

Resource Egalitarianism as a Realisation of Relational
Justice in the Distributive Sphere:
An Analysis of Personal and Interpersonal Responsibility

Genevieve Denise Shanahan

Under the Supervision of
Prof. Jonathan Wolff

MPhil Stud

University College London
Department of Philosophy

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I, Genevieve Denise Shanahan, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

Abstract

In this thesis I examine the role of personal and interpersonal responsibility in relational egalitarianism and argue that Dworkin's resource egalitarianism should be understood as a means by which to realise this aspect of justice, rather than as a competing and incompatible comprehensive theory. I hope to show that resource egalitarianism neutralises the effects of brute luck, not merely so as to put "cosmic injustices" to rights, but to ensure, insofar as possible, that individuals can relate to one another on equitable terms by taking responsibility for the effects of their actions. I focus especially on Elizabeth Anderson's criticisms of responsibility-catering distributive theories and attempt to demonstrate how the interpersonal conception of justification she identifies as the central feature of relational egalitarian theories underlies Dworkin's hypothetical insurance mechanism.

I argue that the distinction Dworkin draws between brute and option luck depends on a highly contextual conception of what it is *reasonable* to expect of one another under various circumstances, informed by the capabilities one cannot reasonably be expected to give up or risk losing. I draw out the relational egalitarian motivation of Dworkin's True-Cost Principle and argue that these true costs cannot be identified without an appreciation for the social construction of the 'dominant cooperative scheme' and a similar concern for the *benefits* to the community of individual choices. This sets the terms for our reconception of hypothetical insurance as a mechanism, not only for neutralising brute luck beyond the reach of voluntary insurance, but of correctly allocating the diffuse costs and benefits of agents' choices and behaviours.

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Introduction

Much contemporary public discourse regarding domestic poverty and disadvantage focuses on the responsibility of the individual for his own well-being. This concern is today probably most apparent in the realm of work and unemployment. In the UK, welfare reform is couched in terms of the duty to “make work pay”, rewarding “strivers” and disincentivising the “skiver” lifestyle. The intuition is that society has no duty to support those who can, but choose not to, support themselves or contribute to the communal pot. Yet both what “choosing” not to contribute means, and what counts as a contribution in the first place, is subject to much disagreement. Most seem to agree, however, that the present system fails to conform to a reasonable interpretation of either.

The current system is plainly deficient in its criteria for choice under various conditions - for example those of ill-health and disability. Much recent controversy has surrounded the Department for Work and Pensions’ Work Capability Assessments, as carried out by the independent contractor ATOS. Obvious, headline-grabbing mistakes include the cuts of benefits to comatose individuals, but horror-stories abound of disabled, terminally-ill and mentally unwell persons being deemed fit for work, with the implication that they have merely been “work-shy” “scroungers” “trying it on to get sickness benefit”¹, choosing idleness over contribution. The continually high proportion of successful appeals against these decisions seems to show that the line between wilful idleness and genuine disability has been inappropriately drawn in these assessments.

The system also displays shortcomings in its implied definition of contribution. Care work, particularly, is widely undervalued despite its vital social and economic role. My interest here is partly motivated by a concern for the gendered nature of poverty worldwide and domestically. Women are

¹ <http://www.theguardian.com/politics/2011/feb/23/government-reform-disability-benefits>

disproportionately poorer due to their continuing status as primary caregivers, both for offspring and other relatives. A persistent weakness of distributive justice discourse highlighted by feminist theorists specifically has been its tendency to idealise away from these highly socially connected actors, in favour of “the myth of independent moral agents who are not born, do not develop under the care of their parents, never get sick, are not disabled and do not grow old.”² It’s no surprise that these agents have been the focus of analysis thus far since they are seemingly much more straightforward to deal with. It is also generally understood that theories and models in a variety of disciplines have tended to take a specific type of male actor as the norm, treating deviations as anomalies to be dealt with “post-theory.” However, as Sen claims upon introducing his capabilities approach, “human diversity is no secondary complication (to be ignored, or to be introduced ‘later on’); it is a fundamental aspect of our interest in equality.”³ One of my aims, then, is to identify the elements of human diversity from which we cannot abstract away in order to develop a useful theory of distributive justice.

Luck and Resource Egalitarianism

The fable of the ant and the grasshopper is often used to illustrate the appeal of luck egalitarianism over strict equality. While all egalitarian theories articulate in some way a belief in the equal moral worth of persons, there is a strong natural intuition that it would be unfair, even exploitative, for some to benefit from the labour of others simply because they *choose* not to work. Some may be truly unable to contribute for reasons beyond their control, and this is regrettable, but one who merely pleases himself is understood to choose to do so, and is therefore held to be an appropriate target of condemnation. G. A. Cohen lauds Ronald Dworkin for introducing this new school of theories of distributive justice sensitive to the justice-relevance of

² Brown (2009), p68

³ Sen, (1992), xi

personal responsibility, observing that he thereby “performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility.”⁴

In less austere terms, the luck egalitarian intuition can be described as an inherently liberal approach to distributive justice since it centres respect for the personal preferences and values of individuals: some may have expensive tastes and will be happy to work harder than others for these tastes to be fulfilled, others will have a preference for leisure and simple pleasures. Strict equality is undesirable due, in part, to its lack of respect for the different values and goals of different persons. It is therefore a natural first step away from this simple and unnuanced dictate of an egalitarian ethos to attempt to devise a system that takes those different values and goals into account, while retaining the underpinning egalitarian thrust.

If the importance of personal responsibility is one tenet of luck egalitarianism, the other is the moral irrelevance of brute luck. Brute luck is understood to pick out those effects of chance over which we have no control, which are not subject to personal responsibility. It is thus understood that, to the extent that these effects carry costs, they should be borne by the whole community (where possible) in the interest of fairness, so that no one is arbitrarily disadvantaged. Whether the impacts of brute luck genuinely constitute a *justice* concern, however, is at least one crux of the disagreement between relational and luck egalitarians.

In order for a luck egalitarian approach to work, however, we must furnish “a defensible account of genuine choice.”⁵ I will specifically utilise Dworkin’s resource egalitarianism in refining such an account. Dworkin’s distinction between brute luck, which is appropriately neutralized, and option luck, which appropriately influences resource distribution, is especially intuitive

⁴ Cohen (1989), p933

⁵ Kaufman (2004) p819

when the line between the two is understood to vary contextually according to prevailing reasonableness judgments, I will argue. Various theorists placed under the 'luck egalitarian' banner, however, disagree on the character of the distinction. Cohen can perhaps be understood as the most in favour of a circumspect ring around admissible cases of option luck, leaving many individual variations in taste, etc. as part of that set subject to equalisation. Richard Arneson and Eric Rakowski propose a much wider scope for option luck, leaving much more of a person's fate up to their own tastes, ambitions, personal characteristics, etc. And Dworkin, I propose, advocates something of a middle ground in this regard.

In fact, Dworkin rejects the label 'luck egalitarian' (coined by Anderson) for his theory as a misnomer. In *Sovereign Virtue Revisited* he claims that 'equality of fortune' or 'luck equality' suggests the impacts of chance on individuals' outcomes are to be equalised altogether, after the die roll. Instead he calls his approach 'equality of resources' and emphasises that its aim is "to make people equal, so far as this is possible, in the resources with which they face uncertainty."⁶ It is this commitment to defending the legitimate operation of chance that renders the distinction he proposes between option luck and brute luck so important.

Perhaps the best definition of equality of resources Dworkin offers is of:

"[...]a process of coordinated decisions in which people who take responsibility for their own ambitions and projects, and who accept, as part of that responsibility, that they belong to a community of equal concern, are able to identify the true costs of their own plans to other people, and so design and redesign these plans so as to use only their fair share of resources in principle available to all."⁷

Giving choice such a central role in our distributive scheme creates an urgent requirement for a robust conception of genuine personal responsibility. This potentially "lands political philosophy in the morass of the free will

⁶ Dworkin (2002), p107

⁷ Dworkin, (2000), p122

problem,”⁸ (a hard determinist would surely take Dworkin’s theory to collapse into strict equality in the belief that choice and personal responsibility are ultimately illusory), but for now we will focus on the most plausible common-sense accounts of choice available, at least until a final verdict on the determinism question emerges. The following chapter, then, will identify reasonable knowledge of risks and reasonable alternative options as key variables in the attribution of personal responsibility for outcomes.

One vital aspect of this account will be the role of risk to fundamental capabilities in agents’ deliberations as to how to invest their limited time and resources. Wolff and de-Shalit identify a sense in which a choice is ‘forced’ when “the agents can choose to take or avoid a risk, but not taking it would typically confront them with a greater risk, or the certainty of some harm.”⁹ For example, when taken individually, the choice to put off having children until one is financially stable and the choice to conceive and raise children while living in social housing seem to be free decisions whose consequences are appropriately regarded as matters of personal responsibility. One might be held partially responsible for health complications as a result of a later pregnancy given that one could have chosen to have children earlier in life. On the other hand, one might be held responsible for one’s children’s lower educational achievements and anti-social behaviour given that one could have chosen to postpone starting a family until one could afford to live in a more advantaged area and to take time out of one’s career to parent personally. However to find yourself in a position where you must choose *either* the first set of risks *or* the second undermines the notion that you are thereby responsible for the outcomes to the same extent.

Of course, the mere fact that in pursuing one line of action one thereby forgoes another cannot be enough to render the choice forced and absolve the agent of responsibility for its outcomes. If I go camping for the weekend

⁸ Cohen (1989), p934

⁹ Wolff and de-Shalit (2007), p67

and thereby fail to complete, or run the risk of failing to complete, a piece of coursework, it is no excuse to say that if I had chosen otherwise and stayed at home to complete the coursework I would have thereby missed out on an enjoyable weekend. There are certain risks or losses which intuitively carry greater implications for personal responsibility than others. Alexander Brown notes that “[Luck egalitarianism] stipulates that people should bear the costs of their choices wherever possible, but it is a further question which choices they should be held responsible for and the answer to this question depends in part on [...] ensuring that people have effective access to valued functionings.”¹⁰ A recurring theme throughout this thesis will be the proposition that the capabilities approach offers a good guide to what these valued functionings might be. I will ultimately claim that, in pursuit of a system under which differences in distributive outcomes simply reflect differences in individuals’ preferences and values, it is necessary that we guarantee all genuine access to a certain basic set of capabilities. This approach will find parallels in Anderson’s work,¹¹ yet rather than judging arrangements based on the extent to which they foster democratic inclusion, I will recommend evaluation based on the extent to which brute luck is neutralised, allowing genuine choices to determine distributions, thereby fostering relational equality.

The Capabilities Approach

Now might be the best time to introduce my belief that the capabilities approach and resource egalitarianism are highly compatible, and that capabilities can offer more to resource egalitarianism than Dworkin allows. Both resource egalitarianism and the capabilities approach attempt to account for the way in which internal, personal features vary from person to person and impact the outcomes that are available to individuals, even when they have precisely equal external resources at their disposal. Dworkin’s

¹⁰ Brown (2005), p318

¹¹ Anderson (1999), p319

solution is to treat these internal features as resources subject to equality themselves, claiming that “[s]omeone who is born with a serious handicap faces his life with what we concede to be fewer resources, just on that account, than others do.”¹² His hypothetical insurance scheme then compensates with extra external resources those who find themselves lacking in particular internal resources.

The question then becomes how to determine the appropriate level of compensation. We might ask what the ‘conversion rate’ is between internal and external resources, or how to set one. Dworkin implicitly appeals to capabilities in his answer to this question arguing that, if individuals were able to choose the type of insurance to buy against, for instance, congenital disabilities, they would do so to the extent that compensation might help to achieve some or all of the capabilities compromised by that disability. Indeed Dworkin ties the value of insurance against certain disabilities for an individual to the value that individual would place on the threatened capability or capabilities,¹³ and explains how the premium one would be willing to pay for such insurance depends additionally on the availability of medical technology to restore the affected capability.¹⁴ Since individual insurance decisions are simply impossible in these cases assumptions have to be made regarding the decisions most people would *likely* make if they could choose for themselves. Here, then, we find a crucial role for the work that has been done within the capabilities literature attempting to identify the fundamental capabilities we all (or almost all) value enough to justify a “compulsory process [...] designed to match the fund that would have been provided through premiums if the odds [of suffering such handicap] had been equal.”¹⁵

While Dworkin treats one’s internal features as themselves resources subject to equality, the capabilities approach utilises instead the notion of ‘personal

¹² Dworkin, (2000), p81

¹³ Dworkin, (2000), p78

¹⁴ Dworkin, (2000), p79

¹⁵ Dworkin, (2000), p78

conversion factors' - the idea that an individual's internal features contingently impact the ease with which they can transform their external resources into 'beings and doings'. Sen explains that:

"[t]he extent of real inequality of opportunities that people face cannot be readily deduced from the magnitude of *incomes*, since what we can or cannot do, can or cannot achieve, do not depend just on our incomes but also on the variety of physical and social characteristics that affect our lives and makes us what we are."¹⁶

Resource egalitarianism can be understood as focusing attention on personal conversion factors and the issue of how personal responsibility and internal features should relate through insurance. This focus is motivated by the moral arbitrariness of internal features that do not stem from one's own choices.

Crucially, however, Dworkin does not treat the role of other's tastes and ambitions as morally arbitrary, even though this is another factor beyond any one individual's control. He states that "[t]he mix of personal ambitions, attitudes, and preferences that I find in my community[...] is not in itself either fair or unfair to me; on the contrary, that mix is among the facts that fix what it is fair or unfair for me to do or to have."¹⁷ Dworkin is concerned to ensure that we appreciate the true costs of our choices to others, and it is therefore vital to resource egalitarianism that the preferences of others are allowed to impact on our capabilities and outcomes. In this way the preferences of others are treated implicitly as akin to brute facts about the world, to which individuals must mold themselves.

A central question throughout this thesis, however, will be how we might distinguish between the legitimate and illegitimate impacts of others' tastes and preferences on one's capabilities. Social conversion factors, according to Pierik and Robeyns, are the factors affecting what one can do with the resources one has due to "characteristics of the society in which one lives,

¹⁶ Sen (1992), p28

¹⁷ Dworkin (2000), p298

such a social norms, discriminating practices, societal hierarchies, gender and racial norms, infrastructure, public goods and social structures that affect different categories of persons differently.”¹⁸ Dworkin arguably sets such complications aside explicitly, describing the society in which he refines his theory as one that “has no history of subordination [...] or any other historical process that has unlevelled the playing field in our actual plural and multicultural societies.”¹⁹ Accordingly the ways in which other agents shape the extent to which one can convert resources into capabilities are taken to be fair reflections of the real costs of one’s actions, by hypothesis.

Yet Dworkin does, in his chapter on liberty, describe a number of principles according to which the auction must be modified in order to correct for various distorting factors - that resources be auctioned in as abstract a form as possible, that security of use of those resources be ensured, that externalities be accounted for, that citizens’ preferences be authentically developed.²⁰ The final principle he posits is that of independence, which specifically corrects for the *unjust* ways in which others’ preferences may impact an individual’s capabilities. This principle requires that baseline constraints on the auction be put in place “to protect people who are the objects of systematic prejudice from suffering any serious or pervasive disadvantage from that prejudice.”²¹ Dworkin has not completely abstracted away from social conversion factors, then, but his treatment is simplistic and inadequate. This is reflected in his subsuming such issues under the category of personal resources, or personal conversion factors. While he accepts that social or structural change is preferable to compensation in these cases, he describes the issue of prejudice as a facet of equality of resources’ response to the problem of handicaps, since one can understand victims of both handicaps and prejudice as disadvantaged due to the tastes of others. It is at this point I believe the approach of ‘justice as recognition’ reveals its relevance to resource egalitarianism.

