

## On the Scope of Egalitarian Justice

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### Résumé de l'article

Il n'est pas clair si le contrat social est censé simplement suppléer aux gains inégaux que les individus peuvent faire en vertu de l'interaction de leur dotations naturelles avec un ensemble de gains égaux déterminés par la coopération sociale, ou si le contrat social doit également compenser les effets des inégalités naturelles des individus, de sorte que ceux-ci deviennent littéralement tous égaux. Cette hésitation fait surgir la question de savoir si l'inégalité naturelle tombe sous la portée de la justice égalitariste. À mon avis, la majorité des égalitaristes présupposent que le principe d'égalité impose une obligation de redresser les inégalités naturelles. Il n'existe toutefois aucun consensus sur cette question. David Gauthier a fait du rejet du principe de redressement une composante centrale de son projet. Peu ont remarqué que John Rawls rejette également le principe de redressement. Ainsi ce ne sont pas seulement des anti-égalitaristes qui rejettent le principe de redressement. Il existe un courant de pensée égalitariste – que, faute de meilleur terme, nous pourrions dénommer égalitarisme d'étroite-portée – qui rejette également ce principe. Dans cet article, je voudrais démontrer qu'il est considérablement sage d'adopter la position de l'égalitarisme d'étroite-portée. Plusieurs des problèmes qui poussent les théoriciens à rejeter l'égalitarisme dans sa totalité sont une conséquence, non pas du principe de l'égalité en tant que tel, mais plutôt de l'engagement à redresser les inégalités naturelles. L'égalitarisme d'étroite-portée évite ces difficultés.

## ON THE SCOPE OF EGALITARIAN JUSTICE

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### ABSTRACT

It is not clear whether the social contract is supposed to merely supplement the unequal gains that individuals are able to make through the exercise of their natural endowments with a set of equal gains secured through social cooperation, or whether the social contract must also compensate individuals for the effects of these natural inequalities, so that they literally become all equal. The issue concerns, in effect, whether natural inequality falls within the scope of egalitarian justice. I think it is fair to say that the majority of egalitarians assume that the principle of equality imposes an obligation to redress natural inequality. Yet there is no consensus on this issue. David Gauthier has made the rejection of the principle of redress a central component of his project. It has often escaped notice that John Rawls also rejects the principle of redress. Thus it is not just anti-egalitarians who reject the principle of redress. There is a current of egalitarian thought – which we might call, for lack of a better term, narrow-scope egalitarianism – which also rejects this principle. In this paper, I would like to show that there is considerable wisdom in the narrow-scope egalitarian position. Many of the problems that lead theorists to reject egalitarianism in its entirety are a consequence, not of the principle of equality per se, but rather of the commitment to redress natural inequality. The narrow-scope view avoids all of these difficulties.

### RÉSUMÉ

Il n'est pas clair si le contrat social est censé simplement suppléer aux gains inégaux que les individus peuvent faire en vertu de l'interaction de leur dotations naturelles avec un ensemble de gains égaux déterminés par la coopération sociale, ou si le contrat social doit également compenser les effets des inégalités naturelles des individus, de sorte que ceux-ci deviennent littéralement tous égaux. Cette hésitation fait surgir la question de savoir si l'inégalité naturelle tombe sous la portée de la justice égalitariste. À mon avis, la majorité des égalitaristes présupposent que le principe d'égalité impose une obligation de redresser les inégalités naturelles. Il n'existe toutefois aucun consensus sur cette question. David Gauthier a fait du rejet du principe de redressement une composante centrale de son projet. Peu ont remarqué que John Rawls rejette également le principe de redressement. Ainsi ce ne sont pas seulement des anti-égalitaristes qui rejettent le principe de redressement. Il existe un courant de pensée égalitariste – que, faute de meilleur terme, nous pourrions dénommer égalitarisme d'étroite-portée – qui rejette également ce principe. Dans cet article, je voudrais démontrer qu'il est considérablement sage d'adopter la position de l'égalitarisme d'étroite-portée. Plusieurs des problèmes qui poussent les théoriciens à rejeter l'égalitarisme dans sa totalité sont une conséquence, non pas du principe de l'égalité en tant que tel, mais plutôt de l'engagement à redresser les inégalités naturelles. L'égalitarisme d'étroite-portée évite ces difficultés.

In *The Social Contract*, Rousseau declares that “rather than destroying natural inequality, the founding contract substitutes a moral and legitimate equality for the physical inequality that nature may have created amongst men. So even though they may be unequal in strength or intelligence, they become all equal through convention and law.”<sup>1</sup> Most people can endorse the sentiment expressed here. There is, however, a crucial ambiguity. It is not clear from Rousseau’s remarks whether the social contract is supposed to merely *supplement* the unequal gains that individuals are able to make through the exercise of their natural endowments with a set of equal gains secured through social cooperation, or whether the social contract must also *compensate* individuals for the effects of these natural inequalities, so that they literally “become all equal.” The issue concerns, in effect, whether natural inequality falls within the *scope* of egalitarian justice.

John Rawls has formulated this question in terms of what he calls the “the principle of redress.” According to this principle, “undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are somehow to be compensated for.” Or more succinctly: “The idea is to redress the bias of contingencies in the direction of equality.”<sup>2</sup> As a result, those who accept such a principle will not regard it as sufficient, from the standpoint of

egalitarian justice, simply to immunize social institutions from the effects of natural inequality so that they do not wind up amplifying it. The distribution of the social product must take the form of a system of differential transfers, in amounts inversely related to the level of each individual's natural endowment (e.g. "greater resources must be spent on the education of the less rather than the more intelligent."<sup>3</sup>)

I think it is fair to say that the majority of egalitarians assume that the principle of equality imposes an obligation to redress natural inequality (although not all would formulate this obligation in terms of desert).<sup>4</sup> Many have difficulty seeing how a view that did not impose such an obligation could qualify as egalitarianism at all. Yet there is no consensus on this issue. David Gauthier has made the rejection of the principle of redress a central component of his project, arguing that the principle of equality should apply only to what he calls the "cooperative surplus."<sup>5</sup> It has often escaped notice that Rawls also rejects the principle of redress.<sup>6</sup> His goal is simply to ensure that the distribution of social primary goods not be "determined" or "settled" by the distribution of natural assets.<sup>7</sup>

Thus it is not just anti-egalitarians who reject the principle of redress. There is a current of egalitarian thought – which we might call, for lack of a better term, narrow-scope egalitarianism – which also rejects this principle. In this paper, I would like to show that there is considerable wisdom in the narrow-scope egalitarian position. Many of the problems that lead theorists to reject egalitarianism in its entirety are a consequence, not of the principle of equality *per se*, but rather of the commitment to redress natural inequality. The narrow-scope view avoids all of these difficulties. The most serious strike against narrow-scope egalitarianism has always been the taint of moral laxity. I will argue that this is not a consequence of the narrow-scope view *per se*, but flows rather from an independent set of Lockean commitments that have often been held by theorists who defend such views. Stripped of this Lockean frippery, the narrow-scope view provides a much more attractive interpretation of the status of egalitarian principles.

I

It should be noted from the outset that the position one takes with respect to the principle of redress is independent of a variety of other distinctions that have been introduced in recent debates over egalitarianism. In particular, it does not matter whether one takes welfare, opportunities for welfare, resources, capabilities, or something else, as the appropriate *equalisandum*, one can still apply the principle of equality with greater or lesser scope. The same is true with respect to the various candidate formulations of the egalitarian principle, e.g. envy-freeness, the difference principle, the Nash bargaining solution, etc.

There is some confusion on this subject in the literature. Most conspicuously, "resourceism" is often conflated with the view that natural inequality need not be redressed, and thus with narrow-scope egalitarianism.<sup>8</sup> This is unmotivated. It may certainly seem *easier* to justify compensating natural handicaps if one believes that individuals should all achieve equal welfare (although there is still the "Tiny Tim" problem – handicapped individuals who are unreasonably cheerful<sup>9</sup>). But the two positions are in principle quite distinct from one another. To see this, it is perhaps sufficient to note the way that a representative sample of theorists can be represented along these two axes (shown in Figure 1).

		Currency	
		Welfare	Resources
Scope	Narrow	Gauthier	Rawls
	Wide	Arneson	Dworkin

Figure 1. Forms of egalitarianism

Yet while the question of scope clearly cuts across many of the issues that divide egalitarians, there is one issue on which it is closely aligned. Rawls and Gauthier are both *contractualists*. Their commitment to the principle of equality falls out, as it were, of the way that they conceive of the social contract. Ronald Dworkin and Richard Arneson, on the other hand, are representatives of the tendency that has come to be known as luck-egalitarianism.<sup>10</sup> Their commitment to the principle of equality has deeper, possibly metaphysical, roots. This alignment on the issue of scope is not a coincidence. Luck-egalitarianism is widely thought to entail the principle of redress. Contractualism, on the other hand, often conflicts with such a principle. Thus the attitude that many egalitarians take toward the principle of redress is often determined by their assessment of the relative merits of these two views. Of course, it is dangerous to generalize, since there are almost as many forms of egalitarianism as there are egalitarians. Nevertheless, I think that examining these two tendencies (luck-egalitarianism and contractualism) is the most useful way of approaching the question of scope.

