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Thesis.

Egalitarian Justice in Unequal Societies.

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Philosophy M.phil 2005.

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Abstract.

My thesis addresses the problem of whether, and how, departures from a strictly egalitarian distribution of advantages can be justified on grounds of justice. I argue that there can be an egalitarian case for unequal distributions of primary goods, or resources, due to the burdens that the previously well off, and the talented, face in moving from an unequal society where they enjoyed great benefits to a more egalitarian society. I argue that these burdens, though transitional, should be taken to be relevant in deciding what the correct principles of justice for our society are. This thought forms the foundation of my 'dynamic' conception of justice, in which different principles of justice apply to different societies, depending on how egalitarian their distribution of advantages actually is. Our society, being very unequal, will have a particular set of principles of justice which correctly apply to it, and which will require substantial redistribution of primary goods to benefit the worst off. However, once these principles are correctly instituted, and our society becomes more egalitarian, a different set of principles of justice may then apply to our society: principles which allow less extensive departures from equality in primary goods than the previous set of principles of justice. This conception of justice is defended against Rawlsian criticisms, which argue that transition problems should not be accommodated by principles of justice, and also against recent arguments from G A Cohen on the distinction between principles of social regulation and principles of justice.

Egalitarian justice in unequal societies.

Introduction.

In much of the contemporary writing on social justice in Anglo-American political philosophy, there is a noticeable lack of support for the idea that the fact that we are currently in (what I assume to be) an unjust and unequal society could, or should, change the principles of justice which correctly apply to our society. Instead, principles of justice which apply to society are derived once the facts about the injustice in the society are abstracted from, and then justice is presented as an ideal which a society, even if substantially unjust, should strive to achieve.¹ An example of such an approach to social justice is Rawls' theory of justice, in which only 'general' facts relating to psychology, and economic and political 'laws' are available to the parties in the Original Position who are to choose the principles of justice: Rawls explicitly rules out the possibility of knowledge of particular existing societies, and hence the injustice of particular existing societies, being available to parties in the Original Position.² As will be discussed throughout this thesis, different conceptions of social justice abstract from facts about societies and individuals' psychologies and motivations to different degrees, but there seems to be a widespread agreement that facts about presently existing, unjust, societies are irrelevant in our deliberations about what justice *is*. I want to counter this widely held view. I argue that facts about existing, unjust and unequal societies *are* relevant in partly determining what justice is.

In the path to this conclusion, I make use of two main argumentative moves. On the one hand, I focus on our pre-philosophical intuitions about justice: both our intuitions about particular cases (for example, which distributions of advantages seem just, and which

¹ To avoid confusion, it should be noted that although I am taking the conceptions of social justice which I discuss in this thesis to all hold that societies should 'strive to achieve justice', these conceptions do not hold that social justice places always *overriding* moral obligations on us to bring about justice, nor are they committed to the view that full justice should, or even *can*, be done.

² See Rawls, *Theory of Justice*, p. 137-138.

unjust), and also intuitions about the role that principles of justice have in our political morality and what the *problem* of justice is. The second main argumentative move is a more ‘internal’ criticism of the major contemporary conceptions of justice. I try to show that, given what these conceptions *do* take to be relevant to questions of justice, they lack a plausible rationale for excluding as irrelevant to justice facts about presently existing unjust distributions in society.

This last point is ambiguous, however, and raises a question about how in this thesis I understand the claim that facts about presently existing injustices in society are ‘relevant’ to the question of justice. On the one hand, one might argue that many contemporary conceptions of justice answer a *different* question to that with which I am concerned here: they address the problem of ‘*ideal*’ justice (in which problems of non-compliance, existing injustice, *and also*, perhaps, what Rawls terms ‘less happy [but not unjust] circumstances’ are held to be irrelevant)³. Perhaps, it might be wondered, I could be more properly said to be addressing problems of non-ideal justice, where issues of non-compliance with principles of justice, and the existence of injustice, *are* relevant?⁴ If this *were* the case, then the arguments of this thesis would not be *objections* to the prevailing conceptions of justice in the contemporary philosophical literature, but rather an *extension* to such works. However, I argue that there is no plausible ‘ideal’ conception of justice which takes facts about existing injustices as irrelevant. In so far as writers on the philosophical problem of justice are answering a different question to me, they are not addressing the problem of justice, but some other problem⁵. In a word, facts of existing injustices are relevant to justice, all the way down. The crucial point is that, given what philosophers such as Rawls take to be relevant to *ideal* justice, their exclusion of facts about existing unjust societies as *irrelevant* is unjustified.

³ Rawls, *Theory of Justice*, p. 246.

⁴ On the distinction between ideal and non-ideal justice, see Section 39 of John Rawls, *A Theory of Justice*, pp. 243-239

⁵ I argue in Parts 1 and 2 of this thesis that contemporary philosophers on justice are best seen as addressing the problem of the correct egalitarian moral ideal for society, rather than the problem of justice. Such a social moral ideal has different desiderata, I argue, than the attempt to devise plausible principles of justice.

This thesis, then, presents the argument that facts about existing distributions of goods in societies are relevant in determining what principles of justice should correctly apply to that society. This idea forms the foundation of what I term the ‘*dynamic conception*’ of justice. The dynamic conception of justice holds that as the distribution of goods in a society changes, the principles of justice that apply to that society may also change. One reason for this is the effect that the distribution of goods has on the burdens on citizens involved in redistributing goods in a more egalitarian pattern (for example, it is extremely burdensome to move to a more egalitarian distribution of social goods, if this involves giving up a great deal of what one has). Furthermore, I argue, the existing distribution of goods in society is relevant to justice in a different, and perhaps less obvious, way: how goods are distributed in our society affects the kind of motivations that it is reasonable to develop. For example, it may be unreasonable to expect a citizen of a society governed according to laissez-faire principles of distribution, which allows great inequalities to become established, and provides little help to those who end up badly off, not to develop predominantly ‘selfish’ motivations. These motivations are relevant to justice as, I argue, principles of justice should not be overly demanding: and conforming to principles of justice may be overly demanding if doing so involves suppressing our strong motivations to act on our partial and self-centered motivations to a high degree.⁶ Again, then, the extent of the burdens which proposed principles of justice will impose on us are relevant in determining whether these principles are correct principles of justice for a society, and the type and extent of these burdens is partly determined by the existing distribution of advantages in the society.

The dynamic conception of justice allows for the possibility, which I argue for in this thesis, that while the principles of justice which correctly apply to our society may not

⁶ In a sense then, it is not simply the facts about the existing distribution of goods which are relevant, but rather- and perhaps more fundamentally- the psychological burdens (such as welfare losses, for example) that will be imposed on society by enacting putative principles of justice. However, these burdens exist because of the present distribution of goods in the society in question. Furthermore, in order to understand whether, and *why*, these burdens are a potential, justifiable, source of complaints against putative principles of justice, we must take in account facts about the present distribution of goods. For example, as was suggested above, if the distribution of goods in a society is in accordance with laissez faire principles, with little safety net for the unfortunate, then it may be unreasonable to expect people not to have predominantly selfish motivations.

be strictly egalitarian, because of the existing inequalities in our unjust society, once the principles of justice which *do* correctly apply to our society are conformed to, and inequality is significantly reduced as a result, different principles of justice may then apply to the society in question, which are *more* strictly egalitarian than the preceding principles: that is, they will permit *less* inequality. The hopeful thought, that I provide some arguments for in Part Three, is that the dynamic conception of justice may, if the principles arising from it are conformed to, demand moves towards a very strongly egalitarian ideal as a matter of justice, by a succession of progressively more egalitarian stages. However, as far as our society *now* is concerned, the principles of justice which will emerge from the dynamic conception of justice are likely to be less egalitarian than those which egalitarian philosophers such as Rawls, Nagel and Cohen have proposed.

This last point touches on a problem which can be seen as the central issue that motivates this thesis: that is, if we are egalitarians, how much inequality can we justify, and how do we justify it? ‘Egalitarianism’ is here understood as a broad church: the positive view that justice should demand a distribution which is significantly less unequal than all existing societies, and also the negative view that factors which one is not responsible for, such as talent and voluntary exchanges, are not, in themselves, a source of moral entitlements to social goods. We should also add the view that *relative*, and not simply absolute, levels of advantages should be of moral concern. This wide-ranging conception of egalitarianism is neutral on other, perhaps more controversial, questions that have provided the focus for much the recent philosophical writing on egalitarianism: for example, whether equality is a good ‘in itself’, or whether ‘leveling down’ is good in any respect.⁷ Most egalitarian political philosophers want to allow that egalitarian justice can, and should, accommodate (limited) prerogatives to depart from equality. Egalitarian political morality does not, on this view, demand that distribution of goods must adhere to a scheme of strict equality: citizens have, as a matter of justice, prerogatives allowing them to depart from equality, if they can do so.⁸

⁷ See, for example, Derek Parfit, ‘Equality or Priority’ and Larry Temkin, ‘Equality, Priority and the Leveling Down Objection’, in Clayton and Williams ed., *The Ideal of Equality*.

⁸ On prerogatives to depart from equality, see David Estlund, ‘Liberalism, Equality, and Fraternity in Cohen’s Critique of Rawls’, and Michael Otsuka, ‘Prerogatives to Depart From Equality’.

The dynamic conception of justice that I present in this thesis allows departures from equality in the distribution of goods in a society as justified, if this distribution could not be reasonably rejected, taking into consideration the complaints of reasonable people participating in the society in question. The essential point here is that moves towards greater equality, from a position of inequality, can impose burdens on the previously well off that can be the source of justified complaints against the enactment of strict equality which outweigh the complaints that those who are worse off (in terms of their share of goods) may raise against the continued existence of (some) inequality in their society. In order to address complaints in a way that accords with the equal moral importance of all citizens, we may have to allow some inequality in the distribution of goods to exist.⁹ However, it is argued in this thesis that the level of inequality in the distribution of goods that is permitted by justice will probably be far below the level of inequality which currently exists in all political societies. Also, the dynamic conception of justice allows for the possibility that after a first move towards greater equality is enacted, as demanded by principles of justice, more strictly egalitarian principles of justice may *then* become correctly applicable to the society in question. The justification of certain prerogatives to depart from equality may be morally valid when moving from a very inegalitarian society to a more egalitarian one, but quite inappropriate as elements of principles of justice when the more egalitarian society has become an established form of social life, with people's motivations, ambitions and values being different from those in a inegalitarian society.

The arguments of this thesis can be seen as an attempt to develop a new, plausible

⁹ By 'the distribution of goods' here, is meant the distribution of so-called 'resources': that is, income, wealth, adequate shelter and health, and the use of the faculties of a normally functioning human body (or adequate artificial substitutes, such as prosthetic limbs for the disabled). I present no argument in this thesis for this account of the 'currency' of egalitarian justice, and in particular the reasons for rejecting welfarist accounts of the egalitarian justice. Such arguments have been rehearsed many times, and I have nothing substantive to add to them. However, two points should be briefly noted. Firstly, insofar as I make use of the 'complaints' model of justification for putative principles of justice, welfarist elements enter into my conception of justice, but in a limited way some the psychological burdens are the source of justified complaints. Secondly, I also allow in Part Two for the possibility that, in a possible strongly egalitarian society in the future, the scope of egalitarian justice *might* be justifiably be expanded to include more extensive welfarist elements.

conception of egalitarian justice, motivated by a series of objections and counterarguments to some of the main examples of contemporary philosophical work on egalitarian justice: in particular, the writing of Rawls, Nagel, and G.A Cohen. The dynamic conception of justice presented here is in agreement with each of these writers on some points, but diverges sharply from them at other points, because of what I believe are serious flaws in their conceptions of justice. In this Introduction, then, these three main theoretical positions on the egalitarian justice should be briefly discussed, in order to establish the intellectual context of this thesis.

Rawls derives his principles of justice from what parties, motivated by rational self-interest in the Original Position would agree to. Parties in the Original Position have no knowledge of the *particular* circumstances of their society, and here we can see a fundamental difference between this conception of justice, and the dynamic conception of justice that I present in this thesis. In the dynamic conception of justice, facts about the distribution of goods in a *particular* society partly determine which principles of justice are appropriate to that society. Now, Rawls *does* bring in consideration of the burdens that principles will impose on citizens who are *not* behind a ‘veil of ignorance’, when he discusses the problem of stability: a conception of justice must be stable, says Rawls, in that it must be reasonable to expect citizens with a knowledge of their own particular conceptions of the good, and their talents, to develop motivations to willingly conform to the principles of justice, and not simply do so for fear of avoiding sanctions.¹⁰ A society will be ‘stable’ for Rawls, if it avoids imposing excessive ‘strains of commitment’ on citizens in enacting principles of justice. However, two points should be noted. Firstly, Rawls *explicitly denies that the ‘strains of the commitment’ faced by those who were previously well off (that is, before egalitarian principles of justice were enacted) have any relevance in determining what justice is.* Rawls writes, ‘We do not consider the strains of commitment that might result from some people having to move from a favoured position in an unjust society to a less favoured position in a just society’.¹¹ On this point, the dynamic conception of justice clearly diverges

¹⁰ Rawls, *Theory of Justice*, especially p. 138 and Section 69 pp. 453-462

¹¹ Rawls, ‘Reply to Alexander and Musgrave’ in Freeman ed. *Collected Papers*. Pp. 251-252

from Rawls. Secondly, insofar as Rawls is concerned to avoid excessive strains of commitment on citizens, he is not concerned with the *relative* size of complaints, but with achieving ‘stability’. Note that a society could be *stable* even if the enactment of principles of justice imposed *greater* strains of commitment on some citizens than others, with a corresponding inequality in the strength of complaints for and against the maintenance of the distribution in question, as long as the strains of commitment were not so great that the principles of justice in question could not generate their own support. Here, too, my conception of justice diverges from Rawls, in that the dynamic conception of justice holds that principles of justice can only be correct for a society if the greatest complaint against the principles is less strong than the greatest complaints against alternative proposed principles of justice.

Nagel’s conception of egalitarian justice is closely related to Rawls’s, both in its constructivist approach to justice, and his substantive conclusions regarding the just society (such as his argument that principles of justice are restricted to the Basic Structure of society, for example).¹² In his book *Equality and Partiality*, Nagel writes that principles of justice are only legitimate if they can be the object of reasonable agreement amongst all citizens to be governed by the proposed principles.¹³ Nagel’s own account of reasonable agreement means that the strains of commitment on citizens in a society governed in accordance with principles of justice have a much more central role, in determining the justifiability of these principles, than in Rawls’ conception of justice. This is because Nagel believes that principles of justice are only justified if no one in the society governed in accordance with these principles could reasonably reject them (what Nagel calls the condition of ‘unanimity’): this is a different (and, perhaps, more difficult to meet) demand from Rawls’ condition that principles of justice would be agreed to in the Original Position and are stable. Principles of justice may be stable in that they generate their own support, without them being such as that they can be

¹² It should be noted that explicit references to justice are rare in Nagel’s *Equality and Partiality*. However, he clearly views his project as closely related to Rawls’ writings on justice. One possible reason for Nagel’s reluctance to use the term ‘justice’ is that his focus is narrower than Rawls’: Nagel is concerned with distributive questions, rather than the additional problems of political equality and basic rights and liberties that Rawls addresses in his theory of justice.

¹³ Nagel, *Equality and Partiality* Ch.4

unanimously agreed to by reasonable citizens who know of their own particular conceptions of the good and their talents (as opposed to parties in the Original Position). Furthermore, unlike Rawls, Nagel is concerned with the *relative* strength of complaints arising from the ‘strains of commitment’. Nagel diverges from Rawls at another point, where he suggests (and it is no more than that; a *suggestion*) that highly egalitarian principles of distribution, such as the difference principle, *might* be reasonably rejected by those with more highly marketable talents as not allowing them great enough gains from their talents.¹⁴ Nagel also raises the possibility that there may be a ‘gap’ between the two poles of distributive schemes which all can reasonably agree are too egalitarian, and those that all can agree are not egalitarian enough. Within this ‘gap’, no principles of distribution are such that no one could not reasonably reject them.¹⁵ In this thesis, I agree with Nagel in giving a central role to the test of reasonable rejection among people with knowledge of their particular circumstances, rather than the Original Position, in the attempt to develop correct principles of justice. I also agree that strongly egalitarian principles of justice may be such that they fail the test of reasonable rejection, and are therefore unjustified; or, to use Nagel’s term ‘illegitimate’ (for our society, at least). However, I raise some doubts over the existence of the ‘gap’ in unanimity that Nagel suggests may be a central difficulty in political philosophy.

G A Cohen’s recent work is an attack on Rawlsian approaches to egalitarian justice. Cohen’s fundamental disagreement with Rawlsians seems to be that Rawlsian conceptions of justice allow some inequalities as *just*, which Cohen believes are more properly seen as *departures* from justice. The arguments that concern me in this thesis are from Cohen’s attack on Rawlsian conceptions of justice presented in his recent, currently unpublished, work.¹⁶ Here, he aims to explain why Rawlsians make the mistakes which he believes they do. His answer is that the constructivist procedure that Rawlsians use to derive principles of justice leads them to confuse ‘principles of social regulation’ with principles of justice. Cohen argues that many of the concerns which

¹⁴ *Equality and Partiality* p. 3: ‘We do not yet possess an acceptable political ideal’. Nagel does not argue that such egalitarian principles *will* fail the test of unanimity, but only seeks to explore some possible reasons why it might be the case that they fail this test.

¹⁵ *Equality and Partiality* pp. 50-51.

¹⁶ G A Cohen, *Rescuing Justice From Constructivism*.

Rawlsians take to be relevant to justice –such as stability, and publicity- *may* be relevant to principles of social regulation (which tell what we ought to do in political morality, *all things considered*), but are *not* relevant to principles of justice. Cohen does not give us more than a brief sketch of what justice is (although he does use counterexamples which aim to appeal to our intuitive judgments regarding what is just and unjust), but he is clear that justice is only one consideration that needs to be taken into account in our principles of social regulation. Cohen also argues that Rawlsians are mistaken in holding that *facts* about human nature and human society partly determine what justice *is*: as he writes,

[These facts] of course (1) make a difference to what justice tells us to do in specific terms; they also (2) tell us how much justice we can get, and they (3) bear on how much we should compromise with justice, but, so I shall argue, they make no difference to the very nature of justice itself.¹⁷

According to Cohen, fundamental principles of justice are ‘fact-insensitive’; that is, they hold independently of what the facts are.¹⁸ It should be clear by now that the dynamic conception of justice *does* take general facts (and also facts about *particular* features of the society) as relevant in partly determining which principles of justice are correct for a society. Briefly, I agree with Cohen that there is an important distinction to be made between principles of social regulation and principles of justice, but I argue that, contrary to Cohen, stability *is* a relevant constraints on justice, and that the ‘fact-infested’ (to use Cohen’s phrase) principles of justice which are held to be correct on the dynamic conception of justice are indeed fundamental principles of justice, rather than principles of social regulation.