¹⁸ Pierik and Robeyns, p136

¹⁹ Pierik and Robeyns, p141

²⁰ Dworkin (2000), pp147-161

²¹ Dworkin (2000), p161

Social Conversion Factors and Justice as Recognition

In *Justice and the Politics of Difference* Iris Marion Young challenged the dominant understanding of justice as merely an issue of distribution, arguing that this tends to ideologically entrench certain assumptions regarding human nature, the primary subjects of politics, etc. This type of thought has given rise to a separate sphere of justice theorising - the concept of justice as recognition. Recognition identifies a distinct aspect of justice concerned specifically with the cultural sphere. While distributive justice deals with the allocation of benefits and burdens amongst citizens, recognition confronts issues related to social respect and esteem. Recognition is often dismissed as being of little relevance to distributive justice. It has been equated largely with 'identity politics' movements, which demand equal respect and cultural representation for marginalised groups - people of colour, women, LGBT persons, those with disabilities, etc. While this "cultural" side of justice is widely understood to be important in terms of interpersonal- and self-respect, it is often treated as a separate sphere of justice to that which deals with the distribution of resources. Yet though recognition is not reducible to its distributive counterpart there is a huge degree of overlap between the two spheres, and justice as recognition can be affirmed or violated both through a given distributive scheme's permitted consequences and its expressive attitudes.

Nancy Fraser describes recognition as aiming at a more "difference-friendly world, where assimilation to majority or dominant cultural norms is no longer the price of equal respect."²² The point of much of her work on recognition and redistribution has been that, as things stand, assimilation is not only the price of equal respect but of equal economic opportunity, even of subsistence. This is not the mere claim that issues of recognition and misrecognition can spill over into the (otherwise inherently impartial) economic realm through the prejudices of employers, or through the

²² Fraser, *Redistribution or Recognition*, p7

economic impact of the emotional hardship engendered by misrecognition. It is the deeper claim that the economic system itself presupposes the universality of dominant group features and enforces these as norms. This can be seen in the labour-market assumption that workers are not also primary caregivers with the attendant responsibilities,²³ that there is a sharp distinction between healthy workers and disabled dependents,²⁴ and that respectability and a certain culture go hand-in-hand.²⁵ The “cultural norms that are biased against some are institutionalised in the state and the economy; meanwhile, economic disadvantage impedes equal participation in the making of culture, in public spheres and in everyday life. The result is often a vicious cycle of cultural and economic subordination.”²⁶ Particularly important for this thesis is the consequent point that theorists of distribution are not immune to this diversity-blindness either. Economic approaches to choice and distributive justice theories have often assumed agents to be broadly similar to the theorist himself - able-bodied and minded, male, not a primary care-giver, relatively wealthy, etc.

There are a number of issues with Dworkin’s account from the perspective of justice as recognition: it arguably fails to “detect injustices in the current gender division of labour and care”²⁷ and the view of disability on which it relies runs contrary to that put forward by many modern disability theorists. Nevertheless I will defend an interpretation of Dworkin’s theory against certain prominent recognition criticisms, particularly those of Anderson, before delving specifically into the positive reasons I believe it can and should be (re)interpreted in a way that takes account of these insights. While resource egalitarianism is a thoroughly distributive approach to justice, it does go further than other prominent egalitarian theories in incorporating real diversity from the start through its concern for ‘personal resources’. In this way it has strong affinities with the capabilities approach which similarly

²³ Fraser, *Justice Interruptus*, p42

²⁴ Groering, “*Mental Illness and Justice as Recognition*”, p18

²⁵ <http://www.telegraph.co.uk/education/10671048/Working-class-children-must-learn-to-be-middle-class-to-get-on-in-life-government-advisor-says.html>

²⁶ Fraser, *From Redistribution to Recognition?*, p72-3

²⁷ Robeyns, *Is Nancy Fraser’s Critique of Theories of Distributive Justice Justified?*, p541

eschews a 'standard' agent to which we are compared and found wanting.

To ensure resource egalitarianism coheres with the insights of justice as recognition, I argue, the conditions of responsibility on which the option-luck/brute-luck distinction relies must take into account inequalities generated through certain of the social conversion factors mentioned above. While prejudice and discrimination are obvious examples of how the attitudes and preferences of others can unjustly affect the extent to which an individual can convert resources into functionings, Fraser argues that overcoming prejudice is not enough to realise justice as recognition. Recognition justice further requires "deinstitutionalising patterns of cultural value that impede parity of participation and replacing them with patterns that foster it,"²⁸ which includes, in some cases, acknowledging group differences as well as commonality. In this way legal means of assuring political equality, as posited by the principle of independence, will often be insufficient.

Relational Egalitarianism

This brings us, in an admittedly roundabout way, to relational egalitarianism. Fraser argues that the distributive and recognition spheres are co-fundamental, but I want to suggest that they have a common grounding in relational justice. Relational egalitarianism, however, is often defined precisely in opposition to distributive equality. Elizabeth Anderson, for example, defines relational egalitarianism as "a kind of social relation between persons – an equality of authority, status, or standing" and argues that it is in fundamental disagreement with distributive justice, which focuses on the "distribution of non-relational goods among individuals."²⁹ Samuel Scheffler similarly distinguishes the two, arguing that distributive theorists, and luck egalitarians specifically, "have lost touch with the reasons

²⁸ Fraser, *Why Overcoming Prejudice is Not Enough*, p24

²⁹ Anderson (2010), p1

why equality matters to us,”³⁰ which is the intrinsic and instrumental value of equality in human relationships. Scheffler argues that the distributive scheme should be dependent on an understanding of what a society of equals requires, and not taken as fundamental itself. By centring our conception of equality on notions of responsibility and choice, he argues, we do precisely the latter.³¹

But why should we not think resource egalitarianism might flow in this way from a plausible account of relational equality? Christian Schemmel points out, after all, that while relational egalitarianism opposes an exclusive focus on distributive issues, it still requires a conception of how relational justice can be realised through just distributions.³² Dworkin himself explicitly rejects the characterisation of his approach as purely distributive, claiming that he aims at a “more general, embracing form of egalitarianism” under which the “political community must treat all its members as equals [...] not only in its design of economic institutions and practices, but in its conception of freedom, of community, and of political democracy as well.”³³ This suggests to me that, far from being incompatible, Dworkin’s resource egalitarianism might be one of the more appropriate accounts for implementing relational justice in distributions.

Anderson answers this question by identifying what she takes to be a fundamental disagreement between relational and luck egalitarian approaches to justice – that luck egalitarians “follow a *third-person* conception of justification” while relational egalitarians’ is a *second-person* conception or *interpersonal*.³⁴ She argues that this interpersonal conception of justification has a number of implications for justice, such that injustice is necessarily relational – it requires that some specific agent be injured, by

³⁰ Scheffler (2005), p23

³¹ Scheffler (2005), p22

³² Schemmel (2011)

³³ Dworkin (2002), p106

³⁴ Anderson (2010), p2-3

some specific other agent(s) who acted in such a way that a *reasonable* complaint could be directed at them that they should have acted otherwise.³⁵

Argument of this Thesis

By contrast, the central claim of this thesis will be that resource egalitarianism should indeed be understood as one way of realizing the distributive facet of relational egalitarianism, rather than as a competing and incompatible approach to justice.

The reconciliation I propose makes use of two broad tactics. On the one hand, I argue that relational egalitarianism requires a robust theory of personal responsibility itself in order to coherently oppose relational injustices such as exploitation. On the other, I argue that resource egalitarianism's focus on personal responsibility is motivated by a dual commitment to the avoidance of unjust social relationships, such as exploitation, and to liberal neutrality regarding the value of various pursuits. I hope to show that resource egalitarianism neutralises the effects of brute luck, not so as to put "cosmic injustices" to rights, but rather to ensure, insofar as possible, that individuals can relate to one another on equitable terms by taking responsibility for the effects of their actions.

I will begin by introducing resource egalitarianism, as set out by Dworkin in his 1981 paper *'What is Equality? Part 2: Equality of Resources'* and later elaborated in his book *Sovereign Virtue*. In my first chapter I focus on his famous brute-luck/option-luck distinction, and argue that that distinction depends on a highly contextual conception of what it is *reasonable* to expect of one another under various circumstances, informed by the capabilities one cannot reasonably be expected to give up or risk losing. I will argue that the capabilities approach, as introduced by Amartya Sen and Martha Nussbaum, might be understood, at least in part, as an attempt to identify those

³⁵ Anderson (2010), p5

conditions of personal responsibility for one's choices. I here introduce the claim that the legitimate operation of option luck depends upon specific social conditions – most notably the availability to agents of a no-risk option through hypothetical insurance.

In chapter 2, I claim that judgments of responsibility for outcomes are central to relational egalitarianism itself since that approach sees justice as concerned primarily with interpersonal and institutional violations of justice. Without the brute luck neutralisation resource egalitarianism recommends relational egalitarianism cannot distinguish between cases of injustice (which are inherently relational, on that account) and mere brute luck (operating through an agent who nevertheless lacks responsibility for his actions). However, drawing on the work of Allen Buchanan, I will argue that the character of any particular instance of luck depends at least in part on its social context - whether it is good or bad is largely socially constructed through the 'dominant cooperative scheme,' which sets the capabilities required for full participation in society. A central example of this phenomenon will be the social model of disability. It will be argued on that basis that the dominant cooperative scheme is an appropriate target of relational justice appraisal because it is collectively *chosen*. So while relational egalitarians claim quite plausibly that justice applies only to the ways in which agents treat one another, this concern appropriately extends to the ways in which we respond to brute luck.

Finally, in chapter 3, I draw out the anti-exploitation motivation of resource egalitarianism's focus on personal responsibility, as expressed through Dworkin's concern that agents internalise the true costs to others of their choices. I will argue that these true costs cannot be identified without reference to the dominant cooperative scheme introduced above, and that the appropriate internalisation of such costs cannot be realised without a similar concern for the *benefits* to the community of individual choices. This will set the terms for our reconception of hypothetical insurance as a mechanism, not only for neutralising brute luck beyond the reach of

voluntary insurance, but of correctly allocating the diffuse costs and benefits of agents' choices and behaviours. I argue, in fact, that the condition of *reasonable expectations* identified in the first chapter can be seen as an instantiation of the interpersonal conception of justification Anderson holds up as the hallmark of a relational theory.³⁶

³⁶ Anderson (2010), p2-3

1. Mitigating Misfortune while Respecting Responsibility

Dworkin's concern for personal responsibility and leaving intact the consequences of choices leads to probably his most influential proposal in this domain: the distinction between brute luck and option luck. Brute luck refers to those effects of chance outside of one's control. Paradigmatically this would include congenital disabilities or instances of pure misfortune, like being struck by lightning. On the other hand, option luck refers to those effects of chance that one voluntarily accepts into one's life. This can include obvious instances of risk-taking, such as gambles, or perhaps less obvious cases, such as the decision of whether or not to undertake a university degree, and in what area.

Dworkin advocates a theory of distributive justice that makes one's fortunes sensitive to those factors that are within one's control, but not to those without. This renders the operation of brute luck a problem. He proposes a seemingly elegant solution: that brute luck be converted into option luck through the availability of insurance.

The motivation behind establishing such a distinction seems pretty clear in the context of the wider resource egalitarian theory. In his introduction to *Sovereign Virtue* Dworkin outlines his two guiding principles. The first, the Principle of Equal Importance, states that the success of a life is objectively valuable, and all lives are equally important. The second, the Principle of Special Responsibility, states: "one person has a special and final responsibility for that success - the person whose life it is."³⁷ These principles seem to enjoy high intuitive plausibility.

In the first place, then, it would be wrong for a theory of justice to ignore the plight of those disadvantaged through no fault of their own. While life is

³⁷ Dworkin (2000), p5

naturally unfair, organised society has the capacity to mitigate this unequal distribution of benefits and burdens. Dworkin seems to take it as given that a society which does not rectify this maldistribution, in as much as is possible, fails to display equal concern for persons. On the other hand, it would be wrong to treat human beings as mere victims of fate. We are capable of exercising a great deal of control over how well or badly our lives go, and ignoring this capacity is often thought to be to disrespect human dignity. For this reason it is vitally important that outcomes are sensitive to the choices we make.³⁸ How this sensitivity should be realised is the topic of this chapter.

Argument of this Chapter

As Dworkin flags within first breath of its introduction, the dichotomy between brute luck and option luck is not clear-cut. He suggests that “the difference between these two forms of luck can be represented as a matter of degree, and we may be uncertain how to describe a particular piece of bad luck.”³⁹ Taking the example of a person diagnosed with cancer, Dworkin suggests that, while in many instances it would be an obvious case of bad brute luck, our intuitions might be different if the victim had been a life-long heavy smoker. In the latter case we might say the victim took an unsuccessful gamble - he fell foul of bad option luck.

Brute luck is further sub-divided into those instances that can be converted into option luck through the availability of elective insurance, and those that must instead be neutralised prior to individual deliberation through hypothetical insurance. This latter type is determined via speculation on what agents would choose to insure against if they did not know how the brute luck lottery of birth would work out for them.

I want to challenge this interpretation of the instances subject to hypothetical insurance, and argue that there is a wider set of brute luck cases which

³⁸ Dworkin (2000), p6

³⁹ Dworkin (2000), p6

elective insurance cannot convert. I will first examine the various ways in which, by Dworkin's definition, instances of brute luck might be closed to conversion into option luck. I will show how a notion of 'reasonableness' that has emerged in the secondary literature plays a role in this demarcation, and how these unconvertible brute luck instances might be covered by hypothetical insurance. This will lead to the question of how reasonableness can guide decisions as to when elective insurance should take over from hypothetical insurance, given dynamic circumstances.

The Limits of Elective Insurance

Dworkin defines option luck as "a matter of how deliberate and calculated gambles turn out - whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined."⁴⁰ Brute luck is defined negatively as "a matter of how risks fall out that are not in that sense deliberate gambles."⁴¹

Before considering insurance markets, actual or hypothetical, we can see how this distinction reflects a natural intuition about justice Dworkin is drawing upon: it is unfair that someone ends up worse off than others due to factors outside of their control, but individuals must be held responsible for the control they do exert over their own fate. Life is naturally fraught with risk, but not all risks are created equally. There are some effects of chance in our lives that are completely beyond our control, such as one's genetic predisposition to disability or disease. We tend to feel that, if redistribution is ever justified, it is in these cases (to the extent that such redistribution would be reasonable given the needs and limited resources of the community as a whole). On the other hand there are those effects of chance that are completely within our control, in that they are highly avoidable. Skiing down a dangerous slope while drunk, for instance, is a very risky thing to do - there

⁴⁰ Ibid.

⁴¹ Ibid.

are many ways in which one might end up, unluckily, severely injured or dead. Yet we would call that misfortune bad *option* luck since it was thoroughly avoidable, and would likely fail to find claims for redistribution on justice grounds particularly compelling in these cases. Of course we are likely to feel a humanitarian impulse to provide medical care and rehabilitation regardless, but our charitable feelings might be strained if that skier fails to take responsibility for her actions and boasts of her intention to do it again, knowing we will come to the rescue.

Dworkin's suggestion is that brute luck can be converted into option luck where insurance is available. One effectively chooses to accept the effects of various risks into one's life by choosing not to purchase certain policies. Hypothetical insurance is introduced simply to deal with those cases in which elective insurance decisions are impossible - where the dice has rolled before the individual gets an opportunity to decide for himself what level of risk he is willing to accept. In this way all brute luck is either converted into option luck, through which agents regain responsibility for the effects chance has on their lives, or neutralised altogether such that, as far as is possible, the costs of unconvertible brute luck are spread across the whole community.

Problems arise for this account, however, when "deliberate and calculated gambles" are impossible for reasons beyond merely arriving too late to the scene. Dworkin's definition of option luck seems to map onto a common understanding of free will - that for an action to be free, and thus for the agent to bear responsibility for its consequences, it must be the case that the agent could have done otherwise. In the context of Dworkin's resource egalitarianism 'doing otherwise' means one of two things - either avoiding taking the risk itself, or purchasing insurance against that risk. According to his option luck definition, it is not true that an agent could have done otherwise if (a) he could not have declined the risk, (b) he could not have anticipated the risk involved, or (c) the risk was not isolated.

Not all risks fall to these easy extremes of evitability, however. In what follows I will examine each of these requirements for option luck in turn, and explore the ways in which our understanding of what risks an agent could avoid becomes hazy. I will draw upon similar worries in the secondary literature to support the claim that a notion of ‘reasonableness’ is necessary in order to meaningfully draw a line here.