Contractualism is typically a more popular view among theorists who are troubled by moral skepticism. First, there is a concern about the sort of metaphysical commitments that the principle of redress seems to entail. Where could such a fundamental obligation to create equality come from?<sup>11</sup> Could it be the object of an overlapping consensus? Second, there is a concern about the motivational demands that the principle of equality may impose. How are agents supposed to be persuaded to respect egalitarian arrangements from which they derive absolutely no benefit, or worse, which impose massive hardship upon them?

Gauthier has provided what is perhaps the clearest articulation of the contractualist view. According to Gauthier, the primary function of social institutions is to resolve collective action problems. People are in many cases able to interact with one another in such a way that the actions of one person do not impose significant costs upon any one else. Under such circumstances, things will work out fine if everyone is left to their own devices. But we often find ourselves in situations where our actions do impose costs upon others. Furthermore, we often wind up in situations

where everyone would be better off if everyone refrained from imposing costs in this way, but where no one has an incentive to stop. These are collective action problems.

Under these circumstances, individuals stand to benefit from a system of generalized constraint. This expectation is usually secured through some combination of internal restraint and external sanctions. Because cooperation generates mutual benefit, it creates a “cooperative surplus.”<sup>12</sup> This surplus is simply the excess of some good created through cooperation, above and beyond the sum of what all individuals could achieve by acting alone. However, because of the “impossibility of a perfect tyranny,” people generally cannot organize a system of cooperation through purely external sanctions.<sup>13</sup> As a result, cooperation has a significant voluntary element. Everyone must be willing to “play along” in order for the cooperative arrangement to be credible and effective.

In many cases, however, there are a wide variety of ways in which the cooperative arrangements can be organized. In order to pick out one of these arrangements, some set of normative principles is required.<sup>14</sup> As Rawls put it, in an oft-cited passage, cooperation generates both a common interest and a conflict of interest.<sup>15</sup> There is a common interest in maximizing the cooperative surplus, but there arises also a conflict of interest over who will receive what portion of it. Thus the set of normative principles used to secure cooperation must contain not only a principle that specifies how much should be produced, but also a principle that deals with questions of distribution – who gets what. The principle of equality is generally thought to be this principle. Thus many formulations of the equality principle, such as the envy-freeness standard, or the symmetry axiom in bargaining theory, represent attempts to articulate the idea that people are equal when they have no incentive to switch places with anyone else in the system of cooperation. Equality is important for achieving agreement, according to this view, because when such an arrangement is proposed, no one has any grounds for rejecting it.<sup>16</sup>

If a social institution is understood to be a set of rules that pins down a particular set of cooperative arrangements, this analysis implies that every social institution must be governed by the principle of equali-

ty. Even if the efficiency gains provide the primary rationale for the institution, securing these gains necessarily entails addressing questions of equality and distributive justice. Equality, in other words, represents one of the *terms* that agents must accept in order to access the cooperative surplus. In this respect, efficiency gains constitute the “carrot” that give everyone an incentive to accept equality. But because of this, the principle of equality cannot impose obligations that would make individuals worse off than they would be in the absence of cooperation. More specifically, it cannot take players outside of what game theorists refer to as the “feasible set.” The problem with the principle of redress, for the contractualist, is that it prescribes institutional arrangements that will often be outside of this set.

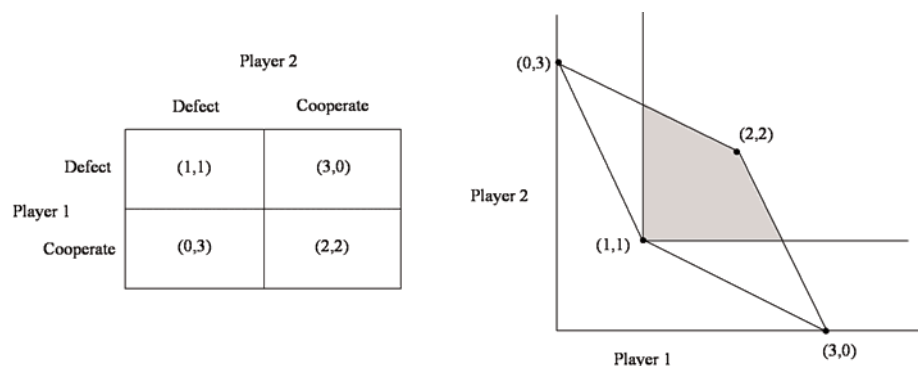


Figure 2. Prisoner's dilemma

The feasible set can be illustrated using a standard two-person prisoner's dilemma (shown in Figure 2). The table on the right shows a graph of the payoffs of the game on the left. The non-cooperative mutual defection outcome is the strategic equilibrium, so if both players maximize utility without regard for the other, they will each wind up with a payoff of 1. If some mechanism is available that will enable them to cooperate, they can achieve any of the outcomes to the northeast of (1,1). The shaded region shows the set of cooperative arrangements that agents might adopt. (Points in the interior are available if the interaction is repeated, or as

expected payoffs achievable through randomization.) This is the “feasible set.” Since the lower bound represents for either agent the worst that she could do in the absence of cooperation, any cooperative arrangement that prescribed an action outside of this set would be especially vulnerable to defection, since some agent could benefit by deviating from that arrangement and “going it alone.”

Gauthier, however, does not rest his case upon strategic considerations of this type. He appeals to our moral intuitions, in order to support the view that individuals have no obligation to accept cooperative arrangements that would take them outside of the feasible set. He defends this position with a well-known thought experiment (which has its origins in reflections by Milton Friedman, and later Robert Nozick). We are asked to imagine 16 different Robinson Crusoes, each stranded on a different island. Some of the islands are well-supplied, others are not, some of the Robinsons energetic, others lazy; some clever, others stupid; and some strong, others weak. The situation of each of the 16 Robinsons represents one permutation of this set of four variables. As a result, some of them will be living quite comfortably by the fruits of their labor, while others will be leading a very marginal existence. Gauthier then asks us to imagine the situation in which the Robinsons, after years of living in total solitude, suddenly all discover the existence of the others. They remain stranded on their respective islands, so they are not in a position to engage in any sort of cooperative interaction. However, a redistributive mechanism is available (sea currents that allow them to send bundles of goods to one another – although somehow not to trade).

Gauthier's question is then whether the rich, industrious, skilled Robinsons are *obliged* to send goods off to their less well-endowed neighbors. Of course, many people would be happy to grant that the fortunate Robinsons have a charitable duty toward their neighbors, especially if the latter are in acute distress. The question is whether they have a duty of justice to redistribute their holdings until everyone is equal. Again, it may not seem unreasonable for the Robinsons who live on bountiful islands to share some of this good fortune. But are the Robinsons who happen to be skilled basket-weavers obliged to give away baskets until everyone has



the same number, even in the absence of any reciprocity?<sup>17</sup> Gauthier argues that they are not.

Unfortunately, this example fails to elicit the same moral intuition in all readers. Part of the problem no doubt involves a failure of abstraction – we are so used to thinking of other human beings in contexts of social interaction, that we have difficulty thinking of the Robinsons outside of such a context. It may help, therefore, to vary the example somewhat. Imagine that one day scientists manage to make radio contact with intelligent life on a distant planet. We discover that they have a civilization much like our own, similar social structures, with comparable population levels. Yet their planet is much smaller. It contains the same mix of resources as our own, but at levels that are approximately one-half as great. As a result, their average standard of living is lower than ours. Are we now obliged to take 25 per cent of our planetary resources and ship them off to the inhabitants of this distant planet? Since it will take several generations for the shipment to arrive, there is no possibility of reciprocity. Thus fulfilling such an obligation would clearly take us outside (way outside) of our feasible set – we would all be much better off had we never discovered their radio signals.

I do not think it takes any particular meanness of spirit to agree with Gauthier that such a transfer would be, at very least, supererogatory. But if this is so, then the contractualist must be correct in thinking that the mere existence of other persons does not generate an obligation to equalize one's condition with theirs. Egalitarian obligations arise only when we begin to interact with these persons, and where the structure of that interaction is such that we can benefit from the exercise of some constraint. In such circumstances, there arises a demand for cooperation. The principle of equality gets introduced at this point, in order to divide up the cooperative surplus, and not prior.

The limit that this analysis sets on the scope of equality has its attractions. It is important to remember that the principle of equality can impose quite onerous demands upon individuals. In certain circumstances, these demands seem entirely appropriate. Most people have strict egalitarian intuitions when it comes to, say, dividing up candy among

children among a birthday party. But these intuitions become severely attenuated when the principle is extended to encompass society as a whole.<sup>18</sup> As David Miller has observed, full-blown equality at this level is a moral ideal that appeals mainly to “political fanatics and philosophers.”<sup>19</sup> Thus there is a tendency, among those who want to give the principle of equality universal scope, to water down the principle in its formulation, to make it more consonant with popular intuitions. Some are tempted, for example, to reinterpret equality as a type of weighted prioritarianism, or as requiring only a basic minimum.<sup>20</sup> Gauthier chooses rather to maintain a strong formulation of the equality principle, but to limit its scope of application. That way he is able to impose strict egalitarian terms upon cooperation relations, without committing himself to the sort of “Harrison Bergeron” world that critics have used, with devastating success, to dismiss egalitarian ideas.<sup>21</sup>

## II

Critics have seen two potential problems with this view. The first objection is based upon the conviction that unequal starting points will necessarily translate into unequal outcomes in the cooperative agreement. Thus, it is claimed, the “contractualist egalitarian” is seeking a middle ground that does not exist. Unless the principles of justice *correct* natural inequality, there is no way to immunize the distribution of the cooperative surplus against its effects. The second concern involves individuals who choose not to enter into cooperative relations with others. Critics argue that if the principle of equality is limited to cooperative projects that generate mutual benefit, highly talented individuals may simply choose not to interact with those less fortunate than themselves. There may be a defection of the elites. Anyone can evade their responsibility to aid others, just by choosing not to interact with them. It seems wrong to say that there is no issue of justice or equality here.