The three main conceptions of justice with which I am concerned in this thesis have only been sketched in outline, and the specific aspects of them which I disagree with

¹⁷ *Rescuing Justice From Constructivism* Section 2 p.44

¹⁸ A complication is introduced into this account of ‘fact insensitivity’ by Cohen’s arguments that ‘*applied* principles of justice’ may be fact-sensitive. That is, we may need to consider the facts of a situation in order to know how to apply fundamental principles of justice in that situation.

will be discussed more fully in the main body of this thesis, where counterarguments to them will be offered. However, at this point it may be useful to note two things about the philosophical positions outlined above. Firstly, all the conceptions present *one* set of principles of justice as being the just one for that society. This clearly contrasts with what I term a ‘dynamic’ conception of justice, which holds that the principles of justice that are correct for our society may change as the distribution of goods changes. Secondly, the conceptions of justice discussed above can be seen as sitting at different points on a scale of how far, and in what way, they allow facts to be relevant to determining what justice is. So, at one end of the scale, we have Cohen, who argues that fundamental principles of justice are ‘insensitive’ to even general facts about human nature and society. Then we have Rawls, who allows that such general facts do partly determine what justice demands. Next on the scale, lies Nagel’s conception of justice, which allows facts about the particular conceptions of the good and talents that people have to partly determine whether principles of justice are ‘legitimate’, and not just in Rawls’ sense of considering whether these facts are such as make a conception of justice stable or unstable. Even further away from the end of the scale we started at with Cohen, might be a conception of justice such as Michael Walzer’s, or David Miller’s, which allows as relevant to justice facts about ‘shared meanings’ held in particular societies.¹⁹ The dynamic conception of justice can be positioned, like Miller and Walzer, further along our imagined scale (from the fact-insensitive end of the scale, that is) than Nagel’s conception of justice. However, unlike Miller and Walzer, the facts regarding particular societies that I take to relevant in determining what justice is are not facts of the ‘shared meanings’ or predominant political views in a society, but facts of the existing distribution of advantages.

The range of conceptions of justice on this scale raises some interesting issues. Firstly, it is notable that all the conceptions are an attempt to delineate as precisely as possible what *justice* is: there seems to be prephilosophical notion of justice that we have some understanding of. Yet this prephilosophical concept seems to exert different, opposite, pulls on different philosophers; for some, like Cohen, we should abstract from the facts

¹⁹ See Michael Walzer, *Spheres of Justice*, and David Miller, *Principles of Social Justice*.

of human circumstances to a large degree in order to reach correct principles of justice. For others, facts about particular societies are central in determining which principles of justice are correct for us. Our intuitions about justice are often ‘fuzzy’: we have *some* idea about what justice is (and what it is not), but when we think of *exactly* what and what is not relevant to justice, we are often thrown into doubt. I suggest that *within* our prephilosophical notion of justice, there are two very different thoughts that need to be reconciled: on the one hand, we think of justice as an ‘ideal’ (that may not be reached), and this can lead us to abstract from the facts of our circumstances, with their attendant practical difficulties and moral imperfections, in our deliberations about what justice is. On the other hand, justice seems to have such an important role in our political morality because it can be proposed as a solution to the real conflicts that we face in our circumstances within society; and, as a solution to a problem, should be tailored in such a way as that it should be achievable. Any conception of justice has to make some attempt to reconcile these two thoughts, but any attempted reconciliation may still leave some residual feelings of philosophical dissatisfaction; the feeling that *something* important has been left out. This may be inevitable when we are trying to reconcile two such different, and often opposing, prephilosophical thoughts. With such an elusive and ambiguous, yet morally important and appealing, value such as justice, we should not hope to always be able to provide devastating arguments against conceptions of justice which are different from our own; the best we may be able to do is to suggest that our conception of justice reconciles our various prephilosophical thoughts regarding justice in a (slightly) less unsatisfactory way than other conceptions.

The structure of this thesis can be divided into three main sections. Firstly, the dynamic conception of justice will be presented in more detail. Then, some possible misunderstandings, and initial objections arising from these, will be replied to. In the Second Part of the thesis, more serious and challenging objections to the dynamic conception of justice will be discussed. These objections will all take a similar form: they will state that the facts regarding unjust societies which I take to be relevant in determining what justice is, are instead relevant in some other area of political morality. So, these objections state that I am answering a *different question* to the conceptions of

justice which I am attempting to provide counterarguments to. Particularly important in Part Two is the rebuttal of concerns that the dynamic conception of justice is a ‘non-ideal’ conception of justice as opposed to the ‘ideal’ theories of Rawls, Cohen, and Nagel. However, these disagreements might lead some to wonder whether the focus of this thesis amounts to no more than a minor disagreement over words, specifically the meaning of the word ‘justice’ (and, as Cohen asks when he faces a similar objection, ‘what’s in a name?’)²⁰. So, to conclude the second section of the thesis, some discussion is given of why this struggle over the correct meaning of justice is of philosophical importance. The third Part of the thesis marks a departure from the previous two sections, in that it focuses on concrete issues of *which* principles of justice might be correct for our society. Specifically, I look in Part Three at how the ‘dynamic’ conception of justice helps to provide a new justification for policies leading to departures from equality, using the argument from the ‘special burdens’ faced by the previously well off in a more egalitarian society.

²⁰ Cohen, *Rescuing Justice From Constructivism*, p. 53.

Part One: The dynamic conception of Justice.

This first section of the main body of the thesis aims to give a clearer notion of what the dynamic conception of justice is, and the underlying thoughts that provide a foundation for it. After the dynamic conception of justice has been presented in some detail, some possible misunderstandings and initial counterarguments are addressed.

Presenting the dynamic conception of justice: The foundations.

One of the most fundamental of the foundational thoughts in the dynamic conception of justice is that principles of justice should be such that reasonable people who are motivated to find a moral solution to the problem of social cooperation must agree to them (and, so, cannot reject them). This moral idea is central to this thesis- it is an idea that I will return to time and again. However, there is a great deal of work that needs to be done to unpack this fundamental idea. This ‘unpacking’ will occupy us for the first part of this section.

Firstly, it should be noted that although the ‘fundamental idea’ that was introduced in the previous paragraph has a clear debt to contractualist moral theories, the arguments which are presented in this thesis can actually be stated in a way which is *neutral* as regards the truth or otherwise of moral contractualism. This is because one can affirm the ‘fundamental idea’ above without thereby saying that putative principles of justice are correct *because* reasonable people who are motivated to find a moral solution to the problem of social cooperation must agree to them.²¹ Rather, this fundamental idea could simply be used as a heuristic device, which we might find helpful in bringing out various considerations which seem relevant to justice (and, more widely, morality). If

²¹ Scanlon, in *What We Owe to Each Other*, p.170 notes that to defend his form of moral contractualism, he must show that, ‘An action is wrong just when, and just *because*, [moral arguments] show that so acting could not be justified to others on grounds they could not reasonably reject [my emphasis]’.

the idea of agreement between reasonable persons is used in this way, as *only* a heuristic device, then the fact that reasonable persons must *agree* to certain principles is actually doing no independent justificatory work: the principles in question are not correct *because* reasonable people must agree to them, but rather reasonable people must agree to the principles because they are correct. Now, the way in which this ‘fundamental idea’ of reasonable agreement will be used in this thesis is consistent with it being used only as a heuristic device. That is, the ‘fundamental idea’ can be seen as a helpful way to bring out, and try to reconcile and order, our prephilosophical intuitions about what is and is not just, and what is and is not relevant to justice. There may also be a role for this notion of reasonable agreement beyond the simply heuristic, but I do not address this more controversial possibility here.

Why, then, would we think that a contractualist form of moral reasoning would be useful as a heuristic device in formulating principles of justice? Now, one way to answer this question is to point to the results of contractualist moral reasoning when applied to the problem of social cooperation, and note that these conform to our strongly held prephilosophical convictions and intuitions regarding justice.²² A further answer would be that, in justifying principles which are to govern major political institutions, we are concerned with whether, and how, given the great impact on citizens’ lives that these institutions can have, coercion of citizens in accordance with these principles can be justified. An appealing move here is to adopt a contractualist form of moral reasoning to justify such coercion; so that we might, as Nagel says, ‘realize some of the values of voluntary participation, in a system of institutions that is unavoidably compulsory’: we try to formulate principles of justice that are such that no reasonable person could reject them in order to address, and hopefully resolve, concerns that state coercion according to such principles of justice could not be justified..²³

We can now move on to unpack the ‘fundamental idea’. To explain what is meant by

²² As I try to do in Part Two.

²³ Nagel, *Equality and Partiality*, p. 36

‘social cooperation’ we start with the idea of a society of citizens which is such that all citizens benefit from their being fellow citizens living under the same law in a political union.²⁴ That is, they are better off than they would be if all the citizens which are, at present, in the same political union, were not in this union. Now, social cooperation involves conforming to certain rules and principles to organize this cooperation. These rules and principles, when they are enforced, have two important results: they restrict the liberty of members in the system of cooperation in various ways, and they partly determine the distribution of goods in the society, at least in broad outlines.²⁵ Human society consists of distinct individuals, each with their own particular range of talents, and distinct personal projects which they are motivated to further. As we face a situation of scarcity, there can be conflicting claims on goods from individuals. The ‘problem’ of social co-operation we face is: *which* principles addressing the question of how liberties and goods are to be distributed in the organization of society are correct?

Principles of justice are to be formulated as solutions to the problem of social cooperation. Now, some qualifications must be mentioned at this stage. Firstly, a political society might have moral reasons to act on reasons that are *not* properly held to be relevant to the problem of social cooperation, with its focus on resolving conflicts between individuals on the distribution of goods and liberties to individuals. One example might be the obligation to preserve natural habitats for wildlife, or promote culture: these do not seem to be matters of *justice*, but then justice is *not all that matters* as far as political morality is concerned. Secondly, in this thesis I am concerned with principles of justice conceived as applying to the Basic Structure of society; within a just Basic Structure, there may be *particular* problems of social cooperation that we must also solve (think, for example, of the correct scheme of waste disposal in a community, taking into account costs, effectiveness, efficiency, and so forth).²⁶ We should not expect principles of justice to solve such problems; they are, rather,

²⁴ Much of what I say here regarding social cooperation owes a clear debt to Rawls: see *Political Liberalism* pp. 15-22.

²⁵ Principles governing social cooperation can be said to *partly* ‘determine the distribution of goods’ in a society even if they are not what Nozick calls ‘patterned’ principles of distribution. Even if the content of such principles is purely procedural, with no commitment to a ‘pattern’ of distribution, they can clearly still have a great impact on the distribution of goods in society.

²⁶ Again I follow Rawls, here. See *Theory of Justice*, pp. 7-11.

formulated to specify the political and social Basic Structure within which a solution to these issues can be found.²⁷

Turning to another aspect of the 'fundamental idea' introduced at the beginning of this section, a reference was made to citizens who want to find a '*moral solution*' to this problem. This brings in the idea that reasonable persons are to agree to principles of justice (if agreement *can* be reached) because they judge the principles to be morally legitimate and justified. This rules out agreements which are achieved as a result of some parties exerting their bargaining power or issuing threats. Agreements made as a result of threats, or some parties having superior bargaining power to others may be prudentially justifiable, but it would be wrong to call them morally legitimate.²⁸

Agreements which are reached as a result of some parties have been manipulated by others' threats and bargaining advantages should carry no moral weight. Furthermore, even if everyone has equal bargaining power, a morally legitimate agreement is not simply a mutually advantageous bargain between self-interested parties: as moral agents we should not simply be concerned with maximizing our gains in a bargain, but should rather take *others'* interests into account as having moral relevance.²⁹

Now, most the unpacking of the fundamental idea introduced at the start of this section has been done. However, one part of it remains undiscussed: that is, what is meant by 'reasonable people'? In one sense, this question is relatively easy to answer: reasonable people are those who are willing to accept a principle if the balance of reasons supports it, and who recognize that others' welfare and complaints can be a source of reasons. This last point seems to be entailed by acceptance of what Scanlon calls the

²⁷ Cohen, in 'Where the Action is' in *If You're an Egalitarian...*, argues that principles of justice are not plausibly restricted to the Basic Structure of society, and his argument- if correct- has important implications for the justification of departures from equality. He points to problems in attempts to define the Basic Structure. However, constraints on space- and the fact that this issue is not immediately relevant to the main argument of the thesis- lead me to leave this question here.

²⁸ On the difference between prudentially rational agreements, and principles of justice, see Rawls, *Political Liberalism* pp.150-154.

²⁹ This, of course, does not rule out the use of a decision procedure in morality such as Rawls' rational, mutually disinterested, choice from within the Original Position, as an essential component in ensuring the moral relevance of the outcome of such a choice is the explicitly moral considerations that Rawls builds into the design, and justification of, the Original Position.

‘universality of reasons judgments’: that is if a feature X of my circumstances (such as my pain) is a reason for me to Y (for example: reject a principle), then it is a reason for all those with circumstances with feature X.³⁰ Being reasonable also seems to involve overcoming bias and prejudice in order to avoid our assessment of the balance of reasons being skewed. However, here we come to more complicated issues. Firstly, we face the problem of just how we are to balance reasons against each other. In this thesis I use a non-aggregative method of moral reasoning, in which one person’s reasons for rejecting a principle can only be outweighed by *another individual’s* stronger reasons, rather than an aggregation of a number of persons’ reasons. No argument is presented for this aspect of my argument, due to constraints on space and the fact that I have little substantive to add to established arguments for non-aggregative moral reasoning.³¹ Furthermore, many of my main philosophical opponents in this thesis (such as Rawls and Nagel)³² are also proponents of some form of non-aggregative moral reasoning, so my rejection of aggregation in morality is not the source of my objections to them, nor of counterarguments which might be raised in their defense.

Secondly, we face the problem of deciding *which* reasons are relevant in relation to the problem we are concerned with- the problem of finding correct principles of justice-, and also the problem of *how much weight* to accord each reason. In regard to the first question, there is scope for disagreement over, for example, whether to allow *other* complaints than those that simply arise from loss of actual or potential welfare- such as complaints based on judgments of unfairness, or the moral importance of responsibility- as relevant reasons to reject a putative principle of justice. Furthermore, some reasons arising from welfare considerations may *not* be relevant reasons to be considered in relation to certain principles: for example, it might not be a relevant consideration against the principle that one should save innocent people who face

³⁰ Scanlon, *What We Owe to Each Other* pp. 73-74

³¹ For such arguments, see Scanlon, *What We Owe to Each Other*, pp 229-241 and Nagel, *Equality and Partiality*, pp 66-69 (although Nagel does allow that some forms of aggregative moral reasoning may be justified, he also provides arguments for non-aggregative moral reasoning as a *component* of the correct form of moral argument for principles of justice)

³² See, for example, Rawls’ famous argument against utilitarian aggregation of moral claims: *Theory of Justice*, pp. 22-27 and p. 188.

imminent death that such a rescue might be *inconvenient* to oneself.³³ And here, we might say that it is not simply the case that a reason to reject the principle arising from this inconvenience is *outweighed* by other, counter veiling reasons, but that it is such that it should not figure in our moral considerations on this issue.

For the time being, I leave these questions over which reasons are relevant in our moral considerations regarding justice, and how much weight we should give them. The appropriate place to discuss them in more detail is as and when they arise in the course of trying to explain more fully what the dynamic conception of justice would involve. Even when they are addressed more fully, the task is so huge as to make *some* progress on *some* of the most pressing difficulties may be the best we can hope for.

Presenting the dynamic conception of justice: demandingness matters.

A widely held thought is that principles of moral rightness (of which I take principles of justice to be subset) should not be overly demanding.³⁴ If we find moral principles very demanding, then that is one (*not necessarily overriding*) reason to revise the principle. By a ‘demanding’ principle is meant one which, in order to conform to it in normal circumstances, involves the suppression, or even permanent departure from, the projects, relationships, and ambitions that have particular value for us, the individuals who are engaged in them. Now, non-aggregative contractualist moral reasoning has (at least) two inherent features which count against it producing moral principles that are overly demanding.³⁵ Firstly, in virtue of its non-aggregative character, it blocks a move which often makes aggregative methods of moral reasoning seem very demanding: that is, the aggregation of benefits from a sacrifice, so that the reasons in favour of the sacrifice outweigh those against it, with the result that the sacrifice (which might be very severe) becomes morally obligatory (the sacrifice will results in a large number of

³³ Scanlon, in *What We Owe to Each Other* pp.156-157, suggests such ‘exclusion’ of some reasons.

³⁴ See, for example, Nagel on ‘Utopianism’, *Equality and Partiality*, ch.3.

³⁵ Here I use ‘contractualist’ to encompass both the view that reasonable agreement is only a heuristic device, and the view that such agreement has an independent moral significance.

individual benefits being produced, or preserved). Secondly, contractualism brings with it a concern for what Rawls terms stability. That is, parties to the moral agreement seek to reach principles which will generate their own support: people will follow and abide by the principles because they are right, rather than because of sanctions against disobedience. The idea that principles of justice should generate their own support seems a compelling and plausible constraint on principles within a contractualist framework, I venture, because of the central idea of *agreement* in contractualism: we want to know what people could agree to abide by, in good faith (and, furthermore, it may be reasonable to decline from agreeing to abide by a principle, if we suspect that the principle will be unstable: that others will gain advantages by avoiding complying with the principle when they can get away with doing so). Very demanding principles might be such that reasonable people will *not* (or *can not guarantee to*) agree to abide by the particular duties that a principle of justice demands of them normal circumstances. There are, then, two inherent features of contractualism that allow us the resources to avoid excessively demanding moral principles. A concern with demandingness, then, may be *one* reason that we would find a contractualist form of moral reasoning plausible.

Within contractualist moral reasoning one might seek to further limit the demands of moral principles by giving particular weight to the opportunity to pursue and commit oneself to one's personal projects, and also perhaps by proposing that there is a 'reasonable threshold' such that any principle which demands sacrifices above this threshold from any individual can be reasonably rejected.³⁶ However, these two possibilities are not *inherent* features of moral contractualism, but rather particular variants of contractualist moral reasoning.

For the well off, the demanding sacrifices required by egalitarian principles of justice are obvious; they will be obligated to give up a large proportion of their wealth. I also want to allow that principles of justice which fall short of demanding strict equality of advantages also require sacrifices of the *worse off*- they are required to give up their

³⁶ For the latter possibility, see Munoz-Darde, 'The Limits of Claims and Social Goods'.

demands for an equal share of society's advantages, and accept a less than equal share as *just* and *morally justified*. As Nagel argues, the status quo distribution has no moral priority per being the status quo.³⁷ This explains why the worse off can be seen as being required to make sacrifices by less-than fully egalitarian proposed principles of justice; being *denied* (potential) advantages is a sacrifice, just as *giving up* advantages is a sacrifice.

It is important to note not only the obvious, material, sacrifices that egalitarian principles demand, however, but also how these material sacrifices translate into demands on *what kind of people we are*. Imagine a well off, talented person living in an unjust society characterized by large inequalities in advantages. Now imagine egalitarian principles of justice are enacted in his society. What is he forced to sacrifice? Obviously, the principles of justice demand that he give up a large proportion of his material advantages (which is likely to bring with it losses in welfare), but other, related, sacrifices are required as well. The previously well off person is required to reconcile himself to *becoming a different kind of person*. He is required to give up many of the ambitions, projects, and expectations he had for the future: he won't be able to pursue them now that he is not especially well off.

