comparative study of well-ordered societies is, I believe, the central theoretical endeavour of moral theory' (Rawls 1974b, p.13).

In his final book in 2005, Brian Barry lamented the state of contemporary normative political theory. He claimed that the discipline had been reduced to a series of technical debates between specialists with little attention paid to how these different areas of enquiry might be brought together to offer integrated guidance on the major questions of institutional design facing modern societies (Barry 2005, p.22). Yet it now appears that, much like Peter Laslett half a century before him, Barry was complaining about the intellectual darkness just before the dawn.¹ The last ten years have seen a resurgence of interest in the normative evaluation of different models of political economy in mainstream political theory, with a particular focus on wholesale alternatives to existing institutional arrangements.²

This change of direction must be seen, at least in part, as a reaction to recent events that have caused both political theorists and citizens alike to question the prevailing models of political economy in advanced capitalist nations. The global financial crisis of 2007-2009 led to the deepest global recession since the Great Depression. According to the International Monetary Fund (IMF), global gross domestic product (GDP) contracted by 6¼ percent (annualised) in the fourth quarter

¹ Peter Laslett famously introduced a collection of essays in 1956 entitled *Philosophy, Politics and Society* with the claim that 'for now, anyway, political philosophy is dead' (Laslett 1956, p.vii). Regardless of whether Laslett was overstating the case, it is now generally accepted that, from almost the moment he laid down his pen, a steady stream of publications began to, if not resuscitate, then at least reinvigorate the mainstream analytic tradition of political philosophy in the Anglophone world.

² For instance, see the edited collection on *Property-Owning Democracy: Rawls and Beyond* (O'Neill & Williamson 2012), the special issues of *Analyse und Kritik* (35:1, 2013) and *The Good Society* (2012) on 'Property-Owning Democracy', the special issue of the *Journal of Applied Philosophy* (32:4, 2015) on 'Socio-economic Justice: Beyond the Welfare State?', the special issue of *The Good Society* (22:1, 2013) on 'Alternatives to Capitalism', plus recent volumes of the Real Utopias Project Series books, in particular (Ackerman et al. 2009). In addition to these collections, there have been several noteworthy standalone articles, such as (O'Neill 2008; 2009; Dagger 2006; Williamson 2009; Malleson 2014; Brennan 2007; Lomasky 2005; Arnold 2012; Hsieh 2008), a superbly insightful book review (Weithman 2013), and an influential book-length treatment (Tomasi 2012) (not to mention Barry's own book (2005)). Of course, it would be a mistake to concur too wholeheartedly with Barry's assessment of the state of the discipline prior to 2005. A number of notable publications from the preceding years and decades inform the current normative debates about political economy, perhaps most notably (Ackerman & Alstott 1999; Miller 1990; Nove 1983; White 2003; Schweikart 2002; Rothstein 1998; van Parijs 1997; Alperovitz 2004; Roemer 1994), plus several earlier volumes of the Real Utopias Project Series books, in particular (Roemer 1995).

of 2008 (a swing of over 10 percent from the 4 percent growth being enjoyed one year earlier) and fell almost as fast in the first quarter of 2009 (IMF 2009, p.4). Moreover, both the major causes of the recession and the most acute contractions were to be found in the advanced Western economies. Many of the expected negative social consequences have duly followed.

The normative debates about political economy that have flourished in the wake of this episode raise questions of both a substantive and a methodological nature. On the substantive side, a particularly important question is: what restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice? From a methodological standpoint, a central question is: how should we conceive of the choice between different types of political economy or social system -- is it an 'all or nothing' choice between the prevailing system and a list of alternatives, or is it possible to 'mix and match' elements from different models?

These are the two main questions that I will address in this thesis, with the majority of my efforts focussing on the substantive issue. I will offer answers from a broadly Rawlsian perspective and, in doing so, suggest that an influential sub-set of theorists in the contemporary normative debates about political economy -- Rawlsians -- have missed something important regarding the restrictions that need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice. In brief, I will argue that they all overlook the fact that those who accept Rawls's most abstract idea of a democratic society as a 'system of cooperation between free and equal citizens' (Rawls 1996, pp.22, 302-03; 2001, p.95), and who view principles of justice as having the role of publicly specifying the fair terms of such cooperation for a 'well-ordered society', should view the very existence of large firms as a credible threat to the realisation of social justice, regardless of how those firms are owned or controlled.³ I will reach this conclusion by arguing that those who accept the above Rawlsian premises should include a fairly demanding principle of political equality within a principle of justice that enjoys lexical priority over whatever principle of justice is taken to regulate social and economic inequalities.⁴ Yet, regardless of how they are owned or

³ I explain what I mean by a 'well-ordered society', as well as the other quasi-technical Rawlsian ideas in this sentence, in the next section.

⁴ As such, one might understand my thesis as offering a defence of an egalitarian interpretation of the fair value of the political liberties demand that Rawls includes in his first principle of justice in his later work, where his principles of justice are (in order of lexical priority):

controlled, large firms pose a credible threat to the realisation of this principle of political equality in a 'well-ordered society'.

As things stand, these types of concerns about large firms have been either rejected or ignored by Rawlsians taking part in the normative debates about political economy. Nonetheless, I will not present my substantive conclusion as a challenge to the types of social systems currently advanced by these theorists, but rather as a vital supplement to their institutional recommendations. This framing of my substantive position is made possible by a prior methodological argument that I will make regarding how Rawlsians should conceive of the choice between different types of social systems. Put simply, I will advance a particular form of the 'mix and match' approach mentioned above.

The remainder of this introductory chapter is divided into three sections. In the first section I will explain what I mean when I say that I will offer answers from a broadly Rawlsian perspective. In the second section I will explain why there is a prominent Rawlsian strand in contemporary normative debates about political economy, and I will then map out the various institutional positions that theorists have adopted within this strand and show how they relate to my substantive argument about large firms. In the third section I will explain why the methodological issue of how we should conceive of the choice between different types of social systems is a particularly divisive topic for Rawlsian contributors to debates about political economy. This will lead us into an outline of how the argument will unfold in subsequent chapters.

1.1. A Broadly Rawlsian Perspective

It will be helpful to begin by stating what I am not attempting to do in this thesis. John Rawls was arguably the most influential political theorist of the second half of the twentieth century; however, when I say that I am aiming to answer the questions 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?' and 'How should we conceive of the choice between different types of political economy or

(1) Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; *and in this scheme the equal political liberties, and only these liberties, are to be guaranteed their fair value* [emphasis mine].

(2) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second they are to be to the greatest benefit of the least advantaged members of society' (Rawls 1996, pp.5–6).

social system?' from a broadly Rawlsian perspective, I do not mean to imply that I am aiming to identify the answers that the most accurate exposition, extension or rational reconstruction of Rawls's body of work would provide to these questions. Put another way, I am not looking to engage in an interpretive exercise.⁵ Nor am I looking to provide an account of how Rawls the man might have answered these questions, based on non-textual evidence. Nor am I primarily interested in providing an analysis of the reasons contemporary Rawlsians seem to have missed something important about the threats posed by large firms.

Rather, my primary aim is to provide a normative argument beginning with what I consider to be some plausible, widely accepted and widely acceptable premises. Given the cogency of Rawls's arguments about social justice, it happens that I and many other contemporary political theorists find a number of his central insights and conclusions compelling, and believe that many democratic citizens either do or would also find them compelling. At the same time, there is much disagreement even among self-identified Rawlsian political theorists about the persuasiveness of the finer points of many of Rawls's arguments. With this in mind, my strategy is to first adopt only the most general Rawlsian commitments regarding social justice that I and, I believe, many, if not all, self-identified Rawlsian political theorists, many non-Rawlsian political theorists, and many democratic citizens do, or would upon reflection, find compelling. I will then aim to show that, by gradually adding in other normative commitments that, in my view, should be compelling to all those who accept the abovementioned general Rawlsian commitments, plus some factual assumptions about social conditions that they should also find compelling (either because they are implicit in these commitments, or independently plausible), we reach certain institutional conclusions about the threats that large firms pose to the realisation of social justice.

So what are these 'most general Rawlsian commitments' that I will treat as premises? There are three of them. The first one, which is the main commitment, is as follows:

⁵ Although I recognise that, at least on one reading of Ronald Dworkin's influential view that the best way to understand the meaning of a text is through 'creative interpretation', it would appear that any normative argument that positions itself within a tradition of thought is, albeit perhaps unwittingly, offering an interpretation of that tradition (Dworkin 1986, pp.49–53). If the reader hold this Dworkinian view of interpretation, then I see no harm in them viewing my normative argument as having such interpretive implications. But if, like me, the reader is more sympathetic to something approaching the Cambridge School's view of textual interpretation (for the paradigmatic account, see (Skinner 1969)), then they should both understand and note this preface to my argument.

Commitment 1: The most abstract idea of a democratic society is a 'system of cooperation between free and equal citizens' (Rawls 1996, pp.22, 302-03; 2001, p.95).

The other two commitments are subsidiary insofar as they specify the content of Commitment 1. They are as follows:

Commitment 2: Different views about what ought to count as *fair* terms of cooperation between free and equal citizens should be understood as different views about the principles of justice that should regulate the major institutions of a democratic society (Rawls 1999a, p.4; 1996, p.16; 2001, p.7).⁶

Commitment 3: A just democratic society must be a suitably 'well-ordered society' (Rawls 1996, p.35; Rawls 1999a, pp.7–8, 397; Rawls 2001, pp.13, 27), which means that it must satisfy the following four conditions:

- (1) nearly all individuals accept and know that everyone else accepts the same principles of justice;
- (2) the major institutions together satisfy, and are publicly known to satisfy, these principles;
- (3) nearly all individuals have a normally effective sense of justice that allows them to understand and apply the publicly recognised principles of justice;
- (4) nearly all individuals are motivated to comply with and further just institutions provided there is sufficient assurance that others will likewise do so.⁷

⁶ By the term 'major institutions', I mean to refer to what Rawls calls the 'basic structure' of a society. For a definition and an indicative list of the institutions in the basic structure, see (Rawls 2001, p.10; 1999a, p.6); however, Rawls follows this with the important point that there are no sharp boundaries to a society's basic structure (Rawls 2001, p.12).

⁷ Rawls enumerates the first three conditions here: (Rawls 2001, p.9; 1999a, pp.4, 398; 1996, p.35). He does not include the 'nearly' qualifiers that I include in these statements, but they seem to be implied in other passages (Rawls 1999a, pp.440–41; 1996, p.248), particularly those about how the wealthy might act in a just well-ordered society (Rawls 2001, p.148; 1999a, p.198). I have included them because I want to maintain that a just well-ordered society is possible, for reasons that I will set out in the next chapter; however, my substantive arguments do not rely on (but would be strengthened by) these 'nearly' qualifiers. Rawls also does not include the fourth condition above in his short definitions of a well-ordered society, but there are several passages across his work that show he views this fourth condition as holding for a well-ordered society. First, regarding the motivation to 'comply with just institutions', he provides methodological reasons for attaching the condition of 'strict compliance' to the idea of a perfectly just democratic society, which I will examine in the next chapter (Rawls 1999a, pp.7–8; Rawls 2001, p.13; Rawls 1996, pp.284–85). Second, regarding the motivation to 'further just institutions', Rawls endorses a normative argument that citizens should generally recognise and discharge their natural duty of justice 'to support and to further the arrangements that satisfy these principles [of justice]' (Rawls 1999a, p.295), which is similar in form to his later argument that citizens have a duty of civility to deliberate and vote upon constitutional essentials and matters of

It is worth saying a bit more about each of these commitments in order to clarify their content and relationship to one another. The rest of this section should not be read as a justification of these commitments, but rather as an attempt to present a more detailed description of the broadly Rawlsian perspective from which I will address certain normative and institutional questions in this thesis, along with some indications of why many theorists and non-theorists alike find this perspective attractive. I will not offer a full justification of Commitment 1 in this thesis; however, I will defend the methodological implications of treating this commitment as foundational and also of specifying its content in terms of Commitments 2 and 3 in the next chapter.

There are two ideas at play in Commitment 1: 'cooperation' and 'free and equal citizens'. The most basic of these two ideas is 'cooperation'. The reason for conceiving of society as a system of cooperation is because it illuminates a central dimension of society-wide interaction that raises a problem worth attending to, namely: how to distribute the benefits and burdens that arise when individuals with competing self- and group interests find themselves having to work together under common rules in order to best achieve their aims (Rawls 1999a, p.4). And, of course, it is these common rules -- as specified by the major institutions that these individuals share -- that will play the primary role in determining how these benefits and burdens are distributed (Rawls 1999a, p.6; 2001, p.10; 1996, p.258).

The companion idea of 'free and equal citizens' is an egalitarian ideal of fully cooperating members of society that is implicit in the public political cultures of the type of democratic societies to whom I am, in the first instance, addressing my substantive arguments. This ideal ascribes to fully cooperating members of society two moral powers: first, 'the capacity to understand, to apply, and to act from (and not merely in accordance with) principles... that specify the fair terms of cooperation' (Rawls 2001, pp.18–19; see also 1996, p.19); second, 'the capacity to form, to

basic justice guided by a political conception of justice (Rawls 1996, pp.219, 226, 248, 252, 444–45). Finally, the caveat 'provided there is sufficient assurance that others will likewise do so' follows from the motivational psychology that Rawls ascribes to free and equal citizens insofar as they are defined in the public political culture as fully cooperating members of society, about which I will say more in this chapter. The point worth noting here is that free and equal cooperating partners are understood to be motivated by reciprocity (i.e. 'something for something') rather than altruism or mutual advantage (Rawls 2001, pp.6, 76–77; 1996, pp.16–17; 1999a, p.433). I mention these passages here purely for the sake of identifying textual support for my rendering of Commitment 3. I will not attempt to defend Commitment 3 against common objections until the next chapter. A final point worth noting here is that, as I see it, all references to 'individuals' in these four conditions might refer to each individual person uniformly across all of their social roles, or to each individual person in only a subset of their social roles. I will expand upon this ambiguity in Chapter 5, section 5.5.

revise and rationally to pursue a conception of one's rational advantage or good' (Rawls 1996, p.19; see also 2001, p.19). As Joshua Cohen notes, this conception of citizens is egalitarian insofar as it closely matches Alexis de Tocqueville's observance that (white male) citizens in early America were not distinguished by rank or status, but were instead viewed as free equals engaged in social cooperation (J. Cohen 2003, pp.95–97; Rawls 1996, pp.302–3; Tocqueville 2003). Following the recent literature, I am inclined to refer to this basic Rawlsian commitment to viewing all fully cooperating members of society as having a free and equal basic status as a commitment to a form of social equality (Scheffler 2003; Anderson 1999; Miller 1997; Scanlon 1996; Wolff 1998; Young 1990). So, within Commitment 1, the idea of 'free and equal citizens' can be seen to play the role of specifying the type of social cooperation that I am primarily interested in: cooperation between agents with a free and equal status (i.e. social equals).

Commitment 2 defines the term 'principles of justice' as a specification of *fair* terms of cooperation, understood as applying to the common rules that play the primary role in determining how the benefits and burdens of social cooperation are distributed. Insofar as any set of common rules governing a system of cooperation will generate different distributions of the benefits and burdens that arise from that cooperation, the idea of cooperation includes within it the idea of the fair terms of cooperation (Rawls 1996, p.16; 2001, p.6). I contend that, for many, this seems like a natural use of the term 'justice', at least in the context of speaking about social justice. Those who disagree, perhaps thinking that justice applies in the first instance to individual actions, should feel free to replace the term 'justice' in what follows with their own preferred term.⁸ Commitment 2 also clarifies that principles of justice *for a democratic society* are a specification of fair terms for a particular type of cooperation, that between free and equal citizens (Rawls 1996, p.371; 2001, p.7).

Commitment 3 is the most complex of the three commitments. However, building on what has already been said, we can understand the four conditions that it lays out for a society to be a just democratic society as each being implied by either the requirement of 'justice', once it is understood as fair terms of cooperation, or the requirement of 'a democratic society', once it is understood as a society of free and equal citizens. To start with the simplest condition first, condition 2 is clearly required for a society to be just if we, for now, remove from it the caveat about

⁸ For instance, I am happy for the reader to go with G.A. Cohen's alternative suggestion of 'rules of regulation' (Cohen 2008, p.284), although I recognise that this concession, made here for the sake of brevity, potentially side-steps some important conceptual issues (see: (Valentini 2012a, p.658)).

principles being publicly known (I will come back to this caveat momentarily). Condition 4 is also required for a society to be just because, if no individuals in a society comply with or further just institutions, then (assuming the background justice of common rules requires ongoing maintenance ((Rawls 1996, p.267)) that society will not be just. Furthermore, the near-universality of condition 4 is required for a just society to also be a democratic society because, if we suppose that only an identifiable subgroup of individuals in a society is motivated to comply with and further just institutions, then the just society in question is not one of free and equal citizens, defined in terms of the two moral powers of fully cooperating members.

Along with condition 1, the previously mentioned caveat about principles being publicly known in condition 2 can be collectively referred to as publicity conditions (Rawls 1996, pp.66–68; 2001, pp.121–22). These are required for a society to be just because, if the common rules that determine the benefits and burdens of cooperation in a society are not known by any of its citizens due to ideology or false consciousness, then it is not a just society (Rawls 2001, pp.121–22; Rawls 1996, p.68, fn.21). Furthermore, the near-universality of these publicity conditions is required for a just society to be a democratic society because, if these common rules are only knowable or known by a subgroup of citizens in a just society, then it is not a society of free and equal citizens. Finally, condition 3 is required for a society to be just because, if no individuals in a society are able to understand and apply principles of justice to their institutions, then that society will not be just. Furthermore, the near-universality of condition 3 is required for a just society to be a democratic society because, if only a subgroup of individuals in a society are cognitively capable of understanding and applying principles of justice to their institutions, then it is not a society of free and equal citizens.

An important implication of Commitment 3 is that, from a broadly Rawlsian perspective, the appropriate way to justify certain principles of justice as specifying fair terms of cooperation for free and equal citizens is to show that they are fair terms of cooperation for the free and equal citizens of a suitably well-ordered society. This means that, in order to justify certain principles of justice for a democratic society, it is not sufficient for us to identify those principles that seem appropriate to regulate our major institutions under present ‘non-well-ordered’ conditions. If we were to understand our normative task in this way, then we would be liable to treat as fixed points our estimations that, as things stand, many of our fellow citizens do not have a normally effective sense of justice and do not appear to

be motivated to comply with and further just institutions, and these psychological shortcomings would then act as inappropriate constraints on the very content of the ideal of a just democratic society. As such, we should understand the task of comparing different possible principles of justice for a democratic society, along with the different social systems that might best instantiate them, as akin to comparing different possible well-ordered societies populated by free and equal citizens -- hence the second quote at the beginning of this chapter.

I recognise that Commitment 3 might, at this stage, seem controversial given my previously avowed argumentative strategy. In particular, it seems to require us to make rather optimistic assumptions about the moral and psychological capacities of democratic citizens. However, rather than aiming to quell these types of concerns here, I will tackle them at the appropriate point in the next chapter by clarifying the limits of my theoretical ambitions. In doing so, I aim to demonstrate that these commitments are indeed plausible, widely accepted, and widely acceptable; however, I shall also acknowledge that, for our purposes, they must be interpreted in light of the background assumption that individuals in a well-ordered society will have limited epistemic faculties. And, as we will see in later chapters, this epistemic assumption has significant implications for how we understand the relevant notion of a suitably well-ordered society. With that caveat in place, we now have a clear enough idea of what I mean when I say that I will be adopting a broadly Rawlsian perspective in this thesis. I will now move on to highlight and explain why this Rawlsian perspective is so prominent in the existing normative debates about political economy, and, in light of this fact, demonstrate the impact of my arguments upon this strand of the literature.

1.2. Rawls, Rawlsians, the 'Choice of Social System' and the Firm

To understand why there is such a prominent Rawlsian strand in the contemporary normative debates about political economy, it is important to note that, for a long time, Rawls's most influential work, *A Theory of Justice* (1971) (hereafter *Theory*), was interpreted by sympathisers and critics alike as a philosophical justification of an idealised version of the type of welfare-state capitalism that has prevailed in most affluent societies since the mid-twentieth century.⁹ To be specific, we can identify a first wave of secondary literature addressing Rawls's arguments on

⁹ O'Neill often prefaces his discussion of a property-owning democracy by noting this fact (2012, p.75; 2009, p.379).

political economy in *Theory* that was almost wholly unified in rejecting (or perhaps ignoring) his avowed conclusion that his principles of justice are agnostic between a private-property society and a socialist society (Rawls 1999a, p.xvi, 242, 248-49). As a result, with only one exception (to be detailed momentarily), the theorists in this first wave of literature all interpreted Rawls as providing a defence of welfare-state capitalism. We can usefully divide these theorists into two camps. On the one hand, there were those who supported Rawls's perceived defence of some form of capitalism (Connin 1985; Gutmann 1980, pp.126–28, 134–35; Hayek 1982, p.xiii). On the other, there were those who argued that only a socialist society could be just (Barry 1973, pp.156–57, 168; Clark & Gintis 1978, pp.311–14, 317–25; Daniels 1989, pp.280–81; Doppelt 1981; Macpherson 1978; Macpherson 1973; Nielsen 1980; Nielsen 1978, pp.196–200; Schweickart 1978; Wolff 1977, pp.195, 200).¹⁰

The one exception to these two capitalist and socialist camps in the first wave of literature was Arthur DiQuattro. He argued that the just private-property society Rawls sketches in *Theory* is not capitalist, and that, so understood, Rawls is not susceptible to the majority of the aforementioned socialist criticisms (DiQuattro 1986; DiQuattro 1983, pp.56–57, 66–69). DiQuattro's view was subsequently developed by Richard Krouse and Michael McPherson, who argued that Rawls's call for 'a property-owning democracy' should in fact be seen as something distinct from -- and more just than -- any form of capitalism. However, they ultimately concluded that the likely institutions of a Rawlsian property-owning democracy so understood would require supplementation by welfare state institutions in order to best realise his principles of justice (Krouse & McPherson 1988, pp.94–99).¹¹

Despite their moderation, Krouse and McPherson's arguments clearly influenced the radical and unexpected changes that Rawls made to his arguments on political economy in the final statement of his conception of justice in *Justice as Fairness: A Restatement* (2001) (hereafter *Restatement*).¹² In this work, Rawls completely rejects the dominant understanding of his work up to that point as a defence of some form of welfare-state capitalism. Instead, he distinguishes five types of social

¹⁰ This binary distinction is mine, but the above list of writers and the upcoming recognition of DiQuattro's unique status are taken from (Krouse & McPherson 1988, p.79, fn.1). For an informative discussion of how a Rawlsian might counter a number of these socialist criticisms, see (Buchanan 1982, pp.122–61).

¹¹ This followed a more general article on the 'choice of social system', in which Krouse and McPherson argued for a 'mixed-property regime' combining privately owned firms and worker-controlled co-operatives (Krouse & McPherson 1986).

¹² Rawls references their influence at (Rawls 2001, p.135, fn.2).

systems: '(1) *laissez-faire* capitalism; (2) welfare-state capitalism; (3) state socialism with a command economy; (4) property-owning democracy; and finally, (5) liberal (democratic) socialism' (Rawls 2001, p.136), noting that his 'ideal institutional description of [each] regime' refers to 'how it works when it is working well, that is, in accordance with its public aims and principles of design' (2001, p.137). Having set out this menu of institutional options, Rawls argues that regimes (1), (2) and (3) each violate both of his principles of justice, including the demand for the fair value of the political liberties, so only (4) a property-owning democracy or (5) a liberal socialist society could be fully just (2001, pp.137–8).¹³ Consistent with his earlier work, Rawls claims that his principles of justice are agnostic between the private-property option (a property-owning democracy) and the socialist option (liberal socialism).¹⁴ As such, existing societies should choose between these two alternatives based on their historical conditions, traditions of political thought and practice, institutions and social forces (2001, pp.114, 139; 1999a, p.xvi, 242, 248-9).

I will say more about the institutional features of Rawls's five types of social systems in the next section. The important point for now is that, as a result of Rawls's radical and unexpected institutional arguments in *Restatement*, a number of contemporary normative theorists who are broadly sympathetic to Rawls's overall approach to theorising about social justice have reasoned that this perspective has a valuable contribution to make to the resurgent normative debates about political economy, a contribution that was perhaps previously underappreciated. This has resulted in a number of positions being advanced in a second wave of literature regarding the type of social system that is best placed to realise broadly Rawlsian standards of social justice.

First, certain contemporary theorists, most notably Samuel Freeman (2013; 2007b, pp.199–243), but also to a lesser extent Thad Williamson (2009; 2012; 2015), defend Rawls's later institutional arguments more or less in their entirety. However,

¹³ In his later work, Rawls argues that one of the main shortcomings of *Theory* is that it failed to emphasise sufficiently the distinction between welfare-state capitalism and a property-owning democracy (2001, p.8 fn.7, 133 2, 139 5; 1999a, p.xiv). Moreover, in the Preface to the revised edition of *Theory* he argues that his specification of a just private-property society in this earlier work in fact refers to a property-owning democracy, as opposed to an ideal form of welfare-state capitalism (Rawls 1999a, p.xiv). Whether or not Rawls's position on this matter is best characterised in terms of change or continuity is not at stake in this thesis, but I conjecture that there is greater change than Rawls admits in his later work.

¹⁴ By the 'private-property' option, Rawls means a society that allows private ownership of productive property. Rawls elaborates his distinction between private-property societies and socialist societies at (Rawls 1999a, pp.241–2). As I note later in this section, not all theorists in the current debate accept this binary distinction (nor many of Rawls's other distinctions between types of institutional arrangements).

a larger number of contemporary theorists have raised concerns about Rawls's institutional conclusions in *Restatement*. First, there are those who argue that, properly understood, the institutions of the modern welfare state should be seen as an essential component of any social system if it is to realise a broadly Rawlsian conception of justice (Weale 2013; O'Neill 2012; O'Neill 2009; Schemmel 2015; Jackson 2012). Second, there are those who add to this that, on balance, welfare-state capitalism looks equally well, if not better, placed than the other types of social system that Rawls canvasses to realise a broadly Rawlsian conception of justice (Weale 2013; Schefczyk 2013; Vallier 2015). Third, there are those who argue that a liberal socialist economy looks better placed to realise a broadly Rawlsian conception of justice than the other types of economy that Rawls canvasses (Schemmel 2015; Schweickart 2012; Malleson 2014). Fourth, there are those who argue that something approaching *laissez-faire* capitalism looks best placed to realise a broadly Rawlsian conception of justice (Tomasi 2012; Shapiro 1995; Shapiro 2007; Lomasky 2005; Brennan 2007).

Of course, even this five-way distinction obscures a number of important differences between the theorists in each camp. In particular, matters are complicated by the fact that some of the theorists in each camp question Rawls's contrast between different types of social systems. Specifically, some question Rawls's contrast between welfare-state capitalism and a property-owning democracy (O'Neill 2012; O'Neill 2009; Weale 2013), while others question his contrast between a property-owning democracy and a liberal socialism (Freeman 2007b; Malleson 2014), and yet others seem to question his contrast between a property-owning democracy and *laissez-faire* capitalism (Tomasi 2014).

However, for the current purpose of situating my substantive argument about large firms, we can put these complications to one side. More important than these overt dividing lines that are generally taken to govern the contemporary Rawlsian 'choice of social system' debate is the fact that many theorists from across the abovementioned camps (plus a few others Rawlsian theorists with more isolated interests) have, in working out their positions, addressed Rawls's claim that questions about the organisation of firms 'call for careful examination [as] the long-run prospects of a constitutional regime might depend on them' (Rawls 2001, pp.178–9). We can usefully divide theorists into two broad camps in terms of how they address this more focused issue, relating them back to the above five groups as we go. First, there are those who defend a robust freedom of contract that

permits the large hierarchical firms we see in existing capitalist societies on the grounds that this best secures the individual liberties that should be protected by Rawls' first principle of justice (Lomasky 2005, pp.191–92; Shapiro 1995, pp.70–73; Tomasi 2012, pp.116–17) and maximises efficiency in a way that best serves his second principle of justice (Brennan 2007, p.293; Lomasky 2005, pp.191–92; Tomasi 2012, pp.234–36). These theorists all argue for something approaching *laissez-faire* capitalism at the level of social systems.

Second, a larger group of theorists argue that, for a social system to realise broadly Rawlsian principles of justice, its firms must have a less hierarchical structure than they do in existing capitalist societies. There are three notable cleavages cutting across this camp. First, although the majority of theorists in this group advocate less hierarchical firms on the grounds that this is required to realise a specific ideal of social equality in Rawls' second principle of justice (Arnold 2012, pp.113–14; Freeman 2013, pp.31–32; Freeman 2007b, pp.113, 134; Hsieh 2012, p.150; Malleson 2014, p.238; O'Neill 2012, pp.88–89; 2008, pp.48–52; Schemmel 2015, p.400; Schweickart 2012, pp.208–11),¹⁵ a smaller number argue that it is also likely to be required in order to realise the lexically prior fair value of the equal political liberties (O'Neill 2012, p.83; Schemmel 2015, pp.404–5; Malleson 2014, pp.233–34).¹⁶ Second, whereas some of these theorists gear their arguments towards the less hierarchical organisation of day-to-day tasks and relationships on the shop floor in firms (Arnold 2012, pp.106–8, 114, 116; Hsieh 2012, pp.155–6; Hsieh 2008, pp.91–3), others place more emphasis on democratic decision-making procedures within firms (Malleson 2014, pp.237–39; Schemmel 2015, pp.401, 404; Schweickart 2012, p.207) and still others indicate a sympathy towards both options (Freeman 2013, pp.23–4, 27; 2007b, pp.113, 126, 134, 220, 226–27, 229, 232; O'Neill 2012, p.89; 2008; Williamson 2009, p.47). Finally, whereas most theorists in this camp view less hierarchical firms as being compatible with the arrangements of a property-owning democracy (O'Neill 2012, pp.91–92; 2008, p.51; Freeman 2013, pp.23–24; 2007b, pp.113, 134, 220, 227; Malleson 2014, pp.243–44; Arnold 2012, p.116), others view it as part of the distinct arrangements of a liberal socialism (Schemmel 2015, p.404; Williamson 2015, pp.413–14; Schweickart 2012, pp.205–6). Hence, these theorists all argue for either a property-owning democracy, or a liberal socialism, or some mix of the two (although there are mixed views among

¹⁵ Thad Williamson makes a similar argument in different terms at (Williamson 2009, pp.438–9).

¹⁶ An exception to this distinction is Waheed Hussain (2012), who advocates less hierarchical firms on the grounds of stability. However, he still permits large firms, so, as we shall see, my arguments also apply to his vision of a just social system.

them as to whether these forms of organisation should be supplemented with the institutions of the welfare state).

Given these many differences between Rawlsians who have focused on the organisation of firms, it is striking that all of the abovementioned theorists appear to agree on one thing: they all either ignore (Arnold 2012; Freeman 2013; Freeman 2007b; O'Neill 2012; O'Neill 2008; Lomasky 2005; Shapiro 1995; Malleson 2014) or explicitly reject (Hsieh 2012, p.152; Schemmel 2015, pp.404–5; Williamson 2009, pp.445–46; Tomasi 2012, pp.251–54; Schweickart 2012, p.205) the idea that large firms pose a credible threat to the to the realisation of social justice. Rather, they seem to accept large firms without much question as a part of whichever type of social system they view as being best placed to realise a broadly Rawlsian set of principles of justice. Hence, if compelling, my substantive argument that the very existence of large firms poses a threat to the realisation of justice, via a threat to the realisation of political equality, should cause a number of Rawlsian theorists in the 'choice of social system' debate to examine more carefully how the types of social systems they advocate need to be modified.¹⁷ I will, of course, offer some suggestions in Chapter 7. But before going on to outline the subsequent chapters in more detail, it will be useful to explain why the methodological issue of how we should conceive of the choice between different types of social systems is such a divisive topic for Rawlsian contributors to the debates about political economy, as I will, of course, be tackling this issue from a broadly Rawlsian perspective.

1.3. The Terms of the 'Choice of Social System'

In order to understand the significance of the abovementioned methodological issue for Rawlsian contributors to the debates about political economy, we must first recognise the tight link between Rawls's normative evaluation of the five types of social systems that he distinguishes in *Restatement* and the way in which he defines each of them in terms of their 'public aims and principles of design'.

Of the five social systems that Rawls describes, three are private-property social systems: *laissez-faire* capitalism, welfare-state capitalism, and a property-owning democracy. Rawls equates the system of *laissez-faire* capitalism with what he calls

¹⁷ Nonetheless, I accept that my arguments may well be less compelling for those theorists in the first camp mentioned above insofar as they advocate a self-consciously revisionist understanding of Rawlsian political theory. As such, I view the theorists in the second camp as my primary audience of Rawlsian theorists.

in *Theory* the 'system of natural liberty' (Rawls 2001, p.137; 1999a, pp.57–63). As such, he defines it as a social system that is organised around the following public aims and principles of design:

- (1) 'it aims for economic efficiency or growth' (2001, p.137) to be achieved through the workings of a competitive market economy (1999a, p.57);
- (2) 'the initial distribution of assets [i.e. before entering the marketplace], that is ... income and wealth, and natural talents and abilities ... is regulated by the arrangements implicit in the conception of careers open to talents ... They require a formal equality of opportunity in that all have at least the same legal rights to all advantaged social positions' (1999a, p.62).

On the basis of this definition, Rawls argues that this type of social system rejects the fair value of the political liberties (2001, p.137), because it 'uses equality of opportunity as a way of releasing men's energies in the pursuit of economic prosperity and *political dominion*' [italics mine] (1999a, p.91). Similarly, he notes that insofar as a system of *laissez-faire* capitalism regulates the initial distribution of assets by a principle of *formal* equality of opportunity, it falls short of realising the more demanding standard of *fair* equality of opportunity included in his second principle of justice (2001, p.138). In sum, in a *laissez-faire* capitalist society, 'equality of opportunity means an equal chance to leave the less fortunate behind in the personal quest for influence and social position' (1999a, p.91).

Taking the same methodological approach, Rawls defines welfare-state capitalism as a social system that is organised around the following public aims and principles of design:

- (1) 'none should fall below a decent minimum standard of life, one in which their basic needs are met' (2001, p.139);
- (2) 'all should receive certain protections against accident and misfortune, for example unemployment compensation and medical care' (2001, p.139).

Thus defined, it is not entirely clear what relationship the system of welfare-state capitalism bears to other models of society that Rawls discusses elsewhere in his

corpus.¹⁸ Regardless, on the basis of this definition Rawls argues that welfare-state capitalism violates the fair value of the political liberties because it 'permits very large inequalities in the ownership of real property ... so that control of the economy and much of political life rests in few hands' (2001, p.138). In addition, 'while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed' (2001, p.138). Finally, 'although ... welfare provisions may be quite generous and guarantee a social minimum covering basic needs, a principle of reciprocity to regulate economic and social inequalities is not recognised' (2001, p.138).

In contrast, Rawls defines the third private-property social system, a property-owning democracy, as a system that has his principles of justice as its public aims and principles of design (2001, p.138). However, he provides few details of the central institutional features of this type of social system. It is clear that his notion of a property-owning democracy is heavily influenced by the work of the mid-twentieth century British economist James Meade (1964), from whom he borrows the term.¹⁹ But Meade uses the term in quite a broad sense to denote any type of private-property system where ownership of wealth is widely dispersed.²⁰ We can go some way beyond this by supplementing Rawls's remarks about a property-owning democracy in *Restatement* with his description of a just private-property society in *Theory*. Using this approach, the central features of Rawls's property-owning democracy appear to be:

- (1) 'the widespread ownership of productive assets and human capital ... at the beginning of each period' (2001, p.139);
- (2) 'inheritance and gift taxes that are implemented with a progressive principle at the beneficiary's end' (1999a, p.245);
- (3) 'the public funding of elections and restrictions on campaign contributions; the assurance of a more even access to public media; and certain regulations of freedom of speech and the press' (2001, p.149);

¹⁸ It appears similar to the 'system of liberal equality' in *Theory* (1999a, pp.63–65). But Freeman (2013, p.18; 2007b, pp.105, 191–92) has distinguished welfare-state capitalism from the 'system of liberal equality', and instead linked it to the system of restricted utilitarianism, as outlined in *Restatement* (and more briefly in *Theory*) (2001, p.120; 1999a, p.279). Yet Schefczyk (2013, p.194) has also distinguished it from the system of restricted utilitarianism. While Kerr (2013, p.74) argues that welfare-state capitalism is taken by Rawls to be the contemporary institutional expression of the 'liberalism of happiness', as outlined in his *Lectures on the History of Moral Philosophy* (2000) in contrast to the 'liberalism of freedom' that he associates with just regimes.

¹⁹ Rawls references Meade a number of times (Rawls 1999a, pp.241–2, fns.12–13).

²⁰ However, this understanding of the term can be contrasted with an overlapping conservative/classical liberal conception, see (Jackson 2012).

- (4) 'government tries to insure equal chances of education and culture for persons similarly endowed and motivated either by subsidising private schools or by establishing a public school system' (1999a, p.243);
- (5) 'a basic level of health-care provided to all' (2001, p.276).²¹

Rawls says considerably less about the two socialist social systems that he identifies than he does about the three private-property systems. He does not distinguish the public aims and principles of design of state socialism with a command economy, but merely notes that it is 'supervised by a one-party regime' and 'guided by a general economic plan adopted from the centre that makes little use of democratic procedures or of markets' (2001, p.138). As such, it violates the equal basic liberties, the fair value of the political liberties and, presumably, fair equality of opportunity (2001, p.138). In contrast, under a liberal socialism, 'in the same way that political power is shared among a number of democratic parties, economic power is dispersed among firms, as when, for example, a firm's direction and management is elected by, if not directly in the hands of, its own workforce' (2001, p.138). For Rawls, a social system arranged in this way has his principles of justice as its public aims and principles of design to the same extent that a property-owning democracy does. But he nevertheless spends the majority of his time focussing on the private-property option of a property-owning democracy on the grounds that 'this case is likely to better known' (1999a, p.242) to his primary audience, presumably in light of their historical conditions, traditions of political thought and practice, institutions and social forces.

The way in which Rawls presents his institutional arguments by way of a choice between the five above types of social systems, each purportedly characterised in terms of its public aims and principles of design, has led contemporary Rawlsians to raise methodological questions about how one should argue for institutional conclusions in normative theory from a broadly Rawlsian perspective. One such question, which is our primary methodological concern here, is whether Rawls has sent us down a blind alley by presenting us with a false 'all or nothing' choice between his five types of social systems, when there are in fact viable alternatives and recombinant possibilities. Indeed, a number of Rawlsian theorists in the contemporary 'choice of social system' debate take this view (Jackson 2012, pp.47–8; Krouse & McPherson 1988, pp.94–100; Malleson 2014, p.244; O'Neill 2012, p.92;

²¹ For a longer list of possible institutional features, see (Freeman 2007b, pp.226–31).

Weale 2013, p.53; Weithman 2013). In this regard, it is also worth noting that Meade explicitly viewed his notion of a property-owning democracy as a form of social arrangement that could, and should, be supplemented with other institutional arrangements, such as those typical of liberal socialist societies, in order to realise liberal egalitarian standards of justice (Meade 1964, pp.75, 94).²² A second question, which I will go on to argue is more closely related to the first question than one might think, is whether Rawls mischaracterises certain types of social systems, in terms of the public aims and principles of design that he ascribes to them. Again, a number of theorists make this charge against Rawls, most notably with his characterisation of welfare-state capitalism (O'Neill 2012, p.91; Schefczyk 2013, p.75; Schemmel 2015, pp.397–98, 405–6; Weale 2013, p.43; Weithman 2013).

The crucial point to emphasise at this stage is that this methodological debate among Rawlsians has important substantive implications. This is because the way in which a theorist answers the first question (which, I will argue, will heavily influence their answer to the second question) will, to a significant degree, determine the menu of options that they consider when it comes to offering substantive recommendations about the institutional features of the type of social system that is best placed to realise Rawlsian standards of justice. To elaborate, if one follows Rawls in thinking that the relevant 'choice of social system' must be an 'all or nothing' choice between the five types of social systems he provides, then one is methodologically precluding the possibility of salvaging subparts of existing social systems and recombining them with subparts of other existing social systems and subparts of hypothetical social systems in order to construct the most just social system. This will have the dual effect of restricting the range of institutional options that one deems available (as it will disallow a range of 'recombinant possibilities'), and making one less inclined to adopt a narrower focus on how principles of justice might constrain specific subparts of social systems, because the relevant choice will be understood as one between pre-defined wholes.

Due to these important substantive implications, **Part I** of the thesis will address these methodological questions at some length. Specifically, in **Chapter 2**, I will buttress the two abovementioned methodological criticisms of 'the choice of social

²² This concern is also intensified by the fact that many of the features of a property-owning democracy that Rawls does mention are those typically associated with modern welfare-state capitalist regimes: publicly funded universal education (Rawls 1999a, p.243) and healthcare (Rawls 2001, p.276), steep inheritance taxes (1999a, p.245), and restrictions on both political campaign contributions and access to the means of political communication (2001, p.149).

system' that Rawls presents us with in *Restatement* by showing how both aspects of Rawls's presentation of this choice rely upon an implausible and unattractive method of constructing ideal-types of existing social systems. It is implausible because it relies on three methodological assumptions that, when used to characterise *existing* social systems, are tied to a strongly idealist social philosophy; and unattractive because it sits in tension with the three broadly Rawlsian commitments that I outlined in section 1.1. Accordingly, I will conclude that Rawlsians should favour an alternative empirical method of constructing ideal-types of existing social systems that allows for a 'mix and match' approach to the use of ideal-types of social systems, and subparts thereof, when generating institutional recommendations.

However, I shall acknowledge that this answer to our main methodological question ('How should we conceive of the choice between different types of political economy or social system?') appears to raise another issue for the broadly Rawlsian perspective from which I am arguing. In short, I appear to endorse an ideal-type that is constructed using at least some of the three methodological assumptions that I accuse of being tied to a strongly idealist social philosophy, namely, a democratic society understood as 'a system of cooperation between free and equal citizens'. In recognition of this complication, I shall spend some time demonstrating that Rawlsians can coherently argue in favour of the empirical method to construct ideal-types of existing social systems, or subparts thereof, while continuing to employ some of the three abovementioned methodological commitments to construct both very abstract ideal-types of existing societies, and ideal-types of attractive hypothetical societies at various levels of abstraction. Having defended the coherence of my ideal-types methodology, I will clarify where this approach positions me in the various dimensions of the contemporary ideal/non-ideal theory debate, and defend this position from prominent objections by showing that it is well suited to my limited theoretical ambitions.

Part II of the thesis will use the methodological approach defended in Part I to make two fairly abstract theoretical arguments that will support my eventual answer to the substantive question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?' The first of these arguments, in **Chapter 3**, will focus on the grounds and role of a principle of political equality in a broadly Rawlsian conception of justice. I will argue that those who accept the abstract idea of a democratic

society as 'a system of cooperation between free and equal citizens', and who view principles of justice as having the role of publicly specifying the fair terms of such cooperation for a well-ordered society, should include the following principle of political equality within a principle of justice that enjoys lexical priority over whatever principle of justice is taken to regulate social and economic inequalities: *each citizen must be guaranteed ongoing approximately equal and adequately positive opportunities to influence policy outcomes*. I will reach this conclusion by developing and defending what I refer to as the Rawlsian *status/self-respect argument* for political equality, which is a form of 'strains of commitment' argument made from the vantage point of a suitably modified original position. However, I will also argue that a distinct Rawlsian argument, which I shall refer to as the *epistemic argument*, can ground the priority of my principle of political equality understood as a principle of constitutional design.

The second fairly abstract theoretical argument that I will make in Part II of the thesis provides more concrete detail on the precise *meaning* of the principle of political equality that I defended in Chapter 3 by specifying some important constraints that it places on a well-ordered society's political decision-making process. Specifically, in **Chapter 4**, I will argue that, for a well-ordered society to realise my principle of political equality, its political decision making process must satisfy the following six principles of constitutional design: (a) *it has a liberal egalitarian voting rule (that satisfies the axiom of resolvability)*; (b) *it guarantees universal suffrage*; (c) *it ensures an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition*; (d) *it ensures, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech during pre-voting deliberation*; (e) *it ensures, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech during post-voting deliberation about implementation*; and (f) *it ensures, on an ongoing basis, adequately positive external resources for each citizen to access and consume political speech*.

In the main, I will argue for these constitutional conclusions by extending the *status/self-respect argument* for political equality. However, I will also sketch how the *epistemic argument* for political equality appears to support the very same principles of constitutional design. I will end Part II by observing that principles (a) and (b) have some fairly straightforward institutional implications for a society's

political constitution, whereas principles (c), (d) and (e) appear to place broader, and less obvious, constraints on the overall organisation of a society's political economy. Accordingly, a society well-ordered by (*inter alia*) my lexically prior principle of political equality will most likely require an economic constitution as well as a political constitution.

Part III of the thesis will use the methodological and theoretical arguments of Parts I and II to develop a particular answer to the substantive question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?' This will be achieved by pursuing the thought raised at the end of Part II about the economic implications of principles of constitutional design (c), (d) and (e) for a society that is well-ordered in a plausible sense. By pursuing this line of thought, I shall develop an answer to the above question in three stages.

First, in **Chapter 5**, I will examine the ways in which the likely activities of resource-rich firms might plausibly compromise principles of constitutional design (c), (d) and (e) in the circumstances of a capitalist democracy that is well-ordered by (*inter alia*) my principle of political equality. I will argue that each principle might plausibly be violated in two separate ways due to the likely (on the whole) profit-maximising political activities of the office-holders that resource-rich firms will bestow with resource power, thus amounting to six possible ways in which resource-rich firms might plausibly violate political equality. Towards the end of the chapter, I will defend the plausibility of each of these logical possibilities occurring in a suitably well-ordered capitalist democracy by highlighting two reasons why the parties to a Rawlsian constitutional convention ought to permit the possibility of a dimension of egoism in the politics of this type of society, at least as far as economic actors are concerned. This is significant because, so far, Rawlsians in the 'choice of social system' debate have tended to focus predominantly on the ways in which office-holders in capitalist firms might unintentionally use their structural power as controllers of capital to violate political equality in a well-ordered capitalist democracy. A crucial question that therefore arises is 'Are the main types of social systems proposed by theorists in the Rawlsian 'choice of social system' debate well placed to prevent resource-rich firms from violating political equality via their resource power?'

The second stage of my institutional argument in Part III will address this question and, in doing so, lead us to endorse a heretofore neglected answer to the question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?' To elaborate, in **Chapter 6**, I will argue that two of the main models of political economy that have so far been recommended by theorists in the Rawlsian 'choice of social system' debate -- namely, a property-owning democracy and liberal socialism -- appear to include large firms that might plausibly compromise my principle of political equality, even if both societies are well-ordered in a relevant sense. This is because there are a number of policy issues in each of these types of social systems in which large firms might plausibly solve a collective action problem for certain political interest groups, thereby furnishing these interest groups with considerable resource power. Moreover, these groups can often be expected to use this power to act in ways that might plausibly violate political equality in all six of the ways distinguished in Chapter 5. As such, I will conclude that large firms might plausibly compromise my principle of political equality in either a well-ordered property-owning democracy or a well-ordered liberal socialist society. This is significant insofar as we noted in section 1.2 that a striking feature of the contemporary Rawlsian 'choice of social system' debate is that all of the theorists who address the issue of the organisation of firms either ignore or explicitly reject the idea that large firms pose a credible threat to the realisation of justice.

In **Chapter 7**, I will summarise the overall argument of the thesis and recognise that, although the shape of a more satisfactory answer to the question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?' has begun to emerge insofar as we have isolated an overlooked threat to the realisation of justice posed by large firms, it is not yet clear what institutional strategies might best neutralise this threat. With this in mind, I shall complete the third and final stage of the institutional argument of Part III by offering some suggestions as to how Rawlsian theorists in the 'choice of social system' debate might usefully supplement their existing institutional recommendations in order to make them consistent with the realisation of political equality. To this end, I will focus predominantly, though not exclusively, on recovering for Rawlsian purposes an ideal-type of an economic system that, though currently neglected in progressive thought, has a rich history of support both in US political thought, from Jefferson through to the Populists and Wilsonian Progressives of the late nineteenth and early twentieth century (Zhicao

2015) as well as in the Ordoliberal tradition of European political thought, which reached its zenith in post-war Germany (Oswalt-Eucken 1994; Bonefeld 2012). I have in mind the ideal-type of a competitive order of small and medium sized independent producers.

I shall offer this ideal-type as a possible supplement to the models of political economy currently advocated by Rawlsian theorists in the 'choice of social system' debate, rather than as a competing ideal-typical social system that they must either prefer or reject in an 'all or nothing' way. This supplementary approach is made possible by the 'mix and match' ideal-types methodology that I shall defend in the next chapter.

PART I: METHODOLOGY

2. Ideal-Types, Idealism and Ideal Theory

2.1. Introduction

In the previous chapter I noted that, although some Rawlsian theorists in the contemporary 'choice of social system' debate loyally defend Rawls's institutional arguments in *Restatement* (e.g. Freeman 2013; 2007, pp.199–243), other Rawlsian theorists have raised questions about the terms of the choice of social system that he presents us with in this work from a methodological perspective. One such question, which is our primary methodological concern, is whether Rawls presents us with a false 'all or nothing' choice between his five types of social systems, even though there are viable alternatives and recombinant possibilities. A number of Rawlsian theorists in the contemporary 'choice of social system' debate take the latter view (Jackson 2012, pp.47–8; Krouse & McPherson 1988, pp.94–100; Malleson 2014, p.244; O'Neill 2012, p.92; Weale 2013, p.53; Weithman 2013). A second question, which I will argue in this chapter is more closely related to the first question than one might think, is whether Rawls mischaracterises certain types of social systems in terms of the public aims and principles of design that he ascribes to them. A number of theorists make this charge against Rawls, most notably with his characterisation of welfare-state capitalism (O'Neill 2012, p.91; Schefczyk 2013, p.75; Schemmel 2015, pp.397–98, 405–6; Weale 2013, p.43; Weithman 2013). I then noted that that this methodological debate among Rawlsians has important substantive implications. This is because the way in which a theorist answers the first question (which, I will argue, will heavily influence their answer to the second question) will, to a significant degree, determine the menu of options that they consider when it comes to offering substantive recommendations about the institutional features of the type of social system that is best placed to realise Rawlsian standards of justice.

For this reason, I will use this chapter to address the methodological question 'How should we conceive of the choice between different types of political economy or social system?' at some length. With this as my focal point, I have three main aims: one critical, one constructive and one elucidatory. My critical aim, the pursuit of which makes up the bulk of the chapter, is to buttress the two abovementioned methodological criticisms of the choice of social system that Rawls presents us with in *Restatement* by showing how both aspects of Rawls's presentation of this choice rely upon an implausible and unattractive method of constructing ideal-types of

existing social systems. It is implausible because it relies on three methodological assumptions that, when used to characterise *existing* social systems, are tied to a strongly idealist social philosophy; and unattractive because it sits in tension with the three commitments underpinning the broadly Rawlsian perspective that I outlined in Chapter 1. As a result, I aim to show that Rawlsians should prefer the alternative empirical methods that are used to construct ideal-types of social systems in contemporary political science for the purpose of characterising *existing* social systems. This not only undermines Rawls's characterisation of welfare-state capitalism, but -- more importantly for our purposes -- allows for a more piecemeal approach to specifying the institutional arrangements of a just social system, which includes the options of salvaging subparts of existing social systems and recombining them with subparts of other existing and hypothetical social systems.

However, this answer to our main methodological question ('How should we conceive of the choice between different types of political economy or social system?') raises another issue for the broadly Rawlsian perspective from which I am arguing. In short, the approach that I outlined in Chapter 1 seems to begin by endorsing what looks like a very abstract ideal-type of a democratic society as a 'system of cooperation between free and equal citizens', and then proceeds to specify at various levels of abstraction ideal-types of a society that is 'well-ordered' by principles of justice appropriate for such a democratic society. Yet these different ideal-types appear to be constructed using at least some of the three methodological assumptions that I accuse of being tied to a strongly idealist social philosophy. Hence, my more constructive aim in this chapter is to show how Rawlsians can coherently argue in favour of the empirical method to construct ideal-types of existing social systems, or subparts thereof, while continuing to employ some of the three abovementioned methodological commitments to construct both very abstract ideal-types of existing societies, and ideal-types of attractive hypothetical societies at various levels of abstraction. This will clarify the coherence of my overall argumentative strategy in the thesis, which can be understood as employing these different types of ideal-types at different times, for different purposes.

Having defended the coherence of my approach, my final aim is to elucidate where this argumentative strategy, which of course stems from the three Rawlsian commitments that I affirmed in Chapter 1, positions me in the various dimensions of the contemporary ideal/non-ideal theory debate. I will then defend this position from

some of the more obvious objections raised in this debate by showing that it is well suited to my limited theoretical ambitions.

I will argue to these three conclusions as follows: in section two, I will offer a general overview of the concept of an ideal-type with reference to the work of Max Weber, highlighting some ambiguities in the way this concept has been understood, yet noting its general suitability for the Rawlsian 'choice of social system' debate. In section three, I will begin the critical portion of the chapter by developing the case that Rawls's institutional arguments in *Restatement* rely on characterising social systems via a set of ideal-types that are generated using three methodological assumptions that, when used to characterise *existing* social systems, are tied to a strongly idealist social philosophy. In contrast, the majority of contemporary Rawlsian theorists who at least partially reject Rawls's later institutional conclusions rely upon ideal-types of existing social systems that are generated using the empirical methods of mainstream contemporary political science, which either reject or significantly weaken the three abovementioned methodological assumptions. I predict that, once these implications are made clear, many Rawlsians will feel intuitively uneasy about relying on the strongly idealist approach due to its general implausibility.

However, in section four I will offer a second argument, this time of a normative variety, to Rawlsians who remain unconvinced. I will argue that using the three abovementioned methodological assumptions to generate ideal-types of existing social systems has implications that conflict with the spirit of the broadly Rawlsian commitments that I outlined in Chapter 1. Specifically, this approach seems to methodologically preclude the possibility of a just social system being implemented in a democratic manner. Hence, I conclude that the arguments in sections three and four buttress the existing methodological criticisms of the choice of social system that Rawls presents us with in *Restatement* and, in doing so, not only undermine Rawls's characterisation of welfare-state capitalism, but, more importantly, justify a more piecemeal approach to specifying the institutional arrangements of a just social system.

In section five, I begin the more constructive portion of the chapter. First, I will draw a distinction between ideal-types that have a *descriptive* purpose and ideal-types that have a *normative* purpose. I will then draw attention to a scale of abstraction within each category, ranging from very abstract ideal-types of whole societies

(such as a 'system of cooperation between free and equal citizens') to more concrete ideal-types that specify institutional arrangements (such as specific characterisations of the welfare state). Finally, I will use this conceptual framework to argue that Rawlsians can coherently rely on the empirical method to construct *descriptive* ideal-types of social systems at the concrete level of institutional arrangements, while continuing to employ something approaching the more idealist method to construct both very abstract *descriptive* ideal-types of whole societies, and hypothetical *normative* ideal-types at either a more abstract or a more concrete level. Section six will then examine where my overall argumentative strategy positions me in the various dimensions of the contemporary ideal/non-ideal theory debate, and defend this position from some prominent objections, while section seven concludes.

2.2. Weber, Ideal-Types and the Rawlsian 'Choice of Social System'

To begin, it will be helpful to provide a general overview of the concept of an ideal-type, its roles in social analysis and its connection with the contemporary Rawlsian 'choice of social system' debate. The first two of these topics have spawned vast secondary literatures within which there is little agreement on specifics. However, it is fair to say that the use of ideal-types in social analysis is most commonly associated with Max Weber and his *locus classicus* on the topic, *Economy and Society* (1922). In this work, Weber makes two well-known arguments: first, he argues that the social sciences should 'seek interpretive understanding of social actions, and thereby causally explain their course and effects' (Weber 2004a, p.311); second, he argues that this is to be achieved by the careful use of 'ideal-types' (2004a, p.313; 2004b, pp.387–90).

Weber's first argument is proposed as a corrective to the positivist view of the social sciences, which sees them as being broadly continuous with the natural sciences. In short, the positivist social scientist understands social analysis in terms of impartially studying the brute data of behavioural regularities with the aim of uncovering general causal laws that govern human behaviour and can therefore be used to make reliable predictions across diverse contexts (Weber 2004b, pp.384–86). Against this view, Weber argues that in order to meaningfully understand a social phenomenon, such as a social practice or institution, the social scientist must provide an account of the intentions underlying the behaviour of the agents engaged

in that phenomenon. Put another way, social analysis must focus on social *actions*, not merely social *behaviour* (Weber 2004a, pp.311, 315, 326).

This is where Weber's second argument about ideal-types enters the picture. For Weber, the key to achieving the aim described above is to provide simplified accounts of the *types* of intentions that can plausibly be supposed to underlie (or have 'elective affinities'²³ with) certain *types* of regularities of behaviour (Weber 2004a, pp.311–16). In short, social scientists should begin their theorising by selecting certain regularities of behaviour, an explanation of which they think is 'culturally significant' (Weber 2004b, pp.377–79) and then, in order to provide such an explanation, they should construct one or more ideal-types that meaningfully explain significant dimensions of this social phenomenon by ascribing certain aims to the agents participating in it, the rational pursuit of which seems to offer the best explanation of a significant dimension of their behaviour (2004a, pp.313, 315–16).

This is as far as we can go without straying into a number of contentious debates in the secondary literature on ideal-types. These disputes tend to arise from either ambiguities in Weber's methodological writings or from tensions between his avowed methodology and the method that he seems to employ in his practical work. It is worth highlighting one of these disputes at this point, which amounts to a disagreement over the extent to which Weber's proposed method of conducting social analysis via ideal-types differs from an idealist approach to social analysis. In his methodological writings, Weber states that, inasmuch as he is keen to avoid the 'naturalistic prejudice' of positivist social science, he is also keen to avoid the opposite mistake of idealist social scientists who understand social analysis in terms of articulating the precise ideas that are in the heads of particular agents engaged in a particular social phenomenon (Weber 2004b, pp.391–93). This idealist approach replaces the positivist's universal laws with interpretive explanations that are so particularistic that they cannot play a predictive role (Weber 2004a, pp.324–25, 332). As such, in his methodological writings at least, Weber presents his approach as a middle way between positivism and idealism: it can account for the important role of ideas in social life whilst also allowing for the construction of general theories that are open, in some form, to empirical assessment (Weber 2004b, pp.397–98, 402–3; Weber 2004a, pp.316–18).