The first concern is articulated most forcefully by Brian Barry, who argues that if one allows a state of natural inequality as the starting point for a cooperative agreement this inequality will *necessarily* translate through to the outcome. Barry distinguishes between two positions, which

he refers to as “justice as mutual advantage” and “justice as impartiality,”<sup>22</sup>. The former limits the scope of egalitarian principles to the distribution of a cooperative surplus, while the latter attempts to create a more comprehensive equality of condition. Barry then argues that the “mutual advantage” view inevitably winds up reproducing natural inequalities in the distribution of the social product. This is “because it appeals to self-interest as the motive for behaving justly. If the terms of the agreement failed to reflect differential bargaining power, those whose power was disproportionate to their share under the agreement would have an incentive to seek to upset it.”<sup>23</sup>

One reservation is worth noting, before considering this argument. Despite considerable effort, no one has ever managed to show how cooperation could be elicited from individuals who obey the precepts of a strictly instrumental (or *homo economicus*) model of action. Thus when Barry talks about “self-interest” as the motive for entering into cooperative agreements, it is important to recognize that mutual-advantage contractualists all construe this term in a broader sense than straightforward utility-maximization.<sup>24</sup> For example, Gauthier’s view is based upon the idea that agents are able to make commitments, which then bind them to counterpreferential choices. Furthermore, he believes, in the spirit of *homo reciprocans*, that agents are also prepared to punish those who fail to live up to cooperative agreements, even at some cost to themselves.<sup>25</sup> Self-interest comes into the picture at a somewhat broader level, with the claim that these sorts of dispositions, and the cooperative projects that they enable, are in the long run beneficial to the agent.

With this in mind, we can evaluate Barry’s argument by looking at a specific example. Imagine two individuals holding money in zero-interest checking accounts. The first has \$100, the second has \$900. There is a savings account available that earns 5 per cent interest, but it requires a minimum deposit of \$1000. Suppose that the two decide to pool their deposits, in order to achieve this higher rate of return. Assuming that money is linear with utility, Gauthier claims that the cooperative surplus should be split evenly – each person should receive \$25 per year.<sup>26</sup>

(Incidentally, this is already too egalitarian for most people. Our everyday intuition seems to be that the person who puts in the \$900 should receive \$45.) Under Gauthier’s arrangement the cooperative gains are equalized, although the initial holdings are not. Barry suggests that this outcome is inconsistent with the assumption that both parties are motivated by self-interest to enter into this arrangement. The person with \$900 will simply demand \$45, or threaten to pull out.

Here I think we can see clearly that Barry’s argument is, at best, a *non sequitur*. Gauthier’s central observation is that the person with \$100 can also demand \$45, or threaten to pull out – and this threat is neither more nor less credible. Thus *both* parties have an effective veto over the arrangement (precisely because the surplus can only be achieved through voluntary cooperation). Of course, from the point of view of utility-maximization (and assuming the absence of other potential investors<sup>27</sup>), *neither* of these threats is credible. Thus any threat actually made reflects a prior commitment made by the agent. And the *content* of this commitment is determined by the conception of justice that the agent subscribes to; it is not dictated by self-interest.<sup>28</sup> Thus the structure of voluntary cooperation effectively levels the power asymmetry between the two individuals, and imposes an egalitarian division of the surplus – despite inequality of initial holdings.

This is not an unrealistic suggestion. Consider, by way of analogy, how experimental subjects typically respond in trials of the so-called “ultimatum” game. Two players are promised \$100, on the condition that they are able to agree upon a division of the money. The wrinkle is that, in order to effect the division, one of them is selected to make a single, take-it-or-leave-it offer to the second. If the second accepts, then the money is distributed out. But if the offer is rejected, neither player receives anything. This game is quasi-cooperative, in the sense that the two players must agree to a division of the \$100 in order to get any of the money.<sup>29</sup> Yet the structure of the game assigns all of the power to the first player, the one who makes the offer. He is free to dictate the terms of cooperation. The only power that the second player has is the power to withdraw from cooperation entirely.



It is well known that (in North America) offers tend to cluster around the 50-50 mark. Furthermore, offers that deviate too much from the “equal” division are often rejected. What is less seldom noted about this game is that the offers made are generally consistent with the self-interest of the first player, *given the pattern of rejections*.<sup>30</sup> In other words, since “low-ball” offers tend to be rejected, even a player who cares only about the money will find it to be in his interest to offer an equal division. No matter how much “power” the first player has to dictate terms, the fact that *both* players must be willing to “play along” means that the second has a veto that she can exercise. So while the first player may have an incentive, in the abstract, to demand more, whether he acts upon this incentive depends entirely upon his beliefs about how the other will respond to such a demand.

Thus the ultimatum game provides concrete illustration of the fact that, merely because individuals have a motive of self-interest to come to an agreement, it does not follow that their self-interest will dictate the *terms* of this agreement. The only constraint that the commitment to “mutual advantage” imposes upon outcomes is that it precludes agreements that are outside of any individual’s feasible set. It says *absolutely nothing* about what agreements they will accept within that set. In principle, self-interest will lead them to accept any agreement that gives them any amount of the cooperative surplus whatsoever, as long as they believe that the cooperation of the others is conditional upon their willingness to accept this payoff. Furthermore, there is no reason to expect that an agreement entered into out of self-interest (a “*modus vivendi*”) will be dynamically unstable. Everyone will always have an ‘incentive’, in the abstract, to upset the terms of any agreement, in order to establish more favorable ones (*regardless* of whether their share is “disproportionate” to their power). But depending upon what beliefs accompany this ‘incentive’ – about the probability that others can be persuaded to “play along” with some new arrangement – agents may never have any reason to act upon it.

Thus there is no reason to assume that natural inequalities, left unchecked, must skew the distribution of the benefits of cooperation.

Barry’s argument therefore begs the question against proponents of “justice as mutual advantage.” The mere fact that individuals are motivated by self-interest to enter into cooperative arrangements does not mean that social institutions will reproduce or amplify natural inequality. There may, on the contrary, be a “washing out of the priors,” so that the development of more and more advanced forms of cooperation, whose product is divided up in a strictly egalitarian fashion, reduces the relative importance of natural inequality. On the other hand, there may not – this is a substantive issue that can only be dealt with by examining the details of specific proposals for the principles of justice. It is, in any case, an issue quite removed from the debate over the appropriate *scope* of these principles.

### III

This leads us to the second, more serious concern that has been raised about the contractualist egalitarian view. Because it takes people’s entitlements to stem from their capacity to contribute to a cooperative endeavor, it would seem that we have no obligations of justice toward those who lack the capacity to contribute to our well-being, or with whom we simply choose not to interact. This runs contrary to the widespread intuition that there are certain duties of justice owed to individuals merely by virtue of their humanity, and not by virtue of their capacity to benefit us in some way. The argument is often illustrated through the example of severely handicapped individuals, or very young children (or in a more question-begging vein, animals). Since we are not obliged to interact with them, and they may have very little to offer in the way of positive incentive for us to do so, it would seem that we owe them nothing. Thus narrow-scope egalitarianism seems to license callous indifference toward the plight of others. While it may offer a convenient response to the problem of motivational skepticism, it does so by tipping the balance too far in the direction of self-interest.

This concern has been raised quite frequently in the discussion of Gauthier’s work, but it has also begun to show up in the literature on Rawls, especially with reference to his claim that there are no obligations of distributive justice in an international context.<sup>31</sup> Rawls appears to sug-

gest that wealthy nations can avoid any obligation to help poverty-stricken nations, simply by refraining from entering into trade relations with them – in the same way that Gauthier’s wealthy Robinsons can ignore their plight of the less fortunate ones.

These concerns are, I think, serious ones. What they point to, however, is a problem with the specific way that the contractualist position has been developed by Gauthier, and to a lesser extent, Rawls. The problem is that both theorists have an overly narrow construal of what constitutes cooperation. In Gauthier’s case, this is because, like Nozick, he assumes that non-cooperative interaction is governed by a set of natural rights, and that respect for these rights does not constitute a form of cooperation. Thus people get no credit for *not* attacking other people, or *not* stealing their vegetables. This runs contrary to the Hobbesian insight that there is a potential prisoner’s dilemma lurking in every social interaction, and in particular, in every market transaction. In the state of nature, no one will be willing to build anything, or deliver goods without immediate payment, or invest any labor in any project, because all of these actions expose the agent to exploitation by free riders. This is why Hobbes thought that there would be neither property nor trade in the state of nature.