(a) Reasonable Possibility of Decline

It seems that an intuitive notion of reasonable avoidability is implicitly at work in Dworkin’s elucidation of brute luck. He lists being hit by a falling meteorite as a case of bad brute luck, even though it is not technically correct that such an instance of bad luck is completely unavoidable - one could choose to live out the rest of one’s days in a bomb shelter in order to avoid the possibility of being struck, for example. It seems natural, however, to say that such behaviour would be irrational. The opportunity cost of such a precaution far outweighs the actual cost of the avoided risk (one might compare the two by defining the cost of being hit by the meteorite and dividing that by the probability of such an event occurring).

Martin Sandbu strengthens this point, noting:

“it is always possible to eliminate risk *altogether* by simply reducing one’s resource stock in all states of the world to the level it would have in the worst realization of the uncertainty. Thus Mary could avoid risk altogether by leading such an overcautious and crippled life that an accident would not cause her much loss.”⁴²

It seems, then, that our intuitions are informed by the cost-benefit analyses we presume the agent to have engaged in, consciously or not. This opens the door to potentially intrusive value judgments – who can decide whether it is fair to say I could not decline the risk of running into my burning house to save my baby, but that I could decline the same risk to save the only copy of my unpublished novel? In the latter case, further, we might be required to

⁴² Sandbu, *Dworkin’s brute-luck-option-luck distinction*, p294

judge the prior cost-benefit analysis I engaged in to decide that it was better to keep only one copy of that novel hidden in my desk-drawer for security purposes, rather than guard against this precise eventuality by keeping a spare copy elsewhere, where it might fall into the wrong hands.

Dworkin neatly side steps this can of worms by arguing that such instances can always be converted into option luck through elective insurance, regardless of whether they would have counted as cases of option or brute luck prior to such decisions. I will interrogate this supposition in the second half of this chapter. First, however, we should look at how this conversion might be blocked by his two further conditions on option luck.

(b) Reasonable Anticipation of Risk

It seems clear that we can't hold somebody responsible for a risk taken if they could not have known that it was a risky action. This, I think, is the deeper reason being struck by a falling meteorite is listed by Dworkin as one of the paradigmatic cases of brute bad luck "even though I could have moved just before it struck if I had had any reason to know where it would strike."⁴³ It is not necessary for this instance to intuitively count as brute luck that the victim be somehow involuntarily rooted in place such that he could not have moved from the spot which happened to be struck (which is to say, in a strong sense, that he could not have declined the gamble). It is enough that he could not have anticipated the (comparative) risk of his action.

It must be possible that the agent *could* have known something about the risk in advance in order to be responsible for the consequences of his actions. This example shows why anticipation of risk might be thought to be a prerequisite for personal responsibility - without such anticipation there is nothing, from the agent's point of view, distinguishing the various possible free actions from one another prior to the actual consequences playing out.

⁴³ Dworkin (2000), p73

Is it sufficient for responsibility that the agent merely *could have* known the risk she ran? Surely this would be too demanding. It is true that I could become an expert astronomer and monitor the skies vigilantly for falling meteorites, thereby gaining the knowledge necessary to anticipate where a strike would occur. Yet in doing so I would likely suffer a similar fate to Thales and fall foul of another, overlooked threat.

Neither does this condition require full, unequivocal knowledge of the risk, however - that would not be demanding enough of the agent. To make absolute knowledge a condition of responsibility would drastically undermine our natural understanding of personal responsibility, since we can never be sure what the precise consequences of our actions will be. Under such a condition I could not be held responsible for someone's death after stabbing them in the chest because it is not absolutely inevitable that one will die from such an injury, and therefore I could argue that I didn't anticipate that risk.

We instead need some way of identifying those consequences of one's actions one could *reasonably* have anticipated under conditions of uncertainty. This goes beyond a factual claim about pure possibility into the normative realm.

(c) Reasonable Isolation of Risk

Another way in which Dworkin suggests one might be unable to decline a risk is if it is not 'isolated'. As I see it there are at least two ways of interpreting this criterion.

Firstly, the requirement that a risk be 'isolated' might simply be another way of stating the epistemic condition. If it is true that a particular outcome resulted from a composite of various elements of brute and option luck, it will be impossible to accurately judge the portion of that outcome attributable to agent responsibility. Sometime in the near future, for instance, medical science will likely advance to the point where one can identify one's

own individual health risk factors. In such an epistemic context one would be able to see clearly the risks attributable to the brute luck of the genetic lottery and those attributable to the option luck of one's lifestyle choices. As it stands, however, these risk factors are thoroughly entangled. They are not adequately epistemically isolated.

The isolation criterion would surely be redundant under this interpretation, however, in light of the previous condition of reasonable anticipation. A second interpretation, then, might be that an 'isolated risk' is one whose avoidance does not carry risks of its own. Wolff and de-Shalit identify one particularly worrying way in which risks fail to be isolated in this way: inverse cross-category risks arise when an agent "acts in a way that puts one category [of functioning] at risk while trying to secure another."⁴⁴ They point to an example, given in Sen's *Development as Freedom*, of a poor community in the Sundarban who risk attack by the wild Royal Bengal tiger in order to collect honey for sale.⁴⁵ It is true that a member of that community could avoid the serious risk of death (fifty or more are killed by the tigers each year) by refraining from collecting the honey in the forest. But that would be to forgo their only available income source - they can only avoid destitution and hunger by collecting the honey and risking attack.

While it is true that in either case one could have done otherwise, one could not have avoided both risks. For this reason it would be difficult to argue that the individual was responsible for the ill consequence of his choice. We might suggest that the relevant instance of luck here is not the option luck of which course of action the individual chose, but the brute luck that determined these to be the only avenues open to him. Anderson's objection that "free choice within a set of options does not justify the set of options itself"⁴⁶ is particularly pertinent in this regard.⁴⁷

⁴⁴ Wolff & de-Shalit, *Disadvantage*, p70

⁴⁵ Wolff & de-Shalit, *Disadvantage*, p65

⁴⁶ Anderson, (1999), p308-9

⁴⁷ An immediate objection to this case might be that the binary choice between risking tiger-attack and risking destitution must be in some way artificial. We might imagine that if the agents' options really are that limited it must be due to the social and economic

Carl Knight, however, challenges the notion that compulsory gambles are always unfree in this way:

“‘[C]ompulsory gambles’ seem also to be cases of option luck, at least provided a sufficient range of alternative gamble are available, as the gamble taken could have been declined for another gamble. Occupational choices, for instance, are paradigmatic instances of deliberate and calculated gambles that could have been declined.”⁴⁸

Occupational choices intuitively do count as cases of option luck. If I were to choose to invest in education and training to pursue a career as a skydiving photographer it would surely be fair to hold me responsible for that choice and that I therefore bear the costs of my expensive decision myself. This is simply to affirm Dworkin’s claim that “people should pay the price of the life they have decided to lead, measured in what others give up in order that they can do so.”⁴⁹ Yet it is also true that the success of an occupational choice is subject to risk - it is notoriously difficult to tell which sets of skills and expertise will be most in demand once one has completed one’s education and training, and the workings of the labour market ensure that there are no fully safe bets, or risk-free options. It is not beyond the bounds of possibility that expertise in customer service today might be as useful as the skills of a skydiving photographer in the near future.

It is instructive here to refer to Cohen’s discussion of freedom and reasonableness in which Wolff and de-Shalit ground their claim that, in cases like these, “the risk cannot be reasonably avoided because there is no reasonable alternative.”⁵⁰ Cohen argues for a distinction between the concepts of ‘being free to do A’ and ‘doing A freely’, or not being forced to do

systems in place. It would therefore be wrong to suggest that this is a case of brute bad luck - we might even suggest that it is merely the case that somebody *else* has made the “deliberate and calculated gamble” to accept these risks on their behalf. This is a central concern of this thesis, and shall receive proper attention in subsequent chapters. In the meantime we can imagine a fictional scenario in which one’s options truly are naturally restricted in this way, as perhaps would be the case on Dworkin’s desert island.

⁴⁸ Knight, *Abandoning the Abandonment Objection to Luck Egalitarianism*, p2

⁴⁹ Dworkin (2000), p74

⁵⁰ Wolff & de-Shalit, *Disadvantage*, p67

A. This distinction again, turns on a notion of reasonableness: “When a person is forced to do something he has no *reasonable* or *acceptable* alternative course. He need not have no alternative at all.”⁵¹ One way in which an alternative course might be unacceptable is that it is *too risky*, but Cohen claims that it would be wrong to interpret ‘reasonable alternatives’ as only those which pose a lesser threat than the given action - if this were true then one would be ‘forced’ to always take the least risky path, thereby losing responsibility for the costs of that decision.⁵² Instead, he gives the following definition of an acceptable alternative:

“*B* is an acceptable alternative to *A* if and only if *B* is not worse than *A* or *B* (though worse than *A*) is not thoroughly bad.”⁵³

Again, cashing out the notion of some course of action being ‘not thoroughly bad’ seems to rely on a judgment of what it is reasonable to expect people to endure in a given society.

Cumulative Risks and Forced Gambles

Elizabeth Anderson famously takes aim at luck egalitarian approaches to distributive justice, including Dworkin’s resource egalitarianism, in her 1999 paper ‘*What is the Point of Equality?*’. While her views on the legitimacy of egalitarians’ focus on distributive issues will be addressed in the next chapter, I want to first address her criticism of luck egalitarianism on the grounds that it “excludes some citizens from enjoying the social conditions of freedom on the spurious ground that it is their fault for losing them.”⁵⁴ I don’t believe this criticism is ultimately successful, but it does draw out an important and overlooked requirement of the luck egalitarian commitment.

⁵¹ Cohen, *History, Labour, and Freedom*, p245

⁵² Cohen, *History, Labour, and Freedom*, p282-3

⁵³ Cohen, *History, Labour, and Freedom*, 282

⁵⁴ Anderson, (1999), p289

Perhaps Anderson's most convincing argument that luck egalitarianism treats the victims of bad option luck unjustly is the so-called "problem of the abandonment of the prudent."⁵⁵ Here she claims that there might be reasons for taking prudent gambles which undermine our intuition that the individual should bear the full costs when the gamble goes bad. One point we must keep mind throughout this analysis is that there is no way to avoid risk entirely. Even the most sensible choices carry risks, both foreseeable and unforeseeable, and there is no guarantee that remote risks will not be catastrophically costly.

I am particularly concerned by the iterative effects of prudent gambles that go wrong. We might term this problem the 'cumulative effects of risk.' Anderson highlights the intuitive injustice that in our present capitalist societies "single lucky or unlucky blows often place individuals in situations of *accumulating* advantage or disadvantage"⁵⁶ where it seems that the consequences of even option luck are completely disproportional to the choice made. It strikes me additionally that our interest in personal responsibility should be forward- as well as backward-looking – if we are moved by the moral relevance of individual choice then we should want to ensure that the conditions of choice are not easily undermined. In this section I will first address the threat to the conditions of choice posed by prudent gambles, before examining the resulting implications for the harder cases in which the agent might have been reasonably expected to have done otherwise.

Prudent Gambles

Let's presume, first, that a particular individual's bad option luck arose through a prudent gamble. Perhaps this island immigrant chose to spend her clam shells on a sizeable farm and opted to sow the hardiest available crop which produces sufficient grain to feed her family and more besides to sell on

⁵⁵ Anderson, (1999), p298

⁵⁶ Anderson, (2008), p240 (original emphasis)

the market 99.9% of the time. Alas, the 0.1% eventuality manifests and she finds herself with nothing to eat or sell. Being a cautious immigrant, she had purchased insurance against such a catastrophe that compensates her such that she and her family's basic needs are met – they have enough to eat, adequate shelter, etc. Nevertheless they are left with limited disposable income. The immigrant again takes only the most prudent gambles available. She invests a large portion in her children's education, knowing that it is very likely to pay dividends in the future as well as having great intrinsic value itself. This investment requires a trade-off and she therefore opts for more modest health/disability insurance than she would have prior to the crop misfortune, reasoning that since she and her husband are so risk-averse and therefore lead extremely healthy lifestyles they are quite unlikely to make claims on that insurance before they reach old age. Being unforeseeably unfortunate, however, her non-smoking, marathon-running, teetotal husband develops lung-cancer. Their modest insurance covers the required surgery, but this leaves him unable to work for a number of years. The consequent reduced income once more forces our prudent immigrant to take greater risks than she would otherwise be comfortable with.

It's undoubtedly possible that this particular immigrant's luck will change and her next forced gamble pays off such that she can afford to return to her original cautious approach. Nevertheless given a large population and the nature of chance it is all but inevitable that some will suffer bad luck compounded by more bad luck. Indeed we might understand the moral of this story as being the expensiveness of prudence – once a gamble is lost one has fewer resources with which to guard against risk going forward. If chance is an inevitable factor in individuals' distributive shares, fewer and fewer people will be able to afford to minimize the impact of risk on their fortunes in successive gambles. Anderson points out that “when certain risks are practically [i.e. reasonably] unavoidable, they are not really matters of option luck.”⁵⁷ It is for this reason, I believe, that we must regard the outcomes of some unavoidable gambles as instances of brute luck and that the resultant

⁵⁷ Anderson, (2008), p257

costs and benefits are appropriately assumed by society as a whole through the hypothetical insurance mechanism.

To implement this aspect of hypothetical insurance, however, we must determine which gambles to regard as 'forced' in this way. The simplest answer, I believe, would be to treat as forced those gambles that are the least risky of all available. If there is a minimally risky option available to an agent and she chooses a more risky option, she surely thereby assumes responsibility for the attending costs. But if she opts for the least risky option she cannot be held personally responsible for the costs if that gamble is lost. Naturally we must face epistemic complications here as noted above – we rarely know precisely the costs or levels of risk associated with various courses of action, and often there are courses of action that are wholly opaque to us. Hypothetical insurance will need to cover not simply the least risky option, then, but rather the option(s) most reasonably thought to be least risky.

I believe this understanding of brute luck accounts for an objection raised against luck egalitarianism concerning its alleged potential for unfair treatment of the risk-averse. Macleod argues that there are risks associated with the imprudent gambles of some that are not internalized as they should be to count as truly optional, but are imposed on the rest of the (prudent) population. These costs most notably manifest as “an unacceptable degree of uncertainty about the sorts of lives people who are not gamblers can reasonably expect to be able to pursue.”⁵⁸ This uncertainty can arise through production gambles that impact the total stock of resources available, but also through risk-lovers' decisions to forego insurance which can undermine the ability of the cautious to avoid risk. Lippert-Rasmussen articulates this point as follows: “When there are fewer people with whom one can pool risks, those who prefer safer lives may well face worse options in that these people will, for a given level of expected value, face higher risks.”⁵⁹

⁵⁸ Macleod, (1998), p59

⁵⁹ Lippert-Rasmussen (2001), p553

If, under Dworkin's account, brute luck is converted into option luck through the availability of insurance, then that conversion will be blocked if insurance is unavailable. Imagine that all but one of the island immigrants are intense risk lovers - perhaps one waiter and a Monte Carlo-bound party are the only survivors of the shipwreck. After getting their bearings and performing an inventory of the resources at their disposal, the waiter suggests that they should establish an insurance scheme against blindness, recognising that a particular blindness-inducing disease is especially prevalent on this particular island. The gamblers acknowledge but decline to pool the risk, preferring to take their chances alone. As it happens, it is the waiter who is struck by the disease.

Is it just, according to resource egalitarianism, that he bears the full costs of this disease alone, since as it happened no one was willing to pool the risk of those costs with him? Surely not, for his bad luck is still brute, given that the gamblers foreclosed the possibility of its conversion into option luck. Of course there are risk-mitigating steps the waiter might have taken himself - he might avoid wading through a swamp to reach the fruit trees on the other side, or invest some of his resource-share in expensive water-purification methods - but this is in effect to choose between gambles; it is not the free choice to accept the full potential costs and benefits that would constitute option luck under Dworkin's definition. As I argued earlier, to be forced to choose between gambles, without an option to decline altogether, is a violation of the Isolation of Risk criterion for option luck. According to my understanding of hypothetical insurance, then, the gamblers do owe the waiter compensation for his bad luck as a matter of justice, since his bad luck remains brute. This would be the case if he had never mentioned anything about the possibility of voluntary insurance to the gamblers, and it would surely be strange for such a matter of justice to turn on his voicing that option.