²³ For a list of the instances of the term 'elective affinity' in Weber's writings, see (Howe 1978, p.367).

Weber also emphasises a common feature of the positivist and idealist approaches that his method of conducting social analysis via ideal-types rejects. Both the positivist and the idealist social scientist view their social explanations as being constructed using concepts that are 'objective' in the sense that there is a direct correspondence between these concepts and the elements of social reality that they depict (Weber 2004b, p.391). However, an ideal-type as Weber understands it (in his methodological writings) does not lay a claim to objectivity in this strong sense of a direct correspondence between the concept it provides and the social reality to which it is intended to apply. Rather, any given ideal-type inevitably imposes a somewhat artificial conceptual order upon an otherwise unmanageably complex social reality, based on the theorist's interpretive insights. As such, any given ideal-type can only be defended in terms of the overall power of the wider explanatory theory, or theories, that can be built upon it, both in terms of the illumination they provide and their predictive power (Weber 2004b, pp.397–98, 402–3). This view comes through most clearly when Weber explains that each time a social scientist constructs an ideal-type, they

'bring together certain relationships and events of social life into an internally coherent *conceptual* cosmos. This construction has the substantive character of a *utopia* arrived at by the conceptual accentuation of particular elements of reality. Its sole relation to the empirically given facts of life is where the relationships there presented abstractly ... can be *identified* or *supposed* as existing in reality; and we are therefore able to make the characteristic features of this relationship pragmatically *lucid* and understandable in terms of an *ideal-type*. This procedure can be of value, even indispensable, heuristically as well as in exposition. The concept of the ideal-type can direct judgement in matters of imputation; it is not a "hypothesis", but seeks to guide the formation of hypotheses. It is not a *representation* of the real, but seeks to provide representation with unambiguous means of expression' [*italics in original*] (Weber 2004b, p.387).

A number of contemporary social scientists are, either explicitly or implicitly, sympathetic to Weber's methodological approach as he presents it in his methodological writings, and utilise this method in their practical work (e.g. Aronovitch 2011; Fishman 2011; Esping-Andersen 1990; Amable 2003; Goodin et al. 1999; Hall & Soskice 2001). However, despite the above remarks to the contrary, other contemporary theorists view Weber's method of social analysis via ideal-types, particularly as he uses it in his practical work, as being more continuous with the idealist tradition of social analysis flowing through the work of Aristotle, Hegel and the later Wittgenstein, and they often present their own work as continuing in

this Weberian tradition (e.g. MacIntyre 1971, pp.277–78; Macrae 1974, pp.8, 63; Rekling 2001, pp.158–62; Taylor 1971, pp.13–14; Gunnell 2007).²⁴

Now that we have at least a general idea of what an ideal-type is and its roles in social analysis, it should be clear why a number of theorists have identified the five social systems that Rawls distinguishes in *Restatement* in terms of their respective 'public aims and principles of design' as *ideal-types* of social systems (O'Neill 2012, p.92; Weithman 2013; Weale 2013, pp.43–44). As Christian Schemmel notes, insofar as a Rawlsian approach to normative theory aims to evaluate the 'basic structure' of society, it must inevitably engage with different institutional possibilities at something like the abstract level of ideal-types of whole social systems (Schemmel 2015, p.396). Furthermore, the way in which, contra-positivism, an ideal-typical approach to social analysis acknowledges the centrality of the intentional aspect of institutional life has a clear affinity with the broadly Rawlsian concern with the effects of the publicity of common institutional rules in a democratic society (Rawls 1996, pp.66–68; 2001, pp.121–22). However, given the ambiguities in Weber's writings on ideal-types and the remaining divisions in the secondary literature, it is perhaps unsurprising that different Rawlsian theorists in 'the choice of social system' debate draw upon ideal-types of social systems that are generated using different methodological assumptions.

2.3. Idealist vs. Empirical Ideal-Types of Existing Social Systems in the 'Choice of Social System' Debate: The Implausibility Case Against the Former

My central contention in this section is that the different institutional conclusions that various Rawlsians come to in the 'choice of social system' debate diverge largely because they utilise different methods to generate ideal-types of social systems. Specifically, I will argue that Rawls's institutional conclusions in *Restatement* are only plausible if we follow him, and those contemporary theorists who loyally defend him, in characterising social systems via a set of ideal-types that are generated

²⁴ The ordoliberal economist Walter Eucken, who will become important in Chapter 7, offers a more nuanced criticism of Weber's position. Like Weber in his methodological writings, Eucken argues that 'pure' ideal-types can be generated by a process of abstraction from social reality, and that these ideal-types can then be used to construct general theories while respecting the fact that an 'unlimited variety of actual economic systems can be made up out of a limited number of basic pure forms' (Eucken 1950, p.109). However, Eucken argues that Weber strays into an idealist approach to social analysis in his practical work insofar as he views different 'pure' ideal-types as being tied to particular phases of history, rather than as the basis of a universally applicable social theory (Eucken 1950, pp.348–50). In my view, we can largely reconcile Eucken and Weber's approaches by recognising that they each affirm what I will later term an 'empirical method' to construct 'descriptive' ideal-types, yet they often work at different levels on what I will later term 'the ladder of abstraction' (specifically, in some of his practical work, Weber drops down a few rungs below Eucken).

using three methodological assumptions that, when used to characterise existing social systems, are tied to a strongly idealist social philosophy. However, an alternative set of institutional conclusions, including those proposed by many contemporary Rawlsian theorists who defect from Rawls's conclusions, become more plausible if we follow these theorists in characterising social systems via a set of ideal-types that are generated using the alternative, more empirical methods typical of mainstream political science. I predict that, once these implications are made clear, many Rawlsians will feel intuitively uneasy about relying on the strongly idealist approach due to its general implausibility.

2.3.1. Rawls, Rawlsian Loyalists and Idealist Ideal-Types of Social Systems

In my view, Rawls's institutional conclusions in *Restatement* rely on characterising social systems via a set of ideal-types that are generated using three assumptions that, when used to characterise existing social systems, are tied to an idealist social philosophy reminiscent of Aristotle, Hegel and the later Wittgenstein. Moreover, the same can be said of the principal contemporary defender of Rawls's later institutional arguments, or 'Rawlsian Loyalist', Samuel Freeman. I shall refer to the three methodological assumptions that these theorists rely on to generate ideal-types of social systems as *institutional system holism*, *coherent moralism* and *intuitive comprehension*.

Beginning with *institutional system holism*, Albert Weale and Martin O'Neill both pick out a significant feature of Rawls's method of generating ideal-types of social systems by noting that he seems to view each ideal-typical social system in *Restatement* as a closed practice with a high degree of internal unity (Weale 2013, p.43; O'Neill 2012, p.92). As Weale notes, Rawls seems to understand each social system as a set of *internally related* institutions that together amount to a social practice or 'form of life'. Using this approach, Rawls is said to define welfare-state capitalism as 'a form of social life combining the principles of minimum welfare and inequality of wealth, the combination of which undermine political equality' (Weale 2013, p.43). The plausible insight of these theorists is that Rawls seems to assume that the different institutions within each of his types of social system are conceptually, rather than contingently, connected. As such, we can say that Rawls's method of generating ideal-types of existing social systems assumes an *institutional-system holism* that is typical of certain strands of Hegel- and

Wittgenstein-inspired idealist social philosophy (e.g. MacIntyre, 1971, pp. 262, 266; Taylor, 1971, pp. 6, 13, 27–29).

Moving on to *coherent moralism*, Weithman (2013) notes that Rawls seems to provide a 'conjunctive definition' of each type of social system in *Restatement*, where one conjunct is the conception of justice that its ongoing activities are intended to realise, and the other conjunct is a highly abstract description of the main organisational strategies that it employs to realise these moral aims. However, this still leaves the question of how Rawls intends these idealised descriptions to relate to the variety of real-world social systems. Weithman's answer, which again seems plausible, is that Rawls's descriptions of *laissez-faire* capitalism, welfare-state capitalism, state socialism and liberal socialism are intended to be what he refers to as 'Weberian ideal-types' of existing or previously existing social systems, respectively: 'Gilded Age capitalism, contemporary welfare capitalism, 20th century Euro-communism and 21st century Chinese communism, and European socialism' (Weithman 2013).²⁵ Yet, Weithman goes on to say, in contrast with the other social systems he picks out, Rawls is best understood as using 'a property-owning democracy' as 'a term or art ... that is, he simply stipulates that the term will denote a set of [private-property] economic institutions, which he singles out because he believes they will realise the aims of justice as fairness' (Weithman 2013). For our purposes, the important point to take away from Weithman's analysis is that Rawls seems to define both possible and existing social systems as necessarily aiming towards a coherent conception of justice. As such, it appears that his method of generating ideal-types of existing social systems assumes a *coherent moralism* that, again, is typical of certain strands of Aristotle- and Hegel-inspired social philosophy (e.g. MacIntyre 1971, p.277; Taylor 1971, pp.39, 42–3).²⁶

This brings us to the final methodological assumption of *intuitive comprehension*. Notably, Rawls does not refer to any cases of existing social systems when he generates his ideal-types of them. Rather, he appears to comprehend the 'public aims' of each existing type of social system in an intuitive manner.²⁷ This, of course,

²⁵ Clearly Weithman presupposes an interpretation of Weber's method here. As will become clear, I am sympathetic to Weithman's overall criticism of Rawls's method in *Restatement*, but remain agnostic on how best to characterise Weber's methodological position.

²⁶ This *coherent moralism* assumption goes beyond the *institutional-system holism* assumption insofar as one could consistently hold the latter assumption about social systems while maintaining that any given social system might be best understood as a functionally stable mixture of institutions that aim towards contradictory conceptions of justice.

²⁷ I am here following Winch's use of the term 'intuitive' (Winch 1958, pp.8–9, 15–18).

makes perfect sense if Rawls is applying to existing social systems the Wittgensteinian approach to social philosophy that reached its apex in the work of Peter Winch (1958). On this view, all intentional action is understood to be meaningful in light of publicly known rules that constitute the "language game" of which it is a part. As such, social practices, which in Rawls's case appear to include entire social systems, can be considered analogous to a game of chess: they are each constituted by certain rules that participants orient their actions towards, and these rules are *publicly* accessible to anyone who conceptually analyses the practice from what H.L.A. Hart later referred to as the 'internal point of view' (Hart 1961, p.89), even if the participants are only dimly aware of them (Winch 1958, pp.24–33, 45–51).²⁸ Moreover, these constitutive rules must have normative weight for at least some participants (Winch 1958, pp.32, 57–62). So Rawls's intuitive approach to generating ideal-types of existing social systems is once again reminiscent of a strand of strongly Wittgensteinian idealist social philosophy.

The idea that Rawls's method of generating ideal-types of existing social systems in *Restatement* exhibits three assumptions typical of a strongly idealist social philosophy is rendered more plausible by the fact that there are significant idealist themes spanning across Rawls's wider work.²⁹ Moreover, there is evidence to suggest that the principal Rawlsian Loyalist, Freeman, carries over Rawls's idealist assumptions when he defends Rawls's ideal-types and institutional conclusions in *Restatement*. First, Freeman specifically highlights Hegel's influence on Rawls's approach to characterising social systems (Freeman 2007a, pp.103–4), and,

²⁸ As Gunnell notes, this approach has the advantage of eliminating the well-known problem of other minds when it comes to social interpretation (Gunnell 2007, pp.80–81).

²⁹ For instance, beginning with Rawls's early work, Weale (2013, p.43) notes that there are passages in *Two Concepts of Rules* (1955, p.5) and *Justice as Fairness* (1958, p.164) that indicate a Wittgensteinian understanding of social institutions. Moving on to *Theory*, Proudfoot (1974, p.114) notes that Rawls' definition of a society that realises his principles of justice as a 'social union of social unions' (Rawls 1999a, p.462) is very similar to the Hegelian idealist philosopher Josiah Royce's concept of the highest good as a communal ethos of 'loyalty to loyalty', and Weale (2013, p.43) also notes other passages where Rawls draws upon Royce's ideas (Rawls 1999a, pp.351, 358). In *Theory*, Rawls also directly affirms Hart's view of how best to conceptualise social institutions (Rawls 1999a, p.48, fn.1), and although Lacey has since uncovered evidence that Hart's views were as much influenced by Weber as Wittgenstein (Lacey, 2004, pp. 230-31), this settles little as there are ways to understand Weber as being very close to Wittgenstein (Gunnell 2007). Moving on to *Political Liberalism*, there is a strong idealist flavour to Rawls's discussion of public reason where he characterises the USA as a society that has developed over time in accordance with a certain background moral conception, consisting of the political values affirmed in 'higher law' by 'We the People' in their founding moment (Rawls 1996, p.231). More strikingly, in *Restatement* Rawls argues that one of the four principal roles of political philosophy is to achieve Hegel's notion of 'reconciliation' (Rawls 2001, p.3). Finally, Schwarzenbach (1991) highlights a number of similarities between the central ideas spanning across Rawls's and Hegel's works, and Alejandro (1993) emphasises a prominent communitarian strand in Rawls's work.

second, his affirmation of this idealist approach comes through when he later defends Rawls's ideal-type of welfare-state capitalism in the following terms:

'Rawls' contrast between POD [property-owning democracy] and WSC [welfare-state capitalism] is intended to compare the institutional embodiments of two different kinds of philosophical conceptions of justice ... justice as fairness with the difference principle, vs. restricted utilitarianism' (Freeman 2013, p.18).³⁰

Once we understand Rawls and Rawlsian Loyalists as relying on this idealist method of generating ideal-types of existing social systems, then we can see why they define social systems, such as welfare-state capitalism, in terms of an overarching restricted utilitarian conception of justice (*coherent moralism* and *intuitive comprehension*). More importantly for our purposes, it also becomes clear why Rawls and Rawlsian Loyalists see the relevant institutional question for a theorist of social justice as an 'all or nothing' choice between Rawls's five types of social system (*institutional-system holism* and *coherent moralism*).

2.3.2. Rawlsian Defectors and Empirical Ideal-Types of Social Systems

As I noted in section two, many contemporary Weber scholars would view the idealist method of generating ideal-types of existing social systems described above as a continuation of Weber's approach to social analysis. However, a number of political scientists who view themselves as continuing in Weber's tradition generate ideal-types of existing social systems using alternative, more empirical methods that either reject or significantly weaken the methodological assumptions of *institutional-system holism*, *intuitive comprehension* and *coherent moralism*. Importantly, the majority of Rawlsian theorists who defect from Rawls's later institutional conclusions (hereafter: Rawlsian Defectors) rely on ideal-types of existing social systems that are generated using these more empirical methods. In what follows, I shall focus on Martin O'Neill (2012; 2009), Christian Schemmel (2015) and Weale (2013) as exemplar Rawlsian Defectors.

All three of these Rawlsian Defectors recognise that Rawls seems to be outlining and assessing 'ideal-types' of social systems in *Restatement*; however, they all

³⁰ The form of restricted utilitarianism that Rawls generally focuses on is a mixed conception of justice that affirms a lexically prior liberty principle, and a distributive principle that gives lexical priority to fair equality of opportunity, yet replaces the difference principle with an average utilitarianism constrained by a social minimum intended to ensure a decent human life (Rawls 2001, pp.120–30; Rawls 1999a, p.107).

argue that Rawls's ideal-type of welfare-state capitalism does not adequately describe the many real-world social systems commonly considered to be cases of this type (O'Neill 2012, pp.91–2; Schemmel 2015, pp.396–97; Weale 2013, pp.45–7). Moreover, they contend that, if we instead rely on the ideal-types of welfare-state capitalism proposed in mainstream contemporary political science, then it seems likely that some version of at least the modern welfare state institutions will be necessary for a modern society to realise Rawlsian principles of justice (O'Neill 2012, p.92; Schemmel 2015, pp.405–6; Weale 2013, p.53).

With this aim in mind, O'Neill and Schemmel specifically draw upon the influential ideal-types of welfare-state capitalism provided by the political scientist Gosta Esping-Andersen (1990). Esping-Andersen argues that existing welfare-state capitalist societies are best understood as conforming to the logic of one of three ideal-types -- liberal, continental, or universal -- that each use different institutional strategies to pursue, to different extents, the aim of de-commodifying certain goods, so people can enjoy them as a matter of right, rather than relying on market distribution. In doing so, each logic of organisation imposes a different stratification of social class (Esping-Andersen 1990, pp.21–26, 51, 77). On this basis, O'Neill and Schemmel argue that, whereas Rawls's normatively unattractive ideal-type of welfare-state capitalism provides a reasonable characterisation of the welfare state institutions of *liberal* welfare-state capitalism, the welfare state institutions of *universal* welfare-state capitalism are most likely required for a modern society to realise Rawlsian principles of justice (O'Neill 2012, p.92; Schemmel 2015, p.406).

For our purposes, the important point to note is that Esping-Andersen's work moves towards an alternative, more empirical understanding of how to pursue the Weberian project of conducting social analysis via ideal-types, which sees this method as being at odds with some of the central assumptions of idealist social philosophy (Fishman 2011, pp.267–68). First, rather than relying on *intuitive comprehension*, Esping-Andersen begins with a large amount of statistical data about the behavioural regularities across different existing social systems that are commonly referred to as 'welfare-state capitalist' and only then offers an interpretive history that hypothesises the likely intentions of the different social groups involved in creating and maintaining these regularities of behaviour (Esping-Andersen 1990, pp.29–32, 47–54, 69–78). Moreover, this is not achieved by trying to understand each social system, or type of social system, from the outset in terms of its coherent background conception of justice. Rather, any given social system, or type of social

system, might include institutions (or bundles thereof) that are best understood as aiming towards contradictory moral aims due to historical compromises between different social groups with different moral aims (Esping-Andersen 1990, pp.26–9). Put another way, the idealist methodological assumption of *coherent moralism* is rejected -- a coherent moralist explanation of an existing social system is something that might be discovered, but should not be assumed.

Nonetheless, it seems that there is still a strain of *institutional-system holism* lurking in Esping-Andersen's ideal-types of social systems. Specifically, Esping-Andersen somewhat controversially maintains that most existing welfare-state capitalist societies can be seen to fall fairly neatly into one of his three distinct ideal-typical categories, within which, roughly speaking, more egalitarian variants of welfare state and economic institutions appear together, as do less egalitarian variants (cf. Arts & Gelissen 2002). As such, although for Esping-Andersen the different institutional components of real-world welfare-state capitalist social systems might aim towards contradictory conceptions of justice, they are still best understood as operating together as a functional whole (universal, continental or liberal) that is only available, in the long-run, as an 'all or nothing' package deal. This weak brand of *institutional-system holism* appears to have a residual impact upon the institutional conclusions drawn by O'Neill and Schemmel. Admittedly, both theorists depart from Esping-Andersen's writing insofar as they ultimately call for a combination of welfare-state institutions and alternative, largely hypothetical, economic institutions to those found alongside these welfare-state institutions in existing societies. However, they both seem to retain the idea that the welfare state institutions purportedly found together in universal welfare-state capitalist societies should all be adopted as a coherent package if Rawls's principles of justice are to be realised (O'Neill 2012, pp.91–3; Schemmel 2015, pp.405–6).

Weale appears to go one step further by relying on an ideal-type of the welfare state that not only rejects the assumptions of *coherent moralism* and *intuitive comprehension* but also further weakens the assumption of *institutional-system holism*. Specifically, Weale draws upon the conclusions of the political scientists Nicholas Barr (2001), Jane Falkingham and John Hills (1995), and Theodore Marmor, Jerry Mashaw and Philip Harvey (1990) to offer an ideal-type of modern welfare state institutions as 'together ensuring economic and social security against the contingencies of life for citizens who can otherwise fend for themselves, through systems of shared savings that collectivise risks by redistributing horizontally across

the life-cycle' (Weale 2013, pp.45–47).³¹ All of these political scientists use a similar data-driven method to Esping-Andersen, but rather than generating a set of ideal-types that purport to capture the different logics of various existing social systems in their entirety, they instead generate a more abstract ideal-type of one subpart of the institutional arrangements of the societies they study that appears to be meaningfully similar across contexts. The important point for our purposes is that, on this approach to ideal-typical analysis, the relationship between the institutions of the welfare state, as well as their relationship with the other political and economic institutions in a social system 'is an empirical one, dependent upon ... the political choices that citizens make' (Weale 2013, p.44). As such, the idealist methodological assumption of *institutional-system holism* is further weakened.

For the time being, what separates Rawlsian Defectors is less important than what they have in common. Specifically, once we recognise that these theorists rely on alternative methods of generating ideal-types of social systems that reject the idealist assumptions of *coherent moralism* and *intuitive comprehension*, then we can see why they also reject Rawls's definition of welfare-state capitalism, in terms of an overarching restricted utilitarian conception of justice. More importantly for our purposes, once we recognise that these theorists also reject, to varying degrees, the idealist assumption of *institutional-system holism*, then we can see why they also reject, to different extents, the idea that the relevant 'choice of social system' is an 'all or nothing' choice between the five ideal-types that Rawls specifies. Rather, these theorists, along with others who defect from Rawls's institutional conclusions in *Restatement*, tend to present their institutional conclusions in terms of 'recombinant possibilities' that mix elements from across Rawls's ideal-types, sometimes combined with other novel institutional strategies not yet realised in any real-world social systems (Jackson 2012, pp.47–48; Krouse & McPherson 1988, pp.94–100; Malleson 2014; Weale 2013, p.47; O'Neill 2012, p.92; Schemmel 2015, pp.405–6).

Ostensibly, this section has merely offered an interpretation. I have argued that the way in which theorists in the Rawlsian 'choice of social system' debate characterise existing social systems and the way in which they understand the terms of the choice between possible social systems are more intimately connected than is at

³¹ For Weale, it is only those institutional features of the welfare state that play this horizontal redistributive role that look likely to be required for Rawls's principles of justice to be realised (Weale 2013, p.53).

first apparent. Specifically, the most plausible way to understand the different answers that theorists reach on these two issues is to view some of them as relying on ideal-types of existing social systems that are generated using methodological assumptions typical of a strongly idealist social philosophy, whereas others rely on ideal-types of existing social systems, or subparts thereof, that are generated using the empirical methods of mainstream contemporary political science. However, my hope is that, by clarifying the strongly idealist commitments that one must adopt in order to formulate a convincing defence of Rawls's 'all or nothing' answer to the question 'How should we conceive of the choice between different types of political economy or social system?', I will have persuaded many of the implausibility of this approach, while clearly demarcating a more plausible empirical methodology that is consistent with an alternative 'mix and match' answer. Nonetheless, I recognise the limits of this type of argument, which is why I will present a complementary normative argument in the next section.

2.4. The Normative Case Against Idealist Ideal-Types of Existing Social Systems in the 'Choice of Social System' Debate

An alternative conclusion that one might draw from the previous section is that, upon inspection, the Rawlsian 'choice of social system' debate appears to be at a methodological impasse. On the one side, Rawlsian Defectors propose their substantive conclusions on the grounds that the methodological assumptions that Rawls and Rawlsian Loyalists rely on to generate their ideal-types of social systems are implausible. On the other side, Rawls and Rawlsian Loyalists can simply respond that their methodological assumptions are plausible provided one is willing to adopt the core tenets of a strongly idealist social philosophy. If we take this view of proceedings, then we are led to the question 'Are there any grounds on which we can adjudicate between the idealist or the more empirical method of generating ideal-types of existing social systems for the purpose of contributing to the Rawlsian 'choice of social system' debate?' In this section I offer an answer in the affirmative. I will argue that the idealist method of generating ideal-types of existing social systems has implications that conflict with the spirit of the broadly Rawlsian commitments that I outlined in Chapter 1. As such, there is a Rawlsian normative perspective from which this methodological dispute can be settled in favour of the empirical method.

To elaborate, I contend that one cannot justify the idealist methodological assumption of *coherent moralism* when looking to describe existing social systems

without relying on assumptions about the moral reasoning of individuals in modern democratic societies that conflict with the idea that a Rawlsian theory of justice is 'for a democratic society' (Rawls 1999a, p.viii) in terms of the group of listeners that it is intended to address. As such, this approach seems to methodologically preclude the possibility of present unjust democratic societies transitioning to just institutional arrangements in a democratic manner, i.e. as a result of the collective will of free and equal citizens, rather than the will of a more enlightened or better-motivated elite. Admittedly, none of the three commitments that I set out under the auspices of 'a broadly Rawlsian perspective' in the introductory chapter directly require that present unjust democratic societies should transition to just institutional arrangements in a democratic manner. However, I expect that many of those who are attracted to the idea that a just democratic society must be a well-ordered society for the social egalitarian reasons that I set out in that chapter, and who view this as an attainable ideal, will also be concerned by methodological assumptions in normative theory that preclude the possibility of present unjust democratic societies transitioning to just institutional arrangements in a democratic manner. And, importantly, if the methodological assumption of *coherent moralism* is no longer viable for Rawlsians who want to retain this possibility, then the rationales for retaining the other idealist methodological assumptions of *institutional-system holism* or *intuitive comprehension* evaporate.

The basic reason why adhering to a methodological assumption of *coherent moralism* when generating ideal-types of existing social systems precludes the possibility of present unjust democratic societies transitioning to just institutional arrangements in a democratic manner is that, for a *coherent moralism* at the level of institutional arrangements to be plausible, one must assume either that the vast majority of individuals in modern democratic societies are intellectually incapable of reflectively affirming justifiable principles of justice, or that they lack the motivation to implement such principles of justice. Yet either assumption is inconsistent with the possibility of present unjust democratic societies transitioning to just institutional arrangements in a democratic manner.

To understand why the option of assuming that the vast majority of individuals in modern democratic societies are intellectually incapable of reflectively affirming justifiable principles of justice appears to be required, recall that the methodological assumption of *coherent moralism* is only plausible if one takes the idealist view that both hypothetical and real-world social systems necessarily aim towards a coherent

background conception of justice. But why might one think that the public aims and principles of design of *existing* social systems should be understood as each embodying a coherent conception of justice?

The most straightforward answer is that, using Rawls's terminology, existing societies should be understood as something close to 'well-ordered societies', i.e. societies that more or less satisfy the following four conditions:

- (1) nearly all individuals accept and know that everyone else accepts the same principles of justice;
- (2) the major institutions together satisfy, and are publicly known to satisfy, these principles;
- (3) nearly all individuals have a normally effective sense of justice that allows them to understand and apply the publicly recognised principles of justice;
- (4) nearly all individuals are motivated to comply with and further just institutions provided there is sufficient assurance that others will likewise do so.³²

Another way of putting this would be to say that we should understand existing social systems as achieving something close to a *full* reflective equilibrium regarding a specific conception of justice (Rawls 2001, p.31). But if this well-ordered society assumption is required to justify employing the methodological assumption of *coherent moralism* when generating ideal-types of existing social systems, then the methodological assumption of *coherent moralism* relies on an assumption that the vast majority of individuals in modern democratic societies are intellectually incapable of reflectively affirming justifiable principles of justice.

We can see why this is the case by utilising a distinction drawn by Bernard Williams (2005b) between the audience and the listeners of a piece of political theory. The audience is comprised of the people who are expected to read the piece of work, whereas the listeners are those addressed by the work. With this distinction in play, Williams argues that Rawls's audience is 'the concerned and well-disposed citizenry of a modern pluralist state' (2005b, p.57), but the listeners appear to be something closer to founding fathers, as 'the reader is being told how best he or she can start from the ground up, perhaps not in a state of nature, but at least having just got off the boat' (2005b, p.58). Building on Williams's argument, I propose that, if, as Rawls

³² For references in support of this characterisation of a 'well-ordered society', see footnote 7, p.11.

appears to suggest, welfare-state capitalist societies truly are best understood as 'well-ordered societies' in which nearly all individuals reflectively affirm a restricted utilitarian conception of justice, then although the citizens of this type of society can be expected to be the primary audience of Rawls's theory, they cannot also be his intended listeners.³³ Rather, in order for his alternative conception of justice as fairness to get any normative purchase, it must instead be addressed to a small dissenting elite who, like Rawls, are assumed to be more capable of enlightenment about the demands of justice than the vast majority of their fellow citizens. But once we start down this path, it is hard to see why a Rawlsian theory of justice can or should be addressed towards the well-disposed citizens of a democratic society, rather than simply towards a subset of philosopher-kings. As such, the well-ordered society assumption about existing unjust societies, which appears necessary to justify the methodological assumption of *coherent moralism*, implicitly assumes that the vast majority of individuals in modern democratic societies are intellectually incapable of reflectively affirming justifiable principles of justice, which methodologically precludes the possibility of present unjust democratic societies transitioning to just institutional arrangements in a democratic manner.

At this juncture one might reply that I have been too quick to argue that it is only plausible to employ the methodological assumption of *coherent moralism* when generating ideal-types of existing social systems if one also adopts the well-ordered society assumption about existing societies. Rather, one might draw a distinction between the first-order social practices of a society, such as the institutions of the basic structure, and its second-order ethical practices, which involve critically assessing its first-order social practices.³⁴ Utilising this distinction, one might argue that it is possible that the constitutive rules that make up the major institutional practices in a given society are best understood as aiming towards a coherent conception of justice; however, when citizens in this society engage in their ethical practices of critically assessing their social practices, there is, in fact, widespread and ever-changing disagreement over the principles of justice that *ought to* structure their institutions. This would allow one to maintain that existing types of social systems are best understood as conforming to a coherent conception of justice,

³³ The assumption that citizens of this type of society are Rawls's primary audience is based on the fact that he spends the majority of his time focussing on the institutions of a just private-property option on the grounds that 'this case is likely to better known' (Rawls 1999a, p.242) to his primary audience, presumably in light of their historical conditions, traditions of political thought and practice, institutions and social forces.

³⁴ To see how this type of distinction can be made consistent with a modified form of Wittgensteinianism, see (Williams 2005a, pp.35–37) and (Dworkin 1986, pp.62–64).

whilst allowing for widespread justice-disagreement at a reflective level within such societies. Put another way, it would show how employing the methodological assumption of *coherent moralism* when generating ideal-types of existing unjust social systems might be consistent with the possibility of these societies eventually transitioning to just institutional arrangements in a democratic manner.

However, as it stands, this line of reply only demonstrates the *logical possibility* that a type of social system might, at an institutional level, conform to a coherent conception of justice, whilst allowing for justice-disagreement between its citizens at a more reflective level. But demonstrating this mere logical possibility is not sufficient to ground a *methodological assumption* that existing social systems should be understood as aiming towards a coherent background conception of justice. On the contrary, it appears equally, if not more, plausible to suppose that, in societies with ethical practices within which there is widespread and ever-changing disagreement about how institutions should be organised, we should expect institutional practices to have developed in a messier way whereby different institutions conform to different conceptions of justice.

One might aim to bolster the above line of reply by adding the motivational assumption that, although on the whole most of the citizens of modern democratic societies reflectively disagree about conceptions of justice, such a large proportion of them are terminally uninterested in implementing their preferred conception of justice that the conception preferred by the minority who are interested in such matters will predominate. The addition of this motivational assumption would justify retaining the *coherent moralism* assumption for the purpose of understanding the first-order social practices of modern democratic societies while making room for widespread disagreements about justice within their second-order ethical practices. But, unfortunately, the addition of this motivational assumption methodologically precludes the possibility of present unjust democratic societies transitioning to just institutional arrangements in a democratic manner in a different way. Now the possibility is not precluded because we are assuming that only a small dissenting elite are capable of enlightenment about the demands of justice, but rather because we are assuming that, even though most citizens are capable of reflectively affirming these demands, only an elite are capable of being sufficiently motivated to implement them.

Overall, then, in order to justify the methodological assumption of *coherent moralism* when generating ideal-types of existing social systems one must adopt one of two other assumptions. First, one might justify the *coherent moralism* assumption by assuming that most of the citizens of modern democratic societies are incapable of reflectively affirming justifiable demands of justice. Second, one might justify the *coherent moralism* assumption by assuming that most of the citizens of modern democratic societies are incapable of being motivated to implement justifiable demands of justice once affirmed. Either assumption methodologically precludes the possibility of an unjust democratic society transitioning to a just institutional arrangements in a democratic manner and, as such, conflicts with the spirit of the broadly Rawlsian commitments that I outlined in Chapter 1.

So what happens if, recognising this dilemma, Rawlsian Loyalists simply choose to abandon the idealist methodological assumption of *coherent moralism* for the purpose of generating ideal-types of existing social systems? In my view, once one makes this move, it becomes apparent that the only plausible remaining rationale for retaining the other idealist methodological assumption of *institutional-system holism* also precludes the possibility of unjust democratic societies transitioning to a just institutional arrangement in a democratic manner. To elaborate, the methodological assumption of *institutional-system holism* seems well motivated if one assumes that each subpart of an existing social system is only fully comprehensible in terms of the role it plays as part of a meta-practice that is governed by the public aims of a conception of justice accepted by all participants. Put another way, it gains support from the methodological assumption of *coherent moralism*. But once one abandons *coherent moralism*, then the only plausible remaining rationale for retaining the methodological assumption of *institutional-system holism* is if one adopts a functional structuralist view that, although the different institutions of existing social systems may be best understood as conforming to different conceptions of justice, they can each only be fully understood in terms of the functional role that they play in maintaining the stability of the whole (unjust) social system. Yet, without a further story to explain how or why a society might move from one stable (unjust) social system to an alternative social system in a democratic manner, this variety of functional structuralism seems to preclude the possibility of an unjust democratic society transitioning to just institutional arrangements in a democratic manner.

Furthermore, once one drops the methodological assumption of *coherent moralism* and *institutional-system holism*, the remaining idealist methodological assumption of *intuitive comprehension* seems poorly suited to the task of generating ideal-types of existing social systems. This is because the absence of assumptions about *coherent moralism*, or at least functional structuralism, makes it necessary for the social theorist to find a way to show that any given account of the public rules that govern a particular social system can meaningfully explain the majority of the actions of participants in that social system most of the time, rather than merely offering a meaningful explanation of some of the actions of some participants some of the time. But this is unlikely to be achieved by *intuitive comprehension* alone because, in a society that is an amalgam of institutions that each potentially have different and conflicting public aims, there is no reason to think that any given intuitive interpretation offers the former kind of explanation, rather than the latter. As such, in the face of potential disagreement, the only viable option is to attempt to weigh up different possible interpretations of any given social system against statistical data that at least tries to capture in a more systematic way the regularities of different behaviours across this social system. Although there will always be the risk of confirmation-bias in any given theorist's selection of data,³⁵ I can see no other process by which a theorist might offer further reasons as to which interpretation, or combination of interpretations, offers the most comprehensive understanding of the social system under examination.

The argument of this section has demonstrated that the idealist method of generating ideal-types of existing social systems has normative implications that conflict with the spirit of the broadly Rawlsian commitments that I outlined in Chapter 1. As such, there is a widely shared normative perspective from which the methodological disputes among Rawlsians in the 'choice of social system' debate can be settled in favour of the empirical method that is predominantly used to generate ideal-types of existing social systems in contemporary political science. So even if a Rawlsian remained unconvinced by the arguments of the previous section, the complementary argument of this section has the same consequence of not only

³⁵ This is emphasised by Taylor (1971), who argues that any such 'brute' statistical data is nothing of the sort as it will always be selected and understood in line with the pre-existing social interpretations of the theorist. I propose that, although the truth of this suggestion is often overlooked in positivist social science, Taylor would be happy to acknowledge a distinction between better and worse interpretations and better and worse methods of collecting data to prevent confirmation bias. Hence, we can heed Taylor's warning while at the same time all agreeing there is an important difference between the quality of interpretation offered by, say, Thomas Piketty's *Capital in the 21st Century* (2014) and the televangelist Pat Robertson's *The New World Order* (1991).

undermining Rawls's characterisation of welfare-state capitalism, but, more importantly for our purposes, allowing for a more piecemeal approach to specifying the institutional arrangements of a just social system, which includes the options of salvaging subparts of existing social systems and recombining them with subparts of other existing and hypothetical social systems.

One might think that a further implication of my argument so far is that Rawlsians should never adopt the three methodological assumptions that underpin the idealist method of generating ideal-types of existing social systems. However, this conclusion is problematic for the broadly Rawlsian perspective from which I am arguing. To recall, my overall approach, as set out in Chapter 1, is to begin with what looks like an abstract ideal-type of a democratic society as 'a system of cooperation between free and equal citizens', and then develop what looks like a more specific ideal-type of a society that is 'well-ordered' by principles of justice appropriate to this type of democratic society. Yet on the face of things, each of these society-wide ideal-types appears to be constructed using at least some of the three methodological assumptions that I have accused of being tied to an implausible and unattractive idealist social philosophy. Is there, then, a tension between the different types of society-wide ideal-types that I intend to use at different points in this thesis? It is to this question that we now turn.

2.5. Descriptive vs. Normative Ideal-Types: A Place For Idealist Methodological Assumptions and Idealist Methodological Assumptions in Their Place

In this section, I will argue that the perceived tension between the different methods of ideal-typical analysis I endorse is illusory. I will do so by first drawing a distinction between *descriptive* and *normative* ideal-types, and then imposing a scale within each of these categories ranging from the abstract to the more concrete. Thereafter, I will use this conceptual framework to argue that Rawlsians can coherently argue in favour of the empirical method for the purpose of constructing *descriptive* ideal-types of existing social systems at the concrete level of institutional arrangements, while employing some of the three abovementioned methodological assumptions to construct abstract *descriptive* ideal-types of whole societies, and *normative* ideal-types of hypothetical 'well-ordered societies' at various levels of abstraction.

2.5.1. *Descriptive vs. Normative Ideal-Types*

As a first step, we can distinguish two purposes for which any given theorist might want to construct an ideal-type that are routinely conflated in the Rawlsian 'choice of social system' debate (not least by Rawls himself). First, a theorist might want to construct an ideal-type as part of a theory that aims to describe part of social reality, for the sorts of reasons outlined by Weber in section 2.2. I will refer to this as a *descriptive ideal-type*. Second, a theorist might want to construct an ideal-type that depicts a hypothetical social reality that is purposefully designed to realise, in part or whole, a certain moral conception as part of a wider normative theory that aims to argue for or against this moral conception, for the sorts of reasons outlined in Chapter 1 during my discussion of comparing 'well-ordered societies'. I will refer to this as a *normative ideal-type*.

Within each of these two categories, we can impose a scale from the very abstract to the more concrete. For *descriptive ideal-types*, this scale is best understood using Giovanni Sartori's notion of a 'ladder of abstraction'. Sartori distinguishes between the extension and intension of conceptual categories used in comparative social science, such as ideal-types: 'The extension of a word is the class of *things* to which the word applies; the intension of a word is the collection of *properties* which determine the things to which the word applies' [emphasis his] (1970, p.1041). Using this distinction, he argues that as we climb the 'ladder of abstraction' to broaden the extension of a concept (the class of things to which it applies), then we must narrow its intension (the collection of properties it indicates) to avoid the risk of misapplying it, or 'conceptual stretching' (Sartori 1970, p.1041).

With this idea in play, it becomes clear that there is no limit on the extent to which a theorist might choose to climb the 'ladder of abstraction' for the purpose of providing a *descriptive ideal-type*. For instance, if one is interested in offering an ideal-typical characterisation of the class of societies that have a social egalitarian ethos (what I referred to in Chapter 1 as democratic societies),³⁶ then one should continue to climb the ladder of abstraction, shedding intensional properties along the way, until a 'lowest common denominator' ideal-type is reached that can be seen to characterise a core set of properties common to all such societies. I propose that this is the best way to understand the Rawlsian idea of a democratic society as a

³⁶ See Chapter 1, section 1.1 for the connection between the idea of a 'democratic society' and social equality.

'system of cooperation between free and equal citizens'. Conversely, if one wants to offer a more detailed ideal-typical characterisation of a specific social practice, then one can descend the ladder of abstraction, adding intensional properties to one's ideal-typical concept along the way, until an ideal-type is reached that may well only apply to a small class, maybe only a class of one. I propose that, regardless of their accuracy, we can understand Weale's ideal-type of the welfare state as having descended the ladder of abstraction a fair amount from the ideal-type of a democratic society as a 'system of cooperation between free and equal citizens', though not quite as far as each of Esping-Andersen's three ideal-types of welfare-state capitalisms.³⁷

We can also helpfully apply the idea of a 'ladder of abstraction' to the category of *normative ideal-types*. At a very high level of abstraction, one might recommend the ideal-type of a 'system of cooperation between free and equal citizens' as a *normative ideal-type* of a democratic society, whilst allowing that this very abstract ideal-type has few intensional properties. Descending the ladder of abstraction a few rungs, one might recommend an ideal-type of a 'well-ordered society' in which:

- (1) nearly all individuals accept and know that everyone else accepts restricted utilitarian principles of justice;
- (2) the major institutions together satisfy, and are publicly known to satisfy, these principles;
- (3) nearly all individuals have a normally effective sense of justice that allows them to understand and apply the publicly recognised principles of justice;
- (4) nearly all individuals are motivated to comply with and further just institutions provided there is sufficient assurance that others will likewise do so.

Clearly this ideal-type of a 'well-ordered society' contains a greater number of intensional properties than the more abstract ideal-type of democratic society as a 'system of cooperation between free and equal citizens', hence it can be understood as one possible specification of this type of society. Finally, one might descend the ladder of abstraction further to offer an account of the concrete institutional arrangement that looks best placed to realise a particular conception of justice

³⁷ A full descent is made by the idealist social philosopher Alasdair MacIntyre when he argues that, just because African mass parties look similar in certain ways to American political parties, and also call themselves parties, this does not mean that they are different instances of the same concept: 'the phenomenon is viewed so differently by those who participate in it that it is an entirely different phenomenon' (MacIntyre 1971, p.266).

affirmed in a well-ordered society. (As I argued in the two previous sections, once a theorist reaches this more concrete level it is open to them to present their institutional conclusions in terms of 'recombinant possibilities' that mix elements from across ideal-types of existing and hypothetical social systems, and subparts thereof.)

As should be clear from this conceptual framework, any given ideal-type at any level of abstraction -- such as the ideal-type of a democratic society as a 'system of cooperation between free and equal citizens', or the ideal-type of a society well-ordered by Rawls's principles of justice -- might be deployed by a political scientist as a *descriptive ideal-type* or by a normative theorist as a *normative ideal-type*. Bearing this in mind, it appears that certain ideal-types of social systems are unhelpfully used by different theorists in the Rawlsian 'choice of social system' debate in different theoretical roles. Specifically, some theorists understand the terms 'a property-owning democracy' and 'liberal socialism' as *descriptive ideal-types* that are constructed to pick out (or not, depending on the cases under consideration) certain dimensions of the institutional life of existing social systems. In this role, 'a property-owning democracy' is defined as a type of social system with the primary aim of widely dispersing private ownership of the means of production. When understood in this way, the ideal-type of a property-owning democracy has no necessary connection with Rawlsian principles of justice. This is apparent from the fact that this ideal-type has been supported by thinkers from a variety of ideological backgrounds (see Jackson 2012).

However, the term 'a property-owning democracy' is deployed by other theorists as a concrete *normative ideal-type* that sets out the various institutional arrangements of a private-property society that is well-ordered by Rawlsian principles of justice. Of course, when understood in this way, a property-owning democracy has no necessary connection with the aim of widely dispersing private ownership of the means of production. It may or may not be the case that such a logic of organisation is an integral part of a social system well-ordered by Rawlsian principles of justice, but such matters cannot be settled by way of a 'conjunctive definition' that combines certain principles of organisation and principles of justice at the outset. Clearly, a similar case can be made for the use of the term 'liberal socialism' in the 'choice of

social system' debate.³⁸ With this in mind, and in line with my earlier defence of conceptualising just social systems in terms of 'recombinant possibilities, I will hereafter reserve the ideal-typical terms 'a property-owning democracy' and a 'liberal socialism' to refer to the *descriptive ideal-types*.

With this terminological point settled, we are now in a position to use the conceptual framework set out in this section to show how some of the methodological assumptions that are, in my view, tied to a strongly idealist social philosophy when used to generate *descriptive ideal-types* of existing social systems, are freed from these strongly idealist implications when used to generate either *descriptive ideal-types* of existing societies at a high level of abstraction, or *normative ideal-types* of societies and social systems at various levels of abstraction.

2.5.2. Abstract Descriptive Ideal-Types, Normative Ideal-Types and Acceptable Idealism

First, let us examine how Rawlsians can coherently reject the three methodological assumptions of *coherent moralism*, *institutional-system holism* and *intuitive comprehension* for the purpose of generating concrete *descriptive ideal-types* of social systems, while employing the assumptions of *coherent moralism* and *intuitive comprehension* for the purpose of generating more abstract *descriptive ideal-types* of whole societies.

To review, I advanced two arguments against relying on the three abovementioned methodological assumptions when generating *descriptive ideal-types* of existing social systems: first, it only makes sense to do so if one implausibly assumes that the institutions of existing societies can each be intuitively understood as integral parts of a whole institutional system that is governed by a coherent background conception of justice; second, even if Rawlsians do not find this implausible, they should find it unattractive because it appears to methodologically preclude the possibility of existing unjust democratic societies transitioning to just institutional arrangements in a democratic manner. These two implications -- implausibility and unattractiveness -- stem from the fact that the three abovementioned methodological assumptions, at least when used to generate *descriptive ideal-types* of existing social systems, fail to allow space for disagreements among democratic

³⁸ As a *descriptive ideal-type* it is taken to refer to a logic of organisation according to which 'economic power is dispersed among firms ... [and] a firm's direction and management is elected by, if not directly in the hands of, its own workforce' (Rawls 2001, p.138). As a *normative ideal-type* it is taken to refer to a socialist social system governed by Rawls's principles of justice (Rawls 2001, p.138).

citizens about conceptions of justice, nor for the related possibility that their institutional arrangements might, as a result of these disagreements, transform towards a competing conception of justice.

The key point to note here is that these concerns about the implausibility and unattractiveness of society-wide *descriptive ideal-types* that are generated using the methodological assumption of *coherent moralism* fade away as we climb the ladder of abstraction. This is because one can climb the ladder of abstraction until one reaches a level where one finds a common thinly moralised society-wide *descriptive ideal-type* that applies to all democratic (i.e. social egalitarian) societies, namely, a 'system of cooperation between free and equal citizens', while allowing that any society belonging to this type should not be assumed to have either a public political culture or institutional arrangement that is best understood as conforming to a coherent conception of justice. Put another way, relying on the methodological assumption of *coherent moralism* to generate very abstract ideal-types of societies does not require the implausible and unattractive assumption that these societies or their social systems are morally coherent at the level of principles of justice. Rather, one is treating the methodological assumption of *coherent moralism* as a fixed point and then moving up the ladder of abstraction until an appropriate 'lowest common coherent-moralist denominator' is found. Clearly the resulting thinly moralised *descriptive ideal-types* of an existing class of society will be premised on a weak strain of idealism, but some such weak view about the coherence and unity of the basic shared understandings underpinning a society is required; otherwise, what would be the conceptual difference between one society and two societies?

From what has already been said, it should be clear that this defence of the methodological assumption of *coherent moralism* for the purpose of generating very abstract *descriptive ideal-types* of societies does not require a methodological assumption of *institutional-system holism*. However, the appropriateness of the methodological assumption of *intuitive comprehension* for the purpose of generating very abstract *descriptive ideal-types* of societies is less clear. I am inclined to argue that, to the extent that one is purposefully climbing the ladder of abstraction to generate a 'lowest common denominator' society-wide *descriptive ideal-type* that most likely has few intensional properties, the risk of accidentally generating an ideal-type that only offers a meaningful interpretation of one subpart of the class of societies under consideration is much smaller than if one were aiming to generate an ideal-type at a lower level of abstraction. For this reason, although a data-driven

approach might ultimately be preferable if it were possible, a reliance upon the methodological assumption of *intuitive comprehension* is less concerning when used for the purpose of generating very abstract *descriptive ideal-types* of existing societies than when used for the purpose of generating *descriptive ideal-types* of societies or social systems at lower levels of abstraction.

Let us now move on to examine how Rawlsians can coherently reject the three methodological assumptions of *coherent moralism*, *institutional-system holism* and *intuitive comprehension* for the purpose of generating concrete *descriptive ideal-types* of social systems, while employing the methodological assumptions of *coherent moralism* and *intuitive comprehension* for the purpose of generating *normative ideal-types* of well-ordered societies at various levels of abstraction.

The first point to note is that concerns about the implausibility and unattractiveness of society-wide *descriptive ideal-types* that are generated using the methodological assumption of *coherent moralism* disappear once we move to the very different task of generating *normative ideal-types* of hypothetical societies, regardless of their level of abstraction. This is because the whole purpose of generating *normative ideal-types* is centred around the methodological assumption of *coherent moralism* insofar as one is specifically aiming to generate ideal-types of societies well-ordered by a particular conception of justice. Pursuing this project has no implications for how one views existing social systems, and is therefore perfectly compatible with thinking that the three methodological assumptions of *coherent moralism*, *institutional-system holism* and *intuitive comprehension* are inappropriate for the purpose of generating descriptive ideal-types of existing social systems.

In contrast, if one accepts the argument of section 2.3 about the implausibility of relying on the methodological assumption of *institutional-system holism* for the purpose of generating *descriptive ideal-types* of existing social systems (which, to recall, amounts to a methodological assumption that each social system is best understood as a set of internally related institutions that together amount to a social practice or 'form of life'), then one should also reject this methodological assumption for the purpose of generating *normative ideal-types* of hypothetical social systems. To be clear, this issue of whether or not to adopt an assumption of *institutional-system holism* only arises once we descend the ladder of abstraction to consider the ideal-typical institutional arrangements required for any given well-ordered society to fulfil its moral aims. But once we arrive at this level, there is no reason to

think that the institutional arrangements for any given well-ordered society must be chosen in an 'all or nothing' fashion between pre-defined wholes, rather than comprising of a mixture of institutional elements selected from across ideal-types of existing and hypothetical social systems, and subparts thereof.

The appropriateness of the methodological assumption of *intuitive comprehension* for the purpose of generating *normative ideal-types* of societies is once again not so clear. For the purpose of generating an abstract *normative ideal-type* that simply depicts a hypothetical society well-ordered by certain principles of justice, it is clearly nonsensical to argue that a data-driven approach should be used, as one is not looking to describe an existing phenomena so there is no relevant data. However, once we descend the ladder of abstraction to construct more concrete *normative ideal-types* that outline the institutional arrangements of various well-ordered societies, then we are faced with a difficult question: if we choose to integrate *descriptive ideal-types* of existing social systems, or subparts thereof, should we lift their characterisations wholesale from contemporary political science, or should we re-imagine these types of institutional arrangements as we think they would operate under the well-ordered conditions that we have stipulated? Once the choice is set out in this way, it seems that the latter option is the correct approach to take. So although the empirical *descriptive ideal-types* of concrete institutional arrangements that dominate mainstream political science will inevitably influence one's thinking about how any given existing institutional arrangement would operate in well-ordered conditions, and its consequent attractiveness, a degree of intuitive comprehension will be required insofar as no such conditions have yet come about. In this regard, Rawls was correct to point out that, when offering concrete *normative ideal-types*, 'we have to rely on conjecture and speculation, arguing as best we can that the social world we envision is feasible and might actually exist' (Rawls 1999b, p.12).

We began this section with the concern that the overall argumentative strategy that I outlined in Chapter 1 begins with what looks like a very abstract ideal-type of a democratic society as a 'system of cooperation between free and equal citizens', and then proceeds to specify at various levels of abstraction different ideal-types of a society that is well-ordered by principles of justice appropriate for such a democratic society. Yet these ideal-types appear to be constructed using at least some of the three methodological assumptions that I accused in the previous two sections of being tied to a strongly idealist social philosophy that has both

implausible and unattractive implications. By drawing a distinction between *descriptive ideal-types* and *normative ideal-types* and then drawing attention to a ladder of abstraction that exists within each category, I have aimed to provide a conceptual framework within which it is clear how a Rawlsian can coherently argue in favour of the empirical method for the purpose of constructing *descriptive* ideal-types of existing social systems, while employing some of the three abovementioned methodological assumptions to construct abstract *descriptive* ideal-types of whole societies, and *normative* ideal-types of hypothetical well-ordered societies at various levels of abstraction. In doing so, I hope to have clarified the coherence of my overall argumentative strategy in this thesis, which can be understood to rely on a range of different ideal-types that are constructed using different methods to serve different theoretical purposes.³⁹

2.6. Descriptive Ideal-Types, Normative Ideal-Types and Ideal Theory

Before concluding, I would like to recognise that my proposed strategy of arguing for certain theoretical and institutional conclusions by deploying a variety of ideal-types, a strategy that ultimately stems from the three foundational commitments of the broadly Rawlsian perspective that I adopted in Chapter 1, raises two questions that feature heavily in the contemporary literature on ideal/non-ideal theory: first, 'Am I proposing a practice-dependent or practice-independent argument?' Second, 'Am I proposing a fact-sensitive or fact-insensitive argument?' Rawlsians and non-Rawlsians alike have lined up on both sides of these dividing lines. My aim in this section is to clarify the position of my overall argument within these two strands of the ideal/non-ideal theory debate and defend this position from some prominent objections in the literature by clarifying the limits of my theoretical ambitions. I am not aiming to resolve either of these disputes, as the original contribution of this thesis lies elsewhere. However, I need to be able to show that my argumentative strategy places me in a defensible position in the ideal/non-ideal theory debate.

The first question of whether I am proposing a practice-dependent or practice-independent argument arises due to my main foundational commitment to the following broadly Rawlsian view, as set out in Chapter 1:

³⁹ For those interested in critical assessments of Rawls's original work, an interesting implication of my argument is that Rawls's mistake in *Restatement* is not that he uses a particular method of generating ideal-types of social systems that has no place in Rawlsian theory, but rather that he uses this method at an inappropriate point in his theory.

Commitment 1: The most abstract idea of a democratic society is a 'system of cooperation between free and equal citizens' (1996, pp.22, 302-03; Rawls 2001, p.95).

By treating this commitment as foundational, I am proposing to begin my normative argument with a very abstract ideal-type of a democratic society that includes thinly moralised content. This relates to the practice-dependent debate in the sense that practice-dependent theories of justice assume that 'the content, scope, and justification of a conception of justice depends [in some way] on the structure and form of the practices that the conception is intended to govern' (Sangiovanni 2008, p.138), whereas practice-independent theories of justice assume that existing practices ought not to constrain our theorising about justice.

The most influential contemporary proponents of the practice-dependent approach propose a specific 'institutionalist' variety of practice-dependent theorising that involves applying Ronald Dworkin's jurisprudential method of 'constructive interpretation' to the basic structures of modern societies, and then, having settled on an interpretation of the point and purpose of these large-scale practices that satisfies Dworkin's criteria of 'best fit' and 'best light', proposing principles of justice that should regulate their operations in light of their overall point and purpose (Sangiovanni 2008, pp.148–50; James 2005, p.301; Dworkin 1986, pp.65–66).⁴⁰ Within this general approach, Aaron James draws a helpful distinction between 'protestant' constructive interpretations of social practices, which give no special authority to the self-understandings of participants, and 'catholic' constructive interpretations, which do (James 2013, pp.323–24).⁴¹ So, in terms of my overall strategy, the relevant questions are: Does the abstract ideal-type of a democratic society as a 'system of cooperation between free and equal citizens' derive its normative content, which is foundational to my argument, in virtue of offering some kind of 'constructive interpretation' of an existing practice? And, if so, what kind of constructive interpretation does it offer?

⁴⁰ These theorists contrast their 'institutionalist' practice-dependent approach with the 'cultural conventionalist' practice-dependent approach of theorists like Michael Walzer (1983), which are considered to be unacceptably biased towards the status quo (Sangiovanni 2008, pp.144–150; James 2005, p.301, fn.39). It is worth noting, however, that in his latest work Andrea Sangiovanni appears to have abandoned the practice-dependent/practice-independent distinction (Sangiovanni 2016, p.13 fn.32).

⁴¹ James argues that Rawls employs a practice-dependent approach that relies on protestant social interpretation in his earlier work, but shifts to a practice-dependent method that relies on catholic interpretation in his later work (James 2013, pp.323–24).

The answer to the first question is yes. The answer to the second question, as alluded to in earlier sections, is that I view the ideal-type of a democratic society as a 'system of cooperation between free and equal citizens' as a *descriptive ideal-type* that is generated by a process of catholic social interpretation. Hence, I originally stated in Chapter 1 that I and, I believe, many, if not all, self-identified Rawlsian political theorists; many non-Rawlsian political theorists; and many democratic citizens do, or would upon reflection, find this to be a compelling account of the point and purpose of a democratic society. Accordingly, my argument in this thesis is best understood, at least in the first instance, as a practice-dependent account of the demands of social justice for a democratic society.

With this clarified, it is worth noting what is at stake in the practice-dependence debate. One possible concern with practice-dependent approaches is that they inappropriately constrain our moral deliberations about what social justice requires by thinking that we must provide an account of principles of justice to regulate the *existing* institutional arrangements of modern democratic societies. This seems to preclude more radical possibilities, such as the total abolition of the major institutions of modern democratic societies in favour of more just arrangements and, as such, practice-dependent approaches appear to be mildly biased towards the status quo in terms of the content of the principles of justice they are able to produce (Valentini 2011, pp.410–14; Ostmann 2016).⁴² I will deal with this kind of objection when I come to examine the second strand of the ideal/non-ideal theory debate momentarily. The main objection I want to deal with here is the distinct, though related, concern that the practice-dependent approach to theorising about justice belies a moral relativism, whereby the demands of justice are considered to be relative to pre-existing social arrangements, rather than of universal application (Valentini 2011, pp.407–8).