If one adopts the Hobbesian perspective, then both the system of property rights and the market are the product of cooperation, and thus governed by principles of justice. The Lockean response is intended to avoid precisely this conclusion. Natural rights are introduced as a kind of bubble that surrounds the individual, which fends off certain types of attacks from others. It is not an accident that the 16 Robinsons in Gauthier’s example are each on an isolated island. This isolation prevents them from entering into various forms of positive interaction with one another, but it also prevents them from stealing each other’s resources, and from coercing, enslaving, or murdering one other. Thus the islands represent a physical embodiment of how the Lockean conceives of the individual in society – excluding by hypothesis a certain class of “undesirable” free rider strategies.

One can see a similar Lockean structure in the way that Rawls conceives of international relations. States that initiate wars, for example, in pursuit of their “rational interests,” declare themselves to be “outlaw” states, and forfeit their position in the Society of Peoples. Because of this, poor countries get no credit for not attacking rich ones, or not hijacking their ships, or not dumping waste in their territorial waters. As a result, if a decrease in these activities were to lead to a reduction in military expenditures, the resulting “peace dividend” would not count as a mutual benefit, in Rawls’s view, and poor countries would have no claim upon it.

Of course, Gauthier takes the bubble image much further than Rawls. He interprets the “Lockean proviso” as a general restriction on individuals imposing costs (or “negative externalities”) upon one another. Thus each individual’s natural endowment, according to Gauthier, is the level of happiness that she is able to achieve acting alone, without imposing costs upon others and without having any costs imposed upon her. Cooperative relations are then simply the set of agreements that the individual chooses to enter into, in order to achieve outcomes above and beyond this baseline.

This construction leads to an arbitrary privileging of “positive” over “negative” talents. Individuals are by and large possessed of two sets of abilities. They have the capacity to produce benefits for themselves and others. But they also have the capacity to create a wide range of negative effects: to cause trouble and delay, to offend and abuse, and last but not least, to physically harm. Purely strategic interaction generates an excessive display of the latter set of skills, to the detriment of the former – overproduction of negative externalities, underproduction of positive externalities. Cooperation is a mechanism through which we persuade people to deploy the former set of skills, and to *refrain from* deploying the latter. But Gauthier’s Lockean proviso imposes what amounts to a strict deontic prohibition against the deployment of any “negative” talents. Thus individuals only get credit in cooperative interaction for their positive contributions. This has the effect of dramatically reducing the number of cooperative interactions, and thus limiting the number of institutions that must respect egalitarian principles.

Consider how this difference carries through in a concrete case. The most basic problem with the private property system is that, even if everything is divided up quite equally between all existing persons, subsequent generations must rely upon inheritance in order to acquire a property endowment. The property system itself has no mechanism to ensure that some individuals do not get “shut out” – receiving no transfer from the previous generation. This presents a *prima facie* challenge to the claim that the system of private property generates a Pareto-improvement over the “commons,” since the individuals who are shut out appear to be harmed by the institution.<sup>32</sup> If they are able to sell their labor, then they may be compensated through the increased productivity that the system of private property enables. But if they are unable to find work, their situation would appear to present a very serious normative difficulty.

Of course, from a Lockean perspective, there is no problem here. The system of property rights is natural, it is not a cooperative institution. Thus the individual who is “shut out” of the property system is just unlucky, like the person who is born blind. From a Hobbesian perspective, on the other hand, the system of property rights is an institution like any other. The problem with people being “shut out” is that it gives them an outcome outside of their feasible set. Thus they are able to do better by dropping out of the cooperative arrangement completely and adopting a strategic orientation. In this context, it means that they will begin to steal. Thus the system of property rights, in order to be justifiable, must contain a mechanism that motivates those who are poor and unemployed to nevertheless respect the system of property rights. One way of doing this is through a transfer of wealth, from those who are receiving a net benefit from the system. In other words, while the Lockean view of rights leaves the poor hanging out to dry, because it does not construe their respect for property rights as a form of cooperation, the Hobbesian view licenses income supports for the poor, in recognition of the fact that everyone has the power, and often the incentive, to make life quite difficult for those who own significant property.

It is therefore too hasty to suppose that because someone with a poor natural endowment has less to offer, that others can simply opt not

to enter into cooperative interactions with him. They may have no choice in the matter, since this individual may also be in a position to harm them, or to block a cooperative project. If this forces them to take costly defensive measures, then the interaction immediately acquires the structure of the prisoner’s dilemma. Thus the talented are often not in a position to pick and choose those with whom they wish to interact. So while the constructive egalitarian framework does not suggest that differences in natural endowment need to be fully compensated, it can nevertheless justify a basic minimum for all persons. The fact that some individuals are not making a positive contribution is not grounds for saying that they are not contributing. They may be *not* making a negative contribution. This is a form of cooperation, and serves as a source of entitlement within the constructive egalitarian framework.

Once the Lockean view of rights is set aside, it becomes apparent that the field of cooperation is quite vast. Consider Rawls’s view of natural talents in the domestic case. To a certain extent Nozick’s early criticisms of *A Theory of Justice* missed their target, simply because Rawls never stated that the difference principle applied to both natural and social primary goods. Furthermore, it is obvious that his later commitments (especially the requirement that conceptions of justice be freestanding) preclude him from treating natural primary goods within the scope of distributive justice.<sup>33</sup> What Rawls claims is that, while an individual may have an extraordinary talent for producing a certain type of good, he is only able to specialize in the production of that good because of a division of labor that allows him to satisfy all his other needs through market exchange.<sup>34</sup> This “gain from specialization,” just like all gains from trade, is a product of cooperation, and thus subject to egalitarian distribution. So while an individual has a claim upon his natural talents, the entire stream of revenue that the exercise of these talents generates is not part of that natural endowment. (Similarly, it is often observed that because the remuneration of labor is primarily a function of its productivity, and productivity depends upon a stock of capital inherited from previous generations, there is a system of cooperation underlying most economic value produced.)

These observations remind us that the feasible set of cooperative relations is very, very large. We are able to achieve precious little through purely autarkic strategic action. This is why Rawls treats “society” as a whole (in essence, the basic institutional structure) as a system of cooperation. Most of what Lockean theorists claim that individuals “bring to the table” when negotiating the social contract are in fact the fruits of cooperation (and often covert free-riding), not individual achievement. Once this is recognized, then the narrow-scope egalitarian’s insistence that social arrangements must fall within each individual’s feasible set turns out to be much less limiting than it might initially have appeared.

#### IV

Many of the counterintuitive moral and political implications of contractualist egalitarianism turn out to be a result of an arbitrary privileging of “promoting positive externalities” over “minimizing negative externalities” in the characterization of the social contract. But it is also worth examining more closely the intuitions that are being countered, in order to see whether they withstand further scrutiny. While most people agree that individuals with very poor natural endowment are entitled to *some* form of compensation from society, it is not clear that they are owed *total* compensation (or as close as possible to total compensation) – which is what the principle of redress suggests.<sup>35</sup>

Dworkin implicitly recognizes this, with his observation that transfers to the disadvantaged in our society tend to be both *targeted* and *capped*.<sup>36</sup> In egalitarian social welfare states, the sick are provided with *medical care*, not a cash transfer that they can spend as they like. Furthermore, individuals are generally not granted the option of renouncing their claim upon medical resources in return for some other bundle of resources, such as extra schooling or a tax exemption. The insensitivity of such distributive schemes to individual preference is difficult to justify from the standpoint of wide-scope egalitarianism, although it strikes most people as perfectly legitimate, even desirable. There is also the fact that the transfers generally fall far short of what would be needed in order to fully compensate the unlucky. We offer people with renal failure dialysis;

we do not organize a “kidney lottery” in order to secure live transplant donors. In other words, there are limits on the costs that we are willing to impose upon “society” (i.e. other people) in order to redress natural inequality.

Some will no doubt argue that this reflects stinginess in the case of capping, or paternalism in the case of targeting. Yet it is very difficult to find many people who actually believe that the handicapped are owed total compensation (such that their opportunities for welfare, or their allocation of social and natural resources, etc., should actually be made equivalent to that of everyone else). Most people have moral intuitions that support ensuring that the basic needs of such individuals are met, not that their condition be equalized.<sup>37</sup>

But if there is no obligation to completely compensate the handicapped, this raises doubts about whether our sense that something is owed to them is in fact an intuition that supports wide-scope egalitarianism. The obligation may not stem from our commitment to equality at all, but rather to some other principle, such as a duty of rescue, or an obligation of mutual benevolence. Not only may there be other principles, within the scope of the social contract, which bias distribution toward those with poor natural endowments, there may also be wide-scope normative principles that apply to social relations other than those that are governed by the terms of the social contract.

Consider Rawls’s view that the basic institutional structure of society as a whole is a system of cooperation. According to this view, social institutions ranging from the capitalist economy to the welfare state exist to promote mutually beneficial cooperation. As a result, there is no one who does not participate, in one way or another, in the core system of cooperation. The theory of justice, in this view, is a set of principles designed to secure agreement concerning this basic structure. At very least, this will require two principles: a principle of efficiency that specifies where along the “common interest” axis the cooperative agreement should be, and a principle of equality that specifies where along the “conflict of interest” axis it should be.