However, the demands of egalitarian principles of justice for the well off are not exhausted by the burdens discussed above. We also want to know how demanding it is to affirm principles of justice as *legitimate*, in our lives, if these principles, when enacted in institutions, conflict with our self interest. Assume that, in the unjust society, the well off person is often motivated- as most people are- by partial, and self-centered, concerns.³⁸ There is a *requirement of reasonableness* to affirm the principles of justice

³⁷ See *Equality and Partiality* p.81 and p.84. However, I diverge from Nagel in that I accord the status quo *some* moral relevance in questions of justice, because giving up what one actually has –in the status quo- is particular type of moral demand (as is giving up the opportunity of having what one has never had in the status quo). But I agree with Nagel that the status quo has no 'moral priority' in (aside from the sense explained above, regarding sacrifices faced by the worst off) the sense that there is no moral reason to preserve the status quo just *because* it is the status quo, and in the sense that it is not the case that only divergences from the status quo need justifying, whereas the preservation of the status quo does not.

³⁸ Rawls, on p. 127 of *Theory of Justice* takes such parochial, or partial, concern- 'Men's preoccupation with their own affairs', to be, 'simply part of men's natural situation'.

as legitimate; if the previously well off person's selfish attitudes and motivations lead him to resent the system of justice and think of it as illegitimate, then he will be unreasonable. Correct principles of justice meet the requirement that reasonable people must agree that they are legitimate. Furthermore, the previously well off person (like all citizens) will be morally required to act in certain ways to preserve and maintain just institutions (such as by voting for just political parties, for example). For the well off person, meeting this requirement involves losing, or at least suppressing, one's self-centered motivations, as he must accept principles which conflict with his self interest (in contrast, the egalitarian society is clearly in the worse off's interests). Furthermore, he has to lose this selfish attitude against the background of knowing that there is another form of society, in which he could be very well off, which is both possible and feasible- he knows this to be the case, because he used to live in it! From being an often selfish (or, at least, *partial*, or parochial), well off person, with high flown ambitions and expectations that his life has been built around, he is morally required to be a more impartial person, with much more modest personal projects, and to accept, as legitimate and without resentment, great sacrifices for the sake of aiding fellow citizens who are strangers to him. To become such a different person is, I think, a very demanding moral requirement, and its demandingness must be considered when we deliberate about which principles of justice are correct.

One important, and often overlooked, point that comes to light in considering the demands of principles of justice is that demandingness has *two levels*. Firstly, we assess the demands that a principle of justice- if enacted- would place on individuals in terms of what it would require that they sacrifice, or forego. Then- at the second level- we must assess how demanding it would be to act in ways which *maintain* these demands on us: for example, by voting for just political parties, or not violating the requirements of principles of justice (ensuring that one pays the correct amount of tax, for example). To require people to 'self-inflict' these sacrifices can, sometimes, be a very great moral demand. The first stage is prior to the second as we need to know just what individuals are required to sacrifice in order to understand the demandingness of being required to 'self-inflict' these sacrifices.

An objection to the claim that demandingness matters.

I have argued that if proposed principles of justice would make severe demands on citizens, then this can be *a* reason to think that the principles in question are not the correct principles of justice for society. Now, this may so even if it would be morally good if all citizens *did* conform to the demanding principles in question. That is, if citizens conformed to the principles they would be doing something morally good, but *supererogatory*. And there can be (I assume) no moral obligation to conform to such principles *precisely because* the principles are so demanding. Furthermore, this lack of this moral obligation shows us that the principles in question are not, or go beyond, principles of justice.: for, I argue (in Part Two), that there *is* a moral obligation to willingly affirm, support and maintain correct institutions of justice in one's society. Now, some writers argue that considerations of demandingness cannot undermine the claim that a particular moral principle is correct. Shelly Kagan argues forcefully on just this point.³⁹ He presents us with a case in which a principle is found to demand sacrifices of much that seems especially valuable from our 'personal' standpoint: our personal projects, ambitions and the welfare of those close to us, for example. Kagan presents a 'moral moderate' as saying that although it might be *regrettable* that people have the motivations in question, in which they have a 'natural' bias in favour of their own and their family and friends' interests, the demandingness of the principles still counts against claims that they are correct.⁴⁰ Kagan responds by arguing that since the moral moderate accepts that it is regrettable that people are thus motivated, he should accept that there is a moral obligation to *try* to overcome these motivations, and thus to try to follow the proposed principles. So, Kagan writes, considerations of demandingness do not justify what the moral moderate thinks they justify; they do not justify the rejection of moral obligations with regard to the principles in question,

³⁹ See Shelly Kagan, *The Limits of Morality*, ch.8. Kagan's concern is with principles of personal, rather than political, morality, but his arguments remain forceful when they are applied to problems of political philosophy, such as the question of justice.

⁴⁰ *Ibid.* pp.270-271.

because we should still have moral obligations to *try* to follow demanding principles.

The picture of the moral moderate that Kagan sketches is similar in many ways to my position in this thesis: I accept that if moral principles are severely demanding, this undermines any claims that they are morally correct, and that this is so even if we say that it is *regrettable* that we are the kind of people for whom following such principles is severely demanding (for example, that it is regrettable that we are motivated in the way that we are). It may be regrettable that we cannot, or that we find it very difficult to, motivate ourselves to conform to a strictly egalitarian moral ideal, but this does not mean that we are morally obligated to follow this ideal, or even to try to follow this ideal.⁴¹

So how would I respond to Kagan's argument against the moral moderate? It seems that we need to consider further what it means to say that our motivations are 'regrettable'. Kagan takes it to mean that the balance of reasons is such that overall there is more reason to act in accordance with the moral ideal, rather than our personal motivations, when these two aims conflict.⁴² In response, firstly, we should note that we can claim that it is *regrettable* that we cannot (or do not) conform to a certain moral principle without making *any* claim to the effect that the balance of reasons supports conforming to the said principle. Think, for example, of a case in which we have to twist the child's arm in order to save individuals in dire peril. One might think it regrettable that the child's arm is twisted, but that does not commit one to saying that the balance of reasons is against twisting the child's arm: rather, the arm-twisting is regrettable because *a* (non-overriding) moral principle- the principle that one should not

⁴¹ Note that *part* of our concern with the stability of principles of justice relates to whether we can rely on reasonable people to conform to principles of justice, which is close- but not identical- to the moral moderates in Kagan's example who argue that they *cannot* motivate themselves to follow very demanding principles. This claim of psychological *impossibility* is an implausible characterisation of the moral moderate, but if we replace it with the claim that the individuals in question cannot be *relied* upon to follow such principles, then the moral moderates arguments are less obviously flawed, while Kagan's counterarguments still have force. Furthermore, even if we present the moral moderate as someone who *can* be expected to conform to demanding moral principles, the moderate might still argue that the demandingness of these principles is one reason to doubt whether they are correct. Again, if we present the moral moderate in this way, then Kagan's counterarguments still seem relevant.

⁴² Ibid. pp.322-326.

intentionally cause harm- is thereby transgressed.⁴³

However, there is a more serious flaw in Kagan's argument. Kagan makes the case of the moral moderate sound like a quintessential problem of weakness-of-will; the individual *cannot* motivate himself to act on the all-things-considered strongest reason.⁴⁴ This is not what the moral moderate wants to say, however. Rather, he will want to argue that, *because* of the motivational difficulties involved in acting in accordance with the moral ideal, this undermines the claim that there is an all-things-considered strongest reason to act in accordance with this moral ideal. Our lack of motivation to act on the moral ideal can show us something significant about the ideal: that following it will bring about severe costs which it is reasonable to want to avoid. Because of these costs, it is *not* the case that there is an overriding reason to act on the moral ideal; the moral ideal entails costs which mean that the reason to follow the moral ideal is not overriding: we are not being unreasonable in refusing to follow this reason. When Kagan discusses the balance of reasons, he ignores what might be called *transitional costs*. So, it might seem that there is greater reason to act in an impartial, morally good, way rather than according to our selfish concerns if we present the case so simply. However, as it is, the case is under-described as it makes no mention of the reasons which are generated as result of the *costs* involved in trying to make the transition to becoming a person who is motivated by such impartial concerns. These costs have to be taken into account, as they alter the balance of reasons.

This, then, is one way in which our motivations against us following the moral ideal are regrettable: there may be a balance of reasons in favour of acting in a morally good, impartial manner, until we assess the transition costs of bringing ourselves to act in this manner. However, there is another way in which we might say that such a situation as the moral moderate finds himself in is 'regrettable', that is particularly relevant to this thesis. It can be the case that we- humanity, that is, rather than simply ourselves- have allowed a situation to build up so that the present situation is far from the appropriate

⁴³ This sense of 'regret' has sometimes been called a 'negative residue'.

⁴⁴ Kagan p.314: 'The... argument holds that there can be no general requirement to promote the good, for such a requirement would lack the necessary motivational underpinning'.

ideal. Particularly relevant to this thesis is the case of allowing inequalities to build up and multiply far beyond the egalitarian ideal, so that moves to reduce inequality would be very demanding. This is regrettable, but recognizing this does not entail accepting moral obligations to return society back to this long-lost ideal, anymore than regretting the damage we and previous generations have done to the environment entails that we accept moral obligations to make the world once again pristine. Humanity can find itself, as a result of a succession of relatively minor moral wrongs, in an altogether more serious situation that would be extremely costly to extract ourselves from: so costly, indeed, that it is not reasonable for us to expect us to be motivated to follow our moral ideal. Kagan conflates something being regrettable with there being an overriding reason to motivate ourselves to avoid it, but this is move is unjustified: we can regret something by *wishing* that things *had* gone differently, rather than *willing* that they *are* different.

Presenting the dynamic conception of justice: the moral importance of existing injustice.

The ‘dynamic’ conception of justice can now be presented in more detail. This conception of justice holds that facts about unjust societies can partly determine what the correct principles of justice are. The demandingness of putative principles of justice must be considered when deciding which principles are correct. One factor which affects how demanding a principle is, is what it requires us to give up: and *here* is where facts about what we have *now* come into play. We can agree that someone has the advantages they do because, and only because, they live in an *unjust* society, but we should also accept that the costs and sacrifices involved in giving up these advantages should be taken into account when formulating principles of justice. This contrasts with conceptions of justice which abstract from facts about existing, unjust societies in their arguments concerning what justice demands: such as the three conceptions of justice discussed in the introduction, from Rawls, Nagel, and Cohen.

My conception contrasts with such conceptions of justice in another way. I have proposed that whether a set of principles of justice is correct is partly determined by citizens' existing ambitions, projects expectations, values and motivations, and how far a society governed by the principles in question will require sacrifices or revisions of them (such facts partly determine the correctness of principles insofar as they impact of what reasonable people can agree to as justified). But, as institutions, and the distribution of advantages in society, change, our expectations, projects, ambitions and motivations may change with them: we become different kinds of people, and our children may be radically different kinds of people from us, as result of their different institutional situations. One reason for this is fairly obvious: people who have grown up in a more equal society will not face the kind of sacrifices in their wealth, and the accompanying disruption of their projects, that was demanded from some individuals in the initial move to greater equality. Another, perhaps less obvious, reason is that as certain principles of justice become more firmly established in a society over time- becoming part of the background assumptions of people's lives- then our attitudes and motivations may change. Being an altruistic person might become easier, the longer we are required to act in altruistic ways. To illustrate this, consider again our previously well off person who now lives in a society governed by principles of justice significantly more egalitarian in content than those that governed the society previously. I said that, in deciding which principles of justice are correct, we needed to consider the sacrifices that they would require of him, which would likely be very substantial. But now think of him after having lived in this egalitarian society for a number of years, and having grown increasingly accustomed to this more modest, egalitarian form of life: the memories of his previous wealth and advantage now weigh less heavily upon him- he no longer speculates sadly about how life could have been if he had been allowed to keep his wealth- and he has formed new ambitions and projects that rely less on having large amounts of material wealth. Imagine, even, that some of his old self-centeredness and partiality has gone, replaced by an egalitarian altruism, an easy willingness to abide by principles which aid others, rather than himself: he has grown accustomed to acting in support of egalitarian institutions. In a word, the institutional changes have changed his material position, and this has changed the kind

of person he is accordingly. Being such a changed person, it may *now* be the case that *even more egalitarian* principles of justice may be justified, because these will now be less demanding for him. So, as a result of institutional changes- which were themselves required by correct principles of justice- the principles of justice which correctly apply to a society might change: there may be a multiplicity of different correct principles of justice applying to a society as it moves gradually towards greater equality.

A likely result of this ‘moral progress’ is a movement towards a more strict egalitarianism, with less extensive policies to depart from equality than justice demands of us *now*. This stricter egalitarianism can form part of a political moral *ideal* for us now, I argue, (which explains how we can view such steps towards greater equality as welcome: as *progress*) but an ideal of this kind is different from correct principles of justice: as I discuss in Part Two, ideals and principles of justice play two different roles in our political morality.

The ‘dynamic’ conception of justice has clear parallels to Marx’s approach to justice (or, if one is unconvinced that Marx thought that ‘justice’ had any place in communism, one could substitute ‘justice’ with ‘principles governing the distribution of advantages in society’). In *Critique of the Gotha Programme* Marx outlines his predictions about how communist society would be organized.⁴⁵ He distinguishes two ‘stages’ of communist society. In the first, ‘lower’ stage, society’s advantages are distributed in accordance to the principle, ‘each according to his contribution’. In the later, second ‘stage’, distribution of advantages conforms to a different principle: each according to his needs. This is *more strictly egalitarian* principle, in that it does not allow factors which we are not responsible for- such as how much we are able to contribute- as a ground for receiving more than others.⁴⁶ Why does this change occur? Partly, Marx argues, it will be the result of a material abundance that communist society brings about. But also, and most importantly in relation to this thesis, he thinks that the change

⁴⁵ McLellan ed. *Karl Marx: Selected Writings*. Pp. 610-616

⁴⁶ Marx, however, seems to be suspicious of all talk of equality in relation to principles of distribution; if we try to bring about equality in distribution according to one respect, we create inequality in another, he argues.

will occur because communist citizens will be *different kinds of people* in the higher stage of communism compared to the lower stage. In the lower stage, bourgeois motivations and ambitions- which tend to be self-centred- prevail, and the principle governing the distribution of advantages reflects this. In the higher stage, citizens have developed different motivations and ambitions- they have progressed beyond the level of bourgeois man. This idea is central to my arguments for a 'dynamic' conception of justice; the idea that as institutions cause people- their ambitions, projects, expectations, motivations and values- to change, the principles of justice which correctly apply to society will also change. Also important for us to note is that Marx saw this change within communist society as a *positive* development- as society *progressing* to a higher ideal. Again, I argue for something very similar in this thesis; the idea that as society moves through different principles of justice, this can be seen as a progression towards a moral *ideal*.

Initial objections to the dynamic conception of justice addressed.

With the dynamic conception of justice explained in more detail, some objections to it should now be discussed. The most serious objections will be discussed in Part Two. Here I am simply concerned to, first, resolve any likely misunderstandings about the dynamic conception of justice, and, secondly, respond to some possible counterintuitive results of this conception of justice. Perhaps the most immediately pressing of these, an objection that may likely come to most readers' minds as I discuss the dynamic conception, is the thought that the facts about previously unjust societies which I take to partly determine what the correct principles of justice are *cannot* fulfill this role as they are 'morally arbitrary'. This phrase comes, of course, from Rawls, from a passage in which he is refuting a conception of moral claims to goods and advantages, which hold that a person is has a moral claim on what he has produced using his talents, because he *deserves* what is produced by use of his talents.⁴⁷ Rawls says that such accounts are mistaken because how much one is able to earn, how many advantages

⁴⁷ Rawls, *Theory of Justice*, pp.103-104 and pp.72-74.

one is able to amass, in an economy which distributes advantages according to meritocratic desert, distributes advantages according to '*morally arbitrary*' factors. These factors are morally arbitrary, or morally 'irrelevant', because we are not responsible for them, and so they cannot ground a valid claim to have more than others. Can a similar objection be pressed against a dynamic conception of justice? My conception of justice takes facts about the distribution of advantages which exist now in a given society to partly determine what justice is. Could it not be argued that- largely speaking- individuals' advantaged positions in our current, unequal, society, is the result of good fortune, rather than being something which they are responsible for? If so, how can we justify allowing them to partly determine what justice is?⁴⁸

My response to this worry is, briefly: advantages which are the result of morally arbitrary factors can still have moral relevance in determining what justice is. I do *not* argue that reward for talent which is the result of good fortune generates any moral claims to advantages simply due to them being the reward for talent (here I break with desert theorists such as David Miller)⁴⁹. Also, I do not argue that humans have any moral claims on what they have produced with their own labour simply as because they have produced goods with their labour (here I break with Nozickian libertarians). I agree with Rawls that factors which one is not responsible for are morally irrelevant in the sense that they do not *themselves* generate claims to advantages. Such factors are indeed morally irrelevant in *this* sense. However, facts about the distribution of advantages in an unjust society *can* partly determine what the correct principles of justice for this society are, even though this distribution comes about because of morally arbitrary factors.

To explain how I reach this conclusion (which might seem immediately counter-intuitive), it will be useful to think again of our well off person in an unjust society. Imagine that strictly egalitarian principles are proposed to him. He complains that proposed egalitarian principles of justice demand great sacrifices of him: they would

⁴⁸ Note that here lack of responsibility for an aspect of one's circumstances is presented only as a sufficient- and not a necessary- condition to undermine a claim to have more than others'.

⁴⁹ See David Miller, *Principles of Social Justice*.

require him to give up many of the significant advantages he has gained throughout his life. (Note that this does not settle the matter of whether they are correct principles of justice: the worse off citizens could have complaints against less-than-strictly egalitarian principles which would outweigh the well off person's complaints against the strictly egalitarian principles)⁵⁰. Now, an objection is raised to the well off person's complaint against the strictly egalitarian principles which have been proposed: how can he think that he has any valid moral claim on the advantages that have accrued to him in the existing society? How can he object on *moral* grounds to them being taken away from him? If the well off person answers this objection by arguing that, for example, his advantages can be seen as market rewards for his talents, and his talents (or the use of them) *themselves* generate valid moral claims to advantages, then it seems to correct to say that his position *is* unjustified: such factors as talents are the result of good fortune, and so are not morally relevant factors that can be used to justify claims on advantages. But the well off person does not have to use this kind of argument at all. He can accept that his gains are the result of morally irrelevant factors, yet point out that any large scale sacrifice of them would mean a severe change in his life's projects, ambitions and expectations. He has, up until this point, been basing his life around the assumption of continued wealth, and many of the projects which are valuable in his life, which he has invested time and energy in, depend on continued wealth. Now he is considering sacrificing these aspects of his life. *It is this loss to his life which is morally relevant*. This is the factor which we should consider when assessing putative principles of justice. Our imagined well off person does not say that he is morally entitled to his advantages *because* of the factors that resulted in them accruing to him; he only says that he should be allowed to live his life in a way that is not severely demanding, and that requiring him to sacrifice all his advantages may be extremely demanding.⁵¹

⁵⁰ Here I assume that a comparison of complaints such as this is at least one plausible component of a contractualist method of moral reasoning.

⁵¹ There is a possibility, however, of desert-based moral theories having moral relevance in the dynamic conception of justice in another way. The well off people who are required to make sacrifices (and who see such sacrifices as legitimate, assuming that they are reasonable) might have felt, for much of their lives, that they did *deserve* their gains; that is, they held a desert-based political morality. *Losing* this morality may be a demanding task. Now, we are only concerned with what *reasonable* people can agree to, and in this case, part of being reasonable seems to be to suspend belief in one's own moral theories;

We can, and should, say that it would have been better, morally, if gains had never been allowed to accrue to people in the society in this unequal way.⁵² But now we have got to this point where gains *have* accrued to people, generating inequality as a result of morally irrelevant factors, we need to consider what is the best way of changing this existing distribution of advantages- what should have *happened* does not tell us what should now *happen* (the example of environmental damage used in the discussion of Kagan may make this position more intuitively appealing). Past moral mistakes may make further moral regrettable actions inevitable.⁵³ Although it may be morally *regrettable* to maintain a society where advantages accrue to people as a result of morally irrelevant factors, it may also be morally impermissible to coerce people who benefit from these advantages give them up totally. Through past departures from the moral ideal, society can condemn itself to a situation where no complete realisation of this moral ideal is morally justified.