As I see it, my approach of developing principles of justice and institutional recommendations that are appropriate for a democratic society, understood as a 'system of cooperation between free and equal citizens', does not necessarily commit me to an objectionably relativistic view about whether such principles also apply to societies without a democratic public political culture. This is because one might coherently think that the reason a background assumption of social equality

⁴² I add the 'mildly' qualifier because it is widely accept that practice-dependent approaches can, at the very least, justify the establishment of some new practices (Ronzoni 2009; James 2005, pp.314–15) and the abolition of some existing practices (James 2005, p.314)

informs the selection of principles of justice in a society with a democratic public political culture is that, at least in this respect, the public political culture of such a society includes a commitment to a form of basic moral equality that ought to be realised between individuals in all types of society (so societies with non-democratic public political cultures therefore have morally deficient cultures).⁴³ However, in order to keep the scope of the thesis manageable, I will remain agnostic on this issue.

The second question of whether I am proposing a fact-sensitive or fact-insensitive argument arises due to my foundational commitment to the following broadly Rawlsian view, as set out in Chapter 1:

Commitment 3: A just democratic society must be a suitably 'well-ordered society' (Rawls 1996, p.35; Rawls 1999a, pp.7–8, 397; Rawls 2001, pp.13, 27), which means that it must satisfy the following four conditions:

- (1) nearly all individuals accept and know that everyone else accepts the same principles of justice;
- (2) the major institutions together satisfy, and are publicly known to satisfy, these principles;
- (3) nearly all individuals have a normally effective sense of justice that allows them to understand and apply the publicly recognised principles of justice;
- (4) nearly all individuals are motivated to comply with and further just institutions provided there is sufficient assurance that others will likewise do so.

Treating this as a foundational commitment means that, in trying to work out what social justice requires at the level of principles of justice and in terms of institutional arrangements, I restrict my focus to generating *normative ideal-types*, at various levels of abstraction, for the case of a hypothetical society that is assumed to be well-ordered in the ways described above. This means that I generate my normative conclusions on the basis of a number of assumptions about the moral psychology of citizens, without which they would not necessarily hold. This raises an issue that is addressed in a distinct, though related, strand of the ideal/non-ideal theory debate that focuses on the sorts of facts about existing individuals that ought to be taken as fixed points for the purposes of making recommendations about the demands of

⁴³ Joshua Cohen makes a similar point (J. Cohen 2003, p.88), as does Sangiovanni (2008, p.147).

justice, particularly at an institutional level. Within this strand of the debate, certain theorists have criticised Rawls for allowing his normative conclusions about principles of justice and institutional arrangements to be excessively constrained by facts about how individuals happen to be motivated in existing social conditions (Cohen 2008; G. A. Cohen 2003; Mason 2004). So, in terms of my proposed method, the relevant question appears to be: Are the sorts of assumptions I make about the moral psychology of citizens for the purpose of generating *normative ideal-types* either too concessive to the status quo, thus making my overall conclusions too realistic, or too optimistic, thus making my overall conclusions too utopian?

On the whole, I agree with theorists such as Laura Valentini (2012a, p.660), Alan Hamlin and Zofia Stemplowska (2012, pp.52–8) and Patrick Tomlin (2012, pp.41–44) that there is no one correct set of assumptions that theorists of social justice should make about the moral psychology of citizens when generating institutional recommendations. Rather, there is a spectrum of less fact-sensitive (or utopian) to more fact-sensitive (or realistic) approaches to this type of theorising, and different positions on the spectrum are suitable for theorists of justice with different theoretical ambitions. For instance, if one's theoretical ambition is to depict a just social system for a democratic society that is not realisable by taking the psychological attributes of citizens as they are, but might nevertheless appear to be an achievable long-term goal for institutional reform given our judgements about the malleability of the psychological attributes of free and equal citizens under different conditions, then one should treat only the most permanent-looking features of the psychological attributes of existing citizens as factual constraints on one's theorising about the content and institutional requirements of justice. In contrast, if one's theoretical ambition is to outline the most just social system that is realisable for democratic societies here and now, then one should treat all of the psychological attributes of existing citizens as constraints on one's theorising about the content and institutional requirements of justice. One might call this position methodological- or justice-pluralism.

In general terms, my aim in this thesis is to posit an achievable long-term goal for the institutional reform of democratic societies given our judgements about the malleability of the psychological attributes of free and equal citizens under different conditions. As such, I will treat only the most permanent-looking features of the psychological attributes of existing citizens as factual constraints on my theorising

about the content and institutional requirements of justice for a democratic society. It is for this reason that I will tailor my theoretical recommendations about the appropriate principles of justice for a democratic society, and their implications for the organisation of firms, for the optimistic case of a suitably well-ordered society. For I share with Rawls the hopeful judgement that a well-ordered society is possible, and therefore a perfectly just democratic society is in the long-run also possible (Rawls 2001, p.9).⁴⁴ Accordingly, it is inappropriate for theorists of justice to dilute their theorising about the long-term goal of institutional reform with psychological assumptions about the permanency of 'non-well-ordered' states of affairs. With this in mind, I will, as noted in the previous chapter, make the following three assumptions about the moral psychology of free and equal citizens for the purpose of theorising about the demands of justice for a democratic society:

Assumption 1: Nearly all individuals accept and know that everyone else accepts the same principles of justice.

Assumption 2: Nearly all individuals have a normally effective sense of justice that allows them to understand and apply the publicly recognised principles of justice.

Preliminary Assumption 3: Nearly all individuals are motivated to comply with and further just institutions.⁴⁵

These psychological assumptions appear to place my overall normative theorising towards the utopian end of the fact-sensitive/fact-insensitive scale. However, there is also a practical dimension to my theoretical ambitions, which places some constraints on the optimism of my psychological assumptions, and also places some constraints on the utopianism of my assumptions about background social conditions. This follows from the fact that I am offering normative recommendations about social justice not simply as part of a mental exercise about what would be a nice way for a group of individuals to live *ab initio*, but rather as an attempt to address a specific issue that arises under the reasonably favourable social conditions of modern democratic societies, namely: What are the fair terms of cooperation that should regulate the common rules that play the primary role in determining the distribution of the benefits and burdens of social cooperation among

⁴⁴ Indeed, I am sympathetic to Rawls's view that 'if a reasonably just society that subordinates power to its aims is not possible and people are largely amoral, if not incurably cynical and self-centred, one might ask with Kant whether it is worthwhile for human beings to live on the earth?' (Rawls 1996, p.lx).

⁴⁵ I will add a caveat to Preliminary Assumption 3 momentarily in order to give the final version.

free and equal citizens? And, once identified, what restrictions do these fair terms of cooperation (or, as I refer to them, principles of justice) place on one particular subset of those common rules: those governing the organisation and activities of firms?

It is worth noting that this practical limit to my theoretical ambitions offers an answer to the 'mildly status quo biased' objection raised earlier against my practice-dependent approach. However, more importantly for our present purposes, as others have pointed out, this practical dimension of my normative theoretical ambitions also means that it would be inappropriate for me to provide an answer that idealises away the very psychological features and social conditions that give rise to the practical issue that I am addressing (Tomlin 2012, pp.43–44; Valentini 2009, pp.351–55). Accordingly, my theoretical ambitions place two constraints on the optimism of my psychological assumptions. First, insofar as I am interested in providing an answer to a question that only arises in the context of social cooperation between free and equal citizens, I should not idealise away the psychological features of citizens in virtue of which such social cooperation arises and is sustained. For this reason, I make the following assumption:

Assumption 4: All individuals have comparable physical and mental powers so, although they have conflicting conceptions of the good, cooperation is reciprocally advantageous (Rawls 1999a, p.110; 2001, pp.84–5).

In addition, I concur with Rawls that the idea of social cooperation between free and equal citizens includes an ideal of reciprocity (i.e. 'something for something') (Rawls 1996, p.16; Rawls 2001, p.6). This is because the free and equal citizens of democratic societies regard themselves as 'self-authenticating sources of valid claims' who are therefore 'entitled to make claims on their shared institutions so as to advance their specifications of the good' (Rawls 2001, p.23; see also Rawls 1996, pp.32–33). As such, we should not propose an account of the fair terms of cooperation *for free and equal citizens* that relies upon the willingness of some citizens to sacrifice their opportunities to fulfil their conception of the good purely for the betterment of their fellow citizens out of a strong sense of altruism. This would be to specify fair terms suitable for some other type of cooperation, not that between free and equal citizens. Rather, the most we can expect of free and equal citizens engaged in cooperation is that they are motivated by a sense of reciprocity and will attempt to fully comply with and further just institutions *provided they have sufficient*

assurance that others will likewise do so (Rawls 2001, pp.6, 196; Rawls 1996, pp.16–17, 49–50). This should lead us to revise Preliminary Assumption 3 to get the following:

Final Assumption 3: Nearly all individuals are motivated to comply with and further just institutions *provided they have sufficient assurance that others will likewise do so*.

The second constraint that the practical dimension of my theoretical ambitions places on the optimism of my psychological assumptions stems from the fact that I am ultimately aiming to provide institutional recommendations, in particular about the organisation of firms. If we were to assume that all individuals in a well-ordered society are both omniscient and fully compliant with principles of justice, then there would be no need for institutional rules to regulate their actions (Hamlin & Stemplowska 2012, p.50). Hence one of these two assumptions must be relaxed in order for institutions to come into the picture. With this in mind, it might seem that this practical dimension of my theoretical ambitions conflicts with my more optimistic ambition of focussing on the case of a well-ordered society. However, I see no reason to assume that individuals will be omniscient in a well-ordered society; it is not required for the possibility of a well-ordered society, and such an assumption strays perilously close to idealising away one of the psychological features in virtue of which social cooperation between free and equal citizens arises. As such, I will focus on providing an account of the principles of justice and institutional arrangements required in a well-ordered society in which:

Assumption 5: All individuals 'suffer from various shortcomings of knowledge, thought and judgement. Their knowledge is necessarily incomplete, their powers or reasoning, memory, and attention are always limited' (Rawls 1999a, p.110). Put another way, all individuals have 'bounded rationality' (Simon 1945; 1983).

It is worth pointing out that, when taken seriously, this assumption of bounded rationality will condition in various ways the understandings of Assumptions 1, 2 and 3 that are relevant for our purposes. For example, I have so far argued that it is important to allow for the possibility of a society in which nearly all individuals accept and know that everyone else accepts the same principles of justice (Assumption 1),

but clearly the assumption of bounded rationality will place some constraints on how this might plausibly be achieved in a well-ordered society.⁴⁶

Finally, the practical dimension of my theoretical ambitions also means that I should not idealise away the very socio-economic pre-conditions in which social cooperation for reciprocal advantage arises among free and equal citizens with comparable physical and mental powers. As such I assume the following:

Assumption 6: Society enjoys 'reasonably favourable conditions' in terms of its culture, traditions, human capital development and level of economic advance (Rawls 1996, p.297; 1999b, p.5), whilst remaining in the 'circumstances of justice' in terms of there being moderate scarcity of resources (Rawls 1999a, p.110; 2001, pp.84–5).

With that said, I hope to have clarified the position of my overall argument within both the practice-dependent/practice-independent strand and the fact-sensitive/fact-insensitive strands of the contemporary ideal/non-ideal theory debate, and to have shown how this position can be defended against some of prominent objections in the literature due to its being well suited to my specific, and somewhat limited, theoretical ambitions.

2.7. Conclusion

In this chapter I aimed to achieve three things. First, I looked to answer the methodological question 'How should we conceive of the choice between different types of political economy or social system: is it an 'all or nothing' choice between the prevailing system and a list of alternatives, or is it possible to 'mix and match' elements from different models?' To this end, I buttressed the two existing methodological criticisms of 'the choice of social system' that Rawls presents us with in *Restatement*: that he presents us with a false 'all or nothing' choice between his five types of social systems, and that he mischaracterises certain types of social systems in terms of the public aims and principles of design that he ascribes to them. I argued that Rawls's presentation of the 'choice of social system' is only

⁴⁶ This particular constraining role of the assumption of bounded rationality will become important in Chapter 5, section 5.5. Similarly, in Chapter 3 I will slightly revise the level of agreement that ought to be supposed in a well-ordered society (i.e. Assumption 2 above) on the grounds that bounded rationality suggests otherwise. In both cases, the introduction of bounded rationality modifies the relevant understanding of a well-ordered society, but -- crucially -- does not reduce its utopianism in a way that might preclude the very possibility of a just democratic society. To recall, I linked the well-ordered society assumption to the possibility of a just democratic society in Chapter 1, section 1.1.

plausible if one follows Rawls and Rawlsian Loyalists in accepting three methodological assumptions to generate ideal-types of existing social systems; however, by relying on these assumption for this purpose, these theorists are adopting a strongly idealist social philosophy. I considered this to demonstrate the implausibility of Rawls's methodological approach, and the consequent superiority of an alternative empirical method of generating ideal-types of existing social systems employed by Rawlsian Defectors, which allows for a 'mix and match' approach to the above methodological question. For those who remained unconvinced at this point, I then added a complementary normative argument against using the idealist method to generate ideal-types of existing social systems to bolster my conclusions.

My second aim in this chapter was to show that Rawlsians can coherently argue in favour of using the empirical method to construct ideal-types of existing social systems, or subparts thereof, while continuing to employ some of the three abovementioned methodological commitments to construct both very abstract ideal-types of existing societies, and ideal-types of hypothetical well-ordered societies at various levels of abstraction. In doing so, I clarified the coherence of my overall argumentative strategy in the thesis, which can be understood as employing different types of ideal-types that are generated using these different methods at different times and for different purposes.

My final aim was to show where my proposed argumentative strategy, which of course stems from the three Rawlsian commitments outlined in Chapter 1, positions me in the various dimensions of the contemporary ideal/non-ideal theory debate. I then defended this position from some prominent objections raised in this debate by showing that it is well suited to my specific theoretical ambitions. In doing so, I offered a clear account of the assumptions about the moral psychology of free and equal citizens and background social conditions that I will rely on when making my substantive arguments in the chapters to come.

PART II: THEORY

3. The Priority of a Principle of Political Equality

3.1. Introduction

We now move into Part II of the thesis, in which I will use the methodological approach defended in Part I to make two fairly abstract theoretical arguments that will support my eventual answer to the substantive question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?' The first of these theoretical arguments, which I make in this chapter, focuses on the *grounds* and *role* of a principle of political equality in a broadly Rawlsian conception of justice. The second theoretical argument, which I make in the next chapter, offers more detail on the precise *meaning* of the principle of political equality that I defend in this chapter by specifying some important constraints that it places on a well-ordered society's political decision-making process. Before looking at the content of my argument in this chapter, it will be helpful to remind ourselves of its role in the overall substantive argument of the thesis.

To recapitulate, my overall substantive argument is that those who accept the abstract idea of a democratic society as a 'system of cooperation between free and equal citizens' (Rawls 1996, pp.22, 302-03; 2001, p.95), and who view principles of justice as having the role of publicly specifying the fair terms of such cooperation for a well-ordered society, should view the very existence of large firms as a credible threat to the realisation of social justice, regardless of how those firms are owned or controlled. This is because those who accept the above Rawlsian premises should include a principle of political equality within a principle of justice that enjoys lexical priority over whatever principle of justice is taken to regulate social and economic inequalities. Yet, regardless of how they are owned or controlled, large firms pose a credible threat to the realisation of this principle of political equality in a well-ordered society.

My aim in this chapter is to defend the claim made in the penultimate sentence of the last paragraph. In other words, I will argue that those who accept the abstract idea of a democratic society as a 'system of cooperation between free and equal citizens', and who view principles of justice as having the role of publicly specifying the fair terms of such cooperation for a well-ordered society, should include a principle of political equality within a principle of justice that enjoys lexical priority

over whatever principle of justice is taken to regulate social and economic inequalities. More concisely, I will argue for the priority of political equality in a just, well-ordered society.

One might question whether this deep theoretical argument is necessary for my overall substantive argument. After all, Rawls clearly includes a demand for the fair value of the political liberties, and only the political liberties, in a principle of justice that is accorded lexical priority over the principle that regulates social and economic inequalities.⁴⁷ As such, many Rawlsians in the ‘choice of social system’ debate simply invoke this *fair value proviso* in order to disqualify certain institutional arrangements that appear incompatible with political equality (O’Neill 2012, pp.81–84; Freeman 2013, pp.34–35; Schemmel 2015, pp.403–05; Malleson 2014, pp.233–34; Williamson 2009, pp.437–38; Vallier 2015, pp.301–03). However, as I highlighted in Chapter 1, I am not aiming to identify the answer to the question ‘What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?’ that the most accurate exposition or rational reconstruction of Rawls’s body of work would provide to these questions. Rather, my aim is to provide a normative argument beginning with what I consider to be some plausible, widely accepted and widely acceptable Rawlsian premises.

With this in mind, it is worth noting that a number of theorists have recently doubted Rawls’s conclusion that his general approach to theorising about social justice provides us with strong grounds to include the *fair value proviso* in a lexically prior principle of justice. Some theorists argue that a broadly Rawlsian approach cannot ground the inclusion of the political liberties, let alone their fair value, in a lexically prior principle of justice. For these theorists, general Rawlsian premises cannot ground the priority of even a weak principle of formal political equality, and are no worse for that fact (Wall 2006; Brennan 2012).⁴⁸ In contrast, other theorists are more critical of a broadly Rawlsian approach to theorising about social justice precisely because, in their view, it offers principles of justice for a well-ordered society that inappropriately relegate a principle of political equality beneath other substantive demands of social justice (Waldron 1999a, pp.157–58; Waldron 1999b, pp.71–73;

⁴⁷ See footnote 4, p.8.

⁴⁸ Niko Kolodny also raises doubts in passing about this aspect of Rawls’s theory in his informative recent article on, among other things, political equality, which I draw upon below (Kolodny 2014a, p.196).

Habermas 1995, p.128; Cheneval 2013, pp.261–64).⁴⁹ As such, it is a live issue whether or not, and to what extent, the priority of a principle of political equality can be justified from a broadly Rawlsian perspective. Given that my overall substantive argument relies on this being the case, it is important that I provide a convincing argument for the priority of a principle of political equality in a just, well-ordered society, rather than assuming this to be the case.

I will provide such an argument as follows. First, in section two, I will clarify what I mean by a principle of political equality and its priority. I will then examine the conceptual vehicle by which a number of Rawlsians in the ‘choice of social system’ debate aim to account for something like this normative demand within a broadly Rawlsian framework. In short, they invoke Rawls’s inclusion of the *fair value proviso* in his lexically prior principle of justice and interpret ‘fair value’ in an egalitarian fashion.

But, as I have already highlighted, Rawls’s inclusion of the *fair value proviso* is contentious from a broadly Rawlsian perspective, the more so when it is interpreted in an egalitarian fashion. Hence, we must evaluate the arguments that have been, or might be, made for this proviso from a broadly Rawlsian perspective in terms of whether they can ground the priority of a principle of political equality. With this in mind, section three will take us on an important detour that must precede any meaningful evaluation of these arguments. It will turn out that the plausibility or otherwise of these arguments depends in large part upon our prior assumptions about the political circumstances of the well-ordered society for which we are selecting principles of justice. So I will use section three to distinguish three ideal-types of the model of politics that might reasonably be thought to hold in a well-ordered society given the methodological assumptions we made in the previous

⁴⁹ The charge levelled by these theorists is that, as a result of his general approach, Rawls ends up recommending principles of justice for free and equal citizens that effectively put certain important issues about the fair terms of their cooperation beyond the reach of democratic procedures that instantiate a principle of political equality. So even though Rawls clearly presupposes that he is, here and now, addressing the citizens of a society with democratic procedures that instantiate a principle of political equality (Rawls 1996, pp.426–27), he is guilty of recommending to them principles of justice that imply a form of guardianship in a just well-ordered society over certain matters of justice. (For qualified defences of Rawls against this charge see (J. Cohen 2003; Gutmann 2003).) My argument in this chapter is primarily aimed at the former group of theorists rather than this group, as I am interested in providing an account of (one of) the principles of justice appropriate for a well-ordered society, which is precisely the type of society that these theorists see as assuming away, and thereby sealing off from democratic oversight, certain disagreements about justice itself. However, I mention them here, first, to note the breadth of controversy surrounding Rawls’s approach to political equality and, second, because what I say in section 3.5 about the possible priority of my principle of political equality to the liberties of the moderns even in a just, well-ordered society somewhat mitigates the force of the arguments made by this group.

chapter about the psychology of the free and equal citizens who will populate such a society. I will then argue that a hybrid of two of these ideal-typical models offers the most plausible characterisation of the politics of a well-ordered society.

With this hybrid model to hand, I will use section four to evaluate three arguments that have been made from a broadly Rawlsian perspective for the inclusion of the *fair value proviso* in a lexically prior principle of justice in terms of whether they can ground the priority of my principle of political equality for a well-ordered society. I shall evaluate these arguments from the vantage point of a slightly modified Rawlsian 'original position' and conclude that what I call the *epistemic argument* can plausibly ground the priority of a principle of political equality as a principle of constitutional design, and what I will call the *status/self-respect argument* can plausibly ground the priority of a principle of political equality as a principle of justice.⁵⁰ Section five then clarifies the scope of each of these arguments with regard to the constitutional entrenchment of basic civil liberties and the role of policy experts, before section six concludes.

3.2. Political Equality, Priority and the Fair Value Proviso

In what follows, I am interested in arguing for the priority of the following principle of political equality:

Each citizen must be guaranteed, on an ongoing basis, an approximately equal and adequately positive opportunity to influence policy outcomes.

This principle specifies three things: a constituency ('each citizen'), a distributive pattern ('ongoing approximately equal and adequately positive') and a distribuendum ('opportunities to influence policy outcomes'). I will say a bit more about each component in turn.

I will begin with the constituency ('each citizen'): hopefully for current purposes little explanation is required as to what is meant by this and why I see it as a necessary component of a plausible principle of political equality. I am ignoring for the purposes of this thesis complex issues about how to define the boundaries of a political community. However, it is worth mentioning at this point that, as the

⁵⁰ I will explain and justify my use of original position reasoning, along with the modifications I make to the usual rendering of this heuristic device, in section 3.4.1.

argument progresses in subsequent chapters, I will define citizenship as only one role among many that each individual is likely to occupy in a well-ordered society (or any society, for that matter). As such, the abovementioned principle only applies to individuals *qua* citizens, and not to individuals in their other institutional roles (such as shareholder, firm manager, trade union representative etc.).

The distributive pattern ('ongoing approximately equal and adequately positive') can be seen to include both a relative and an absolute distributive demand. The relative demand is that each citizen ought to have an 'ongoing approximately equal' amount of the distribuendum when compared against every other citizen. For this to be satisfied, it is not enough for each citizen to have an approximately equal amount of the distribuendum at a certain point in time (perhaps at the onset of adulthood). Rather, they must enjoy an approximately equal amount of the distribuendum at all times, i.e. on an ongoing basis.⁵¹

As noted, the distributive pattern in the above principle also includes an absolute demand ('adequately positive'). For this to be satisfied, it is not enough that each citizen has an approximately equal small amount (perhaps zero) of the distribuendum of political equality on an ongoing basis. Rather, it must be the case that they each have an equally adequate amount of the distribuendum (i.e. 'opportunities to influence policy outcomes'). There is some vagueness here, but it will suffice for the purpose of this chapter, which is simply to justify the lexical priority of a principle of justice of this type. I will go on to specify what 'adequacy' entails at the different stages of the politics of a well-ordered society in the next chapter. For now, suffice to say that this absolute distributive demand discounts a minimalist conception of political equality whereby either an impersonal decision-making procedure (such as a completely random lottery) or some non-citizen agent(s) enjoys a significant portion of the distribuendum of political equality, so that citizens only have an approximately equal share of the paltry leftover amount.⁵² As such, a principle of popular sovereignty is integrated into my principle of political

⁵¹ Another way to put it would be to say that each citizen requires 'equal availability' of the distribuendum (Brighouse 1996, p.127; Brighouse 1997, p.161). Other theorists who have also emphasised the diachronic nature of the demand for political equality include (Kolodny 2014a, p.213) and, more briefly, (Schemmel 2015, p.404). It is also implicit in Thomas Christiano's discussion of his conception of political equality as 'equal resources to influence decisions regarding the collective properties of society' (Christiano 1996, p.87).

⁵² I am indebted to Kolodny for clarity on this distinction between equal and positive opportunities for political influence (Kolodny 2014a, pp.197–99, 212–13). However, unlike me, Kolodny ultimately argues for a form of political equality that demands ongoing equal, but not necessarily positive, opportunities for political influence (Kolodny 2014b, pp.313–14).

equality on the grounds that, despite the fact they are logically distinct demands, there would be little point in political equality if citizens were governed by someone else. So, when understood in the democratic sense that I am interested in, political equality presupposes popular sovereignty.⁵³

The final component of the above principle of political equality is the *distribuendum* ('opportunities to influence policy outcomes'). We can better understand this idea by drawing on some distinctions made by Niko Kolodny. First, the form of influence I am referring to is *contributory* influence, rather than decisive influence or control. One enjoys *decisive* influence in a decision making process when, had one's choice been different, the result would have been different. One enjoys *control* when one enjoys decisive influence over a whole range of decisions under a wide variety of circumstances, as with a dictator. In contrast, one enjoys *contributory* influence when one's choice contributes, in some measure, to the result, in much the same way that one weight among many placed on a single set of scales will have a contributory influence on the overall balance (Kolodny 2014a, pp.199–200). Second, it is not *actual* influence over policy outcomes that is to be distributed according to the demands of our principle, but rather *opportunities* for influence, and, more specifically, only those opportunities for influence that are specified by the common rules that make up the shared institutions of a political community. Third, I include in the idea of 'opportunities to influence' both *formal* and *informal* opportunities. Although this distinction permits some vagueness, generally speaking one's *formal* opportunities to influence a collective decision are determined by the procedural voting rules that govern that decision, such as one person, one vote. In contrast, one's *informal* opportunities for influence are determined by the substantive resources at one's disposal that might be used to influence the result, such as wealth, leisure time or (access to) information (Kolodny 2014a, p.198).⁵⁴

As I see it, this focus on the distribution of institutionally specified *opportunities* for influence, rather than *actual* influence, means that my principle of political equality is interchangeable with the following principle:

Each citizen must be guaranteed ongoing approximately equal and adequate institutionally specified political power-to.

⁵³ For a helpful discussion of the distinction between political equality and popular sovereignty in democratic theory, see (Weale & Ward 2010, pp.29–31).

⁵⁴ For other equivalent distinctions of formal vs. informal opportunities see (Christiano 1996, p.90; Brighouse 1996, pp.120–21; Dahl 2015, pp.177–78).

Although there is probably even more disagreement about the definition of power than about the definition of political equality, this comparison is helpful insofar as it reinforces that I am not principally interested in the distribution of *exercises* of influence by citizens, nor the distribution of political *success* (which may, of course, always be the result of luck (Barry 1989; although cf. Barry 2002)), but rather the distribution of the *capacity* or *ability* that a society's institutional arrangements bestows upon each citizen to influence policy outcomes.⁵⁵ In this sense, I am interested in the distribution of a specific type of what Peter Morriss refers to as 'power-to', which has come to be regarded by many as the most basic notion of power (Morriss 2002, pp.8–13, 32–34; Lukes 2005, p.109; Barry 2002, p.160).⁵⁶ However, unlike Morris and many others, I restrict my focus to, first, the *political* power-to of citizens and, second, only that dimension of the political power-to of citizens that is determined by the resources that a society's institutions bestow upon them. Other than these restrictions, I remain open-minded about what counts as an institutionally specified power-conferring resource.⁵⁷

Now that I have clarified what I mean by a principle of political equality, it will be helpful to say what I mean by priority. In short, I will be assessing certain Rawlsian arguments in terms of whether or not they can justify the inclusion of the above principle of political equality within a principle of justice that enjoys lexical priority over whatever principle of justice is taken to regulate social and economic inequalities. As I will discuss in section 3.5, I remain agnostic on whether this principle of political equality is also lexically prior to a principle securing equal civil liberties.

⁵⁵ The comparison between my principle and this formulation is also instructive insofar as many political theorists have felt it natural to define political equality in terms of 'an equal share in political power' (Miller 1978, p.3) or 'equal power in determining political outcomes' (Pateman 1970, p.43). For further examples, see (Beitz 1989, pp.4–11). In a similar vein, Ronald Dworkin treats equality of influence as one species of equality of power, with the other being equality of impact. He explains the difference as follows: 'someone's impact in politics is the difference he can make, just on his own, by voting for or choosing one decision rather than another. Someone's influence, on the other hand, is the difference he can make not just on his own but also by leading or inducing others to believe or vote or choose as he does' (Dworkin 1987, p.9).

⁵⁶ I take it that, at the level we are using it, the power-over vs. power-to distinction is self-explanatory, but for further details see (Morriss 2002, pp.32–35).

⁵⁷ As such, I am adopting the language of a 'resourcist' account of power (e.g. Dowding 2003; Dowding 1996; Hindmoor & McGeechan 2013), while remaining more open minded than most of those who adopt such an approach as to what exactly should count as a resource and for whom. To be clear, I am not adopting the language of resources because I think that, all things considered, the concept of power is reducible to certain distributions of resources, but rather because this is the aspect of power that matters to me insofar as I am interested in evaluating the ways in which a society's institutions distribute political power-to to citizens.

The *fair value proviso* is the main conceptual vehicle by which a number of Rawlsians in the 'choice of social system' debate (and beyond) aim to account for the priority of the above principle of political equality within a broadly Rawlsian framework. In the rest of this section I will distinguish and clarify the constituent ideas that make up the *fair value proviso*, namely: (1) the political liberties, (2) the priority of their formal equality and adequate extent, and (3) their fair value and its priority.

Rawls consistently identifies a number of political liberties among the basic liberties that are to be guaranteed by his lexically prior liberty principle: the right to vote and hold public office, freedom of political speech (and the requisite freedom of thought), freedom to participate in politics (and the requisite freedoms of association and assembly), and freedom of the press (Rawls 2001, p.45; 1999a, p.53; Rawls 1996, pp.309, 335).⁵⁸ These political liberties are roughly equivalent to what Benjamin Constant called the 'liberties of the ancients', with the other civil liberties guaranteed by the liberty principle being roughly equivalent to Constant's 'liberties of the moderns' (Rawls 1999a, p.195; 1996, p.5; Constant 1988).

Rawls's inclusion of these political liberties among the basic liberties to be guaranteed by his lexically prior liberty principle has three implications for how they are to be guaranteed to citizens. First, in terms of their distribution, there is a strong presumption that all of the basic liberties are to be guaranteed equally to all citizens in a formal sense. The only way this presumption can be defeated is if a less than formally equal basic liberty is justifiable to those with the lesser liberty in terms of ensuring that their lesser liberty is better secured (Rawls 1999a, pp.215–16)⁵⁹. Second, in terms of their extent, it is guaranteed that all citizens will have 'a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all' (Rawls 2001, p.42), where adequacy is defined in terms of the development of certain 'moral powers' and their exercise in certain 'fundamental cases'.⁶⁰ Third, in terms of their importance, both the formal equality and the adequate extent of the basic liberties are to be guaranteed as a matter of

⁵⁸ The other non-political basic liberties are listed at (Rawls 1999a, p.53; 2001, pp.112–13).

⁵⁹ For ease of exposition, I ignore for now Rawls's inclusion of a lexically prior principle to meet basic needs in his later work (Rawls 1996, p.7; 2001, p.44)

⁶⁰ The two moral powers were covered in Chapter 1. The three fundamental interests that Rawls ascribes to free and equal citizens are, essentially, an interest in developing each moral power, and an interest in pursuing one's determinate conception of the good at any given time (Rawls 1996, pp.19, 74, 332; 2001, pp.18–19, 45, 85, 112–13).

lexical priority over the demands of whatever principle of justice is taken to regulate social and economic inequalities (Rawls 1999a, p.266; 2001, p.43).

In addition to the strong presumption of formal equality and the guarantee of adequate extent that Rawls applies to all of the basic liberties, he argues in a number of places that the basic political liberties, and these liberties alone, ought to be guaranteed their 'fair value'. This is what we earlier labelled the *fair value proviso*. It is increasingly emphasised in Rawls's mature work, where he explicitly attaches it to his lexically prior liberty principle and claims that he was mistaken not to do so in his earlier work (in which he appeared to view it as a principle of constitutional design) (Rawls 1996, p.5, 327 (fn.35); 2001, p.149). The *fair value proviso* requires that institutions are organised so as to satisfy the following two demands: 'that citizens similarly gifted and motivated have roughly an equal chance of [1] influencing the government's policy and of [2] attaining positions of authority irrespective of their economic and social class' (Rawls 2001, p.46).⁶¹

The second demand of the *fair value proviso* seems to require that the more general demand for fair equality of opportunity included in Rawls's second principle of justice should be promoted to his lexically prior principle of justice, but only insofar as it applies to positions of political authority (Rawls 2001, p.149; 1999a, pp.194, 197; 1996, p.327). However, unless one adopts a consciously revisionist understanding of the demands of the fair equality of opportunity principle,⁶² it only seems to require that similarly gifted and motivated citizens from different social and economic backgrounds have a roughly equal chance to access different social positions at a certain point in time, i.e. at the onset of adulthood, rather than on an ongoing basis (Rawls 2001, p.44).

This synchronic notion of 'a fair opportunity' does not seem to be the same notion at play in the first demand of the *fair value proviso*, which calls for a fair opportunity to influence the outcomes of political decisions. Rather, this is most naturally understood as a demand that citizens similarly gifted and motivated should have a roughly equal chance of influencing the outcomes of political decisions on an ongoing basis. Put another way, it appears to utilise a diachronic notion of 'a fair opportunity'. This comes to the fore every time Rawls specifies that inequalities in

⁶¹ It is articulated elsewhere slightly differently as 'a fair opportunity to [(1)] hold public office and to [(2)] influence the outcome of political decisions' (Rawls 1996, p.327).

⁶² For example, see (Freeman 2007b, pp.135–36).

wealth arising at any point in time pose a potential threat to the fair value of the political liberties (Rawls 2001, pp.138, 150; 1999a, pp.198–99; 1996, p.325).

By including the *fair value proviso* in his lexically prior principle of justice, Rawls ascribes the same level of importance to the two demands outlined above as he does to the presumption of formal equality and guarantee of adequate extent of the basic liberties. As such, the *fair value proviso* is to be guaranteed as a matter of lexical priority over the demands of whatever principle of justice is taken to regulate social and economic inequalities. However, for Rawlsians to use the *fair value proviso* to ground the priority of my principle of political equality, they must demonstrate not only that it should be attached to a lexically prior principle of justice, but also that 'fair value' should be interpreted as demanding *ongoing, approximately equal and adequately positive opportunities for each citizen to influence policy outcomes*. In section 3.4, I will assess the most promising Rawlsian arguments for the *fair value proviso* in terms of whether they can offer a plausible grounding for the priority of my principle of political equality. But before doing so, it is necessary to take a detour into the likely circumstances of politics in the sort of well-ordered society for which we are selecting principles of justice.

3.3. The Politics of a Well-Ordered Society

To recall, I suggested in Chapter 1 that, from a broadly Rawlsian perspective, the appropriate way to justify certain principles of justice as specifying fair terms of cooperation for free and equal citizens is to show that they are fair terms of cooperation for the free and equal citizens of a well-ordered society. In Chapter 2, section 2.6, I then provided methodological support for this suggestion and, in doing so, defended several assumptions that I will be making about the psychology of the inhabitants of a well-ordered society. As we will see, these assumptions constrain, yet do not uniquely determine, the type of politics that we might expect to arise in the sort of well-ordered society for which we are selecting principles. Specifically, we are left with three possible models, or ideal-types, of the politics of a well-ordered society, each of which appears to be relied upon by Rawls, and by Rawlsians who have developed arguments to defend the priority of the *fair value proviso*, at different times, but only two of which, I will argue, are plausible.

Thus far, we have characterised a well-ordered society as a society in which:

- (1) nearly all individuals accept and know that nearly everyone else accepts the same principles of justice;
- (2) the major institutions together satisfy, and are publicly known to satisfy, these principles;
- (3) nearly all individuals have a normally effective sense of justice that allows them to understand and apply the publicly recognised principles of justice;
- (4) nearly all individuals are motivated to comply with and further just institutions provided there is sufficient assurance that others will likewise do so.

At first glance, these conditions seem to imply a model of *consensual moral politics* wherein nearly all individuals in society agree on principles of justice and also on how institutions should be organised so as to realise these principles, and they are effectively motivated in politics by the desire to realise this shared vision of just institutions. However, this model of the politics of a well-ordered society is a non-starter once we take seriously the psychological assumption defended in Chapter 2 that the individuals in a well-ordered society should be supposed to have bounded rationality. Once this assumption is taken seriously, then it seems that a well-ordered society should be characterised as a society in which we replace (2) above with:

- (2) there is *reasonable disagreement* over the extent to which the major institutions together satisfy, and are publicly known to satisfy, these principles.

Importantly, this updated characterisation of a well-ordered society implies an alternative model of *competitive moral politics* wherein individuals agree on principles of justice, and are effectively motivated in politics by the desire to realise just institutions, but they *reasonably disagree* about what just institutions look like. There is, of course, a risk that this seems like an *ad hoc* modification of the broadly Rawlsian perspective from which I have argued so far. Accordingly, although I am not aiming to provide an interpretation of Rawls's corpus in this thesis, it is worth noting that there are several passages in his work that support this alternative understanding of a well-ordered society and its politics, particularly seeing as Rawls's general approach to these matters is adopted, sometimes tacitly, by many

in the 'choice of social system' debate. For example, Rawls takes it as given that 'the question whether legislation is just or unjust, especially in connection with economic and social policies, is commonly subject to reasonable differences of opinion' (Rawls 1999a, p.174), and this is because 'a lack of unanimity is part of the circumstances of justice, since disagreement is bound to exist even among honest men [and presumably women] who desire to follow much the same political principles' (Rawls 1999a, p.196). In addition, reasonable justice-disagreement about matters of institutional design are not restricted to the implementation of social and economic policies, but also to the implementation of a just constitution: 'it is not always clear which of several constitutions, or economic and social arrangements, would be chosen. But when this is so, justice is likewise indeterminate' (Rawls 1999a, p.176).

This final quote raises another important distinction that should be drawn between two possible forms of *competitive moral politics* that might occur in a well-ordered society. First, it could be the case, as the above quote suggests, that the reason there is reasonable disagreement even in a well-ordered society is not (only) due to bounded rationality, but because, when it comes to issues of institutional design and policy, principles of justice are indeterminate over a certain range of options. As such, it is possible that disagreements about which institutions best realise shared principles of justice might all be equally right from the perspective of justice. This would cohere with Rawls's view, shared by many in the 'choice of social system' debate, that a property-owning democracy and a liberal socialism are equally well equipped to realise Rawls's principles of justice and so existing societies should choose between these two alternatives based on their historical conditions, traditions of political thought and practice, institutions and social forces (Rawls 2001, pp.114, 139; Rawls 1999a, p.xvi, 242, 248-9).⁶³ Let us call this more specific ideal-type of a *competitive moral politics* a model of *reasonably right politics*.

A contrasting model of the *competitive moral politics* that might occur in a well-ordered society is one where, due to their bounded rationality, individuals are often slightly wrong about what shared principles of justice require at the level of institutional design and policy, despite genuinely aiming to find out what justice requires and reasoning to the best of their ability. On this understanding, reasonable disagreement stems from individuals' limited powers of reasoning, rather than the

⁶³ This also matches Rawls's view that 'the nature of the principles themselves may leave open a range of options rather than singling out any particular alternative' (Rawls 1999a, p.318).

standards of justice being indeterminate, which seems to fit more comfortably with other passages in Rawls's work.⁶⁴ Moreover, it seems plausible that this type of disagreement might still occur even if the individuals of a well-ordered society aim to restrict themselves to the guidelines of enquiry of public reason, which include 'presently accepted general beliefs and forms of reasoning found in common sense, and the method and conclusions of science when these are not controversial', particularly as there will most likely be reasonable boundary disputes about what ought to qualify (Rawls 1996, p.224). Indeed, Rawls seems to recognise this at several points (Rawls 1996, p.lii, 478).⁶⁵ As such, we have an alternative ideal-type of the *competitive moral politics* that might occur in a well-ordered society that we can refer to as a *reasonably wrong politics*.

As I see it, although there are good reasons to think that a well-ordered society will have a *competitive moral politics* with reasonable disagreements about matters of institutional design and policy, there is no reason to think that this politics will be either purely a *reasonable right politics* or a *reasonably wrong politics*, rather than a mix of the two. Moreover, insofar as they have bounded rationality, we should expect that the individuals in a well-ordered society will often struggle to know whether any given reasonable disagreement is persisting because some individuals are reasonably wrong, or because all citizens are reasonably right. As such, I propose that we should conceptualise the politics of a well-ordered society as being a *competitive moral politics* that is a complex hybrid of the ideal-types of a *reasonable right politics* and a *reasonably wrong politics*.

One way to defend this assumption that even the well-meaning and well-informed citizenry of a well-ordered society will reasonably disagree on matters of institutional design and policy is to reflect on our feelings about the Rawlsian 'choice of social system' debate. The theorists in this debate are well-meaning and well-informed and, for the sake of the debate at least, affirm similar principles of justice; yet, as

⁶⁴ For instance, the extended version of the first quote from the previous paragraph reads: 'the question of whether legislation is just or unjust, especially in connection with economic and social policies, is commonly subject to reasonable differences of opinion. In these cases judgement frequently depends upon speculative political and economic doctrines and upon social theory generally. Often the best we can say about a law or policy is that it is at least not clearly unjust' (Rawls 1999a, p.174). Additionally, elsewhere Rawls predicts that 'the restrictions of information will not guarantee agreement, since the tendencies of the general social facts will often be ambiguous and difficult to assess' (Rawls 1999a, p.314).

⁶⁵ Evidently in these passages Rawls is no longer speaking about the type of well-ordered society that we are concerned with here as he is assuming reasonable disagreement about principles of justice. But his remarks clearly cover not only reasonable disagreement about principles of justice but 'all forms of reasoning, including science and common sense' (Rawls 1996, p.lii).

discussed in the previous chapter, they disagree over the institutional requirements of these principles, with some of this disagreement appearing to be *reasonably right* and other aspects *reasonably wrong*.

Before moving on, I would like to consider and dismiss a third potential ideal-type of the politics of a well-ordered society. This is the model of a *competitive egoistic politics* in which individuals are not effectively motivated by the desire to realise just institutions but instead aim to realise institutions that satisfy their self- or group-interests. In my view, if one adopts this model of the politics of a well-ordered society, then one is vulnerable to the following dilemma: either one must methodologically preclude the possibility of present unjust democratic societies transitioning to just institutional arrangements in a democratic manner, i.e. as a result of the collective will of free and equal citizens (rather than the will of a more enlightened or better motivated elite, or a one-off 'golden generation'); or one must implicitly rely upon an implausible and unnecessarily complex moral psychology.⁶⁶

It is worth noting that, at times, the model of a *competitive egoistic politics* is assumed by Rawls when discussing principles to govern a well-ordered society and, probably as a consequence, also by Rawlsians in the 'choice of social system' debate. For instance, this becomes apparent when Rawls justifies his inclusion of the *fair value proviso* in order to prevent 'those with greater wealth and position controlling political life and enacting legislation and social policies that advance their interests' (Rawls 2001, p.148; see also Rawls 1996, p.325) (about which I will say more in the next section).⁶⁷ However, Rawls seems to recognise a major issue for this view of the politics of a well-ordered society elsewhere when he states that 'no institutional procedure without substantive guidelines for admissible reasons can cancel the maxim 'garbage in, garbage out' (Rawls 1996, p.431).⁶⁸ The point is that, if one assumes that the vast majority of individuals in a well-ordered society are not effectively motivated by the desire to realise just institutions, but instead aim to realise institutions that satisfy their self- or group-interest, then, given that politics is the arena in which the rules that make up the basic structure of society are formulated, one is methodologically precluding the possibility of a just democratic

⁶⁶ To recall, this concern about 'methodological preclusion' lay at the heart of my normative criticism of using idealist ideal-types of existing social systems in Chapter 2, section 2.4.

⁶⁷ Some examples of this model of politics being relied upon in the 'choice of social system' debate are (O'Neill 2012, p.82; Malleon 2014, p.234; Schemmel 2015, pp.403-04).

⁶⁸ At several other points in his later work, Rawls emphasises the importance of citizens being motivated by the realisation of justice when engaging in politics for much the same reason: (Rawls 1996, pp.219, 252, 444–45, 448–49, 479).

society. One might think that I have run this argument too quickly. But, as I see it, there are two possible lines of reply to this charge, each of which catches the proponent on one of the horns of my dilemma.

First, one might reply that it seems possible to imagine the creation of a political constitution that allows the self- and group interested actions of individuals in politics thereafter to lead to just legislative outcomes, as if by an invisible hand. However, if this is the case, then it seems that the prospects for a just society rely on a one-off 'golden generation' who are more enlightened and morally motivated than the average free and equal citizen instituting a constitution that will effectively shepherd the self- and group interested actions of subsequent generations towards just legislative outcomes.⁶⁹ But I doubt many theorists who adopt a broadly Rawlsian perspective will want to commit themselves to the position that this is the *only* way for a just basic structure to come about. To do so seems to methodologically preclude the possibility of present unjust democratic societies transitioning to just institutional arrangements in a democratic manner, thus catching the proponent on the first horn of my dilemma. (Unless they assume that all individuals in every generation are capable of becoming the founders of a just 'invisible hand' constitution, but then it is hard to see why we need to ascribe to them self- and group interested motivations in politics.)⁷⁰

In order to avoid this first horn of the dilemma, one might instead reply that the individuals of a well-ordered society should be viewed as being capable of creating a just constitution in a founding 'constitutional moment' during which they are motivated by the desire to bring about just institutions. This constitution could then effectively channel their everyday self- and group interested political actions towards just legislative outcomes. Indeed, this is one plausible reading of Rawls's distinction between *higher* law, which involves 'We the People' of a democratic society creating a just constitution as a principled expression of the ideal of self-government, and *ordinary* law, which involves 'the legislation of transient majorities, or more likely, by organised and well-situated narrow interests skilled in getting their way' (Rawls 1996, p.233).

⁶⁹ At some points Rawls seems to think this way, although without ever quite going this far (Rawls 1996, pp.402-03).

⁷⁰ In addition, Rawls makes the separate point in his reflections on the limits of economic theories of democracy that there is the unanswerable question of why purely self- and group interested citizens would accept and act in accordance with the just constitutional rules passed down to them (Rawls 1999a, p.431; 1999a, pp.316-17).

This dualist view of democracy evokes Friedrich Hayek's distinction between law and legislation (Hayek 1976, chs.7 & 9). However, as Richard Bellamy has forcefully argued in relation to Hayek's dualism, the practice of politics -- even, I submit, the politics of a well-ordered society, provided it is populated by individuals with bounded rationality -- cannot be so neatly divided into the two functions of higher law and ordinary law, with the former being set once and for all in a temporally prior constitutional moment. Rather, individuals with bounded rationality will have to reassess and revise the rules of the political game as they play it due to the ways in which social and technological developments will raise new questions about, for instance, how to interpret and balance the demands of different basic liberties that may be protected in a constitutional bill of rights (Bellamy 1994, pp.429–440). As such, if one were to go with a dualist view of the politics of a well-ordered society, and one wanted it to be the case that 'We the People' set the constitutional rules, then one would need to view constitutional politics as taking place alongside legislative politics. But this would require an assumption that individuals *qua* co-legislators are constantly swapping between their 'justice hats' (for constitutional politics) and their 'self- or group interest hats' (for legislative politics). As such, the proponents of the model of a *competitive egoistic politics* for a well-ordered society are led to the second horn of my dilemma: they must invoke an implausibly schizophrenic hat-switching moral psychology for individuals in their roles as co-legislators, when the simpler moral psychology of a *competitive moral politics* is available.⁷¹

Accordingly, I am inclined to retain a view of the politics of a well-ordered society as being a *competitive moral politics* that is a complex hybrid of the ideal-types of a *reasonably right politics* and a *reasonably wrong politics*. In what follows, I will rely on this model when evaluating the most promising Rawlsian arguments for the inclusion of the *fair value proviso* in a lexically prior principle of justice in terms of whether they can ground the priority of my principle of political equality for a well-ordered democratic society.

⁷¹ It is important to note that I do not think such 'hat swapping' is an unrealistic model of how people with bounded rationality will act in different social roles. Indeed, I will rely on an idea of this sort to argue in Chapter 5, section 5.5, that we should expect a dimension of egoistic politics in a well-ordered society (though a narrower dimension than that considered here). My present point is simply that this 'hat swapping' model seems like an unnecessarily complex account of how individuals act in one social role -- that of co-legislator -- all for the sake of rescuing a predominantly egoistic model of politics at the level of ideal theory.

3.4. Evaluating Three Rawlsian Arguments for the Fair Value Proviso as Grounds for the Priority of Political Equality

In this section I will evaluate three Rawlsian arguments for incorporating the *fair value proviso* in a lexically prior principle of justice in terms of whether they support the priority of my principle of political equality. First, I will argue that what I call the *self-protection argument* is only plausible if one assumes a model of *competitive egoistic politics* for a well-ordered society, which, for the reasons given in the previous section, one should not do. Second, I will argue that what I call the *epistemic argument* can plausibly ground the priority of my principle of political equality as a principle of constitutional design. Third, I will argue that what I call the *status/self-respect argument* can plausibly ground the priority of my principle of political equality as a principle of justice.⁷²

3.4.1. An Original Position for a Democratic Society

I will evaluate the three above arguments from the vantage point of a slightly modified Rawlsian original position. In order to justify this approach, I must first explain why original position reasoning is appropriate given the basic commitments that I signed up to in Chapter 1, and then justify my slight modifications to the usual form that original position reasoning takes on the same grounds.

In short, the original position is a hypothetical choice situation that Rawls takes to constitute a fair viewpoint from which parties who all aim to best secure the fundamental interests of a representative group of free and equal citizens (with all citizens being represented) can agree upon principles of justice that will henceforth specify the fair terms of cooperation for the society of free and equal citizens that they represent. In order for such a viewpoint to be fair, the relevant parties must reason as if they were behind a 'veil of ignorance' that obscures certain morally irrelevant information about the group of citizens whose interests they are aiming to promote that might otherwise sway their judgement, including their social positions, comprehensive doctrines, race or ethnic group, gender, or native endowments

⁷² My distinctions between these arguments are informed by, but go beyond, those drawn by Stephen Wall (2006). Wall identifies a fourth argument for the *fair value proviso* in Rawls's work, which is the idea that securing the fair value of the political liberties is necessary and sufficient for citizens to develop a sense of justice adequate to maintain social stability (Rawls 1996, pp.315–16; 2001, pp.45–46). I agree with Wall's criticism of this argument: the *fair value proviso* seems either unnecessary, because a sense of justice can be developed outside of politics without one having the opportunity to make political decisions; or insufficient, because, if political participation is required to develop a sense of justice, then an opportunity concept is not enough (Wall 2006, p.256). As such, this argument would fail to ground the priority of my principle of political equality.

(such as strength or intelligence) (Rawls 2001, p.15; Rawls 1999a, p.118; Rawls 1996, pp.24–25). However, it is not morally troubling for the parties to know general facts about the society they are selecting principles of justice for insofar as they can be inferred from applying the first principles of social theory to any society in the circumstances of justice (Rawls 1999a, p.119). From this viewpoint, the parties must agree on principles of justice to govern the main institutions of the society of those they represent (2001, p.83).

The use of original position reasoning to select appropriate principles of justice (i.e. fair terms of cooperation) for free and equal citizens can be justified by direct reference to the content of Commitment 1 made in Chapter 1, namely that the most abstract conception of a democratic society is a 'system of cooperation *between free and equal citizens*'. First, the restrictions on knowledge imposed by the veil of ignorance mean that all parties are situated symmetrically for the purpose of selecting principles of justice. This 'models our considered conviction that in matters of basic political justice citizens are equal in all relevant respects' (Rawls 2001, p.18). Put another way, the ideal of equal status that is inherent in the notion of free and equal citizens in the public political culture of a democratic society means that we should view the veil of ignorance as an appropriate restriction for the purpose of selecting principles of justice for free and equal citizens.

Second, the stipulation that each party in the original position should aim to best secure the fundamental interests of the free and equal citizen that they represent is intended to model the basic freedom of free and equal citizens in two ways. First, a free citizen is understood to have a fundamental interest in being able to develop the capacity to form and revise a conception of the good and to pursue whatever conception of the good they hold at any given time (Rawls 1996, pp.19, 30, 74, 332; 2001, pp.18–19, 45, 85, 112–13). Second, free citizens are understood to be 'self-authenticating sources of valid claims' who are therefore 'entitled to make claims on their shared institutions so as to advance their specifications of the good' (Rawls 2001, p.23; see also Rawls 1996, pp.32–33). So, original position reasoning is appropriate to select principles of justice *for free and equal citizens* because it is constructed using the very moral commitments of freedom and equality that citizens in democratic societies already accept (Rawls 1996, p.26; 2001, p.17; James 2005, p.282).

I will begin my justification of my two slight modifications to Rawls's original position by highlighting the following important point made by Samuel Freeman:

There are two sides to Rawls's social contract. The parties in the original position have the task of agreeing to principles that all rationally can accept under the circumstances of the original position. But their rational choice is partially determined by the principles that free and equal moral persons reasonably can accept and agree to in a well-ordered society (Freeman 1996; Freeman 2007b, p.xi, 183-84).

This understanding of the original position means that a certain type of concern should inform the parties' reasoning that might otherwise be obscured, namely, they are to consider the 'strains of commitment' associated with any given principles of justice, understood in terms of the likely psychological ease or difficulty that citizens in different social positions would experience when living in a society publicly known to be governed by these principles (Rawls 1999a, pp.126, 153–54; 2001, pp.103–4; 1996, p.17).⁷³ This understanding of the original position fits with Commitment 3 in Chapter 1: that a just democratic society must be a 'well-ordered society' (Rawls 1996, p.35; Rawls 1999a, pp.7–8, 397; Rawls 2001, pp.13, 27). It also sets the stage for my two slight modifications to Rawls's formulation of the original position. First, I contend that when the parties in the original position evaluate principles of justice in terms of whether or not they best secure the fundamental interests of the free and equal citizens that they represent, their evaluations should be informed by applying these principles to the circumstances of a well-ordered society that is assumed to have a complex hybrid of *reasonably right politics* and *reasonably wrong politics*, for the reasons set out in the previous section.

Second, I hold that it should be assumed that the parties in the original position are aware that they are selecting principles of justice for a *democratic* society, recognised as a society in which all individuals understand themselves as having (a) an *equal status* in virtue of having the capacity to develop and exercise an adequate sense of justice and (b) a *free status* in virtue of having the capacity to form, to revise and rationally to pursue a conception of the good, and in virtue of being self-authenticating sources of valid claims who are entitled to make claims on their shared institutions. In his earlier work, Rawls seems to deny that such information should be available to the parties in the original position, claiming that it should only

⁷³ By the same token, the parties should also use this information to evaluate principles of justice in terms of their likely 'stability for the right reasons' (Rawls 1996, p.xli; 1999a, pp.119, 153–57; 2001, p.285).

come in at the subsequent stage of selecting principles of constitutional design (Rawls 1999a, pp.118, 173). However, insofar as my broadly Rawlsian approach is closer to Rawls's later view that the ultimate theoretical purpose of the original position is to justify principles of justice *for a democratic society* (Rawls 1999a, pp.xi, xviii; 1996, pp.22–23, 342, 369; 2001, pp.14–15), I see no reason to place such information about the type of society for which principles are being selected behind the veil of ignorance. I especially feel that this is the case because, at least on our practice-dependent approach to Rawlsian theory, this interpretive information is used to construct the veil itself and therefore is clearly not seen as something morally irrelevant about existing democratic societies to be abstracted away. That said, my arguments in later chapters are not damaged if one thinks that I only succeed in showing that my principle of political equality should be a lexically prior principle of constitutional design, rather than a lexically prior principle of justice in this chapter.

3.4.2. *The Self-Protection Argument*

The first Rawlsian argument for incorporating the *fair value proviso* in a lexically prior principle of justice that I shall evaluate from the perspective of the parties in the original position is the *self-protection argument*. There are in fact two versions of the *self-protection argument*, and it is worth distinguishing them. The first of these I shall refer to as the *self-protection of socio-economic interests argument*. Rawls alludes to this argument when he says: 'the guarantee of the fair value of the political liberties is included in the first principle of justice because it is essential in order to establish just legislation' (Rawls 1996, p.330). This implies that the fair value of the political liberties is necessary, though perhaps not sufficient, for securing just legislative outcomes. And, to recall, for Rawls legislative outcomes are considered to be just insofar as they satisfy a lexically subsequent principle of justice that governs the distribution of social and economic advantages (Rawls 1999a, pp.174–75; 2001, pp.48–9).

One way to understand the argument being made here is as follows: the parties in the original position would include the *fair value proviso* in a lexically prior principle of justice on the grounds that the best way for the free and equal citizens that they represent to realise their legitimate socio-economic interests, as defined by a lexically subsequent principle of justice, is by having the political power to influence legislation so that it best serves their socio-economic interests. As noted in the

previous section, this view seems to underpin the view shared by Rawls and others in the 'choice of social system' debate that the *fair value proviso* is required to prevent 'those with greater wealth and position controlling political life and enacting legislation and social policies that advance their interests' (Rawls 2001, p.148; see also Rawls 1996, p.325).⁷⁴ It is also worth noting that the *self-protection of socio-economic interests argument* is consistent with Rawls's view, perhaps shared by others in the 'choice of social system' debate, that the design of a just constitution is to a significant extent a problem of 'imperfect procedural justice' (Rawls 1999a, pp.173, 194, 201; 1996, p.422, fn.68).⁷⁵ So, when it comes to the *fair value proviso*, the relevant argument would seem to be that, although a constitution that realises (*inter alia*) this proviso is not sufficient to ensure just legislative outcomes (measured using Rawls's second principle of justice), it is a necessary feature of the best possible constitution for achieving just legislative outcomes.

Understood in this way, the *self-protection of socio-economic interests argument* follows in a long tradition of political thought, which is perhaps best captured by J.S. Mill's idea that 'each is the only safe guardian of his [or her] own rights and interests' and so 'human beings are only secure from evil at the hands of others, in proportion as they have the power of being, or are, *self-protecting* [italics in original]' (Mill 1998, p.245). This argument gains some further plausibility from Brian Barry's technical demonstration that, under some simplifying conditions, a voting procedure in which all citizens have one vote and in which they all vote to protect their own interests will

⁷⁴ See footnote 67, p.84. This is also consistent with Rawls's remark elsewhere that 'the liberties protected by the principles of participation [i.e. the political liberties] lose much of their value whenever those who have greater private means are permitted to use their advantages to control the course of public debate. For eventually these inequalities will enable those better situated to exercise a larger influence over the development of legislation' (Rawls 1999a, p.198).