However, a theory of justice with just an efficiency principle and an equality principle remains quite skeletal. A more developed theory must include additional principles for dealing with problems like uncertainty, irrationality, liberty, and autonomy. Any one of these principles might license special transfers to the handicapped, above and beyond the portion of the cooperative surplus that they are entitled to under the principle of equality.

A principle of solidarity might be introduced, for example, which prescribes risk pooling in the face of exogenous uncertainty. Thus there would be an insurance mechanism, separate from and independent of the egalitarian scheme (as Hal Varian has suggested).<sup>38</sup> There might also be a case to be made for a principle of benevolence, which would act as a “hedge” against irrational conduct. Such a principle might license the provision of basic goods, to establish a floor level below which no individual will be permitted to fall (even when it is the person’s own choices that generate the shortfall). There might also be a principle of autonomy, to ensure that everyone has capacity to formulate an independent conception of the good, so that entry into agreements will be voluntary and based upon reasonably well-informed preferences. Finally, a principle of liberty might also be required, in order to reflect the fact that while individuals have an incentive to enter into specific cooperative relations, the option to refuse remains legitimate among those willing to shoulder the full costs of their choice.

My goal here is not to defend any one of these principles. The goal is simply to give some sense of the range of normative standards that could be included within a narrow-scope contractual framework. The usual strategy for rejecting the contractualist egalitarian view is to claim that it generates normatively unacceptable conclusions. But those who advance this argument tacitly assume that equality is a “solo” principle, so that if a particular conclusion does not follow from a narrow-scope principle of equality, this must show that the contractualist view in general is flawed. What gets overlooked in the process is the possibility that a contractualist theory of justice may contain a number of different princi-

ples, and that the politically desirable conclusion might follow from some principle *other* than the principle of equality.

Furthermore, there is no reason that the narrow-scope egalitarian cannot claim that while the principle of equality is limited in scope, there are a variety of other normative principles that are not limited in this way. Rawls’s “duty of fair play” is of this sort.<sup>39</sup> The “duty of assistance” that rich nations have towards “burdened” nations may be as well.<sup>40</sup> Similarly, we might have a moral obligation to provide some assistance to a race of intelligent aliens that we discover in distress, or perhaps even in poverty. The contractualist egalitarian’s point is simply that we would only be obliged to apply a norm of strict equality, in matters of distribution, to benefits that are produced through our cooperation with them.

## V

The positive case for the principle of redress is usually made through appeal to a set of moral intuitions concerning the role that luck and responsibility should play in determining people’s entitlements. The typical sort of argument runs like this: A person who is born with a handicap faces dramatically reduced chances for attaining any of the elements that we consider important for a successful or even enjoyable life. Yet this person has done nothing to deserve this fate, and because he does not deserve this condition, he cannot be held responsible for its effects – be they poverty, unhappiness, incapacity, etc. Similarly, people who get lucky and receive an exceptional natural endowment have done nothing to deserve the associated rewards. Thus society is under an obligation to effect a transfer from those who make undeserved gains to those who suffer undeserved losses. Such a transfer is justified even if it takes some people outside of the feasible set, making them net losers from their participation in society. After all, these people have done nothing to deserve their superior initial endowments, and so have no moral grounds to resist this appropriation.

The broader ideal that informs this view is one of a society in which reward is exactly proportional to desert. Under such conditions, the distri-



bution of the social product would be justified in a very strong sense of the term. If anyone asks why so-and-so has such-and-such, it would be possible to tell a story that would justify that precise endowment. Another way of conceiving of this is to imagine a society that is completely immunized against luck.<sup>41</sup> Translating this back into an older philosophical vocabulary, one would say that under such conditions there would be a perfect coincidence of happiness and virtue. This is, according to a variety of different metaethical views – including one influential stream of Kantianism – the *summum bonum*.<sup>42</sup>

If this view is correct, then it naturally requires an extension of the scope of egalitarian arrangements beyond the cooperative surplus, to include individuals' natural endowment. But this leads to an immediate difficulty. The individual's "natural primary goods" are generally non-fungible – they cannot be transferred from one individual to another. This means that they cannot be redistributed in any meaningful sense. Thus wide scope egalitarianism requires that we distribute the social goods 'unequally', in a way that precisely offsets the inequality of natural distribution.<sup>43</sup> This leads quite quickly to a series of well-known problems (although, it should be noted, critics usually identify egalitarianism as the cause of these problems, failing to note that it is the *scope* with which egalitarian principles are being applied that is at the root of the difficulties):

1. *Existence problems*. If egalitarian principles apply only to the social product, then we can rest assured that there will always be a feasible egalitarian allocation. As soon as we include natural endowments in the distribution problem, this assurance disappears. Many economists regard this as a basis for immediate disqualification of wide scope egalitarianism. Non-economists, on the other hand, have exhibited a remarkable insouciance in the face of this difficulty.<sup>44</sup> Part of this may stem from the conviction that, even if there is no perfectly equal outcome, we can always pick the one that is as close as possible to equality. This is often coupled with a failure to recognize that many candidate formulations of the principle of equality are technically incapable of producing a ranking of states. For example, the envy-freeness principle distinguishes allocations that are envy-free from those that are not envy-free, but among those that

are not envy-free, it cannot distinguish those that contain more envy from those that contain less.<sup>45</sup> Nevertheless, Dworkin develops his view under the assumption that he will be able to identify allocations that are "close enough" to being envy-free, so that he need not worry about the fact that a real-world auction could never achieve an actual envy-free allocation.

2. *Money pits*. Even if the presence of severely under-endowed individuals does not make an egalitarian allocation impossible, it can still create an obligation to transfer a staggering portion of the social product to such persons. This concern is often brusquely dismissed on the grounds that, as G.A. Cohen puts it, "it hardly represents an egalitarian objection."<sup>46</sup> In particular, it is often thought to be merely an efficiency concern, and thus not a problem for the principle of equality, strictly construed. Yet it is far from obvious that there is no issue of equality at stake in these situations. While our efficiency sensibilities are offended by the waste of resources our egalitarian sensibilities are also injured by the sight of one individual "hogging" too large a share. It is often felt that egalitarian principles should not permit individuals to impose unreasonable burdens upon others. Does not the requirement that one individual receive the lion's share of the social product represent precisely such an imposition?

3. *Slavery problems*. One does not have to buy into Nozick's hyperbole to see that wide-scope egalitarianism also has the potential to produce very disturbing interferences with individual liberty. The problem shows up most acutely when one realizes that any plausible conception of equality is going to have to include *leisure* as one of the goods that makes up an individual's allocation. If we leave individuals with a generous natural endowment free to choose their own hours of work, many will choose not to work (since anything that they produce will be transferred away to others). But this is equivalent to increasing the quantity of leisure that they enjoy (they are choosing, in effect, to spend their time producing a non-fungible good, in order to avoid the social transfer). Thus a dilemma emerges: because the egalitarian allocation takes the talented outside of their feasible set, there is no way to offer them a positive incentive to

work, yet they cannot be allowed *not* to work, because this would exacerbate inequality. The only solution appears to be to force them to work.

4. *Leveling down.* It tends to be assumed in discussions of egalitarianism that the equal allocation is to be achieved through measures that “lift up” those at the bottom. However, there is no reason in principle why it could not also be achieved by “leveling down” those at the top, without providing any benefits to those at the bottom.<sup>47</sup> This is a particular problem for wide-scope egalitarians, given their preoccupation with non-fungible natural endowments. Natural abilities may not be transferable, but it is possible to handicap people in various ways so that they are not able to benefit from or enjoy their endowment.

These four problems have been widely discussed in the literature, even if their significance has often been underestimated. Among wide-scope egalitarians who do take these problems seriously, the usual solution has been to adopt some form of pluralism (i.e. to claim that the theory of justice will contain a set of principles, some of which will moderate or trump the demands of equality). Unfortunately, it is difficult to evaluate this claim, since wide-scope egalitarians have yet to produce such a theory. Of course, the same could be said for contractualists (especially with reference to my arguments in the previous section). Yet there is a crucial difference between the two cases. There is reason to think that producing a “watered down” wide-scope egalitarianism will be much more difficult than producing a “pumped up” narrow-scope egalitarianism. This is because wide-scope egalitarians cannot just add a few more principles, they must do so in a way that offers a *consistent* resolution of all these problems. It is not obvious that they can do so in a compelling way. For example, a quick fix to the leveling-down problem can be achieved by granting the Pareto-efficiency principle priority over the principle of equality, but this would significantly exacerbate the slavery problem. Furthermore, in order to avoid all of the difficulties, the pluralist may have to water down the principle of equality so much that the resulting theory is not longer recognizably egalitarian. Short of that, it might still

defeat the presumption that wide-scope egalitarianism is more rigorous than narrow-scope. Strict equality applied to specific contexts may turn out to be more satisfying than watered down equality applied to all contexts.