However, this response may simply prompt another objection which has some immediate intuitive appeal. I have said that a person may have moral claims on his advantages because of how demanding it would be for him to sacrifice them, and that this can be so even when he only has those advantages because of living in a society that allows advantages to accrue to people in unjust ways. However, a possible counterexample to this argument runs thus: imagine a society in which institutions are not in place to prevent citizens taking goods and advantages from others by physical

after all, the point of our moral reasoning is to assess whether the moral status quo is correct. So the well off people who have led their lives following desert-based moralities cannot complain that the proposed principles of justice are demanding in the sense of requiring them to go against what they believe is *right*. Nevertheless, there may be demands involved in 'training' oneself to lose the moral impulses and intuitions that are part of- to use the present example- a desert-based morality. So *should* we take such demands into moral consideration when attempting to find correct principles of justice? I think not. It is not the case that *all* demanding burdens have to be considered in contractualist moral reasoning, and it seems plausible that reasonable people should agree that the burdens faced in losing an incorrect morality should not impact in any way on the search for *correct* moral principles. Such a position seems part of 'suspending belief' in one's morality: one should not let moral falsehoods even partly determine the search for moral truths.

⁵² In Part Three I will discuss just how this more strictly egalitarian society might be morally better than a less egalitarian one. For now, I simply note the intuitive appeal of the idea that there is something better about such a society.

⁵³ One might say that if an action is 'morally regrettable' then it is, in a sense, morally *wrong*. I refrain from taking this controversial move: nothing of importance (for this thesis) rests on it.

force; principles prohibiting such behavior are not among the principles enacted to govern the Basic Structure. Now imagine that principles are proposed which would demand that all advantages that have been won by use of physical coercion of others will be redistributed (either to the original holders of the advantages, or perhaps according to a principle of equality. The exact form of redistribution is not important: what *is* important is that those who won advantages by physical coercion stand to lose out if the principles are enacted). Now, imagine that someone who has profited greatly from taking advantages of others by the use of physical coercion complains against the proposed principles. He says that the proposed principles would demand severe sacrifices from him: he has formed his ambitions and life projects on the assumption of his continued wealth gained as a result of physical coercion. Now, it seems that, on my conception of justice, such a complaint against the proposed principles should be seen as a valid reason to not enact them (note that this does not mean that they present an *overriding* reason against enacting the proposed principles). This case seems relevantly similar to the case of the well off man in the previous two paragraphs: both accrued large advantages as a result of living in an unjust society (here I assume what few would deny: that physical coercion of others in order to take goods from them is unjust), and both complain that principles which would require them to give up these advantages are severely demanding. Yet, the presenter of the counterexample might argue, is it not extremely intuitively implausible that such complaints from the beneficiaries of physical coercion against principles (which, when enacted, would disallow such behavior and force people to forego the benefits that they gained from such behavior), could partly determine what the correct principles of justice for this society are? Why should we concern ourselves with the complaints of *thieves* when deciding what justice demands? *Of course* thieves will complain about principles that condemn their unjust behavior, but why should principles of justice accommodate the complaints of thieves? Surely, it might be thought, the *point* of principles of justice is to condemn such behavior as thievery, and so is it not, in a sense, self defeating to consider the complaints of thieves when deciding which are the correct principles of justice for a society? If this counterexample is indeed convincing, then it undermines the argument that facts which are the result of an unjust society prevailing can partly

determine what justice requires for that society: because, as we have noted, the example given in this paragraph and the previous example of the well off man are relevantly similar. If one example falls, this undermines the plausibility of the other, and the argument for them both.

In response, it is important to note that the counterexample is under-described in various ways. As we describe the counterexample more fully, its intuitive appeal may fall away. We must ask whether the ‘thievery’ of the kind described in the above paragraph is something that the citizens who engage in such behavior can be held responsible for. Now of course, it is plausible to assume that the citizens who gain advantages through physical coercion are responsible for their actions in the (limited) sense that they are acting without physical coercion themselves, and also that they act on their own volitions. Furthermore, we can assume that they are acting on their higher order volitions: thievery is not an addiction, or uncontrollable compulsion. Yet we can still ask whether they are *morally* responsible for acting in the way that they do. Here, an important consideration is *whether it is reasonable to expect them to do otherwise*. Even if a person acted from his own higher order volitions, if he could not reasonably be expected to act differently, then he cannot be held *responsible* for his actions in a way that undermines his claims to advantages. So we must ask: can the thief in the example in the above paragraph be held morally responsible for his actions?

It should be noted, first, that this conception of responsibility can accommodate the truth- if there is such a truth- of determinism. What matters for this conception of responsibility is that the individual faces a choice situation of acceptable options. Choices made in such a situation are those that we can be held responsible for. Now, if determinism is true it will be the case that we could not have chosen differently; yet still we will have chosen from a choice situation of acceptable options, and hence still be responsible for our choices.

To return to the questions of whether the thieves can be held responsible for their thieving, then, we must decide whether the thieves face an acceptable choice situation.

In answering this question, much rests on how widespread the thievery in the society is. If it is very widespread, then this form of behavior may simply be the 'rules of the game' in society; that is, if people want to have a reasonable standard of living and provide for their dependents, then they must use physical coercion to gain advantages (note that this can be the case even in situations where the majority do not steal; perhaps the majority are non-thieving ascetics who can cope with the deprivation that not stealing forces upon them!). It may be unreasonable to expect the 'thieves' to behave differently from this widespread existing practice *while the practice was so widespread*. *Relative* disadvantages must also be considered here. To refrain from engaging in this practice would disadvantage them severely as against the position of their peers, and lead them to deny to themselves and those close to them the advantages which their peers enjoyed: to make oneself disadvantaged relative to one's peers can be very difficult and burdensome. Also, it can be difficult to follow an independent, different moral path to the majority: it may be unreasonable to expect the thieves to even see what they are doing as wrong may be unreasonable, in light of the moral landscape they inhabit. If the thieves do not face an acceptable choice situation- as they may not do, if thieving is widespread- then they cannot be held morally responsible for their behavior.

If the thieves cannot be held responsible for their actions, then it seems, intuitively, appropriate to at least *consider* their complaints against principles which would, if enacted, disallow thieving. Once the example is described more fully, the intuitive appeal of the counterexample is greatly reduced. There is a possibility that a similar argument can be presented for the case of well off people in an unequal society: that they cannot be held morally responsible for taking up opportunities to have more than others, because they did not face an acceptable choice situation. To refrain from taking advantage of benefits when one *can* do so- and when one's peers are doing so- may be so demanding that one cannot reasonably expect people to do so. So, considerations of responsibility provide us with a way of avoiding the intuitively appealing counterexample. In a sense, the well off can be seen as '*victims*' of the unjust society, in that, when moves towards equality are enacted in the society, burdens are placed on the well

off that they cannot be held responsible for: as they could not have been reasonably expected to forego the advantages that were available in the unjust society.⁵⁴

In considering which principles of justice are correct, I have argued that we need to look at differently situated peoples' complaints against various proposed principles. We need to 'put ourselves in others' shoes', and consider how the principle in question, if enacted, would affect them. Now, for people who are well off and have selfish motivations, egalitarian principles may seem overly demanding, when we put ourselves in their shoes. But the question then arises of why should we take *their* complaints into account- why should we put ourselves in *their* shoes? Why should we consider the complaints of those who have been 'morally corrupted' by living in an unjust society? The answer seems to be that, despite their 'moral corruption', they *are* reasonable people. They are reasonable because they are committed to finding a moral solution to the problem of social cooperation that no one can reasonably reject. They should also- if they are reasonable- agree to steps which may eventually result in their losing some non-egalitarian, if such steps are not overly demanding. So, those with selfish motivations will, if they are reasonable, accept moral requirements which demand that they frequently act non-selfishly, and also accept that their motivations are 'moral corruptions' and therefore see policies which will eventually lead to them losing such motivations as morally justified, as long as they are not overly demanding (if, indeed, there are such policies available). The individuals with the selfish motivations which I am taking to have moral weight in our deliberations regarding the correct principles of justice are taken to be reasonable in the sense of being motivated to seek a moral solution to the problem of social cooperation.

⁵⁴ There is obviously much more work to do here in explaining just what is meant by an 'acceptable choice situation', but constraints on space prevent me from attending to this problem in more detail. For the arguments of this thesis, the hope is that appeals to moral intuitions about what seems 'acceptable' in particular cases will suffice to make arguments worthy of consideration.

Summary of Part One.

This brings the first part of the thesis to an end. It might be helpful to summarize Part One before moving on to the arguments of Part Two. Here, the dynamic conception of justice has been presented in more detail than the outline that was given in the Introduction. Some initial counterarguments to the dynamic conception of justice, appealing to our moral intuitions, have been discussed. In replying to these counterarguments, I hope to have resolved some possible misunderstandings regarding the dynamic conception of justice. However, two major tasks have yet to be addressed. Firstly, there are a number of possible objections all to the effect that while the facts about existing unjust societies are relevant to *some* aspect of our political morality, they are not relevant to our formulation of principles of justice, and only- at most- relevant to how principles of justice apply in ‘non-ideal’ situations. These objections hold, then, that I am really answering a different question to that the conceptions of justice that I present my thesis as an alternative to. Secondly, one might wonder how- even if the dynamic conception of justice is correct- the principles of justice which emerge from it are different to those proposed by non-dynamic theorists. These two questions are taken up in turn in Parts Two and Three of this thesis.

Part Two: Am I answering a different question from Rawls, Nagel and Cohen?

The road ahead.

In this section of the thesis, I counter arguments which hold that I should not call the proposals of this thesis as forming a conception of *justice*: they state that the facts about existing unjust societies are irrelevant to formulating principles of justice. In reply to these arguments, I make use of the two philosophical argumentative moves discussed in the Introduction. Appeals are made to our intuitions about what is and what is not just in a particular case, and also to the role which justice seems to play in our political morality: what place do we want considerations of justice to have in our moral thought? Many of the arguments against Nagel and Rawls take an 'internal' form; I try to show that given what these writers do take to be relevant to justice, they have no compelling arguments against *also* taking facts about existing unjust societies as relevant to the formulation of principles of justice. The arguments against Cohen take a different form, in that they aim to show that Cohen's most intuitively plausible examples regarding the distinction between principles of justice and principles of social regulation can be accommodated *without* thereby committing us to his particular conception of fundamental principles being 'insensitive' to facts about human society and psychology, or to the view that the principles that are derived from the dynamic conception are principles of social regulation, rather than principles of justice.

However, these arguments might raise another worry: what is the philosophical importance of whether a certain principle is properly called a principle of justice or not? What's in a name?. I try to answer this question at the end of this section.

Before particular objections are discussed in turn, it should be noted that, because the topic which I address- the possible relevance, for our moral arguments regarding what

justice *is*, of facts about existing injustice- has been so ignored in so much of the recent philosophical literature on justice, the counterarguments I discuss in this section have not been developed in any great detail by the writers in question. They are more frequently than not offered as widely-shared assumptions regarding what is and what is not relevant to justice. It is just these assumptions that I want to question and, ultimately, reject as unfounded. However, because few of these assumptions have been argued for in any detail, much of this section is concerned with trying to locate just what kind of considerations and arguments *might* be underlying these assumptions. Some philosophical guess-work is involved here, but I try to consider a wide range of possible objections to the dynamic conception of justice, with the hope that most, if not all, (even prima-facie) plausible objections have been 'guessed' and then rejected.

Nagel and problems of transition.

To begin this section's responses to counterarguments to the dynamic conception of justice, I first look at an argument from Nagel. The problems raised in this argument help to provide some context for the arguments supporting the dynamic conception of justice that are presented in Part Two; by seeing what is wrong with Nagel's argument, the move towards a dynamic conception on of justice may seem more plausible.

It might be argued that the problems involved in moving from an unjust society to a more egalitarian, just, society that I focus on-such as the burdens of making such a move on the well off- are merely *transition* problems, and transition problems- it could be argued- should not partly determine what justice demands. Nagel offers just such an argument: he presents us with the case of slaveholders who might object that if society moves to abolish slavery, the costs on them- the slaveholders- will be very great.⁵⁵ Nagel then considers whether the high costs to the slaveholders means that they could reasonably reject the enactment of principles to abolish slavery. Nagel argues that the costs do not generate such a result, because the costs of slaveholding are an example of

⁵⁵ Nagel, *Equality and Partiality*, pp. 26-27.

‘transition’ problems. That is, this burden will only occur *temporarily*, and future generations –or the former slave-holders themselves- will eventually reconcile themselves, if they are reasonable, to seeing the abolition of slavery without resentment as a positive, justified institutional change. Nagel suggests that one cannot reasonably reject a principle if the costs it imposes are temporary, or transitional, in the sense: transition problem do not undermine the ‘legitimacy’ of principles of justice, for Nagel. It is worth briefly noting, however, that we do not *need* to appeal to any special ‘transition’ problems in explaining why justice demands that the state should act against the wishes of the slaveowner, and in favour of the wishes of the slaves, and should abolish slavery. We can argue for this result simply by pointing to the tremendous difference in the respective losses incurred by each course of possible state action: if the state does not abolish slavery, then the lives of the slaves continues to be miserable, far below a minimally decent standard of life. If the state abolishes slavery, the slaveowners’ welfare may well be significantly impaired, but not to the degree that maintaining slavery would impair the lives of the slaves. The slaves’ complaint should outweigh the slaveowner’s complaint in pairwise comparison.⁵⁶

However, we can, and do, encounter real transition problems in political philosophy. And the difficulties faced by the well off in moving to a more egalitarian society, which are central to the argument of this thesis, may be transition problems (in that the burdens involved in moving to a position of greater equality may only occur temporarily). So, an argument for the conclusion that transition problems *can* partly determine what justice demands is clearly required by the dynamic conception of justice.

There are really two kinds of ‘transition problem’, and Nagel does not distinguish between them. In the first type of case, which I will call the ‘single-generation’ case, it is the person who raises the complaint against the proposed principles who will *himself* eventually withdraw this complaint after the principle has become enacted and he has

⁵⁶ It *might* even be the case that the slaveowner’s complaints should not be given *any* moral weight in our moral reasoning on this question, but I do not explore this possibility here.

become accustomed to living in a society governed by the principle in question. In the second case, which I call the ‘intergenerational’ case, it is *future* generations who, having grown up and lived in a society governed by the principle in question, do not have complaints against the principle which previous generations had; but, crucially, this leaves open the possibility that the person who now complains that the principle will be too costly for him will not withdraw his complaint even after the principle is enacted, and he comes to live in a society governed by this principle. To the end of his days, he will feel that the principle is too costly, and will never retract his initial complaint.

In fact, there are two subsets of cases within the ‘single-generation’ cases. Firstly, there is the case of the person who withdraws his complaint against the principle and says that the principle is justified, and *also* that it was a justified move to enact the principle despite his complaint against it. This person says, effectively, ‘I was wrong, and you were right to force me to become right against my will’. If *this* is the kind of transition problem that we are interested, then I have no complaints about *this* sort of problem not partly determining what justice demands. After all, in this sort of case, the ‘sacrifice’ is the result of lack of moral foresight. So, in a sense, such a case is not one of a *genuine* complaint against the enacted principle: it is rather a *mistaken* complaint. Indeed, one’s rejection of a principle in such a case will not be *reasonable*: it will not be based on actual reasons, but rather on what are *wrongly* held to be reasons, and only reasonable rejection of principles should concern us when we attempt to formulate correct principles of justice. In the second type of ‘single generation’ case, however, although the person withdraws the complaint against the principle- he no longer feels the principle to be burdensome now that he has grown accustomed to living in a society governed by the principle in question- he does *not* accept that it was a justified move to enact the principle against his will, and despite his complaint against it. This person effectively says, ‘*Now* I do not find the principle overly costly, but it was tremendously costly for me to get to this point, and because of this, it was wrong to force me to become this sort of person against my will’.

Nagel is ambiguous as to whether he believes that transition problems are not relevant to justice in the sense that they should not be taken to undermine the justification of proposed principles of justice, or *also* in sense that transition problems should not figure in our considerations as to whether principles of justice should be *enacted* in the institutions of society (call this two-pronged way in which transition problems might be irrelevant to justice the ‘stronger interpretation’).⁵⁷ Both interpretations have some support, and- as we shall see- I reject both positions on transition problems as unjustified. Firstly, however, let us assume that Nagel hold the ‘stronger’ position on transition problems.

Now, if the ‘transition problem’ in question is of the ‘intergenerational’ type then it seems that, if we enact principles of justice despite the transitional costs, then the most plausible explanation of what we are doing is that we are ‘sacrificing’ the well-being of those who face the transitional costs, *because of an appeal to numbers*. The number of people in future generations who will follow the principles without complaint may outweigh the number in *this* generation who will face the transitional costs and complain that the enactment of the principle in question is very burdensome. Now, if those who argue that transition problems should not partly determine what justice demands, are basing their argument on an appeal to the moral significance of numbers- that is, they think that numbers *do* count and *this* is why they reach the conclusion that they do- then the fact that the particular problem we are considering is a *transition* problem seems to lose its relevance; their argument does not specifically apply to transition problems, but rather to all problems where a policy would sacrifice the welfare of a minority in benefiting a majority. This, of course, is a separate problem to the problems of transition we are considering here.

To see how arguments rejecting transition problems as irrelevant to the question of whether principles of justice should be enacted seem to rely on an appeal to the moral significance of numbers, imagine a case where the numbers of people who suffer the

⁵⁷ At p. 26 of *Equality and Partiality*, Nagel can perhaps be interpreted as arguing for the ‘stronger’ position on transition problems: he says that transition problems, ‘do not mean that we are no justified in taking political steps which substantial numbers of people will be unable to accept’.

'transitional' sacrifice are actually greater than those who will enjoy the benefits of the policy in question without sacrifices, after the 'transitional' phase has passed. Such a case takes us into the realms of science fiction, which often renders our moral intuitions even less reliable than usual.⁵⁸ However, I think that our intuitions in the case I present below are fairly clear, and instructive. So, imagine a society which knows itself to be currently at its highest population for the foreseeable future: reliable scientific data brings them to the conclusion that future generations will be *much* smaller in size. Their society is on the brink of a historic, lasting, decrease in size. Now they come to consider the policies necessary to realise their moral ideal for society. They note that instituting these policies will impose significant sacrifices on some people. They also note that the number of people who have to suffer such sacrifices will be much greater than the number of people who will live without such sacrifices, after the transitional period has been passed (this difference in numbers will be due to the imminent decline of the population). Now, if this is the case, then it seems that the proposal to enact the policy, and bring about the attendant sacrifices, has very little, if any, intuitive support. Few people would want to say that in this situation, the state would be justified in enacting the policy. And this seems to show that the fact that some sacrifices are 'merely' 'transitional' does not have moral significance when we are deliberating about which state policies it would be legitimate to enact. Any moral significance such facts seem to have, actually appears to rest on a hidden appeal to the moral significance of numbers, which is a quite different issue.