⁷⁵ This is one of three types of procedural justice that Rawls distinguishes: First, *pure procedural justice* refers to a situation in which there are no independent criteria for what counts as a just outcome, but there are independent criteria for what counts as a fair procedure. In this scenario, we can say that whatever outcome a fair procedure selects is just. In contrast, *perfect procedural justice* refers to a situation in which there are independent criteria for what counts as a just outcome. In this scenario, we can say that a procedure that is guaranteed to select just outcomes is perfectly just. *Imperfect procedural justice* is the same as perfect procedural justice, except that now there is no procedure that can guarantee just outcomes. In this scenario, we can still say that whatever procedure is most likely to select just outcomes is imperfectly just (1999a, pp.74–5). The 'to a significant extent' caveat in the sentence to which this footnote is attached is required because Rawls holds that the liberty principle narrows the range of permissible constitutions, and within this narrower range the problem then becomes one of imperfect procedural justice (Rawls 1999a, pp.173–74). As such, the problem should be characterised as one of 'quasi-imperfect procedural justice' (see Rawls 1999, p.176).

lead to outcomes that maximise both average satisfaction and the satisfaction of the worst-off group (Barry 1989a, pp.42–50).⁷⁶

Nevertheless, the *self-protection of socio-economic interests argument* cannot offer a plausible grounding for the priority of my principle of political equality as a principle of justice. This is because it has an obvious logical weakness: it is incoherent to argue that achieving the fair value of the political liberties ought to be a lexically prior concern to achieving whatever principle of justice is taken to regulate social and economic inequalities because the former is an essential institutional means to achieving the latter. Hence, even if the parties in the original position accepted the empirical generalisation that *ongoing approximately equal and adequately positive opportunities to influence policy outcomes for all citizens* are necessary to best approximate just socio-economic legislation, this would not justify the priority of my principle of political equality. Rather, it would simply show that under certain conditions, my principle of political equality ought to have priority as a principle of constitutional design, at least when it comes to the constitutional procedure for passing socio-economic legislation.

A second version of the *self-protection argument* for the *fair value proviso* looks better placed to avoid this sort of problem. I shall refer to this as the *self-protection of the modern liberties argument*. This argument can be constructed as a natural extension of one of Rawls's arguments for the priority of the political liberties, which goes as follows:

The political liberties can still be counted as basic even if they are only essential institutional means to protect and preserve other basic liberties. When politically weaker groups and minorities are denied the franchise and excluded from political office and party politics, they are likely to have their basic right and liberties restricted if not denied. (Rawls 2001, p.143; see also 1996, p.299).

This line of argument is consistent with the previously surveyed arguments of Mill and Barry, each of whom focuses on the self-protection of fundamental rights as well as socio-economic interests (Mill 1998, p.245; Barry 1989a, pp.37–38). A Rawlsian could extend this line of argument to defend the further idea that, in addition to the formal equality of the political liberties, their fair value must also be

⁷⁶ In short, the simplifying assumptions are that there are no passionate minorities, no persistent minorities and all collective decisions are dichotomous, i.e. choices between two options (Barry 1989a, p.42).

guaranteed if a well-ordered democratic society is to achieve the formal equality and adequate extent of the liberties of the moderns. This second version of the *self-protection argument* appears to be of a more promising form to ground the priority of my principle of political equality. If the parties in the original position accept that in all well-ordered democratic societies, it is necessary to secure *ongoing approximately equal and adequately positive opportunities to influence policy outcomes for all citizens* in order to secure the formal equality and adequate extent of the liberties of the moderns, then this would warrant including my principle of political equality in a lexically prior liberty principle that also guarantees the liberties of the moderns (provided one accepts other arguments from the original position for the priority of the liberties of the moderns).⁷⁷

However, once the argument is articulated in this way it becomes clear that no version of the *self-protection argument* for the *fair value proviso* can offer a plausible grounding for the priority of my principle of political equality. This is because it must rely on us ascribing to the parties in the original position knowledge that the citizens of the well-ordered society for which they are selecting principles of justice will not be politically motivated by the desire to realise just institutions, but instead by the desire to realise institutions that satisfy their self- or group interests. But, as was argued in the previous section, we should not ascribe this model of *competitive egoistic politics* to a well-ordered *democratic* society. As such, even in its strongest form, the *self-protection argument* fails to offer a plausible grounding for the priority of my principle of political equality.

3.4.3 The Epistemic Argument

The second Rawlsian argument for incorporating the *fair value proviso* in a lexically prior principle of justice that I shall evaluate from the perspective of the parties in the original position is the *epistemic argument*. This argument is not fully fledged in Rawls's work, but it can be constructed using some materials found in his writings, particularly in *Theory*. The argument states that the parties in the original position would include the *fair value proviso* in a lexically prior principle of justice on the grounds that the best way for the citizens of the well-ordered society for which they are selecting principles of justice to determine accurately what justice requires at the level of institutional design and policy is for each such citizen to have an equal say

⁷⁷ Of course, one might maintain that the *self-protection of the modern liberties argument* only supports the priority of my principle of political equality as a principle of constitutional design. Either way, my criticism in the next paragraph is pertinent.

in the process by which policies are agreed. An 'equal say' here is understood to require the equal political liberties guaranteed at their fair value.

There are some passages in Rawls's work from which we can construct this argument. For starters, when discussing the legislative process in a just, well-ordered society, he argues that 'the legislative discussion must be conceived not as a contest between interests, but as an attempt to find the best policy as defined by the principles of justice' (Rawls 1999a, p.314). He then draws upon Condorcet's Jury Theorem, which shows that, provided each voter generates their policy judgements independently, and choices between policy options are always binary choices, and each voter has a greater chance of being right than wrong on each issue, a majority vote among a large number of individuals should lead to the correct outcome on each issue (Condorcet 1785, p.pp.279ff; Rawls 1999a, p.315). Although it is perhaps not Rawls's primary intention, we could interpret this passage as a Rawlsian argument for the priority of the equal political liberties. It would place Rawls in an ongoing tradition of political thought that looks to defend the populist implications of Condorcet's Jury Theorem (Black 1958, pp.159–35; Coleman & Ferejohn 1986, pp.15–19), even if one weakens the abovementioned conditions so that only the mean voter is more likely than not to be correct, or one allows for certain interdependencies between the ways in which voters form their policy judgements (Grofman et al. 1983, pp.268, 273–74). Recent work in this tradition even demonstrates that, when applied to choices between three or more policy options, Condorcet's Jury Theorem supports plurality rule among the largest possible number of voters (List & Goodin 2001).

As things stand, the above argument leads to the conclusion that a guarantee of the equal political liberties is justified because it is a necessary component of a decision-making procedure that instantiates *perfect* procedural justice.⁷⁸ However, there are three shortcomings of this strong form of the *epistemic argument* for the equal political liberties. First, as Rawls recognises, the strength of the argument (in terms of claiming *perfect* procedural justice) becomes implausible once we accept that interdependencies in policy judgement formation are often likely to be so complex that the probabilistic reasoning of Condorcet's Jury Theorem will not apply (Rawls 1999, p.315; see also Grofman et al. 1983, pp.273–74). Second, as David Estlund argues, even if we conclude that such interdependencies are unlikely to

⁷⁸ For the definition of perfect procedural justice, see footnote 75, p.91.

undermine Condorcet's Jury Theorem, we still have no convincing reason to accept that each voter has a greater chance of being right than wrong on each issue. Rather, it is possible that many voters will be systematically wrong across a range of policy issues due to deriving their conclusions from a faulty system of thought (Estlund 2008, pp.229–31). Finally, even if one concedes that it is unlikely that all citizens will have faulty systems of thought, this is not enough for Condorcet's Jury Theorem to ground the equal political liberties *for all citizens*. To reach this conclusion, one must assume that the distribution of political wisdom is spread more or less evenly amongst all individuals in society. For, if only a particular subgroup of citizens is recognised as having a greater chance of being right than wrong on each issue, while others are suspected of having a greater chance of being wrong than right, then Condorcet's Jury Theorem would, at best, be neutral between securing equal political liberties for all of those citizens for whom the mean voter is more likely than not to be correct, and securing equal political liberties only for the wiser subgroup (such as Mill's preferred subgroup of university graduates (Mill 1998, pp.326–46)).

Nevertheless, there is a more plausible weaker form of the *epistemic argument* for the equal political liberties that can avoid these difficulties, as Rawls himself recognises. Specifically, by adopting two plausible assumptions, one can use the basic logic of the above argument to reach the conclusion that a guarantee of the equal political liberties is justified because it is a necessary component of a decision procedure that instantiates *imperfect* procedural justice.⁷⁹ The first assumption regards what Thomas Christiano refers to as the 'cognitive biases' that ubiquitously infect well-intentioned reasoning about the institutional demands of justice whenever it is conducted by individuals with bounded rationality. Christiano explains this idea as follows:

There is a tendency to cognitive bias in articulating and elaborating conceptions of justice, particularly in contexts of actual political conflicts. Cynicism is not necessary to observe this. Cognitive bias is natural given that individuals are likely to be more sensitive and understanding to their own interests than those of others ... To be sure, the process of rational deliberation should eliminate some of this cognitive bias, but it is unlikely to eliminate it all. (Christiano 1996, pp.72–73; see also: 2008, pp.88–90).

For our purposes, we need not go so far as to argue that cognitive biases will inevitably lead individuals in a well-ordered society to favour their own interests,

⁷⁹ For the definition of imperfect procedural justice, see footnote 75, p.91.

which is a strong claim. Rather, it is enough that, for individuals with bounded rationality, their life experiences are highly likely to skew their judgements about the institutional requirements of principles of justice one way or another. The important upshot of this assumption is that, if it holds, then, even if we presume that all citizens are effectively motivated in politics by the desire to realise just institutions, there simply is no subgroup of citizens (such as Mill's preferred university graduates) who will have a monopoly on political wisdom to the point that their collective judgements about the institutional demands of justice would not be improved from the input of all other citizens. This is because any given subgroup will share certain cognitive biases.⁸⁰

The second assumption that is required to support a weaker form of the *epistemic argument* for the equal political liberties is that, for each individual, pre-voting communication with as many other individuals as possible is *the most reliable way* to overcome their own biases and therefore increase their chances of being right on each policy issue, even if it does not guarantee that all of their cognitive biases will be overcome, nor that they necessarily have a greater chance of being right than wrong on each and every issue. If we marry this mildly optimistic assumption about the effects of deliberation with the first assumption about the ubiquity of cognitive biases, then we reach the conclusion that a guarantee of the equal political liberties for as many citizens as possible (i.e. all citizens) is a necessary component of a decision-making procedure that instantiates *imperfect* procedural justice (Rawls 1999a, p.315; Christiano 2008, pp.92–93).⁸¹

Importantly, once the weaker form of the Rawlsian *epistemic argument* for the equal political liberties is elaborated in this way, then it naturally extends to guarantee the fair value of the political liberties. It follows from the above argument that the desirable epistemic properties of a process that involves pre-voting communication with as many individuals as possible, followed by an equal vote for all, would be undermined if certain individuals had the resources to dominate the pre-voting

⁸⁰ Rawls makes a similar point, albeit briefly (Rawls 1999a, p.315). Estlund also makes a similar point about the role of cognitive biases, but holds back from allying this with the second assumption that I will introduce momentarily in order to ground the equal political liberties. Rather, Estlund argues that, given these cognitive biases, rule by any given wise subgroup of citizens can always be 'reasonably rejected' in a relevant sense, which means that we should default to equal suffrage (Estlund 2008, pp.215–19). But, as Kolodny notes, it is not clear why Estlund treats equal suffrage as a default option within his framework (Kolodny 2014a, pp.224–25).

⁸¹ In terms of their subsequent conclusions, Rawls and Christiano seem to accept this 'most reliable way' formulation. Estlund argues for the weaker conclusion that this type of procedure is no less reliable than other procedures that also pass his 'reasonable rejectability' test, none of which are epistocratic (Estlund 2008, pp.231–36).

communication with their particular cognitively biased view, or to somehow sway the vote in favour of that view. To sum up, the Rawlsian *epistemic argument* for the *fair value proviso* goes as follows: the parties in the original position would reason that, for the type of well-ordered democratic society for which they are selecting principles of justice (i.e. one where citizens are justice-motivated in politics, but have bounded rationality), guaranteeing the equal political liberties for all citizens at their fair value is a necessary component of a political procedure that offers the most reliable (though not perfectly reliable) institutional means to bring about the policies that best realise other principles of justice that have already been selected.

Of course, the relevant question for our purposes is whether or not this weaker version of the *epistemic argument* for the *fair value proviso* can ground the priority of a principle of political equality that demands *ongoing approximately equal and adequately positive opportunities to influence policy outcomes for all citizens*. In short, my answer is yes and no. To see why, it will be helpful to first remind ourselves of the relevant vantage point from which this question should be answered: the parties in our slightly modified original position are looking to select principles of justice for a well-ordered democratic society, which they are to suppose will have a *competitive moral politics* that involves a complex hybrid of *reasonably right politics* and *reasonably wrong politics*.

With this in mind, it appears that the weak version of the *epistemic argument* offers strong grounds for the parties to secure *ongoing approximately equal and adequately positive opportunities to influence policy outcomes* for the citizens that they represent insofar as these citizens are expected to be engaged in *reasonably wrong politics*. This is because, in this dimension of politics, it seems that providing each and every citizen with *ongoing approximately equal opportunities to influence policy outcomes* is a necessary component of the political procedure that offers the most reliable (though not perfectly reliable) institutional means to bring about the policies that best realise other principles of justice, due to the prevalence of cognitive biases and the epistemic benefits of communication. In addition, given that this type of political procedure is considered more reliable than either an impersonal decision-making procedure (such as a completely random lottery) or a decision-making procedure that gives some share of opportunities for influence to another agent, or group of agents, who, unlike citizens, cannot be relied upon to be

motivated by justice,⁸² the *epistemic argument* also offers strong grounds for the parties to secure *adequately positive opportunities to influence policy outcomes for all citizens*.

In contrast, it is not clear that the weak version of the *epistemic argument* offers grounds for the parties to secure *ongoing approximately equal and adequately positive opportunities to influence policy outcomes for all citizens* insofar as the citizens that they represent are expected to be engaged in *reasonably right politics*. This is because, in this dimension of politics, principles of justice are indeterminate at the level of institutional design and policy and each citizen's judgements on such matters are equally right. So, despite the possible persistence of cognitive biases, it is not clear why a collective political procedure that secures *ongoing approximately equal and adequately positive opportunities to influence policy outcomes for all citizens* has epistemic benefits over other procedures that allow some subgroup of citizens to select the outcome. Even so, one might argue that the parties in the original position would still choose to secure *ongoing approximately equal and adequately positive opportunities to influence policy outcomes* for the citizens that they represent on the grounds that, when these citizens are involved in *reasonably wrong politics*, they will have the most reliable institutional means available to bring about the policies that best realise other principles of justice, and when they are involved in *reasonably right politics* this procedure will be no less reliable for bringing about the policies that best realise other principles of justice than any other procedure.

So it seems that the weaker version of the *epistemic argument* can ground the priority of my principle of political equality. However, on reflection, it only appears to show that, under certain relevant conditions, any other principle of justice that the parties in the original position select will be best approximated at the level of institutional design (assuming there is reasonable disagreement on this matter) by instantiating a political procedure that is arranged in accordance with my principle of political equality. So the *epistemic argument* appears to ground the priority of my principle of political equality as a principle of constitutional design, rather than a principle of justice with priority over whatever principle is taken to govern the distribution of social and economic advantages.

⁸² I have assumed here that we cannot rely on non-citizen agents to be motivated by justice, in contrast to citizens. I will say more about this in Chapter 5, section 5.5.

3.4.4. *The Status/Self-Respect argument*

The final Rawlsian argument for incorporating the *fair value proviso* in a lexically prior principle of justice that I shall evaluate from the perspective of the parties in the original position is the *status/self-respect argument*. This argument is underdeveloped by Rawls and will therefore require some reconstruction from a broadly Rawlsian perspective. In short, the argument states that the parties in the original position would include the *fair value proviso* in a lexically prior principle of justice because they would recognise this as a necessary social basis of self-respect for the free and equal citizens that they represent, and they would also be aware that without self-respect, the citizens they represent may well not have the confidence or impetus to use the other resources conferred on them as a matter of justice to pursue their conceptions of the good. The *status/self-respect argument* for the priority of the fair value of the political liberties is best understood as an extension of one of Rawls's arguments for the priority of the equal political liberties. As such, it will be useful to sketch this more general argument first, before seeing whether it might be extended to offer a plausible grounding for the *fair value proviso*, and more importantly, for the priority of my principle of political equality.

By way of background, Rawls proposes the general psychological thesis that achieving and maintaining self-respect is a likely precondition for individuals to realise their other fundamental interests, because 'without self-respect nothing may seem worth doing, and if some things have value for us, we lack the will to pursue them' (Rawls 1996, p.318). I will assume that this is not particularly controversial. On my interpretation, Rawls then introduces a moralised notion of self-respect that is appropriate for the ideal of a free and equal citizen that is latent in the public political culture of democratic societies. It is grounded in the possession of the following two attitudes: (1) a sense of their free and equal status, which itself is grounded in the two convictions that: (a) they have the capacity to develop and exercise an adequate sense of justice (i.e. they have an equal status); and (b) they have the capacity to form, to revise and rationally to pursue a conception of the good worth carrying out; and they are 'self-authenticating sources of valid claims' who are therefore 'entitled to make claims on their shared institutions so as to advance their specifications of the good' (Rawls 2001, p.23; see also Rawls 1996, pp.32–33) (i.e. they have a free status); and (2) a confidence in their ability to carry out their overall plan of life as a fully cooperating member of society (Rawls 1996, pp.318–19; 1999a, p.386).

This notion of self-respect sits between what Stephen Massey calls a 'subjective' and an 'objective' account of self-respect. Subjective accounts are amoral insofar as they focus on the self-respect one might enjoy in virtue of having the characteristics required to act in accordance with the norms of any practice, such as respecting oneself as a fully participating, or perhaps even a good, member of a caste. In contrast, objective accounts are interested in something closer to a moralised Kantian notion of self-respect, understood as respecting oneself as an ultimate end-in-itself of equal moral worth to other ends-in-themselves (Massey 1983, pp.248–52). The Rawlsian notion of self-respect might be referred to as a 'political' third way. On the one hand, it focuses on the self-respect one might enjoy in virtue of having the characteristics required to act in accordance with the norms of a particular practice: the practice of democratic citizenship. On the other hand, it focuses on that practice, interpreted in a certain way, because it is taken to be a morally attractive starting point insofar as many democratic citizens already do, or would, accept it as such.⁸³ I take it that this political notion of self-respect should be acceptable to those who accept the broadly Rawlsian perspective from which I am arguing.

A second background point worth mentioning is that Rawls recognises that it is beyond the purview of the parties in the original position to select principles for the distribution of self-respect as an attitude among free and equal citizens, as their job is limited to the selection of principles to govern the major institutions shared by the free and equal citizens of a well-ordered society. Nonetheless, the parties should be sensitive to the impact that their institutional choices are likely to have on the attitudinal self-respect of the citizens they represent. In Rawls's view, this impact can be substantial because, following a path laid by Jean-Jacques Rousseau, he holds that 'self-respect depends upon and is encouraged by certain public features of basic social institutions ... and how people who accept these arrangements are expected to (and normally do) regard and treat one another' (Rawls 1996, p.318). I take it that this public basis of self-respect is not particularly controversial. It does, however, mean that the parties in the original position should pay significant attention to the distribution of the *social (i.e. institutional) bases* of self-respect, as

⁸³ Nir Eyal makes a similar point, although he notes that Rawls only uses a political notion of self-respect from the late 1970s onwards, prior to which he worked with a more straightforwardly Kantian notion (Eyal 2005, p.205). I take it that both the thinly moralised political notion and the even more thickly moralised Kantian notion are forms of self-respect, rather than self-esteem. For the relevant distinction see (Sachs 1981).

they are 'among the most essential primary goods' (Rawls 1996, p.319; see also 2001, p.60, fn.27; 1999, p.386).⁸⁴

With all of this as background, the Rawlsian *status/self-respect argument* for the priority of the equal political liberties can be sketched in rough outline as comprising of the following three steps: (1) The parties in the original position will have access to the abovementioned psychological information about the nature and grounds of the self-respect of the democratic citizens for whom they are selecting principles of justice. (2) As such, they will conclude that if the society for which they are selecting principles of justice does not have institutions that publicly secure the equal political liberties for each citizen, then this will undermine the self-respect of those with the lesser political liberties to the point that they are likely to be unable to fully enjoy the goods they are entitled to as a matter of justice, including any of the material benefits that might flow from the unequal political liberties. (3) Therefore, they will choose to guarantee the equal political liberties as a matter of lexical priority over whatever principle of justice is taken to govern the distribution of social and economic advantages.⁸⁵

Clearly step (2) does most of the work in this argument and needs to be further elaborated upon in order to make the argument convincing. For one might still reasonably ask 'Why would the parties in the original position reach this conclusion about the relationship between the priority of the equal political liberties and the self-respect of those for whom they are selecting principles of justice?' In my view, the parties can plausibly be understood to reach this conclusion by the following chain of reasoning:

Premise 1: The parties will recognise that the ways in which the citizens for whom they are selecting principles of justice view themselves is greatly influenced by how they are publicly treated by their institutions (Rawls 1996, p.318).

⁸⁴ To be clear, the type of respect needed from public institutions in order to ground the self-respect required for a democratic citizen to have the confidence and impetus to pursue their conception of the good is *recognition* respect (as a fully cooperating free and equal citizen, i.e. a sufficiency concept) rather than *appraisal* respect (as a particularly good or effective citizen, i.e. a comparative concept). For more about this distinction see (Darwall 1977).

⁸⁵ This is structurally equivalent to the 'strains of commitment' argument that Rawls runs against utilitarian principles of justice (Rawls 1999a, pp.154–60); hence, the *status/self-respect argument* for the priority of political equality is a form of 'strains of commitment' argument.

Premise 2: The parties will recognise that, in any society in reasonably favourable circumstances, securing lesser formal political liberties for a certain citizen, or set of citizens, will be understood by those citizens as a public message from their fellow citizens that they are not considered to have the capacity to develop and exercise an adequate sense of justice (Rawls 1996, p.319; 1999a, p.477).

Premise 3: The parties will recognise that the democratic citizens for whom they are selecting principles of justice will only view themselves as having an equal status to their fellow citizens if they view themselves as having the capacity to develop and exercise an adequate sense of justice (Rawls 1996, p.302; Rawls 1999a, pp.205, 477).

Sub-conclusion 1: The parties will therefore conclude that the combination of Premises 1, 2 and 3 means that if they fail to guarantee the equal formal political liberties to all of the citizens for whom they are selecting principles of justice, then those citizens who are publicly known to have lesser political liberties will not view themselves as having an equal status to their fellow citizens.

Premise 4: The parties will recognise that the self-respect of the democratic citizens for whom they are selecting principles of justice is grounded, in part, in a sense of their equal status (Rawls 1996, p.302; Rawls 1999a, pp.205, 477).

Premise 5: The parties will recognise the general psychological thesis that, 'without self-respect nothing may seem worth doing, and if some things have value for us, we lack the will to pursue them' (Rawls 1996, p.318).

Main conclusion: The parties will therefore conclude that the combination of Sub-conclusion 1 and Premises 4 and 5 means that, if they fail to guarantee the equal formal political liberties to all of the citizens for whom they are selecting principles of justice, then those citizens with lesser formal political liberties will not have secure institutional bases for their self-respect, and as such they are unlikely to be able to fully enjoy the goods they are entitled to as a matter of justice, including any additional material benefits that might flow from the unequal formal political liberties.⁸⁶

⁸⁶ This is a more developed version of Joshua Cohen's reconstruction of Rawls's *status/self-respect argument* for the equal political liberties (J. Cohen 2003, pp.109–11).

This main conclusion supports the move to step (3) in the original sketch of the argument above: the parties in the original position will therefore choose to guarantee the equal political liberties as a matter of lexical priority over whatever principle of justice is taken to govern the distribution of social and economic advantages.

The *status/self-respect argument* for the priority of the *fair value proviso* can be understood as an extension of this argument for the priority of the equal basic liberties. In his later work, Rawls adds in a footnote: 'In the discussion of the equal political liberties as a basis of self-respect, the fair value of these liberties is not mentioned. It should have been' (Rawls 1996, p.318 (fn.29)). This amendment is intended to deal with Norman Daniels's criticism that Rawls's earlier work failed to see that a formal guarantee of equal political liberties is insufficient to secure citizens' self-respect unless it is accompanied by a guarantee of their fair value (Rawls 2001, p.148 (fn.20); 1996, p.325 (fn.32)). In short, Daniels argues that if the parties in the original position recognise that the citizens for whom they are selecting principles of justice will not view themselves as having an equal status to their fellow citizens if they have lesser formal political liberties than them, then it is equally unlikely that they will view themselves as having an equal status to their fellow citizens if the *value* of their political liberties is less than that of their peers. And both types of inequality will be equally damaging to their self-respect (Daniels 1989, pp.273–6). So the Rawlsian *status/self-respect argument* for the priority of the *fair value proviso* is best understood by replacing every underlined use of the word 'formal' in Premise 2, Sub-conclusion 1, and the Main Conclusion of the above argument with the words 'worth of'. This will then support the conclusion that the parties in the original position would choose to guarantee the fair value of the political liberties, understood in a fairly egalitarian way, as a matter of lexical priority over whatever principle of justice is taken to govern the distribution of social and economic advantages.⁸⁷

⁸⁷ A similar conclusion is drawn by Meena Krishnamurthy (2013, pp.189, 194) and Joshua Cohen (Cohen 2001, p.73). Another way to formulate this argument would be to accept Nir Eyal's and Henry Shue's point that a broadly Rawlsian approach appears to rely on an unstated lexically prior principle of justice: equality of the social bases of self-respect (Eyal 2005, pp.197–201; Shue 1975, p.198). My argument here could then be understood as showing what the implications of this demand are for the distribution of one of these social bases -- opportunities to influence policy outcomes -- while remaining agnostic about other possible social bases. Rawls appears to formulate his argument in these terms at one point (Rawls 1996, p.404, fn.39; Rawls 1999a, p.477).

The relevant question for our purposes is whether or not this Rawlsian *status/self-respect argument* for the *fair value proviso* can ground the priority of a principle of political equality that demands *ongoing approximately equal and adequately positive opportunities to influence policy outcomes for all citizens*. To recall, for our purposes this question should be answered from the vantage point of the parties in my slightly modified original position who are looking to select principles of justice for a well-ordered democratic society with a *competitive moral politics* that involves a complex hybrid of *reasonably right politics* and *reasonably wrong politics*. Moreover, as I argued in section 3.4.1, we should assume that the parties in the original position are aware that they are selecting principles of justice for a *democratic* society, meaning a society in which all individuals understand themselves as having (a) an *equal status* in virtue of having the capacity to develop and exercise an adequate sense of justice and (b) a *free status* in virtue of having the capacity to form, to revise and rationally to pursue a conception of the good, and in virtue of being self-authenticating sources of valid claims who are entitled to make claims on their shared institutions.

As I see it, provided the parties' understand their decision in these terms, the Rawlsian *status/self-respect argument* offers plausible grounds for the priority of my principle of political equality in both the dimensions of *reasonably wrong politics* and *reasonably right politics*.

Regarding the demand for *ongoing approximately equal opportunities to influence policy outcomes for all citizens*, I contend that, regardless of which of these two dimensions of politics the parties in the original position have in mind, the following chain of reasoning will hold:

Premise 1: The parties will recognise that the ways in which the citizens for whom they are selecting principles of justice view themselves is greatly influenced by how they are publicly treated by their institutions.

Premise 2: The parties will recognise that, in any given society in reasonably favourable conditions, securing *significantly lesser ongoing opportunities to influence policy outcomes* for a certain citizen, or set of citizens, will be understood by those citizens as a public message from their fellow citizens that they are not considered to have the capacity to develop and exercise an adequate sense of justice.

Premise 3: The parties will recognise that the democratic citizens for whom they are selecting principles of justice will only view themselves as having an equal status to their fellow citizens if they view themselves as having the capacity to develop and exercise an adequate sense of justice.

Sub-conclusion 1: The parties will therefore conclude that the combination of Premises 1, 2 and 3 means that, if they fail to guarantee *ongoing approximately equal opportunities to influence policy outcomes* for all of the citizens for whom they are selecting principles of justice, then those citizens who are publicly known to have *significantly lesser ongoing opportunities to influence policy outcomes* will not view themselves as having an equal status to their fellow citizens.

Premise 4: The parties will recognise that the self-respect of the democratic citizens for whom they are selecting principles of justice is grounded, in part, in a sense of their equal status.

Premise 5: The parties will recognise the general psychological thesis that 'without self-respect nothing may seem worth doing, and if some things have value for us, we lack the will to pursue them' (Rawls 1996, p.318).

Main conclusion: The parties will therefore conclude that the combination of Sub-conclusion 1 and Premises 4 and 5 means that, if they fail to guarantee *ongoing approximately equal opportunities to influence policy outcomes* for all of the citizens for whom they are selecting principles of justice, then those citizens with *significantly lesser opportunities to influence policy outcomes* will not have secure institutional bases for their self-respect, and as such they are likely to be unable to fully enjoy the goods they are entitled to as a matter of justice, including any additional material benefits that might flow from *significantly unequal opportunities to influence policy outcomes*.

This chain of reasoning supports the further conclusion that the parties in the original position will choose to guarantee *ongoing approximately equal opportunities to influence policy outcomes for all citizens* as a matter of lexical priority over whatever principle of justice is taken to govern the distribution of social and economic advantages. This is not a particularly controversial conclusion if we focus only on the dimension of *reasonably right politics* that will occur in the well-ordered

society for which the parties are selecting principles of justice, because however political decisions are made in this dimension of politics, the outcomes will be equally just in terms of realising previously selected principles of justice. The more controversial implication is that, within the dimension of *reasonably wrong politics*, whether or not the parties in the original position reason that *significantly unequal opportunities to influence policy outcomes* might allow for policy outcomes that better realise whatever principle of justice is taken to govern the distribution of social and economic advantages, such inequalities would still not be permitted due their anticipated negative effects on the self-respect of those with significantly lesser political opportunities. In short, knowing what they do about the moral psychology of the democratic citizens for whom they are selecting principles of justice, the parties in the original position would not risk those whose interests they represent suffering a loss of self-respect that may well render them unable to fully enjoy the goods they are entitled to as a matter of justice.

I contend that the parties in the original position will reason in almost exactly the same way as above when it comes to the demand for *ongoing adequately positive opportunities to influence policy outcomes for all citizens*. However, this time they will not be concerned by the prospect of the self-respect of those citizens with *significantly lesser opportunities to influence policy outcomes than their fellow citizens* being undermined because of the public message that they lack the capacity to develop and exercise an adequate sense of justice, and therefore do not have an *equal status*. Rather, they will be concerned that the self-respect of *all* democratic citizens will be undermined because of the public message that they are not self-authenticating sources of valid claims who are therefore entitled to make claims on their shared institutions, and therefore do not have a *free status*. As such, the parties will guarantee *ongoing adequately positive opportunities to influence policy outcomes for all citizens*, rather than allowing an impersonal decision-making procedure (such as a random lottery) or a decision-making procedure that gives some share of opportunities for influence to another non-citizen agent(s) to be institutionalised. And, once again, this will be the case whether or not such alternative decision-making procedures might allow for policy outcomes that better realise whatever principle of justice is taken to govern the distribution of social and economic advantages.

Before moving on, I would like to emphasise that the above *status/self-respect argument* for the priority of my principle of political equality avoids H.L.A. Hart's

famous criticism of Rawls's original argument for the priority of the equal political liberties. For Hart, Rawls's contention that the parties in the original position would prioritise equality of their political liberties, even if small political inequalities would lead to large increases of wealth for the worst-off group, seems to rely on the parties in the original position being directly motivated to realise 'the ideal of a public-spirited citizen who prizes political activity and service to others as among the chief goods of life and could not contemplate as tolerable an exchange of the opportunities for such activity for mere material goods or contentment', rather than simply being motivated to secure the fundamental interests of those they represent (Hart 1975, p.252).

Hopefully it is clear that in my slightly modified original position, the parties are not motivated by the abovementioned ideal at all. Instead, we allow them knowledge of the contingent (interpretive) fact that, in the (well-ordered democratic) practice for which they are selecting principles of justice, there is a particular relationship between political equality, a democratic notion of equal status and an appropriately moralised notion of self-respect. This fact then influences their reasoning about how best to secure the narrower interests of the citizens they represent, which is their only concern. We take this fact about the relationship between political equality, status and self-respect to be something the parties should know to the extent that we accept, as our starting point, a 'constructive interpretation' of the point and purpose of the democratic society for which the parties are selecting principles of justice, namely that it is best understood as a 'system of cooperation between free and equal citizens'. So, ultimately, the *status/self-respect argument* for the priority of my principle of political equality can be seen to rely as much on Commitment 1 of the broadly Rawlsian perspective from which I am arguing (as outlined in Chapter 1), and my consequent practice-dependent approach, as it does on original position reasoning.⁸⁸

With this clarified, I submit that the *status/self-respect argument* for the priority of my principle of political equality demonstrates why this principle ought to be viewed as a distinct lexically prior principle of justice to whatever principle is taken to govern the

⁸⁸ This clarification also shows how I can deal with Wall's criticisms of the *status/self-respect argument*: first, that it only applies convincingly to certain democratic societies; second, that it is unrealistic in linking strict political equality to self-respect even in these types of societies (Wall 2006, pp.260–61). (Jason Brennan makes similar points (Brennan 2012, pp.6–9).) Regarding the first point, I concede that this is part of my broadly Rawlsian practice-dependent approach. Regarding the second point, I note my inclusion of the qualifier 'approximately' in my principle of political equality, which will be elaborated on in the next chapter.

distribution of social and economic advantages, rather than a lexically prior principle of constitutional design for the realisation of this, or other, principles of justice under certain conditions.

3.5. Constitutions and Policy Experts

Before concluding, I would like to clarify the scope of the conclusions that I have drawn from the *epistemic argument* and the *status/self-respect argument* with regard to two issues: constitutions and policy experts. First, it is worth emphasising that neither of these two arguments for the priority of my principle of political equality necessarily commits me to rejecting any form of constitutionalism in favour of a thoroughgoing procedural approach to the politics of a just, well-ordered society. This is an important point because one of the few things that many theorists who take a broadly Rawlsian approach to theorising about social justice agree on is that this approach should lead one to endorse the priority of a number of equal civil liberties, all of which are to be constitutionally entrenched so that they are beyond the reach of 'ordinary politics'.

To recall, the *epistemic argument* for the priority of my principle of political equality states that this principle is a necessary component of a political procedure that offers the most reliable (though not perfectly reliable) institutional means to bring about the policies that best realise other principles of justice that have already been selected. However, this argument only applies when there is reasonable disagreement about what institutions and policies will best realise previously agreed principles of justice. Thus, one way for this argument to be made consistent with the constitutional entrenchment of certain basic civil liberties would be to argue that there will be no disagreement among the citizens of a just, well-ordered society about the need for the basic civil liberties to be constitutionally entrenched, at least across a certain central range of application. If this was the case, then there would be no epistemic argument for deciding issues about the mutually accepted central range of application of the basic civil liberties using a political procedure that instantiates my principle of political equality. A Rawlsian could therefore consistently hold the view that a set of civil liberties should be constitutionally entrenched, at least in terms of the central range of their application, while still holding that controversial decisions about how to trade off some of these liberties at the margins, as well as decisions about socio-economic policy, should be made by a political procedure that instantiates my principle of political equality.

Moving on to the *status/self-respect argument*, one might accept that for democratic societies, *ongoing approximately equal and adequately positive opportunities to influence policy outcomes* are vital social bases of self-respect for citizens, and therefore should be prioritised over possible increases in the material goods that these citizens might enjoy as a result of political inequalities. However, one might similarly argue, as Rawls does, that a public guarantee of the equal civil liberties is also a vital social basis of self-respect for each citizen that should also be prioritised over possible increases in the material goods that these citizens might enjoy as a result of unequal civil liberties. As such, the conclusion of the Rawlsian *status/self-respect argument* for the priority of my principle of political equality is potentially compatible with the idea that this principle must be balanced against another demand of justice, the guarantee of the equal civil liberties. As such, the latter may (or may not) be constitutionally entrenched, rather than subject to the demands of political equality, if self-respect so requires.

The second issue I would like to touch on regards the roles that my two arguments for the priority of my principle of political equality allow for policy experts. Clearly there is no such thing as a policy expert in the dimension of *reasonably right politics* in a well-ordered society. However, even in the dimension of *reasonably wrong politics*, the *epistemic argument* renounces the idea that there are any obvious experts on the topic of the best policies to bring about mutually agreed upon principles of justice. This is because cognitive biases can be expected to infect the reasoning of all individuals with bounded rationality, the more so when a society has a highly developed division of labour so that individuals occupy specialised roles.⁸⁹ At best, then, we might *discover* some more compelling, or less compelling, views on each policy issue through a process of deliberation. But it must be an authentic discovery process in order to ensure we are not simply amplifying our cognitive biases. And, as discussed in section 3.4.3, the process of deliberation best suited to such discovery is one governed in accordance with my principle of political equality.

Conversely, the *status/self-respect argument* does not rely on renouncing the idea that there might be clear policy experts on particular issues. Rather, it leads us to the conclusion that, even if there were such experts and giving extra political power to them looked like a more reliable way to bring about policies that best realised a

⁸⁹ Laura Valentini makes a similar argument: (Valentini 2012b, pp.189–90).

previously agreed principle of justice for socio-economic distributions, there is a trumping reason not to give them more political power. This trumping reason is that significantly unequal distributions of political power publicly express the inferior status of those with less, which will (in a well-ordered democratic society) erode their self-respect, meaning that they are likely to forego enjoyment of many of the goods to which they are entitled as a matter of justice. So the implication of the *status/self-respect argument* for the priority of political equality is that experts should play a predominantly advisory role in a just, well-ordered society by injecting specialist information into the deliberative process. In addition, they may make some subordinate decisions when asked to by free and equal citizens who have approximately equal and adequately positive political power, because, as Robert Dahl notes, 'to delegate certain subordinate decisions to experts is not equivalent to ceding final control over major decisions' (Dahl 2015, p.71).

3.6. Conclusion

The main argument of this chapter has been that those who accept the abstract idea of a democratic society as a 'system of cooperation over time between free and equal citizens', and who view principles of justice as having the role of publicly specifying the fair terms of such cooperation for a well-ordered society, should include a principle of political equality within a principle of justice that enjoys lexical priority over whatever principle of justice is taken to regulate social and economic inequalities. I made this argument in three broad stages. First, I clarified the principle of political equality that interests me -- namely, *each citizen must be guaranteed ongoing approximately equal and adequately positive opportunities to influence policy outcomes* -- and outlined the relationship between this principle and the Rawlsian idea of the priority of the fair value of the political liberties. Second, I argued that it follows from the methodological assumptions that I defended in Chapter 2 that the sort of well-ordered society for which we are looking to justify principles of justice would have a *competitive moral politics* that comprises of a complex hybrid of *reasonably right politics* and *reasonably wrong politics*. Third, I evaluated three Rawlsian arguments for the priority of the fair value of the political liberties from the vantage point of a slightly modified original position in terms of whether they provide plausible grounds for the priority of my principle of political equality. I concluded that the first argument is not convincing, but the *epistemic argument* can plausibly ground the priority of my principle of political equality as a

principle of constitutional design, and the *status/self-respect argument* can plausibly ground the priority of my principle of political equality as a principle of justice.

In terms of the broader thesis, this chapter has focused very much on the grounds and role of a principle of political equality in a broadly Rawlsian conception of justice, without going into much detail about precisely what this principle would require at a more concrete level. Yet, in order to show that (regardless of how they are owned or controlled) large firms pose a credible threat to the realisation of this principle of political equality in a well-ordered society, it is necessary for us to elaborate the *meaning* of this principle of political equality in terms of the constraints that it places on a well-ordered society's political decision making process. This is my task in the next chapter. In carrying out this task I will rely predominantly on the *status/self-respect argument* for the priority of my principle of political equality due to its stronger and, in my view, more straightforward implications. However, my arguments in Chapters 5 and 6 apply even if one were only to accept the *epistemic argument* for the priority of my principle of equality as a principle of constitutional design. As such, I will keep the *epistemic argument* running at a lower level in the background, referencing along the way how it also supports the important conclusions that are required for the overall argument of the thesis to work.

4. What Would It Mean for a Well-Ordered Society to Realise Political Equality?: Some Necessary Principles of Constitutional Design

4.1. Introduction

In this chapter I shall make the second theoretical argument of Part II of the thesis, which offers more concrete detail on the precise *meaning* of the principle of political equality that I defended in the previous chapter by specifying some important constraints that it places on a well-ordered society's political decision-making process. To recall, in the previous chapter, I argued that those who accept the abstract idea of a democratic society as a 'system of cooperation between free and equal citizens', and who view principles of justice as having the role of publicly specifying the fair terms of such cooperation for a well-ordered society, should include the following principle of political equality within a principle of justice that enjoys lexical priority over whatever principle of justice is taken to regulate social and economic inequalities:

Each citizen must be guaranteed, on an ongoing basis, an approximately equal and adequately positive opportunity to influence policy outcomes.

Returning to the language of ideal-types that was developed in Chapter 2, we might say that, so far, I have demonstrated that those who affirm the very abstract *normative ideal-type* of a democratic society as a 'system of cooperation between free and equal citizens' should, in certain conditions made relevant by the theoretical ambitions of my thesis, view this ideal-type as being further specified in terms of a slightly less abstract *normative ideal-type* of a society well-ordered by (*inter alia*) a lexically prior principle of political equality. However, I have so far said fairly little about the precise meaning of this principle in terms of what it requires at a more concrete level. So, continuing the process of ideal-typical specification, the purpose of this chapter is to develop a slightly more concrete *normative ideal-type* that is comprised of some necessary principles of constitutional design that a society well-ordered by (*inter alia*) my lexically prior principle of political equality ought to realise.

To this end, I will argue that such a society ought to be specified, at the level of principles of constitutional design, as a well-ordered society that: (*a*) *has a liberal*

*egalitarian voting rule (that satisfies the axiom of resolvability); (b) guarantees universal suffrage; (c) ensures an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition; (d) ensures, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech during pre-voting deliberation; (e) ensures, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech during post-voting deliberation about implementation; and (f) ensures, on an ongoing basis, adequately positive external resources for each citizen to access and consume political speech.*⁹⁰

It is important to clarify at the outset that I view these six principles of constitutional design as *necessary*, but not necessarily *sufficient*, conditions for a well-ordered society to realise my principle of political equality. I adopt this narrower focus on necessary conditions here because it is all that is required in order to make a convincing case, in Part III of the thesis, that Rawlsians in the ‘choice of social system’ debate have all missed something important regarding the restrictions that need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice.⁹¹

In this chapter, I will argue for each of the above principles of constitutional design from two directions. In the main, I will argue that these principles of constitutional design can be seen to follow if we extend the reasoning of the *status/self-respect argument* for the priority of my principle of political equality (as developed in the previous chapter) to each of the more concrete issues of constitutional design that I consider in this chapter. I will also argue, albeit much more briefly, that each principle of constitutional design looks well supported by an extension of the *epistemic argument* for the priority of my principle of political equality (as also developed in the previous chapter).⁹² As I see it, this result is not a foregone conclusion because the way in which an abstract normative principle is specified at

⁹⁰ This multi-part ideal-typical definition of what it would mean for a society to realise political equality follows in a similar tradition of thought to Robert Dahl's multi-part ideal-type of a democracy: (Dahl 2015, pp.37–38; 1982, p.6). I will return to the relation between my argument in this chapter and Dahl's democratic theory in section 4.5.

⁹¹ As a result, the institutional recommendations that I provide in the final chapter regarding how the types of social systems that these theorists advocate need to be modified should be viewed as promising suggestions, rather than comprehensive solutions.

⁹² In the previous chapter I argued that the *epistemic argument* can only ground my principle of political equality in a prior principle of constitutional design, rather than a principle of justice. I do not see this as a problem for this chapter as, departing slightly from Rawls's approach, I am open to the idea that principles of constitutional design can be specified at higher and lower levels of abstraction.

a more concrete level depends not only upon the conditions in which it is specified, but also upon the reasons that are taken to justify the principle. These reasons will inform our judgements as to how the spirit, or driving aim, of the principle is best served in more concrete cases.⁹³

With this in mind, the argument of the chapter will unfold as follows: first, in section two, I will distinguish and characterise four stages of the political decision-making process that we should expect in a well-ordered society populated by individuals with the psychological profiles that I defended in Chapter 2. These four stages are: (1) pre-voting deliberation, (2) agenda-setting, (3) voting, and (4) implementation. Each subsequent section in this chapter will focus on the constraints that my principle of political equality places on one of these stages of politics and suggest an appropriate principle of constitutional design to reflect this (with the exception of section five, which focuses on stages (1) and (4) together for reasons that will become clear).

I will begin section three by arguing that the *status/self-respect argument* for my principle of political equality, when extended to the voting stage of politics, requires a voting rule that satisfies the axioms of anonymity, neutrality, universality and non-negative responsiveness (and, for practical reasons, resolvability). I will then show that a range of intuitively unobjectionable voting rules satisfy these axiomatic requirements in the likely conditions of a well-ordered society. Thereafter, I will argue that the *status/self-respect argument* for my principle of political equality requires universal suffrage. Finally, I will briefly demonstrate that the abovementioned class of voting rules and universal suffrage are both supported by the *epistemic argument* for my principle of political equality. In light of this result, I will offer a preliminary statement of what it would mean for the constitution of a well-ordered society to realise political equality.

I will begin section four by examining the constraints that the *status/self-respect argument* for my principle of political equality places on the agenda-setting stage of

⁹³ For instance, applying an abstract principle of equal opportunity that is justified in terms of economic efficiency within a utilitarian framework may well lead one to less demanding conclusions about the more concrete principles that ought to regulate an education system than one would reach from applying the same abstractly stated principle of equal opportunity when it is considered to be justified as a necessary (but not sufficient) requirement to maintain relations of social equality. On the former view, one might reasonably judge that equal educational opportunities should only be made available to each citizen until the beginning, or perhaps middle, of adulthood, whereas on the latter view one might hold that equal educational opportunities should be available to citizens of all ages.

politics, in terms of the process by which content is added to the political agenda. In short, I will argue that it demands an *approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition*. I will then briefly argue that this principle of constitutional design is supported by the *epistemic argument* for my principle of political equality. In light of this result, I will offer an updated statement of what it would mean for the constitution of a well-ordered society to realise political equality.

In section five I will examine the constraints that the *status/self-respect argument* for my principle of political equality places on the process of social deliberation, both before voting (during the process of judgement-formation by citizens) and after voting (during the process of judgement-formation by the bureaucrats tasked with implementing the policy). I will argue that, at the stage of pre-voting deliberation, two things are required: first, *ongoing approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech*; and second, *ongoing adequately positive external resources for each citizen to access and consume political speech*. I shall concentrate on the content of the first of these two principles of constitutional design, as this is the most important for my discussion of firms in later chapters. I will then briefly argue that both of these principles of constitutional design are also supported by the *epistemic argument* for my principle of political equality. Finally, I will contend that the very same principles of constitutional design should apply to the deliberative process that surrounds the post-voting implementation of policies. In light of these results, I will offer a final statement of what it would mean for the constitution of a well-ordered society to realise political equality. Section six concludes.

4.2. Four Stages of Politics in a Well-Ordered Society

My argument in the previous chapter made certain assumptions about the type of society for which we were looking to justify principles of justice. In short, I viewed it as a well-ordered society populated by individuals with bounded rationality. Partly as a result of this bounded rationality, and partly due to the indeterminacy of principles of justice, I argued that the politics of such a society should be supposed to comprise of reasonable disagreement about which policies best realise shared principles of justice, with some of these disagreements being *reasonably right* and others being *reasonably wrong*. Yet, due to bounded rationality, individuals in this society will rarely be aware of which type of disagreement they are involved in at

any one time. I also assumed that the society in question was a *democratic* society, understood as a society in which all citizens understand themselves as having (a) an *equal status* in virtue of having the capacity to develop and exercise an adequate sense of justice, and (b) a *free status* in virtue of having the capacity to form, to revise and rationally to pursue a conception of the good, and in virtue of being self-authenticating sources of valid claims who are entitled to make claims on their shared institutions. The purpose of this section is to distinguish four distinct stages that we can expect of the political decision-making process in such a well-ordered democratic society, namely: (1) pre-voting deliberation, (2) agenda-setting, (3) voting, and (4) implementation. I will say a little more about each in turn.

First, in a well-ordered society, citizens with bounded rationality can be expected to engage in a process of pre-voting deliberation about what their shared principles of justice require at the level of institutional design and policy. We can remain agnostic on how citizens of this well-ordered society came to mutually accept the same principles of justice: they may have all reached this conclusion through original position reasoning or through a process of social deliberation, or a bit of both. Regardless, we are entitled to think that isolated philosophical reflection is unlikely to provide these citizens with as much certainty in their judgements about institutional design and policy as it might allow for in their judgements about more abstract principles of justice. This is because a raft of sociological judgements come into play at the stage of thinking about policy, which opens up another dimension of complexity. This being the case, we can assume that citizens will rely more heavily on working out their judgements about what justice requires at the level of policy by engaging in a process of pre-voting social deliberation. This could be through producing and consuming literature as much as verbal interaction. Hence, we should expect citizens often to enter this stage of politics with provisional judgements that they aim to persuade others of, yet with an acknowledgement that they may be *reasonably wrong* and a willingness to change their minds. This deliberative process can be thought of as a 'marketplace of ideas'. As such, the relevant question for our purposes is 'What constraints does my principle of political equality place on the marketplace of ideas?'

At the end of the pre-voting deliberation process, each citizen will have settled on his or her final policy judgements.⁹⁴ Yet regardless of how successful the process of pre-voting deliberation is in a well-ordered society, it will end in reasonable disagreement. This is because principles of justice are indeterminate on many issues, so even in a best case scenario citizens will continue to disagree because they are all (probably without knowing it) *reasonably right*. More likely, some will continue to be *reasonably wrong*. As such, in order to reach a collective decision on important matters, they must vote. But this raises the question 'What options should be on the agenda?'. At this point we have entered the agenda-setting stage of the politics of a well-ordered society. Many individuals will have reached divergent judgements regarding what justice requires at the level of policy, and will want their preferred option(s) to be considered for implementation. The relevant question this raises for our purposes is 'What constraints does my principle of political equality place on the process by which content is added to the political agenda?'

Once the agenda is set, the citizens of a well-ordered society will vote. It being a well-ordered society, they will each vote for what they consider to be the most just policy on each issue (or, in the case of an election, for the candidate who they consider to have proposed the most just combination of policies). However, the collective choice that results from this vote will depend not only upon the distribution of preferences among the citizenry, but also upon the voting rule that is used. This being the case, different voting rules can be seen to treat voters in different ways. The relevant question this raises for our purposes is 'What constraints does my principle of political equality place on the voting rule?'

Finally, once there has been a vote and a policy has been collectively chosen, this policy will not simply become part of the institutional background of the well-ordered society in question. Rather, there will be a process of implementation by bureaucrats who, of course, have bounded rationality. This process may involve further refining the policy in light of available empirical evidence as to how it might best achieve its underlying aims. It being a well-ordered society, we can expect these bureaucrats to be motivated by a sense of justice and therefore not to take bribes (indeed, it being a well-ordered society, no citizen would offer a bribe). Nevertheless, the bureaucrats will rely upon the prevailing ideas when trying to

⁹⁴ This way of understanding the judgement-formation process will become important later insofar as it means that, whereas citizens might permissibly, and perhaps helpfully, influence the judgements of other citizens during the pre-voting deliberation stage, there is no reason for them to be doing so during the agenda-setting stage.

ascertain the best means of achieving the aims of the policy that they have been tasked with implementing. As such, they will participate in another, more niche, sub-marketplace of ideas. The relevant question this raises for our purposes is 'What constraints does my principle of political equality place on this sub-marketplace of ideas?'

These are the four stages of politics in a well-ordered society, which together amount to neither a purely aggregative, nor a purely deliberative political decision making process.⁹⁵ In the subsequent sections of this chapter I will focus on the constraints that my principle of political equality places on each of these stages of politics and suggest an appropriate principle of constitutional design to reflect this.

Before embarking upon this project, it is worth noting two limitations on the scope of my argument that follow from my restricted focus on the circumstances of a well-ordered society. First, insofar as each citizen in such a society is imagined to engage in politics *qua* citizen with the sole aim of bringing about the most just policies, understood in terms of shared principles of justice, we can abstract away from the problem of certain groups being persistent minorities, which is taken by some to cause problems for theories of political equality (e.g. Jones 1983). This is because individuals will identify first and foremost as citizens aiming for justice, rather than members of a particular subgroup with narrower interests. Moreover, we can plausibly stipulate that a just, well-ordered society is likely to be characterised by many cross-cutting cleavages, rather than ossified social divisions. Second, insofar as all disagreements in politics are understood by citizens to be reasonable disagreements by individuals who affirm the same conception of justice and are effectively motivated in politics to realise this conception of justice, we are also in a position to idealise away, for the most part, the problem of intense or passionate minorities that some have considered problematic for theories of political equality (e.g. Downs 1957, pp.64–69). With the way cleared, we can now proceed.

4.3. Political Equality and the Vote

In this section, I will examine the constraints that my principle of political equality places on the voting stage of a well-ordered society's politics. It is worth explaining why I begin by focussing on the voting stage despite the fact that this stage is not

⁹⁵ In rejecting the false dichotomy between aggregative and deliberative conceptions of the democratic decision-making process, I consider myself to be in line with recent developments in mainstream democratic theory (e.g. Mansbridge et al. 2010; Dryzek & List 2003).

readily susceptible to influence from firms, which is my main concern in future chapters. My reasons are threefold: first, some of the most influential social choice theorists have questioned whether any voting rule can satisfy the demands of political equality without being deeply flawed in some other respect (Riker 1982; Arrow 1963). As such, I view it as important to emphasise that a number of intuitively unobjectionable voting rules can satisfy the demands of political equality.⁹⁶ Without this, my specifications of what political equality requires at the other stages of a well-ordered society's political decision-making process risk being made in vain. For if there is no way for citizens who reasonably disagree about policy to settle their differences using an intuitively unobjectionable voting rule that respects political equality, then we are immediately faced with 'the problem of second best' regarding how to best realise political equality at the other stages of politics.⁹⁷ Second, it is instructive to note that the *status/self-respect argument* for political equality makes stricter demands of equality at the voting stage of politics than at other stages, which coheres with widespread intuitions. Third, I will draw upon the concepts introduced in this section in relation to voting rules when making my arguments in subsequent sections.

The principal question that I will address in this section is 'What would it mean for the voting process of a well-ordered society's politics to ensure each citizen has, on an ongoing basis, approximately equal and adequately positive opportunities to influence policy outcomes?' I will answer this question in four stages. First, I will extend the *status/self-respect argument* for political equality to the issue of what type of voting rule should be used by considering what different axiomatic qualities of voting rules would express about the status of citizens.⁹⁸ I will conclude in favour

⁹⁶ To be clear, my aim here is not to definitively rebut the many technical criticisms of voting rules that satisfy axioms of political equality by either denigrating the other (allegedly) attractive axioms that they (purportedly) cannot simultaneously realise, or by demonstrating that, in practice, such voting rules often will be able to realise all of these axioms simultaneously (although Gerry Mackie makes a convincing case for the latter (Mackie 2003)). Rather, my more modest aim is to demonstrate that, despite the worrying noises made in some social choice circles, my argument for political equality is compatible with a range of workable and intuitively unobjectionable voting rules.

⁹⁷ By the 'problem of second best' I am referring to Richard Lipsey and Kelvin Lancaster's general theory of second best, which shows that, if an optimality condition for Pareto efficiency cannot be satisfied by one part of an economic system, then it is often wrong to assume that the second most efficient option is for the other parts of the system to satisfy as many of the other optimality conditions for Pareto efficiency as possible (Lipsey & Lancaster 1956). I mean to apply this basic logic to normative theory in much the same way as David Estlund often does (but for more or less the opposite reason) (Estlund 2014, p.121). I recognise that I cannot fully overcome the problem of second best in this chapter insofar as I only focus on necessary, but not sufficient, conditions for a well-ordered society to realise political equality. But it is still worth highlighting that my position does not immediately fall prey to an obvious form of this objection at this early stage.

⁹⁸ My Rawlsian *status/self-respect argument* in support of a voting rule that satisfies anonymity, neutrality and universality borrows from an argument made by Bruce Ackerman (1980, pp.274–89).

of a voting rule that satisfies the axioms of anonymity, neutrality, universality, and non-negative responsiveness (plus, for practical reasons, resolvability). Second, I will identify some intuitively unobjectionable voting rules that satisfy these axiomatic criteria in the conditions of a well-ordered society. Third, I will briefly argue that the same reasons that favour these voting rules straightforwardly favour the principle of universal suffrage. Finally, I will draw on the work of others to show that the abovementioned class of voting rules and universal suffrage are both also supported by the *epistemic argument* for my principle of political equality.

It is worth noting that, for the purpose of making judgements about what the *status/self-respect argument* for political equality requires at the level of constitutional design, we can either put ourselves in the position of various citizens in a well-ordered democratic society and then ask ourselves 'What would this institutional proposal say about my two moral powers?' and make moral judgements accordingly, or we can view ourselves as parties to what Rawls calls a 'constitutional convention'. This is a thought experiment that follows in the wake of the original position. At this new stage, hypothetical parties are tasked with selecting principles of constitutional design that will best satisfy principles of justice that were selected in the original position. To help them in this task, the parties at the constitutional convention have access to information that was unavailable in the original position, such as their society's 'natural circumstances and resources, [and] its level of economic advance' (Rawls 1999a, p.172). However, they remain ignorant about the social position, natural attributes, or specification of the good of the free and equal citizen whose interests they represent (1999a, p.172). I will present my arguments in terms of a constitutional convention in this chapter, but as I see it the difference between the two approaches is primarily stylistic.