Thus the appeal to pluralism is less a solution to the difficulties outlined above than it is an outstanding promissory note. Yet many wide-scope egalitarians seem to have underestimated the importance of redeeming this note. While most are “officially” committed to some sort of pluralism, the debate among egalitarians has largely taken place in a strange normative vacuum in which the supplementary principles remain unstated. Many arguments rely heavily upon appeals to our supposedly “egalitarian” intuitions. But how can we articulate these intuitions in the absence of these other principles, which modify our judgments? Larry Temkin, for example, in his polls on equality judgments, instructs his interview subjects “to set aside their ‘all-things-considered’ judgments and indicate what they would say about the situations in terms of but one respect, inequality; that is, as if equality were the only thing about which they cared.”<sup>48</sup> This is highly dubious. Most of us have fairly undifferentiated intuitions about what is “just” and “fair,” and it is not obvious that we can clearly separate these out into “equality” intuitions, “efficiency” intuitions, “liberty” intuitions, and so forth. Furthermore, since wide-scope egalitarianism is morally repugnant in the absence of these moderating principles (e.g. insofar as it endorses “Harrison Bergeron”-style leveling down), individuals who are sympathetic to egalitarian ideals will be loath to articulate these “equality” intuitions in their solo form.

## VI

Even if the pluralist promissory note could be cashed in, there are two other problems with the wide-scope view that cannot be resolved by the pluralist strategy. The most basic is that any principle of equality that included natural endowments within its scope is all but impossible to apply piecemeal, to particular social institutions or distribution problems. It can only be applied to society as a whole. It is very difficult to see how an egalitarian principle formulated at this level of abstraction offers any

guidance to individuals trying to resolve any of the distribution problems that crop up in everyday life.

Consider, for example, the case of three brothers who receive an inheritance, one of whom is handicapped. Wide-scope egalitarianism plays upon the intuition that the handicapped person is treated unequally if he receives exactly the same bundle of goods as the others, since this allocation ignores the special hardships that he faces. Suppose then that the three brothers decide to divide up the inheritance in a way that generates an envy-free allocation. One way of recognizing the needs of the handicapped brother is to include his disability as a kind of virtual “negative good,” to be distributed along with the rest. He will therefore get a larger share of the inheritance, because more fungible goods must be added to his bundle in order to prevent him envying the bundle of some other person, which does not include the handicap.

But if this is the proposal, then the two brothers might rightly complain, even if they accept the relevant principle of equality and agree to give it comprehensive scope. “This is unfair,” they might say. “We grant that our brother is entitled to a larger share of the social product, but it is unreasonable that this transfer should be handled through the inheritance system. This just turns us into the unlucky ones – unlucky to be born with a handicapped brother so that we lose most of our inheritance.” Of course they would be quite right. Wide-scope egalitarianism necessarily imposes a certain ‘division of labor’ within the basic institutions of society when it comes to achieving the egalitarian distribution. Some of the burden will fall upon the family, some of it upon the education system, some of it upon employers, and so forth. But how could one ever calculate which “portion” of the handicapped person’s compensation is owed to him by his family? And can one imagine a judge trying to mediate an inheritance dispute doing such calculations?

This example is important because the case of inheritance distribution among children with different natural abilities is often used as a way of encouraging the idea that handicaps pose a serious challenge to narrow-scope egalitarianism.<sup>49</sup> But this intuition is idle if there is absolutely

no way of determining how these handicaps should be factored into any particular distribution problem. Should  $1/10^{\text{th}}$  of the brother’s handicap be treated as “negative good” for the sake of the inheritance problem? Or  $1/100^{\text{th}}$ ? It is impossible to answer this question without considering the total division of burdens in society. But this means that it is impossible to say that any particular arrangement is equal in the absence of such information. After all, it is unfair to the two other brothers if the handicap counts at  $1/100^{\text{th}}$  its full value, when in the total calculus it should only be weighted at  $1/107^{\text{th}}$ . Thus we are not simply dealing with an empirical problem. Wide-scope egalitarianism runs contrary to the widely held intuition that it is possible for a particular group of individuals, dealing with a particular problem, to resolve it in a way that respects the principle of equality, independent of how every other domain of society is organized. By extending the scope of egalitarian principles to encompass all aspects of the human condition, wide-scope egalitarians have therefore made the principle all but useless at addressing any problems that have a *lesser* scope, and have left themselves no clear strategy to correct this problem.

Consider, for example, the false analogy that wide-scope egalitarianism introduces between efficiency and equality. The narrow-scope egalitarian assumes that we can look at a particular cooperative arrangement and make judgments such as “that will be more efficient, but it’s really unequal.” The wide-scope egalitarian, in looking at the terms of the arrangement, is still able to make the efficiency judgment, but is obliged to refrain from making the equality judgment until, until what? Until a giant computer simulation is run (using information that no one could ever hope to obtain) that calculates the total impact on the distribution of the social product relative to everyone’s natural endowments?

The second major objection is somewhat more specific to luck egalitarianism. Luck egalitarians often suggest that equality must require compensation for natural handicaps, because an individual is not responsible for her endowment (or has done nothing to deserve it). The claim is therefore that undeserved losses should not lie where they fall, they should be collectivized. Yet the case for collectivization of such losses

does not follow from the mere fact that the individual most directly affected is not responsible. Even though the individual has done nothing to deserve the endowment, this does not mean that “society” as a whole should assume the burden. After all, society is just a shorthand way of referring to “other people.”

Consider Temkin’s formulation of the intuition: “I believe egalitarians have the deep and (for them) compelling view that it is bad – unjust and unfair – for some to be worse off than others through no fault of their own.”<sup>50</sup> One can agree it is “bad,” without also endorsing the claim that this generates a positive obligation to redress, such that others must incur costs in order to correct the situation. Even though the world might be a better place if individuals did not suffer undeserved losses, this does not imply that the world would be a better place if these losses were transferred to others (who have not done anything to deserve them either). To illustrate the burden of proof here, consider the argument from the standpoint of a “lawyer for society,” who persistently asks the question, “but why should *my client* pay?”<sup>51</sup> When the handicapped person says “I shouldn’t have to pay for this, it’s not my fault,” the lawyer will reply “It’s not my clients’ fault either, so why should they have to pay?”

Because of this, the debate over scope often seems to come down to a conflict in our intuitions over who is to be held “responsible” for natural endowments. As a result, luck egalitarians have been tempted by the thought that further analysis of the notion of responsibility or desert might serve to adjudicate the two positions. This would show that the disagreement between narrow-scope and wide-scope egalitarians is not simply a matter of conflicting intuitions. It would show that narrow-scope egalitarians are committed to holding individuals responsible for outcomes for which they cannot coherently be held responsible.

The question is whether there is really a self-standing concept of responsibility available to do this job. The most common strategy among luck egalitarians has been to suggest that there is an internal connection between responsibility and choice, such that individuals can only be held responsible for the effects of their choices (or their “option luck”). And since one cannot claim that individuals choose their natural endowments,

one cannot claim that they should be held responsible for them. Of course, it is not obvious that the concept of choice is an attractive way to ground the notion of responsibility. Cohen has expressed concern that this argument “lands political philosophy in the morass of the free will problem.” Nevertheless, he chooses to bite the bullet, taking solace only from the observation that “the amount of genuineness that there is in a choice is a matter of degree, and egalitarian redress is indicated to the *extent* that a disadvantage does not reflect genuine choice.”<sup>52</sup>

This argument, in my view, gets us nowhere. What appear to be conflicting intuitions about responsibility are in fact just conflicting intuitions about the scope of egalitarian justice, misleadingly expressed. The idea that individuals are to be held responsible for the choices, but not their circumstances, cannot be meant literally. There are very few misfortunes suffered by an individual that cannot be traced back, in some way, to a choice that person has made. Stepping outside in the morning, riding the subway, working in a tall building – these are all calculated risks. If our judgments of responsibility involved simply tracking events back to choices, then almost everything would end up being the result of choice (or “option luck”).

But if judgments of responsibility are not grounded in individual choice, on what basis are they made? Arthur Ripstein has argued, in my view persuasively, that responsibility is essentially a normative notion, one which is *derived from* the principle of equality.<sup>53</sup> He develops this analysis with a very simple and powerful argument, drawing upon examples from tort law. Consider a typical accident – a car hits a pedestrian. There is no metaphysical answer to the question of who caused the accident. It would not have happened if the driver of the car had not chosen that route, but it also would not have happened if the pedestrian had decided to stay home that morning. Both parties made choices that ultimately caused the accident. Thus if we try to say that the person who “caused” the accident is the one responsible (as Cohen assumes we must), then we wind up with a problem of “too many causes.” It is because of this problem that in legal contexts we normally assign responsibility through appeal to a “standard of care.” Everyone is taken to



be responsible for exercising reasonable caution when engaging in risky activities. When there is an accident, the person that we hold responsible is the one who violated the standard of care.<sup>54</sup> Thus the concept of responsibility is a normative notion, derived from our concept of what “reasonable care” consists in when dealing with others. How do we determine what is reasonable? Ripstein claims that we do so by *balancing the interests of all parties* – in this case the interests of the various users of the roadway. But obviously not just any sort of “balancing” will do. When we talk about “balance” what we are really talking about is equality. The interests of all parties must be given equal consideration in the determination of what sort of care is required.

One can see this compromise at work in the way that speed limits are determined. In general, it is in the interest of pedestrians to have motor vehicle traffic move as slowly as possible (since it poses much less of a danger that way). But drivers have an interest in arriving at their destination sooner rather than later. A speed limit represents a compromise between these two interests. This is all governed by an implicit norm of equality – getting where you want to go is equally important, regardless of whether you are a pedestrian or a motorist. When there is a car accident, the first question we ask is whether the driver was speeding. What we really want to know, when we ask this question, is whether the driver was assuming his fair share of the burdens of accident-prevention. The problem with holding the pedestrian responsible for the accident, in cases where the driver was speeding, is that it fails to treat her equally. It imposes upon her an unfair share of the burdens of accident-prevention.