Although in the above paragraph I allowed that an appeal to the moral significance of numbers may have *some* intuitive moral appeal, I *do not* think that numbers should always count- sometimes letting the numbers count will run counter to other, more deeply held, intuitions.

So, it seems that if the 'stronger' sense in which transition problems might be irrelevant to principles of justice is appealing, then the most plausible explanation of this is not that the sacrifices and burdens involved in enacting principles of justice are

⁵⁸ A point I discuss the towards the end of this Part of the thesis

transitional, but rather an implicit appeal to the moral significance of numbers. If this is the case, then transition problems are not ruled out as being irrelevant to justice because they are transition problems, and so we cannot rule facts regarding existing injustices as irrelevant to justice simply on the grounds that such facts present *transition* problems. Now, it might be thought that numbers *are* morally significant and *this* is why facts of existing injustice are irrelevant to justice: the thought might be that the complaints of those facing the burdens of moving from an unequal society to a more equal society will likely be outweighed by the larger number of future generations who *benefit* from living in a more equal society. The dynamic conception of justice that I present in this thesis uses a non-aggregative form of moral reasoning: the pair-wise comparison of complaints (this will be discussed more fully in Part Three). Constraints on space prevent me from arguing here against the position that aggregation of complaints should figure in moral arguments. However, it is worthwhile to note three points. Firstly, *Nagel himself* proposes a non-aggregative form of moral justification for principles of justice, so we might wonder whether he could coherently hold the ‘stronger’ position on transition problems.⁵⁹ Secondly, even if numbers are taken to be morally significant, we might think that giving greater weight to the complaints of *our* generation than to future generations is justified, which may allow us to say that the complaints of the well off in our society against moves towards strict equality may not always- or even *generally*- be outweighed by the greater number of people in future generations who will benefit from the creation of a more equal society. Thirdly, understanding that the intuitive appeal of ‘stronger’ position on the (ir)relevance of transition problems to principles of justice rests on an implicit appeal to the moral significance of numbers has the virtue at least reveals the true site of the disagreement between those who hold this ‘stronger’ position, and those who affirm the dynamic conception of justice. After all, what else could provide the moral appeal of the ‘stronger position’? If we are concerned to justify coercive measures to citizens, why would an argument that only they- and not future generations- would face severe

⁵⁹ See Nagel, *Equality and Partiality*, pp. 66-67. It should be noted that, at many points in his book, Nagel shows some support for the idea that numbers are of moral importance in *some* sense, but he does not provide an argument as to why this is the case: however, he does give an argument for a non-aggregative component to moral reasoning in the pages referenced above.

burdens be thought a plausible, compelling justificatory move, if it was not an appeal to the moral significance of numbers? If it is choice between my being burdened, or future generations having complaints, why should I agree to the burden?

However, we might interpret Nagel in another way than the ‘stronger’ interpretation would have it. That is, we might think that Nagel points to the irrelevance of transition problems in formulating correct principles of justice, but that he could allow that transition problems may mean that it would be unjustified to *enact* principles of justice at a given time. To address *this* position on transition problems satisfactorily, we need to look at the role that justice plays in our political morality: what kind of moral consideration *is* justice, and why do we care about it?

The role of justice in our political morality.

Arguments over the correct conception of justice have been a feature of the philosophical landscape since classical Greece, and yet it remains extremely difficult to define exactly *what* we are talking about when our thoughts turn, as they often do as political philosophers, to justice. Rawls’ intuition regarding justice, with which he begins *Theory of Justice* does indeed have a great, immediate, intuitive appeal, even if, as I will argue, it may not be *fully* correct. It will be useful to quote the relevant passage in full:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise, laws and institutions must be reformed or abolished if they are unjust.⁶⁰

Few people, I think, would agree fully with what is argued here (indeed, Rawls allows that his position may be ‘addressed too strongly’)⁶¹. What if an institution, A, is only

⁶⁰ John Rawls, *Theory of Justice* p.3

⁶¹ *Ibid.* p.3

afflicted by a minor injustice, and reforming it so that it is just will be very costly (assume that there is not injustice in imposing such costs on the population)? Rawls says deviations from justice are only justified in order to prevent greater injustices.⁶² *Must* institution A be reformed or ‘abolished’? This seems an overly stringent characterisation of the role of justice in our political morality. However, this is not the main point that concerns me. Of main interest here is the fact that Rawls sees his conception of justice as closely linked to political action: if an institution is unjust, we, or the state, should act to reform it. Now, as I have said, I do not agree with Rawls that we *always must* act to reform unjust institutions, but I do agree that there is a close link between correct principles of justice for a society and moral requirements to act in certain ways. These moral requirements fall into two main groups- requirements to support the initial enactment of the correct principles of justice (for example, voting for the political party-or parties- which, if elected, pledges to conform to the correct principles of justice for society), and requirements to support the *maintenance* of just institutions (for example, to abide by the rules of just institutions, to vote for parties which pledge to continue to conform to the correct principles of justice, and to educate one’s offspring to respect and affirm the correct principles of justice).

Now, if justice brings with it moral requirements for us to act in certain ways, then the question of demandingness of principles becomes very significant. If putative principles of justice are severely demanding, then this gives us one reason to doubt that they are correct. It seems plausible that we are morally required to act to support and maintain just institutions, and intuitively, we do not believe that moral requirements on our action should be severely demanding. Severely demanding principles of justice could mean that actions to support and maintain institutions conforming to these principles will be *supererogatory* acts: they may be morally good, but they go beyond what can be morally *required* of individuals.

⁶² This point raises the issue of whether there are two different questions we need to address in our conceptions of justice; that of ideal justice, and non-ideal justice. I argue later in this section that it is unconvincing to see the dynamic conception of justice as a set of ‘non-ideal’ principles of justice, if this is taken to mean that there is a set of ‘ideal’ principles of justice *in relation to which facts about existing unjust societies are irrelevant*.

One could argue against this, of course, that it is not a desideratum of correct principles of justice that they bring with them moral requirements relating to individual conduct to support and maintain just institutions. Principles of justice simply relate to how major social institutions, and the distribution of advantages in society, should be organised, it could be said: they themselves make no demands on *us* as individuals. This view then, has justice as a moral ideal for society's organisation, that stands independently on moral requirements on us as individuals. One *could* say this, but it would give justice a very different role in our political morality than it is generally thought to have. My opponent says something like this: 'Yes, these principles of justice are very demanding, but they are still correct, even though- because of the demandingness of these principles-, there are no moral requirements to support and maintain institutions which conform to these principles. Justice does not *consist in* demands on how we, as individuals, act. Indeed, it can be supererogatory to support and maintain institutions which conform to these principles'.

I do not deny that moral ideals for society of this form have *some* role in our political morality: indeed, the 'strictly egalitarian' moral ideal which goes beyond my conception of justice for our society can be seen as just such an ideal. What I do deny is that *justice* is such an ideal.

The main reason for this denial stems from the pressing importance that justice has in our political morality. The appeal of stating that 'justice is the first virtue of social institutions' lies largely in the fact that we think that justice *should* (generally, in normal circumstances) be brought about. Our thinking about justice is not simply an academic exercise of inquiry into a moral ideal for society, but the more pressing problem of: *how should society be changed?* If we make justice independent of moral requirements on individuals (in the sense that the correct conception of justice is held to not even partly consist in such moral requirements), then we lose this pressing aspect of the problem: we lose what makes the question of justice one that has paramount importance in our lives. We do not simply want an ideal for society that is unattainable, or very costly or demanding to attain. Rather, we want to know: what are we morally

required to support and maintain *now*, as regards the major social institutions? ‘How ought this society be organised?’ is a very different question to, ‘What would an ideal society be like?’, and this is because the former question takes into account the steps required to achieve and maintain the morally correct society. What we should *will* should happen is a more pressing problem for us than what we should *wish* would happen, or *had happened*: and justice *does* seem to be a very pressing problem. Imagine how strange it sounds for someone to say, ‘this society is unjust, but there are no generally overriding moral requirements on me to support the institution of a just system, nor to help maintain such a system- even in relatively low-cost ways such as voting- if it is, somehow, established’. This sounds so odd because we look to principles of justice to tell us what should be brought about.

The charge of ‘injustice’ is a very strong moral criticism of a society, and this fact is not accommodated if we argue that it is, generally, morally permissible to take no steps to rectify this injustice. Again: if such action (or lack of action) was morally permissible, why would we think that justice, and injustice, is such a pressing problem? Why would we be so concerned to know what a just society would be like if we also felt that it was generally (in normal circumstances) morally permissible to act in ways that maintained injustice, and to fail to act in ways that support steps towards justice? The points above should not be taken to entail that departures from justice are *never* morally permissible: only that the role of justice in our political morality seems to rule out permissible departures from justice being the *norm*, or a very common occurrence, in our society. If they are the norm, the strength of the criticism of ‘injustice’ in our political morality cannot be accounted for.

Again, the contrast between moral ideals and principles of justice is important. It may *not* undermine a moral ideal if, in common-place normal circumstances, it is morally permissible to depart from this ideal. The nature of some moral ideals can mean that permissible departures from them in our society, simply because of all the moral

imperfections within our society (for example: our selfish motivations, or the failures of present institutional designs to perfectly meet our aims in political morality).⁶³

Against those who hold that transition problems may mean that we are not justified in enacting correct principles of justice, but that transition problems are *not* relevant to the question of which principles of justice are (call this the ‘*anti-transition problem argument*’), it should be argued that if justice is seen as such a moral ideal, as independent of problems of transition, it will play a very different role in our political morality than we generally think it should play. In effect, such the anti-transition problem argument reduces justice to something we ‘wish’ for, rather than something that we are morally required to *will*. Such a position puts justice at one remove from the truly pressing problem in political philosophy which is: how ought society to change? How ought we, as members of political society behave? By doing this, such a moral position loses sight of what motivates us to concern ourselves with questions of justice. If justice is a moral ideal that is independent of moral requirements to bring about its attainment, then we have a political morality which morally permits sustained injustice. This fails to accommodate the powerful thought that justice is, ‘the first virtue of social institutions’. Although, as I discuss later in this section, there are problems with Rawls’ explication of this idea, the basic thought remains highly plausible: injustice is *not* something that it should be generally morally permissible to tolerate and maintain. The criticism of ‘injustice’ is not simply one that points to *imperfection*, but rather one that points a very serious moral failing on the part of society to meet its moral requirements. So, because transition problems *do* matter to justice, we should take facts of presently existing, and unjust, distributions of advantages in society into consideration when formulating principles of justice.

⁶³ On the last point, see Nagel’s discussion of Utopian political ideals in Chapter 3 of *Equality and Partiality*.

The anti-transition problem argument re-emerges.

However, it might be argued that holders of the anti-transition problem argument can accept all the arguments above on the role of justice in our political morality and *still* argue from their position against my dynamic conception of justice (remember that the anti-transition problem argument can be aimed against the dynamic conception of justice if it is thought that the burdens that a move to a strictly egalitarian society will impose on some citizens are ‘transitional’; that is, in the future, after the strictly egalitarian society has been established, these burdens will gradually disappear). The dynamic conception of justice holds that the principles of justice which are correct for our society now may be different to the principles of justice which are correct for our society once it has moved towards egalitarianism. We can view these different principles of justice as gradually moving us towards a strictly egalitarian moral ideal for society. Now, it might be objected that if we hold this strictly egalitarian moral ideal for society, then we can call *this ideal* ‘justice’ (or, ‘the just society’), *and* still retain the connection between justice and moral requirements to change society that I argued for in the last section, by saying that this egalitarian moral ideal brings with it moral requirements to change society in a way in which we *gradually move towards* this ideal. The egalitarian moral ideal does not bring with it an immediate moral requirement for us *now* to change society and enact strictly egalitarian principles, it could be said, but it morally requires us to change society so that it becomes more egalitarian than it is now, a move which will bring with it further moral requirements for us (or future generations) to move towards greater equality. So, the objection runs: we can call this strictly egalitarian moral ideal ‘justice’ and retain a connection between justice and moral requirements to not sustain injustice.

This may be an appealing thought: the idea that because transition problems can be overcome in morally permissible ways, they are not relevant to justice. Nevertheless, this thought is incorrect, or so I aim to show.

In response to this objection to the dynamic conception of justice, let us first assume that substantively egalitarian principles governing the distribution of goods (which include opportunities) are instituted in our society. So, for example, let us imagine that Rawls' 'well ordered' society, governed in accordance with Rawls' two principles of justice, is brought into being. Now, imagine that the establishment of this well ordered society has a somewhat unusual consequence: as the society becomes more equal, it splits up into very small, closely knit communities that are largely independent of each other, perhaps similar to the Kibbutz system in Israel (and assume, furthermore, that this change can be seen as a form of moral progress towards a moral *ideal*, for that society: perhaps there is a moral value in having a closely-knit community with strong bonds of solidarity). This might seem a far-fetched possibility, but that fact is irrelevant for this argument: what *is* relevant is that it seems plausible that different principles of justice will correctly apply to our society, than to such small, closely knit communities.⁶⁴ At least two reasons for this suggest themselves. Firstly, in such closely knit communities, one's relationships with one's fellow citizens will be very different from the relationships which we have in *our* form of society, where most of our fellow citizens are strangers to us. This difference in the relationships which we have with our fellow citizens could mean that different principles of justice apply to each society. For example, the expansion of the 'currency' of distributive justice beyond primary goods may be appropriate in more closely knit communities. Also, as I suggest below (in the section on 'ambiguous' moral ideals), as our relationships with our fellow citizens change, the moral appeal of 'levelling down' may change: for example, as our fellow citizens cease to be strangers to us, perhaps levelling down may be seen as morally appropriate in some cases.

A second reason for thinking that this transition to a smaller, more closely knit form of society may change the principles of justice which correctly apply to that society is that the institutional resources available to enforce proposed principles of justice may be quite different in the two different forms of society. For example, it may be that in very

⁶⁴ Indeed, we should note that Nagel thinks that the principles of justice which apply to closely knit communities may be different, and more egalitarian, than those principles which apply to larger communities where there is less 'solidarity' between citizens. See *Equality and Partiality* p.90

small, closely knit societies, the creation of institutions to ensure that all inequalities maximally benefit the worse off (in accordance with the difference principle) will be unacceptably costly, as the tax revenue base necessary to establish and maintain such redistributive institutions may be lacking: if someone is very disadvantaged, as a result of the natural lottery, then the cost of removing their disadvantage will be born by fewer people in small communities than in large communities. Or, perhaps a system of egalitarian redistributive taxation would be very costly to set up and administer in a small community with limited resources (perhaps because of the administrative costs of finding out who is the worst off). In such cases, it may be correct to replace the difference principle with a less demanding principle of distributive justice, which would not impose such costs.

So, we have seen two reasons as to why if a society splits into small, largely independent, and closely knit communities, the principles of justice which correctly apply to the society may change. These two reasons have focussed on, respectively, changes in our conceptions of our fellow citizens, and changes in the institutional means available to enforce proposed principles of justice. We should note that Rawls himself has the resources to accept that the principles of justice that correctly apply to the society in our example could change as the society changes. In *Political Liberalism* he is careful to emphasise that his conception of justice takes the conceptions of citizens which are to be found in the 'political culture' or 'tradition' of modern constitutional democracies as a foundational idea, grounding his arguments for the Original Position as the correct constructivist procedure from which to derive principles of justice.⁶⁵ So, Rawls might accept that as our conceptions of citizens change- as our 'political culture' changes, due to our society splitting into small, closely knit communities-, then the principles of justice which correctly apply to our society will change. Also, Rawls argues that we must assess the likely consequences of enforcing principles of justice in order to determine whether they are 'acceptable': if not, then the

⁶⁵ Rawls, *Political Liberalism*, pp.13-20, especially p. 13: 'a political conception of justice is... implicit in the public political culture of a democratic society'.

principle of justice in question may be incorrect for the society we are concerned with (and so he spends much of Part Two of a *Theory of Justice* trying to show that his principles of justice will not, when enacted in institutions, lead to unacceptable conclusions).⁶⁶ So, Rawls might accept that, if a society- because it is so small- lacks the institutional resources to enforce the difference principle in a way which is not severely costly, then the difference principle may not correctly apply to that society. So, it might be that an *internal* argument can be employed to force Rawlsians to accept my arguments.

Whether or not Rawls must accept these points, however, it still seems plausible that if our society does split up into much smaller communities, then different principles of justice may apply to *this* society from our society. In the example we imagined above, if, when Rawls' two principles of justice are enforced, a society then splits into smaller, more closely knit communities- and does so because these two principles have been enforced- then the first form of well ordered society is a temporary, transitional stage in a societal movement towards another form of society, a movement which proceeds- we assume- via morally permissible methods. Yet, even taking the transitional, temporary nature of this first society into account, it seems plausible to allow for the possibility that different principles of *justice* will apply to this society from those that apply to the second form of society, with its smaller, closely knit community. If this is so, then a counterexample has been given to the anti-transition problem argument.

It is important to note that the dynamic conception of justice does *not* affirm without qualification that, in the future, there *will* be more strictly egalitarian principles of justice which are correct for our society. Rather, it simply raises this prospect as a *possibility*: our motivations *may* change and become more egalitarian as we move towards a more egalitarian distribution of advantages; people *may* come to find strictly egalitarian principles less demanding than they do now. But likewise, this may not happen. There may be no morally permissible path to the strictly egalitarian moral ideal

⁶⁶ Rawls, *Theory of Justice*, p.265: Rawls says we must show that, 'under a wide range of circumstances the difference principle will lead to acceptable conclusions'.

for society. If this *is* the case, then those who hold the anti-transition problem argument are actually committed to the position that the correct principles of justice for society will be partly determined by facts about existing injustice, if they allow that correct principles of justice should be such that we are morally required to take steps to bring about their enactment in institutions: if the facts of our society are such that enacting more strictly egalitarian principles in the future will not be morally permissible, then the facts of our current situation partly determine what justice is for us, as they make it the case that moves (via state coercion) towards an egalitarian moral ideal will be morally impermissible. Indeed, there may be some good reasons for doubting that motivational changes could ever occur in such a way that moral requirements to sustain strictly egalitarian principles of justice will apply. For example: if other countries, and other societies, do not move towards egalitarianism, then knowledge of how well off talented people are in such societies makes it much more difficult to be a strict egalitarian in this society; being reminded frequently of what you *could* have can make settling for less extremely difficult. So, one response to the above objection is this: we might be optimistic that strict egalitarianism will become less demanding in the future, but this might *not* happen, because motivations may not change. Some powerful non-egalitarian motivations might be eradicable. And if there is no morally permissible route to the strictly egalitarian moral ideal, then this strictly egalitarian moral ideal cannot be (on the revised anti-transition problem argument we have considered in this section) what *justice* is.

The lack of a detailed, non-ambiguous egalitarian moral ideal for society.