One way to specify the type of voting rule that the *status/self-respect argument* for political equality requires is to proceed negatively. On this approach, we begin by selecting certain axioms that a voting rule should satisfy in order to ensure that the opportunities for political influence available to some (or all) democratic citizens at the voting stage are not reduced in a way that might reasonably be taken to publicly express that they have an unequal, or unfree, status. Having done so, we then identify which, if any, voting rules satisfy these axioms.

Ackerman also argues that two rationally self-interested individuals would agree that their collective decision rule should satisfy the axiom of responsiveness; however, I shall offer distinct Rawlsian grounds for this fourth axiom.

Taking this approach, I begin with the axiom of anonymity. A voting rule satisfies this axiom when only the numbers and not the identities of individuals matter, so no special weight is attached to the opinions of any particular person or group. Put another way, if the voters trade names, the result does not change. I propose that parties to our constitutional convention would agree that any collective decision rule must satisfy this formal axiom. This is because the parties know that they are selecting principles for a well-ordered democratic society in which citizens view themselves as having an equal status in virtue of having the capacity to develop and exercise an adequate sense of justice. And their self-respect as free and equal citizens is likely to depend, in large part, on their being publicly treated as having an equal status. In my view, if the parties permit a voting rule that privileges certain named individuals, then there is a high chance that this will be understood as a public message that those less privileged are not considered to have the capacity to develop and exercise an adequate sense of justice. This amounts to a public expression of inferior status, which has a high chance of undermining the self-respect of those citizens with the less valuable votes. The parties to our constitutional convention would therefore not take the risk that the free and equal citizen whose interests they represent might be one of those discriminated against by a non-anonymous voting rule.

A similar argument can be made in support of the axiom of neutrality. A voting rule satisfies this axiom insofar as it operates in exactly the same way no matter what issue is being decided. Put another way, if the alternatives trade places, the result does not change. Put another way still, the rule is not biased towards certain options on the agenda. A typical example of a voting rule that satisfies anonymity but not neutrality is one that requires a supermajority for changes to the status quo. The important point to note for our purposes is that, if a voting rule violates this axiom, then it will publicly privilege the choices of certain citizens. With this in mind, I propose that the parties to our constitutional convention would agree that any collective decision rule must satisfy this formal axiom. To see why, imagine yourself coming of voting age in a society and forming policy preferences on every issue that cohere with a vast majority of your fellow voters. Then imagine that every time you and your likeminded citizens vote on an issue, you enjoy a 65 percent majority. Nonetheless, the rules that govern your society do not alter. Rather, they remain the same because your society operates with a 66 percent supermajority voting rule, and 35 percent of your fellow citizens reliably line up against you on each issue. I

contend that in this scenario, over time you may well come to think that your institutions publicly express a doubt as to whether you have the capacity to develop and exercise an adequate sense of justice, hence they give so much extra weight to the judgements of a minority. This can reasonably be understood as a public expression of your inferior status, which has a high chance of undermining your self-respect. The parties to our constitutional convention would therefore not take the risk that the free and equal citizen whose interests they represent might be one of those consistently on the losing majority side of a non-neutral voting rule.⁹⁹

This brings us to the third axiom of universality. A voting rule satisfies this axiom if it can operate over all logically possible preference orderings at the individual level. Put another way, given any possible profile of voter preferences, the rule will always select a winning option or issue in a tie. If we accept the above arguments about anonymity and neutrality, then the argument for universality follows quite straightforwardly. This is because, if the parties to our constitutional convention choose not to affirm the axiom of universality, then they are allowing that another decision procedure that does not satisfy anonymity and neutrality can be used to settle certain reasonable policy disagreements in a well-ordered society.

The *status/self-respect argument* can be extended in a different direction to ground a fourth formal axiom, which is often referred to in the social choice literature as non-negative responsiveness. It is worth distinguishing two forms of responsiveness. First, a voting rule satisfies *positive* responsiveness when any increase in support for an option at the level of an individual voter's preferences makes it more likely that it will be the winning option, and if an option is a joint winner, then if one voter alters their vote in favour of that alternative, it becomes the unique winner. Second, a voting rule satisfies *non-negative* responsiveness when any increase in support for an option at the level of an individual voter's preferences does not make it less likely that it will be the winning option, and if an option is a joint winner, then if one voter alters their vote in favour of that alternative, it must not become a loser. In what follows, I will argue that the parties to our constitutional convention would agree that any collective decision rule must satisfy the axiom of non-negative responsiveness.

⁹⁹ Thomas Christiano makes a similar argument (Christiano 1996, p.88). One might think my argument is too weak to ground strict neutrality, but nonetheless rules out significant departures from neutrality of the kind described in my example. Even if one rejects this argument for neutrality completely, it is worth noting that my arguments about firms in later chapters also apply, albeit with caveats, to super-majoritarian political systems.

As Gerry Mackie notes, we can effectively isolate the normative value of non-negative responsiveness by imagining a voting rule that satisfies negative responsiveness. A voting rule satisfies negative responsiveness when, if a policy alternative is a joint winner, then if one voter alters their vote in favour of that policy alternative, it becomes a loser. Intuitively, it seems that a voting rule that satisfies this axiom is unattractive. However, a voting rule can satisfy negative responsiveness while also satisfying anonymity, neutrality and universality (Mackie 2011, pp.451–52). As such, the way in which I have extended the *status/self-respect argument* so far does not entail non-negative responsiveness. How, then, might the *status/self-respect argument* be extended to show that the parties to our constitutional convention have reasons to agree that any voting rule should satisfy not only anonymity, neutrality and universality, but also non-negative responsiveness?

This can be achieved by recognising that the *status/self-respect argument* grounds not only ongoing approximately *equal* opportunities for political influence, but also ongoing *adequately positive* opportunities for political influence. This absolute distributive demand discounts a minimalist conception of political equality whereby citizens have an approximately equal share of very little, if any, political power to get what they want. To recall, the *status/self-respect argument* grounds this requirement on the basis that, in the absence of citizens enjoying adequately positive opportunities for political influence, the *free* status of *all* democratic citizens would be undermined because of the public message that they are not self-authenticating sources of valid claims who are entitled to make claims on their shared institutions. And the self-respect of free and equal citizen depends not only on public expressions of their equal status, but also on public expressions of their free status.

However, there is clearly a judgement to be made by the parties to our constitutional convention as to what counts as an *adequately positive* opportunity to secure the self-respect of free citizens at each stage of the politics of a well-ordered society. With this in mind, I propose that the parties would conclude that a decision rule that is completely unresponsive or satisfies negative responsiveness would fail to treat citizens as agents who are entitled to make claims on their shared institutions. Yet I accept that the parties may not be convinced that a collective decision rule needs to satisfy the demanding axiom of positive responsiveness in order to publicly express the free status of citizens. As such, I suggest that they would most likely call for a

decision rule to satisfy non-negative responsiveness on the grounds that anything less begins to run the risk of publicly expressing the unfree status of citizens, which would undermine the self-respect of the free and equal citizen whose interests they represent.

The final axiom that a well-ordered democratic society's voting rule should satisfy is required for practical reasons, rather than due to the demands of the *status/self-respect argument*. As I noted earlier, the universality axiom allows for ties, but this is no good insofar as the whole purpose of having a voting rule is to reach a collective decision on a matter over which there is reasonable disagreement. As such, for our purposes, the universality axiom needs to be bolstered by the addition of another axiom that is weaker than positive responsiveness. T.N. Tideman proposes an axiom called resolvability that offers what we require. A voting rule satisfies resolvability when any tie between two winning policy options can be resolved by the addition of one more individual preference ordering (i.e. the addition of 'the right sort of voter') (Tideman 1986, p.25). This axiom does not necessarily imply positive responsiveness because it allows for the possibility that, in the case of a winning tie, one of the tied options might go up in an individual voter's preference ordering without becoming the unique winner. Resolvability does, however, mean that ties should be extremely rare among large groups of voters (Tideman 1986, p.26).

So far I have identified four axioms that the parties to our Rawlsian constitutional convention would agree that a voting rule must satisfy in order to secure the social bases of self-respect for free and equal citizens, plus the practically important axiom of resolvability. I will hereafter refer to any voting rule that satisfies the first four axioms as a 'liberal egalitarian' voting rule. However, in order to avoid immediately falling prey to the 'problem of second best', it is important to now demonstrate that there is at least one intuitively unobjectionable voting rule that looks well placed to satisfy these axioms in the conditions of a well-ordered society populated by individuals with bounded rationality.

Kenneth May (1952) provided a famous proof that if we conceptualise all voting in terms of citizens facing a binary choice on each policy issue, then a simple majority voting rule (whereby the policy option that is backed by 50 percent of voters plus one wins on any given issue) is the only voting rule that satisfies the axioms of anonymity, neutrality, universality and positive responsiveness (it is also the only voting rule to satisfy the axiomatic requirements of a liberal egalitarian rule plus

resolvability (Tideman 1986, p.26)). Unfortunately, there are two reasons to think that citizens will often have to choose between three or more policy options in a well-ordered society with bounded rationality. First, many policy issues are more naturally conceptualised as a matter of degree, rather than a binary choice. For instance, when making a choice about a tax rate, it is natural to think that the available options range from zero to 100 percent. Second, even for issues that are most naturally conceptualised as a binary choice, it will often be the case that the policy option a citizen prefers in one dimension of political choice (for example: for or against unconditional payments in line with the minimum wage to the unemployed) will alter depending on the policy option that is selected in another dimension of political choice (for example: for or against the government as employer of last resort). Whenever political choices span across two or more dimensions, then even if choices within each dimension are binary, there will be at least four policy options that a citizen must choose between at any one time.¹⁰⁰

We are thus forced to consider whether there is a voting rule that could satisfy the axioms required of a liberal egalitarian voting rule, plus resolvability, in conditions in which voters face non-binary political choices. In what follows, I will concentrate on one voting rule that satisfies these requirements, while noting that it is not the only voting rule to do so. The voting rule I will focus on is the plurality rule, which simply picks out the option that receives the most first preference votes as the winning option. Robert Goodin and Christian List (2006, pp.943–45) provide a formal proof that in conditions in which individuals face non-binary political choices and only form a first preference from the available options for each political choice, plurality rule uniquely satisfies anonymity, neutrality, universality and positive responsiveness. Drawing on their discussion, it is possible to explain at an intuitive level why plurality rule satisfies anonymity, neutrality, universality, non-negative responsiveness and resolvability.

First, using the plurality rule means that the winning option in any non-binary choice is simply a function of the number of votes received, so the names of voters do not affect the result and anonymity is therefore satisfied. Second, because using the plurality rule means that the winning option in any non-binary choice is simply a

¹⁰⁰ I speak in terms of policy options in this paragraph, but clearly non-binary choices may also be required in candidate elections, particularly in a system of proportional representation, which -- for reasons I will elaborate in footnote 123, p.161 -- I view as being the best representative system to satisfy the principles of constitutional design set out in this chapter. (Admittedly, Duverger's Law suggests that candidate elections might tend towards binary choices in a Westminster System (Duverger 1954).)

function of the number of votes received, the labels of the options do not affect the result, so neutrality is also satisfied. Third, even in a world with non-binary choices, the plurality rule will always select a winning option or issue in a tie, so universality is satisfied. Fourth, using the plurality rule means that any increase in support for an option at the level of an individual voter's preferences makes it more likely that it will be the winning option, and when there is a winning tie, if one voter alters their vote in favour of one of the winning options, then that option will become the unique winner. As such, positive responsiveness is also satisfied, and if positive responsiveness is satisfied, then both non-negative responsiveness and resolvability must also be satisfied.

The plurality rule is sometimes criticised because it ignores relevant information about voters' preferences when generating a collective choice because it only takes into account their first preferences, even though most voters will have ordered the available options from most to least favoured. Goodin and List are clear that the axiomatic characterisation of plurality rule offered above only holds in a world where voters only form a first preference for each political choice, rather than a fuller preference ordering (Goodin & List 2006, p.945). However, as I see it, there is no reason for us to be concerned by this feature of a plurality voting rule. After all, we are not looking for a voting rule that maximises utility, but merely one that satisfies certain axioms. Moreover, in a society populated by individuals with bounded rationality, the fact that a voting rule does not require citizens to generate a full preference ordering for each political choice can be seen as a positive. Nevertheless, as Tideman demonstrates, a second voting rule that satisfies the axioms of a liberal egalitarian voting rule, plus resolvability, in conditions of non-binary choice is the Borda count, which does require voters to submit full preference orderings for each political choice (Tideman 1986, pp.23–25).

Without retreading all of the above steps, I hope it is clear that the *status/self-respect argument* for political equality also demands universal suffrage. In short, if only some citizens are entitled to the vote then this would publicly express the inferior status of those without the vote. And if no citizens are entitled to a vote, then this would publicly express the unfree status of all citizens. With this settled, we are now in a position to offer a preliminary statement of what it would mean for the constitution of a well-ordered society to realise political equality:

Statement 1: *A well-ordered society will only realise my principle of political equality provided it: (a) has a liberal egalitarian voting rule (that also satisfies the axiom of resolvability); and (b) guarantees universal suffrage.*

We can draw on a separate piece of work by List and Goodin (2001) to show that the requirements of a liberal egalitarian (and resolvable) voting rule and universal suffrage are also supported by the *epistemic argument* for my principle of political equality. They demonstrate that if there is a correct option and each voter is more likely to prefer that option to any other single option (which is a much weaker condition than demanding that each voter is more likely than not to select the correct option), then the plurality rule does about as well as any other majoritarian voting rule (including the Borda count, which gets the best score of all the voting rules by a small margin) in terms of selecting the correct option (List & Goodin 2001, p.292). Moreover, the epistemic benefits of any majoritarian voting rule are considerable as the number of voters get higher (2001, pp.293–94). So, from an epistemic perspective, the decision between the plurality rule and the Borda count will once again turn on whether we think it feasible for individuals with bounded rationality to generate full preference orderings for political choices or not.

With this result in mind, it appears that the *epistemic argument* for my principle of political equality developed in the previous chapter also requires a liberal egalitarian voting rule that satisfies resolvability. The overall aim of the *epistemic argument* is to identify the most reliable procedure for selecting the most just policy outcomes on the whole. To recall, the *epistemic argument* takes a mildly optimistic view about the veracity of voter's judgements after a period of social deliberation (provided it is conducted on equal terms, about which I say more later), yet also assumes that all citizens must be eligible to vote due to the prevalence and persistence of reasonable disagreement along with cognitive biases even after social deliberation. As such, given the above two assumptions and List and Goodin's work, it appears that the parties to our constitutional convention should also select a liberal egalitarian (and resolvable) voting rule, with either the plurality rule or the Borda count taking prime position, depending on the parties' understanding of the limitations of bounded rationality. Similarly, the assumption of prevalent cognitive biases, alongside List and Goodin's proof that the epistemic benefits of any majoritarian voting rule tend to increase dramatically as the number of voters get higher, should also lead the parties to support universal suffrage on epistemic grounds.

4.4. Populating the Agenda

So far we have focused on the constraints that my principle of political equality places on the voting stage of a well-ordered society's politics. However, as we have seen, it is not enough from the perspective of political equality for the politics of a well-ordered society to be governed by a permissible voting rule. As highlighted in the literature on power, there is a remaining concern that even when a society has a permissible voting rule, it is still possible for certain citizens' political choices to be arbitrarily favoured, or ignored, due to the way in which the political agenda is set (Lukes 1974, p.20). Accordingly, the question that I will address in this section is 'What would it mean for the agenda-setting process of a well-ordered society's politics to ensure each citizen, on an ongoing basis, approximately equal and adequately positive opportunities to influence policy outcomes?'

I will answer this question in two stages. First, I will extend the *status/self-respect argument* for political equality to the question of what principle ought to govern the process by which content is added to the political agenda. Although I will aim to show that my favoured principle is achievable in the conditions of a well-ordered society with bounded rationality, it is no longer incumbent upon me to provide a practical example of how, at an institutional level, this principle might be best achieved in a well-ordered society in order to avoid 'the problem of second best'. This is because the practical question 'What institutional arrangements are required to ensure that the process by which content is added to the political agenda in a well-ordered society realises political equality?' raises much wider questions of political economy, unlike the voting stage, which can be shown to satisfy political equality provided the right sort of formal decision rule is adopted. These questions of political economy will be the topic of the next two chapters; hence, for the purpose of engaging in those discussions, 'the problem of second best', at least in its most damaging form, has already have been solved. My second task in this section will be to argue that the *epistemic argument* for my principle of political equality also supports my proposed principle of constitutional design for agenda-setting.

Let us begin by examining what the *status/self-respect argument* for political equality requires of the process by which content is added to the agenda. We can identify two possible threats to the self-respect of the free and equal citizens of a well-ordered society that might arise from the process by which content is added to

the political agenda. First, regardless of whether they are privileged due to their name, social position, or policy preferences, if the rules of agenda-setting provide some citizens with significantly greater opportunities to add items to the political agenda than others, then there is a high chance that this will be understood as a public message that the latter group are not considered to have the capacity to develop and exercise an adequate sense of justice. For if certain citizens' final policy preferences consistently stand a significantly lower chance of being included on the political agenda than those of others, then society is effectively saying that the views of the former group are worth less and ought not to be seriously considered, let alone voted on.¹⁰¹ Understood as such, this amounts to a public expression of the inferior status of those with fewer opportunities to add items to the political agenda, and therefore has a high chance of undermining their self-respect as free and equal citizens.

Hopefully it is clear that this extension of the *status/self-respect argument* to the process by which content is added to the political agenda is equivalent to the arguments that I made against non-anonymous and non-neutral voting rules in the previous section. However, it is inappropriate to extend the axiomatic approach in too literal a sense to the process by which content is added to the political agenda in a society, as this process is not governed by a formal decision rule. As a result, I contend that the parties to our constitutional convention would provisionally call for the vaguer requirement of *ongoing approximately equal opportunities for each citizen to add items to the political agenda*.¹⁰² The reason for the parties' more relaxed understanding of an 'approximately equal opportunity' at this point in the decision making process is that minor deviations from ongoing equal opportunities to add items to the political agenda are less likely to undermine the self-respect of free and equal citizens than minor deviations from anonymity and neutrality when it comes to voting rules. This is simply because inequalities in opportunities to add content to the agenda are harder to publicly recognise, measure and verify, whereas voting rules are easily accessible, measurable and verifiable. As such, minor deviations from equality at the agenda-setting stage are less likely to amount

¹⁰¹ I refer to 'final policy preferences' to reflect the assumption made in section 4.2 that citizens can be expected to reach a final judgements at the conclusion of the pre-voting deliberation stage of politics.

¹⁰² This is broadly similar to Joshua Cohen's demand that 'each can put issues on the agenda, propose solutions, and offer reasons in support of or in criticism of proposals, and each has an equal voice in the decision' (Cohen 1989, p.33).

to *clear* public expressions of inferior status, provided there is public confidence that there are no major deviations.¹⁰³

So, although each party to our constitutional convention would be unwilling to take the risk that the free and equal citizen whose interests they represent might be publicly known to enjoy *significantly* fewer opportunities to add items to the political agenda, there will be the need for further case-by-case judgements as to whether any particular institutional arrangement satisfies the demands of the *status/self-respect argument* in this regard. This vagueness does not pose any major problems for my institutional arguments in subsequent chapters, as they will focus on the ways in which the very presence of large corporations and firms appears well placed to undermine public confidence that there are no major deviations from 'equal opportunity to influence' in the process by which content is added to the political agenda (in the presumed absence of countervailing measures).

The second threat to the self-respect of the free and equal citizens of a well-ordered society that might arise from the process by which content is added to the political agenda relates to their free status. In the previous section, I argued in favour of the axiom of non-negative responsiveness for a voting rule on the grounds that if a voting rule is anonymous and neutral, but either selects outcomes completely randomly, or correlates outcomes negatively with the choices of voters, then the *free* status of *all* democratic citizens would be undermined because of the public message that they are not self-authenticating sources of valid claims who are entitled to make claims on their shared institutions. We can make a similar, though slightly weaker, argument regarding the process by which content is added to the agenda. Here the issue is that, if citizens have equally little, or no, opportunities to add content to the agenda, then they are not being publicly acknowledged by their institutions as self-authenticating sources of valid claims who are entitled to make claims on their shared institutions. And this amounts to a public expression of their unfree status, which has a high chance of undermining their self-respect as free and equal citizens. Accordingly, I contend that the parties to our constitutional convention would call for an ongoing approximately equal *and adequately positive* opportunity for each citizen to add items to the political agenda.

¹⁰³ The final clause in this sentence shows how the relative opaqueness of opportunities to add items to the agenda can cut both ways in terms of the demands of political equality. For if it is simply unclear to citizens whether or not other citizens have *significantly* greater opportunities to add items to the agenda than them, then regardless of whether or not this is actually the case, those citizens might feel that their social bases of their self-respect are not secure.

However, when phrased in this way, the parties' provisional constitutional principle for the agenda-setting stage still leaves open the question of what ought to count as an 'adequately positive opportunity' in the context of adding items to the political agenda. For instance, does the *status/self-respect argument* for political equality require that each citizen has an ongoing equal and positive opportunity to add items to the political agenda in perpetuity? If so, it looks as if this requirement will result in endless additions to the agenda, thus making it an entirely unviable standard for individuals with bounded rationality.

In my view, such a concern can be allayed by noting that, in conditions of bounded rationality, the *status/self-respect argument* is consistent with restricting the agenda-setting process to a finite period of reasonable length, provided the overall political decision-making process incorporates an 'appeals condition' whereby policy issues on which a collective choice have been made are brought back on to the agenda for subsequent votes at appropriately regular periods.¹⁰⁴ As such, in conditions of bounded rationality, the *status/self-respect argument* supports something closer to the spirit of Robert Dahl's demand that

Throughout the process of collective decision making, including the stage of putting matters on the agenda, each citizen ought to have *adequate* and equal opportunities for expressing his or her preferences as to the final outcome [emphasis mine] (Dahl 1982, p.6).

To elaborate, the *status/self-respect argument* can be seen to ground a finite notion of adequacy combined with an appeals condition insofar as it is unlikely that democratic citizens with bounded rationality will feel that they have not been publicly treated as self-authenticating sources of valid claims due to their preferred options not always making it on to the agenda, provided they are aware that the community gave them a finite opportunity of reasonable length to add them to the agenda, and that they will enjoy a similar opportunity to do so again in the not-too-distant future. As such, the parties to our constitutional convention would ultimately call for *an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition.*

¹⁰⁴ In using the term 'appeals condition' I adopt the language of Norman Daniels and James Sabin who argue that in the context of a representative group of citizens making decisions about their public healthcare system, it is crucial that finite opportunities to participate are offset by 'the opportunity for revising decisions in light of further evidence or arguments' (Daniels 2001, p.11; Daniels & Sabin 1997, p.323).

We are now in a position to offer an updated statement of what it would mean for the constitution of a well-ordered society to realise political equality:

Statement 2: *A well-ordered society will only realise my principle of political equality provided it: (a) has a liberal egalitarian voting rule (that satisfies the axiom of resolvability); (b) guarantees universal suffrage; and (c) ensures an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition.*

Before moving on, I will briefly argue that this new principle of constitutional design for the agenda-setting stage can also be supported by an extension of the *epistemic argument* for the priority of my principle of political equality. This conclusion follows provided that we maintain the *epistemic argument's* mildly optimistic view about the veracity of voter's judgements after a period of social deliberation conducted on equal terms, and its underlying assumption that, even in a well-ordered society, many citizens' judgements about what justice requires at the level of policy will be infected by cognitive biases even after social deliberation. The combination of these two assumptions should lead the parties to our constitutional convention to conclude that the most reliable procedure for selecting the most just outcomes most of the time will be the one that ensures, so far as practically possible, that all citizens have an ongoing equal and adequately positive opportunity to add items to the political agenda. For it is likely that if some citizens have significantly greater opportunities to add content to the political agenda, then oftentimes, voting outcomes will skew towards, and thereby amplify, their cognitively biased views. And if all citizens have equally few opportunities to add items to the political agenda, then the outcome of each vote is unlikely to be as just, because many preferred options will have been left off of the agenda, so the 'benefits of large numbers' that the epistemic argument for majoritarian voting rules relies upon will not be so satisfactorily realised.

4.5. Social Deliberation: Before (and After) the Vote

We now have an understanding of the constraints that my principle of political equality places on the voting stage and the agenda-setting stage of a well-ordered society's politics. However, it is not enough from the perspective of political equality for the politics of a well-ordered society to be governed by a permissible voting rule and a permissible agenda-setting process. As highlighted in the literature on power, there is a remaining concern that even when a society has these two things, it is still

possible for certain political choices to be arbitrarily favoured, or ignored, due to the conditions in which voters form their policy preferences (Lukes 1974, p.25).

Accordingly, the principal question that I will address in this section is 'What would it mean for the pre-voting deliberation stage of a well-ordered society's politics -- i.e. the marketplace of ideas -- to ensure each citizen, on an ongoing basis, approximately equal and adequately positive opportunities to influence policy outcomes?'

I will answer this question in four stages. First, I will extend the *status/self-respect argument* for political equality to the question of what principle ought to govern the supply side of the pre-voting marketplace of ideas. I will conclude that it requires *ongoing approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech*. Second, I will clarify and justify my focus on *external* resources from the perspective of the *status/self-respect argument*. Third, I will clarify the extent to which deviations from equality of external resources are permissible at this stage of politics from the perspective of the *status/self-respect* argument. In short, I will argue that it depends on the extent to which a society realises a distinct principle that the *status/self-respect argument* places on the demand side of the pre-voting marketplace of ideas: that *each citizen ought to enjoy, on an ongoing basis, adequate external resources to access and consume political speech*. Fourth, I will argue that these two principles of constitutional design are also justified by the *epistemic argument* for political equality. Thereafter, I will briefly argue that both of these principles straightforwardly apply to the implementation stage of politics. In light of this, I will offer a final statement of what it would mean for the constitution of a well-ordered society to realise political equality.

Let us begin by examining what the *status/self-respect argument* for political equality requires of the supply side of the pre-voting marketplace of ideas. I propose that the parties to our constitutional convention would agree, as a provisional principle, that *each citizen ought to enjoy, on an ongoing basis, approximately equal resources to produce and disseminate political speech*. In taking this egalitarian approach, I follow a number of deliberative democratic theorists. For instance, Jack Knight and James Johnson emphasise 'the need for equality in the resources that any participant be allowed to employ in the deliberation process' (Knight & Johnson 1997, p.293). And Joshua Cohen holds the similar, though slightly more nuanced, view that

[T]he participants are substantively equal in that the existing distribution of power and resources does not shape their chances to contribute at any stage of the deliberative process, nor does that distribution play an authoritative role in their deliberation (Cohen 1989, p.33).

From the perspective of the *status/self-respect argument* for political equality, the rationale behind this egalitarian approach to distributing resources that provide opportunities to influence during pre-voting deliberation is that, if certain citizens enjoy significantly greater resources than others to influence the policy judgement-formation of their fellow citizens, then -- regardless of the reason why they enjoy these greater resources¹⁰⁵ -- there is a high chance that this will be understood as a public message that the group with fewer resources to influence the policy judgement-formation of their fellow citizens are not considered to have the capacity to develop and exercise an adequate sense of justice. For if certain citizens have *significantly* fewer resources than others to influence the policy judgement-formation of their fellow citizens, then society is effectively saying that the views of the former group are worth much less and ought not to be seriously considered, let alone added to the agenda or voted on. Understood as such, this amounts to a public expression of the inferior status of those with fewer resources to produce and disseminate political speech, and this therefore has a high chance of undermining their self-respect as free and equal citizens. Accordingly, the parties to our constitutional convention would be unwilling to risk significant inequalities in these types of resources.

As it stands, this provisional principle of constitutional design for the pre-voting deliberative stage contains two sources of vagueness that need to be clarified in order for us to understand and assess its demands. First, it does not specify what types of resources ought to fall under its remit. This is significant because the abovementioned deliberative democratic theorists who sympathise with the need for an egalitarian distributive demand to govern the pre-voting deliberative stage of politics tend to disagree when it comes to the distribuendum of this demand. On the one hand, theorists such as Knight and Johnson (1997, pp.298–99) and James Bohman (1997, pp.322, 341–44) argue that it should be interpreted as something

¹⁰⁵ Returning momentarily to the language of voting rules, we might say there is an obvious problem if certain individuals are assigned significantly greater resources to influence the policy judgement-formation of their fellow citizens on the basis of their name (meaning the process of pre-voting deliberation fails to be anonymous) or their policy preferences (meaning that the process fails to be neutral).

akin to equal capacities to influence the policy judgement-formation of other citizens, where a capacity is taken to include both one's 'external resources' (such as wealth and leisure time) and one's 'internal resources' (such as talent, intelligence and erudition).¹⁰⁶ On the other hand, Cohen argues that this egalitarian distributive demand ought to be interpreted, for the most part, as only applying to external resources, understood specifically as Rawlsian primary goods (Cohen 1995, p.285).¹⁰⁷ The primary goods that appear most relevant in this context are income and wealth and leisure time (and, of course, political liberties).¹⁰⁸

In my view, the Rawlsian *status/self-respect argument* for political equality requires approximate equality of those external resources that are recognised to provide citizens with opportunities to influence the policy judgement-formation of their fellow citizens, but not internal resources that are recognised to provide similar opportunities. This is because if we assume that all citizens have received just educational opportunities (which we are entitled to assume in the context of a well-ordered society), then any remaining inequalities in the distribution of internal resources (which we might imagine to be much narrower than in existing societies) that allow certain citizens greater opportunities than others to influence the policy judgement-formation of their fellow citizens cannot reasonably be considered as public expressions of the inferior status of the group with fewer internal resources. To be sure, these types of inequalities may well be condemned from some other moral perspective, such as that of luck egalitarianism. But if we restrict our concern to the issue of whether institutions treat certain citizens in ways that publicly indicate that they lack a capacity to develop and exercise an adequate sense of justice, then one would be hard pressed to argue that allowing all citizens to exercise their justly acquired internal resources is to publicly treat certain citizens as having an inferior status in this way.

Rather, as social egalitarian theorists have emphasised, it is precisely institutional strategies that publicly aim to compensate those who are considered to have significantly fewer internal resources by providing them with greater external resources that pose a threat to the self-respect of those eligible for compensation. This is because this approach of compensating across internal and external

¹⁰⁶ For the distinction between internal and external resources see (Dworkin 1981, p.300).

¹⁰⁷ For Rawls's list of primary goods, see (Rawls 2001, pp.58–59).

¹⁰⁸ Rawls included leisure time as a primary good in response to criticisms of his early work (Rawls 1974a).

resources involves institutions publicly expressing judgements that *can* plausibly be understood to imply that certain citizens lack a capacity to develop and exercise an adequate sense of justice (Anderson 1999, pp.301, 305; Wolff 1998, pp.114–15).¹⁰⁹ None of this is to deny that one of the aims of a just education system might be to provide each citizen with an equal opportunity to develop approximately equal internal resources. I simply refute that inequality of outcome in this regard is a concern of political inequality if one thinks political equality valuable for the reasons given by the *status/self-respect argument*. As such, from the perspective of the *status/self-respect argument* for political equality, the parties to our constitutional convention would see no problem with some citizens enjoying greater present opportunities to influence the policy judgement-formation of their fellow citizens during pre-voting deliberation, provided it is only because they have the justly acquired capacity to more consistently employ 'the unforced force of the better argument' (Habermas 1996, p.306) about what justice requires at the level of policy.¹¹⁰

The second source of vagueness in the parties' provisional principle of constitutional design for the pre-voting deliberative stage is the reference to '*approximately* equal resources'. To recall, I argued earlier that my guiding principle of political equality, which demands that *each citizen must be guaranteed, on an ongoing basis, an approximately equal and adequately positive opportunity to influence policy outcomes*, should be understood as requiring *strict* 'equality of opportunity to influence' when it comes to the voting stage of the politics of a well-ordered society. This was because voting rules are easily accessible, measurable and verifiable, and so inequalities in the way they treat citizens can be understood as a clear public message that some are of an inferior status. In contrast, when it came to applying this principle of political equality to the process by which content is added to the political agenda, I argued that the parties to our constitutional convention would permit a more relaxed understanding of an 'approximately equal opportunity to influence'. This is because inequalities in opportunities to add content to the agenda are harder to publicly recognise, measure and verify, and therefore it is less likely

¹⁰⁹ Elizabeth Anderson puts the point well when she says that such a strategy 'disparages the internally disadvantaged and raises private disdain to the status of officially recognised truth' (Anderson 1999, p.306).

¹¹⁰ To be clear, this same point about internal vs. external resources also applies to any other stages of the politics of a well-ordered society where the public use of reasoning and arguments offers a viable way to influence outcomes. I have in mind, in particular, the agenda-setting process in a representative democracy, which may be susceptible to various kinds of lobbying. I leave it open for now whether lobbying at this stage is permissible. In the next chapter I argue that, to some extent, it is likely to be a permanent feature of a just, well-ordered representative democracy.

that minor deviations from strict equality will be understood as a clear public message that some are of inferior status, provided there is public confidence that there are no major deviations.

I contend that, for the same reasons, the parties to our constitutional convention would permit some deviations from strict equality of opportunity during the process of adding content to the political agenda, they would also permit some deviations from strict equality of opportunity when it comes to the distribution of external resources that allow citizens to influence the policy judgement-formation of their fellow citizens during the pre-voting deliberative stage of politics. However, the extent to which unequal opportunities are permitted in the supply side of the pre-voting marketplace of ideas will depend upon the extent to which a well-ordered society realises another principle of constitutional design that the *status/self-respect argument* requires of the demand side of the pre-voting marketplace of ideas, namely: *ongoing adequately positive external resources for each citizen to access and consume political speech.*

I propose that something like this principle would be selected by the parties to our constitutional convention on the grounds that, if certain citizens are not entitled to the external resources required to access and consume sufficient political speech to have an enlightened understanding of the issues that will be voted on, then they are being publicly treated in a way that suggests they lack a capacity to develop and exercise an adequate sense of justice. For they are not being treated as potentially valuable contributors to the discussion. The details of this principle are not important for our purposes, as the principle does little work in subsequent chapters.¹¹¹ The crucial point is that the greater the external resources that all citizens have to devote to accessing and consuming political speech, the less inequalities matter in the external resources that citizens have to produce and disseminate political speech. This is because consumers will have the time and money to be more discerning and seek out a range of reasonable viewpoints on each issue, so the relative advantage that producers with greater resources might otherwise have in a society of rational interlocutors by way of 'dominating the issue space' or 'flooding the marketplace of ideas' will be reduced.

¹¹¹ For instance, one might think that the *status/self-respect argument* requires an egalitarian, rather than sufficientarian, principle of constitutional design to govern the demand side of the pre-voting marketplace of ideas. I am open to further discussion on this point.

This remaining vagueness in precisely when inequalities in external resources to produce and disseminate political speech fail to satisfy the requirements of the *status/self-respect argument* means that there will be the need for further case-by-case judgements as to whether any particular institutional arrangement satisfies the demands of the *status/self-respect argument* in this regard. Yet this vagueness does not pose any major problems for my institutional arguments in subsequent chapters, as they will focus on the ways in which the very presence of large corporations and firms appears well placed to undermine public confidence that there are no major deviations from 'equal opportunity to influence' in the pre-voting deliberative stage of politics (in the presumed absence of countervailing measures).

So far I have argued that the parties to our constitutional convention would call for *each citizen to enjoy, on an ongoing basis, approximately equal external resources to produce and disseminate political speech*, but I have said nothing about the further requirement that such approximately equal resources ought to also be *adequately positive*. To recall, in the previous section I argued that if citizens have equally little, or no, opportunities to add their final policy judgements to the agenda, then they are not being publicly acknowledged by their institutions as self-authenticating sources of valid claims who are entitled to make claims on their shared institutions. And this amounts to a public expression of their unfree status, which has a high chance of undermining their self-respect as free and equal citizens. However, it is less plausible to apply this argument to the stage of pre-voting deliberation, for it is far-fetched to argue that all citizens are not publicly acknowledged by their institutions as self-authenticating sources of valid claims simply because they all have few resources to produce and disseminate political speech. Rather, provided they are all able to deliberate in isolation about what justice requires at the level of policy and then add their final policy judgements to the agenda and vote, then they seem to have been treated as valid sources of claims against their institutions.

The only way to avoid this conclusion would be to argue that citizens cannot know their 'true claims' as self-authenticating sources of valid claims until they have engaged in a process of social deliberation. But this would be to assume strong epistemic benefits of social deliberation that are not part of the make-up of the *status/self-respect argument* for political equality. So, is there a way for the *status/self-respect argument* to ground the principle of constitutional design that each citizen ought to enjoy, on an ongoing basis, approximately equal *and*

adequately positive external resources to produce and disseminate political speech?

In my view, there is, provided we accept two insights that will be further elaborated in the next chapter. First, we must accept that in a society populated by individuals with bounded rationality and finite external resources, the marketplace of ideas 'has limited space, as it were' (Rawls 2001, p.150). This is because, regardless of how well resourced citizens with bounded rationality are, they will have limited time to hunt down and consume every reasonable political viewpoint produced by their fellow citizens on every issue. Accordingly, as already alluded to, if certain agents have the ability to 'dominate the issue space' or 'flood the marketplace of ideas', then the resources enjoyed by their fellow citizens will, no matter their absolute value, be worth less in terms of providing opportunities to influence the policy judgement-formation of their fellow citizens. Another way of putting this is to note that insofar as external resources are valuable to us because they provide us with opportunities to influence the policy judgement-formation of our fellow citizens, they are 'positional goods'. This means that their value to us is, in this regard, dependent upon how much of them we have relative to others in the political process, rather than in absolute terms (Brighouse 1997, p.165; Hirsch 1977, pp.3–5; Frank 1985, p.6).

The second insight we need to recognise is that in a well-ordered society, citizens will not only face other citizens as political competitors (when there is disagreement) but also other, non-citizen political actors. The idea here, which I will expand upon in the next chapter, is that organisations (such as firms) might be understood as political competitors who use resources to pursue their own institutional aims in politics (such as profit-maximisation). If we understand the social ontology of democratic politics in this way, then it becomes clear how the requirement that all citizens enjoy approximately equal external resources to produce and disseminate political speech is insufficient to ensure all citizens are publicly acknowledged by their institutions as self-authenticating sources of valid claims who are entitled to make claims on their shared institutions. For if other non-citizen political competitors have vast quantities of resources that they can use to 'flood the marketplace of ideas', then although each *citizen* may have approximately equal external resources to produce and disseminate political speech, none of them will have *adequately positive* resources to ensure that the pre-voting deliberative stage of politics -- *and,*

consequently, all the subsequent stages -- are responsive to their claims, rather than the 'louder' claims of resource-rich non-citizens.

In such a scenario, I propose that a society's institutions would publicly express the unfree status of all citizens, which has a high chance of undermining their self-respect as free and equal citizens. As such, the parties to our constitutional convention would call for *each citizen to enjoy, on an ongoing basis, approximately equal and adequately positive external resources to produce and disseminate political speech*, albeit with the usual caveat that some deviations from the pure standard (which in this case would require 'citizen-only' producers in the marketplace of ideas) are permissible at the pre-voting deliberative stage, given the usual limitations on measuring and publicly verifying such judgements.

These two new principles of constitutional design for the pre-voting deliberative stage can also be supported by an extension of the reasoning of the *epistemic argument* for the priority of my principle of political equality. This conclusion follows provided we maintain the *epistemic argument's* mildly optimistic view about the epistemic benefits of social deliberation, and its underlying assumption that, even in a well-ordered society, many citizens' initial judgements about what justice requires at the level of policy will be infected by cognitive biases. The combination of these two assumptions, plus the assumption that (unlike many other political competitors) the citizens of a well-ordered society are motivated in politics to pursue justice, should lead the parties to our constitutional convention to conclude that the most reliable procedure for selecting the most just outcomes most of the time will be the one that ensures, so far as practically possible, that all citizens *have ongoing approximately equal and adequately positive resources to produce and disseminate political speech*. Moreover, they would welcome the epistemic benefits of some citizens enjoying greater present opportunities to influence the policy judgement-formation of their fellow citizens during pre-voting deliberation provided it is purely because they have the justly acquired capacity to more consistently employ 'the unforced force of the better argument' (Habermas 1996, p.306) about what justice requires at the level of policy. As such, they would be happy to restrict their focus to approximate equality of *external* resources (assuming more equal internal resources are not demanded on other grounds). Finally, there are straightforward epistemic benefits to *ensuring, on an ongoing basis, adequately positive external resources for each citizen to access and consume political speech* that do not require elaboration.

Thomas Christiano argues that the epistemic benefits of pre-voting deliberation are better served by a supply side principle of qualitative equality, rather than a principle of numerical equality. By this he means that each reasonable viewpoint on each policy issue ought to enjoy equal external resources (i.e. qualitative equality), rather than each citizen (i.e. numerical equality). His reasoning is that if we all care only about reaching the truth, rather than getting our own way, then we will want to hear every reasonable point of view, rather than just the popular ones, or the ones that we initially agree with (Christiano 1996, pp.91–93, 271–77). In reply, I submit that Christiano overlooks the important epistemic virtues of the ‘marketplace’ aspect of the marketplace of ideas for citizens with bounded rationality. As Friedrich von Hayek emphasises, the value of the marketplace for individuals with bounded rationality is that it is an efficient way for many diverse individuals to get the information they require without any single agent trying (and failing) to coordinate everything (Hayek 1948). I contend that provided citizen-producers have *approximately equal and adequately positive resources to produce and disseminate political speech* and citizen-consumers have *adequately positive external resources to access and consume political speech*, the operation of a marketplace of ideas will in fact provide them with epistemically valuable information about the products that their fellow citizens have, or have not, found persuasive and trustworthy. Admittedly, regulation would be required to ensure low barriers to entry to the marketplace of ideas. But this is significantly less demanding for citizens with bounded rationality to achieve than Christiano's alternative, which would seem to require an omniscient coordinator of ideas-funding.¹¹²

I have argued that both the *status/self-respect argument* and the *epistemic argument* for political equality require two principles of constitutional design to govern the marketplace of ideas at the pre-voting stage of deliberation. Without retreading all the steps of this argument, I simply add here that I see no reason why both of these arguments would not also support both of these principles as being applicable to the sub-marketplace of ideas in which bureaucrats consume ideas about how to best implement policies in accordance with their underlying aims. To be sure, we should expect lower participation in this sub-marketplace, but there is no reason of either self-respect or epistemic gain to limit some, or all, citizens'

¹¹² In fairness to Christiano, he admits that he is not fully satisfied with any of his surveyed solutions to the problem of inequality in pre-voting deliberation (Christiano 1996, p.295). But his concern here is focused more at an institutional level, whereas my disagreement with him is at the level of principle.

opportunity-conferring resources to produce or consume in this marketplace, particularly given its significant impact on policy outcomes.

We are now in a position to provide a final statement of what it would mean for the constitution of a well-ordered society to realise political equality:

Statement 3: *A well-ordered society will only realise my principle of political equality provided it (a) has a liberal egalitarian voting rule (that satisfies the axiom of resolvability); (b) guarantees universal suffrage; (c) ensures an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition; (d) ensures, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech during pre-voting deliberation; (e) ensures, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech during post-voting deliberation about implementation; and (f) ensures, on an ongoing basis, adequately positive external resources for each citizen to access and consume political speech.*

It is worth noting that when these six principles are understood to be justified by the *status/self-respect argument*, then procedures that conform with them are themselves seen to instantiate important normative values. As such, the argument is consonant with normative proceduralist arguments for democracy of the type most commonly associated in recent times with Dahl (2006; 2015). However, when these six principles are understood to be justified by the *epistemic argument*, then procedures that conform with them are justified in more ruthlessly instrumental terms.

4.6. Conclusion

I began this chapter with a fairly abstract *normative ideal-type* of a society well-ordered by (*inter alia*) a lexically prior principle of political equality, which demanded that *each citizen must be guaranteed, on an ongoing basis, an approximately equal and adequately positive opportunity to influence policy outcomes*. My main goal has been to construct a more concrete *normative ideal-type* that provides a definition of what it would mean for the constitution of a well-ordered society to realise this principle of political equality. Specifically, I aimed to construct an ideal-type that is made up of some principles of constitutional design that are necessary for the

realisation of my principle of political equality. To this end, I began by distinguishing four stages of the politics of a well-ordered society: (1) pre-voting deliberation, (2) agenda-setting, (3) voting, and (4) implementation. I then looked at what my principle of political equality requires in terms of principles of constitutional design at each of these stages of politics.

First, I argued that at the voting stage, an extension of the *status/self-respect argument* for my principle of political equality requires a liberal egalitarian voting rule that also satisfies the axiom of resolvability, plus universal suffrage. I identified a class of intuitively unobjectionable voting rules that satisfy these axioms, thus preventing my arguments regarding the other stages of politics from falling prey to an obvious instance of 'the problem of second best'. Second, I argued that, at the agenda-setting stage, an extension of the *status/self-respect argument* for my principle of political equality requires an *approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition* that ensures issues are brought back on to the agenda at appropriate intervals (i.e. no decision is forever). Third, I argued that at the pre-voting deliberation stage, an extension of the *status/self-respect argument* for my principle of political equality requires two things: first, *ongoing approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech*; and, second, *ongoing adequately positive external resources for each citizen to access and consume political speech*. I spent some time clarifying the appropriate interpretation of the content of the former principle, as this will play a more significant role in the arguments to come than the latter principle. Finally, I argued that an extension of the *status/self-respect argument* for my principle of political equality also requires these same two principles at the implementation stage.

Throughout the chapter, I aimed to demonstrate, albeit much more briefly, that an extension of the alternative *epistemic argument* for my principle of political equality also requires very similar, if not the same, principles of constitutional design at each stage of the politics of a well-ordered society. I will not continue to spell out how my arguments are also supported by the *epistemic argument* for political equality in subsequent chapters. Rather, when it becomes necessary to return to deeper theoretical matters, I will rely solely on the *status/self-respect argument* and leave the reader to decide whether my arguments are, as I believe, over-determined.

The discussion of voting rules and universal suffrage in this chapter highlighted some fairly clear institutional requirements for the political constitution of a society that is well-ordered by (*inter alia*) my lexically prior principle of political equality. In contrast, the institutional implications of our discussion of agenda-setting, pre-voting deliberation and post-voting deliberation were more ambiguous. Nonetheless, they did highlight one thing: a society well-ordered by (*inter alia*) my lexically prior principle of political equality will most likely require an economic constitution as well as a political constitution. This is because the principles of constitutional design outlined in relation to the non-voting stages of politics appear to place constraints on the system of political economy considered as an interacting whole. This is the line of thought that I shall pursue in the upcoming chapters, paying particular attention to the question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?'

PART III: INSTITUTIONS

5. How Might Resource-Rich Firms Compromise Political Equality in a Well-Ordered Capitalist Democracy?: Taking Resource Power Seriously

5.1. Introduction

We now move into Part III of the thesis, in which I will build upon the methodological and theoretical results of Parts I and II to develop a heretofore neglected answer to the substantive institutional question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?' I will develop this answer in three stages. First, in this chapter, I will examine the ways in which the activities of resource-rich firms might plausibly compromise the principles of constitutional design that I defended in the previous chapter in the circumstances of a capitalist democracy, even if such a society is well-ordered in a suitable sense. Second, in the next chapter, I will argue that, in the absence of countervailing measures, large firms pose a plausible threat to these principles of constitutional design in a well-ordered society, even if the ownership of productive property is widely dispersed (i.e. a property-owning democracy) or if workers enjoy democratic control over their enterprises (i.e. liberal socialism). If this argument holds, then Rawlsian theorists in the 'choice of social system' debate have all overlooked an important way in which the very existence of large firms poses a credible threat to the realisation of social justice, regardless of how those firms are owned or controlled. Accordingly, in the concluding chapter, I will offer some suggestions as to how the existing institutional arrangements that different Rawlsian theorists have so far recommended might be supplemented to better protect political equality.

Before outlining my argument in this chapter, it will be helpful to briefly review the main argument of Chapter 4. There I argued that if a well-ordered society is to realise the lexically prior principle of political equality that I defended in Chapter 3, then certain principles of constitutional design must govern the various different stages of political decision-making. Specifically: *A well-ordered society will only realise my principle of political equality provided it: (a) has a liberal egalitarian voting rule (that satisfies the axiom of resolvability); (b) guarantees universal suffrage; (c) ensures an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition; (d) ensures, on an ongoing basis, approximately equal and adequately positive external*

resources for each citizen to produce and disseminate political speech during pre-voting deliberation; (e) ensures, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech during post-voting deliberation about implementation; and (f) ensures, on an ongoing basis, adequately positive external resources for each citizen to access and consume political speech.

I noted at the end of Chapter 4 that principles (a) and (b) have some fairly straightforward institutional implications for a society's political constitution. In contrast, principles (c), (d) and (e) appear to place broader, and less obvious, constraints on the overall organisation of a society's political economy.¹¹³ In this chapter and the next, I aim to highlight a significant restriction that these latter three principles of constitutional design appear to place on the organisation of a well-ordered society's firms. As already suggested, my strategy will be to begin in this chapter by examining how the activities of resource-rich firms might plausibly violate each of these principles in the circumstances of a well-ordered capitalist democracy. This will provide me with the conceptual framework required to assess, in the next chapter, whether the main forms of political economy proposed in the Rawlsian 'choice of social system' debate look adequate to prevent such violations.

My main argument in this chapter is that those who accept the abstract idea of a democratic society as a 'system of cooperation over time between free and equal citizens', and also accept the assumptions that I defended in Chapter 2 regarding the psychology of the free and equal citizens who should be supposed to populate a well-ordered-society, should be concerned about office-holders in resource-rich firms using their resource power to compromise political equality in a well-ordered capitalist democracy. This is because, even in such a society, it is plausible to think that these office-holders will use their resource power in ways that will ultimately undermine principles of constitutional design (c), (d) and (e) that I defended in the previous chapter (each does so in two ways, thus amounting to six possible ways in which resource-rich firms might violate political equality via resource power). As things stand, this type of threat has not received as much attention from theorists in the Rawlsian 'choice of social system' debate, who instead tend to focus on the ways in which office-holders in capitalist firms might use their structural power as controllers of capital to violate political equality in a well-ordered capitalist

¹¹³ As mentioned in the previous chapter, I am less interested in tracing the implications of principle (f). It was highlighted there because of its interesting relationship with principles (d) and (e).

democracy. I shall neither affirm nor deny that this form of structural power poses a serious threat to the principles of constitutional design that I defended in the previous chapter. Rather, my aim in this chapter is to demonstrate that Rawlsians in the 'choice of social system' debate ought to take the resource power that resource-rich firms bestow on certain agents as a serious threat to political equality.

I shall advance my argument in this chapter as follows. In section two, I will explain what I mean by a 'well-ordered capitalist democracy'. In section three, I will distinguish two roles that firms can be understood to play in the politics of a well-ordered capitalist democracy and six ways in which their activities might violate political equality in such a society.

With this conceptual framework to hand, section four will pinpoint the two main practical mechanisms by which the activities of resource-rich firms might cause some of the abovementioned violations of political equality in a well-ordered capitalist democracy. I will begin by drawing upon the business power literature to distinguish two relevant forms of 'power-over' that business, understood as a homogenous interest group, might enjoy over other groups in a capitalist democracy: resource power and structural power. I will then translate these insights into a language more suitable for our purposes. Specifically, I will concentrate on how exercises of either of these types of power might plausibly entail some of the abovementioned violations of political equality in a well-ordered capitalist society in virtue of their impacts on the 'power-to', and consequent self-respect, of some, or all, citizens.¹¹⁴

In section five, I will examine a possible concern with my conclusions about the resource power of firms, which, if viable, would justify the decision made by most Rawlsians in the 'choice of social system' debate to focus on combating the *structural* power of capitalist firms when theorising about the institutions of a just, well-ordered society. In short, one might think that because resource power must be exercised intentionally, the idea that this might be used in the pursuit of group interests in politics is irrelevant to the circumstances of a *well-ordered* capitalist democracy. In contrast, the structural power of firms remains a relevant problem because individuals can exercise this type of power *unintentionally*. Against this

¹¹⁴ To recall, I argued in Chapter 3, section 3.2, that my principle of political equality ought to be understood as equivalent to the following principle, articulated in terms of power: *Each citizen must be guaranteed ongoing approximately equal and adequate institutionally specified political power-to.*

view, I will argue that resource power can be exercised by office-holders in firms unintentionally, and, more importantly, that office-holders in resource-rich firms can be expected to intentionally pursue their group interests in politics, even in the circumstances of a well-ordered capitalist democracy. Section six concludes.

5.2. The Idea of a Well-Ordered Capitalist Democracy

We can distinguish three component ideas in the concept of a 'well-ordered capitalist democracy': (a) it is, in some sense, a well-ordered society; (b) it has a capitalist economic system; and (c) it has, in some sense, a democratic political system. I will say a bit more about each in turn, beginning with the idea of 'a well-ordered society'. By this I generally mean a society in which:

- (1) nearly all individuals accept and know that nearly everyone else accepts the same principles of justice;
- (2) there is *reasonable disagreement* over the extent to which the major institutions together satisfy, and are publicly known to satisfy, these principles;
- (3) nearly all individuals have a normally effective sense of justice that allows them to understand and apply the publicly recognised principles of justice;
- (4) nearly all individuals are motivated to comply with and further just institutions provided there is sufficient assurance that others will likewise do so.

For the purposes of this chapter, when I speak of a well-ordered society I mean to refer specifically to a society in which nearly all individuals accept and know that nearly everyone else accepts my principle of political equality, understood as residing within a principle of justice that enjoys lexical priority over whatever principle of justice is taken to regulate social and economic inequalities (the content of which we can remain agnostic about).

However, there is a sense in which I am not (necessarily) speaking about a well-ordered society in the fullest possible sense when I speak of a well-ordered capitalist democracy. This is because I am stipulating that this society has certain institutional arrangements (i.e. it is a capitalist democracy) and then asking whether, even if nearly all citizens began by affirming my lexically prior principle of political equality, such arrangements would satisfy and be publicly known to satisfy this principle, or at least clearly fall within the range of institutional arrangements that

nearly all citizens view as reasonable attempts to satisfy this principle. Whereas a society is only fully well-ordered when, by definition, its institutions do satisfy, and are publicly known to satisfy, the principles of justice that nearly all of its citizens accept; or when its institutions fall within the range of, and are publicly known to fall within the range of, institutional arrangements that nearly all citizens view as reasonable attempts to satisfy their shared principles of justice.

The reason it is, for now, appropriate for me to take this half-measure and treat certain institutional arrangements as fixed points, is that it is these institutional arrangements that I want to assess from the perspective of justice. And the reason it is appropriate for me to begin with certain favourable psychological commitments on the part of citizens when making this assessment (i.e. those associated with a well-ordered society) is that I specifically want to know whether these institutional arrangements might plausibly be part of a fully well-ordered society, and if not, why not.

With that clarified, I will now say what I mean by a 'capitalist' economic system. For the purpose of this chapter, it will suffice to use a fairly abstract *descriptive ideal-type* of a capitalist economic system that intends to pick out a logic of organisation that, to varying extents, can be found across many real-world societies. With this in mind, I will borrow the following two characteristics from a definition proposed by Stuart White:

(1) The allocation of resources between alternative ends is determined primarily through markets; (2) productive resources are privately owned and, as part of the institution of private ownership, investment decisions are in private hands (White 2011, p.562).¹¹⁵

And I will add to this the following characteristic: (3) some large firms have significantly greater financial resources at their disposal than most individuals and organisations in society.

This additional characteristic broadens the intension and narrows the extension of my *descriptive ideal-type* (thus moving it down Giovanni Sartori's 'ladder of

¹¹⁵ White also includes: '(3) there is substantial inequality in the ownership of productive resources' (White 2011, p.562); however, I refrain from adding this characteristic as it appears to restrict the potential class of referents to only a subgroup of those to whom my argument in this chapter might apply.

abstraction' (Sartori 1970, p.1041)).¹¹⁶ Accordingly, I am happy to acknowledge that my ideal-type might be best understood as picking out a particular sub-type of capitalist economy, rather than accurately characterising all economic systems that are commonly understood as capitalist.

Finally, by a 'democratic society', I mean a society that is characterised by the four stages of politics that I distinguished in the previous chapter, namely: (1) pre-voting deliberation, (2) agenda-setting, (3) voting, and (4) implementation. Furthermore, the voting stage is organised in accordance with the following principles of constitutional design: (a) it has a liberal egalitarian voting rule (that satisfies the axiom of resolvability), and (b) it guarantees universal suffrage.

5.3. Six Ways in Which The Presence of Firms Might Violate Political Equality in a Well-Ordered Capitalist Democracy

Now that we have a fuller understanding of what I mean by a well-ordered capitalist democracy, I would like to distinguish two roles that firms can be understood to play in the politics of this type of society, followed by six ways in which the presence of firms might violate political equality in this type of society. My aim in this section is simply to map out the conceptual possibilities. I will isolate the main practical mechanisms by which firms might violate political equality in one or more of these ways in the next section.

I understand the firm in ideal-typical terms as a commercial organisation within which individual members (on the whole) act with the unified primary aim of maximising financial returns to those with ultimate decision-making power in the enterprise. In a capitalist firm, this amounts to (on the whole) maximising profits. Understood as such, the first role that firms can be understood to play in the politics of a well-ordered capitalist democracy is the role of possible *political competitors* to citizens. The idea here is that although citizens who reasonably disagree about what justice requires at the level of policy are the only political actors at the voting stage of politics, there are other non-citizen actors, who may or may not be motivated by justice, who look to influence policy outcomes at the pre-voting deliberation, agenda-setting and implementation stages of politics. One such non-citizen actor is the capitalist firm, which (on the whole) aims to maximise its profits. So, insofar as firms have the capacity to influence policy outcomes in accordance

¹¹⁶ See Chapter 2, section 2.5.1 for more details.

with their profit-maximising aims, they should be understood as distinct political actors who are *political competitors* to justice-motivated citizens. (As we will see in the next section, this is the role that firms are generally understood to play in the politics of capitalist democracies by theorists in the business power literature.)