This type of hypothetical insurance will guarantee (insofar as possible) the conditions of free choice for subsequent gambles when the individual chooses the most reasonably prudent option. But what happens when the agent chooses a riskier course of action?

Imprudent Quasi-Gambles

Now we must recognise another pertinent distinction – this time regarding the motivation for risk-taking. In the above example, the shipwrecked party bound for Monte Carlo enjoy gambling precisely because of its risky nature. It would take all the fun out of blackjack if they were guaranteed a specific return, no more and no less. These are ‘gambles proper’ defined by the player’s preference for “facing the gamble to having its expected value.”⁶⁰ When luck egalitarians discuss gambles, however, they refer to a wider range which includes quasi-gambles. These are gambles “in which the gambler prefers the expected value of the gamble to facing the gamble.”⁶¹ It is commonly understood that insurance is a gamble of the latter type.

Let’s imagine then, that the waiter additionally proposes insurance against the adverse consequences of eating berries native to the island that he knows to be delicious but highly poisonous. He has no desire for the risk of poisoning himself and would much prefer if these berries were perfectly benign. Given that this is sadly not the case, however, his next best option is to convince the other immigrants to pool the risk with him and fund his medical care if the berries do make him sick – this would be a quasi-gamble. In such a case it would be reasonable for the gamblers (who have no desire to try the berries themselves, as it happens) to require that the waiter either refrain from indulging his taste or bear the costs alone, and refuse to engage in optional insurance with him against its attendant risks. There is already a low-risk option available to the waiter – that of simply not eating the berries – and so there is no justice requirement that such an option be socially

⁶⁰ Lippert-Rasmussen (2001), p555

⁶¹ Lippert-Rasmussen (2001), p555

created through insurance. Here, then, the notion of reasonable expectations finds a decisive role to play in distinguishing between brute luck and option luck; between risks subject to hypothetical versus elective insurance.

Is it acceptable from the point of view of justice that the gamblers deny the waiter medical care when he nevertheless poisons himself? Clearly Dworkin does not mean for his hypothetical insurance scheme to limit us to only ever choosing the most prudent option open to us at any given juncture, for that is no choice at all. He merely intends that we take account of the costs of such actions, and proposes extensive cost-internalisation as the simplest mechanism to achieve that end. There are at least two possible interpretations of this cost-internalisation requirement. On the one hand we might say that once an individual deviates from the minimal risk option, she assumes fully the potential costs and benefits of that course of action (which she may or may not choose to pool with similar risk-takers). On the other hand we could argue that the individual, in assuming more risk than is strictly necessary, thereby assumes only the portion of risk additional to that of the naturally forced gamble. We respect her right to choose that course of action, and in doing so she takes personal ownership of the potential rewards and costs of that decision, but there remains a greater or lesser portion of those rewards and costs that she had no control over and that are therefore rightly subject to neutralisation through the hypothetical insurance scheme.

Assume for simplicity that the berries have a substantial and well-known chance of causing blindness in those who ingest them, an eventuality already insured against due to the unavoidable risk posed by the blindness-inducing disease on the island. The waiter again goes blind, but this time the islanders have no way to tell whether his condition is due to the berries he ate or the disease. What obligations do they have to provide medical care and expensive accommodations for his blindness? We might propose that the hypothetical insurance payout be discounted to match the probability that his condition was self-caused, but this would presumably require potentially unjustified invasive monitoring to determine how many berries he ate, if he

in fact ate any at all. If, unbeknownst to anyone, he decided not to run the risk of consuming the berries it will surely be unjust to penalise him as though he had. We might instead suggest that the cost of the treatment or accommodation of his disability if his gamble goes bad, discounted by the probability of it doing so, be applied directly to the risky behaviour rather than after the dice is rolled. In Dworkin's initial auction this might mean pricing the berries not merely according to the demand among the immigrants for them, but also according to the probable costs they will impose on the rest of the society through their ill effects. This idea is used in the real world, for example, to justify high taxes on cigarettes at the point of purchase.

This approach might be understood as equivalent to an elective insurance scheme amongst those who undertake unnecessary risks. It is elective, however, only to the extent that the risky behaviour is engaged in electively. Under this scheme it is not possible for an individual to waive his right to medical care if the gamble goes bad in return for a lower price. In this way it is possible to deviate from the most prudent course of action without thereby forfeiting one's right to assistance or risking the cumulative effects of subsequently forced gambles. One can internalize the costs associated with a particular quasi-gamble without risking one's future freedom to decline to gamble and a possible resultant slide into destitution, as is Anderson's concern.

These suggestions regarding the relationship between hypothetical and elective insurance are sketchy and have yet to be offered justification. The proposal that agents be required to 'electively' insure against the more drastic risks associated with optional gambles, especially, will face the charge of paternalism – why should an adult of sound mind and body be blocked from genuinely risking her basic capabilities, waiving all right to rescue, if she so chooses? It is merely my intention to show that if relational egalitarianism requires such limits on individual freedom, then these restrictions will form part of the resource egalitarian scheme through hypothetical insurance.

However I must first demonstrate how it is that these approaches overcome their apparent incompatibility. This is the task of my next chapter.

2. Interpersonal Responsibility: Exploitation and the Social Construction of Luck

To refresh our memories, my intention in this thesis is to show how resource egalitarianism can be understood as an instantiation of relational egalitarianism in the distributive sphere. Yet relational egalitarians accuse theories of justice that focus on the neutralisation of brute luck of fundamentally misunderstanding the object of justice, which is the manner in which agents treat one another. Since resource egalitarianism is just such a theory, it would seem my project is doomed before it ever gets off the ground.

The problem with an exclusive focus on natural inequalities is easy to see when we look at some luck egalitarian attempts to subsume relational issues within its scheme. Nicholas Barry, for example, claims that exploitation “is a matter of structural relations between social groups and therefore reflects brute luck.”⁶² He offers the specific example of women’s exploitation through their restricted option sets and enforced norms, and claims that because women “are not responsible for the way gender roles are constructed, the lower well-being that results is a matter of brute bad luck.”⁶³ But this characterisation misses the relational egalitarians’ point entirely. By attributing women’s oppression to ‘brute bad luck’ one fails to recognize the concrete causes of that oppression and potentially blinds oneself to the available structural solutions. Additionally, failing to identify this aspect of responsibility surely undermines luck egalitarianism’s responsibility-catering credentials.

How might resource egalitarianism incorporate relational impacts on individual outcomes without running afoul of this equivocation? Hillel Steiner claims that “the causal factors contributing to a person’s incurring

⁶² Barry (2006), p94

⁶³ Barry (2006), p94

adverse (or benign) consequences can be exhaustively consigned to a threefold classification: (1) her own doings; (2) the doings of others; and (3) the doings of nature.”⁶⁴ Dworkin’s True-Cost Principle offers a guide as to how costs arising from the ‘the doings of others’ should be apportioned. It states that “people must pay the actual cost of the choices they make, or the choices that are properly attributed to them, measured by the cost to others of those choices.”⁶⁵ These are defined in terms of opportunity costs, which fix “the value of any transferable resource one person has as the value others forgo by his having it.”⁶⁶

On this basis equality of resources can be understood fundamentally as an attempt to avoid the exploitative relationships Dworkin identifies in other egalitarian distributive theories, encapsulated by the Problem of Expensive Tastes. Where Cohen, for example, suggests that the expense associated with one’s preferences and ambitions constitutes an instance of brute luck since such costs are not within any one individual’s control (even if their tastes largely are),⁶⁷ Dworkin argues that the market conveys information morally relevant to individuals’ choices in a way that transmits responsibility. The preferences of others are not matters of brute luck but rather form part of the ‘parameters of justice.’

“The mix of personal ambitions, attitudes, and preferences that I find in my community, or the overall state of the world’s resources, is not in itself either fair or unfair to me; on the contrary, that mix is among the facts that fix what it is fair or unfair for me to do or to have.”⁶⁸

Dworkin’s liberalism leads him to endorse the market as the best mechanism by which to identify the opportunity costs of one’s choices to others, though, as noted in our introduction, he proposes a number of supplementary principles to correct for market imperfections. In this way some interpersonal impacts on individual outcomes are perfectly just – indeed they

⁶⁴ Steiner (1997), p303-4

⁶⁵ Dworkin (2002), p111

⁶⁶ Dworkin (2000), p149

⁶⁷ Cohen (1989), p922-7

⁶⁸ Dworkin(2000), p298

define the contours of justice. Just as my own tastes and preferences are not matters of brute luck, but “interwoven with judgments of endorsement and approval,”⁶⁹ so too are the tastes and preferences of others.

Argument of this Chapter

In this chapter I hope to undermine the seeming incompatibility of relational and resource egalitarianism by showing how a great portion of misfortune often understood to be traceable to mere brute bad luck is actually of central concern to relational egalitarians. This, I will argue, is because the ‘dominant cooperative scheme’ found in a given society is itself the result of choices made by those within the society, historically as well as contemporaneously, and that in many cases this cooperative scheme plays a large role in determining what counts as good or bad luck. In this way the opportunity costs to those disadvantaged by the cooperative scheme must be taken into account if the True-Cost Principle is to be honoured, even though such costs are, by definition, untraceable to any identifiable agent or set of agents bar the community taken as a whole.

By the same token, I believe, resource egalitarianism must also take what might be termed ‘true-benefits’ into account. One prominent relational critique of many distributive theories, including equality of resources, targets their individualism. Agents are treated as acting purely from their own preferences, even if those preferences happen to be other-regarding. This approach is rooted, not in disdain for community-mindedness, but in a necessary commitment to the value of liberal pluralism. Yet as a result the benefits of an agent’s actions are afforded little attention since they are presumed to accrue primarily to the agent herself. Anderson argues that the problem with such approaches is that they disable “criticism of social arrangements that assign to individuals the risk of weighty costs to their choices, even when those choices are socially necessary – even when there is

⁶⁹ Dworkin (2000), p291

a shared interest in having people make those choices.”⁷⁰ I will argue that, while the market is unable to account for many of these benefits to the community and their individual costs, Dworkin’s hypothetical insurance is an ideal stand-in.

The Social Construction of Luck

In ‘*The Fundamental Disagreement Between Luck Egalitarians and Relational Egalitarians*’ Anderson outlines four constraints on what counts as injustice based on her understanding of justice as inherently interpersonal. She argues on that basis that “[t]he fundamental luck egalitarian claim, that inequalities due to brute luck are unjust, fails to satisfy [the relational egalitarian] constraints because it does not identify an injury or anyone responsible for avoiding or remedying it.” In this section, then, I will argue that resource egalitarians’ motivation to neutralise ‘brute bad luck’ is implicitly grounded in the fact that, in many cases at least, its badness is interpersonally determined. For there are innumerable instances of brute luck (the colour of one’s eyes, for instance) that issue no negative social consequences and for that reason, it seems, do not strike us as grounding claims for social mitigation.

Responsibility and the Dominant Cooperative Scheme

Anderson holds up an interpersonal conception of justification as the hallmark of relational egalitarianism in contrast to the ‘third-person conception’ allegedly underlying luck egalitarianism. She draws here upon Stephen Darwall’s account of justice as essentially concerning “individual *claim rights*, which ground duties of others to pay due regard to individual’s interests.”⁷¹ From this understanding of justice Anderson seeks to undermine the luck egalitarian principle, as proffered by Cohen, that “inequalities in the

⁷⁰ Anderson (2008), p255

⁷¹ Anderson (2010), p4

distribution of natural endowments are unjust,⁷² or, more modestly, that socially sustaining such natural inequalities is unjust,⁷³ claiming this principle cannot be correct since such natural inequalities are not traceable to any agent(s). While I will hold off analysis of the specifics of the argument between Anderson, Cohen and Dworkin regarding the legitimate role of natural endowment inequalities till the next chapter, for now I want to consider how relational egalitarians might distinguish natural from social inequalities.

Cohen's own account of interpersonal justification brings most clearly into focus, I believe, the way in which relational equality is violated when relational impacts on individual outcomes are treated as mere instances of brute luck. In *'Incentives, Inequality, and Community'* Cohen mounts a case against the Rawlsian incentives argument for inequality on the basis that such arguments fail the 'Interpersonal Test' – they are rendered incoherent when expressed by the agent(s) whose behaviour determines the argument's empirical premise. In that specific case the argument involves a normative premise, that "[e]conomic inequalities are justified when they make the worst off people materially better off";⁷⁴ and an empirical premise, that the talented rich utilise their talents in such a way as to make the worst off better off only when they receive material incentives i.e. only when there is economic inequality in their favour.

The point for our present purposes is that Cohen here exposes one of the ways in which "the rich may represent their own optional attitudes and decisions as given facts."⁷⁵ Just as in the incentives case the talented rich present as fact their choice, as Cohen sees it, to withhold (or to present themselves as likely to withhold) productivity unless economic inequality is instantiated or allowed to continue to benefit them, those with certain natural endowments present as similarly natural the social systems which

⁷² Anderson (2010), p8

⁷³ Anderson (2010), p11

⁷⁴ Cohen (1991), p271

⁷⁵ Cohen (1991), p308

favour those endowments, when in reality those systems are social constructions open to modification. In doing so they “imply that they do not qualify as choosing agents”⁷⁶ in this regard, thereby alienating themselves from their own responsibility for the given state of affairs. The social model of disability highlights the fact that the choice of the ‘dominant cooperative scheme’ is indeed a *choice* and therefore appropriately subject to interrogation regarding responsibility and the allocation of its attendant costs and benefits.

Contemptuous Pity

One of Anderson’s three core objections to luck egalitarian theories specifically is her allegation that they express “contemptuous pity for those who are judged to have done badly out of the natural lottery.”⁷⁷ She suggests that under these accounts in order to receive compensation for the brute bad luck of being born into some form of disadvantage citizens must endorse a judgment that they are inferior to others, and in this way such approaches cannot achieve relational equality. In doing so Anderson highlights the *expressive* aspect of supposedly purely distributive theories and the various ways in which such judgments can run contrary to justice as recognition. On her understanding, luck egalitarianism “disparages the internally disadvantaged and raises private disdain to the status of officially recognised truth.”⁷⁸

Anderson’s point cannot be, however, that no one is naturally disadvantaged in comparison to anyone else, as that would be plainly absurd. An account that presupposes everyone begins on a level playing field would run contrary to the recognition insights she endorses. The question must instead be how we might develop an objective, respectful account of disadvantage and the obligation to alleviate it, which retains a central commitment to the equal moral worth of persons.

⁷⁶ Cohen (1991), p309

⁷⁷ Anderson (1999), p289

⁷⁸ Anderson (1999), p306

Despite Dworkin's staunch opposition to welfare equality Anderson claims that his hypothetical insurance scheme ushers in welfare metrics through the back door, based on the supposition that it "would treat two people with the same disability [or, more generally, the same internal features] differently, depending on their tastes."⁷⁹ In this way the problem of expensive (and, for that matter, cheap) tastes infects resource egalitarianism. If, as Anderson supposes, compensation for internal features is paid out on the basis of what the individual in question would have insured against in the original position, there would be nothing to stop someone who judges the possession of an unappealing visage to be unbearable from demanding that the state fund the "remedy" of this "bad" luck through plastic surgery. On the same logic anyone traditionally regarded as disadvantaged through brute bad luck, such as by being born deaf, would not be entitled to compensation if they were to embrace that internal feature, as many members of the Deaf community do.⁸⁰ Dworkin (wrongly, I will argue below) bites this bullet in *'Sovereign Virtue Revisited,'* conceding that if the deaf individual "would not submit to a costless and painless medical procedure [...] that would give him hearing"⁸¹ it is safe to say he would not have purchased insurance against such an internal feature in the original position and therefore is entitled to no compensation.