Ripstein’s analysis is concerned with the legal concept of responsibility, but the critique applies just as well to the concept of responsibility deployed by luck egalitarians. For example, John Roemer argues “being hit by a truck which runs a red light while you are in the pedestrian crossing is brute bad luck. Being hit by a truck while you are jay walking is not: for in that case, you took a calculated gamble and lost, a gamble you need (and perhaps should) not have taken.”<sup>55</sup> Thus he holds the driver responsible in the former case and the pedestrian responsible in the latter. But crossing the street at a light is just as much a calculated gam-

ble as jaywalking. The distinction that Roemer draws between the two cases is only intelligible against a background set of norms that divide up the burdens of accident-prevention between pedestrians and drivers. And these norms clearly reflect prior egalitarian commitments.

Thus when theorists say that the goal of equality is “to neutralize the effects of brute luck,” or “to eliminate the effects of circumstances,” the line of reasoning is circular. An event will count as “brute luck,” or as a “circumstance,” only when we feel an obligation to neutralize one of its effects. And this obligation will stem from our sense of what constitutes an equal division of the relevant risks within the population.

We can see now why intuitions about responsibility cannot be used as arguments for particular conceptions of equality. To say that individuals are not responsible for their natural endowment is to say that holding them responsible, i.e. making them shoulder the associated burdens, treats them unequally. But this is precisely what the narrow-scope egalitarian denies. Thus it begs the question against this version of egalitarianism to argue that only wide-scope egalitarianism is able to accommodate our intuitions about responsibility. People have these intuitions only because of a prior commitment to wide-scope egalitarianism.

## VII

The above arguments are not likely to be viewed as decisive by many. My goal is simply to show that the wide-scope egalitarian view is much weaker than it is generally perceived to be. First, I have tried to show that many of the problems that critics associate with “egalitarianism” in general are not a consequence of the principle of equality; they are a consequence of the unrestricted scope with which that principle has been applied. Second, I have argued that “luck egalitarianism” provides no independent arguments for the principle of redress. The notions of responsibility, choice and luck that are bandied about by theorists of this inclination have no independent purchase upon the issue; they represent simply alternative formulations of the intuition that serves as the point of controversy.

But these technical points are not, I think, at the heart of the issue. Wide-scope egalitarianism derives considerable support from the perception



that it is on the side of the angels, or at least that it has a generosity of spirit largely absent among those who would like to restrict the scope of egalitarian justice to the fruits of cooperation. Against this perception, I have tried to show that the political implications most often imputed to the narrow-scope view are not a consequence of that view *per se*, but rather of some Lockean side commitments that have been adopted by some of the more influential proponents of the narrow-scope view. Furthermore, if one adopts a pluralist framework, it is not obvious that wide-scope egalitarianism, once watered down enough to handle all of standard objections (such as leveling-down), will be more demanding than a pumped-up version of narrow-scope egalitarianism.

Generally speaking, if we start from a set of moral convictions that we would like to defend, wide-scope egalitarianism may seem more attractive, simply because it allows certain normatively unacceptable outcomes to be ruled out at the beginning, rather than the end, of the argument. If we are willing to hold out a bit longer, we may find that the narrower position offers a much more compelling analysis of egalitarian principles. Primarily this is because the contractualist egalitarian is able to provide a very clear account of *why* people should care about equality (and also why the *issue* of equality shows up so persistently in human affairs, even among those with no principled commitment to the ideal).

Yet the significance of this debate is not simply metaethical. Although I cannot defend the claim here, I would like to suggest that adopting a narrow-scope view creates the prospect of greater progress on many of the problems that have long bedeviled egalitarians. The “equality of what?” question, for example, admits of a very simple response. What we should equalize are the fruits of cooperation. This will mean very different things in different cases, depending upon what purposes a particular cooperative arrangement serves, and what advantages it confers upon participants. Traffic lights should, all things being equal, equalize opportunities to get through an intersection. Wills should, all things being equal, provide for an equal distribution of the estate to the heirs. More generally, educational institutions should equalize access to certain skills. Property rights should equalize access to the goods and services

exchanged on the market. In each case there is a certain type of social product that results from cooperation. Sometimes what gets produced is a very concrete good, sometimes it will be very abstract. In each case, it is this social product that should be equalized.

Narrow-scope egalitarianism also makes it much easier to develop an adequate formulation of the principle of equality. As Hobbes observed long ago, “there is not ordinarily a greater sign of the equal distribution of anything than that every man is contented with his share.”<sup>56</sup> Yet the considerable merits of this envy-freeness standard have been underestimated, largely due to the problems that Dworkin encountered with it. It is seldom noted that Dworkin’s project runs quite smoothly up until the point at which he decides to redress deficiencies of natural talent (at which point it gets mired in difficulties<sup>lvii</sup>). This is just one example of how the problems that egalitarians create for themselves by insisting upon a promiscuous application of their principle have been allowed to overshadow the tangible gains that have been made in the articulation and defence of various conceptions of the principle itself.

## NOTES

<sup>1</sup> Jean-Jacques Rousseau, *Du Contrat Social* (Paris: GF-Flammarion, 1966), p. 58-59.

<sup>2</sup> John Rawls, *A Theory of Justice*, 2<sup>nd</sup> edn. (Cambridge, MA: Harvard University Press, 1999), p. 86.

<sup>3</sup> Rawls, *Theory of Justice*, p. 87.

<sup>4</sup> A quick list of theorists who subscribe to one or another formulation of the principle would include G.A. Cohen, John Roemer, Richard Arneson, Ronald Dworkin, Larry Temkin, and Philippe van Parijs.

<sup>5</sup> David Gauthier, *Morals by Agreement* (Oxford: Clarendon, 1986)..

<sup>6</sup> Rawls makes it fairly clear that this is his interpretation (e.g. *A Theory of Justice*, p. 55), when he identifies a state in which “all the social primary goods are equally distributed” as the benchmark for judging improvements. However, much of his subsequent discussion in *A Theory of Justice* is quite misleading on this point, especially when he identifies “natural endowments (as realized)” as one of the contingencies used to identify the least advantaged individual (p. 83). More generally, he does not distinguish as sharply as he might between neutralizing the *effects* of natural inequality in the distribution of the social product, and redressing these inequalities. Nevertheless, he does state consistently that the goal of “democratic equality” is to immunize social institutions from the effects of natural inequality, not undo these effects. The debate with Robert Nozick, however, almost hopelessly obscured this aspect of Rawls’s view. Clarification of a sort can be found in John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), pp. 75-76.

<sup>7</sup> Rawls, *Theory of Justice*, p. 64.

<sup>8</sup> Richard Arneson, for example, in “Equality and Equal Opportunities for Welfare,” *Philosophical Studies*, 56 (1989): 77-93, at 78, rests his case against resource egalitarianism on its failure to redress handicaps.

<sup>9</sup> For discussion of these and related problems, see John Roemer, *Theories of Distributive Justice* (Cambridge, MA: Harvard University Press, 1996)), p. 272-6

<sup>10</sup> Rawls’s view has been widely conflated with luck egalitarianism. For an

effort to disentangle the two, see Samuel Scheffler, “What is Egalitarianism?” *Philosophy and Public Affairs*, 31 (2003): 106-43, also Scheffler, “Equality as the Virtue of Sovereigns: A Reply to Ronald Dworkin,” *Philosophy and Public Affairs*, 31 (2003): 199-208.

<sup>11</sup> For an overview of these concerns, see David Miller, “Arguments for Equality,” *Midwest Studies in Philosophy* (1982): 73-88.

<sup>12</sup> Gauthier, *Morals by Agreement*, p. 141.

<sup>13</sup> This term is from Gregory Kavka, *Hobbesian Moral and Political Philosophy* (Princeton: Princeton University Press, 1986). Kavka has argued that the perfect tyranny can be created by establishing a “web of fear”, in which each person is afraid of everyone else. He does not explain, however, why this is a tyranny and not simply the state of nature. In any case, his argument introduces a number of auxiliary assumptions about individual behavior that are incompatible with instrumental rationality. For the conditions under which cooperation can be secured through sanctions alone, under the assumptions of strict instrumental rationality, see Drew Fudenberg and Eric Maskin, “The Folk Theorem in Repeated Games with Discounting or Incomplete Information,” *Econometrica*, 54 (1986): 533-554.

<sup>14</sup> The clearest formulation of the problem in these terms remains John Nash, “The Bargaining Problem,” *Econometrica*, 18 (1950): 155-162.

<sup>15</sup> Rawls, *Theory of Justice*, p. 4.

<sup>16</sup> Gauthier adopts the view, standard in bargaining theory, that the Pareto-efficiency principle should be combined with a symmetry constraint in order to select a cooperative arrangement. I am here stating Gauthier’s view at a higher level of generality that one finds in his work, simply because he has changed his position somewhat on the nature of the bargaining solution. However, whether one adopts the Kalai-Smorokinski or the Nash bargaining solution, it is the symmetry axiom that does all the work in favouring egalitarian divisions.