A second role that firms can be understood to play in the politics of a well-ordered capitalist democracy is the role of possible *issue subsidisers* for certain citizens. This understanding of the political role of firms begins once more with the idea that although citizens who reasonably disagree about what justice requires at the level of policy are the only political actors at the voting stage of politics, there are other non-citizen actors, including profit-maximising firms, who look to influence policy outcomes at the other non-voting stages of politics. However, when thinking about firms as *issue subsidisers*, we are not concerned with their capacity to influence policy outcomes in accordance with their institutional (on the whole) profit-maximising aims. Rather, we are concerned with the increased opportunities to influence policy outcomes that firms provide to certain citizens as a by-product of their political activities. For example, those citizens who, for justice-motivated reasons, happen to share the firm's policy preferences on certain issues might have increased opportunities to influence policy outcomes insofar as they will enjoy subsidised (perhaps free) use of the firm's carefully researched public political arguments and supporting information on the issues at hand, as well as the possibility of utilising the firm's organisational capacities to campaign on the relevant issues. It is worth emphasising that the two roles of *political competitors* and *issue subsidisers* are not mutually exclusive: a firm could perform both roles simultaneously.

We can employ this dual understanding of the roles that firms play in the politics of a well-ordered capitalist democracy to distinguish six ways in which the presence of firms might violate political equality in such a society. In short, each of my principles of constitutional design (c), (d) and (e) might be violated in one way by firms as *political competitors*, and in another way by firms as *issue subsidisers*.

Let us begin with principle (c), which specifies what is required for the agenda-setting process in a well-ordered society not to violate my principle of political equality. It states that at the agenda-setting stage, a well-ordered society must *ensure an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition*. Understood

as *political competitors*, firms might violate this principle insofar as they ensure that the political agenda does not include certain policy options that citizens would like to have added because the firms view these policy options as going against their (on the whole) profit-maximising interests. This alone would not necessarily violate the demand in this principle for 'an *approximately equal* opportunity for each citizen to add items to the political agenda'; rather, it would violate the demand for 'an *adequately positive* finite opportunity for each citizen to add items to the political agenda'. This is because, beyond a certain point, citizens are no longer the ones deciding the political agenda: non-citizen actors are. I will refer to this first way in which firms might violate political equality in a well-ordered capitalist democracy as the *problem of unresponsive agenda formation*.

When understood as *issue subsidisers* for certain citizens, firms might violate principle (c) insofar as they increase the opportunities for certain citizens to add items to the political agenda as a by-product of their (on the whole) profit-maximising political activities. The prime activity I have in mind here is the campaigning that firms might engage in on certain issues, thereby establishing networks that can thereafter be utilised by citizens. This alone might not violate the demand in principle (c) for 'an *adequately positive* finite opportunity for each citizen to add items to the political agenda', but it would, after a point, violate the demand for 'an *approximately equal* opportunity for each citizen to add items to the political agenda'. I will refer to this second way in which firms might violate political equality in a well-ordered capitalist democracy as the *problem of inegalitarian agenda formation*.

Let us now move on to principle (d), which specifies what is required for the pre-voting deliberation process in a well-ordered society not to violate my principle of political equality. It states that during pre-voting deliberation, a well-ordered society must *ensure, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech*. Understood as *political competitors*, firms might violate this principle insofar as they 'flood the marketplace of ideas' with arguments and information in favour of policies that favour their profit-maximising interests. As discussed in the previous chapter, if non-citizen political competitors have vast quantities of resources that they can use to 'flood the marketplace of ideas', then although each citizen might have *approximately equal* external resources to produce and disseminate political speech, none of them will have *adequately positive* resources to ensure that the

pre-voting deliberative stage of politics (and, consequently, all the subsequent stages) are responsive to their claims, rather than the 'louder' claims of non-citizens.¹¹⁷ I will refer to this third way in which firms might violate political equality in a well-ordered capitalist democracy as the *problem of unresponsive policy judgement-formation*.

Understood as *issue subsidisers* for certain citizens, firms might violate principle (d) insofar as they increase the external resources that certain citizens have to produce and disseminate political speech as a by-product of their (on the whole) profit-maximising political activities. The prime activity I have in mind here is the production and free, or heavily subsidised, dissemination of carefully researched arguments and supporting information by firms on certain issues, which citizens who agree with them for reasons of justice can then utilise. This alone might not violate the demand in principle (d) for '*adequately positive* external resources for each citizen to produce and disseminate political speech', but it would, after a point, violate the demand for '*approximately equal* external resources for each citizen to produce and disseminate political speech'. I will refer to this fourth way in which firms might violate political equality in a well-ordered capitalist democracy as the *problem of inegalitarian policy judgement-formation*.

Finally, principle (e) specifies what is required of the implementation process for a well-ordered society not to violate my principle of political equality. It states that at the implementation stage, a well-ordered society must *ensure, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech*. To recall, the concern that motivated this principle of constitutional design was that the post-voting stage of implementation offers another opportunity for either certain citizens, or certain non-citizen actors, to enjoy disproportionate opportunities to influence policy outcomes. Insofar as principle (e) places an identical requirement on this stage of the politics of a well-ordered capitalist democracy as principle (d) places on the pre-voting deliberative stage, I will not re-tread the steps of the argument from the previous two paragraphs, but instead merely note that there are two equivalent ways in which firms might violate political equality in a well-ordered capitalist democracy at the implementation stage. As such, I will refer to the fifth way in which firms might violate political equality in a well-ordered capitalist democracy as the *problem of*

¹¹⁷ See Chapter 4, section 4.5.

unresponsive implementation, and the sixth way as the *problem of inegalitarian implementation*.

So far I have distinguished six ways in which the presence of firms might violate political equality in a well-ordered capitalist democracy, based on an understanding that firms might play two roles in the politics of such a society. In doing so, I have switched between speaking about a firm as an aggregate of individual office-holders, each of whom aims to maximise the firm's profits, and as a unified rational actor, or group agent, that aims to maximise its profits. This is because, in my view, a firm might simultaneously be understood as both a collection of individual office-holders who have internalised certain ways of making decisions, and as a group agent. And this is true of firms in either of their roles in a well-ordered capitalist democracy (i.e. as *political competitors* or as *issue subsidisers*). As I see it, Christian List and Philip Pettit (2011) have convincingly shown that an epistemologically realist view of group agency can emerge from, and remain compatible with, individualistic ontological premises. And Peter French's (1979) account of corporate agency can be reinterpreted as an application of List and Pettit's theory that shows how firms in particular can be simultaneously no more than a collection of office-holders, and also group agents.¹¹⁸ However, it goes beyond the remit of the thesis to fully articulate and defend this view. Accordingly, if the reader disagrees, then they should feel free to replace my terms with their preferred terms in what follows, as my substantive argument does not hinge on this point of social ontology.

5.4. Business Power and Beyond: Power-Over, Power-To and Political Equality

In the previous section, I developed the conceptual framework that is required to make judgements about the *practical mechanisms* by which firms might cause political equality to be violated in a well-ordered capitalist democracy. In this section I will examine what these practical mechanisms might plausibly be for resource-rich firms in such a society. First, I will draw upon the business power literature to distinguish two forms of 'power-over' that business, understood as a homogenous interest group, might enjoy over other groups in a capitalist democracy. Second, I will concentrate on how exercises of either of these types of power might plausibly

¹¹⁸ French understands his view to have rather stronger ontological and moral implications than List and Pettit's epistemological realism about group agency. But, in my view, they do not necessarily follow, which is why List and Pettit are correct to view their position as being compatible with French's (List & Pettit 2011, p.11).

entail some of the abovementioned violations of political equality in a well-ordered capitalist society in virtue of their impacts on the 'power-to', and consequent self-respect, of various citizens.

5.4.1. *Business Power-Over*

Contributions to the business power literature tend to focus on one or more of three possible ways in which business, understood as a homogenous interest group comprising of whomever in society happens to control investable capital, might exercise troublesome political power over other groups in a capitalist representative democracy. This tripartite distinction more or less follows the contours of Steven Lukes's (1974; 2005) well-known distinction between the three faces of power.

First, certain theorists in the business power literature focus on how business can exercise 'instrumental power' due to its resource advantages over other social groups. Specifically, they study how business can directly influence government policy through campaign contributions and lobbying to a greater extent than other social groups (Dahl & Lindblom 1953; Wright Mills 1956; Dowding 1996; 2003; Hindmoor & McGeechan 2013).¹¹⁹ As Lukes notes, theorists who focus mainly on these issues tend to rely on a one-dimensional view of power. Robert Dahl's 'intuitive' idea of power is the paradigmatic case, which states that 'A has power over B to the extent that he can get B to do something he would not otherwise do' (Dahl 1957, pp.202–3). This view is characterised by 'a focus on *behaviour* in the making of *decisions* on issues over which there is an observable *conflict* of (subjective) *interests*, seen as express policy preferences, revealed by political participation [*italics in original*]' (Lukes 1974, p.15).

A second group of theorists in the business power literature focus less on instrumental power and more on how business can exercise 'structural power' due to its privileged position in the structure of free market societies (Block 1977; Christiano 2010; Hacker & Pierson 2002; Lindblom 1977; 1982; Przeworski & Wallerstein 1988; Barry 2002; Cohen 1989). The basic idea here is that those who control investable capital in a market society have the legal authority to make decisions about where, when and how to invest that capital, and these decisions can fundamentally affect the overall levels of wealth and employment in that society.

¹¹⁹ These are some paradigmatic examples. For a broader survey of 'instrumental' approaches, particularly in the field of international relations, as well as the other two approaches that I distinguish later in this section, see (Fuchs & Lederer 2007, pp.4–11).

At the same time, the elected representatives of that society are aware that they are less likely to be re-elected if the overall levels of wealth and employment drop during their tenure in office. As such, elected representatives are unlikely to even propose policies that go against the interests of business because they fear that business will react in ways that will reduce their chances of re-election. As Lukes notes, those who focus mainly on these issues tend to hold a two-dimensional view of power, which, in addition to the features of the one-dimensional view, allows for 'consideration of the ways in which *decisions* are prevented from being taken on *potential issues* over which there is an observable conflict of (subjective) *interests*, seen as embodied in express policy preferences and sub-political grievances [italics in original]' (Lukes 1974, p.20).¹²⁰

A third group of theorists in the business power literature focus less on instrumental and structural power and more on how business can exercise 'discursive power'. The basic idea here is that those who control capital are often also in a strong position to shape discourses in society and thereby influence the formation of interests and preferences among citizens so that they better serve the interests of business. This is achieved by 'naming', 'framing' and 'campaigning' through advertising and public relations campaigns, use or control of the media, and privileged access to other public forums (Cox 1987; Galbraith 1984; Galbraith 1958; Gill 2003; Lindblom 1977; Schmidt 2008; Bell 2012). As Lukes notes, those who focus mainly on these issues tend to hold a three-dimensional view of power, which, in addition to the features of the two-dimensional view, allows for the idea that observable conflict is not necessary for the exercise of power, as such conflicts can be kept latent through 'control of information, through the mass media and through the process of socialisation' (Lukes 1974, p.23).

We now have an understanding of the shape of the business power literature. However, as will have become clear, most of the theorists in this literature are primarily interested in identifying instances of business exercising power over other groups in society, whereas I want to go a step beyond this and examine the normative implications of the likely activities of resource-rich firms in a capitalist

¹²⁰ David A. Vogel (1987) and Mark A. Smith (1999) each interrogate the 'structural power' thesis from an empirical perspective and conclude that the competing interests between different businesses, and between businesses and citizens, look likely to mitigate the force of the thesis -- at least as found in Charles Lindblom's work -- that business is clearly disproportionately powerful across many issues. Of course, this is not to say that structural power is not an important dimension of business power, but it does indicate that it might be a more complex dimension than some of the earlier proponents of this view indicated.

democracy in terms of their impacts on my principle of political equality. So I am primarily interested in using the insights of the business power literature to identify the practical mechanisms by which resource-rich firms might violate political equality in one of the six ways identified in the previous section. As such, in the next section I will re-frame the business power literature in four ways so that its main insights best serve my purposes.

First, I will restrict my focus to, on the whole, resource power and, as a secondary matter, structural power. There are three reasons for this. First, a focus on resource power is required because my overall argument in the thesis relies on the resource power of firms. Second, I will also address structural power because a number of theorists in the Rawlsian 'choice of social system' debate view this as the most threatening form of business power, for reasons that we shall examine, and call into question, in section 5.5. Finally, as I see it, most of the activities that are viewed as exercises of discursive power are only morally troubling insofar as they result from individuals or groups having disproportionately large amounts of external resources to produce and disseminate political speech at various stages in the democratic process. Hence, there is nothing morally troubling, *per se*, with 'naming', 'framing' and 'campaigning' by citizens or other groups. These are simply another way in which they might use their internal and external resources. As I argued in the previous chapter, we should only be concerned if a society does not *ensure, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech*. But this reduces to a question about the distribution of external resources that enable political speech among citizens and other groups.¹²¹

Second, in broadly following Lukes's three faces of power, the business power literature restricts its focus to a particular sub-type of power, which is not my principal concern. As Lukes recognises in the second edition of his well-known monograph on power, his original account 'deals only with asymmetric power -- the power of some over others -- and, moreover, with only a sub-type of this, namely, the securing of compliance to domination' (Lukes 2005, p.64). Clearly there is a

¹²¹ I argued in the previous chapter that the parties to our constitutional convention would see no problem with some citizens enjoying greater opportunities to influence the policy judgement-formation of their fellow citizens during pre-voting deliberation purely because they have the justly acquired capacity to more consistently employ 'the unforced force of the better argument' (Habermas 1996, p.541, fn.58) about what justice requires at the level of policy. Nor, I contend, would they be concerned by non-citizen political actors having this kind of discursive impact, provided it was only due to them making a strong argument (and not due to exercising disproportionate resource power).

strong link between the amount of power-over enjoyed by some individuals in a society, and the amount of power-to that others have insofar as, in the competitive political arena at least, there is a zero-sum dimension to the distribution of power. But, nonetheless, in what follows, it will be helpful for me to *supplement* the business power literature's emphasis on exercises of power-over by business with an explicit focus on the impact that such exercises of power would have on the distribution of power-to in society, and the impacts that this would be likely to have on the status and self-respect of various citizens.

Third, the different schools of thought in the business power literature tend to each presuppose different stages of the democratic decision-making process for the purpose of theorising about power. To generalise, those interested in instrumental power tend to focus on the process by which representatives set the political agenda and, to a lesser extent, the ways in which policies are implemented; those interested in structural power focus also tend to focus on the process by which representatives set the political agenda; and those interested in discursive power tend to focus on pre-voting deliberation. But, clearly, for my purposes it is insufficient to restrict my attention to any subgroup of these stages of the decision-making process, as I am interested in how the political power of firms might compromise political equality at each stage.

Finally, the business power literature presupposes the conditions of a capitalist democracy, whereas I am interested in how the presence of resource-rich firms might plausibly compromise political equality in a *well-ordered* capitalist democracy. Hence, in what follows, I will first examine how a resource-rich capitalist firm's resource power might violate political equality at each stage of a well-ordered capitalist democracy's political decision-making process, and, as a secondary matter, examine why one might think a firm's structural power could have some similar impacts.

5.4.2. Resource-Rich Firms, Power-To and Political Equality

Our first task is to examine the ways in which a resource-rich firm might compromise political equality in a well-ordered capitalist democracy in virtue of exercising its resource power. When I speak of a firm's resource power, I mean to refer to the relative financial resources at the disposal of relevant office-holders in the firm for the purposes of political activity that aims to further its (on the whole)

profit-maximising interests. For the purpose of this thesis, I will put to one side complex issues about how to conceive of, or measure, a firm's resources. As Thomas Piketty notes, the solution to this type of problem is to accept that although any given measure of an organisation's monetary value will fail to capture certain relevant dimensions, we can still use a combination of such measures to work out some rough comparisons of the relative monetary values of different organisations (Piketty 2014, p.179).¹²² With this in mind, I presume the idea of a resource-rich firm is intuitively comprehensible. But how could such resource power be used to violate political equality at each stage of a well-ordered capitalist democracy's political decision-making process?

Let us begin once more with the agenda-setting stage. To recall, at this stage of politics a well-ordered capitalist democracy must *ensure an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition*. Accordingly, I contend that the main way in which a resource-rich firm might use its resource power to violate this principle in a well-ordered capitalist democracy would be by using its relative resource advantage to 'flood' elected representatives with arguments and information that raise doubts about the attraction or viability of certain policy options that a significant number of citizens indicated (during the pre-voting deliberative stage) that they would like to have added to the political agenda. Specifically, the relevant office-holders in the firm will look to raise doubts in the minds of representatives about those policy options that the firms perceive to go against its (on the whole) profit-maximising interests, and to amplify those policy options that will maximise their profits.

To clarify, the way in which this mechanism would operate in a well-ordered capitalist democracy hinges on the bounded rationality of elected representatives.

¹²² To elaborate, one might think that the stock market value of a firm seems like a strong contender, but this measure of its monetary value often diverges from its accounting value (i.e. net assets minus liabilities) for two reasons. First, the stock market value might be higher (or lower) than the accounting value because the stock price incorporates positive (or negative) speculations about the value of certain immaterial investments made by the firm that are not captured on its balance sheet (e.g. expenditures to increase the value of the 'brand'). Second, the stock market value might be lower than the accounting value because the stockholders do not have full control of the firm's decision-making, such as in the case of German co-determination (Piketty 2014, pp.187–91). In such cases, it is often unclear whether the stock market value or the accounting value is the more accurate measure of underlying value. Similar problems apply to non-commercial organisations, such as charities, foundations, trusts and trade unions. Their monetary value is generally expressed in terms of their accounting value, but clearly these organisations might also make immaterial investments that are not captured by such a measure (Piketty 2014, pp.182–83). In practice, these discrepancies are partially overcome by the use of Tobin's Q, which provides a uniform way to measure and compare the divergence of stock market value and accounting value across varying contexts (Piketty 2014, pp.188–90).

The idea is that even though elected representatives would be motivated to pass the policies that they were elected on, they will still have to make decisions in many policy domains that only become salient subsequent to their election about what options those who elected them would have selected given adequate time and information.¹²³ And they will still have to make decisions about the precise form that any given policy will take, and the order of priority in which policy issues will be addressed. In making these decisions at the requisite pace, elected representatives must inevitably rely on readily digestible information that is available in a timely manner. It is at this point that the resource-rich firm can convert its resource advantages into lobbying advantages and skew the information available to the well-intentioned elected representatives of our well-ordered capitalist democracy.

Based on the experiences of existing capitalist democracies, we can identify two main ways in which this conversion of resource power into lobbying advantages might occur. First, the resource-rich firm could use its resource advantages to employ experts who can generate sophisticated lobbying strategies, particularly at the committee stage of electoral politics, which has lower public salience due to its formality and complexity. As a result, by the time the issues of concern to the firm reach the stage of the vote, the relevant policy options have already been quietly taken off the agenda, or watered down (Hojnacki & Kimball 1998). Second, it has been suggested that higher campaign contributions to elected representatives tend to foment closer relationships, which ease the way for future access (Wayman & Hall 1990; Sitkoff 2003).¹²⁴

¹²³ To clarify, I follow, for the most part, Thomas Christiano (2010) and Anthony McGann (2006) in thinking that, for a principle of political equality (such as mine) to be realised within a representative political system, elected representatives must be conceptualised as, for the most part, *delegates* who aim to pass policies that those who elected them would have wanted, given adequate time and information (Christiano 1996, pp.215–19). This means that elected representatives must abide by a norm of loyalty to the perceived wishes of their electors (Christiano 1996, p.221), and also requires elected representatives to have been elected using a pure proportional representation voting rule (or as Christiano puts it 'a principle of voluntary proportionality' (Christiano 1996, p.220)) so that they can be understood as a microcosm of the electorate, where the electors choose which features of themselves they would most like represented using a seat allocation rule that satisfies all of the liberal egalitarian axioms distinguished in the previous section (McGann 2006, pp.37, 41–43). If these conditions are in place, then my principles of constitutional design can be realised by a representative political system: the pre-voting deliberative stage remains the same; the agenda-setting principle is satisfied insofar as the outcome of the proportional election of representatives dictates the agenda, hence, it also now applies to the temporal gap between the election of representatives and the setting of votes in the legislature; the liberal egalitarian voting rule applies to votes in the legislature; and the post-voting deliberation stage remains the same.

¹²⁴ These references, along with the majority of empirical references included in this section, can be found in Timothy Werner and Graham Wilson's insightful survey of the literature (Werner & Wilson 2010, pp.263–69). They focus on US politics, but I try to rely on examples that can be suitably generalised for other political contexts.

These uses of resource power by a resource-rich firm at the agenda-setting stage might plausibly violate the relevant principle of constitutional design in two ways, depending upon the role that the resource-rich firm is understood to play in the politics of a well-ordered capitalist democracy. If the firm is understood as a *political competitor*, then the main concern that arises is that, beyond a certain point, citizens are no longer the ones deciding the political agenda: non-citizen actors are. As a result, we are faced with the *problem of unresponsive agenda formation*. To recall, the issue here is that if citizens have equally little, or no, opportunities to add content to the agenda, then they are not being publicly acknowledged by their institutions as self-authenticating sources of valid claims who are entitled to make claims on their shared institutions. And this amounts to a public expression of their unfree status, which has a high chance of undermining their self-respect as free and equal citizens.

Additionally, if the firm is understood as an *issue subsidiser* for certain citizens, then the relevant concern that arises is that they will increase the opportunities for certain citizens to add items to the political agenda as a by-product of their (on the whole) profit-maximising political activities. The idea here is that politically active citizens who agree, for justice-based reasons, with the resource-rich firm's policy positions can, either by approaching the firm or more informally, utilise or mimic aspects of the firm's carefully worked out lobbying strategies on the issues at hand. This might be as simple as utilising research on which elected representatives to target and how. Nonetheless, this important, and subsidised (or free) information will provide them with systematically increased opportunities to add items to the political agenda (or block items wanted by others). As a result, we are faced with the *problem of inegalitarian agenda formation*. To recall, the issue here is that if certain citizens' final policy preferences consistently stand a significantly lower chance of being included on the political agenda than those of others, then society is effectively saying that the views of the former group are worth less and ought not to be seriously considered, let alone voted on. Understood as such, this amounts to a public expression of the inferior status of those with fewer opportunities to add items to the political agenda, and this therefore has a high chance of undermining their self-respect as free and equal citizens.¹²⁵

¹²⁵ To be clear, neither the problems raised in this paragraph nor the problem raised in the previous paragraph rely upon the firm, or subsidised citizens, ultimately being successful. The threats to self-respect remain, provided the disadvantaged citizens have to mount significantly greater efforts than others in order to influence agenda-setting.

Let us now move on to the pre-voting deliberation stage. To recall, at this stage of politics a well-ordered capitalist democracy must *ensure, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech*. Accordingly, the main way in which a resource-rich firm might use its resource power to violate this principle in a well-ordered capitalist democracy would be by using its relative resource advantage to 'flood the marketplace of ideas' on issues of concern. To recall, I noted in the previous chapter that regardless of how well resourced citizens with bounded rationality are, they will have limited time to hunt down and consume every reasonable political viewpoint produced by their fellow citizens on every issue. Accordingly, the marketplace of ideas 'has limited space, as it were' (Rawls 2001, p.150), and, as such, those external resources that are valuable because they provide opportunities to influence the policy judgement-formation of fellow citizens are 'positional goods' (Brighouse 1997, p.165; Hirsch 1977, pp.3–5; Frank 1985, p.6).¹²⁶

Based on the experiences of existing capitalist democracies, we can identify three main ways in which this conversion of resource power into pre-voting deliberative advantages might occur. First, large-scale advertising campaigns might be used to 'dominate the issue space'. Timothy Werner and Graham Wilson provide an instructive example from US politics:

Corporate participants in the mid-1990s national healthcare debate targeted the districts of persuadable members of Congress with television advertisements that questioned the proposed reforms (Werner & Wilson 2010, p.269; see also Smith 2000).

Second, a resource-rich firm might engage in more grassroots community-based campaigning, such as organising meetings and citizen-networks to spread its message (Kollman 1998; Goldstein 1999). For instance, a resource-rich firm might provide resources to groups of activist citizens who happen to share its policy preferences, or even help to create such groups, with the aim of helping them to occupy a disproportionately large share of the limited media space so that their side of a policy argument gets a better hearing among members of the electorate than their opponent's point of view (a process commonly referred to as "astroturfing") (Mackie 2009, pp.48–52). Third, a resource-rich firm might fund, or in other ways publicise, think tanks and research organisations that either already share its policy

¹²⁶ See Chapter 4, section 4.5.

preferences, or are expected to thereafter promote such preferences in public debate. These political actors tend to enjoy a veneer of impartiality among members of the public due to the effort required to find out who their financial backers are, and what their interests are (unlike with the firm itself) (Weaver 1989; Smith 1991).¹²⁷

Depending upon the role that the resource-rich firm is understood to play in the politics of a well-ordered capitalist democracy, these uses of resource power by a resource-rich firm at the pre-voting deliberative stage might plausibly violate the relevant principle of constitutional design in two ways. If the firm is understood as a *political competitor*, then the main concern that arises is that, although each citizen might have *approximately equal* external resources to produce and disseminate political speech, none of them will have *adequately positive* resources to ensure that the pre-voting deliberative stage of politics (and, consequently, all the subsequent stages) are responsive to their claims, rather than the 'louder' claims of non-citizens. As a result, we are faced with the *problem of unresponsive policy judgement-formation*. In such a scenario, a society's institutions publicly express the unfree status of all citizens, which has a high chance of undermining their self-respect as free and equal citizens.

Additionally, if the firm is understood as an *issue subsidiser*, then the relevant concern that arises is that the firm will effectively increase the amount of external resources for certain citizens to produce and disseminate political speech. This is because politically active citizens who agree, for justice-based reasons, with the resource-rich firm's policy positions will enjoy subsidised (or free) use of the firm's carefully researched public political arguments and supporting information on the issues at hand. As a result, we are faced with the *problem of inegalitarian policy judgement-formation*. In such a scenario, a society's institutions publicly express the unequal status of those citizens with fewer external resources to produce and disseminate political speech, for it is giving the message that their views on matters of justice ought not to be considered as seriously as others. This has a high chance of undermining their self-respect as free and equal citizens.

Finally, let us focus on the post-voting implementation stage. To recall, at this stage of politics, a well-ordered capitalist democracy must once again *ensure, on an*

¹²⁷ Of course, think tanks can also be used in this way to influence elected representatives at the agenda-setting stage.

ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech. Accordingly, the main way in which a resource-rich firm might use its resource power to violate this principle in a well-ordered capitalist democracy would be by using its relative resource advantage to ‘flood the sub-marketplace of ideas’ on issues of concern (i.e. the sub-marketplace within which bureaucrats and other appointed officials consume ideas about how to best implement policies in line with their underlying aims). Based on the experiences of existing capitalist democracies, the main way in which this conversion of resource power into post-voting deliberative advantages might occur is by the same kind of lobbying that is targeted at elected officials being targeted at bureaucrats (Aberbach & Rockman 2000).¹²⁸ Hopefully it is clear how these activities would raise the *problem of unresponsive implementation* and the *problem of inequalitarian implementation* without retreading the steps of the equivalent arguments that applied at the pre-voting deliberative stage.

Before moving on, I will briefly examine the ways in which a resource-rich firm might be thought to compromise political equality in a well-ordered capitalist democracy in virtue of exercising its structural power. I will devote less time to this because my argument in the next chapter does not rely on it. However, it is helpful to translate this second form of business power into my terms so that we can compare the threats it poses to political equality to those posed by resource power, particularly given that a number of Rawlsians in the ‘choice of social system’ debate are more deeply concerned by the structural power of firms.

Let us begin once more, then, with the agenda-setting stage. Christiano (2010) asks us to imagine a society in which a clear majority of citizens vote for candidates who promise policies that will reduce the profitability of a particular resource-rich firm, such as higher minimum wage laws. It is also the case that, in this society, the affected firm could abide by these policies ‘without serious harm to themselves ... partly by spreading the costs to consumers and partly by taking a modest decrease in profitability’ (2010, pp.196–7). Nonetheless, the relevant office-holders in this firm would prefer laws that allow them to maximise profits, so they publicly threaten to invest in another state with a lower minimum wage if these policies are turned into laws. Due to the negative effects that this capital flight would have on the national

¹²⁸ In addition, if the society in question allows for judicial challenge to certain policies, then a resource-rich firm can effectively raise the bureaucratic costs associated with implementing policies in ways that harm their (on the whole) profit-maximising aim (Banks 1999).

economy in terms of wealth and employment levels, the elected representatives choose not to even consider the higher minimum wage policies they were elected on.¹²⁹

For those theorists who are mainly concerned about the structural power of business, this use of structural power by a resource-rich firm at the agenda-setting stage would presumably be viewed as a violation of the relevant principle of constitutional design, provided the firm is understood as a *political competitor*. In this instance, the main concern would be that, beyond a certain point, citizens are no longer the ones deciding the political agenda: non-citizen actors are. As a result, we would be faced with the *problem of unresponsive agenda formation*. There are definitely elements of plausibility to this diagnosis; however, the crucial question to answer is whether or not there is a feasible world in which the citizens can have everything their own way (i.e. higher minimum wage laws, plus current levels of wealth and employment). If so, and their elected representatives are aware of this, then it is hard to see why their elected representatives would not legislate for this outcome. If not, and citizens are aware of the costs of their decision in terms of lower wealth and employment, then it is unclear what their elected representatives have to gain from ignoring their wishes. As such, it is not clear how much this problem relies for its force on either elected representatives or citizens voting ignorantly, irrationally or myopically. Luckily, I can afford to remain agnostic on the plausibility of the structural power thesis.¹³⁰ Either way, it is clear that if we think about the resource-rich firm as a possible *issue subsidiser*, then the use of structural power alone at the agenda-setting stage cannot raise the *problem of inegalitarian agenda formation* because there are no resources being created for citizens to utilise.¹³¹

Christiano's example can be tweaked so that it also applies to the pre-voting and post-voting deliberative stages of the politics of a well-ordered society. Beginning with the pre-voting deliberative stage, imagine that the relevant office-holders in the resource-rich firm aim their threat of capital flight not at elected representatives, but instead at voting citizens. The result of this is that, at one point in time, the voters

¹²⁹ I have adapted Christiano's example slightly so that it refers to a single resource-rich firm, rather than a group of firms.

¹³⁰ I am indebted to Michael Bennett for highlighting these types of doubts about the structural power thesis during discussions of an early draft of this chapter.

¹³¹ It is not clear to me that simply pointing to exercises of influence by others who one agrees with (i.e. the firms threatening to leave) is itself a form of influence, but nothing in my wider argument turns on this assessment.

favour a higher minimum wage policy, thinking it is compatible with pre-existing policies that aim to maintain high levels of prosperity and employment in their society. But, in light of threats from the firm's office-holders, they become convinced at a later point that a higher minimum wage policy will not fulfil its underlying aims in tandem with pre-existing policies that aim to maintain high levels of prosperity and employment. As a result, they vote for candidates who promise alternatives to the higher minimum wage policy. Those sympathetic to the structural power perspective would presumably view this as an instance of the *problem of unresponsive policy judgement-formation*. However, once again, the force of the example seems to turn on whether or not there is a feasible world in which the citizens can have everything their own way. If not, then one might argue that the office-holders in the firm are simply employing 'the unforced force of the better argument' (Habermas 1996, p.306).

Either way, if we think about the resource-rich firm as a possible *issue subsidiser*, then it is once more hard to see how the use of structural power alone at the pre-voting deliberative stage can raise the *problem of inegalitarian policy judgement-formation* because there are no resources being created for citizens to utilise. Hopefully it is by now clear why I come to precisely the same conclusion regarding the post-voting deliberative stage: the *problem of unresponsive implementation* is a possibility; the *problem of inegalitarian implementation* is not.

To sum up, in this section I distinguished the two main practical mechanisms by which a resource-rich firm might plausibly compromise political equality in a well-ordered capitalist democracy: through its resource power and its structural power. I argued that its resource power might plausibly violate political equality in all six ways distinguished in the previous section. I remained agnostic on whether its structural power might violate political equality by undermining the responsiveness of the political decision-making process in the three ways distinguished in the previous section, and argued that its structural power cannot undermine the egalitarianism of the political decision-making process in the three ways distinguished in the previous chapter.

5.5. Taking Resource Power Seriously in a Well-Ordered Capitalist Democracy: The Possibility of Economic Actors Being Motivated by Egoism in Politics

In this section, I will respond to a possible concern that one might have about the conclusions I drew in the previous section about the ways in which resource-rich firms might plausibly use their resource power to compromise political equality in a well-ordered capitalist democracy. If viable, this concern would justify the decision made by most Rawlsians in the 'choice of social system' debate to focus predominantly on combating the structural power of capitalist firms when theorising about the institutions of a just, well-ordered society (O'Neill 2012, p.83; Schemmel 2015, pp.404–5; Malleson 2014, pp.233–34; Krouse & McPherson 1986, pp.134–35). However, I will argue that although this concern is well motivated, it does not provide a sufficient justification for Rawlsians to ignore the resource power of firms, particularly given the gravity of the threat that exercises of this resource power pose to the self-respect of free and equal citizens.

The possible concern with my conclusions about the resource power of resource-rich firms is that office-holders in such firms simply will not use their resource advantages in ways that might violate political equality in a capitalist democracy that is *well-ordered*. To recall, I have argued that the politics of a well-ordered society should be understood as a *competitive moral politics* wherein individuals agree on principles of justice, and are effectively motivated in politics by the desire to realise just institutions, but they *reasonably disagree* about what just institutions look like.¹³² However, insofar as I have consequently adopted this model of politics, I seem to have precluded the possibility of office-holders in resource-rich firms intentionally acting with the aim of maximising their firm's profits in the politics of a well-ordered capitalist democracy. Let us refer to this as the *unwarranted egoism objection* to my conclusions about resource power.

If the *unwarranted egoism objection* is viable, then it would explain, and justify, the decision made by most Rawlsians in the 'choice of social system' debate to focus predominantly on combating the structural power of capitalist firms when theorising about the institutions of a just, well-ordered society. This is because one of the most influential renderings of the structural power thesis emphasises that office-holders in capitalist firms can exercise this form of power *unintentionally*. I have in mind

¹³² See Chapter 3, section 3.3.

Lindblom's (1982; 1977) version of the structural power thesis. Lindblom focuses on similar cases to Christiano, in which a majority of citizens are taken to have voted for certain policies that will reduce the profitability of certain firms, such as higher minimum wage laws. However, in Lindblom's version, the relevant office-holders in resource-rich firms do not react in ways that aim to prevent such policies from being implemented. Rather, they simply go on 'minding their own business' (1982, p.326), in the sense of continuing to concentrate on maximising their profits. It just so happens that the profit-maximising course of action is to begin investing in other countries with lower minimum wages. Yet as elected representatives begin to get wise to this consequence (or, ahead of time, this likely consequence), and the negative effects that this capital flight would have on the national economy, they choose to roll back (or, ahead of time, to leave off the agenda) policies that reduce the profitability of resource-rich firms.¹³³ Understood in this way, the structural power of these firms raises a deeper problem than their resource power because office-holders can exercise structural power *unintentionally*, thus allowing this form of group interested political action to occur even in the circumstances of a well-ordered society.¹³⁴

I have two lines of reply to the *unwarranted egoism objection*. My first line of reply is that office-holders in resource-rich capitalist firms can unintentionally exercise their resource power, and, as such, these types of actions might arise in a well-ordered capitalist democracy even if we assume that all individuals are effectively motivated in politics by the desire to realise just institutions. This unintentional exercising of resource power might occur at either the pre-voting or post-voting deliberative stages of politics. The logic of how this might occur is captured by Werner and Wilson when they observe that

If the marketing strategy is to sell shoes that allow you to 'Bend it Like Beckham' or to 'Be Like Mike' (Michael Jordan), protestors outside your store alleging that the shoes were made in sweat shops can puncture the image. Thus the political need to promote a positive public image and a real commercial need to protect the brand can often coincide (Werner & Wilson 2010, p.269).

¹³³ Clearly Lindblom's reasoning can be extended in the same way as Christiano's so that it applies to other non-voting stages of politics. For a recent defence of Lindblom's version of the structural power thesis, see Brian Barry (2002).

¹³⁴ Lindblom generally focuses on resource-rich firms in his examples (e.g. Lindblom 1977, p.171); however, White has recently applied the structural power thesis to a more egalitarian economy (White 2011, pp.569–70). I will address White's version in Chapter 7.

The key point is that office-holders in resource-rich firms are likely to use their resource advantages to 'flood the commercial marketplace of ideas' with advertising and public relations campaigns that have some *apolitical* intention in mind, namely the maximisation of profits. Yet the 'naming', 'framing' and 'campaigning' that they engage in with this goal in mind may well have the unintended consequence of spilling over into, and flooding, the 'marketplace of political ideas'. This consequence would violate political equality in four of the ways distinguished in section 5.3. First, if we understand these firms as unintentional, or accidental, *political competitors*, then their accidental flooding of both the overall marketplace of political ideas, and also the sub-marketplace of bureaucratic ideas, will raise the *problems of unresponsive policy judgement-formation and unresponsive implementation*. Second, if we understand these firms as *issue subsidisers* for certain citizens, then we have straightforward instantiations of the *problems of inegalitarian policy judgement-formation and inegalitarian implementation*, neither of which rely on citizens acting from unjust motivations in politics.

My second line of reply to the *unwarranted egoism objection* is that office-holders in resource-rich firms can often be expected to intentionally pursue their group interests in politics, even assuming the circumstances of a well-ordered capitalist democracy. As I see it, there are two plausible arguments to this conclusion. The first of these I refer to as the *institutional instability argument*. The basic idea here is that, although it is appropriate (for the reasons given in Chapters 2 and 3) for Rawlsians to assume, as a methodological starting point, a model of *competitive moral politics* when evaluating different institutional arrangements, part of our normative evaluation of any given institutional arrangement ought to include a judgement as to how well placed it is to generate interests and norms that secure its ongoing stability as a just regime over time. Rawls ignores this issue of institutional stability when discussing different types of social systems in *Restatement* (2001, p.137), but as Christian Schemmel has pointed out, such an abstraction should only be preliminary, for

it would make little sense to embark on a thorough discussion of the institutional content demanded by Rawlsian principles without double-checking, as far as this is possible, whether the institutions in question are, or would be, reasonably stable and therefore apt to ensure social justice over time (Schemmel 2015, p.397).

As Schemmel and others have noted, this type of concern about institutional stability is distinct from Rawls's concern that principles of justice ought to be 'stable

for the right reasons' (Rawls 1996, p.xli; Schemmel 2015, p.397).¹³⁵ The relevant stability question at the level of principles of justice is whether, if they were publicly known to govern a well-ordered society, it is likely that citizens growing up in this society would develop and retain a commitment to these principles over time, given a reasonable moral psychology (Rawls 1999a, pp.153–57; 2001, p.285). This type of information about the likely stability of principles is admissible in the original position (Rawls 1999a, p.119). Indeed, this type of information about the likely psychological impact of adopting principles of justice must be included once one accepts that there are two sides to the original position, as we did in Chapter 3, section 3.4.1.¹³⁶ This being the case, I submit that it is inconsistent to put a premium on issues of publicity and stability at the level of evaluating principles of justice, while ignoring such issues at the level of evaluating institutional arrangements. So let us suppose that, for this reason, we decide to take the possibility of institutional instability seriously when evaluating social systems. How can this be developed into a reply to the *unwarranted egoism objection* to my conclusions about the various ways in which office-holders in resource-rich firms might plausibly use their resource power to compromise political equality in a well-ordered capitalist democracy?

The key move is to adopt a revised version of Alexis de Tocqueville's thesis about the likely corrupting psychological impact of living in a democratic society. Tocqueville argues that as societies become more democratic, particularly in terms of their economic conditions becoming less feudal, there are certain widespread and predictable impacts on the characters of citizens. One of these is that they become more individualistic (Tocqueville 2003, pp.587–89). As White notes, there are both affective and cognitive elements to this individualism: affectively, it consists of an attachment to associational ties, rather than principles of justice; cognitively, it

¹³⁵ This mirrors the distinction between 'conception stability' and 'political stability' that Paul Weithman and George Klosko draw in their dispute over the success of Rawls's stability arguments. In short, Weithman argues that Rawls demonstrates the superior conception stability of his principles of justice when compared with alternatives, but has little concern for the political stability of different institutional regimes that might realise these principles (Weithman 2015, pp.254–56). In contrast, Klosko argues that Rawls's conclusion that his principles of justice enjoy greater conception stability than alternatives must turn on the tacit premise that this conception stability is more likely to secure the political stability of an institutional regime than alternative strategies, such as matching principles of justice that enjoy less conception stability with a measure of imposed stability through coercive laws (Klosko 2015b, pp.266–67, 270–71). Klosko rejects this tacit premise (2015b, p.271; 2015a, pp.243–44). In making my *institutional instability argument* I am closer to Weithman in the sense that I presume that the priority of my principle of political equality has already been justified in the original position due to its superior conception stability to alternatives. However, with this result in hand, I am looking to go beyond Weithman and ask 'Does a specific institutional regime (capitalist democracy) offer a politically stable instantiation of a society that realises my principle of political equality?' if we begin by assuming that that such a society has a *competitive moral politics*.

¹³⁶ This type of information informs 'strains of commitment'-type arguments for certain principles of justice, such as the *status/self-respect argument* for my principle of political equality.

consists of a misplaced sense of material independence. The combined result of this psychological change is that citizens becomes less motivated by reciprocity to their fellow citizens in social life, and more motivated by the pursuit of their group interests (White 2012, p.137).

Pertaining as it does to all democratic societies, Tocqueville's psychological corruption thesis is unnecessarily broad for our purposes. But many have found it plausible to argue, more narrowly, that participation in the economic practices of a *capitalist* democracy is likely to have similar effects on the character of citizens, whether that be due to the norms inculcated in hierarchical workplaces (White 2011, p.572; Krouse & McPherson 1986, pp.135–37; Cohen 1989, pp.28–29; Pateman 1970, pp.45–67; Sandel 1995, pp.185–86), or the emphasis in capitalist economic life on one or more of the values of competition, self- and group interest, acquisition and commodification (Schemmel 2011, p.384; 2015, pp.402–3; Macpherson 1962; 1973; Doppelt 1981, pp.282–85; Wolff 1977, p.pt.5; Clark & Gintis 1978, pp.314–17). I want to use the insights of these theorists to propose the even narrower and more modest psychological thesis that if we begin with a well-ordered capitalist democracy, then although it seems reasonable to think that, on the whole, free and equal citizens will continue to be effectively motivated in politics by the desire to realise just institutions over time, a plausible exception to this for a number of individuals will be when they are participating in a central range of capitalist economic activities. This is because when (and only when) engaging in such practices, they will internalise the prevailing self- and group interested norms and these will often run up against, and occasionally overpower, their broader sense of justice. Let us refer to this as the *narrow psychological corruption thesis*.¹³⁷

If we accept the *narrow psychological corruption thesis* regarding the institutional arrangements of capitalist democracies, then even if we begin with a starting assumption of a *well-ordered* capitalist democracy, we must acknowledge that, over time, certain economic actors -- including office-holders in resource-rich firms -- are likely to intentionally use their resource advantages in ways that violate political

¹³⁷ I here rely on a 'hat swapping' moral psychology, whereby individuals internalise different norms as they move between different social practices, with democratic citizenship being a practice that, though permeating most other practices, has its own focal activities (e.g. voting, political argument with friends, town hall debates etc.) within which its norms have the greatest grip on free and equal citizens. Conversely, in some economic practices the norms of democratic citizenship are overpowered by countervailing norms. Notice that this does not conflict with my dismissal of a 'hat swapping' moral psychology in Chapter 3 section 3.3 in relation to a dualist conception of democratic politics. This was based on the idea that citizens swap hats back and forth *within a single practice* in their roles as co-legislators, depending on whether the issue at hand has constitutional implications or not. For the reasons given in that chapter, I take this to be implausible.

equality. As such, in the absence of countervailing measures, the institutional arrangements of a capitalist democracy may well be institutionally unstable. However, the caveat 'in the absence of countervailing measures' is vital because the implication of the *narrow psychological corruption thesis* is not that any possible capitalist economic system, let alone any possible free market economic system, is ultimately unable to realise political equality and, therefore, social justice. Rather, it only implies that some economic actors can be expected to be motivated by self- or group interest when participating in the politics of a well-ordered capitalist democracy. And this allows for the possibility that office-holders in resource-rich firms will use their resource power to pursue their group interests in politics. As such, my overall point is simply that, given the significant threat that this type of political activity by resource-rich firms might pose to the self-respect of free and equal citizens, the parties to a Rawlsian constitutional convention ought to recognise the possibility of resource power being exercised in an (initially) well-ordered society, rather than optimistically restricting their focus to the structural power of firms.¹³⁸

I shall refer to my second argument that office-holders in resource-rich firms can often be expected to intentionally pursue their group interests in politics, even assuming the circumstances of a well-ordered capitalist democracy, as the *limits of reciprocity argument*. Unlike the previous argument, this argument does not rely on certain individuals in an initially well-ordered society having their sense of justice corrupted when participating in certain economic practices. Rather, it isolates a significant limitation to the Rawlsian notion of a sense of justice that we have been working with so far, which, in my view, has the implication that in any feasible just, well-ordered society, there will be a significant -- though not pervasive -- egoistic dimension to politics. To understand why, the key point to note is that the fourth condition of the characterisation of a well-ordered society that we have been assuming is that nearly all individuals are motivated to comply with and further just institutions *provided there is sufficient assurance that others will likewise do so*. The italicised portion follows from our Rawlsian commitment to the idea that free and

¹³⁸ Put another way, the *institutional instability argument* highlights the plausible risk that in an initially well-ordered capitalist democracy certain economic actors will, over time, come to view political cooperation as a 'generalised prisoner's dilemma' or 'isolation problem' in which their dominant strategy is to pursue profit-maximisation rather than justice, regardless of the actions of others (for an explanation of this type of collective action problem see (Sen 1967, p.113)). This threatens to partially undermine condition (3) of a (fully) well-ordered society, which, in turn, risks condition (4) being partially undermined, which, in turn, allows for the possibility of resource-rich firms undermining political equality. Given the threat this would pose to the self-respect of citizens, the parties to a Rawlsian constitutional convention should incorporate the possibility that political egoism might emerge by this route into their reasoning.

equal citizens engaged in social cooperation are understood to be motivated by reciprocity, rather than altruism or mutual advantage (Rawls 2001, pp.6, 76–77; 1996, pp.16–17; 1999a, p.433).¹³⁹

As Paul Weithman emphasises, an important implication of assuming that citizens in a well-ordered society are motivated by reciprocity is that assurance problems will continue to arise in such a society (Weithman 2010, pp.46, 48–9). An assurance problem occurs when each individual prefers to do A provided they have assurance that everyone else will do A, but in the absence of such assurance, each individual prefers to do B regardless of what everyone else does (Sen 1967, p.114).¹⁴⁰ Insofar as the citizens of a well-ordered society are motivated by reciprocity, even though they would all prefer to act so as to bring about just institutions, they will only restrict their self- and group interest and attempt to fully comply with and further just institutions if they have sufficient assurance that others will likewise do so. As such, it is not a given that egoism will not occur in the politics of a well-ordered society.

Weithman argues that assurance problems of this type are nevertheless straightforwardly overcome in a well-ordered society in virtue of condition (1) of this type of society, which stipulates that nearly all individuals accept and know that nearly everyone else accepts the same principles of justice (Weithman 2010, pp.98, 157, 173).¹⁴¹ However, as I argued in Chapter 2, section 2.6, for our purposes the assumption of bounded rationality ought to constrain our understanding of how the four conditions of a well-ordered society might plausibly be achieved. As such, we cannot simply stipulate that certain types of knowledge about the motivations of others are publicly available to all citizens. Rather, in a society of any moderate size, it is far-fetched to suppose that, in everyday life, feelings of mutual trust will be sufficiently strong between a large enough number of individuals to provide this kind of assurance. Accordingly, for the most part, individuals in a well-ordered society must be confident that enforceable laws are in place to make sure everyone abides by the mutually agreed fair terms of cooperation, even if such laws will rarely need

¹³⁹ I defended this commitment in Chapter 2, section 2.6.

¹⁴⁰ Rawls defines assurance problems by reference to the work of Mancur Olson (1965, p.chs.1 and 2) and Amartya Sen (1967) in *Theory* (1971, pp.236–38).

¹⁴¹ To be clear, I am here referring to Weithman's rational reconstruction of Rawls's argument in *Theory* because it is more relevant for my purposes in this thesis. Although Weithman ultimately rejects Rawls's overall approach in *Theory*, he continues to advocate this same type of 'stipulated publicity' solution to the assurance problem, only articulated in terms of 'public reason' (Weithman 2010, p.339). As such, my concerns in this section remain relevant to Weithman's final answer.

to be enforced.¹⁴² Rawls notes this implication in the following passage, worth quoting in full:

Under normal conditions public knowledge and confidence are always imperfect. So even in a just society it is reasonable to admit certain constraining arrangements to insure compliance, but their main purpose is to underwrite citizens' trust in one another. These mechanisms will seldom be invoked and will comprise but a minor part of the social scheme (Rawls 1999a, p.505).

Against this background, I contend that, in a well-ordered society populated by individuals with bounded rationality, it is impossible to create enforceable and otherwise just laws that will provide citizens with sufficient mutual assurance that non-citizen actors, and in particular resource-rich economic actors, are not participating at the non-voting stages of politics with the aim of promoting their group interests. This is because any laws that might achieve this would be manifestly illiberal. As such, there will be a significant number of unresolved assurance problems in the politics of any well-ordered society, which will mean that despite the fact that nearly all individuals have a normally effective sense of justice, few will be willing to act solely upon this sense of justice in politics because there is insufficient assurance that others will likewise do so.

Why am I so sceptical about the enforceability of otherwise just laws that might solve these assurance problems in the politics of a well-ordered society? To be sure, certain Rawlsians in the 'choice of social system' debate are fairly sanguine about the prospects of a well-ordered capitalist democracy solving such problems by implementing enforceable laws that provide assurance that the non-voting stages of politics are insulated from the influence of self- or group interested political actors (O'Neill 2012, pp.82–4; Vallier 2015, p.302). But in my view, this optimism is only possible insofar as one focuses on the *direct* and *overt* mechanisms by which individuals, and particularly resource-rich economic agents, are able to exert influence at the non-voting stages of the politics of a well-ordered society. For instance, campaign contributions to candidates, direct lobbying of elected representatives and certain advertising and public relations campaigns that clearly engage in political speech can all be prevented, or largely mitigated, by

¹⁴² In taking this line, I agree with Carlisle Ford Runge that, in conditions of bounded rationality, institutions must play a major role in solving assurance problems by transmitting information (Runge 1984, pp. 158, 164–66). Gerald Gaus makes a similar point with regard to Weithman's stipulated solution when he says 'whether once we have obtained a cooperative equilibrium such knowledge is sufficient to maintain it in the face of "trembling hands" [mistakes] requires perhaps more analysis than Weithman provides' (Gaus 2011, p.223).

the public funding of elections and restrictions on campaign contributions; the assurance of a more even access to public media; and certain regulations of freedom of speech and of the press (but not restrictions affecting the content of speech) (Rawls 2001, p.149).

It is less plausible, however, that legislators and bureaucrats with bounded rationality could create enforceable and otherwise just laws that provide an effective public guarantee that non-citizen actors, particularly resource-rich economic actors, are unable to exert influence at the non-voting stages of the politics of a well-ordered society through *indirect* and *covert* mechanisms. I have in mind here sophisticated lobbying strategies, perhaps involving the use of proxies, several steps removed, to exert influence on one's behalf, such as funding, or perhaps publicising in less obvious ways, think tanks and other research organisations that are then inclined to promote one's policy preferences. Moreover, attempts to isolate and restrict these types of political activities are made more difficult by the blurred border between the production of political and non-political speech and the fact that, as *issue subsidisers*, resource-rich agents can cause violations of political equality purely by producing resources that certain justice-motivated citizens then find useful in promoting their policy preferences.

Accordingly, it appears that the only way in which legislators and bureaucrats with bounded rationality might provide public confidence that indirect and covert mechanisms are not being successfully employed to exert influence at the non-voting stages of politics, would be to task a hugely intrusive public organisation with monitoring and preventing the types of seemingly benign interactions between individuals that could lead to third parties wittingly or unwittingly doing the political bidding of those with resource power. Yet any such approach is highly unlikely to be compatible with a fully adequate scheme of equal basic liberties of the moderns. Specifically, the restrictions on freedom of speech and association alone that would be required to give citizens full public confidence that others are not using their resources at the non-voting stages of politics to pursue policies that satisfy their self- or group-interests would risk undermining the social conditions essential for the adequate development and full and informed exercise of either a sense of justice or a conception of the good.¹⁴³

¹⁴³ Schemmel makes a similar argument, albeit more briefly (Schemmel 2015, p.403), and a number of other Rawlsians in the 'choice of social system' debate view the insulation of the non-voting stages of politics as necessary, but not sufficient, to prevent individuals exerting undue influence for similar

So there are strong reasons to be sceptical about the enforceability of otherwise just laws that provide sufficient assurance to citizens that non-citizen actors, and in particular resource-rich economic actors, are not participating at the non-voting stages of politics in a well-ordered capitalist democracy with the aim of promoting their self- or group interests. Accordingly, given the significant threat that this type of political activity by resource-rich firms might pose to the self-respect of free and equal citizens, the parties to a Rawlsian constitutional convention ought to recognise the possibility of resource power being exercised in a well-ordered society, rather than optimistically restricting their focus to the structural power of firms.

On the whole, the *limits of reciprocity argument* appears to provide another route by which we might reach the conclusion that office-holders in resource-rich firms can often be expected to intentionally pursue their group interests in politics, even assuming the circumstances of a well-ordered capitalist democracy. However, unlike the *institutional instability argument*, which begins with the assumption that a *competitive moral politics* is possible in a well-ordered society, the *limits of reciprocity argument* appears to lead us inexorably towards the conclusion that any well-ordered society will, in fact, be characterised by a predominantly *competitive egoistic politics*. Of course, this would be problematic insofar as it would seem to methodologically preclude the possibility of a just democratic society in a meaningful sense.¹⁴⁴

I propose that a plausible way to accept the *limits of reciprocity argument* without embracing a fully *competitive egoistic* model of politics for a well-ordered society is to follow Weithman in thinking that the mutual trust cultivated between free and equal citizens engaged in a system of cooperation will be sufficient to overcome the assurance problem, but only when such citizens are engaged in practices that encapsulate their role as free and equal citizens engaged in a fair system of social cooperation. I have in mind here the activities that are most closely associated with the role of democratic citizenship (e.g. voting, political argument with friends, town hall debates etc.). In my view, it is plausible to think that, when engaging in such democratic practices, citizens will consciously conceive of their society as a 'system

reasons (Williamson 2009, pp.437–38; Freeman 2013, p.16; Krouse & McPherson 1988, pp.86–7; Thomas 2012, p.119).

¹⁴⁴ This follows from my arguments in Chapter 2, section 2.4, and Chapter 3, section 3.3.

of cooperation between free and equal citizens' and, in doing so, they will be inclined to view their fellow citizens as being motivated to act in accordance with a normally effective sense of justice, thus overcoming the assurance problem through the bonds of civic virtue and mutual trust alone. In contrast, outside of these democratic practices, individuals *qua* non-citizen actors will often pursue their self- or group interests in politics due to the absence of enforceable and otherwise just laws that solve the relevant assurance problems.¹⁴⁵

The upshot of this section is that my conclusions in the previous section about resource power are relevant to the circumstances of a well-ordered capitalist democracy. Accordingly, there are six ways in which the office-holders of resource-rich firms might plausibly violate political equality in such a society, purely in virtue of their resource power.

5.6. Conclusion

This chapter has served two main purposes. First, it built upon the theoretical arguments in Part II of the thesis to present an account of the different ways in which resource-rich firms might compromise political equality in a well-ordered capitalist democracy. This was achieved by distinguishing two roles that firms can play in the politics of a well-ordered capitalist democracy (*political competitors*, and *issue subsidisers*), and six ways in which firms so conceived might violate political equality in such a society. With this conceptual framework to hand, I then isolated the two main mechanisms by which resource-rich firms might violate political equality in a capitalist democracy: their resource power and their structural power. I argued that a resource-rich firm's resource power might plausibly violate political equality in all of the six ways previously distinguished, and remained agnostic on whether or not a resource-rich firm's structural power might plausibly violate political equality in three of the ways previously distinguished, and argued that it could not cause the other three types of violation.

¹⁴⁵ Put another way, the *limits of reciprocity argument* highlights the plausible risk that, for many non-citizen political actors in a well-ordered society, there will be insufficient mutual trust or enforceable and otherwise just laws to offer mutual assurance that everyone is pursuing justice in politics. This threatens to partially undermine condition (1) of a (fully) well-ordered society, which, in turn, risks condition (4) being partially undermined, which, in turn, allows for the possibility of resource-rich firms undermining political equality. Given the threat this would pose to the self-respect of citizens, the parties to a Rawlsian constitutional convention should incorporate the possibility that political egoism might emerge by this route into their reasoning.

The second main purpose of this chapter was to make the case that Rawlsians in the 'choice of social system' debate ought to take seriously the threat posed to political equality by the resource power of resource-rich firms, even in the circumstances of a well-ordered capitalist democracy. In the final section, I defended this conclusion from the *unwarranted egoism objection*, which states that this type of threat to political equality cannot arise in the politics of a capitalist democracy that is well-ordered by, *inter alia*, my principle of political equality. I noted that, if viable, this objection would justify the decision made by most Rawlsians in the 'choice of social system' debate to focus predominantly on combating the structural power of firms when theorising about the institutions of a just, well-ordered society. However, I argued that the *unwarranted egoism objection* is not viable for two reasons: first, office-holders in resource-rich capitalist firms can unintentionally exercise their resource power; second, office-holders in resource-rich firms can often be expected to intentionally pursue their group interests in politics, even assuming the circumstances of a well-ordered capitalist democracy. I presented two arguments for the latter conclusion: the *institutional stability argument*, and the *limits of reciprocity argument*.