I think we can understand these issues as rooted in confusion over how to identify bad luck. This should be unsurprising given that any particular event or feature can be good, bad or neutral for any individual depending on the context. Even to be struck dead by a heart-attack out of the blue in the prime of one's youth might constitute an instance of good luck if, say, one were at that moment awaiting imminent torture and execution. Dworkin agrees with capabilities theorists that "people want resources not simply to have them but to do something with them,"⁸² and we might extend this conception of value to instances of luck - matters of chance are valued, not intrinsically, but

⁷⁹ Anderson (1999), p303

⁸⁰ Anderson (1999), pp303-4

⁸¹ Dworkin (2002), p139

⁸² Dworkin (2000), p303

in what they *do* for us. Sometimes what they do for us is indeed just a matter of welfare, where my idiosyncratic tastes are the sole determining context (getting caught in a heavy downpour might constitute good or bad luck for me, depending on whether such an experience gives me pleasure or discomfort). But most of the time we judge an instance of luck by its effects on what we are able to do, which, as we saw in our earlier account of the capabilities approach, is determined by the various conversion factors at play. Good luck, then, constitutes some instance of chance that, upon interaction with these conversion factors, expands one's option set (and by extension one's ability to achieve welfare). Bad luck restricts that option set in the given context.

I argued in the introduction that Dworkin implicitly appeals to this capabilities' notion of conversion factors in his description of the hypothetical insurance scheme, which functions as a way of evaluating external against internal resources and calculating appropriate compensation for bad luck regarding the options one's internal features block. Hypothetical insurance thus reflects, not each individual's idiosyncratic tastes, but rather contingent facts about how brute luck can limit people's freedom to develop and pursue those tastes. As there flagged, however, these include facts about the tastes and preferences of others in one's community.

How would this interpretation of resource egalitarianism treat the misfortune of an unattractive face, then? Dworkin suppose it to be "incredible that the bulk of citizens of any community would have paid the extravagant premiums necessary for cosmetic or vanity insurance."⁸³ But that is not to reject the charge that subjective welfare considerations contaminate hypothetical insurance with 'private disdain' for certain personal features – it merely reminds us that hypothetical insurance is not determined by *individual* preferences but rather the aggregated probable preferences of all relevant individuals, and asserts that such disdain would not be shared by a

⁸³ Dworkin, (2002), p116

sufficient portion of the population. The real question, I think, is whether such an internal feature tends to limit one's option set in such a way that it would have been rational for any agent to purchase insurance to restore, insofar as possible, the compromised capabilities. In the case of appearance we can assume any impact on capabilities would be attributable to social conversion factors, which we have singled out as an (implicit) element of Dworkin's theory in need of more attention. While the affected individual's own preferences don't figure in the resource egalitarian's judgment of whether or not they are entitled to compensation, Anderson rightly notes that "the claims a person makes [...] are a function of everyone's tastes,"⁸⁴ insofar as others' preferences influence one's capabilities.

In this way hypothetical insurance may indeed endorse "private disdain", depending on how it responds to these social conversion factors. It is for this reason Anderson claims that "people, not nature, are responsible for turning the natural diversity of human beings into oppressive hierarchies."⁸⁵ The 'contemptuous pity' criticism thus highlights the question we must answer regarding the legitimacy of the impact on one another's capabilities of personal preferences regarding one another's internal features.

The Social Model of Disability

We have argued that whether a given instance of luck is good, bad or neutral depends on its impact on one's capabilities and welfare, and one's social context is one of the main determinants of that impact. In this way, though brute luck is beyond the control of the primary affected individual, its character is determined, in part, by other agents.

The social model of disability is one prominent example of the way in which brute luck can be socially constructed, and highlights the role of recognition in identifying where costs and benefits are hidden through necessary-

⁸⁴ Anderson (1999), p295

⁸⁵ Anderson (1999), p336

appearing contingencies. Advanced by disability activists in the 70s and 80s, the social model suggests that one's internal features are not always in themselves good or bad, but often rather rendered so by ill-suited social structures. Allen Buchanan refers to the social context of ability and disability as "the infrastructure for interaction" or "dominant cooperative scheme" and claims that it consists of at least two elements – "the physical infrastructure, for example, buildings, machinery, etc., and the institutional infrastructure, roughly the rules and norms of interaction."⁸⁶

It must be underlined here that the social environment is not the sole determinant of disability. Tom Shakespeare, a pre-eminent disability theorist and person with a disability himself, argues that "[i]n many circumstances, impairment is problematic in itself, as well as having broader cultural and political consequences."⁸⁷ Many disabilities, for example, cause physical pain and discomfort for the affected individual, and the badness of such features cannot be attributed to their social context – it just is bad to suffer in this way. We must keep in mind, therefore, the elements of genuine brute bad luck inherent to these disabilities.

If disability is understood as at least in part, however, as a 'lack of fit' between the individual and his social environment then it becomes clear that there are at least two distinct possible responses - we can choose to change the individual or that environment (or, more likely, both) – and there has been much debate as to which best expresses respect for the affected individual. Jonathan Wolff has noted, for example, that "a social policy requiring individuals to undergo physical change in order to function well encourages the idea that there is something *wrong* with such people, and that they need to be cured."⁸⁸ That is to say we must be mindful of the attitudes and judgments expressed in the way society responds to this aspect of diversity.

⁸⁶ Buchanan (1996), p39

⁸⁷ Shakespeare, (2008), p13

⁸⁸ Wolff, *Disability, Status Enhancement, Personal Enhancement* (2009), p52

I want to focus for now, however, on what the social model tells us about responsibility in these particular cases of supposed brute bad luck, and what implications we can draw with regard to the just allocation of costs and benefits. Buchanan emphasises that, though the prevailing cooperative scheme was not chosen by any one individual or group, but rather emerged organically, it is that system that largely determines “who will and who will not be disabled.”⁸⁹ Shakespeare stresses that it is “only when society has developed certain expectations of its members [that] the lack of ability to fulfil those expectations become[s] obvious and problematic,” and offers as an example people possessing the internal features of dyslexia who would not have been regarded as suffering from a disability in previous generations when the various societal institutions and the labour market did not require ordinary citizens to be especially literate.⁹⁰

By upholding the dominant cooperative scheme in light of this understanding then, Buchanan argues, we consciously allow that some people will remain disabled relative to their social environment. His point is not that this should be necessarily lamented or condemned, but that we should make these communal decisions consciously. For what we do in choosing whether or not to change the cooperative scheme we inherit (and we have chosen to do so in many ways in recent decades through various accessibility initiatives) is to balance the interests of those with particular internal features against others. In this way we can see that the brute bad luck of being born with a disability is, at least in part, a relational issue.

⁸⁹ Buchanan (1996), p40

⁹⁰ Shakespeare (2008), p13

Capabilities and Disability

How might resource egalitarianism incorporate this understanding of luck? We mentioned earlier the potential problem posed for Dworkin's scheme by the example of a deaf individual, Dan, who would refuse a hypothetical simple medical procedure to restore his hearing. This specific example comes from Andrew Williams' paper on the strengths of the capabilities approach as compared to resource egalitarianism, where he argues that "it is possible for proponents of the capability approach to argue that the inequality in communicative capabilities between Dan and the nondeaf majority is unfair in a way that is unconditional on Dan's attitudes."⁹¹ Dworkin responds by objecting that, if Dan genuinely prefers being deaf, it would be to express contemptuous pity if the community were to nevertheless treat him as having suffered bad luck and compensate him as such. His being deaf may indeed be a matter of brute luck but Dan clearly does not see that luck as bad and it would be very strange and disrespectful for the community to tell him that his judgment on that count is incorrect.⁹²

But Williams's original description of Dan's case emphasises that the dominant cooperative scheme relies on the hearing capacity in everyday communication such that his ability to communicate with the wider population is reduced. Dan doesn't regret this primarily because he sees that capability-inhibition as outweighed by his membership of the deaf community and capability for communication within it. Surely he does, however, have reason to regret that his communicative community is not larger than it is. It is a matter of brute luck that the majority of people are born with hearing and that its efficiency leads them to prefer speech to sign language.

Dan's preference is now for a communicative community solely comprised of deaf and hearing-impaired persons, perhaps because he has found the

⁹¹ Williams (2002), p37

⁹² Dworkin (2002), p138-40

majority of hearing people in his life to be stubborn in their unreflective acceptance of speech as the best means of communication, or prejudiced in their implied belief that deaf people's words are not worth learning how to hear. But what would he have judged in the original position in ignorance of the internal capacities he would or would not possess? It's quite possible that his preference for non-verbal communication is not merely adaptive and would remain intact in that position before he discovers whether or not he is deaf. Speech is not, after all, necessarily superior in all regards to sign language or other non-verbal methods of communication. Faced with the uncertainty, then, of whether he would be born with the capability to hear, what sort of insurance would Dan purchase? It is important to emphasise that without hypothetical insurance cover there would be none of the publicly-funded accessibility accommodations to which we have become accustomed which foster communication between the hearing and the deaf. Furthermore, from the original position Dan cannot rely on the existence of such a strong Deaf community as he now enjoys. But, importantly, neither can he suppose that the dominant communicative scheme will be as speech-dependent as it happens to be. The social model of disability tells us that much of the good luck of possessing a given capability is that it fits with the capabilities of the general population.

Contrary, then, to Dworkin's response to Williams' challenge, the capabilities approach does not necessarily "insist that the capacity for hearing is objectively more important than the capacity to participate in a world of the deaf,"⁹³ though he is right to be vigilant against the potential for such underlying assumptions. Rather, the capabilities approach recognises the value of a cooperative scheme, and the reliance of such schemes on shared capabilities. For Dan to opt for no insurance at all would be to run the risk of completely lacking the capability to communicate with others. But it would be imprudent for him to insure specifically against lacking the capacity for hearing, since the dominant scheme only contingently relies on that capability. Rather, it would make most sense for Dan to insure against lacking

⁹³ Dworkin (2002), p140

the capability to communicate easily within whatever scheme he finds himself, and to the extent that such insurance might realise that capability, whether through medical, technological or social means.

Buchanan does distributive justice a great service by elucidating the costs involved on both sides of decisions like these. On the one hand, those with impairments in any given arena have an interest in the design of the dominant cooperative scheme including them. On the other hand, those with abilities in that arena have an interest in the dominant cooperative scheme making full use of those abilities so as to maximise efficiency.⁹⁴ When deciding on a hypothetical insurance policy one has to reason from both positions, not just in regard to the capabilities of hearing versus signing, or the capabilities relevant to the broader arena of communication, but those relevant to all aspects of the dominant cooperative scheme.

Social Compensation for Natural Disadvantage

To conclude this section, let's return to the relational egalitarian account of the justice-relevance of natural inequalities. Thomas Pogge demonstrates his relational allegiance and endorses Anderson's critique of pure distributivism in his proposal of the 'active conception of justice,' which treats social, rather than natural, inequalities as the primary concern of justice. On that basis he criticises *purely recipient-oriented*⁹⁵ conceptions, which he characterizes as fundamentally consequentialist in their approach to justice.⁹⁶ He points towards our intuitions regarding organ redistribution cases as evidence for the claim that "we ought to distinguish between *treating recipients justly* and *promoting a good distribution among recipients* and, more generally, between how subjects *treat* and how they *affect* their recipients."⁹⁷ He argues that we tend to think it unjust (not merely grizzly) to take superfluous organs from healthy citizens and transfer them to citizens who have been disadvantaged

⁹⁴ Buchanan (1996), p44

⁹⁵ Pogge (2004), p146

⁹⁶ Pogge (2004), p148

⁹⁷ Pogge, (2004), p148 (emphasis in original)

by the natural lottery,⁹⁸ which is to say that, at least in some cases, using social benefits to compensate for natural handicaps is unjust.

At the same time natural inequalities do retain a role in the calculus of justice under Pogge's relational account. It is presumed wrong, for instance, to allocate a donated kidney to one who already has one functioning kidney over one who has none (due purely to brute bad luck), for to do otherwise would be to unjustly favour the former over the latter, compounding natural inequalities. While the natural distribution of healthy organs is "neither just nor unjust,"⁹⁹ Pogge agrees that the social rules for responding to such natural inequality are an appropriate target of justice appraisal. We have argued in this section that the effects of a natural instance of brute luck are largely determined by its social context, and Pogge endorses this view.¹⁰⁰ As such, conceding to relational egalitarians that brute luck itself is beyond the domain of justice at least arguably leaves intact the resource egalitarian concern for the way in which social and economic institutions respond to that luck.

Diffuse Benefits and Collective Commissioning

We mentioned in the introduction to this chapter Anderson's criticism of luck egalitarianism's seeming inability to account for socially necessary choices. We discussed in the previous chapter the problem of cumulative risk from gambles individuals are forced by circumstance to take. Anderson additionally points out that the comprehensive division of labour in modern society means our economy is best understood as "a system of cooperative, joint production,"¹⁰¹ which seems to undermine the appeal of luck egalitarianism's strict risk-internalisation. Each of us relies on an economic system in which individuals take risks in how they invest their limited time

⁹⁸ Pogge (2004), p149

⁹⁹ Rawls as quoted in Pogge (2004), p153

¹⁰⁰ Pogge (2004), p145 fn. 31

¹⁰¹ Anderson, (1999), p321

and resources, and so, Anderson claims, it is not always fair that individuals bear the full costs of such gambles when they go bad.

It is at this point Anderson suggests that we should understand ourselves as “collectively commissioning” one another to take various risks for the benefit of the community.¹⁰²

“When everyone shares an interest in some people making risky choices – when, in effect, society has commissioned them to be farmers, miners, mothers, and so forth – it is unfair to disavow any share in the costs associated with commissioning people to take up these roles.”¹⁰³

An immediate objection to this line of thought is that understanding the economy in such a way obscures the workings of the market in many cases. Alexander Brown points out that “[i]t is questionable to say the least that consumers commission producers to act as their agents. Consumers merely display a willingness to buy products if the price and quality of those products is attractive to them.”¹⁰⁴ It would be hard to say, for example, that someone who has no interest in videogames, has never bought one, and resents their impact on society, nevertheless commissions the work of those in the videogame industry and thus has the relevant responsibilities towards those workers. It surely makes most sense in these cases to say that the commissioning of workers to produce goods and provide services is done by consumers (and intermediately by employers) rather than by the community as a whole.

Yet while the market may be the best mechanism for apportioning liability in situations where the benefits of risk-taking accrue to identifiable persons, it is arguably much more difficult to apply in situations where the benefits of individual choices and actions are diffuse. Some form of collective

¹⁰² Anderson, (1999), p322

¹⁰³ Anderson (2008), p257

¹⁰⁴ Brown (2005), p313

commissioning might thereby constitute a much more appropriate conception of how risks and costs should be borne in these cases.

Socially Necessary Individual Choices

A paradigm example of a socially necessary costly individual choice is the decision to raise a child. Though far too often the voluntariness of this decision is unjustly undermined by societal and interpersonal conditions, many do assume the responsibility of childrearing voluntarily and enthusiastically. They act out of a genuine preference for having children, with which they identify and would in no way prefer to be without. For many, the having and raising of children is judged to be an essential aspect of what it is to lead a good and meaningful life. In such cases this preference, under Dworkin's account, qualifies as an expensive taste, and as such those who choose to accept the responsibilities of parenthood have no claim on the rest of society for aid in bearing its costs.

This is to ignore the benefits we all enjoy by living in a society in which children are born and reared, and in which individuals invest heavily in the quality of the parenting they provide. Alexander Kaufman points out that the investments parents make cannot really be understood as instances of option luck, since caretakers "do not make a calculated gamble in order to secure the possibility of a [personal] gain."¹⁰⁵ I may not personally desire to have and raise children, but it is in my interest that others do so and do so well, if only in order that there will be citizens in the future to sustain society when my generation reaches old age. To accept these substantial benefits without contributing to their costs, then, is to free ride on the labour of others. It is on these grounds that I believe Dworkin's True-Cost Principle, if intended to avoid the exploitative implications of equality of welfare, must be supplemented with something like a 'True-Benefit Principle.' If the former requires that individuals internalise the costs to others of their choices, the

¹⁰⁵ Kaufman (2004), p826

latter suggest the costs associated with benefits to others are appropriately externalised.