The objection to the dynamic conception of justice that we considered above states that, if we accept- as I do- that there is a strictly egalitarian moral ideal that is correct for our society, then we should call this ideal 'justice', if we believe we can reach this ideal through morally permissible steps. However, it seems that our moral intuitions about *what this ideal is* are far from clear, and many important issues will thereby remain without a non-ambiguous answer. The problem is that in enacting steps to radically

reduce inequality in our society, we profoundly change our social world; instituting truly egalitarian principles of justice is a creation of a society which has no usefully similar comparison in today's world. In this creation of a new type of society, where opportunities to gain more than others are greatly curtailed, our moral intuitions regarding the morally correct distribution of advantages may be very different to those we have now, because of our different situations and our correspondingly different conceptions of, and relationships to, our fellow citizens and ourselves. Of course, we can use hypothetical moral problems, and thought experiments, to try to overcome this problem, but these will be of limited use because of the fact that *so much* about the supposed future, egalitarian, society will be different from our society. Moral thought experiments are useful when we suppose that *one particular fact* about our circumstances changes, leaving other facts unchanged, and then ask what would seem morally right or wrong in those circumstances. However, our intuitions seem much less clear when we imagine that our circumstances are very different, in a great number of different ways. It seems a plausible possibility that radically reducing inequalities in our society, on the basis of moral arguments, could change our thoughts about our fellow citizens, and our relations with them. To cease, for example, to see other citizens as people whom one is competing with in order to try to achieve very great gains, is a major shift from many citizens' *present* relations with other citizens. Now, with these changes in our thoughts regarding our fellow citizens, different moral intuitions may carry weight than do at present.⁶⁷ Just two examples: it may be more intuitively plausible than in our current society to extend the 'scope' of justice to include welfarist considerations, which could ground claims for compensation for 'expensive tastes'; also, 'levelling down' might become more intuitively plausible as our relations with our fellow citizens changes (in certain relationships, it should be noted, levelling down does have *some* moral plausibility; think of a friends deciding to forego an enjoyable trip if one of the group cannot go: here, the thought seems to be that if they all cannot go, then

⁶⁷ Likewise, Joseph Raz, on p. 419 of *The Morality of Freedom*, comments on the future possibility of forms state coercion which do not invade autonomy and writes: 'The supposed circumstances... diverge from anything we have experience of sufficiently to make it impossible to say how the change would affect the merits of the issue'.

there is something morally regrettable about just *some* of them going)⁶⁸. These remarks are highly speculative, but this is what we should expect when we are trying to decide what would be morally right in a world very different from our own. So, the second response to the pressing anti-transition problem argument is that the egalitarian moral ideal which we might be able to approach through morally permissible stages is very unclear and ambiguous; the task of formulating principles for the distribution of advantages in such a future, ‘ideal’, society may be one which we lack the resources to answer adequately. Yet, I venture, in our *prephilosophical thoughts about justice*, we think that justice should be a problem on which we can make some adequate progress now. Again, considering the role of justice in our prephilosophical political morality lends some support to the dynamic conception against rival conceptions of justice.

The strains of commitment and the distinction between ideal and non-ideal justice.

For this section, I will not rely on arguments regarding our prephilosophical thoughts that principles of justice bring with them moral requirements to bring about justice from our current unjust society. Although this argument seems very plausible, the dynamic conception of justice can be defended without it. To see this, we should note that even if we do not think that justice brings with it such moral requirements, it is often argued that a just society will be stable. That is, given facts about human psychology (amongst other facts), it will be reasonable to expect people abide by the principles of justice voluntarily, and not simply because of sanctions against disobedience. So, we can put aside the issue of whether there are moral requirements to bring about a situation of justice from a situation of injustice, and yet still maintain that once we are in a just society, there will be moral requirements to abide by the principles of justice and sustain the situation of justice; and these principles should bring excessively demanding ‘strains of commitment’ on citizens. Principles of justice should be ‘stable’ in this way, it is often argued: they should accommodate facts about our

⁶⁸ Cf. my comments in the previous section regarding small, closely knit communities.

psychology in order than it is reasonable to expect people in a society governed by these principles of justice to affirm the principles and abide by them.

We should, then, in some sense ‘take people as they are’ in thinking about which are the correct principles of justice.⁶⁹

The question then arises, however of: *which* facts of our psychology are relevant in deciding what justice demands? Consideration of this problem allows us to mount *internal* criticisms against Rawlsian conceptions of justice: that is, we can argue that given what Rawlsians *do* take to be relevant to questions of justice (and, particularly, the stability of principles of justice), they are without a morally plausible argument for why facts about unjust societies should *not* be considered as relevant. I argue below that the exclusion of facts arising from unjust societies in some conceptions of justice is an unjustified move. This means that a move to argue that what I am calling ‘justice’ is not justice, but rather another, different aspect of political morality, has been blocked, because once we start letting facts about psychology into questions of justice, we cannot give a compelling argument for excluding the facts that I argue are relevant in deciding what justice is. The proposed distinction between ‘true’ justice, and my dynamic conception of justice falls down. Furthermore, I aim to show that given the facts which Rawlsians *do* take to be relevant in formulating principles of justice in their ‘ideal theory’ (in which non-‘happy’ circumstances are assumed not to hold), they lack a plausible rationale for excluding facts of the existing distribution of advantages in an unjust society as irrelevant to ‘ideal’ justice.

Why might facts of currently existing injustice be held to be irrelevant to formulating principles of ideal justice? We have already seen that one argument- to the effect that the problems raised by such facts are ‘transitional’ and can be overcome- will not work. So, what other features of such facts could we pick up on in order to justify their exclusion as irrelevant to the formulation of principles of justice? It might be thought that the facts that I take to be relevant to questions of justice, such as the prevalence of non-egalitarian motivations and the burdens on the previously well off of moving

⁶⁹ The phrase comes from Joshua Cohen’s article, ‘Taking People as They Are’

towards a position of greater equality, should properly be excluded from partly determining what justice is, *simply because* they are the result of an unjust society having existed up until this point.

There is, however, a major flaw in such an argument. To see this, take the facts about human psychology that many (Rawlsian) philosophers take to be relevant in partly determining the principles of their 'ideal theory' conceptions of justice: generally, among the facts to be included are that people are often motivated by selfish or parochial concerns. As Nagel puts it, for instance, we have many reasons which arise from our 'personal' point of view, and such reasons can conflict with more strictly egalitarian reasons arising from the 'impersonal' viewpoint.⁷⁰ Rawls also accepts that certain facts about our psychology are relevant to justice, such as the fact that we often envy others, and are often motivated by partial, rather than impartial, concerns.⁷¹ Now, it *does* seem sensible to accommodate such facts about our psychology in our principles of justice. However, would it seem any *less* sensible if historical sociological research showed that such psychological facts are the result of having grown up in an established unjust society? That is, what if we are only partial, and even self-centred, to the extent that we are because of previous injustice up to this point in our history? It seems that such a sociological discovery would *not* make it any less sensible to accommodate such psychological facts in our principles of justice. Indeed, it is notable that when Rawls, Nagel, and other broadly Rawlsian writers on justice, take such psychological facts into account in their conceptions of justice, no question is generally raised as to their origin. We are simply to accept that this is how people are, and principles of justice should 'take people as they are'. And this move is a sensible one, because of the difference pointed to earlier of *wishing* that things *had* been different and *willing* that they *are* now different. To know what we should will, we need to know what we are, and what our circumstances are.

⁷⁰ Nagel, *Equality and Partiality* ch.2

⁷¹ For the former point, see *Theory of Justice* pp. 530-532, and for the former point, see p. 127

Secondly, it might be argued that the facts that I take into account in formulating the dynamic conception of justice are not relevant to questions of justice because the non-egalitarian motivations can be lost, whereas the parochial concerns that Nagel and other writers try to accommodate are in some sense part of our 'human nature', and hence cannot be lost or eradicated. Indeed, this is just the kind of justification that Rawls seems to favour, as he argues that only facts which are 'fixed' aspects of human circumstances should be relevant to an ideal theory of justice.⁷² Earlier in Part Two, I raised some doubts as to whether the non-egalitarian motivations that I take to be relevant to questions of justice could be lost, but assume for the sake of argument that they could be. Even making this allowance, there is a serious flaw in the above argument, which is, simply: whether an aspect of our psychology is unchangeable or not does not seem to affect whether it is relevant to formulating principles of *justice*. Assume that, for example, a fact which Rawlsians take to be relevant to justice- the fact that we are predominantly motivated by partial, rather than impartial, considerations in our day-to-day choices- is *not* 'fixed', but could be eradicated from our psychologies, albeit *at great cost to us* (perhaps very oppressive state policies would be necessary to effect this change). It does not seem intuitively plausible to say that, if such a procedure for largely eliminating selfishness *was* available, then the fact that we currently have such selfish motivations would thereby be irrelevant to justice. Evidence of this is provided by the fact that there *have* been societies which had more prevalent strictly egalitarian motivations than we do (some examples of such societies are close-knit tribal societies). Now, for *us* to reach this point might be very difficult and costly, but *not impossible*. Yet the possibility of eliminating selfish motivations does not seem to change our thoughts about what the correct principles of justice are. And one explanation of this is the fact that eliminating such motivations would be very costly; it seems implausible to say that facts about our character which we *could* lose, but which would be *very burdensome* for us to lose, should not be relevant to justice. So, contrary to what Rawlsians say, the (supposed) fact that aspects of our character are 'fixed' conditions of human life does not play a role in determining whether or not such facts are relevant to justice. What *does* matter is the cost of losing such aspects of our

⁷² Rawls, *Theory of Justice*, p. 245.

characters. But then, why should not the costs that moving towards greater equality would impose on well off people in an unjust society be taken as relevant in formulating correct principles of justice for that society? This would, of course, lead us back to the dynamic conception of justice.

One response to this question could be that the non-egalitarian motivations of the well off that I take to be relevant to justice are in fact *not* relevant in this way, because they are aspects of our psychology which will we be better off, morally, without. Perhaps they belong to the non-‘happy’ circumstances which Rawls says are only relevant to non-ideal, rather than an ideal theory of justice?⁷³ Whereas, it could be argued, we would *not* be better off, morally, without the non-impartial concerns that Nagel and other Rawlsians take to be relevant to justice; such concerns and motivations are necessary for us to have a fulfilling and worthwhile life. Perhaps *this* is the significant difference between the two sets of psychological facts. However, even if this difference *could* justify taking one set of facts to be relevant to justice, and not the other, it seems very doubtful that the difference holds up to scrutiny in relation to the disagreement between the dynamic conception of justice and Rawlsian conceptions of justice. After all, although it might be plausible to say that some of our non-impartial concerns are morally valuable, surely not *all* of them are. There is some sense in which we would be morally better people if we were more altruistic and less self-centred. Furthermore surely we do not want a conception of justice to take in account *only* those psychological facts that we would not be better off, morally, without. We do not want justice to only accommodate the psychological facts relating to moral ‘saints’ or ‘angels’. If this is the case, then one cannot object to the facts that I take to be relevant to justice by way of an argument that these psychological facts are such that we would be morally better off without them.

⁷³ Rawls, *Theory of Justice*, p. 246.

Rawlsian conceptions of justice aim to establish standards of *reasonableness* on the justification of principles of justice.⁷⁴ What it is reasonable to agree to, and to ask of citizens, depends on what the citizens in question's circumstances are. We need to take these circumstances into account in order to adequately address the problem of social cooperation. As Rawls writes, 'Conceptions of justice must be adjusted to the characteristics of social cooperation which they are to regulate'.⁷⁵ Yet, once we allow facts to be relevant to justice in this way, the exclusion of facts of the existing distribution of advantages in society, as irrelevant to justice, looks to be unjustified.

What is owed to citizens *qua* citizens.

In 'Kantian Constructivism in Moral Theory', Rawls argues that principles of justice should state what is owed to citizens *qua* citizens (and citizens conceive of themselves as free and equal). Because of this, facts about particular societies are irrelevant to justice; we want to know what is owed to *any* citizen as a matter of justice simply in virtue of them being a citizen.⁷⁶ So, Rawls wants his principles of justice to abstract from facts about particular societies, to achieve this kind of generality, in order to find what is owed to citizens simply in virtue of them being citizens, and *not* in virtue of them being citizens of a particular society. Now, I think we should agree that principles of justice should state what is owed to citizens *qua* citizens. This thought should be born in mind, for example, when we think of the 'currency' of distributive justice; we want to know what kind of advantages citizens can have a claim on simply in virtue of

⁷⁴ Ibid. p 120: 'The philosophically favoured interpretation of the Original Position incorporates conditions which it is thought reasonable to impose on the choice of principles'.

⁷⁵ Ibid. p.138. However, it should not be thought that Rawls affirms a dynamic conception of justice in which, as social circumstances change, the principles of justice which correctly apply to the society change. On p. 125 he writes that the democratic equality conception of justice (which he affirms), 'holds unconditionally. That is, whatever the circumstances or state of society'.

⁷⁶ Rawls, 'Kantian Constructivism in Moral Theory' in *Collected Papers*, p.336: 'Were we to allow knowledge of the general institutions of society, we would permit particular information about the outcome of society's history to obscure how intimately the principles adopted are tied to that conception of person [as a free and equal citizen]'.

them being citizens.⁷⁷ However, the move that Rawls makes from this plausible thought that justice is concerned with what is owed to citizens *qua* citizens is puzzling. It seems that we can be concerned with what is owed to citizens *qua* citizens, without thereby excluding all contingent facts regarding particular societies as irrelevant to justice (which would seem to lead us to the view that the *same* principles of justice hold for all citizens: after all, the principles have to be chosen so that they apply ‘unconditionally... whatever the circumstances of society’, says Rawls)⁷⁸.

An example from another area of morality might help to make my point plausible. We might say that (at least some of) the moral duties that a parent has to a child are concerned with what is owed to that child *qua* being a child of the parent in question. Yet it does not seem plausible to say that facts about particular features of a family are of no relevance to what one owes to one’s children *qua* being one’s children. Whether we need to work to support our children, how old our children are, how well behaved they are, how far our relatives support us in child-rearing, and many other facts about our particular circumstances seem to be relevant in determining what we owe to our children *qua* being our children. With this in mind, the justification for abstracting from facts about particular societies, leaving only facts relating to the permanent ‘fixed constraints’ of human life, in considerations of justice seems very unclear. We can be concerned with what is owed to citizens *qua* citizens *without* thereby holding that facts about the particular conditions of citizens are irrelevant to this concern. In many cases, particular facts will have to be known before we can make a decision of just what the correct moral principles regarding what is owed to a person of type X, *qua* being type X; just as in the case of what parents morally owe their children. Being of type X might mean that certain kinds of moral considerations should figure in our moral reasoning (such as the consideration that our children should be loved, or that there is a division of moral responsibility, such that citizens can be held responsible for the-possibly

⁷⁷ Rawls, in *Political Liberalism*, often focuses on the importance of our conception of a *citizen* in our political culture. See, in particular, pp.97-99, where Rawls is concerned with how our political conceptions of citizens as free and equal affects our reasoning to principles of justice.

⁷⁸ Rawls, *Theory of Justice*, p.125.

expensive- tastes they develop, for example), but just how these considerations should figure in our moral reasoning may depend on our particular circumstances.

Further worries regarding ideal and non-ideal justice.

For the last two subsections of Part Two, I have argued that, given the facts that Rawls does take to be relevant to justice (and, more specifically, *ideal* justice), he lacks a plausible justification for rejecting facts of the existing distribution of advantage in unjust societies as irrelevant to justice, or only as relevant to *non-ideal* justice. Here, I want to briefly address some worries which may remain regarding the question of whether the dynamic conception of justice addresses a different, *non-ideal* problem, from Rawls' *ideal* theory.

Firstly, it might be thought that the dynamic conception of justice addresses the problem of *non-compliance* to principles of justice, which is a different, 'non-ideal'-type problem, to the question which Rawls is focussed upon.⁷⁹ Now, problems of non-compliance may indeed be the realm of 'non-ideal', rather than 'ideal' theory, and be beyond the realm of my search here for the correct principles of justice for a society. After all, we need to know what these correct principles of justice *are* before we can identify who is not complying with them. However, the dynamic conception of justice can (and should) be presented in such a way that we *do* assume full compliance with instituted principles of justice: the problem we are concerned with is with what principles of justice *should* be instituted. So, the dynamic conception of justice is not undermined by the thought that problems of non-compliance lie outside our search for correct principles of justice.

Secondly, when Rawls excludes facts about non-'happy' circumstances from his theory of ideal justice, he is working within the assumption that the principles of ideal justice

⁷⁹ Rawls, *Theory of Justice*, pp.244-247 addresses problems of non-compliance as problems of non-ideal theory.

will illuminate questions of justice relating to these unhappy circumstances. That is, he suggests that once we know what the structure of ideal justice is, the problems of justice in ‘unhappy circumstances’ will become more tractable.⁸⁰ Indeed, this is a plausible assumption if we restrict ourselves to Rawls’ examples, such as the case where some liberties have to be restricted by the state in order to preserve others.⁸¹ Addressing this problem, Rawls argues that we should assess the value of different liberties and then apply the principle (which comes from *ideal* justice) that the most extensive set of equal liberties for all should be secured. So, in the ‘non-ideal’ cases that Rawls discusses, problems are resolved by *applying* principles from ideal justice; at least part of the motivation for distinguishing between ideal and non-ideal conceptions of justice seems to be that the ideal case presents a more tractable problem, which- when answered- can then illuminate non-ideal problems of justice. However, as we shall see in Part Three, the principles of justice which are justifiable once we allow facts about existing injustice into consideration may be different from Rawls’ ‘ideal’ principles of justice. More specifically, they are likely to be less strongly egalitarian. If this is the case, then the solution to the problem with which I am concerned is not simply the application of ‘ideal’ principles of justice, but the formulation of *different* principles of justice. *Even if* Rawls is answering a different question from me, then, in being concerned with ‘ideal’ justice, it seems that one of the apparent motivations for concerning oneself with this question of ideal justice- the hope that it will make other, ‘non-ideal’ problems more tractable- has been lost. So, *if* I am answering a different question from the Rawlsians, it is difficult to see why they are answering *their* question, instead of mine.

Cohen, principles of justice, and principles of social regulation.

I now leave the debate with Rawlsians, to focus on a quite different possible objection to the dynamic conception of justice, which stems from Cohen’s recent criticisms of

⁸⁰ Ibid. pp. 8-9

⁸¹ Ibid. p.244-245

Rawlsian conceptions of justice. Cohen argues that Rawlsians mistakenly take factors which are actually irrelevant to justice as relevant, because they do not adequately appreciate the distinction between ‘principles of social regulation’ and ‘principles of justice’.⁸² So, for example, Cohen argues that questions of stability, publicity, and efficiency may be relevant to ‘principles of social regulation’ but are *not* relevant to ‘principles of justice’. Furthermore, Cohen argues that principles of social regulation should tell us how much justice we should bring about; but that the question of how much justice it is morally acceptable to bring about does not affect what justice *is*. Cohen takes factors which justify departures from justice- such as considerations of publicity, or stability- to be relevant to principles of social regulation, but not relevant in determining *what justice is*. Because of the circumstances of our society, for example, it may be morally impermissible to bring about justice; but this does not mean that these circumstances of our society change what justice *is*. For Cohen, justice is a moral ideal which is not partly determined by facts of human psychology or human circumstances.

Cohen’s conception of justice, and his metaethical thoughts on the fact insensitivity of principles of justice, are opposed to my own. Cohen believes that justice is an unchanging, ahistorical moral ideal that is fact-insensitive: I argue, in contrast, that which fundamental principles of justice are correct for our society can change as facts of the distribution of goods in the society change. Cohen argues that, because of the circumstances of our society, it may often be morally impermissible to fully achieve justice.⁸³ in contrast, I argue that it implausible that justice should be *generally* overridden as a moral consideration, and so we must take our particular circumstances into account when we formulate principles of justice. Lastly, I argue in this thesis that questions of stability are relevant to justice. In contrast, Cohen argues that stability may be relevant to principles of social regulation, but not principles of justice. So, in summary, it seems that Cohen might object to the dynamic conception of justice that it is set of applied principles of justice at best, or he could object more strongly- and this

⁸² G.A Cohen, *Rescuing Justice From Constructivism*.