Overall, it appears that in a well-ordered capitalist democracy, resource-rich firms pose a plausible threat to political equality, and therefore social justice, purely in virtue of their resource power. Moreover, Rawlsians in the 'choice of social system' debate have tended to overlook this type of threat to political equality in favour of focussing on the threat posed by the structural power of firms. An important question that therefore arises is 'Are the main types of social systems proposed by theorists in the Rawlsian 'choice of social system' debate well placed to prevent resource-rich firms from violating political equality via their resource power?' It is to this question that I will turn in the next chapter. By answering this question, we will be led to endorse a heretofore neglected answer to the main substantive institutional question of this thesis, namely 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?'

6. Why Firm Size Matters: The Limits of Widespread Ownership and Democratic Control

6.1. Introduction

In this chapter, I shall make the second institutional argument of Part III of the thesis, which uses my conclusions from the previous chapter about the ways in which resource-rich firms might plausibly compromise political equality to evaluate two of the main models of political economy that have so far been recommended by theorists in the Rawlsian 'choice of social system' debate, namely, a property-owning democracy and liberal socialism. In undertaking these evaluations, we will be led to endorse a heretofore neglected answer to the question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?', the implications of which I will explore in Chapter 7.

My main argument in this chapter is that large firms might plausibly compromise my principle of political equality in both a well-ordered property-owning democracy, understood as a society in which the private ownership of productive property is widely dispersed, and a well-ordered liberal socialism, understood as a society in which workers enjoy democratic control over their firms. This is because in either of these types of social systems, the resource power that large firms bestow upon certain groups might plausibly allow them to act in ways that will violate political equality in all six of the ways distinguished in Chapter 5.¹⁴⁶ Furthermore, I will tentatively suggest that the egalitarian distribution of wealth that is supposed of both of these types of social systems may well aggravate, rather than mitigate, these six problems. Accordingly, given that from a broadly Rawlsian perspective my principle of political equality ought to be understood as a lexically prior demand of justice, we should conclude that the very existence of large firms poses a credible threat to the realisation of justice, regardless of how those firms are owned or controlled.

If my argument in this chapter is compelling, then it suggests that Rawlsians in the 'choice of social system' debate have all missed something important regarding the restrictions that need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice. To see why, it will be helpful to remind ourselves of the different positions that Rawlsians in this debate

¹⁴⁶ See Chapter 5, section 5.3.

have taken on this issue.¹⁴⁷ We can distinguish two broad camps of theorists in terms of how they address the organisation of firms, relating them back to the five main camps in the 'choice of social system' debate as we go. First, there are those who defend a robust freedom of contract that permits the large hierarchical firms we see in existing capitalist societies on the grounds that this best secures the individual liberties that should be protected by Rawls's first principle of justice (Lomasky 2005, pp.191–92; Shapiro 1995, pp.70–73; Tomasi 2012, pp.116–17) and maximises efficiency in a way that best serves his second principle of justice (Brennan 2007, p.293; Lomasky 2005, pp.191–92; Tomasi 2012, pp.234–36). These theorists all argue for something approaching *laissez-faire* capitalism at the level of social systems.

Second, a larger camp of theorists argue that for a social system to realise broadly Rawlsian principles of justice, its firms must have a less hierarchical structure than they do in existing capitalist societies. There are three notable cleavages cutting across this camp. First, although the majority of theorists in this camp advocate less hierarchical firms on the grounds that this is required to realise an ideal of social equality in Rawls's second principle of justice (Arnold 2012, pp.113–14; Freeman 2013, pp.31–32; Freeman 2007b, pp.113, 134; Hsieh 2012, p.150; Malleson 2014, p.238; O'Neill 2012, pp.88–89; Schemmel 2015, p.400; Schweickart 2012, pp.208–11),¹⁴⁸ a smaller number of them argue that it is also likely to be required in order to realise the lexically prior fair value of the equal political liberties (O'Neill 2012, p.83; Schemmel 2015, pp.404–5; Malleson 2014, pp.233–34).¹⁴⁹ Second, whereas some of these theorists gear their arguments towards the less hierarchical organisation of day-to-day tasks and relationships on the shop floor in firms (Arnold 2012, pp.106–8, 114, 116; Hsieh 2012, pp.155–6; Hsieh 2008, pp.91–3), others place more emphasis on democratic decision-making procedures within firms (Malleson 2014, pp.237–39; Schemmel 2015, pp.401, 404; Schweickart 2012, p.207) and still others indicate a sympathy towards both options (Freeman 2013, pp.23–4, 27; 2007b, pp.113, 126, 134, 220, 226–27, 229, 232; O'Neill 2012, p.89; 2008; Williamson 2009, p.47). Finally, whereas most theorists in this camp view less hierarchical firms as being compatible with the arrangements of a property-owning democracy (O'Neill

¹⁴⁷ In keeping with Chapter 1, I also include here certain Rawlsians who have taken a more isolated interest in the issue of how firms are to be organised, rather than addressing this issue through the prism of the 'choice of social system' debate.

¹⁴⁸ Thad Williamson makes a similar argument in different terms at (Williamson 2009, pp.438–9).

¹⁴⁹ An exception to this distinction is Waheed Hussain (2012) who advocates less hierarchical firms on the grounds of stability. However, he still permits large firms, so my arguments apply to his vision of a just social system.

2012, pp.91–92; 2008, p.51; Freeman 2013, pp.23–24; 2007b, pp.113, 134, 220, 227; Malleson 2014, pp.243–44; Arnold 2012, p.116), others view it as part of the distinct arrangements of a liberal socialism (Schemmel 2015, p.404; Williamson 2015, pp.413–14; Schweickart 2012, pp.205–6). Hence, these theorists all argue for a property-owning democracy, a liberal socialism, or some mix of the two (although there are competing views among them as to whether or not these forms of organisation should be supplemented with the institutions of the welfare state).

Given these many differences between Rawlsians who have focused on the organisation of firms, it is striking that all of the abovementioned theorists appear to agree on one thing: they all either ignore (Arnold 2012; Freeman 2013; Freeman 2007b; O'Neill 2012; O'Neill 2008; Lomasky 2005; Shapiro 1995; Malleson 2014) or explicitly reject (Hsieh 2012, p.152; Schemmel 2015, pp.404–5; Williamson 2009, pp.445–46; Tomasi 2012, pp.251–54; Schweickart 2012, p.205) the idea that large firms pose a credible threat to the realisation of social justice. Rather, they seem to accept large firms without much question as a part of whichever type of social system they view as being best placed to realise a broadly Rawlsian set of principles of justice. Hence, if compelling, my substantive argument that the very existence of large firms poses a threat to the realisation of justice, via a threat to the realisation of political equality, should cause a number of Rawlsian theorists in the 'choice of social system' debate (and beyond) to examine more carefully how the types of social systems they advocate need to be modified.¹⁵⁰

The argument of this chapter will proceed as follows. In section two, I will clarify the notion of size that I have in mind when I talk about large firms. In section three, I will explain what I mean by a 'well-ordered property-owning democracy'. In section four, I will argue that large corporations might plausibly enjoy substantial resource power as political actors in a well-ordered property-owning democracy. In section five, I will focus on three dimensions of likely political conflict in a well-ordered property-owning democracy in which it is plausible to suppose that large corporations will use their resource power to compromise political equality in all of the six ways distinguished in Chapter 5. In section six, I will focus on two dimensions of likely political conflict in a well-ordered liberal socialist society in which it is plausible to suppose that large democratically controlled firms will use their resource power to

¹⁵⁰ As noted in Chapter 1, I accept that my arguments may well be less compelling for those theorists in the first camp above insofar as they advocate a self-consciously revisionist understanding of Rawlsian political theory. As such, I view the theorists in the second camp as the primary Rawlsian audience for my institutional arguments.

compromise political equality in all of the six ways distinguished in Chapter 5. In section seven, I will tentatively suggest that the egalitarian distribution of wealth in a property-owning democracy and a liberal socialist society looks likely to exacerbate, rather than mitigate, these problems. Section eight concludes.

6.2. Large Firms

Before embarking on my argument, it will be useful to clarify some of the main terms that I will use. First, I understand the joint-stock corporation to be one of many types of commercial organisations, all of which have the primary aim of maximising financial returns to those with ultimate decision-making power in the enterprise, and all of which can also be called firms.¹⁵¹ Understood in this way, commercial organisations, or firms, can be distinguished from non-commercial organisations, such as charities, foundations, trusts and trade unions.¹⁵² Second, by a large firm I mean an entity similar to, though distinct from, what I referred to in the previous chapter as a 'resource-rich firm'.

To recall, in the previous chapter, I defined a 'resource-rich firm' as a firm in which relevant office-holders have considerable financial resources at their disposal for the purpose of political activity that intends to further the firm's institutional aims. I put to one side complex issues about how to conceive of, or measure, a firm's resources, noting Thomas Piketty's solution to this type of problem (Piketty 2014, p.179). With this clarified, I presumed the idea of a resource-rich firm was intuitively comprehensible. However, for the purposes of this chapter, I define a large firm more specifically as *a firm whose financial value is considerably larger than the average financial value of other organisations that operate in the same sovereign political community*. Evidently, this goes no further than Piketty's solution to the problem of how to conceptualise, or measure, a firm's value. However, it does differ from the definition of a 'resource-rich firm' in a ways that justifies the change in terminology.

To elaborate, in the previous chapter, I was not concerned with the process by which relevant office-holders in any given firm might acquire the ability to dispose of some of the firm's resources for the purpose of political activity. Rather, I built this feature into the very definition of a 'resource-rich firm'. But I will spend some time in

¹⁵¹ I will offer more detail on the defining features of the joint-stock corporation in section 6.4.2.

¹⁵² I will explore the possible roles that these secondary organisations might play in a just society in Chapter 7.

the next section of this chapter explaining how it is possible that some firms whose financial value is considerably larger than the average financial value of other organisations that operate in the same sovereign political community might furnish certain office-holders with considerable resources to engage in political action. This alone justifies the change in terminology. It will also become clear in this chapter that, in either a property-owning democracy or a liberal socialist society, for a firm to be large in terms of its relative financial value, it must also be large in terms of the number of shareholders or workers that count as its 'members' (this is due to the egalitarian structures of ownership in these types of social systems). This makes it instructive to refer to such firms as 'large firms'.

It is worth noting that my definition of a 'large firm' is broader than some other proposed definitions. For instance, Colin Crouch specifies two necessary and jointly sufficient criteria for a large (or, in his terms 'giant') firm: first, market dominance (understood in monopolistic terms); second, trans-national commercial activity (Crouch 2010, pp.148–49). My definition does not take either of these criteria to be necessary. Against Crouch's first criterion, I allow that a firm operating in a large competitive global market might have a financial value that is considerably larger than the average financial value of other organisations that reside in its sovereign political community. Against Crouch's second criterion, I allow that a firm operating only in a highly uncompetitive domestic market might have a financial value that is considerably larger than the average financial value of other organisations that reside in its sovereign political community. Nonetheless, I recognise that both of Crouch's criteria may well be aggravating factors in terms of allowing large firms to bestow certain office-holders with considerable resources to use for political activity (thus making them 'resource-rich' firms).

A vagueness remains in my definition of a large firm, namely, the idea of it having a financial value that is 'considerably larger' than other organisations. I will not attempt to specify in precise numerical terms the exact point at which a firm's financial value becomes 'considerably larger' in the relevant sense. Rather, my aim in this chapter is the more modest one of proposing some compelling theoretical reasons to think that as certain firms' financial value grows larger and larger than the average resource value of other organisations that operate in the same sovereign political community, it becomes plausible to think that, at some point, regardless of how they are owned or internally structured, they will begin to furnish certain office-holders with sufficient resource power in the political arena to compromise political equality.

6.3. The Idea of a Well-Ordered Property-Owning Democracy

Another key concept in this chapter is the idea of a 'well-ordered property-owning democracy'. We can distinguish three component ideas in the concept of a 'well-ordered property-owning democracy': (a) it is, in some sense, a well-ordered society; (b) it has a particular private-property economic system; and (c) it has, in some sense, a democratic political system. I will say a bit more about each in turn.

When I speak of a 'well-ordered society' in this context, I mean precisely the same thing that I meant when speaking about a well-ordered capitalist democracy in Chapter 5.¹⁵³ So, first, I mean to refer specifically to a society in which nearly all individuals accept and know that nearly everyone else accepts my principle of political equality, understood as residing within a principle of justice that enjoys lexical priority over whatever principle of justice is taken to regulate social and economic inequalities (the content of which we can remain agnostic about). And, second, there is a sense in which I am not (necessarily) speaking about a well-ordered society in the fullest possible sense when I speak of a well-ordered property-owning democracy. This is because I am stipulating that this society has certain institutional arrangements (i.e. it is a property-owning democracy) and then asking whether, even if nearly all citizens began by affirming my lexically prior principle of political equality, such arrangements would satisfy and be publicly known to satisfy this principle, or at least clearly fall within the range of institutional arrangements that nearly all citizens view as reasonable attempts to satisfy this principle over time.

To recall, we listed the particular type of private-property economic system that is characteristic of a property-owning democracy in Chapter 1, the *sine qua non* of which was 'the widespread ownership of productive assets and human capital' (Rawls 2001, p.139).¹⁵⁴ Moreover, in keeping with our suppositions about a well-ordered capitalist democracy in the previous chapter, I will here also suppose that a well-ordered property-owning democracy is characterised by the four stages of politics that I distinguished in the previous chapter, namely: (1) pre-voting deliberation, (2) agenda-setting, (3) voting, and (4) implementation. And, furthermore, I will suppose that the voting stage is organised in accordance with the

¹⁵³ See section 5.2.

¹⁵⁴ See Chapter 1, section 1.3 for further details.

following principles of constitutional design: (a) it has a liberal egalitarian voting rule (that satisfies the axiom of resolvability), and (b) it guarantees universal suffrage.

Finally, it is important to note that, for the same reasons that many non-citizen actors, including office-holders in firms, can often be expected to intentionally pursue their group interests in the politics of a well-ordered capitalist democracy, many non-citizen actors, including the office-holders in firms, can often be expected to intentionally pursue their group interests in the politics of a well-ordered property-owning democracy.¹⁵⁵

6.4. The Logic of Large Corporations as Resource-Rich Political Actors in a Well-Ordered Property-Owning Democracy¹⁵⁶

Now that the conceptual scene has been set, I am in a position to argue that in a well-ordered property-owning democracy, a large joint-stock corporation might plausibly bestow relevant office-holders with considerable financial resources that they will be able, and often willing, to spend on political activity that aims to further the corporation's (on the whole) profit-maximising aims. Put another way, large corporations will enjoy substantial resource power as political actors. I will do so by combining Olson's (1965) central insights about the logic of collective action with some important insights provided by new institutional economics, particularly the theory of the firm. Importantly, as will become clear in the next section, the very same logic that allows us to draw this conclusion about large corporations in a well-ordered property-owning democracy should lead us to the opposite conclusion with regard to many of the interest groups that might otherwise be thought to provide countervailing power to large corporations in certain dimensions of political conflict.

6.4.1. The Logic of Collective Action

One of Mancur Olson's seminal contributions to collective choice theory was to argue convincingly that if we apply the marginal principle to each individual's rational decision-making process, then we should expect many large groups of individuals who share common interests to remain politically immobilised, and

¹⁵⁵ To recall, the two supporting arguments for this conclusion in Chapter 5, section 5.5, were the *institutional instability argument*, and the *limits of reciprocity argument*, both of which continue to apply here. In addition, we can also expect the office-holders in large corporations to unintentionally pursue their group interests in politics in the circumstances of a well-ordered property-owning democracy, for the reasons set out in Chapter 5, section 5.5.

¹⁵⁶ I will continue to switch back-and-forth between speaking about a corporation or firm as an aggregate of individual office-holders, and as a group agent for the reasons given at the end of Chapter 5, section 5.3. Although I will partially relax the group agent assumption in section 6.5.3.

therefore we should expect free competition between interest groups often to lead to policy outcomes that are advanced by the less numerous group(s) among those who care about each issue. I will refer to this as the *small beats large argument*. In order to properly understand this argument, we must elaborate its three main conceptual ingredients, the first of which is an analytical distinction Olson draws between three types of political interest groups.

First, an interest group is *privileged* when, for at least one member of the group, the individual benefit of achieving the common interests of the group outweighs the anticipated costs of being the only group member to expend resources pursuing these interests. Second, an interest group is *latent* when there is no single group member for whom this is the case. However, within the category of latent groups, there is an important subcategory of *intermediate* groups. This refers to a group in which, for a small number of group members, the individual benefits of achieving the common interests of the group outweigh the anticipated costs of being the only group members to expend resources pursuing these interests. It may or may not be the case that this small number of group members comprises the whole group (Olson 1965, pp.43–53).¹⁵⁷

The second main conceptual ingredient of Olson's *small beats large argument* is his insight that the principal type of good that political interest groups aim to bring about -- a change in the law -- generally exhibits one of the key characteristics of a public good: non-excludability, i.e. it is either impossible or very costly to exclude certain group members from enjoying it once it has been achieved (Olson 1965, p.15; Hardin 1982, p.19). The third main conceptual ingredient of Olson's argument is his insight that if we apply the marginal principle to the rational decision-making process of each individual member of a group, then their decision to expend their resources on the group's efforts will not turn on their answer to the question 'Does this group pursue aims that I support?', but rather on their answer to the question 'Would my marginal contribution to this group's efforts increase its chances of success sufficiently to warrant my spending resources on it?' (Olson 1965, pp.11–12; McLean 1987, p.65).

¹⁵⁷ It is worth noting that there are ambiguities in Olson's original typology of interest groups because he conflates distinctions based on size with those based on latency. In this paragraph, I follow Russell Hardin's (1982, pp.38–49) interpretation of Olson, which I consider to be the most charitable reading.

Olson combines these three ingredients to make the following argument: we should expect individuals in non-intermediate latent groups who make decisions based on the marginal principle to calculate that they are better off spending their personal resources on their private projects whilst free-riding on the efforts of their fellow group members to achieve changes to the law. By and large, Olson's argument proceeds by an analogy with different types of markets. He notes that we observe firms in a competitive industry concluding that they are better off increasing their output to the point where marginal cost equals price, even though if a sufficient number of firms restricted their output it would drive up the market price and they would all enjoy higher profits. This is because, using the marginal principle, each individual firm calculates that the likely contribution they will make to driving up the market price by restricting their output is close to zero, so they are better off increasing their output to the point where marginal cost equals price in order to stay competitive, whilst simultaneously benefitting from any collective efforts to restrict output made by other firms (Olson 1965, pp.9–11).

In much the same way, we should expect rational individuals in non-intermediate latent groups to calculate that the likely contribution they will make to achieving the common interests of the group by spending their resources on its efforts is close to zero, so they are better off spending their personal resources on private excludable goods, while simultaneously benefitting from any changes to the law achieved by their fellow group members. The result is that individuals in non-intermediate latent groups will generally fail to mobilise to pursue their common political interests, in much the same way that firms in a competitive industry fail to restrict their outputs to drive up the market price of their product (Olson 1965, pp.11–16).

In contrast, Olson argues that when we apply the marginal principle to each individual group member's rational decision-making process, we should generally expect the members of privileged and intermediate groups to mobilise to pursue their common interests. For privileged groups, Olson assumes that the very fact that there is at least one group member who calculates that they will benefit from the unilateral pursuit of the group's common interest means that they will act, if necessary, alone. The relevant market analogy here is the observation that the dominant firm in a monopolistic industry will generally restrict output to drive up the

market price (Olson 1965, pp.46, 50).¹⁵⁸ For intermediate groups, Olson gives two main reasons why members will be likely to organise to pursue their common political interests: first, each member is more likely to calculate that their marginal contribution to the group's effort will be decisive, so they will be less likely to attempt to free-ride on the efforts of other group members; second, because only a small number of group members need to organise to achieve the common interests of the group, they will be willing and able to monitor one another's actions to minimise free-riding. The relevant market analogy here is the way in which firms conspire to restrict output and raise the market price in an oligopolistic industry (Olson 1965, pp.26–27, 46, 49–50; Hardin 1982, pp.126–31). The upshot of Olson's reasoning is that if group interested organisations with voluntary memberships freely participate in a democratic society's political process, then we should expect the less numerous interest groups to exert the largest influence in each issue domain (Olson 1965, pp.165–67).¹⁵⁹

So how does Olson's analysis relate to my argument that a large joint-stock corporation might plausibly bestow relevant office-holders with considerable financial resources that they will be able, and often willing, to spend on political activity that aims to further the corporation's (on the whole) profit-maximising aims in a well-ordered property-owning democracy? In my view, Olson provides the beginnings of an answer to this question with his subsequent *By-Product Theory*, which explains why non-intermediate latent groups sometimes mobilise. The *By-Product Theory* states that non-intermediate latent groups can mobilise to pursue their common political interests, but only when group membership provides individual members with private excludable goods. When a group provides each member with this private incentive to participate, then, regardless of the size or latency of the group, each member will have a private reason to commit their resources to the group, and a proportion of the group's resources can then be used to pursue the common political interests of its members. So, although privileged and

¹⁵⁸ Olson refers to this as 'the "exploitation" of the great by the small' (Olson 1965, p.35). However, it has been pointed out that Olson's argument here is too hasty because members of privileged groups are liable to the same sorts of strategic interactions as those that Olson recognises in intermediate groups (which I will outline next) (McLean 1987, p.67). Nonetheless, even if this objection goes through, we can still expect privileged groups to enjoy similar advantages over large latent groups to those enjoyed by intermediate groups.

¹⁵⁹ Note that we can accept this conclusion for a central range of cases while recognising that there are some important counterexamples to Olson's straightforward equation of privileged, intermediate latent and non-intermediate latent groups with small, medium and large sized interest groups. This gets us around the oft-cited counterexamples of large privileged groups (e.g. the Howard Hughes counterexample) and small latent groups (e.g. the two-person Prisoner's Dilemma counterexample) (Hardin 1982, pp.41–42; McLean 1987, pp.63, 67–8).

intermediate groups may exist *only* to lobby for the common interests of their members, when non-intermediate latent groups lobby for the common interests of their members, this should be seen as a *by-product* of their primary purpose, which is to provide their members with private excludable goods (Olson 1965, pp.132–35). Olson applies the *By-Product Theory* to trade unions and professional associations. In what follows, I will argue that it applies equally well, if not better, to large corporations, particularly in the context of a (well-ordered) property-owning democracy.¹⁶⁰

6.4.2. *The Appeal of the Large Corporation to Small Investors*

In order to see why Olson's *By-Product Theory* should be taken to apply to the large corporation, we must first elucidate several key features of the joint-stock corporation that distinguish it from a general partnership or sole trader. The defining feature of the joint-stock corporation is the separation of ownership and control, in the sense that the shareholders divest control of the firm's day-to-day decision-making to a board of directors/managers.¹⁶¹ David Ciepley helpfully distinguishes three other features that separate the joint-stock corporation from the general partnership or sole trader: first, 'asset lock-in', which refers to the fact that once an investor buys shares in a joint-stock corporation, they cannot directly withdraw their investment, but must sell it to another investor. Second, Ciepley cites 'entity shielding', which refers to the fact that once an investor invests in a corporation, their personal creditors may only take their shares and no further corporate assets as recompense. Finally, he highlights 'limited liability', which shields investors from the debts of the corporation (Ciepley 2013, pp.143–44).¹⁶²

¹⁶⁰ Olson comes close to applying his theory to the large corporation. He argues that business interests tend to be overrepresented in the legislative processes of modern capitalist democracies because most industries in modern capitalist economies are dominated by one, or a small number of, large corporations. As such, most industries' lobbying organisations are either privileged or intermediate groups, so we can expect their members to mobilise to pursue their common political interests (Olson 1965, pp.141–48). However, this is only half an answer because it fails to address the prior question of why each individual who owns shares in a large joint-stock corporation would choose to spend their resources on the pursuit of the political interests that they share in common with their many fellow shareholders, rather than free-riding on the efforts of their fellow shareholders as we would expect in a non-intermediate latent group.

¹⁶¹ Sometimes boards of directors are comprised wholly of the firm's managers (executive directors), sometimes they are comprised wholly of people from outside the firm (non-executive directors), and most commonly they include a mix of the two.

¹⁶² There are, of course, forms of economic organisation that straddle the divide between a joint-stock corporation and a general partnership or sole trader, such as a limited liability partnership. In what follows I will focus on the clear distinction between an ideal-typical joint-stock corporation, and an ideal-typical general partnership or sole trader, whilst allowing that different aspects of the pursuant arguments will apply, to different degrees, to intermediary forms of economic organisation.

In my view, these four features of the joint-stock corporation mean that capital owners (or their agents) have powerful private incentives to invest in this type of legal form, rather than joining a general partnership or setting up as a sole trader or investing in many other productive endeavours. First, as has been pointed out in the literature on worker-managed firms, the separation of ownership and control afforded by the joint-stock corporation means that capital owners can lower their investment risks by investing across a diverse range of corporations (and other types of investment), rather than having a substantial proportion of both their savings and income bound up in the fate of a single organisation, as would be the case if they used their capital to join a general partnership or set up as a sole trader (Meade 1986, p.20; Miller 1990, p.87). Second, 'asset lock-in' and 'entity-shielding' mean that the joint-stock corporation does not have to keep assets in liquid form in case of investor withdrawal or investor debt, so it can instead specialise its assets, thus increasing productivity and allowing for higher returns to shareholders than a general partnership or sole trader could afford. Third, 'limited liability' makes investing in a joint-stock corporation a relatively less risky venture for small and passive investors than investing in a general partnership or setting up as a sole trader (Ciepley 2013, pp.143–44).

In addition, there are reasons to think that individual capital owners (or their agents) will often have private incentives to invest in large, rather than small or medium sized, firms, whether they be joint-stock corporations or not. First, as standard neoclassical economics recognises, in industries that supply goods with either increasing returns to scale (i.e. natural monopolies) or with network economies (electricity generation and Microsoft Windows being paradigmatic examples respectively), large firms will achieve greater profits than smaller firms and therefore be able to offer higher returns to shareholders (Barr 2004, pp.74–5; Frank & Bernanke 2007, pp.287–88). Second -- and more importantly -- as modern theories of the firm convincingly add, larger firms are likely to achieve greater profits than smaller firms in many other types of industry because they are more efficient. This is because, in a society populated by individuals with bounded rationality, there are epistemic costs to using the price mechanism, so it is more efficient to organise production hierarchically within the firm 'until the costs of carrying out an extra transaction within the firm become equal to the costs of carrying out the same transaction by means of an exchange in the open market' (Coase 1937, p.395). And there are reasons to think that, although technological economies will commonly be exhausted at a size that falls well short of market dominance in most mature

industries, the same is not true when we factor in attempts to economise the costs of using the price mechanism (Williamson 1975, p.260).

So if we combine the private incentives that individual capital owners have to invest in joint-stock corporations with the private incentives that they will often have to invest in large firms, then we can expect large joint-stock corporations to sit in a sweet spot in terms of their attractiveness to individual capital owners (or their agents), particularly small capital owners. This is important because if we assume that all of the shareholders of any given large corporation each own a very small and roughly equal share of that corporation, then they will make up a non-intermediate latent interest group insofar as, *qua* shareholders, they have a common interest in achieving changes to the law that increase the profitability of that particular corporation. And this, of course, is the ownership structure we would expect of large corporations in a society where ownership of productive property is widely or equally dispersed, i.e. a well-ordered property-owning democracy. Thus, at first glance Olson's *small beats large argument* might lead us to expect that the shareholders of any given large corporation in a well-ordered property-owning democracy will fail to mobilise to pursue their common profit-maximising political interests. But because it has been shown that individual capital owners will have powerful private incentives to invest in, and remain invested in, large corporations in this type of society, Olson's *By-Product Theory* comes into play for each such group of shareholders. As such, each large corporation's directors/managers should be able to overcome their shareholders' collective action problem and use some of their collective resources to pursue the common profit-maximising political interests of the group.

For this reason, it is plausible to think that in the conditions of a well-ordered property-owning democracy, large joint-stock corporations will bestow relevant office-holders (its directors/managers) with considerable financial resources that they will be able, and often willing, to spend on political activity that aims to further the corporation's (on the whole) profit-maximising aims. The supposition that these office-holders will look to spend these resources on political activity that aims to further the corporation's (on the whole) profit-maximising aims relies on two prior assumptions. First, as noted in the previous section, office-holders in corporations can often be expected to intentionally pursue their group interests in politics in the circumstances of a well-ordered property-owning democracy. Second, I am assuming that these office-holders stand in an effective principal-agent relationship,

whereby the agents (the directors/managers of the corporation) faithfully aim to realise the profit-maximising interests of their principals (the shareholders in the corporation).¹⁶³ (I will, however, partially relax this second assumption in section 6.5.3.)

To recall, my overall argument in this chapter in relation to a well-ordered property-owning democracy is that large corporations might plausibly compromise my principle of political equality in such a society. Specifically, I aim to argue that the resource power of large corporations in such a society might plausibly cause all six of the violations of political equality distinguished in Chapter 5, section 5.3. As things stand, we are only halfway to this conclusion. So far, I have demonstrated that in the conditions of a well-ordered property-owning democracy, large joint-stock corporations might plausibly bestow relevant office-holders with considerable financial resources that they will be able, and often willing, to spend on political activity that aims to further the corporation's (on the whole) profit-maximising aims. But in order to move from this conclusion to the conclusion that, in such a society, large corporations might plausibly cause all six of the violations of political equality distinguished in Chapter 5, I must identify some likely dimensions of political conflict in a well-ordered property-owning democracy within which the relative resource power of the large corporation might plausibly cause all six violations. This is the task of the next section.

6.5. The Limits of Widespread Ownership: The Large Corporation vs. Political Equality in a Well-Ordered Property-Owning Democracy

In what follows, I will isolate three dimensions of likely political conflict in a well-ordered property-owning democracy in which, in virtue of their relative resource power, large corporations might plausibly compromise political equality in each of the six ways distinguished in Chapter 5, section 5.3. In each dimension of conflict, this is because the large corporation allows its members (or a subgroup of its members), understood as a (group interested) political interest group, to solve their

¹⁶³ It is worth noting that the generalised free-rider problem that Olson argues non-intermediate latent interest groups will face can be understood either as the result of a generalised prisoner's dilemma where each individual in the group is motivated to be uncooperative regardless of the actions of others (Hardin 1982, pp.25–31), or as the result of an unresolved assurance problem where each individual is motivated to cooperate provided there is sufficient assurance that others will cooperate but the size of the group makes such assurances hard to supply (Runge 1984, pp.169–70). As such, Olson's collective action problem can be expected to arise in the egoistic dimension of the politics of a well-ordered property-owning democracy whether that dimension of politics is justified via the *institutional instability argument* in Chapter 5, section 5.5 (which argues that some economic actors will view politics as a generalised prisoner's dilemma) or the *limits of reciprocity argument* (which argues that many non-citizen actors will view much of politics as an unresolved assurance problem).

collective action problem more effectively than those (group interested) interest groups that might otherwise be thought to provide countervailing power to the large corporation (or a subunit of the corporation), thus allowing them to unlock superior resources for political activity. To be clear, in what follows I will offer a slightly simplified characterisation of each of these likely dimensions of group interested political conflict. This is because my overall aim in this section is not to predict definitively that large corporations will compromise political equality in each of these dimensions of politics in a well-ordered property-owning democracy. Rather, my more modest aim is to highlight some ways in which the existence of large corporations might plausibly compromise political equality in a well-ordered property-owning democracy in the hope that this will spur Rawlsian theorists in the 'choice of social system' debate to examine more carefully the extent to which this threat is likely to emerge under different social conditions, and the ways in which it might therefore be most effectively prevented.

6.5.1. The Large Corporation vs. Small and Medium Sized Firms

The first dimension of political conflict in a well-ordered property-owning democracy that I will focus on is the range of policy issues in which the profit-maximising interests of a large corporation can be expected to conflict with the profit-maximising interests of small and medium sized firms (SMFs). We can expect policy issues that engage these conflicting interest groups to arise in a well-ordered property-owning democracy insofar as it is plausible to assume that citizens who are effectively motivated in politics by the desire to realise just institutions will reasonably disagree on what justice requires in certain policy areas, and each of the above two interest groups will consider a different policy option either within or outside this range of reasonable disagreement as the one most likely to maximise their profits. In order to clarify this idea, it will be helpful to highlight two examples of policy issues where this might be the case.

First, it is plausible to imagine that in a well-ordered property-owning democracy populated by individuals with bounded rationality, citizens might reasonably disagree on whether or not heavy goods lorries ought to be able to use high streets. On the one hand, many citizens might judge that socio-economic justice is best served by allowing heavy goods lorries to use high streets because this allows for the more efficient transporting of commercial goods, which will ultimately lower their price for consumers. This might be considered preferable from the standpoint of

socio-economic justice insofar as it either maximises average utility, or maximally benefits the worst-off group.¹⁶⁴ On the other hand, many citizens might judge that socio-economic justice is best served by banning heavy goods lorries from using high streets because this makes high streets more pleasant places to visit, which in turn allows the many artisanal businesses predominantly based in high streets to flourish. This might be considered preferable from the standpoint of socio-economic justice insofar as artisanal businesses are considered to provide an important source of meaningful and well paid skilled work for workers with less academic backgrounds.

This being the case, it is plausible to imagine that, in this particular issue area, the SMFs will support a ban on heavy goods lorries using high streets because the noise and pollution they create is understood to lower the footfall in these areas, which has a negative impact on the profitability of the majority of their outlets (which are based on high streets). In contrast, it is plausible to imagine that there is a large retail corporation in this society whose outlets are mainly based in retail parks outside of town and, as a result, its transportation costs will increase if the heavy goods lorries that transport its products cannot use high streets. Accordingly, the large retail corporation will oppose a ban on heavy goods lorries using high streets. Let us suppose also that consumers are more or less evenly divided on this issue: some would prefer that products in the out-of-town retail stores were as cheap as possible; others are keen to preserve the variety of consumer options provided by the artisanal businesses on high streets.

A second example of a policy issue over which citizens might reasonably disagree, and the profit-maximising interests of a large retail corporation and SMFs are likely to be best served by different options, relates to Sunday trading laws. It is plausible that in a well-ordered property-owning democracy populated by individuals with bounded rationality, citizens might reasonably disagree on whether to prevent shops from trading on Sundays. On the one hand, many citizens might judge that, provided no employee is expected to work for more than 40 hours a week, socio-economic justice is best served by allowing shops to trade on Sundays because it increases the general availability of goods. This might be considered preferable from the standpoint of socio-economic justice insofar as it either maximises average utility, or maximally benefits to the worst-off group. On the other hand, many citizens

¹⁶⁴ To recall, I have remained agnostic in this thesis about the principle of justice that parties would choose in the original position to regulate the distribution of social and economic advantages.

might judge that socio-economic justice is best served by banning Sunday trading because, otherwise, smaller businesses will be unable to compete with larger retail businesses unless the owners/employees of the smaller businesses work well in excess of 40 hours a week in order to remain open on Sundays. As such, a ban on Sunday trading might be considered preferable from the perspective of socio-economic justice because, given there is a consensus that people should not be expected to work more than 40 hours a week, allowing Sunday trading seems to either threaten this, or make it more likely that small businesses will, over time, be unable to compete in the market and close. Once again, the latter option might be considered a loss from the standpoint of socio-economic justice insofar as small businesses are considered to provide an important source of meaningful and well paid skilled work for workers with less academic backgrounds.

Once again, it is plausible to imagine that in this particular issue area, SMFs will support a ban on Sunday trading because this will allow them to compete with larger businesses without requiring that their owners/employees regularly work for more than 40 hours a week. As such, it is the profit-maximising option, all things considered. In contrast, it is plausible to imagine that there is a large retail corporation in this society that calculates that it will increase its market share and, in the long run, profitability, if Sunday trading is allowed and more SMFs go out of business.¹⁶⁵ And, once more, let us suppose that consumers are more or less evenly divided on this issue: some would prefer the option of being able to purchase goods on a Sunday; others are keen to preserve the variety of consumer options provided by the those small businesses that might be threatened by Sunday trading.

In both of these examples, the important question for our purposes is 'How should we expect the configuration of (group interested) interest group politics on this issue to affect each stage of a well-ordered property-owning democracy's democratic decision making process?' To recall, by definition the large retail corporation has a financial value that is considerably larger than the average financial value of other organisations that operate in the same sovereign political community. But we might plausibly suppose that the owners and employees in SMFs equal in number, or perhaps even outnumber, the shareholders and employees of the large retail corporation. With this in mind, what should we expect?

¹⁶⁵ To clarify, the large corporation can easily trade on Sundays without requiring its employees to work more than 40 hours per week by using shift rotations that are not available to SMFs with fewer employees.

Let us begin with the agenda-setting stage of politics. To recall, the principle of constitutional design that governs this stage of politics states that a society must *ensure an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition*. I contend that in both of the two scenarios depicted, the large retail corporation, but not the SMFs, might plausibly violate this principle in two ways. To see why, notice that, on an Olsonian analysis, the shareholders and employees in SMFs will make up a non-intermediate latent group and, as such, they will typically find it hard to mobilise and spend their collective resources in pursuit of their common political interests. The shareholders and employees in the large retail corporation will also make up a non-intermediate latent group, but the *By-product Theory* comes into play to explain why they typically will be able to mobilise and spend their collective resources in pursuit of their common political interests.

On this basis, if we understand both the large retail corporation and each SMF as a possible *political competitor* to citizens, then the former, but not the latter, might plausibly compromise political equality at the agenda-setting stage of politics by acting in ways that cause the *problem of unresponsive agenda formation*. This is because, in both of the scenarios outlined above, the large retail corporation will enable its shareholders to use their considerable collective resources (via their agents, i.e. the relevant office-holders in the corporation) to 'flood' elected representatives with arguments and information that raise doubts about the attraction or viability of banning heavy goods lorries from using high streets or banning Sunday trading. The large retail corporation might achieve this either through sophisticated and subtle direct lobbying strategies that are hard to detect and prevent, or through funding or in other ways publicising third parties, such as think tanks, that then skew the information that is available to elected representatives on these issues. To the extent that these strategies are effective, citizens will have less control over setting the political agenda. Consequently, citizens are not being publicly acknowledged by their institutions as self-authenticating sources of valid claims who are entitled to make claims on their shared institutions. And this amounts to a public expression of their unfree status, which has a high chance of undermining their self-respect as free and equal citizens.

Conversely, if we understand both the large retail corporation and each SMF as possible *issue subsidisers* for certain citizens, then the former, but not the latter, might plausibly compromise political equality at the agenda-setting stage of politics by acting in ways that cause the *problem of inegalitarian agenda formation*. This is because politically active citizens who agree, for justice-based reasons, with allowing heavy goods lorries to use high streets or allowing Sunday trading can, either by approaching the large retail corporation or more informally, utilise or mimic aspects of the large retail corporation's carefully planned lobbying strategies and public political arguments on the issues at hand. This important and subsidised (or free) information will provide these citizens with a greater opportunity to add items to the political agenda than those citizens who take the opposing views on the issues at hand. Yet if certain citizens' final policy preferences consistently stand a significantly lower chance of being included on the political agenda than those of others, then society is effectively saying that the views of the former group are worth less and ought not to be seriously considered, let alone voted on. Understood as such, this amounts to a public expression of the inferior status of those with fewer opportunities to add items to the political agenda, and this therefore has a high chance of undermining their self-respect as free and equal citizens.

Let us now move on to the pre-voting deliberative stage. To recall, the principle of constitutional design that governs this stage of politics states that a society must *ensure, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech*. Once more, I contend that in both of the scenarios depicted above, the large retail corporation, but not the SMFs, might plausibly violate this principle in two ways. This is because the same logic of collective action continues to apply to both interest groups. Accordingly, if we understand both the large retail corporation and each SMF as a possible *political competitor* to citizens, then the former, but not the latter, might plausibly compromise political equality at this stage of the political process by acting in ways that cause the *problem of unresponsive policy judgement formation*.

This follows because, in both of the scenarios outlined above, the large retail corporation will enable its shareholders to use their considerable collective resources (via their agents, i.e. the relevant office-holders in the corporation) to 'flood the marketplace of ideas' with arguments and information that favour allowing heavy goods lorries to use high streets or allowing Sunday trading. This can be achieved through the sort of indirect and covert 'naming', 'framing' and

'campaigning' discussed in Chapter 5.¹⁶⁶ Due to the fact that external resources that are valued because they allow one to produce and disseminate political speech are positional goods, it is plausible that beyond a certain point, citizens will conclude that they do not have adequate external resources to ensure that the pre-voting deliberative stage of politics (and, consequently, all subsequent stages) is responsive to their claims, rather than the 'louder' claims of large corporate interests. In such a scenario, a society's institutions once more publicly express the unfree status of all citizens, which has a high chance of undermining their self-respect as free and equal citizens.

Similarly, if we understand both the large retail corporation and each SMF as a possible *issue subsidiser* for certain citizens, then the former, but not the latter, might plausibly compromise political equality at the pre-voting deliberation stage of politics by acting in ways that cause the *problem of inegalitarian policy judgement formation*. This is because politically active citizens who agree, for justice-based reasons, with allowing heavy goods lorries to use high streets or allowing Sunday trading, can utilise the large retail corporation's carefully researched public political arguments and supporting information on the issues at hand. As such, they are provided with additional subsidised (or free) external resources to produce and disseminate political speech that citizens who take the opposing views on the issues at hand do not have. In such a scenario, a society's institutions publicly express the unequal status of those citizens with fewer external resources to produce and disseminate political speech, for they are giving the message that their views on matters of justice ought not to be considered as seriously as the views of others. And this has a high chance of undermining their self-respect as free and equal citizens.

Without retreading all of the equivalent steps of the argument, I hope it is clear that in the two scenarios depicted above, the large retail corporation, but not the SMFs, might plausibly violate the principle of constitutional design that governs the implementation stage of politics, which is once again that society must *ensure, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech*. If we understand the large retail corporation and each SMF as a possible *political competitor* to citizens, then the former, but not the latter, might plausibly compromise political equality at

¹⁶⁶ See section 5.4.2.

this stage of the political process by acting in ways that cause the *problem of unresponsive implementation*. Conversely, if we understand both the large retail corporation and each SMF as a possible *issue subsidiser* for certain citizens, then the former, but not the latter, might plausibly compromise political equality at this stage of the political process by acting in ways that cause the *problem of inequalitarian implementation*. It is also worth noting that at the pre-voting deliberation and implementation stages of politics, the large corporation might plausibly violate the relevant principles of constitutional design due to the unintentional (i.e. apolitical) actions of its resource-rich office-holders.¹⁶⁷

In my view, it is plausible to think that in addition to the two example policy issues covered in this sub-section, there will be many other policy issues in a well-ordered property-owning democracy in which (a) citizens reasonably disagree, (b) the main interest groups are large corporations and SMFs, and (c) the profits of large corporations and SMFs are maximised by different policy options. If so, the above analysis suggests that there will be a significant dimension of political conflict in a well-ordered property-owning democracy in which the presence of large corporations might plausibly compromise political equality in all six ways distinguished in Chapter 5. Moreover, I take it as a straightforward implication of this conclusion that, for policy issues in which *multiple* large corporations oppose SMFs, the former group will, on the whole, retain a collective action advantage, and therefore a resource advantage, because they are more likely to be a privileged or intermediate group than the latter group.¹⁶⁸

6.5.2. *The Large Corporation vs. Non-Economic Interest Groups*

The second dimension of political conflict in a well-ordered property-owning democracy that I will focus on is the range of policy issues in which the profit-maximising interests of a large corporation can be expected to conflict with the political interests of certain non-economic interest groups. By a non-economic interest group, I mean a group of individuals who share a common political interest,

¹⁶⁷ See Chapter 5, section 5.5. For reasons of brevity, I will not belabour the possibility of unintentional actions in this chapter, but rather take it as an implication of what is said about intentional political actions at these stages of politics.

¹⁶⁸ As previously noted, Olson recognises this point about the logic of collective action *between* large corporations (Olson 1965, pp.141–48).

but are not bound together by a common economic interest, in the way that the shareholders in a firm or the workers in a trade union are.¹⁶⁹

Understood as such, the members of a non-economic interest group might be motivated by the shared (non-economic) self-interest of group members or by justice.¹⁷⁰ For the purpose of this sub-section, it does not matter which type of motivation we assume of non-economic interest groups. But in terms of the wider argument of the thesis, there is a significant difference. This is because, in Chapter 5, section 5.5, I provided two arguments as to why egoistic political action might be expected to occur in the circumstances of a well-ordered property-owning democracy. The first of these, the *institutional instability argument*, only explains why individuals would act egoistically in politics when occupying a role in a certain type of economic practice. The second argument, the *limits of reciprocity argument*, explains why individuals might act egoistically in politics in general, with the exception of when they are engaged in those activities that encapsulate democratic citizenship (such as voting, debating with friends, town hall meetings, etc). It follows that if we want to view the members of non-economic interest groups as in some sense self-interested, then we must rely on the *limits of reciprocity argument*, whereas if we choose to view the members of non-economic interest groups as justice-motivated, then we must rely on the *institutional instability argument*.¹⁷¹ In what follows, I will keep the language neutral so the reader can rely on their preferred argument.

¹⁶⁹ This is similar to Ian McLean's distinction between producer and non-producer interest groups (McLean 1987, p.64). However, insofar as McLean includes in the category of non-producer interest groups any group that does not control a factor of production, he allows interest groups who are bound together by a common economic interest, such as consumer groups. In my view, it is already clear why consumer groups would be in an equivalent position to the SMFs in the previous subsection. Accordingly, I want to narrow my focus in this section to interest groups whose members share a political interest, but not a common economic interest in order to pick out an interestingly distinct dimension of political conflict in a well-ordered property-owning democracy.

¹⁷⁰ I do not here countenance the possibility of altruistic non-economic interest groups that aim to act in ways in the politics of a well-ordered property-owning democracy that will give their members additional influence. This is because, by definition, the individuals in this society share a conception of justice that includes a commitment to political equality. Yet in order to have a group of individuals aiming to gain additional political influence to implement a distinct set of moral claims against their shared institutions, it must be the case that they, in fact, affirm a distinct and more demanding conception of justice.

¹⁷¹ If we take the second approach and rely on the *institutional stability argument*, then the idea must be that certain groups of justice-motivated citizens will form political interest groups with the aim of acting in ways that give them additional influence in politics only insofar as this is required to provide sufficient countervailing power to the egoistic economic interest groups that already exist. It cannot be the case that these justice-motivated citizens form these political interest groups with the aim of acting in ways that will give them a greater opportunity than their fellow citizens to achieve the policy outcomes they desire (on the grounds of justice), because they have each internalised my principle of political equality.

With this clarified, I submit that we can expect policy issues that engage the two above conflicting interest groups to arise in a well-ordered property-owning democracy insofar as it is plausible to assume that citizens who are effectively motivated in politics by the desire to realise just institutions will reasonably disagree on what justice requires in certain policy areas, and each of the above two types of interest groups will consider a different policy option either within or (assuming both groups are egoistic) outside this range of reasonable disagreement as the one most likely to achieve their group's aims. In order to clarify this idea, it will be helpful to highlight an example policy issue in which this might be the case.

It is plausible to imagine that, in a well-ordered property-owning democracy populated by individuals with bounded rationality, citizens might reasonably disagree on whether the public healthcare system ought to spend money on providing a new drug for a rare and aggressive cancer that costs £50,000 per quality adjusted life year (QALY) gained, or on extending the currently limited provision of an existing drug that helps to prevent complications from a common disease to all other demographic groups at a cost of £10,000 per QALY gained. We will assume, for simplicity, that a choice must be made between only these two options.¹⁷² This being the case, many citizens might judge that socio-economic justice is best served by allowing public provision of the cancer drug on the grounds that it will allow many of those who are among the unluckiest in society to continue as fully cooperating members of society for as long as possible. Yet, many other citizens might judge that the cancer drug is not very cost-effective and, as such, socio-economic justice is best served by spending the health service's limited funds on extending the provision of the other drug (hereafter: drug X).

Moreover, it is plausible to imagine that in this particular issue area, a very large patient group supports extending the public provision of drug X, whereas only a very small patient group supports the public provision of the new cancer drug. In addition, let us suppose that the cancer drug is manufactured by a large pharmaceutical corporation that, due to patent protection of the new drug, enjoys a high-profit margin and, therefore, has a profit-maximising interest in the timely public provision of its product. On the other hand, the patent protection has expired on drug X, so it is manufactured by many pharmaceutical companies of various sizes at near cost of production.

¹⁷² For an explanation of the concept of a QALY as I use it here, see (Towse & Pritchard 2002).

In this example, the important question for our purposes is 'How should we expect the configuration of interest group politics on this issue to affect each stage of a well-ordered property-owning democracy's democratic decision-making process?' To simplify matters, let us suppose that the many pharmaceutical companies that manufacture drug X at near cost of production are afflicted by the same collective action problem that applied to the SMFs in the previous sub-section. And let us suppose that the cancer patient group is so small as to have negligible resources to impact upon the politics of a well-ordered property-owning democracy. This leaves us with the members of the large patient group in favour of rolling out drug X, and the shareholders in the large pharmaceutical corporation as the main interest groups on each side of the issue at hand. Let us suppose that the former group is equal in number to, or outnumbers, the latter group. With this in mind, what should we expect?

I contend that in this scenario, the large pharmaceutical corporation, but not the large patient group, might plausibly compromise political equality at every non-voting stage of the politics of a well-ordered property-owning democracy in the same way that the large retail corporation, but not the SMFs, did in the previous sub-section. The reason being that on an Olsonian analysis, the members of the large patient group will make up a non-intermediate latent group and, as such, will typically find it hard to mobilise and spend their collective resources in pursuit of their common political interests. The shareholders and employees in the large pharmaceutical corporation will also make up a non-intermediate latent group, but the *By-product Theory* comes into play to explain why they typically will be able to mobilise and spend their collective resources in pursuit of their common political interests. If this analysis of the logic of collective action of the interest group politics of this policy issue is correct, then the large pharmaceutical corporation is in an equivalent position to the large retail corporation in the previous section, and the large patient group is in an equivalent position to the SMFs. Accordingly, we can expect equivalent implications at each stage of our well-ordered property-owning democracy's democratic decision-making process on the issue at hand.

In my view, it is plausible to think that there will be many other policy issues in a well-ordered property-owning democracy in which (a) citizens reasonably disagree, (b) the main interest groups are large corporations and one or more non-economic interest group(s), and (c) the profit-maximising interests of the large corporations

and the interests of the non-economic interest groups are best served by different policy options. If so, the above analysis suggests that there will be a second significant dimension of political conflict in a well-ordered property-owning democracy in which the presence of large corporations might plausibly compromise political equality in all of the six ways distinguished in Chapter 5.

6.5.3. The Managers of Large Corporations vs. the Shareholders of Large Corporations

The third dimension of political conflict in a well-ordered property-owning democracy that I would like to focus on is the range of policy issues in which the political interests of the managers of large corporations might be expected to conflict with the political interests of the shareholders of large corporations. In order to accommodate this dimension of political conflict in our model of a well-ordered property-owning democracy, we must now relax an assumption that has been made up to this point about the relationship between the shareholders and the directors/managers in a large corporation.

So far we have assumed that the directors/managers of large corporations will act in the interests of their shareholders (*qua* shareholders) by maximising profits. This is in keeping with the view of the corporation as a unitary rational actor that has historically been the dominant view in political science (Hart 2010, pp.174–8). This view of the corporation was taken across from neoclassical economics where firms are treated as ‘production functions’ in which homogenous factors of production are transformed into homogenous consumer products using processes of production that are fully known by all market actors (Langlois et al. 2002, p.xi). As such, the firm or the corporation has no acknowledged internal structure, but is instead treated as a ‘black box’ (Arrow et al. 1999, p.vii; Langlois et al. 2002, p.xi).

Yet, as early as the time of Adam Smith it was pointed out that the separation of ownership and control in the joint-stock corporation means that it is misleading to view this type of organisation as a unitary rational actor. This is because, once control of productive property is not constrained by the risks and rewards attaching to ownership, there is the potential for those in *control* of productive assets to pursue interests other than maximising the return to those assets (A. Smith 1999, p.700). This insight has been developed by more recent work in principal-agent theory. Essentially, in the ideal-typical joint-stock corporation we can think of shareholders as *principals* who task the directors/managers, as their *agents*, to

realise their interests in profit-maximisation. But as Michael Jensen and William Meckling (1976) pointed out in an early contribution to a vast subsequent literature, in a world of bounded rationality there is a problem of asymmetrical information between principals and their agents in the corporation: namely, the directors/managers are likely to have a level of expertise and familiarity with the workings of the corporation that is not matched by the shareholders, thereby making it hard for the latter to hold the former to account.¹⁷³

Dennis Mueller helpfully highlights a number of empirical studies that indicate that this principal-agent problem is not merely a theoretical problem (Mueller 2003, pp.68–82). First, there is evidence to suggest that the directors/managers of corporations in existing capitalist democracies often maximise managerial perquisites and the growth rates of their companies (and the accompanying prestige), rather than returns to shareholders (Marris 1998; Williamson 1964). Second, there is evidence to suggest that, particularly when faced with a market for managerial talent with a high turnover, directors/managers will pursue risky business strategies that boost shareholder returns and consequently their incomes in the short-term, but leave the corporation, and its owners, at risk of heavy losses thereafter (Narayan 1985; Palley 1997). Furthermore, Oliver Williamson convincingly argues that these principal-agent problems are exacerbated in larger corporations, because there is inevitably a more complex administrative bureaucracy for the directors/managers to work within that is harder for their principals to navigate (Williamson 1975, pp.126–29).

As I have argued elsewhere, this principal-agent problem is also likely to be exacerbated in the context of a property-owning democracy that ensures widespread ownership of shares (Wilesmith 2015). This is because, as Adolf Berle and Gardiner Means first pointed out, in a society of many small dispersed shareholders, where each shareholder owns only a very small amount of any particular corporation, then any given shareholder will have neither the incentive nor the expertise to hold the directors/managers of any given corporation to account (Berle & Means 1932, pp.44–67).¹⁷⁴ One response to this problem among

¹⁷³ These advances in principal-agent theory were one of many lines of research that were stimulated by Ronald Coase's criticisms of the 'black box' conception of the firm and his influential argument that we can only provide convincing answers to the questions 'Why are there firms?' and 'Why isn't there just one big firm?' by taking the bounded rationality of market actors seriously (Coase 1937).

¹⁷⁴ This replicates the logic behind Olson's *small beats large argument*. Olson actually notes this specific problem in passing (1965, p.133, fn.2), as does Russell Hardin (1982, p.35). Thomas Malleson

advocates of a property-owning democracy is to argue that individual capital owners will not invest directly in large-scale joint-stock corporations in this type of society. Rather, as in modern capitalist societies, small capital owners will pool their investments in large institutional investment funds, such as pension funds and mutual funds, and the managers of these funds can then be expected to have the expertise and incentives to hold the directors/managers of particular corporations, even large corporations, to account (Williamson 2012, pp.236–8; Meade 1964, p.40; Alperovitz 2012, pp.274–75). But the problem with this type of solution is that similar principal-agent problems to those that apply to the relationships between small shareholders and the directors/managers of large corporations will then apply to the relationship between small shareholders and the managers of large investment funds.¹⁷⁵

As a consequence, it is possible that there will be issue dimensions in which the shareholders of large corporations have a common interest in certain policy options that would increase the profitability of their organisations, and the directors/managers of these very same organisations prefer alternative policy options because they would increase their incomes, managerial perquisites or the growth rates of their companies.¹⁷⁶ Moreover, I submit that we can expect these types of policy issues to arise in a well-ordered property-owning democracy insofar as it is plausible to assume that citizens who are effectively motivated in politics by the desire to realise just institutions will reasonably disagree on what justice requires in certain policy areas, and each of the above two interest groups will consider a different policy option either within or outside this range of reasonable disagreement as the one most likely to realise their (occasionally) divergent economic interests. In order to clarify this idea, it will be helpful to highlight an example policy issue where this might be the case.

It is plausible to imagine that in a well-ordered property-owning democracy populated by individuals with bounded rationality, citizens might reasonably disagree over the optimal level of competition in the market for corporate managerial talent. On the one hand, many citizens might judge that socio-economic

also recognises that this problem is exacerbated in a property-owning democracy (Malleson 2014, p.234).

¹⁷⁵ Moreover, as Peter Gourevitch and James Shinn note, there is a tendency for the managers of investment funds and the managers of corporations to form a powerful coalition on many issues (Gourevitch & Shinn 2005, pp.240–41).

¹⁷⁶ To clarify, the type of egoistic political actions postulated in this sub-section could be justified by either the *institutional instability argument* or the *limited reciprocity argument*.

justice is best served by increasing levels of competition for corporate managerial talent, meaning a higher managerial turnover, on the grounds that the discipline of the market mechanism will keep managers more faithful to the profit-maximising interest of shareholders. On the other hand, many citizens might judge that socio-economic justice is best served by allowing corporate managers to retain some protection from competition, meaning a lower managerial turnover, on the grounds that this will incentivise managers to focus on the long-term, rather than short-term, profitability of their corporations, thereby maximally benefitting shareholders in the long-run.

Furthermore, one might plausibly imagine a scenario in which, on this particular issue, the shareholders in existing large corporations tend to support measures that would increase the levels of competition for corporate managerial talent because they think that although some protection from competition is justifiable, as things stand the level of competition is beneath that which best serves their profit-maximising interests in the short- or long-run. In contrast, one might plausibly imagine that the managers in existing large corporations will tend to oppose measures that would increase the level of competition in the market for managerial talent because they judge that such measures would decrease their managerial perquisites or the growth rates of their companies. Let us suppose that the shareholders considerably outnumber the managers. And let us suppose that due to the low salience of this type of issue, these are the only two interest groups of any note.¹⁷⁷

In this example, the important question for our purposes is 'How should we expect the configuration of interest group politics on this issue to affect each stage of a well-ordered property-owning democracy's democratic decision making process?' I contend that in this scenario, the directors/managers of the large corporations, but not their shareholders, might plausibly compromise political equality at every non-voting stage of the politics of a well-ordered property-owning democracy. The reason is that on an Olsonian analysis, whenever the shareholders of a large corporation cannot rely on their directors/managers to pursue their collective political interests, then they must organise separately on the relevant issue as a group directly aiming to achieve certain changes to the law. But in this task they will face the same collective action problem that all non-intermediate latent groups face

¹⁷⁷ On the significant impact of low salience on the politics of corporate governance, see (Culpepper 2010).

and they are therefore unlikely to mobilise and spend their collective resources in pursuit of their common political interests. In contrast, the directors/managers of large corporations are likely to be a privileged or intermediate group who will mobilise to pursue their common political interests.¹⁷⁸ If this analysis of the logic of collective action of the interest group politics of this policy issue is correct, then the directors/managers are in a similarly privileged position to the large retail and pharmaceutical corporation in the previous section, and the shareholders are in a similarly disadvantaged position to the SMFs and the large patient group. Accordingly, we can expect more or less the same implications at each stage of our well-ordered property-owning democracy's democratic decision-making process on the issue at hand.