I propose that the argument for such externalisation might go something like the following:

True-Benefits Principle: The costs to individuals of voluntary behaviour that issues diffuse benefits to the community are appropriately borne by the community as a whole, where possible. (*Normative Premise*)

The community as a whole benefits when children are cared for in such a way that they can participate in and sustain the community. The community benefits when this care is provided by an individual or individuals identifiable to the child. (*Empirical Premise 1*)

There are individuals who choose to provide such care, and this care is necessarily costly in a number of ways. (*Empirical Premise 2*)

Therefore, the community as a whole should bear the costs to those individuals of providing such care, where possible.

In this way the distributive implications of justice as recognition become clear. In *Justice Interruptus* Nancy Fraser maintains that relational equality¹⁰⁶ is undermined both through inequality in the distributive sphere, diminishing agents' abilities to interact with one another as peers, and in the cultural sphere, institutionalising patterns of value regarding what counts as a benefit to the community.¹⁰⁷ She focuses specifically on the cultural devaluation of care work and argues that relational equality requires a radical revaluation in both the cultural and distributive spheres.

¹⁰⁶ What she terms 'participatory parity' – the ability of citizens to participate in a par with one another in social life

¹⁰⁷ Fraser, *Why Overcoming Prejudice is Not Enough* (2000), p24

One of the most striking aspects of Fraser's account is the assertion that care work is properly regarded as a duty that falls on everyone, comparable to the duty distributive theories like Dworkin's assign to capable individuals to work for the resources they consume. She goes as far as to apply the notion of a free-rider, familiar in distributive justice discourse, to the "men of all classes who shirk care work and domestic labour, as well as corporations who free-ride on the labour of working people, both underpaid and unpaid."¹⁰⁸ Dworkin wants us to allow variation in valuation of people's various talents and ambitions to ensure an efficient distribution and incentive scheme, but recognition points out how these valuations are already distorted and advises how they should be corrected.

Exploitation is in fact difficult to define purely in terms of the allocation of costs and benefits. It is often noted in paradigm exploitation cases, such a sweatshop labour, that the exploited party *does* receive some benefit from the exploiter and consensually engages in the exchange under most plausible accounts of consent. While Hillel Steiner identifies the unequal value of the items exchanged as one (insufficient) condition of exploitation,¹⁰⁹ it is notoriously difficult to compare the value of goods beyond their market value, which is itself determined on the basis of the exchanges in which they feature. In this way we lack a means of identifying instances of exploitation based on unequal exchange unless we develop an "*objective* measure of costs,"¹¹⁰ which would run contrary to the claim of the unencumbered market to be the most efficient means of identifying true costs and benefits.

Hypothetical Insurance as Cost-Externalisation

It is not the cases, of course, that all individual choices thought to be communally beneficial really are. In the interpersonal context we are all

¹⁰⁸ Fraser, (1997), p62

¹⁰⁹ Steiner (1984), p226

¹¹⁰ Coleman & Ripstein (1995), p96 (emphasis in original)

familiar with unsolicited gift situations in which one is offered an alleged benefit voluntarily by another, seemingly with no strings attached, who subsequently demands that we compensate them for the cost they bore in providing the benefit we did not necessarily even desire. Ordinarily we understand this type of case to be exploitative, and insist that the benefiting party must voluntarily enter into agreement with the one providing the benefit in order to be liable for the costs. While in diffuse benefit situations this principle might be impossible to honour in practice, we must find a way to track that ideal inasmuch as is possible in the theoretical underpinnings of collective commissioning.

Similarly, much of the free market's value lies in its power to efficiently communicate a great deal of information regarding consumer interests to producers. If we accept that this tool is unavailable in cases of diffuse benefit, especially when the producers of such benefits are already non-economically motivated, we will need an alternative mechanism by which to determine and communicate the interests of the community that warrant cost-externalisation.

It is at this point I believe hypothetical insurance reveals its true value. Dworkin introduces hypothetical insurance as a justification for the externalisation of the costs of brute luck as a means by which to determine the terms of that externalisation. I want to argue, however, that brute bad luck is just one category of costs that would be externalised under a hypothetical insurance scheme. From the original position we would not merely insure against certain risks beyond our control; we would also be concerned to ensure that various social benefits stemming from individual agents' choices and behaviours would be encouraged and sustained. Furthermore the 'brute bad luck' of being excluded from the dominant cooperative scheme, we argued above, is more accurately understood as a communal and extended choice to trade that inclusion for some efficiency gain. In order to be justified, that trade-off must be reasonable to all from the

original position and this will require that those disadvantaged in the pursuit of efficiency appropriately share in the benefits it creates.

3. Interpersonal Justification and Reasonable Expectations

Having demonstrated that resource and relational egalitarianism are not fundamentally incompatible, despite first appearances, it's time now to return to our central idea of reasonableness as an appropriate guide to the reach of hypothetical insurance. I argued in my first chapter that Dworkin's theory already implicitly relies on such a criterion in order to distinguish in a plausible manner between instances of option and brute luck, and thereby to determine the cases to which hypothetical insurance applies. In the second chapter I concluded that hypothetical insurance should be understood as a means of justifying (either additionally or, on a strict relational egalitarian account, solely) the communal bearing of a variety of costs that *are* traceable to choices – both of the community and individual agents. First, I argued that the character of many instances of supposed 'brute bad luck' is in actuality at least partially socially determined by the dominant cooperative scheme chosen (in a diffuse way) by the community. Second, and relatedly, I examined a number of ways in which that cooperative scheme depends on the communal benefits of some individuals' voluntary actions.

In both types of case, I argue, the costs associated with the benefits enjoyed by the whole community fall initially to individual members. In this chapter I want to explore how rational agents would treat such costs through hypothetical insurance – which costs they would leave with the individual and which they would choose to bear communally – and defend the thesis that such insurance is a valid means of meeting the relational egalitarian requirement of interpersonal justification.

Argument of this Chapter

Starting from Anderson's claim that relational justice "comprises a set of interpersonally justifiable claims"¹¹¹ I first want to explain how I think such interpersonal justification relies on the judgments of reasonableness I have been invoking throughout this thesis. I will argue that the counterfactual ignorance Dworkin solicits in order to determine the extent of hypothetical insurance's coverage can be understood as a means of ensuring interpersonal justifiability. I will then examine the disagreement between Anderson and Cohen regarding the relationship between justice, possibility and what it is reasonable to expect of agents. This feature, I will suggest, issues a number of interesting implications regarding the progressive realisation of justice and the extent of hypothetical insurance.

Next I will turn to the relational objection to 'distributivist' theories which treat distribution patterns as the sole objects of justice appraisal, thereby overlooking the justice relevance of the *manner* in which those distributions are brought about. I will endorse the claim that the institutional attitudes thereby expressed are of justice concern, as demonstrated by the fact that such attitudes cannot be interpersonally justified. I will claim, however, that the attitudes expressed by the principles central to resource egalitarianism are justified in this light, and that resource egalitarianism does not preclude the appraisal of more fine-grained policy proposals on expressive as well as distributive grounds.

Finally, I will explore the implications of understanding hypothetical insurance as a means by which to realise the interpersonal conception of justification, and suggest that *if* relational egalitarians can show that range-constraints on income inequality are interpersonally justified, hypothetical insurance will enforce such constraints. Resource and relational egalitarianism thereby face the same challenges in applying the ideals of relational justice, and should issue the same verdicts.

¹¹¹ Anderson (2010), p3

Reasonableness and Interpersonal Justifiability

Dworkin himself, in the second half of *Sovereign Virtue* which applies his resource egalitarianism to concrete political issues, invokes the idea of reasonableness for determining the contours of hypothetical insurance, claiming that a community “must ask roughly what level of coverage against risks of the character in question would seem reasonable to the majority of people in the community.”¹¹² Anderson, in her criticism of this approach, claims that luck egalitarianism abandons those who made “entirely reasonable [...] choices,”¹¹³ and advocates basing our judgment of the fundamental capabilities necessary for equal participation in society on what “we can reasonably agree to collectively provide.”¹¹⁴

The notion of reasonableness is notoriously resistant to definition and I must decline to meet that challenge here. Instead, I want to argue that our invocation of that virtue so far throughout this thesis – in designating reasonable avoidability, reasonable anticipation, reasonable alternatives – can be understood as a shorthand for the interpersonal conception of justification central to relational equality. Indeed it seems that this is at least one of the uses to which Rawls puts that notion:

“Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so.”¹¹⁵

What we can say, I think, is that the condition of reasonableness limits the permissible premises of arguments regarding political principles and policies to those that can (again, *reasonably*) be accepted by all other members of the community. This condition is not merely required on epistemic grounds but on the basis of respect for the judgment of others. Reasonable citizens,

¹¹² Dworkin (2000), p345

¹¹³ Anderson, (1999), p301

¹¹⁴ Anderson, (1999), p330

¹¹⁵ Rawls (1993), p49

according to Rawls, “begin deliberations by crediting others with good faith reasoning” and recognise that their own judgments “are fallible, and open to revision and correction.”¹¹⁶

Cohen and the Interpersonal Test

We introduced in the previous chapter Cohen’s interpretation of interpersonal justification as an analysis of the ways in which an argument for a given policy proposal “changes its aspect when its presenter is the person, or one of the people, whose choice, or choices, make one or more of the argument’s premises true.”¹¹⁷ This immediately coheres with Dworkin’s treatment of option-luck – an individual who takes a gamble voluntarily in the hopes of some personal gain cannot justify interpersonally a demand to be compensated if that gamble goes bad, since he himself makes the empirical premise true, and could have reasonably avoided doing so.

Cohen was there arguing specifically against the incentives argument for inequality, which he claimed could not be interpersonally justified since the talented, he alleged, make the empirical premise (that they would use those talents to everyone’s benefit only under circumstances of inequality in their favour) true by choice. We must be careful to note, however, that the mere operation of choice in the empirical premise is not necessarily enough to undermine the justification of such an argument in all cases. The broader point is that a policy is interpersonally justified only if the behaviour of the relevant agents to which it applies is itself justified.¹¹⁸ It is the justification of the talented’s choice to withhold productivity that is missing in the argument above, according to Cohen, not that it is a choice *per se*. So far in this thesis we’ve been attending to a variety of individual and community choices that I argue are intuitively justified. The question then is how we might codify the distinction between justified and unjustified truth-makers of the empirical premise in such arguments.

¹¹⁶ Boettcher (2004), p614

¹¹⁷ Cohen (1991), p276

¹¹⁸ Cohen (1991), p279

The Contours of Justice – Reasonableness, Ought and Can

Cohen and Anderson, while both endorsing interpersonal justification as central to the legitimacy of any distributive scheme, disagree fundamentally on the standard to which individual agents can be held. Anderson argues that Cohen's interpretation of interpersonal justification is unreasonably demanding of individual citizens and that in making such unreasonable demands Cohen reveals his underlying consequentialist commitment, thereby dissenting from relational egalitarianism.

This disagreement between Anderson and Cohen is illustrated in their conflicting interpretations of Rawls' Difference Principle, though its root is much deeper such that we should expect similar disagreement to arise in relation to any principle of social justice. Cohen's objection to the Difference Principle can be traced to his contention that the basic structures of society, to which Rawls' principles of justice apply, cannot be meaningfully distinguished from the behaviours of individual citizens that uphold such structures, so if justice requirements apply to the former they therefore must also apply to the latter.¹¹⁹ In this way citizens must themselves act from the principles and values of justice, not merely maximise their own self-interest while obeying the rules of an institutional scheme understood to aim at justice on their behalf. Cohen readily concedes that such a requirement may indeed be so onerous as to render justice impossible under some given conditions, and in such cases we must settle for "the best injustice we can get."¹²⁰

Anderson, by contrast, argues that the interpersonal conception of justification itself constrains justice requirements to what can, in fact, be realised. Justice, on that account, cannot be defined "except through the concept of agents' compliance with reasonable claims people may make on

¹¹⁹ Cohen (2000), p146

¹²⁰ Cohen (1991), p327

each other,”¹²¹ and “[i]t is unreasonable to demand of agents that they satisfy a principle they are unable to follow.”¹²² One resulting constraint on reasonable claims, Anderson alleges, is that they allow room for what Samuel Scheffler calls an ‘agent-centred prerogative’¹²³ – that they allow agents to pursue their own values and projects, not merely aim only ever at justice.¹²⁴

How does this quarrel apply to resource egalitarianism? I believe Dworkin would agree with Anderson that justice cannot require what cannot be done – the parameters of justice, he argues, include “the overall state of the world’s resources”¹²⁵ and so he would disagree with Cohen’s contention that justice is sometimes unattainable on scarcity grounds.¹²⁶ But it is not immediately obvious that Dworkin would similarly accept the agent-centred prerogative as a genuine viability restriction.

The Agent-Centred Prerogative and True Costs

Seana Shiffrin suggests that there is value in cost-externalisation in some cases in order to protect the social conditions of freedom, arguing that egalitarianism must “temper choice-sensitive measures of resource distribution with accommodation, that is social practices in which we absorb some of the costs of others’ free, morally relevant choices.”¹²⁷ The costs she proposes as appropriately externalised, I believe, fall into at least two broad categories – collective commissioning and agent-centred prerogatives.

On the one hand, Shiffrin argues for the accommodation of moral supererogatory acts such as care work. She suggests, for example, that the communal bearing or mitigation of the costs of choosing to care for children and other dependents might be justified on ‘public goods’ grounds, since such

¹²¹ Anderson (2010), p5

¹²² Anderson (2010), p19

¹²³ Cohen (1991), p302

¹²⁴ Anderson (2010), p16

¹²⁵ Dworkin (2000), p298

¹²⁶ Cohen (1991), p327

¹²⁷ Shiffrin, (2004), p274

choices “make possible the community’s continued existence and flourishing.”¹²⁸ This proposal reads just as collective commissioning set out in a different vocabulary.¹²⁹

On the other had, she argues that the freedom from personally bearing certain costs of one’s choices is valuable because it offers “the opportunity to engage with a particular value, in some degree of isolation, to determine its significance to oneself and to respond appropriately to the reasons it presents.”¹³⁰ But how are we to determine the cases to which such accommodations apply? Surely the Malibu surfers¹³¹ would argue that their choice of lifestyle and evaluation of the transcendental experience of riding the perfect wave should be isolated from such base and materialistic concerns as their economic contribution. To avoid rampant permissiveness, which would undermine cost-internalisation and personal responsibility altogether, Shiffrin would need to make decidedly anti-liberal judgments regarding the choices subject to her accommodation. This point is illustrated when we consider the realities of her paradigm case of religious accommodation, which requires states to discriminate between established and novel, or particularly expensive, religions.

One of the strengths of resource egalitarianism and the hypothetical insurance scheme, I believe, is that it dispenses with the need for an independent and competing agent-centred prerogative. The True-Cost Principle gives agents free reign to pursue their own projects and interests so long as they cover the costs to others of those pursuits. Anderson argues that relational equality requires that agents be allowed to enjoy “within a wide range, real freedom to lead their own lives according to their own judgments, without having to receive permission from others, justify the ideals and

¹²⁸ Shiffrin, (2004), p277

¹²⁹ Shiffrin herself rejects this justification on the basis that we would similarly accommodate someone who developed a medical condition resulting from their choice not to have children, but that latter accommodation seems most naturally to be grounded in the hypothetical insurance we imagine it would be reasonable to purchase against such medical costs, rather than in the general costs of the choice not to have children.

¹³⁰ Shiffrin, (2004), p291

¹³¹ Rawls, (1988), p257 n7

priorities they adopt to others, or submit to others' moralizing scrutiny."¹³² While that may indeed be so, relational equality also fundamentally tells against exploitation or "the social processes that bring about a transfer of energies from one group to another to produce unequal distributions [under which] social institutions enable a few to accumulate while they constrain many more."¹³³ If relational egalitarianism is to effectively guard against this type of subordination it must employ some means by which to judge when the communal bearing of costs is fair and unfair. To say that individuals must be allowed to pursue their own ends without, at least in theory, being able to justify the costs to others of that pursuit surely violates the interpersonal conception of justification.