⁸³ Ibid. p.52: ‘There is some justice which cannot, and should not, be implemented institutionally’.

seems more likely given my focus on factors such as stability, and the idea that full justice should *generally* be done- that I am proposing principles of social regulation, rather than principles of *justice*.

Before I attempt to rebut these objections, the appeal of Cohen's position should be noted. Cohen argues that Rawlsians are mistaken in conceiving of justice as the '*first* virtue of social institutions [my emphasis]'. Cohen notes that it may be morally permissible to fail to achieve justice, even when one can. So, he argues, justice is not the '*first* virtue' of social institutions if this means that justice cannot be overridden by other moral considerations. Cohen's argument that justice is not the '*first* virtue' of social institutions, because it can be morally permissible to fail to achieve justice even if one can, seems plausible. However, his arguments that are built on this foundation, regarding what is and is not relevant to justice, seem less plausible. So, in this section I attempt to agree with Cohen's more compelling points, while avoiding his less convincing positions, in order to show how Cohen-esque objections to the dynamic conception of justice are flawed.

In some circumstances, it may be morally permissible to fail to achieve justice even if one can, because considerations which are *not* relevant to justice have a particularly great moral importance. For example, if we think of justice as an account of what is owed to citizens qua citizens, then some moral considerations relating to the natural environment will not be relevant to justice. Some protection of the environment might be owed to citizens, but there may also be moral reasons in favour of protecting the environment which are not exhausted by what is owed to citizens. For instance, the state may have a moral reason to protect the environment even if citizens cannot engage with this environment- perhaps the environment is a deep sea wilderness which no citizen can safely enter. Now, it may be the case that the cost of fully achieving justice would be to destroy this natural environment. It seems intuitively plausible here that, if the destruction of this natural environment violates a very strong moral reason, it may be morally permissible to fail to fully achieve justice (or it may even be morally *impermissible* to fully achieve justice). This is particularly intuitively plausible if we

imagine that we can protect the natural environment in question if we depart from justice *very slightly*.

In many cases, however, factors which *are* relevant to justice can mean that departures from justice are morally impermissible. To give an example: circumstances can be such that the means of instituting justice (equalising opportunities, for instance) may be very costly for all citizens, and this cost might make it the case that it would be morally permissible to fail to fully institute justice. However, we can- and should- accept the above points *without* committing ourselves to what Cohen says: that is, to the position that the moral considerations which mean that we are morally permitted to fail to achieve justice (the cost and the intrusiveness of achieving justice) are lie *outside* the realm of justice. To see why, we should note first that the 'just' society is a society organised in accordance with correct principles of justice. If we depart from these principles of justice, even if that departure is morally permissible, there seems to be some 'negative residue', or a sense of moral regret: *something* morally wrong has been done, even it was necessary to prevent a more serious moral wrong. And this 'something morally wrong' seems to be the departure from the correct principles of justice. Now, principles of justice are general principles, which should apply to a wide range of possible particular circumstances. There may be good moral reason to include *within* the principles qualifications, which specify the kind of circumstances in which the principles either do not apply, or do not apply in the usual way. Priority rules are examples of such 'qualifications'; so that we might say, for example, that principle X should be conformed with, except in cases where this would involve violating principle Y. Another example of such a 'qualification' might be that we should enact Principle X except when this would severely compromise security. Now, there is a good reason to qualify principles of justice in this way, if one accepts my arguments on the role of justice in our prephilosophical thoughts, and believes that principles of justice should be formulated in such a way that it is not generally permissible to violate them. By allowing such 'qualifications' to be built *within* principles of justice, we can ensure that, generally, it will be morally *impermissible* to violate these principles: and this gives us good reason to take considerations such as stability, and also the facts of our

particular circumstances, into account when formulating principles of justice. However, we also have reason to resist incorporating too many ‘qualifications’ in to our principles of justice; that is, principles, to be useful in our moral thought, should be general, and apply to a range of circumstances. If moral principles have a great many qualifications, then they will apply differently in particular circumstances and the desiderata of ‘generality’ of moral principles will not be met; the principle will not be a guide to what we should generally do, but rather a set of particular answers to particular moral problems. So, we have two opposing considerations in our moral thoughts regarding justice: on the one hand, we want principles of justice to be sensitive to some particular circumstances, through qualifications, so that they will not generally be overridden by other moral considerations; on the other hand, we do not want principles of justice to be so sensitive to the different moral problems raised by particular circumstances that they collapse into a set of answers to particular moral problems, rather than being general moral principles.

To go back to the case of morally permissible departures from principles of justice, we can now see how a moral consideration can justify a departure from a principle *without* it being the case that this moral consideration is of a type that is irrelevant to justice. Take the example of the means of bringing about justice being very costly. One could accept that the cost of bringing about proposed principles of justice *is* relevant to the question of whether or not the proposed principles are principles of justice (and indeed one should, in order to ensure that it is not generally so costly that it will be generally morally permissible to depart from the principles in question). However, one can also allow that, in exceptional circumstances, the cost of the means of enacting the principles of justice will be such that it will be morally impermissible to depart from these principles. Furthermore, there might be good reason deriving from the desiderata that principles be general, rather than a set of particular solutions for particular circumstances, to avoid building a ‘qualification’ into the principles of justice to accommodate the morally correct way of addressing the problems raised by this exceptional circumstance. So, we can accept Cohen’s claim that principles of justice can be permissibly departed from, without accepting that, if a moral consideration

means that we are justified in departing from the principle of justice in question, then this moral consideration is of a type that is irrelevant to the question of what principles of justice are correct for a given society.

This conclusion allows us to see how the dynamic conception of justice can avoid the Cohen-esque objections that were outlined at the start of this section: an argument has been given that allows us to say that, although departures from principles of justice can be justified by a wide range of moral considerations, this does not necessarily mean these considerations are *irrelevant* to justice, in the sense of not partly determining what justice is. The fact that a consideration justifies a departure from justice does not mean that it is a consideration that is relevant only to ‘principles of social regulation’ rather than justice. So, this argument can help rebut the Cohen-esque objection that the dynamic conception of justice provides us with principles of social regulation, rather than principles of justice.

Cohen argues that, once we take the facts regarding human society and psychology, and also considerations such as stability, efficiency, and publicity, into account in formulating principles, we will be left with principles of social regulation, rather than principles of justice. However, taking such considerations into account is necessary in order to formulate principles which tell us what we should *generally* do, given normal- rather than exceptional- circumstances. And this is, as I have argued, the role that we seem to want principles of justice to play in our political morality, in our prephilosophical thoughts.

Now, it might be argued by Cohen, against the dynamic conception of justice, that behind the principles of justice which emerge from my ‘fact-infested’ form of moral reasoning, must lie ‘fact-insensitive’ fundamental principles. The principles of justice which emerge from different factual situations on the dynamic conception of justice may be very different from each other. Clearly, a ‘fact-insensitive’ fundamental principle which simply conjoined these principles in a series of hypothetical moral

statements (if factual situation A, then principle X holds; and if factual situation B, principle Y holds) would be an unacceptably ad hoc way to insist on fact-insensitive principles of justice lying behind ‘fact-infested’ principles of justice. If there is *any* fact-insensitive principle in the dynamic conception of justice, it might be the principle that we should only organise the basic structure of society, and coerce people within this structure, in ways that no one could reasonably reject. However, this does not seem to be a principle of *justice*, but rather a principle that gives us a condition that principles of justice must meet (and which yields principles of justice, once we consider facts: because facts reveal the balance of reasons in a given situation).

Different types of obstacles to justice.

To finish this section on Cohen, I want to look at the reasons we have to include moral considerations regarding strains of commitment among the considerations that are relevant to the question of what justice is. As we have seen, there may be obstacles, arising from particular circumstances, which mean that we are justified in departing from justice. Also, it was noted above that morally permissible departures from justice can leave a ‘negative residue’. The explanation of this ‘residue’ seems to be something like, ‘Would that the world were different, in order that justice could have justifiably been done’. We ‘regret’ the fact that the world is such as to make it the case that justice should not be done. Now, obstacles to justice can be of (at least) two types; what I call ‘external and ‘internal’ obstacles to justice. This distinction does *not* refer to the internal/external world distinction. Rather, the distinction to be made is between what we identify with, and value, and what we do not identify with, and do not value; the former are internal obstacles, the latter external obstacles to justice. The case of very costly means of enacting justice is an example of an ‘external’ obstacle to justice; we do not identify with this obstacle, nor do we value it. If, somehow, this obstacle was removed with the rest of the world left as it was, there be no loss, only a gain (because we may then justifiably enact principles of justice).

If we think that strains of commitment are such that justice should not be done, then we will see them as *obstacles* to justice. However, strains of commitment generally arise because moral principles demand that we give up, or at least override considerations deriving from, what we care about in our lives, and what gives our lives meaning. Because of this, if strains of commitment *are* obstacles to justice, then they will be *internal* obstacles; because we could not overcome these obstacles without giving up what we identify with and value, and hence there *would* be a loss in the removal of such obstacles. However, this last point suggests a moral reason to avoid formulating principles of justice which are such that they allow for the possibility of *internal* obstacles to these principles of justice. There would be a loss in removing such obstacles as strains of commitment, and losing the aspects of our characters and lives which give rise to such internal obstacles would be a loss of aspects of ourselves that we identify with and value. Yet, it also seems that when we encounter an obstacle to justice, we should *regret* that such an obstacle exists; we should think, ‘would that the world were different...’. If we allow for the possibility of internal obstacles to justice, then the result seems to be a kind of moral ‘schizophrenia’, in which it seems appropriate to regret that we have certain aspects of our character, while also valuing and identifying with these aspects of our character. Even if this form of moral ‘schizophrenia’ is not strictly *incoherent*, its (potential) presence gives us some reason to exclude the possibility of their being *internal* obstacles to justice. We try to find principles of justice that reasonable people can accept, and if principles induce ‘moral schizophrenia’ then this ‘acceptance’ is put in doubt: if accepting a principle means that we must regret what we in fact value, then acceptance of such a principle may not be possible for us. So, if the possibility of internal obstacles to justice should be excluded, then we have a further moral reason to hold facts about our psychology, and the strains of commitment that arise for creatures with our psychology, as relevant to what justice *is*.

Summary of Part Two and what *is* in a name.

To summarise the section of the thesis, I have tried to defend the dynamic conception of justice against objections which hold that the facts regarding existing unjust societies which I take to be relevant to justice, are not actually relevant to justice (or ‘ideal’ justice), even if they are relevant to some other aspect of our political morality. I have argued that, given the role that the question of justice seems to play in our normative political thought, such facts must be taken to be relevant to justice. Furthermore, I have argued that, given what facts Rawlsians do take to be relevant to justice, they are left without the resources to present compelling arguments against the dynamic conception of justice.

However, these arguments may raise the question: just why should we be so concerned with what is, and is not, properly called ‘justice’? What’s in a name?. Now, in *one* sense, the debates in this thesis have little importance in political theory, in that the conflicting conceptions of justice discussed here do not necessarily conflict on normative political problems relating to practical *policy* issues. However, in another sense, the questions discussed in this thesis *do* have substantial importance in political theory. We have a prephilosophical understanding of the problem of justice, and political philosophy is- in part- concerned with giving as full account as we can of such prephilosophical normative understanding. Although the debates in this thesis have little practical importance, the philosophical task which they are concerned with is a familiar one; that is, an attempt to resolve our prephilosophical thoughts into an acceptable form. So, in answer to the question, ‘what’s in a name?’, we can reply: a correct account of what just what we are appealing to, when we appeal, as we often do, to justice.

Part Three: the dynamic conception of justice and substantive implications for principles of justice.

The complaint model.

In the previous two sections, the dynamic conception of egalitarian justice has been presented and defended against likely and powerful objections. In this section we move on to the different task of discussing which particular principles of egalitarian justice can be justified. I argue that principles of distributive justice which is less strictly egalitarian (in terms of the distribution of income and other resources) than Rawls' difference principle *may* be correct in our current, very unequal society. However, the dynamic conception of justice allows for the principles of justice which apply to future, more equal, societies to be much more strictly egalitarian than the principles of justice which apply to us now.

How, then, are we to justify principles of justice? First, we need to note the problem that principles of justice aim to solve. This is the problem of social cooperation. We then face the question: how should we balance competing claims on the benefits of social cooperation? After all, there will be a wide variety of competing claims on such benefits that cannot all be met fully in a situation of scarce resources. We should note, in formulating an answer to this problem, that citizens are moral equals: that is, their interests are of equal moral importance. Because of this, in formulating principles of justice we should show equal concern and respect for all citizens, and the moral claims on the benefits of social cooperation. To give unequal weight to citizen's moral claims on the benefits of social cooperation is unjustified as to do so would be to deny citizens' equal moral importance. If citizens' equal moral importance is denied in this way, in the distribution of the benefits of social cooperation, then they can reasonably reject the system of distribution as unjustified. Principles of justice must be justifiable to citizens as equally morally important.

Our aim is to find principles of distribution which are justifiable to all citizens. Only then will we have found principles to govern a *legitimate* system of distribution: if the system of distribution is not justifiable to citizens, then we cannot reasonably require citizens to abide by the terms of social cooperation. We have seen that principles of distribution will be unjustifiable to citizens if they do not show equal concern and respect to all citizens as moral equals. How, then, do we show equal concern and respect for all citizens? Here I propose a non-aggregative contractualist method of moral reasoning. The arguments for such a non-aggregative method will not be discussed here: they have been rehearsed on many other occasions, by many different authors.

The method of moral reasoning I propose here will be familiar: it is the comparison of complaints from individuals. In assessing whether a particular system of distribution is justified, we look to the complaints against it from individuals. A complaint against a particular distribution A takes the form of proposing an alternative distribution (call this B), and complaining that if A is instituted, one gives up the gains that B would grant one. If the strongest complaint against a proposed distribution is less strong than the strongest complaint against an alternative principle, then it is reasonable to reject principles of justice which would enact the alternative principle.

This method of moral reasoning assigns equal weights to the interests of all citizens: it is founded on the assumption that all citizens' interests have equal importance, and that a system of distribution must accommodate this moral fact if it is to be legitimate. I want to use this method of moral reasoning to present some reasons to think that the correct principles of distributive justice for our society may be less strictly egalitarian, in terms of distribution of resources, than many egalitarian principles that have been proposed. Yet, crucially, it is *a concern with equality* that pushes us towards this 'limited' form of egalitarian redistribution. If someone has a stronger complaint than others, we do not seem to respect the equal moral importance of citizens if we neglect to act to remove this complaint, and address a less strong complaint instead.

Before I discuss just how the comparison of complaints relates to the dynamic principle of justice, however, it would be useful to specify in a little more detail just what a complaint against a proposed principle of justice should involve. The worst off clearly have some valid complaints against proposed principles of justice which would not, if enacted, bring about equality. Firstly, we can say that principles of justice which permit a great deal of inequality might leave the worse off's needs unmet; and the complaint that one's *needs* are not met in a system of distribution is a very strong complaint against this distribution, and the principles of justice that govern it. However, even if the worse off needs are met, they can complain against less-than-strictly egalitarian principles of justice that they are still being asked to sacrifice possible greater advantages: that is, the advantages that would accrue to them in a strictly egalitarian distribution. For their part, the well off can complain against egalitarian principles that a great deal of disruption is caused to their projects and ambitions when the advantages that have accrued to them during their lives are redistributed to the worse off.

The complaint model and priority for the worse off.

It is sometimes argued that an egalitarian conception of justice should give priority to the worse off, over the complaints of the better off.⁸⁴ If this means that we should give more weight to the complaints of the worse off, simply *because* they are the worse off, then I do not accept that the complaints of the worse off should have priority in this sense.

The worse off can complain against principles which maintain their position as the worse off that there is a special burden involved in being worse off than others, through no fault of one's own, if it would be possible to remove one's disadvantage. This complaint is difficult to elucidate exactly, but it something like the sense of being 'left behind' in the system of social cooperation, which can diminish one's self-esteem: being required to forego potential advantages in order to allow others to have more than

⁸⁴ See, for example, Nagel: *Equality and Partiality*, pp.68-69.

oneself can be a great burden. The knowledge that one has to settle for less in order to allow others to have more than oneself can generate a particular complaint, because we care about our position relative to others, and it can be very burdensome to settle for less than others have, in order to maintain their advantaged position over us.⁸⁵ With this complaint in mind, we can see why giving priority to the worse off in the sense of giving a greater weight to the complaints of the worse off than to the complaints of the well off, would be unjustified; to give priority to the worse off in this way would seem to involve something like 'double counting' of the complaints of the worse off. As we have seen, the worse off have a strong complaint against distributions which maintain their disadvantage *relative* to the better off. This complaint provides us with strong reasons against less than strictly egalitarian distributions. If we were also to give greater weight to the complaints of the worse off simply because they were the worse off, we would 'double count' the reasons against less than strictly egalitarian distributions which stem from the worse off's *relative* disadvantage. Once we already acknowledge that the worse off have a complaint against such distributions because of their relative disadvantage, then it is difficult to see why we would then give extra weight to the worse off's complaint. We can get the intuitively plausible results we want (if we find egalitarianism intuitively plausible) simply by appealing to the strength of this complaint.⁸⁶

However, it should be noted that although the complaints that the worse off have against less than strictly egalitarian distributions are very strong, they are not always an *overriding* moral consideration: in cases where the well off have to sacrifice a great deal in order to improve the worse off's positions by a marginal amount, the complaints

⁸⁵ Cf. Ibid. p.79: 'It is an extreme demand to have to accept the greater advantages of others,- in the sense of advantages greater than one enjoys oneself- as a sufficient reason for lower expectations over the course of one's life'.

⁸⁶ Furthermore, if we interpret 'giving priority to the worse off' as giving greater *weight* to the complaints of the worse off simply because they are the worse off, then we struggle to explain why- intuitively- giving priority to the rich over the super-rich does not seem to be morally required of us. *My* account, however, can accommodate this intuition: we can say that it is unreasonable for the (merely) rich to complain that they are being 'left behind' (after all, they are already rich!).

from the well off against such a move may outweigh the complaints from the worse off as to the marginal gains which they have sacrificed.⁸⁷

Some reasons to think that less than strictly egalitarian principles of justice may be correct for our society.

If income and other resources that were initially distributed unequally were then equalised completely, then the previously well off would have a complaint against this strictly-egalitarian redistribution that would be stronger than the complaint the previously worst off had against the initial distribution. The previously well off would lose more than the previously worst off would gain in a shift from an unequal society to a society where resources were distributed equally. Furthermore, it is possible that if resources were distributed in a strictly egalitarian fashion, then the formerly well off would now be the *worst off*, as they would suffer a burden that others do not suffer: the burden of having had one's life and projects severely disrupted. It is crucial to my argument here that there is a particular burden in having one's life disrupted such that one is no longer able to follow the ambitions and projects one has formed and based one's life around. It is this burden that the previously well off suffer in moves towards more equal distribution of resources. So, if we want to address the strongest complaint, as it has been argued we should, then we should not equalise resources. Rather, our concern with the equal moral importance of citizens' interests should lead us to allow the well off to keep *some* of their advantages in resources, in order to reduce the burden of their lives being disrupted.