In my view, it is plausible to think that there will be other policy issues in a well-ordered property-owning democracy in which (a) citizens reasonably disagree, (b) the main interest groups are the directors/managers of large corporations and the shareholders of large corporations, and (c) the profit-maximising interests of the shareholders and the economic interests of the directors/managers are best served by different policy options. If so, the above analysis suggests that there will be a third significant dimension of political conflict in a well-ordered property-owning democracy in which the presence of large corporations might plausibly compromise political equality.

To summarise, I have highlighted three dimensions of likely political conflict in a well-ordered property-owning democracy in which large corporations might plausibly compromise political equality in each of the six ways distinguished in Chapter 5 by bestowing certain groups of individuals who share common political interests with considerably greater resource power than their likely political rivals. This occurs because the existence of large corporations allows certain interest groups to solve their collective action problems more effectively than those interest groups that might otherwise be thought to offer countervailing power.

¹⁷⁸ Of course, for this line of argument to hold, one must think it plausible that the principal-agent problem is likely to afflict large corporations regardless of the corporate governance regime in place. Otherwise this threat to political equality only arises in well-ordered property-owning democracies that happen to have particularly ineffective corporate governance regimes.

6.6. The Limits of Democratic Control: The Large Democratic Firm vs. Political Equality in a Well-Ordered Liberal Socialist Society

I noted in the introduction that my arguments in this chapter are primarily addressed towards a set of Rawlsian theorists who argue that, in a just social system, firms will have a less hierarchical structure than they do in existing capitalist societies. However, I pointed out some important differences in the sort of less hierarchical structures that they advocate. My argument in the previous two sections was addressed towards the subgroup of these theorists who indicate, or imply, that the large joint-stock corporation will continue to play a central role in the economy of a just social system (e.g. Arnold 2012, pp.106–8, 114, 116; Hsieh 2012, pp.155–6; Hsieh 2008, pp.91–3).¹⁷⁹ My argument in this section is addressed to that subgroup of theorists who instead advocate democratically controlled firms (Malleon 2014, pp.237–39; Schemmel 2015, pp.401, 404; Schweickart 2012, p.207), seeing this as a move away from a property-owning democracy and towards a liberal socialism.¹⁸⁰ In what follows, I will argue that some equivalent issues to those raised in the previous two sections are likely to arise in a liberal socialist society with large democratically controlled firms.¹⁸¹

In order to make this argument, it will be helpful to first distinguish the main features of the democratically controlled firms that this group of Rawlsians appears to advocate. Although they say little about the specific features of the firms they have in mind, it seems safe to assume that they follow Rawls (and most others in the relevant literature) in viewing the *sine qua non* of a democratically controlled firm as the 'firm's direction and management being elected by, if not directly in the hands of, its own workforce' (Rawls 2001, p.138) according to the principle of one person, one vote. I follow the accepted convention of assuming that the workers in such firms will aim to maximise average income per worker, rather than the firm's profitability.¹⁸² Clearly this model of democratic control is compatible with a variety of

¹⁷⁹ They also apply secondarily to those more revisionist Rawlsians who argue for large hierarchical capitalist firms within a system approaching *laissez-faire* capitalism: (Lomasky 2005, pp.191–92; Shapiro 1995, pp.70–73; Tomasi 2012, pp.116–17, 234–36; Brennan 2007, p.293).

¹⁸⁰ Both of my arguments apply to those theorists who are sympathetic to both options (Freeman 2013, pp.23–4, 27; 2007b, pp.113, 126, 134, 220, 226–27, 229, 232; O'Neill 2012, p.89; 2008; Williamson 2009, p.47).

¹⁸¹ Following the discussion in Chapter 1, section 1.3, I take the widespread existence of democratically controlled firms to be the *sine qua non* of a liberal socialist society.

¹⁸² There is a voluminous literature assessing the implications of this assumption on technical efficiency and unemployment in a liberal socialist society. For a summary of the issues see (Miller 1990, pp.83–90). Fortunately, we can remain agnostic on these debates for the purpose of my argument.

underlying structures of ownership; however, the following argument applies to all of these various models of ownership.¹⁸³

As I see it, there are at least two dimensions of likely political conflict in a well-ordered liberal socialist society in which large democratic firms might plausibly compromise political equality in each of the six ways distinguished in Chapter 5 in virtue of their relative resource power. In each dimension of conflict, this is because the large democratic firm allows its members, understood as a political interest group, to solve their collective action problem more effectively than those interest groups that might otherwise be thought to provide countervailing power to the large democratic firm, thus unlocking superior resources for political activity.

6.6.1. *The Large Democratic Firm vs. Small and Medium Sized Democratic Firms*

The first dimension of political conflict in a well-ordered liberal socialist society that I will focus on is the range of policy issues in which the average income per worker-maximising interests of a large democratic firm can be expected to conflict with the average income per worker-maximising interests of small and medium sized democratic firms (SMDFs). We can expect policy issues that engage these conflicting interest groups to arise in a well-ordered liberal socialist society insofar as it is plausible to assume that citizens who are effectively motivated in politics by the desire to realise just institutions will reasonably disagree on what justice requires in certain policy areas, and each of the above two interest groups will

¹⁸³ We can distinguish three models of ownership that have gained prominence in the literature on democratic firms. First, there is the model of democratically controlled firms that James Meade (1986, pp.17–28) and Robert Dahl (1985) describe whereby all of a firm's shares are owned by the workers in the firm, and every worker in the firm owns some shares. Each share carries an entitlement to the same rate of dividend from the firm's profits; however, each worker only has one vote at shareholder meetings, regardless of the number of shares they own. The internal management structure of the firm and the wage levels that accrue to positions of differential responsibility are among the things to be decided by shareholders. We might refer to this model as the *worker-owned democratic firm*.¹⁸³ Second, David Schweikart (2012, p.207), David Miller (1990, pp.10–15, 309–12) and Richard Krouse and Michael McPherson (1986, pp.119–20) describe an alternative form of ownership for democratically controlled firms whereby the workers in each individual firm borrow capital that is publically owned and distributed by investment agencies. They do so by paying a leasing fee to these agencies that is equivalent to the value of the capital assets under their control. In return, the workers in each firm have the authority to elect a workers' council, which plays an equivalent role to the board of directors in a joint-stock corporation. Rather than receiving a fixed salary, the workers in each firm are entitled to a specified share of the firm's profits, with the specific distribution of these dividends being among the things decided by the workers' council. We might refer to this model as the *publically owned democratic firm*. Finally, Janoslav Vanek (1970, pp.1–8) describes a form of ownership for democratically controlled firms where neither the workers nor society as a whole own firms. Rather, workers capitalise their firms by selling perpetual bonds with a fixed rate of interest in a private bond market (1970, pp.177–81). As such, the firm's profits do not go to capital owners, but are instead divided among the workers. Once again, Vanek allows that democratic firms might choose to elect a workers' council to make important strategic decisions (1970, pp.1–2), although he maintains that the distribution of profits among the workers is a matter to be decided by a vote of all workers (1970, pp.216–17). We might refer to this model as the *privately owned democratic firm*.

consider a different policy option either within or outside this range of reasonable disagreement as the one most likely to maximise their average income per worker.

We can clarify this idea by tweaking the two example policy issues that were used in section 6.5.1. This time we should imagine that it is the workers in the many SMDFs who want to ban heavy goods lorries using high streets and ban Sunday trading, and that both bans are opposed by the workers in a large democratic retail firm. Again, we might plausibly suppose that the workers in the SMDFs are equal in number to, or outnumber, the workers in the large democratic retail firm. Either way, I contend that in these scenarios, the large democratic retail firm, but not the SMDFs, might plausibly compromise political equality at every non-voting stage of the politics of a well-ordered liberal socialist society in the same way that the large retail corporation, but not the SMFs, did in the politics of a well-ordered property-owning democracy. The reason for this is that on an Olsonian analysis, the members of the SMDFs will make up a non-intermediate latent group and, as such, they will typically find it hard to mobilise and spend their collective resources in pursuit of their common political interests. The shareholders and employees in the large democratic retail firm will also make up a non-intermediate latent group, but the *By-product Theory* comes into play to explain why they will typically be able to mobilise and spend their collective resources in pursuit of their common political interests.

To see why the *By-product Theory* applies to the large democratic retail firm, note that the private incentives for individuals to invest in large corporations in a property-owning democracy had two sources: first, the higher productivity enabled by the distinct legal privileges of the joint-stock corporate form; second, the greater efficiency enabled by organising production at scale, due to natural monopolies, network economies and, most importantly, avoiding the substantial epistemic costs of using the price mechanism for certain economic activities. Although the first of these two private incentives does not apply to large democratic firms, the second does. As such, workers will often have private incentives to form, and remain working in, *large* democratic firms.

If this analysis of the logic of collective action of the interest group politics of these two policy issues is correct, then the large democratic retail firm here is in an equivalent position to that of the large retail corporation in the previous section, and the SMDFs here are in an equivalent position to the SMFs there. Accordingly, we

can expect the same implications at each stage of our well-ordered liberal socialist society's democratic decision-making process on these issues as we expected of a well-ordered property-owning democracy's decision-making process. Furthermore, in my view, it is plausible that there will be many other policy issues in a well-ordered liberal socialist society in which (a) citizens reasonably disagree, (b) the main interest groups are large democratic firms and SMDFs, and (c) the average income per worker-maximising interests of the large democratic firms and the average income per worker-maximising interests of the SMDFs are best served by different policy options. If so, the above analysis suggests that there will be a significant dimension of political conflict in a well-ordered liberal socialist society in which the presence of large democratic firms might plausibly compromise political equality in the six ways distinguished in Chapter 5.

6.6.2. The Large Democratic Firm vs. Non-Economic Interest Groups

The second dimension of political conflict in a well-ordered liberal socialist society that I would like to focus on is the range of policy issues in which the average income per worker-maximising interests of a large democratic firm can be expected to conflict with the political interests of certain non-economic interest groups (as defined in section 6.5.2). We can expect policy issues that engage these conflicting interest groups to arise in a well-ordered liberal socialist society insofar as it is plausible to assume that citizens who are effectively motivated in politics by the desire to realise just institutions will reasonably disagree on what justice requires in certain policy areas, and each of the above two types of interest groups will consider a different policy option either within or (assuming both groups are egoistic) outside this range of reasonable disagreement as the one most likely to achieve their group's aims.

We can clarify this idea by tweaking the example policy issue that was used in section 6.5.2. This time we should imagine that there is still a very large patient group that supports extending the public provision of drug X, but now it is a large *democratic* pharmaceutical firm that supports the alternative option of publicly providing the new cancer drug.¹⁸⁴ Again, we might plausibly suppose that the patient group is equal in number to, or outnumbers, the workers in the large democratic

¹⁸⁴ For those who find the idea of a large democratic pharmaceutical firm implausible, we might tweak the example further to stipulate that the pharmaceutical industry itself is nationalised, but there is a large democratic firm in the supply chain for the cancer drug division of the pharmaceutical industry, and this firm has an average income per worker-maximising interest in the public healthcare system providing any new and expensive cancer drug that is developed.

pharmaceutical firm, and that these are the two main interest groups on each side of the issue at hand. I contend that, in this scenario, the large democratic pharmaceutical firm, but not the large patient group, might plausibly compromise political equality at every non-voting stage of the politics of a well-ordered liberal socialist society in the same way that the large pharmaceutical corporation, but not the large patient group, did in the previous section. This is because on an Olsonian analysis, the members of the large patient group will once again make up a non-intermediate latent group and, as such, they will typically find it hard to mobilise and spend their collective resources in pursuit of their common political interests. The shareholders and employees in the large democratic pharmaceutical firm will also make up a non-intermediate latent group, but the *By-product Theory* comes into play to explain why they will typically be able to mobilise and spend their collective resources in pursuit of their common political interests.

If this analysis of the logic of collective action of the interest group politics of this policy issue is correct, then the large democratic pharmaceutical firm here is in an equivalent position to that of the large pharmaceutical corporation in the previous section, and the large patient group here is in the same position as the large patient group there. Accordingly, we can expect the same implications at each stage of our well-ordered liberal socialist society's democratic decision-making process on this issue as we expected of a well-ordered property-owning democracy's decision-making process. Furthermore, in my view, it is plausible to think that there will be many other policy issues in a well-ordered liberal socialist society in which (a) citizens reasonably disagree, (b) the main interest groups are large democratic firms and non-economic interest groups, and (c) the average income per worker-maximising interests of the large democratic firms and the non-economic interests of the SMDFs are best served by different policy options. If so, the above analysis suggests that there will be a second significant dimension of political conflict in a well-ordered liberal socialist society in which the presence of large democratic firms might plausibly compromise political equality in the six ways distinguished in Chapter 5.

To sum up, I have highlighted two dimensions of likely political conflict in a well-ordered liberal socialist society in which large democratic firms might plausibly compromise political equality in each of the six ways distinguished in Chapter 5 by bestowing certain groups of individuals who share common political interests with considerable greater resource power than their likely political rivals. However, there

are two possible objections to my conclusions in this section that were not applicable in the case of a well-ordered property-owning democracy considered in section 6.5.

First, one might argue that the *By-product Theory* does not apply to large democratic firms because they do not avoid the epistemic costs of using the price mechanism insofar as there are considerable epistemic costs to organising large-scale production democratically, rather than hierarchically. In reply, I note that if it were true that the costs of organising another unit of production democratically soon outweighs the costs of using the price mechanism, then we would expect democratically organised firms to remain small or medium sized. But, in societies that have had democratically organised firms, there have tended to be a range of small, medium and large firms (Eucken 1951, pp.32–34; Ward 1965, pp.67–8). The reason for this -- as the Rawlsian theorists who advocate large democratic firms tacitly acknowledge -- is that in a society populated by individuals with bounded rationality, viable large democratic firms must be structured as representative democracies, rather than as direct democracies. So an element of hierarchy must be permitted in the day-to-day running of large democratic firms, even though those in positions of authority are ultimately accountable to the firm's workers. Yet it is precisely the increased efficiency this hierarchy allows that means the *By-product Theory* will apply to the workers of large firms considered as a political interest group.¹⁸⁵

The second possible objection to my conclusions in this section is that I have assumed that workers in democratic firms will be similarly group interested in the politics of a well-ordered liberal socialist society as the shareholders and managers of large corporations in the politics of a well-ordered property-owning democracy. One way to justify this assumption is by relying on the *limits of reciprocity argument* to explain egoistic political activity. However, it is less clear that the *institutional instability argument* can also ground this assumption. This is because the *institutional instability argument* relies on the idea that when occupying a role in certain types of economic practices associated with private market societies, individuals are inclined to internalise norms that conflict with, and occasionally overpower, their sense of justice. Yet many theorists have argued that one of the

¹⁸⁵ If I am wrong and the *By-product Theory* does not apply to large democratic firms because there are no private incentives for individuals to join or remain in such firms, then this would merely mean that, whereas regulations to prevent large firms from forming look likely to be required in a property-owning democracy, they will not be required in a liberal socialist society.

chief advantages of democratic firms is that they nurture and strengthen each worker's sense of justice (O'Neill 2008, pp.42–48; Cohen 1989, p.46; Pateman 1970, pp.45–67). In reply, I concede that the *institutional instability argument* may apply with less force to the economic practices of a liberal socialist society. However, as I presented that argument in Chapter 5, section 5.5, there are two ways in which the economic practices of capitalist societies might be supposed to compromise individuals' sense of justice: first, due to the norms inculcated in hierarchical workplaces; second, due to the emphasis in economic life on one or more of the values of competition, self- and group interest, acquisition and commodification. I simply note here that, whereas the first type of economic practice may no longer exist in a liberal socialist society, the latter types of economic practices look likely to persist.

6.7. Beyond Olson: Some Unintended Consequences of Egalitarianism?

In this section, I shall examine six commonly accepted limitations of the Olsonian approach to analysing the politics of capitalist democracies that I have relied on.¹⁸⁶ I accept that four of these limitations provide us with reasons to think that the likely interest group rivals of large firms in a well-ordered property-owning democracy or a well-ordered liberal socialist society identified in the previous two sections might often enjoy a greater measure of countervailing power than has so far been suggested. However, in an ironic twist, I will argue that two of these limitations no longer apply once we assume the conditions of a well-ordered property-owning democracy or a well-ordered liberal socialism. So although I must apply some caveats to the conclusions of the previous two sections, I tentatively suggest that the presence of large firms might pose an even greater threat to the realisation of political equality in a well-ordered property-owning democracy or a well-ordered liberal socialist society than in existing capitalist democracies. (And, caveats withstanding, it is far from clear that we should be optimistic about this issue in existing capitalist democracies.)

As I see it, the first two limitations of the Olsonian approach to analysing the politics of capitalist democracies apply with roughly equal force to my conclusions about the collective action problems that face the interest group rivals of large firms in a well-ordered property-owning democracy or a well-ordered liberal socialist society. The

¹⁸⁶ I am indebted to Andrew McFarland's helpful survey article for distinguishing four of these limitations, which come as numbers two, three, four and six in my list (McFarland 2007, pp.55–57).

first limitation is that Olson's arguments underestimate the role of ignorance. As Terry Moe convincingly argues, the observed political mobilisation of large interest groups that Olson's theory tells us should remain dormant can often be explained by their members ignorantly thinking that their marginal contribution to the group's efforts is much higher than is realistically likely (Moe 1980, pp.201–18). The second limitation is that Olson's arguments overlook the equalising effects of issue networks. As Hugo Hecló (1978) convincingly argues, the observed political mobilisation of large interest groups that Olson's theory tells us should remain dormant can often be explained by the fact that each policy domain has its own complex network of communication and interaction that it is hard for any small group to entirely control. As such, the existence of this network lowers the costs for large diffuse groups of individuals to act together in their collective interests. As I see it, if we assume the conditions of a society populated by citizens with bounded rationality, then it is reasonable to conclude that both ignorance effects and issue networks will sometimes enable the interest group rivals of large firms to exercise a measure of countervailing power in the conditions of a fairly well-ordered property-owning democracy or a well-ordered liberal socialism.

On balance, the third and fourth limitations of the Olsonian approach to analysing capitalist democracies also seem to apply to my conclusions with roughly equal force. The third limitation is that Olson's arguments underestimate the role of political entrepreneurs. As Norman Frohlich and Joe Oppenheimer convincingly argue, the observed political mobilisation of large interest groups that Olson's theory tells us should remain dormant can often be explained by energetic political entrepreneurs taking on the (non-financial) costs of mobilisation (Frohlich & Oppenheimer 1971, pp.18–26). The fourth limitation is that Olson's arguments do not account for the observed role of social movements. As Charles Tilly (2004) and John McCarthy and Mayer Zald (1977; 2006) convincingly argue, the observed political mobilisation of large interest groups that Olson's theory tells us should remain dormant can often be explained as outcrops of social movements spearheaded by groups of energetic social entrepreneurs who take on some of the (non-financial) costs of mobilisation.

It is hard to assess whether these two limitations of the Olsonian approach to analysing existing capitalist democracies have the same force when applied to the circumstances of a well-ordered property-owning democracy or a well-ordered liberal socialist society. On the one hand, one might think that insofar as these

societies are well-ordered, individuals will generally be less inclined to expend vast amounts of time and effort creating and maintaining non-economic interest groups, because they will recognise that most of the political disagreements they are involved in are reasonable. On the other hand, given that certain egoistic political actors that generate political inequalities are stipulated to exist in both of these types of society, one might think that because all citizens have a normally effective sense of justice, a greater number of them will mobilise to counteract these political actors than is the case in existing capitalist democracies. As such, I am inclined to say that, on balance, the third and fourth limitations of the Olsonian approach to analysing existing capitalist democracies apply with roughly equal force to my arguments.

However, the fifth and sixth limitations of the Olsonian approach to analysing capitalist democracies do not affect my conclusions about the collective action problems that face the interest group rivals of large firms in a well-ordered property-owning democracy or a well-ordered liberal socialist society. The fifth limitation is that Olson underestimates the likelihood of any given large group containing an intermediate sub-group that has an incentive to mobilise to pursue the good that the entire group wants due to large asymmetries in the wealth holdings of members of the group. As Russell Hardin convincingly argues, the political mobilisation of large non-economic interest groups that we see in existing capitalist democracies can often be explained in terms of a very wealthy sub-group of their members operating as an intermediate group (Hardin 1982, pp.133–37). The sixth limitation is that Olson underestimates the role of wealthy patrons. As Jack Walker convincingly argues, the observed political mobilisation of large interest groups that Olson's theory tells us should remain dormant can often be explained by wealthy patrons taking on the costs of mobilisation (Walker 1991, pp.75–102). The reason neither of these limitations of Olson's arguments apply to my conclusions is that, by definition, there will not be large asymmetries of wealth holdings, and therefore few (if any) suitably wealthy patrons, in a property-owning democracy. And I presume that Rawlsian theorists who advocate democratic firms follow David Schweikart (2012, pp.208–9) in thinking that this will lead to a similarly egalitarian distribution of wealth in a liberal socialist society.

This means that there are at least four ways in which the interest group rivals of large firms might sometimes counteract their *prima facie* resource power in a well-ordered property-owning democracy or a well-ordered liberal socialist society.

However, there are also two reasons to think that the more egalitarian distribution of wealth in a well-ordered property-owning democracy and a well-ordered liberal socialist society might mean that the interest group rivals of large firms are in a weaker overall position in either of these types of societies than they are in existing capitalist democracies. Perhaps most importantly, few contemporary political scientists argue that Olson's concerns about the weak position of these types of groups in existing capitalist democracies are entirely misplaced due to the six abovementioned limitations of his arguments (McFarland 2007, p.58; Smith 2006, pp.311–22). As such, caveats withstanding, I uphold the general conclusion that large firms might plausibly compromise my principle of political equality in either a well-ordered property-owning democracy or a well-ordered liberal socialist society.

6.8. Conclusion

My main argument in this chapter has been that the presence of large firms poses a plausible threat to the realisation of political equality, and therefore justice, in a well-ordered property-owning democracy and a well-ordered liberal socialist society. I made this argument in three broad stages. First, I argued that in a well-ordered property-owning democracy, the presence of a large corporation might plausibly solve a collective action problem for a numerous political interest group (its small shareholders), thus enabling their agents (the relevant office-holders in the corporation) to use their considerable collective resources to pursue their profit-maximising group interests at all three non-voting stages of the political decision making process.

Second, I identified three likely dimensions of political conflict in a well-ordered property-owning democracy in which the relative resource power of the large corporation as described above might plausibly cause political equality to be violated in the six ways distinguished in Chapter 5. In two of these dimensions of political conflict, the interest group rivals of the large corporation look likely to face more intransigent collective action problems than those faced by the shareholders of the corporation. In the third dimension of political conflict, I supposed that the principal-agent relationship between the shareholders in the large corporation and the directors/managers was imperfect, thus allowing the latter group to utilise the corporation's resources for their own distinct political ends. Finally, I identified two likely dimensions of political conflict in a well-ordered liberal socialist society in which the resource power bestowed on certain groups by large democratic firms

might plausibly allow those groups to act in ways that will violate political equality in all six of the ways distinguished in Chapter 5.

Thereafter, I recognised some of the limitations of the Olsonian analysis that my argument had relied upon up to that point, and added some caveats accordingly. Specifically, I recognised that the presence of ignorance, issue networks, political entrepreneurs and social movements in both a well-ordered property-owning democracy and a well-ordered liberal socialist society mean that some of the main interest group rivals to large firms in these social systems are likely to enjoy a greater measure of countervailing power than my initial arguments suggested. However, I tentatively suggested that the egalitarian distribution of wealth in both of these types of social systems might mean that the main interest groups rivals to large firms will have less resource power than they enjoy in existing capitalist democracies.

I noted in Chapter 1, and again at the outset of this chapter, that a striking feature of the contemporary Rawlsian 'choice of social system' debate is that all of the theorists who address the issue of the organisation of firms either ignore or explicitly reject the idea that large firms pose a credible threat to the realisation of justice. Hence, if compelling, my arguments so far in Part III of the thesis suggest that these theorists have all overlooked something important regarding the restrictions that need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice. Accordingly, in the final chapter I will offer some suggestions as to how these theorists might usefully supplement their existing institutional recommendations by combining them with a neglected model of political economy.

7. Conclusion: A Rawlsian Recovery of a Neglected Ideal-Type?

7.1. Summary

I began this thesis by noting the political relevance of two questions that are prompted by the resurgent debates about political economy in normative political theory: first, from a substantive perspective, 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?'; second, from a methodological perspective, 'How should we conceive of the choice between different types of political economy or social system?'

In the three subsequent parts of the thesis, I offered answers to these two questions from a broadly Rawlsian perspective. This perspective was defined by three commitments: (1) the most abstract idea of a democratic society is 'a system of cooperation between free and equal citizens' (Rawls 2001, p.95; 1996, pp.22, 302-03); (2) different views about what ought to count as fair terms of cooperation between free and equal citizens should be understood as different views about the principles of justice that should regulate the major institutions of a democratic society (Rawls 1999a, p.4; 1996, p.16; 2001, p.7); and (3) a just democratic society must be a suitably well-ordered society (Rawls 1996, p.35; Rawls 1999a, pp.7-8, 397; Rawls 2001, pp.13, 27).

In Part I, I addressed the methodological question. I had three aims in this part of the thesis: one critical, one constructive and one elucidatory. On the critical side, I argued that the way in which Rawls presents his institutional arguments by way of an 'all or nothing' choice between five ideal-types of social systems, each purportedly characterised in terms of its 'public aims and principles of design', relies upon an implausible and unattractive method of constructing ideal-types of existing social systems. It is implausible because it relies on three methodological assumptions that, when used to characterise *existing* social systems, are tied to a strongly idealist social philosophy; and unattractive because it sits in tension with the above commitments underpinning a broadly Rawlsian perspective. Accordingly, Rawlsians ought to employ an alternative empirical method of generating ideal-types of existing social systems, which allows for a more flexible 'mix and match' approach to the use of ideal-types when generating institutional recommendations.

More constructively, I argued that, nevertheless, the idealist method of constructing ideal-types of social systems can coherently play a circumscribed role in Rawlsian political theory. Finally, I elucidated where my overall approach, which can be seen to utilise a variety of ideal-types, positions me in the various dimensions of the contemporary ideal/non-ideal theory debate, and defended this position from some prominent objections by clarifying the limits of my theoretical ambitions.

In Parts II and III of the thesis, I addressed the substantive question. My overall argument in these two parts of the thesis was that those who accept the abstract idea of a democratic society as a 'system of cooperation between free and equal citizens' and who view principles of justice as having the role of publicly specifying the fair terms of such cooperation for a well-ordered society, should view the very existence of large firms as a credible threat to the realisation of social justice, regardless of how those firms are owned or controlled.

To this end, Part II comprised of two fairly abstract theoretical arguments. The first of these arguments, in Chapter 3, focused on the *grounds* and *role* of a principle of political equality in a broadly Rawlsian conception of justice. I argued that those who accept the abstract idea of a democratic society as a 'system of cooperation between free and equal citizens', and who view principles of justice as having the role of publicly specifying the fair terms of such cooperation for a well-ordered society, should include the following principle of political equality within a principle of justice that enjoys lexical priority over whatever principle of justice is taken to regulate social and economic inequalities: *each citizen must be guaranteed ongoing approximately equal and adequately positive opportunities to influence policy outcomes*. I reached this conclusion by developing and defending what I referred to as the Rawlsian *status/self-respect argument* for political equality, which is a form of 'strains of commitment' argument made from the vantage point of a suitably modified original position. However, I also argued that a distinct Rawlsian argument, which I referred to as the *epistemic argument*, can ground the priority of my principle of political equality as an abstract principle of constitutional design.

In Chapter 4, I made the second theoretical argument of Part II of the thesis, which provided more concrete detail on the precise *meaning* of my principle of political equality by specifying some constraints that it places on a well-ordered society's political decision-making process. Specifically, I argued that for a well-ordered society to realise my principle of political equality, its political decision making

process must: (a) have a liberal egalitarian voting rule (that satisfies the axiom of resolvability); (b) guarantee universal suffrage; (c) ensure an approximately equal and adequately positive finite opportunity for each citizen to add items to the political agenda, with an appeals condition; (d) ensure, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech during pre-voting deliberation; (e) ensure, on an ongoing basis, approximately equal and adequately positive external resources for each citizen to produce and disseminate political speech during post-voting deliberation about implementation; and (f) ensure, on an ongoing basis, adequately positive external resources for each citizen to access and consume political speech. In the main, I argued to these conclusions by extending the *status/self-respect argument* for political equality. But I also sketched how the *epistemic argument* for political equality appears to support the same conclusions. I ended Part II by observing that principles (a) and (b) have some fairly straightforward institutional implications for a society's political constitution, whereas principles (c), (d) and (e) appear to place broader, and less obvious, constraints on the overall organisation of a society's political economy. Accordingly, a society well-ordered by (*inter alia*) my lexically prior principle of political equality will most likely require an economic constitution as well as a political constitution.

In Part III, I pursued this line of thought about the economic implications of my principle of political equality for a society that is well-ordered in a suitable sense. I specifically focused on the restrictions that my principles of constitutional design (c), (d) and (e) might place on corporations and other types of firms in such a society. I looked to develop this account in three stages. First, in Chapter 5, I examined the ways in which the likely activities of resource-rich firms might plausibly compromise these three principles of constitutional design in the circumstances of a capitalist democracy that is well-ordered by (*inter alia*) my principle of political equality. I argued that each principle might plausibly be violated in two separate ways due to the likely (on the whole) profit-maximising political activities of the office-holders that resource-rich firms bestow with resource power. On the one hand, if we view resource-rich firms (or their office-holders) as *political competitors* to citizens, then the 'adequately positive' demand in each of these principles might plausibly be violated, leading to the problems of *unresponsive agenda formation*, *unresponsive policy judgement formation*, and *unresponsive implementation*. On the other hand, if we view resource-rich firms (or their office-holders) as *issue subsidisers* for certain citizens, then the 'approximately equal' demand in each of these principles might

plausibly be violated, leading to the problems of *inegalitarian agenda formation*, *inegalitarian policy judgement formation*, and *inegalitarian implementation*.

Thereafter, I defended the plausibility of each of these logical possibilities occurring in a suitably well-ordered society by highlighting two reasons that the parties to a Rawlsian constitutional convention have to recognise the possibility of a dimension of egoism in the politics of a well-ordered society, at least as far as non-citizen actors are concerned.

I noted in Chapter 5 that Rawlsians in the 'choice of social system' debate have tended to overlook the threat that resource-rich firms pose to political equality in favour of focussing on the threat posed by the structural power of firms. An important question that therefore arises is 'Are the main types of social systems proposed by theorists in the Rawlsian 'choice of social system' debate well placed to prevent resource-rich firms from violating political equality via their resource power?' The second stage of my institutional argument in Part III addressed this question. Specifically, in Chapter 6, I argued that two of the main models of political economy that have so far been recommended by theorists in the Rawlsian 'choice of social system' debate -- namely, a property-owning democracy and liberal socialism -- appear to include large firms that might plausibly compromise my principle of political equality, even if both societies are well-ordered in a suitable sense. This is because, in a number of issue dimensions, large firms might plausibly solve a collective action problem for certain political interest groups, thereby furnishing these interest groups with considerably greater resource power than their likely political rivals. Moreover, these groups can often be expected to use this power to act in ways that might plausibly violate political equality in all six of the ways distinguished in Chapter 5 (although which violations occur will depend upon whether they are seen to act as *political competitors*, *issue subsidisers* or both). I ended Chapter 6 by recognising four likely features of a well-ordered property-owning democracy and a well-ordered liberal socialism that might mitigate, but not neutralise, the force of my arguments; however, I also noted a feature of both of these societies that might intensify the force of my arguments: the egalitarian distribution of wealth. As such, caveats withstanding, I upheld the general conclusion that large firms might plausibly compromise my principle of political equality in either a well-ordered property-owning democracy or a well-ordered liberal socialist society.

Taken together, Parts II and III of the thesis demonstrate that Rawlsians in the 'choice of social system' debate have all overlooked something important regarding the restrictions that need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice. This is because, as I noted in Chapters 1 and 6, a striking feature of the contemporary Rawlsian 'choice of social system' debate is that all of the theorists who address the issue of the organisation of firms either ignore or explicitly reject the idea that large firms pose a credible threat to the realisation of justice. Accordingly, it appears that my main overall argument in this thesis should lead us to endorse a heretofore neglected answer to the question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?' However, although the shape of a more satisfactory answer to this question has begun to emerge insofar as we have isolated an overlooked and persistent threat to the realisation of justice posed by large firms, it is not yet clear what institutional strategies might best counteract this threat. With this in mind, I shall complete the third and final stage of the institutional argument of Part III of the thesis in the next section by offering some suggestions as to how Rawlsian theorists in the 'choice of social system' debate might usefully supplement their existing institutional recommendations in order to make them consistent with the realisation of political equality.

7.2. Implications: A Rawlsian Recovery of a Neglected Ideal-Type?

In what follows, I shall outline and briefly assess two ideal-typical institutional strategies that look like promising candidates to neutralise the threat that large firms pose to the realisation of political equality in either a well-ordered property-owning democracy or a well-ordered liberal socialism. I consider both of these institutional strategies as possible supplements to the models of political economy advocated by Rawlsian theorists in the 'choice of social system' debate, rather than as competing ideal-types of social systems that we must either prefer or reject in an 'all or nothing' way. This supplementary approach follows directly from the ideal-types methodology that I defended in Chapter 2. To recall, I argued that Rawlsians should favour a more flexible 'mix and match' approach to the use of ideal-types of social systems, and subparts thereof, when generating institutional recommendations, thus allowing for 'recombinant possibilities'. With this in mind, I hope Rawlsians in all of the major camps in the 'choice of social system' debate will view my suggestions

below as possible friendly amendments that might prompt fruitful developments within their camp, rather than as an adversarial challenge from a new upstart camp.

The first promising institutional strategy for neutralising the threat that large firms pose to political equality is what I shall call the *countervailing associational power strategy*. The idea of 'countervailing power' is most commonly associated with J.K. Galbraith's (1952) view of mid-twentieth century American capitalism; however, the concept can be generalised to pick out an ideal-typical approach to combating the threats that large firms, and other concentrations of private political power, pose to political equality. The basic aim of the *countervailing associational power strategy* is to design a political economy so as to encourage the formation of secondary associations that can be expected to exert a roughly equal and opposing influence to one another in each issue domain at each non-voting stage of the democratic decision making process.¹⁸⁷

Understood in these general terms, it is clear that a range of approaches to solving what James Madison famously called 'the mischief of factions' (Madison 2008) can be understood as different species of the *countervailing associational power strategy*. At one end of the spectrum, the egalitarian pluralism associated with Robert Dahl recommends equalising the political resources available to each individual so that in each issue domain, the relevant associational subsystem that voluntarily emerges will be proportionally representative of the different individuals whose interests are engaged (Dahl 1982, pp.170–86). At the other end of the spectrum, the corporatism associated with Philip Schmitter recommends imbuing the main opposing interest groups in each issue domain with certain types of public authority, so that they are equally represented in the governing process itself (Schmitter 1974; 1983).¹⁸⁸ Somewhere in between these two options is the ideal-type of associative democracy called for by Joshua Cohen and Joel Rogers, which looks to encourage the formation of more civic oriented -- or, in our terms, justice-motivated -- secondary associations, which are then imbued with a degree of public

¹⁸⁷ In this sentence I conflate the idea of having power and exerting influence only because the *countervailing associational power strategy* presumes that organisations will be inclined to use their political power to pursue their interests (understood in a broad sense), so an *opportunity* to influence (i.e. power) is, for the sake of discussing this strategy, presumed to be equivalent to the exertion of influence.

¹⁸⁸ Waheed Hussain (2012) proposes a corporatist model of a property-owning democracy; however, he does so on the grounds that such a form of organisation looks best placed to nurture each citizen's sense of justice and is therefore preferable because it promotes 'stability for the right reasons'. In contrast, I mention corporatism here as a potential solution to the threat the large firms might plausibly otherwise pose to political equality.

authority to make certain governing decisions, without this public authority being as formalised as in the corporatist model (Cohen & Rogers 1992).

Clearly, then, there are many possible institutional strategies that might fall under the generic category of a *countervailing associational power strategy* to combating the otherwise disproportionate political power of (*inter alia*) large firms in either a well-ordered property-owning democracy or a well-ordered liberal socialism. I imagine that a credible solution to the problems raised in Chapter 6 will draw upon some of the ideas in this school of thought. However, in what follows, I will highlight three limitations of relying solely on the *countervailing associational power strategy*, which, when taken together, should lead us to take a closer look at another neglected institutional strategy.

The first limitation is that secondary associations that are created, or encouraged to form, in order to provide countervailing political power to the political power of large firms might plausibly have group interests that coincide with the (on the whole) profit-maximising interests of large firms in certain policy areas. When this is the case, the six violations of political equality that I distinguished in Chapter 5 will be even more likely to occur because two powerful interest groups will be united in their efforts, thus forming a *super-political competitor*, and a *super-issue subsidiser* in the relevant policy areas. Admittedly, this first limitation applies with less force to the associative democracy approach of nurturing more secondary associations that aim towards the common good. However, on either the egalitarian pluralist or corporatist approaches, we can imagine plausible scenarios where, for instance, the trade union that is supposed to offset the political power of the large firm instead combines efforts with the large firm. One such example would be if the citizens of a well-ordered property-owning democracy or a well-ordered liberal socialism reasonably disagreed on whether or not a certain industry containing large firms, such as the alcoholic drinks industry, ought to be more heavily regulated. In such a scenario, it is plausible to think that both the large firms representing the economic interests of shareholders in this industry and the trade unions representing the economic interests of workers in this industry would combine efforts to violate political equality at each non-voting stage of the political decision making process.

The second limitation of the *countervailing associational power strategy* is that it seems to require a body to make authoritative decisions about which groups ought to be represented, and to what extent, in each issue domain, but this seems like an

impossible task. As I already noted, Dahl emphasises the equalisation of political resources among individuals, but this alone will not solve the type of collective action problems that I have argued might plausibly plague certain groups in a well-ordered property-owning democracy or a well-ordered liberal socialist society. Accordingly, we require a body to identify latent interest groups and then provide them with what they need to solve their collective action problems. Cohen and Rogers seem to think that the legislative body itself might be able to perform this type of function (Cohen & Rogers 1992, p.451). But as Thomas Christiano has pointed out, this type of solution is circular because legislative outcomes are the very things that are compromised by pre-existing powerful interest groups (Christiano 1996, p.293). As such, there is no obvious solution to this problem.

The first two limitations of the *countervailing associational power strategy* are practical; however, the third limitation is normative. To recall, of the six violations of political equality that large firms might plausibly engender in a well-ordered property-owning democracy or a well-ordered liberal socialism, three were problems of unresponsiveness. These are violations of political equality insofar as, in Chapter 3, I integrated a principle of popular sovereignty into my (democratic) principle of political equality. With this in mind, one might argue that even if the two practical limitations mentioned above were overcome, it would still not be the case that citizens had approximately equal and adequate political power to influence policy outcomes. Rather, citizens would have equally little, if any, political power to do so because policy outcomes would be determined by the interplay of powerful secondary associations. To be sure, insofar as this interplay of secondary associations has been effectively designed so that they neutralise one another's influence in each policy domain, citizens should enjoy roughly the same policy outcomes that they would have achieved in the absence of secondary associations participating in the political decision making process. But the residual concern is that in such a scenario, citizens are equally lucky, not equally powerful.¹⁸⁹

With these three limitations in mind, I would like to highlight a distinct, yet potentially complementary, institutional strategy to neutralising the threat that large firms pose to political equality that has received less attention in contemporary political theory. I have in mind an ideal-type of an economic system that, though currently neglected

¹⁸⁹ Despite his narrow focus on technical inefficiency in *Efficiency, Equality and the Ownership of Property* (1964, pp.35–38), this type of normative concern seems to motivate James Meade's concerns with the Trade Union State in some of his other work (e.g. Meade 1975, p.46).

in progressive thought, has a rich history of support both in US political thought, from Jefferson through to the Populists and Wilsonian Progressives of the late nineteenth and early twentieth century (Zhicao 2015), as well as in the Ordoliberal tradition of European political thought, which reached its zenith in post-war Germany (Oswalt-Eucken 1994; Bonefeld 2012). This is, roughly speaking, the ideal-type of a competitive order of small and medium sized independent producers.

Tong Zhicao has recently argued that Rawls's preference for a property-owning democracy over welfare-state capitalism can be understood (though, I might add, not fully justified) as the latest contribution to a line of US political thought that looks to recover this neglected ideal-type:

Unlike the New Deal and subsequent liberal governments that expanded the federal bureaucracies in order to sustain a modern consumer economy, the aim of reform for the Populists was actually to restore the old ideal of Jeffersonian democracy, a society of decentralised economic and political powers. Compared with the agenda of New Deal liberals, the Populist ideal actually had more in common with Rawlsian property-owning democracy in economic terms (Zhicao 2015, p.297).¹⁹⁰

In what follows, I will focus on the related Ordoliberal vision of this neglected ideal-type, viewing it as an institutional strategy that might usefully supplement the ideal-types of a well-ordered property-owning democracy and a well-ordered liberal socialist society. The chief architect of the Ordoliberal vision was Walter Eucken. His theoretical contributions have often been mistakenly viewed as akin to the classical liberalism promoted by Friedrich von Hayek. Yet, in contrast to Hayek's work, Eucken's Ordoliberalism has been neglected in Anglophone political theory, most likely due to his preoccupation with the specifics of Germany's post-war economic situation (Oswalt-Eucken 1994, p.44; Tuncer 2013, p.154). Admittedly, Hayek's classical liberalism and Eucken's Ordoliberalism share many similarities: they address the same central problem of how to guarantee individual liberty, they have common subject matters in terms of focussing on markets and competitive orders, and they are similarly dismissive of the neoclassical concept of perfect competition. But, in contrast to Hayek, Eucken does not go so far as to argue that there is no relevant hypothetical benchmark against which we can evaluate existing markets. Rather, he says that the attainable standard of 'complete competition', which refers to a market in which all market participants treat the price as given in

¹⁹⁰ Guiliano Amato traces a similar strain of thought in the history of US antitrust jurisprudence (Amato 1997, pp.7–38).

their plans, offers us the relevant benchmark because its realisation guarantees maximum equal individual liberty. He notes that complete competition, understood in this way, can be observed by the absence of market strategies (Eucken 1950, pp.136–52; Oswalt-Eucken 1994, p.40; Tuncer 2013, pp.155–60).

Having identified this normative ideal of the 'completely competitive economy', Eucken argues that a strong state must play a central role in guaranteeing the background conditions against which such an order of free competition is sustainable over time (Eucken 1951, pp.54–5, 95–6). This is a crucial point of divergence from Hayek, who was sceptical of the idea that a social order that is intentionally designed through government policies could ever do a better job of promoting individual liberty and social efficiency than the spontaneous social order that will emerge as a result of individuals acting on rules of thumb that have evolved through an accumulation of specialist knowledge, against a background of freedom of contract (Hayek 1976, p.62).¹⁹¹ Eucken, however, has the opposite concern that a system of robust freedom of contract will lead to self-perpetuating concentrations of private economic power that will eventually undermine the very liberal freedoms that originally constituted the system (Eucken 1951, pp.31–2). As such, a strong state is required to influence the *form* that the economy takes, while holding back from directing the day-to-day economic *process* itself (Eucken 1951, p.95). This conclusion is based less on abstract epistemological theorising of the kind that Hayek favours, and more on empirical studies of the actual effects of trying out different systems of political economy, such as a *laissez-faire* freedom of contract or a system of regulated monopoly, in a given society (in this case Germany) (Eucken 1951, pp.28–31; 1950, pp.106–16).

Using this method, Eucken argues that a background system of *laissez-faire* freedom of contract can be seen to lead to concentrations of economic power that undermine complete competition over time. In Eucken's view, the threat here is not merely that modern technological advances require large-scale industrial units of production to be technically efficient, which puts small and medium size firms out of business. This is because these same technological advances tend to open larger

¹⁹¹ I refer here to Hayek III. Historians of economic thought have divided Hayek's corpus into three phases that substantially differ, known as Hayek I (1929 - 1936), where he focuses on technical economics, and Hayek II (1936 - 1960) and Hayek III (1960 - 1988), where he advances different versions of his classical liberal political economy (Fleetwood 1995). It has been suggested that Hayek II was much closer to the Ordoliberal position of Eucken. But this was before Hayek's major works on institutional design in which he demonstrates a deeper scepticism about an interventionist role for governments and sets out his position on monopolisation (Kolev 2010, pp.9–15).

industrial units to wider competition through better transport, the development of substitute goods, and the increasing flexibility of industrial equipment to switch between producing different goods (Eucken 1951, pp.42–4; 1950, p.270). Rather, problematic economic power stems from market concentration, which most commonly results from bringing many works under unified control, whether that be through cartelisation, vertical integration throughout the supply chain, or horizontal integration among one-time competitors (Eucken 1951, p.49).

We can distinguish three separate problems that Eucken attributes to the existence of this type of private economic power. First, it undermines individual liberty because 'freedom of contract can be used to eliminate competition and to restrict the freedom of others by means of sanctions, boycotts, etc. The principle of freedom of contract has thus come into open conflict with the competitive principle' (Eucken 1951, p.31). Second, it is inefficient because, although monopolistic enterprises often have higher profits that they reinvest in their productive apparatus in order to make technological improvements, this merely means that the 'excess profits' of the monopolist are being invested in a branch of production that it would not be invested in were there complete competition. As such, the resulting economy will suffer from product-mix inefficiency (Eucken 1951, p.39). Third -- and most important for our purposes -- 'once monopolistic bodies have begun to flourish in a state, they gain considerable political influence, so considerable that the state itself becomes incapable of exercising effective control' (Eucken 1951, p.35). Put another way, 'economic and political power are usually to be found in mutual support of one another' (Eucken 1950, p.272).

In light of these diagnoses, the key recommendation of the Ordoliberal school is that economic policy should not aim to regulate private economic power, but rather to prevent its very existence. Indeed, Eucken went so far as to propose an independent anti-trust agency to regulate market structures, which he viewed as being as important as a supreme court for maintaining a liberal social order (Oswalt-Eucken 1994, p.41; Eucken 1990, p.294). I mention this policy proposal here only as an illustrative example of the types of solutions that this approach offers, in contrast to those generally recommended by theorists who adopt the *countervailing associational power strategy*. By way of contrast, we might instructively label this approach the *fragmentation strategy*: whereas the *countervailing associational power strategy* aims to help certain latent political interest groups overcome collective action problems that might otherwise persist, the *fragmentation strategy*

aims to ensure that certain political interest groups are faced with collective action problems that they might otherwise overcome.

Clearly Eucken and the Ordoliberalists were primarily concerned with market power, rather than large firms *per se*. In a similar vein, I noted in Chapter 6, section 6.2, that if a large firm enjoys market power, then it may be more likely to act in ways that will bring about the six types of political inequality distinguished in Chapter 5. However, I went on to offer a broader definition of the type of large firm that poses a plausible threat to political equality, which did not view market power as a necessary characteristic. I would like to tentatively suggest that Eucken's issues with the political power of monopolistic firms lend themselves to this broader concern with large firms once we combine his thought with two insights about the nature of modern economies. First, in a world where large firms compete in competitive international markets, but different firms are based in different sovereign states within which they qualify as large firms, it is plausible that a firm might gain a crucial short- to medium-run advantage over its competitors in other states if it can induce an advantageous policy change in its state of residency. Second, even in competitive markets, large firms that have the resources to influence public policy can be expected to integrate political activities into their profit-maximising strategy if this use of resources offers them a competitive advantage (Reich 2009, pp.50–56, 133–36, 143–48). As I see it, these economic conditions of modernity raise the possibility that complete economic competition might be necessary, but not sufficient, to ensure political equality. If so, it appears that, when applied to modern conditions, Eucken's Ordoliberalism may well converge upon the vision originally proposed by Jeffersonian democrats: the neglected ideal-type of a competitive order of small and medium sized independent producers.

Interestingly, a number of examples of how the *fragmentation strategy* might be used to realise and sustain a competitive order of small and medium sized independent producers can be found in the work of James Meade (1975, pp.46–49).¹⁹² One interesting policy proposal worth mentioning, again purely for illustrative purposes, is the idea that

¹⁹² As I noted in Chapter 1, Meade was a mid-twentieth century British economist whose work was the main inspiration behind Rawls's call for a property-owning democracy.

the present Corporation Tax which is levied on the profits of all companies might be abolished and replaced by a progressive tax on the number employed by a single employer (Meade 1975, p.46).

As the subtitle of this thesis suggests, the institutional recommendations that I have set out here are intended as promising suggestions for further consideration, rather than as a comprehensive answer to the question 'What restrictions, if any, need to be placed on corporations and other types of firms in order for a social system to conform to the demands of social justice?' I have highlighted two broad strategies that Rawlsians in the 'choice of social system' debate might adopt to supplement the ideal-types of a property-owning democracy and liberal socialism as they are currently advocated so that these social systems are able to counter the threat that large firms might plausibly pose to the realisation of political equality. The *countervailing associational power strategy* is more widely advocated in contemporary political theory; hence, I have focused predominantly on the virtues of the neglected *fragmentation strategy*. Insofar as my points in favour of this second strategy are compelling, this section can be seen to amount to a Rawlsian recovery of the neglected ideal-type of a competitive order of small and medium sized independent producers.

7.3. Further Research

I take it that the preceding discussion about the implications of my main argument for the Rawlsian 'choice of social system' debate highlights a number of avenues for further research. Most obviously, it raises the question of whether the *countervailing associational power strategy* or the *fragmentation strategy*, or some combination of the two, or some alternative option, offers the most promising response to the threat that large firms pose to political equality in a well-ordered property-owning democracy or a well-ordered liberal socialism. Additionally, it raises an interesting question about the extent to which large firms might pose a threat to political equality, even if -- contra-Eucken -- they are economically efficient due to the fact that 'although technological economies will commonly be exhausted at a size that falls well short of market dominance in most mature industries, the same is not true when we factor in attempts to economise the costs of using the price mechanism' (Williamson 1975, p.260). Similarly, there is the question I raised about whether large firms might plausibly pose a threat to political equality even if -- contra-Eucken -- they do not enjoy market power in an international market, provided they have adequate political resources to influence the rules that govern their activities in their

state of residency. Finally, I raised the more theoretical question of whether it matters, from a normative perspective, if policy outcomes are responsive to the claims of interest groups, rather than the justice-motivated claims of citizens, provided interest group politics has been designed so as to ensure that it results in the same policy outcomes that justice-motivated citizens would have selected.

In addition to the topics raised in the previous section, the arguments of previous chapters indicated several areas for further research. In Chapter 6, I argued that the presence of large firms poses a plausible threat to political equality in both a well-ordered property-owning democracy and a well-ordered liberal socialism. However, I highlighted three problems of political inequality that large corporations raise in a property-owning democracy, and only two problems of political inequality that large democratic firms raise in a liberal socialist society. This raises the question of whether the latter type of social system might be preferable to the former from the perspective of political equality. My initial thoughts on this issue are that, insofar as the institutional strategies outlined in the previous section seem to apply to either a private-property or a liberal socialist society, there is no reason to think that one such type of society is at a clear disadvantage at this stage. But the issue is worth exploring in greater depth. Moreover, the arguments of Chapters 6 and 7 indicate that it might be fruitful to develop and evaluate from a more general normative perspective an ideal-type of Ordoliberal Socialism.

In Chapter 5, I remained officially agnostic about the threat that the structural power of capitalist firms might pose to political equality in order to focus on their resource power. However, insofar as my avowed aim in theorising about social justice is to posit an achievable long-term goal for the institutional reform of democratic societies, this agnosticism can only be provisional.¹⁹³ There are two questions that are worth pursuing about the structural power of firms. The first is the extent to which the structural power of firms really does present a threat to the realisation of political equality. In Chapter 5, I raised the possibility that this problem relies for its force on either elected representatives or citizens voting ignorantly, irrationally or myopically. This is not necessarily a criticism of the structural power thesis, but it does raise questions about the conditions in which it applies. The second question about the structural power of capitalist firms is whether, if the structural power thesis

¹⁹³ Although it is worth noting that, whereas theorists have tended to emphasise that the structural power of firms is a problem that would remain even if their resource power were neutralised, my arguments in Chapters 5 and 6 show that the resource power of firms may well remain even if their structural power was neutralised.

holds, it offers us grounds to prefer a liberal socialism to a property-owning democracy. Martin O'Neill has hinted at this possibility (O'Neill 2012, p.83), and Stuart White has recently argued that egalitarian capital flight is a concern in a property-owning democracy (White 2011, pp.569–71). However, it is clear that a more thorough comparison of the socialist solution to this problem (worker- or socially owned firms) and solutions that are compatible with the retention of privately owned firms (such as capital controls) is required.

Chapter 5 also raised questions about the moral psychology that should be assumed of individuals in a well-ordered society. A sub-theme of this thesis has been that different theorists in the Rawlsian 'choice of social system' debate tend to rely on different assumptions about moral psychology to support their institutional conclusions. I have aimed to adopt a set of psychological assumptions about the free and equal citizens of a well-ordered society that match my overall theoretical ambitions, which allow for a measure of utopianism restrained by the practical aim of theorising about a social practice governed by an ideal of reciprocity in a world of bounded rationality. However, it is clear that further research into the most plausible moral psychology to assume for the purposes of theorising about institutions from a broadly Rawlsian perspective will have major implications for the type of social system that is ultimately recommended. For instance, one institutional option that is discounted by my psychological assumptions is an effective regime of corporate social responsibility in a well-ordered society. Yet with some minor tweaks to the moral psychology I have relied on, this institutional strategy might also become a viable option. On a related point, it is worth investigating the extent to which theorists who are concerned by political inequality in existing democratic societies require a distinct moral psychology of institutional change in order to explain how democratic societies might transform into just societies in a democratic manner.

Finally, the earlier chapters of the thesis contained some insights that could be developed into more general contributions to Rawlsian scholarship. First, Chapter 2 highlighted the neglected role of idealist philosophy in Rawls's work, and, as a result, the role that idealist assumptions have, perhaps inadvertently, played in the work of contemporary Rawlsian theorists. Second, Chapters 3 and 4 highlighted the way in which Rawls's more opaque arguments about the social bases of self-respect might be developed so as to make a Rawlsian contribution to recent work on the link between social equality and political equality (e.g. Kolodny 2014a; 2014b).

I hope to have persuaded those who are sympathetic to a broadly Rawlsian approach to theorising about social justice that it is worth examining, once again, the value of political equality in a just society, and the restrictions that this might place on corporations and other types of firms. As always, I offer this suggestion in the spirit of a free and equal cooperating partner engaged in the reciprocally advantageous project of bringing about a just, well-ordered democratic society.

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Acknowledgements

Over the last four years I have accumulated many vast debts of gratitude. I hope to one day repay many of these debts in full (the rest I plan to repackage into complex collateralised emotional obligations and sell on). In the meantime, I would like to offer my heartfelt thanks to my many kind creditors.

I would like to begin by thanking my primary supervisor, Albert Weale. I have been one of many lucky beneficiaries of Albert's dedication to the pedagogical side of his work. It has been a real privilege to have spent so much time in his company discussing ideas, and I cannot begin to quantify how valuable his detailed feedback on my draft work has been over these past four years. Similarly, my secondary supervisor, Emily McTernan, has gone beyond the call of duty in terms of the time and effort she has devoted to helping me improve my work. I would like to thank her in particular for inviting me to present at the British Academy and Leverhulme Trust sponsored workshop on 'Social Equality and Public Policy' in January 2016.

Many of the ideas in this thesis were first presented at the UCL School of Public Policy Political Theory Workshop. In my opinion, when at its best, this workshop is an unrivalled forum in which to receive detailed feedback on a piece of work. Of course, this is only the case due to the generosity of my fellow PhD students, and the many talented and dedicated convenors over the years, to whom I am extremely grateful.

I am also grateful to all those who have commented on the draft chapters that I have presented at conferences, including Warwick University's Legal and Political Theory Conference (2013 and 2016), and the University of Manchester's Brave New World Conference (2015). In addition, I would like to thank the attendees of the 2014 'Predistribution and Property-Owning Democracy' Summer School at the University of Minho in Braga, Portugal for their many valuable insights and pleasant company. Special thanks go to the organisers Michele Loi and Roberto Merrill.

Thanks must also go to António Baptista for arranging for my article on 'Social Equality and the Corporate Governance of a Property-Owning Democracy' to appear in a special issue of the journal *Diacritica* on 'Predistribution and Property-Owning Democracy' following the University of Minho conference. Similarly, I would like to thank Christian Schemmel and Stefan Gosepath for feedback on a draft

article that was under consideration for an earlier special issue on 'Socio-Economic Justice: Beyond the Welfare State?'. Unfortunately that special issue arrived a little too early in my research period. In a similar vein, thanks to Michael Bennett for a productive exchange of draft papers on the topic of business power. And special thanks to Florian Ostmann for many stimulating discussions about the topics in this thesis, and political theory more generally.

I would of course like to thank the Arts and Humanities Research Council (AHRC) for funding this PhD. During my fourth year I have come to realise the true value of having had AHRC funding for the first three years.

I would like to thank my family for their support over the last four years, and in particular the last few months. It goes without saying that I could not have done this, or anything else, without you.

Finally, thank you Liz -- I could not have asked for more love and support and I will be forever in your debt for all of your help.