Privacy

Of course there may be interpersonally justifiable reasons to resist such demands for justification in practice. Anderson objects to the 'demeaning judgments' she supposes to be required by the True-Cost Principle to distinguish between those who genuinely cannot support themselves through lack of marketable talent, and those who instead choose not to contribute. She claims that, in the former case, one would have to "display evidence of personal inferiority"¹³⁴ to access one's entitlement to compensation, which would be inherently demeaning. Wolff expands this worry by considering the specific example of one "who is unemployed at a time of low unemployment and no particular shortage of jobs,"¹³⁵ claiming that the individual would have to convince others that they genuinely lack the option to work, even when the opportunity is plainly open to others in similar external circumstances - he would have to make '*shameful revelations*' about himself. Shiffrin similarly worries that "[v]ery thorough schemes of choice-sensitivity [would] involve the collection and possession of detailed

¹³² Anderson (2008), p265

¹³³ Young, *Justice and the Politics of Difference* (1990), p53

¹³⁴ Anderson (1999), p305

¹³⁵ Wolff, "*Fairness, Respect, and the Egalitarian Ethos*" (1998), p113

information about individuals by others,"¹³⁶ which may undermine the spirit of relational equality and potentially place individuals at risk of exploitative relationships. Even worse, Anderson claims, such a scheme would give everyone "an incentive to deny personal responsibility for their problems and to represent their situation as one in which they were helpless before uncontrollable forces."¹³⁷

These contingent implementation difficulties may very well limit the extent to which we are able to realise the True-Cost Principle in practice. If Dworkin does indeed agree with Anderson that the dictates of justice are contingent upon the brute luck of what is genuinely possible, the difficulties she highlights in determining responsibility for an individual's lack of wealth talents will similarly impose a restriction upon what we can require of one another on justice grounds.

Expressive Violations of Relational Equality

Of course the distributive implications of a given policy constitute only one aspect of our concern when we demand that it be interpersonally justified. Relational egalitarians object to purely distributive approaches to justice on the grounds that they fail to recognise the moral relevance of the way in which those distributions come about.¹³⁸

To illustrate this relevance, Pogge offers a number of different scenarios under which a given portion of the population might suffer a medical condition due to the avoidable lack of some vital nutrient. This nutritional deficit might (1) be officially mandated by the reigning social and political institutions; or (2) result from the legally authorized behaviour of private citizens; (3) be engendered avoidably and foreseeably by the institutions themselves without being their aim; (4) result from private citizens'

¹³⁶ Shiffrin (2004), p287

¹³⁷ Anderson (1999), p311

¹³⁸ Schemmel (2012), p125

behaviour that is technically legally prohibited but allowed to continue in practice; (5) result from a natural deficit whose effects are left unmitigated; or (6) be self-caused and left unmitigated by social institutions.¹³⁹ In each case the distributive result is the same, but Pogge suggests that our intuitions regarding justice vary from case to case – specifically that the first case strikes us as the most egregious injustice of the list, with the rest roughly descending in order of their intuitive injustice. If Pogge’s intuitions hold up it seems to show that, while the presence or absence of the affected individual’s responsibility for her situation is important in determining its justice standing, it is not the only relevant factor. The comparative role of other citizens, individually or collectively through social institutions, and natural factors in engendering that outcome also have a part to play in our judgments.

Schemmel agrees with Pogge’s intuitive ordering, and attempts to elucidate its grounds. Our first thought, he suggests, might be that these justice intuitions simply track the causal differences between the different scenarios.¹⁴⁰ The deficit in scenario 6 is traceable, by hypothesis, to the deficit-sufferer himself. In scenario 5, by contrast, the deficit is attributed to natural factors. Scenarios 1-4, then, are of intuitively greater justice concern due to the causal role played by social institutions. Both Pogge and Schemmel argue, however, that part, at least, of what concerns us from a justice perspective in scenarios 1-4 are the *attitudes* expressed by the institutions in question toward the deficit-sufferers, and that this is not reducible to distributive concerns.¹⁴¹ For an institution to act with the appropriate attitude, Schemmel alleges, is for it to “take the right considerations as reasons for actions” regarding the object of those actions.¹⁴² An institution treats a set of individuals unjustly in its expressive attitude toward them if it fails to appropriately modify its actions in light of their probable effects on

¹³⁹ Pogge (2004), p156-7

¹⁴⁰ Schemmel (2012), p129-33

¹⁴¹ Schemmel (2012), p133

¹⁴² Schemmel (2012), p135

those individuals *even if* those effects do not in fact manifest.¹⁴³ It is this feature of our justice intuitions that seems to show our concern for expressive attitudes wholly independently of costs and effects.

Institutional Attitudes and the Interpersonal Test

Dworkin's is not a purely distributivist approach, I have been arguing. The distinctive feature of resource egalitarianism is its focus on responsibility for distributions, and in this way it similarly treats identical distributions differently depending on the manner in which they come about. Can this responsibility concern be understood in terms of expressive attitudes? Dworkin certainly intends that his scheme should "show equal concern for all"¹⁴⁴ and claims that it does so by adhering to the True-Cost Principle. The individual himself is responsible for the deficit in scenario 6 and as such, Dworkin claims, the costs of his bad option luck appropriately rest with him. In scenario 5 it is alleged that the deficit is the result of a natural defect and so would count, under Dworkin's scheme, as an instance of brute bad luck. Scenarios 1-4 involve societal and institutional responsibility for the individual's disadvantage to varying degrees. The justice-ordering in the latter set similarly seems to track Dworkin's criteria for responsibility as introduced in his definition of option luck. For instance, the deficit in scenario 1 is highly foreseeable and avoidable, and there are obvious reasonable alternatives available, while in scenario 3, perhaps, it is less obvious what a reasonable alternative might be given that an alternative institutional structure might itself engender similar deficits in other sections of the population.

How might these scenarios fare under the interpersonal test? Surely scenario 1 strikes us as the most egregiously unjust because the policy of officially mandating the deficit could not possibly be interpersonally justified to those targeted. To enforce such a policy despite failing the interpersonal test would

¹⁴³ Schemmel (2012), p139

¹⁴⁴ Dworkin (2002), p107

be to treat those it disadvantages as outside of the justificatory community,¹⁴⁵ as people to whom such policies do not need to be justified. In this way failing to meet the interpersonal test is unjust because it expresses a lack of relational equality, independent of any potential distributive injustice. Cohen emphasises the importance of relational equality beyond its mere distributive implications, pointing out that:

“[i]t is not necessarily irrational (and it is sometimes felt to be morally imperative) to refuse to deal with a person who wields power in an untoward way even if, should you accede to the proposal he makes, you would be materially better off.”¹⁴⁶

Marginalised populations, for instance, often rebuke members who are seen to have ‘sold out’ the community by accepting material or social benefits on terms that are not justifiable to that community. The other three scenarios of relationally engendered deficits perhaps intuitively seem somewhat less obviously unjust insofar as there is a greater possibility in each case that the policy in question *would* be interpersonally justified. It might be the case, for example, that guarding against the deficit under scenario 4 would require an invasion of privacy even those disadvantaged by the policy would not endorse.

Resource and relational egalitarians will agree with one another that scenario 6 is of least justice concern since it would be difficult to interpersonally justify a communal bearing of the costs of the deficit when that deficit is the result of the sufferers’ own behaviour (though not impossible, I have been arguing, if that behaviour is itself interpersonally justified). The justice standing of scenario 5, then, is the real point of contention between the two approaches. Yet as I argued in the last chapter, the social context of brute luck is of concern to both relational and resource egalitarians, and “avoidably leaving unmitigated the effects of a natural defect”¹⁴⁷ will be just only if such a policy can be interpersonally justified

¹⁴⁵ Cohen (1991), p283

¹⁴⁶ Cohen (1991), p305-6

¹⁴⁷ Pogge (2004), p156

both to those affected by the natural defect and those who would pay for its mitigation.

The Interpersonal Justifiability of Forward-Looking Responsibility Guarantees

Finally, then, we can investigate whether relational and resource egalitarianism, under my interpretation, are likely to converge in their judgments regarding the safeguarding of the conditions of personal responsibility.

In “*How Should Egalitarians Cope with Market Risks?*” Anderson refines her critique of luck egalitarianism and elucidates the ways in which she believes markets can justly impact outcomes while remaining true to relational equality. There she argues that markets must be permitted to reflect luck in order that they might function efficiently in communicating and responding to the various interests people have within the community.¹⁴⁸ Without this chance-sensitive (and desert-insensitive) mechanism individuals cannot respond accurately to the interests of others. The question relational egalitarians face, then, is how to allow the market to operate efficiently while ensuring the costs of that efficiency do not fall disproportionately and unjustly to some individuals or groups. Anderson argues that the correct solution is to impose ‘range-constraints’ which compress the signal range of markets “without degrading the signal quality.”¹⁴⁹ Can this relational egalitarian requirement be justified interpersonally, and thereby incorporated into the hypothetical insurance scheme?

I see Anderson’s proposal as open to interpretation in one of at least two ways. First, she may be read as simply continuing to fill in the justification for her claim in ‘*What is the Point of Equality?*’ that her democratic equality

¹⁴⁸ Anderson (2008), p270

¹⁴⁹ Anderson (2008), p262

theory of distributive justice “guarantees all law-abiding citizens effective access to the social conditions of their freedom at all times.”¹⁵⁰ According to Anderson, democratic equality retains respect for personal responsibility by limiting the sphere of capabilities with which it concerns itself. While luck egalitarianism must make intrusive judgments in order to distinguish between losses which the individual brings upon himself and losses which are traceable to brute bad luck, democratic equality “guarantees a set of capabilities necessary to functioning as a free and equal citizen and avoiding oppression”¹⁵¹ while leaving all other losses, whether through bad luck or imprudence, up to the individual. Under that reading, range-constraints would include certain capability-access guarantees based on a fundamental concern for relational equality, regardless of the reason for the loss of capability-access (barring, perhaps, illegal behaviour). Call this the Unconditional Guarantee.

On a second reading, Anderson might be targeting ‘bad market luck’ specifically. This would suggest a more circumspect capabilities guarantee, justified by reference to the moral irrelevance of market luck. While “[e]fficient market prices are necessarily undeserved”¹⁵² and therefore individuals cannot be held (fully) responsible for loss of access to basic capabilities through bad market luck, there are other ways in which one can lose such access – for example, by fecklessly choosing to spend all one’s time surfing rather than earning a living through the performance of socially useful tasks. To the extent that becoming destitute through such behaviour is non-attributable to market luck these situations may not be covered by Anderson’s proposed range-constraints. Call this the Conditional Guarantee.

Unconditional guarantees of all stripes inevitably face the exploitation objection – that such guarantees are unfair because they allow “people to live off the labour of their fellow citizens without making a reciprocal productive

¹⁵⁰ Anderson (1999), p289

¹⁵¹ Anderson (1999), p327

¹⁵² Anderson (2008), p247

contribution to society.”¹⁵³ Anderson herself objects to Van Parijs’ unconditional basic income proposal precisely on the grounds that it “invites the charge that egalitarians support irresponsibility and encourage the slothful to be parasitic on the productive.”¹⁵⁴ Yet not all arrangements under which some benefit unilaterally from the labour of others are intuitively unfair. As discussed in the previous chapter, most of us recognise an obligation to support those with disabilities who cannot make a reciprocal productive contribution – either because their impairments are so extensive as to preclude the possibility of contribution, or because the dominant cooperative scheme excludes the abilities they do have. Cohen similarly identifies as exploitative situations in which “other people pay for [one’s] readily avoidable wastefulness,”¹⁵⁵ or inefficiency in converting resources into welfare, but distinguishes these from blamelessly inefficient converters.

Wealth Talents and Hypothetical Unemployment Insurance

Dworkin’s hypothetical unemployment insurance, I believe, converges at the very least with Anderson’s Conditional Guarantee, given that the roles of effort and luck in earning power are almost impossible to distinguish epistemically in any given case. He claims that there are two demands of equality relevant to such cases pulling in opposing directions:

“Equality requires that those who choose more expensive ways to live - which includes choosing less productive occupations measured by what others want - have less residual income in consequence. But it also requires that no one have less income simply in consequence of less native talent.”¹⁵⁶

Here he draws a connection between a lack of “wealth-talents”, or “talents to produce what people actually want,”¹⁵⁷ and disability, since one’s native talent is a matter of brute luck. Dworkin’s conception of wealth talents in fact

¹⁵³ White, Stuart (2006), p1

¹⁵⁴ Anderson (1999), p287

¹⁵⁵ Cohen, (1989), p911

¹⁵⁶ Dworkin (2000), p102

¹⁵⁷ Dworkin (2000), p326

aligns largely with the social model of disability discussed above – he claims that those whose talents do not command a high market wage are “in no way [...] intrinsically less talented people, than income millionaires,” and points to the contingencies of the market in determining the recent demand for “the ability to cause a leather ball to fall through a distant hoop”¹⁵⁸ as illustrative of the disconnect between market value and any objective measure. The True-Cost Principle, however, requires that such contingencies as the tastes of others be allowed to shape our ambitions, so a balance must be struck between spreading the costs of brute bad luck in native talents, and maintaining the role of personal responsibility in determining whether and which talents to develop based on that decision’s cost to the community.

Again, Dworkin invokes the hypothetical insurance device to resolve this tension. He imagines that in the original position one knows one’s own talents but not their ‘economic rent’, or what income they would produce on the market.¹⁵⁹ A rational agent would then chose an insurance package against the risk of that economic rent dropping below a certain level, and Dworkin argues that the level chosen would vary from person to person, but fall into a determinate band. At the upper end, it would be irrational for the individual to insure at a very high level since any unemployment insurance will necessarily be a disadvantageous gamble in purely financial terms - the operational costs alone would require that premiums exceed pay-outs. It is the fact of marginal utility, that increased resources buy less and less utility/welfare further up the scale, that renders such disadvantageous gambles rational.¹⁶⁰

“Unemployment insurance makes sense, therefore, only when it protects, not just against having less wealth than one otherwise might, but against being in such a significantly worse position that it is worth a technically bad investment to avoid any chance of it.”¹⁶¹

¹⁵⁸ Dworkin (2002), p117

¹⁵⁹ Dworkin (2000), 94

¹⁶⁰ Dworkin, (2000) pp 95-9

¹⁶¹ Dworkin, (2000) p335

In this way the band of rational income levels to insure for depends on the spread of individual marginal utility preferences. Since the decision of how much insurance to buy cannot in fact be made individually since in the real world we do have at least some idea of the economic rent of our talents, this insurance will have to be hypothetical and apply equally to everyone. It is therefore subject to the same public discourse of interpersonal justifiability as those hypothetical decisions regarding disability and the communal benefits of individual behaviours. Dworkin believes, however, that we would agree to “provide everyone with at least a decent minimum standard of living.”¹⁶²

Dworkin thereby endorses at least some sort of safety net regarding how low citizens are allowed to fall in terms of their material holdings. Anderson also argues, however, that we should similarly demand a limit on inequality at the upper end of the wealth spectrum. While Dworkin rules out social domination on prejudicial grounds through the Principle of Independence we might still expect that economic domination, through economic inequality, would arise and proliferate under his scheme. Anderson points out that the relatively poorer party would not necessarily need to be especially poor in absolute terms for domination to emerge through economic inequality - “well before material conditions fall to the point of absolute suffering, bad market luck may subject individuals to subordinating or exploitative relationships, or impair their ability to participate as an equal in public affairs.”¹⁶³ Is it consistent with Dworkin’s theory that this type of domination be permitted to arise through optional gambles? His Principle of Special Responsibility is motivated by the demand that individuals appropriately control the course of their own lives.¹⁶⁴ Option luck is taken to justly influence an individual’s outcomes because the risks are taken voluntarily, in isolation and with appropriate knowledge of the possible results. Yet in situations of domination, one party is forced to risk and forfeit important capabilities by another. We cannot ensure that individual citizens are able to take

¹⁶² Dworkin (2002), p114

¹⁶³ Anderson (2008), p258

¹⁶⁴ Dworkin (2000), p6

responsibility for their own choices without guarding against domination, and this requires undermining the bases of economic domination. How might this type of constraint be justified interpersonally, and enforced through hypothetical insurance?