This argument as it stands is too quick, however. Firstly, it might be objected that we could say that we must also take into account the special burdens faced by the worst off in an unequal society when formulating principles of justice. That is, we could say that

⁸⁷ Indeed, one appealing feature of the complaint model is that it can explain why we are not required to forego large advantages in order to help the worse off in minimal ways: our complaint against such redistribution will be larger than the worse off's complaint against the status quo, because we stand to lose a great deal, but they only stand to benefit a minimal amount.

the worst off in an unequal society face burdens that go beyond their lack of resources and opportunities: a plausible candidate for such a burden would be the social stigma of being worse off than others, and the feeling of being 'alienated' from society. This burden, it could be argued, could generate a complaint from the worst off against the less than strictly equal redistribution of resources proposed above that could outweigh the previously well off's complaint against a strictly equal distribution of resources. So, comparison of complaints would, in this case, lead us to propose strictly egalitarian distribution of resources and opportunities (although, perhaps, with a qualification taken from the Difference Principle: that inequalities which maximally benefit the worse off are to be permitted).

I cannot prove that such a situation would not arise, although below I give some reasons for doubting that it would. Firstly, however, it should be noted that even if the argument above were correct, it would not refute the dynamic conception of justice. Remember that the dynamic conception of justice simply states that the principles of justice that apply to a society may change as the distribution of goods in that society changes, because of the relationship between distribution of advantages in a society, and the burdens of moving to a position of greater equality in this distribution. Now, it might be that the complaint against the social stigma of being worse off than others is so strong that justice would demand that we give an equal share of resources and opportunities to the previously worst off, in order to compensate them for this burden that they have had to suffer. However, *once this distribution has been established*, it may be that future generations cannot make the *same* complaint as the past generation that was badly off: they cannot argue, that is, that the social stigma of being worse off than others that they have suffered makes it reasonable for them to reject any distribution other than a strictly egalitarian one-, *precisely because they have not suffered this stigma, as they have not been worse off than others!* So, with this group unable to reasonably make this complaint against losing their equal share, it may be *reasonable* to allow some forms of limited inequality: a departure from strict egalitarianism.

Although constraints on space mean that a full argument for the conclusion that a less than strictly egalitarian distribution of goods will probably be justified in a society that has long-established inequalities of advantages, some reasons for thinking this at least a plausible *possibility* can be given. In an attempt to make this possibility as plausible as I can, I will present what seems to be the *strongest* case for a move to a strictly egalitarian distribution of advantages in our, presently very unequal society, and then show how- even when we engineer the example so that it presents such a strong case in favour of strict equality- there is *still* good reason to think that only less than strictly egalitarian principles of distributive justice will be justified. Imagine that we consider the complaints regarding material gains and losses involved for the worse off and the better off and also the complaints of need that the badly off may have, and find that, due to the particular burdens which the better off face, in having their lives severely disrupted by a move towards greater equality, a *slightly* less than strictly egalitarian distribution of advantages seems to be justified. However, imagine that we have neglected to take into account the special burdens on the worse off of being, and remaining, worse off than others, in order that others keep their greater advantages. If only a *slightly* less than strictly egalitarian distribution of advantages was justified when we neglected to consider this complaint, is it not plausible to think that once we *do* consider this complaint, the balance of complaints will be such that only a *strictly egalitarian* distribution of resources will now be justified?

Perhaps not. To see why, imagine that a strictly egalitarian distribution of benefits *is* established. Let us call the representative previously badly off person, A, and the representative previously well person B. B might ask A to consider giving him a little more of the resource-goods that have been distributed, as this would reduce the burden of having his life disrupted. A might complain against this that to do so would impose a burden on him: the burden of social stigma of being the worse off, and the feeling of being 'left behind' and 'alienated', that he has had to endure all his life. However, the complaints do not seem to be equal in this case. B's complaint may well be stronger. This is because the marginal value of a resource-good in alleviating his burden is likely to be higher for B at a position of near-equality than the marginal value of holding on to

a resource good is for A.⁸⁸ One reason for this is that as we lose more of our resources, our lives become more severely disrupted. If we only lose one resource-benefit, we might be able to hold on to most of our ambitions and projects, albeit with more difficulty than before. If we lose another resource-benefit, we might have to sacrifice some of our projects, but are able to retain others. If we lose yet another resource-benefit, the marginal disvalue of the loss is even worse than before: we now face, in a sense, the loss of a great deal of what we have built our lives around, rather than simply a few ambitions. So, the first reason for the increasing marginal disutility of losing resource goods is that initial reductions in our resource goods only deprive us of the opportunity to engage in some of our projects, leaving us free to engage in many other projects that are important to us, whereas further losses in resource goods can disrupt lives in a deeper sense: they can mean not simply that we have to give up some projects within the ‘narrative’ of one’s life, but that the whole narrative of one’s life is changed, or at least severely threatened.⁸⁹ Another reason for the increasing marginal disutility of loss of resource goods is the empirical point that when we lose resources, the ambitions and projects that we will give up first tend to be those which have less central role in our lives, and less value to us, than other ambitions and projects. Only when we lose more of our resources will we finally relinquish those projects and ambitions that are dearer to us.

It seems at least plausible that the move towards a distribution which is just less than strict-equality would have a marginal *disvalue* to A that would be less than the marginal *value* to B that such a move would bring. The sense of stigma and alienation in being worst off is worse, the larger the gap between our benefits and the benefits enjoyed by the better off. If the gap between our benefits and those who are better off than us is small, as it would be in the proposed shift away from strict equality, then very little social stigma, or alienation, would be suffered. The marginal value of more resources in removing this burden of social stigma becomes less, the smaller the gap becomes

⁸⁸ As I use the qualification ‘likely to be higher’, to acknowledge the speculative- albeit, hopefully plausible- nature of this argument.

⁸⁹ The idea of a literary ‘narrative’ helps to explain this point. Think of a passage of text: changing some words might damage the text in various ways, but the marginal damage becomes worse as we change more words: at some point, the literary narrative is not simply damaged, but lost.

between the benefits of the worst off and others. *In contrast*, the marginal disvalue of losing resources becomes greater, for the well off, the more resources they lose. So, it may be likely that A's complaint will not be as strong as B's complaint. The move away from strict equality would benefit B more greatly, in terms of alleviating the burden on him, than it would burden A. The difference in the marginal value for A of staying at the position of strict equality and the marginal value of B of moving away from this position of strict equality, make it unreasonable for B to reject the less than strictly egalitarian distribution. This long argument is not conclusive, but it does give us some reason to think that it might be unreasonable to redistribute resource benefits in a strictly egalitarian way.⁹⁰

In what way would a strictly egalitarian society be a moral ideal for us?

Consideration of the complaints that individuals may raise against unequal distributions of society may help us to understand in what sense a more equal society progresses towards a 'moral ideal'. Now, if we accept the dynamic conception of justice, then we do not want to say that moves towards equality approach the moral ideal of *justice*, because we want to allow that less than strictly egalitarian principles of *justice* may apply to a society. We *might* say that equality in distribution of advantages is 'good in itself', and so moves towards greater equality are morally good in *this* way, although I am unsympathetic to such arguments. Rather, a more equal society seems to be a form of *moral progress* over less equal societies when the move towards equality *removes complaints* (such as, for example, the complaint of alienation or social stigma, from the worse off). In the dynamic conception of justice, we (hopefully) can progress towards greater equality, and in doing so, remove complaints against the distribution of advantages in society.

⁹⁰ Again, we should note, however, that- because of the burdens that inequality places on the worse off- the less than strictly egalitarian principles which may be derived on the dynamic conception of justice are likely to permit far less inequality than currently exists in our society.

Principles of justice for the future: considering the descendants of the well off.

A question which arises here is: will the children of the previously well off *also* face such burdens as their parents did? Will they be able to complain, just as their parents did, that a move towards further equality of resources would disrupt their lives? Such questions are significant as they bear on the issue of just how long it will be reasonable for a less than strictly-egalitarian distribution to persist, which clearly relates to the major concern of this thesis; that different principles of justice may be correct for a society in its progression towards a more egalitarian distribution.

In one important sense, the children of the previously well off *cannot* make the same complaint against further moves to equality that their parents made. This is because their parents faced very severe disruption to their lives in moving towards a distribution of greater equality, whereas the children of the previously well off, having grown up in conditions of much greater equality than their parents, will face much less potential disruption to their lives. Yet, despite this, they can still complain that further moves to equality will place special burdens on them. Below I give some grounds for these complaints.

Firstly, the children of the previously well off can complain that further moves towards equality will disrupt their lives in that they will have grown up *better off* than they would be under conditions of greater equality. We noted above that remaining better off than most would allow the previously well off to retain some of their most central and valued ambitions and projects. It is reasonable to allow parents to teach their children to participate in such projects, given that they have the resources to do so. Indeed, it would be unreasonable to intrude on family life in such a way as to prevent parents from passing on respect for the value of these projects, and encouraging their children to take part in these projects.⁹¹ Furthermore, it is unreasonable to expect parents to refrain from influencing their children in such a way. The result of this is that the

⁹¹ I do not argue for this assumption here, but I take it that there is a fairly broad consensus that plausible principles of justice should not make such familial relationships between parents and children morally impermissible.

children of the previously well off would *also* have central projects and ambitions that relied for their achievement on remaining well off (and well off to the extent that they have must have more resources than a scheme of strict equality would allow). So, the children of the well off can make similar complaints against moves towards further equality as their parents. This gives us one reason for thinking that well off parents should be allowed, according to justice, to leave inheritances for their children which will have the result of maintaining some inequality in society's distribution of resource goods. (Another reason, comes from the complaints of the parents: to be required not to leave an inheritance for one's children, to do the best one can by them, might be extremely demanding and burdensome),

It should be noted that although it is true that the children of the previously well off are *less* well off than their parents were, they are still better off than most people in their society. So, it is likely that they will have developed *some* projects and ambitions which rely on them retaining this higher level of resource goods. To be sure, the children of the previously well off will have complaints against further moves towards equality that are less strong than their parents' complaints were, when they were faced with the initial move towards greater equality, but the children of the previously well off still have *some* complaint against further moves towards equality which is of the same type- if not as strong- as the previous generations' complaint.

Furthermore, if we allow that the children of the well off should be allowed by justice to receive some of their parents' wealth, in inheritance, then considerations of efficiency might lead us to allow them to *increase* their greater than equal share of resources- for instance, by investing it- if this makes no one worse off, and actually *benefits* the worse off (again, I assume that inequalities which benefit the worse off should be permitted by principles of justice). If they thereby become very rich, then they may have very strong complaints against moves towards greater equality.

Non-egalitarian motivations, and the complaints of the talented.

In considering complaints against further moves to equality in distribution, we should not only look at complaints from the previously well off, but also complaints from the *talented* (who may or may not be well off). It seems plausible to assume that, in the initial stages of a more equal society, people will still have the kinds of self-centred motivations that predominated in the less equal, previous, society; (in a society marked by great inequality, such selfish motivations are likely to be common, firstly because there is a feeling that it is 'every man for himself' - that one cannot rely on the state to support oneself- and secondly because a political culture in which inequality, and an unwillingness to provide for the less fortunate, is commonly accepted to be unacceptable, will often not be firmly established). Now, there seems to be a particular burden imposed on the talented by a society which would not allow the talented to become better off than others. The talented would be burdened in that requiring them to affirm such a situation as *just*, and to act in various ways which maintains such a system, would involve requiring them to sacrifice the opportunity to have a much *greater* share of benefits. If people are, as we assume, still chiefly governed by selfish motivations, then this is a significant burden: it involves the talented refraining from acting as their selfish motivations direct. Note that such a burden is *not* experienced by the untalented: the move towards equality from a position of great inequality is very much in their interests, and so conforms to their self-centred motivations (here we are assuming that the untalented will also be badly off in the original, unequal society). The talented face a burden that the untalented do not have to face. The dynamic conception of justice allows, however, for the principles of justice which apply to a society to change as, or *if*, these selfish motivations are lost.⁹²

Now, it might be argued against this that it is unjustified to appeal only to the sacrifices that the talented face, rather than the sacrifices that the untalented may be said to face. Suppose that the untalented and talented are in position of strict equality, but that an

⁹² There may be reason to hope that moves towards greater equality will change citizens' motivations in this way, but clearly a great deal of empirical work needs to be done here.

alternative distribution of benefits would give the talented 10 more benefits than the currently have (and would mean that the untalented have 10 fewer benefits than they currently have). We can say that there is a burden on the talented in the strictly equal society of having to sacrifice the possibility of having 10 more benefits than they currently have. However, why do we not say that the untalented face a similar sacrifice? After all, there is a possible distribution whereby the *untalented* have 10 more benefits than they do now, and the talented have 10 fewer benefits. Why only focus on the sacrifice faced by the talented?

To explain why, we appeal to the idea that only some distributions of benefits are *feasible*. The proposed distribution in which the untalented have 10 extra benefits and the talented 10 fewer would provide a disincentive for people to work in jobs requiring higher talents. The presence of such a disincentive would very probably affect the economy in such a way as to decrease total output. The untalented's wish for 10 extra benefits is unfeasible because in achieving this wish we would damage the economy in such a way that the total output would be reduced and so it is likely that, in the long term, the position of the untalented would be worse than it would have been if this disincentive were not introduced. The untalented are wishing for something which will, in the medium to long term, reduce the amount of benefits they have. In contrast, the talented's wish for 10 extra benefits is not unfeasible, as it would not introduce into the economy a damaging disincentive against working in jobs that require particular talent (quite the opposite, in fact). This is the reason why we focus on the sacrifices made by the talented rather than the supposed sacrifices made by the untalented: the 'sacrifices' the untalented face are not truly sacrifices at all, as the distribution of benefits they wish for is unfeasible and counter-productive to their interests. The untalented cannot be said to be 'sacrificing' benefits, if these benefits are such that they could not actually have them, in anything other than the short term.

Reasonable thresholds and departures from equality.

In Part Three, I have argued that a proposed principle of justice must be rejected if the complaints against it, in favour of an alternative, are stronger than the complaints against this alternative. One possible objection to this argument comes from Nagel. Nagel argues that the self is 'divided' in the sense that we have an impersonal standpoint, from which all persons' interests are of equal importance, and also a personal standpoint, in which extra weight is given to our interests and the interests of those close to us. He suggests that this existence of the personal standpoint may mean that a person could reasonably reject a given distribution of resources in favour of another distribution, because of the burdens the proposed distribution would impose on him *even if these burdens were less bad*, impersonally considered, than the burdens that would be imposed on others, in his preferred distributions.⁹³ That is, Nagel would reject my argument that one can only reasonably reject a distribution if one's complaint against it is worse than others' complaints against the proposed alternative distribution. Nagel argues that there is no one distribution between the poles which no one could reasonably reject. For example, in a distribution with no large inequalities, but that nevertheless stops short of strict equality, Nagel says that the talented could reject further moves to equality as unreasonably demanding, and that the untalented could reject the maintenance of a less than strictly equal distribution as unreasonable.

However, this argument seems puzzling. Even given the fact that from the personal standpoint, our interests have added importance, there still seems to be an objective, impersonally considered, fact of the matter as to who has the strongest complaint: the talented or the untalented. We must show equal concern to all citizens, and so must address the strongest complaint. For one of the parties to then complain that the distribution brought about is 'unreasonably demanding' is unconvincing. Certainly, the distribution might be very demanding on some citizens, but then alternative distributions would be even *more* demanding on other citizens. *Some* distribution must

⁹³ Nagel only suggests this result as a *possibility*; he does not commit himself to the view that this result *will* be the case when we try to find correct principles of justice. See *Equality and Partiality* pp.49-51 and p. 63.

be settled upon, and it seems that a concern with equality should push us into addressing the complaints which are strongest, impersonally considered.

Now, this is not to deny that *sometimes*, there will be no opportunity to institute a distribution which is not unreasonably demanding on some citizens. Think, for example, of a case whereby A has 1 benefit and B has disvalue of -10 (which benefits and disvalue on a continuous scale). Imagine that we could redistribute resources so that B has -4 disvalue, and A has -3. B's complaint against not moving to this alternative distribution may be stronger than A's complaint against moving away from the initial distribution. But suppose now that any negative disvalue figure is a case of *severe hardship*. Then it seems reasonable for A to reject a move the proposed distribution: we cannot reasonably expect people to agree to severe hardship. Considerations of stability are important here: we cannot reasonably expect people to maintain a system which imposes severe hardship on them, and- a related point- it is probable that people could not agree in good faith to these principles, and to the accompanying duties to maintain institutions governed in accordance with these principles. In such cases where some severe hardship is unavoidable, it may indeed be true that there is no distribution that no one can reasonably reject.

However, Nagel's case of the talented and the untalented does not seem to be like this case of severe hardship: neither the untalented and the talented face extreme hardship in the proposed distributions. It seems reasonable, then, to expect them to agree that the strongest complaint, impersonally considered, should be addressed. We are morally required to accept that principles governing the distributions of advantages must treat all citizens with equal concern, and we do not do this if we insist that our complaint, (*not being one of extreme hardship*), although less strong than others', should be addressed.

Conclusion.

To conclude this thesis, some limitations to the arguments that have been presented should be noted. In the first two Parts of the thesis, the dynamic conception of justice was presented, and defended against numerous objections. The aim was to show that facts about existing unjust distributions of goods in societies should be taken to be relevant to justice, and that this could mean that we should allow that different principles of justice will be correct for a society as the distribution of goods in that society changes. However, justice remains an elusive, mysterious moral notion; we have a prephilosophical conception of justice, but it is far from clear how best to elucidate these prephilosophical thoughts, and put them in to an acceptable order and structure. Because of this, there may be the nagging feeling that *something* important has been lost in the move to a dynamic conception of justice; we may still find the dynamic conception of justice counter-intuitive in many ways.

In Part Three of this thesis, I attempted to give some reasons as to why the correct principles of justice for our society, on a dynamic conception of justice, may be less than strictly egalitarian. However, no specific principles of justice were argued for; there is clearly a great deal more work to be done here, to work out the implications of the dynamic conception of justice. Indeed, it might be argued that the form of contractualist moral reasoning I employ in this thesis is unsuited to the task of formulating correct principles of justice, because we may be unable to generate definite results from it which we are confident that reasonable people must agree to. Perhaps, it could be argued, Rawls' argument from the Original Position has the advantage that definite results *do* emerge from it.⁹⁴ Now, this defence of the Original Position may be less convincing when we consider the vast and ongoing debates over whether the results of the choice in the Original Position will be as Rawls thinks they are. More work needs to be done to refine contractualist moral reasoning so that we can more

⁹⁴ Scanlon, in 'Contractualism and Utilitarianism' p.149 in *The Difficulty of Tolerance* considers such a defence of Rawls' argument from the Original Position, but finds it unconvincing.

confidently derive definite results from it, and more work needs to be done to decide whether alternatives- such as the Original Position- are superior in this respect.

At the least, however, I hope to have provided some reason to think that one should not assume without argument- as many philosophers have- that facts about existing unjust societies are not relevant in arguments on the correct principles of justice are, for our society. The exclusion of such facts from conceptions of justice not only needs argument, but also arguments which avoid the problems and counterexamples which I have sought to identify.

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