Exploitation and the Bargaining Problem

Matthew Seligman highlights the way in which luck egalitarianism, by endorsing economic inequalities as just once they arise through its designated procedure, can lead to exploitation by examining what he terms 'the bargaining problem'. Here bad luck is compounded by factors outside of one's control, which are nonetheless treated as just by luck egalitarians since they *are* attributable to *someone's* choice.¹⁶⁵ His specific example again involves a shipwrecked group of equally naturally talented individuals, possessing equally distributed resources. From that starting position most opt for a safe bet of fishing in shallow waters, which leaves them with paltry food stores, while one, Gates, takes a much greater risk which pays off when he catches a whale. This inequality is perfectly just from a luck egalitarian perspective, but now Gates and the others have unequal bargaining positions such that Gates has *leverage* over the others. He then uses this position to propose a deal heavily slanted in his favour, which the others rationally must accept out of desperation. While, by hypothesis, the deal is freely consented to by all parties, Seligman supposes that it, and the resultant exacerbation of resource inequality, will strike us as intuitively unjust. Yet luck egalitarianism cannot account for why it should be so.¹⁶⁶

Does this problem similarly affect resource egalitarianism? Seligman defines his main target as the principle that "[i]nequalities, or parts thereof, are just if and only if they are traceable to choice, rather than chance."¹⁶⁷ While it is crucial to Dworkin's theory that option luck (i.e. the voluntarily accepted influence of chance) be permitted to influence distributions, it is the *chosen*

¹⁶⁵ Seligman (2007), pp 271-8

¹⁶⁶ Seligman (2007), pp 271-4

¹⁶⁷ Seligman (2007), p268

nature of those gambles that legitimates their impact.¹⁶⁸ In this way we might expect the bargaining problem to apply. According to resource egalitarianism the shipwreck survivors' fortunes are attributable to option luck in the fishing strategies they chose. Gates takes a greater gamble than the others, risking the entirety of his initial resource share, as well as his life, in the hopes of winning big. The other survivors have as much claim to the whale he catches as they would have responsibility to help Gates if his gamble had turned out badly. But resource egalitarianism departs from luck egalitarianism here in that that responsibility is non-zero. To discover what claims the survivors have on each others' differential luck we must identify the hypothetical insurance scheme to which they would have rationally assented.

In the first chapter I argued that, when an agent is forced to make a choice between gambles, the result of the most prudent gamble should be regarded as an instance of brute luck and accordingly subject to hypothetical insurance, and that when an agent chooses a more risky strategy he is responsible for only those costs and benefits beyond what might have been reasonably anticipated under the most prudent option. Presume for simplicity's sake, then, that there are only two options available to any one survivor, that these options are equally available to all, and there are no more fine-grained decisions to be made within either strategy regarding time or effort spent at the task. The safe bet is presumed to be to fish with spears in the shallow waters near the shore; the risky option is to use all of one's resources to fashion a raft to venture into deeper, more treacherous waters. If one must choose one or the other to survive, then it is more accurate to regard the results of the safe bet for any one individual as a matter of brute luck. For that reason justice requires that the effects of luck be equalized between those who choose the prudent strategy. In practice this would most simply mean pooling and dividing equally their spoils. Gates then chooses the riskier strategy. He judges the risks of death, injury, loss of his initial resources or simple failure to catch anything at all to be worth accepting for

¹⁶⁸ Dworkin (2003), p192 and Dworkin (2000), p287

the potential of a great payoff. In choosing that route, does Gates thereby forfeit his claim to hypothetical insurance?

One possibility is that the survivors agree in some democratic fashion that fishing the deeper waters might be a good idea worth trying, and collectively commission Gates to be the first to attempt (being the bravest and most risk-embracing of the group). After all they don't know for sure, let's presume, precisely how risky or potentially worthwhile that strategy might be. Gates cannot be compensated if he drowns so that's a risk he must bear himself, but the other survivors agree to feed him if he comes back empty-handed, and replace his stock of driftwood with which to make spears for shallow-water fishing if his raft sinks. If Gates then catches the whale all the survivors are entitled to portions of the spoils since the risk was shared (though he may deserve a greater portion since he did risk his life alone). That is the case even if they do not materially contribute to the endeavour as it happens – it is enough that they promised to come to Gates' aid if the gamble went bad.

It's not just the whale meat the survivors gain from this communal gamble, however. They also learn more than they otherwise could have about the risks and benefits involved and so, in this case, increase everyone's capacity to make decisions for which they can legitimately be held personally responsible. It's possible, for instance, that the whole community learns from Gates' experiment that the deep-water fishing strategy is actually the more prudent option on balance. In this way the survivors all have an interest on autonomy grounds in Gates taking the risk, and so it would make sense for them to communally commission his endeavour.

The argument for externalising the costs of such a gamble might go as follows:

True-Benefits Principle: The costs to individuals of voluntary behaviour that issues diffuse benefits to the community are

appropriately borne by the community as a whole, where possible.
(*Normative Premise*)

The community as a whole benefits when individual agents explore a variety of avenues of productive activity. (*Empirical Premise 1*)

There are individuals who choose to perform such exploration, and that exploration is often risky. (*Empirical Premise 2*)

Therefore, the community as a whole should bear the risks attending such exploration, where possible.

We might imagine, then, that the survivors in the original position would endorse a hypothetical insurance scheme that would cover the majority of risks run by the individual in taking a communally beneficial gamble of this type. Financing such an extensive guarantee would surely require much of the potential gains of the gamble to be reabsorbed by the community, but this requirement would be interpersonally justifiable to Gates since he is not coerced into taking any risks, and the risk he does choose to take is mitigated inasmuch as is possible.

Imprudent Gambles

What should we say, however, of cases in which the first empirical premise does not obtain, where the community would not benefit from individuals taking a given risk or set of risks, and therefore would not commission such behaviour? In that type of case hypothetical insurance would not indemnify the risk-taker against the potential losses and they would therefore claim sole entitlement to the potential benefits. If the gamble then does, in fact, pay off Seligman's concern regarding unequal bargaining positions will be realised.

Let's imagine first that Gates survived but returned empty-handed, or badly injured. Everyone agrees on that basis that the deep-water fishing strategy is a bad one, and furthermore new techniques of shallow-water fishing actually yield enough food for all to subsist on. Another survivor, Gill, ill-advisedly decides to try her hand at deep-water fishing since she loves the taste of whale and the thrill of such a dangerous occupation. The other survivors have no interest in commissioning her to take that risk, however, since they reasonably judge that there is little to be gained having already explored that avenue of action through Gates. Such a gamble would be in this way analogous to the waiter with an expensive taste for poisonous berries we encountered in the first chapter.

There are at least two ways in which this type of imprudent gamble might lead to inequality objectionable from a relational egalitarian perspective. In the first case, Gill's gamble might go badly such that she loses the resources or physical capabilities necessary to function as an equal in society, thereby rendering her vulnerable to subjection and exploitation. In the second case, her gamble may work out such that she gains a large economic advantage over the other survivors and thereby the unequal bargaining position that gives rise to Seligman's relational concerns. Seligman suggests that in this second instance "[t]he problem with the survivors' bargaining position was not that [their] option set was externally determined, but that the options open to them were systematically unattractive,"¹⁶⁹ and argues that there is no way for a luck egalitarian to incorporate the moral significance of the content of option-sets into their theory, dependent as it is solely upon the choice/chance distinction. We have been arguing, however, that resource egalitarianism departs from traditional luck egalitarian approaches in its inclusion of the hypothetical insurance scheme. If that scheme can justify the guarantee of the capabilities required for relational equality, then, the adequacy of the option sets of all parties to subsequent bargains will be protected.

¹⁶⁹ Seligman, p281

Compulsory Insurance

I argued in the first chapter that it would be unreasonable to expect the community to bear the costs of a plainly imprudent gamble, which is to say that a policy of indemnifying individuals against consequent losses would not be interpersonally justifiable and therefore would not form part of the hypothetical insurance scheme. Rather, it is up to the individual to either refrain from indulging the taste for such gambles, or personally bear the costs if the gamble goes bad.

One way of bearing the costs of that gamble would be to pool the risk with others possessed of the same expensive taste through an elective insurance scheme. Indeed, I claimed in that first chapter, the community may be justified in requiring those who indulge these risky tastes to purchase such insurance in advance, in order to ensure that no one avoidably falls below some threshold of basic capabilities. This threshold is determined by those capabilities necessary for relational equality, which is to say, the capabilities required for exercising truly responsible choice. Dworkin justified his hypothetical unemployment insurance scheme above on the basis that it is rational for agents to make what is, in purely financial terms, a bad investment in order to avoid any chance of finding oneself in a significantly bad position. This aligns with our interpretation in the first chapter of his 'reasonable isolation of risk' criterion for option luck as requiring that there exist a viable 'not thoroughly bad' alternative. Our resource egalitarian concern to honour the value of personal responsibility, however, suggests that we should understand the notion of a 'significantly bad' or 'thoroughly bad' option not directly in material terms, but rather in terms of the potential one has or lacks to exercise responsibility. It is on this basis that I believe resource egalitarianism, when understood as a means of applying relational equality in the distributive realm, will include a forward-looking conception of responsibility and not merely a backward-looking one.

In this way the survivors in Seligman's thought experiment might similarly require Gill to pay a premium to cover at least some of the risks attending her

decision to indulge her desire for whale-hunting. But we noted in that first chapter that requiring an agent to purchase such insurance against the risks attending elective gambles faces the charge of paternalism. Anderson, for example, argues that forcing individuals to purchase such insurance expresses a judgment that citizens are be “too stupid” to make their own decisions.¹⁷⁰ Yet she herself expresses support for *ex ante* insurance to cover the costs of restoring fundamental capabilities to those who might lose them through imprudent behaviour, proposing something like hazard taxation to subsidise the greater demand.¹⁷¹ The draw of compulsory insurance is seemingly undeniable, and so we might surmise that agents in the original position would similarly endorse such a scheme. They may indeed be wary of its paternalistic implications, but judge that, on balance, safeguarding the capabilities required to relate to one another on an equitable basis justifies such intrusion.

What do we mean by guaranteed *access* to these capabilities? Wolff highlights the way in which, for an agent to realise a capability, they must themselves perform some action, which, as we have seen throughout this thesis, is to accept some cost or risk. He suggests that identifying what actions are fair to expect the agent to perform in order to access a given capability depends upon:

“[...] whether it is reasonable for [that agent] to act one way rather than another. Whether it is reasonable will, in turn, depend on the potential impact on the person and others of their not acting in a particular way [...] Hence the relevant notion of reasonableness is that of interpersonal justifiability, rather than prudential reason.”¹⁷²

Anderson similarly describes democratic equality as guaranteeing citizens effective access to the functionings necessary to relate on equitable terms with one another, and clarifies that “[f]or those capable of working and with access to jobs, the actual achievement of these functionings is, in the normal

¹⁷⁰ Anderson (1999), p330

¹⁷¹ Anderson (1999), p328-9

¹⁷² Wolff, ‘*Disability among Equals*’ (2009), p117-8

case, conditional on participating in the productive system.”¹⁷³ It is not perfectly clear, however, precisely which capabilities are guaranteed to all regardless of individual conduct and capacity. Anderson clarifies that “democratic equality can make access to certain functionings - those requiring an income - conditional upon working for them, provided that citizens have effective access to those conditions”.¹⁷⁴ Democratic equality will therefore still surely require some means by which to test citizens’ ability to work for those functionings, investigating whether the individual genuinely has access to work that does not conflict with other duties; is physically capable, etc. Anderson voices discontent with the luck egalitarian literature’s focus on ‘beach bums’, but it is hard to evaluate her proposal without knowing how it would guarantee the fundamental capabilities of those able to work who chose instead to devote their lives to leisure and hedonism. Here, then, the problems of privacy and security return. We argued above that such concerns may legitimately constrain the reach of the True-Cost Principle if they pass the interpersonal test, that is, if everyone can agree from the original position, in ignorance of where their abilities, talents and ambitions will place them on the income scale, that they would prefer to insure their access to the capabilities fundamental to relational equality at such a level that would dispose with the need for intrusive judgments regarding their genuine access to those capabilities.

Similarly, whether range-constraints are to be imposed at the upper end of the wealth scale depends on citizens’ hypothetical insurance judgements and rational trade-offs between the benefits of superfluous wealth and the attendant risks of such wealth inequality undermining the conditions of relational equality. Schemmel points out, for instance, that there are a number of measures that can be employed in society to guard against the deleterious relational impacts of distributive inequality, and argues that constraining its extent is likely to be the most effective given the inordinate difficulty of restraining economic power’s transformation into social and

¹⁷³ Anderson (1999), p321

¹⁷⁴ Anderson (1999), p318

political power.¹⁷⁵ These are empirical questions however, and adherence to the True-Cost Principle requires a continual and consistent openness to new information from all quarters regarding what the true costs of a given policy might actually be.

¹⁷⁵ Schemmel (2011), p379

Conclusion

My central claim in this thesis has been that resource egalitarianism is not necessarily antithetical to relational justice, but can be instead understood as a means by which to apply that conception of justice in the distributive sphere. I argued that hypothetical insurance should be understood as a means by which to test the interpersonal justifiability of various policy proposals given its thin requirement of ignorance regarding the individual's situation within the dominant cooperative scheme.

Yet given that no one can in actuality abstract from their own situated context, and so cannot accurately judge what is really justifiable to everyone, real-world interpersonal justification is necessary. Alexander Brown notes that politicians and other agents of public reasoning “don't always start out with reasonable expectations about what can be done by the individual concerned”¹⁷⁶ in a given policy proposal. It is for this reason that distributive justice must take into account the insights provided by recognition theorists regarding what it *is* reasonable to expect of diverse individuals in diverse social contexts. The specifics of the distributive scheme cannot and should not be written from the armchair. Brown proposes instead that we might establish, in the interest of justice and genuine interpersonal justifiability, citizens' juries as means by which to approximate “a truly public test of reasonableness.”¹⁷⁷ Crucially, however, the individual representations made will only be admissible if they themselves can pass the test of interpersonal justifiability.

Christian Schemmel claims that luck, resource and relational egalitarianism fundamentally flow from differing interpretations of the value of equality. Luck egalitarianism is concerned to neutralize the impact of natural inequalities due to its focus on “the abstract moral equality of humans,” while

¹⁷⁶ Brown (2009), p107

¹⁷⁷ Brown (2009), p165

relational equality is more concerned with equality as founded in reciprocal cooperation.¹⁷⁸ He points out that Dworkin's 'equal concern', by contrast, is rooted in its being a requirement of the legitimacy of the state.¹⁷⁹ Similarly Samuel Scheffler argues against resource egalitarianism being admitted to the class of relational egalitarian approaches since Dworkin invokes "the model of testator and heirs [which is] an asymmetrical model, with one party distributing benefits and the others receiving them. [...] the model of testator and heir does not describe a relationship among equals at all."¹⁸⁰ This may indeed be an unfortunate choice of model of conceptualizing distributive justice for our conciliatory purposes here, but it is not foundational to Dworkin's view. That particular example is most readily understood as an attempt to pump our intuitions regarding distributive justice from an impartial perspective – of one who is not subject to the distributive scheme judged most just. When it comes to the actual determination of the principles of just distribution, I have been arguing, resource egalitarianism relies on the judgments of those subject to those principles themselves through the hypothetical insurance device. In the same way, while Dworkin's principles are grounded in the 'sovereign virtue' of the state's equal concern for all citizens, the state itself is nothing but the cooperative endeavour of those citizens. It is difficult, then, to see how resource egalitarianism's concern for the legitimacy of the state and its policies can be understood as anything more than an alternative way of asking the relational egalitarian's questions regarding reciprocal cooperation.

¹⁷⁸ Schemmel (2011), fn 17, p370

¹⁷⁹ Dworkin (2000), p1

¹⁸⁰ Scheffler (2003), p35

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