<sup>17</sup> This formulation presupposes a particular conception of what the *equalisandum* is. Naturally not all will have the same need or desire for baskets, etc. However, it does not matter what one takes as the *equalisandum*, one can imagine circumstances under which equality would mandate such a redistribution. Thus the conceptual point is independent of the particular example

chosen.

<sup>18</sup> David Miller, “Distributive Justice: What the People Think,” reprinted in his *Principles of Social Justice*, (Cambridge, MA: Harvard University Press, 1999), chap. 4.

<sup>19</sup> Miller, *Principles of Social Justice*, p. 231.

<sup>20</sup> See e.g. Harry Frankfurt, “Equality as a Moral Ideal,” *Ethics*, 98 (1987): 21-43.

<sup>21</sup> “Harrison Bergeron” is Kurt Vonnegut’s vicious parody of egalitarianism. He presents a world in which the beautiful are forced to wear masks, the graceful are saddled with weights, and the intelligent are forced to wear headsets that prevent them from concentrating. See his *Welcome to the Monkey House*, (New York: Dell, 1998).

<sup>22</sup> Brian Barry, *A Treatise on Social Justice, Vol. 1, Theories of Justice*, (London: Harvester Wheatsheaf, 1989). A similar distinction also figures explicitly in Philippe Van Parijs’s work, where it is referred to as one between “mutual benefit” and “equal concern” egalitarianism. Philippe van Parijs, “Free Riding versus Rent-Sharing: Should Even David Gauthier Support an Unconditional Basic Income?” in *Ethics, Rationality and Economic Behaviour*, eds Francesco Farina, Frank Hahn, and Stefano Vannucci (Oxford: Clarendon, 1996), p. 178

<sup>23</sup> Brian Barry, *Theories of Justice: A Treatise on Social Justice, Vol. 1*. (London: Harvester Wheatsheaf, 1989), p. 7.

<sup>24</sup> In later work, *Justice as Impartiality: A Treatise on Social Justice, Vol. 2*. (Oxford: Clarendon, 1995), Barry introduces a third type, “justice as reciprocity,” a position that is said to differ from the “pure” self-interest model in that it permits individuals to be motivated by a sense of “fair play.” Gauthier in turn complained that he does not presuppose pure utility-maximization. In response, Barry granted that Gauthier’s view is a version of “justice as reciprocity.” See Gauthier’s paper and Barry’s response in Paul Kelly, ed. *Impartiality, Neutrality and Justice* (Edinburgh: Edinburgh University Press, 1998). To avoid getting into these details, I will simply stick to original contrast between “mutual advantage” and “impartiality.”

<sup>25</sup> See Herbert Gintis, “Strong Reciprocity and Human Sociality,” *Journal of Theoretical Biology* 206 (2000): 169-179, also Herbert Gintis and Samuel

Bowles, “The Origins of Human Cooperation,” in Peter Hammerstein (ed.) *Genetic and Cultural Evolution of Cooperation*, (Cambridge, MA: MIT Press, 2003)

<sup>26</sup> Gauthier, *Morals by Agreement*, p. 153.

<sup>27</sup> If the presence of other potential investors allows the larger investor to claim more of the cooperative surplus, then the nature of the problem changes, so that it becomes an issue of “defection of the elites” (discussed in the following section).

<sup>28</sup> Gauthier’s specific view is that agents will adopt a *narrowly compliant* choice disposition. They will adopt a disposition to cooperate in cases where the surplus is divided up equally, but not otherwise (*Morals by Agreement*, p. 178-9). They do so for self-interested reasons, but the impact of this choice is to effectively neutralize the effects of self-interest in determining how the surplus should be divided.

<sup>xxix</sup> It is not cooperative in the technical sense of the term because the strategic equilibrium of the game is Pareto-optimal, and so no deviation from strict utility-maximization is called for in order to achieve efficiency.

<sup>30</sup> Colin Cemerer and Richard Thaler, “Ultimatums, Dictators and Manners,” *Journal of Economic Perspectives*, 9 (1995): 209-19.

<sup>31</sup> John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).

<sup>32</sup> See Hillel Steiner, “The Natural Right to the Means of Production,” *The Philosophical Quarterly*, 27 (1977): 41-49.

<sup>33</sup> For a helpful clarification of these issues, see Scheffler, “What is Egalitarianism?”

<sup>34</sup> John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), pp. 75-76.

<sup>35</sup> See, for example, Roemer, *Theories of Distributive Justice*, pp. 263-278.

<sup>36</sup> Ronald Dworkin, “Equality of Welfare,” *Sovereign Virtue*, p. 59-62. Dworkin is drawing here upon arguments from T.M. Scanlon, “Preference and Urgency,” *Journal of Philosophy*, 72 (1975): 655-669.

<sup>37</sup> Miller, “Distributive Justice: What the People Think,” p. 77-78.

<sup>38</sup> Hal Varian, “Distributive Justice, Welfare Economics, and the Theory of Fairness,” *Philosophy and Public Affairs*, 4 (1975): 223-247 at 244.

Dworkin observes that transfers to the handicapped bear the hallmarks of an insurance payment, but then confuses the issue by building an insurance scheme into the auction that he uses to divide up resources, on the grounds that insurance is necessary in order to guarantee *dynamic* envy-freeness. This is unmotivated, since insurance cannot eliminate the occurrence of envy.

<sup>39</sup> See John Rawls, "Legal Obligation and the Duty of Fair Play," in his *Collected Papers*, Samuel Freeman, ed. (Cambridge, MA: Harvard University Press, 1999), p. 122.

<sup>40</sup> Rawls, *The Law of Peoples*, pp. 105-119.

<sup>41</sup> Following G.A. Cohen's influential formulation: "In my view, a large part of the fundamental egalitarian aim is to extinguish the influence of brute luck on distribution," in "On the Currency of Egalitarian Justice," *Ethics*, 99 (1989): 906-944 at 931. For a critique of this view, see Susan Hurley, *Justice, Luck and Knowledge* (Cambridge, MA: Harvard University Press, 2003).

<sup>42</sup> Compare Kant's formulation, with its explicitly religious overtones, and Richard Arneson's view that "the ideal of equality of opportunity for welfare is roughly that other things equal, it is morally wrong if some people are worse off than others through no fault or voluntary choice of their own," in "Liberalism, Distributive Subjectivism, and Equal Opportunity for Welfare," *Philosophy and Public Affairs*, 19 (1990): 159-194 at 177. It is worth noting that Kant believed that achieving such an ideal would require not only the work of a benevolent, omnipotent deity, but also an eternal afterlife.

<sup>43</sup> It should be noted that wide-scope egalitarians sometimes forget that they are committed to, as Philippe van Parijs puts it, "differential transfers, in amounts inversely related to people's level of talent," *Real Freedom for All* (Oxford: Clarendon, 1995), p. 61. Eric Rakowski, for example, after articulating a forceful commitment to the wide-scope position, goes on to defend a scheme that would merely immunize incomes against differences in natural endowment, e.g. "guaranteeing that all who did the same work would receive the same income, as would be the case in a world where talents were equal and markets perfect." *Equal Justice* (Oxford: Clarendon, 1991), p. 144.

<sup>44</sup> For example, Arneson imagines individuals confronting a giant decision tree at the beginning of life, and argues that equality of opportunity for welfare is satisfied only when each individual faces the same expected utility on

all branches of the tree. Yet even if it were possible to ensure the blind person one or two avenues through which he could attain the same happiness as a sighted person, it is unrealistic to insist that all of his inferior options be as good as anyone else's. Thus there are serious existence problems with Arneson's proposal, even before one considers the fact that, because individuals interact with one another, all of the decision trees will be interdependent. This means that none of the probabilities can be specified *ex ante*. Every choice made by every individual would alter the set of options available to everyone else (in some possible world, somewhere on their tree). Thus a solution would require not just a set of trees in which everyone has equal opportunities for welfare, but an *equilibrium set* of such trees.

<sup>45</sup> That is, without supplementation from other principles. See Elisha A. Pazner and David Schmeidler, "Egalitarian Equivalent Allocations: A New Concept of Economic Equity," *Quarterly Journal of Economics*, 92 (1978): 671-687.

<sup>46</sup> Cohen, "On the Currency of Egalitarian Justice," p. 911.

<sup>47</sup> Derek Parfit, "Equality and Partiality," *Ratio*, 10 (1997): 202-221.

<sup>48</sup> Larry Temkin, *Inequality* (New York: Oxford University Press, 1993) p. 54.

<sup>49</sup> Dworkin, *Sovereign Virtue*, p. 12.

<sup>50</sup> Temkin, *Inequality*, p. 13

<sup>51</sup> This way of putting it (in terms of a "lawyer for society") must be credited to Hillel Steiner.

<sup>52</sup> Cohen, "On the Currency of Egalitarian Justice," p. 934.

<sup>53</sup> Arthur Ripstein, *Equality, Responsibility and the Law* (Cambridge: Cambridge University Press, 1999).

<sup>54</sup> Ripstein follows the usual assumption of the courts that in cases where no one violated the standard of care no one is responsible for an accident, and so the losses must lie where they fall. It is simply "bad luck" for the person who suffers the accident.

<sup>55</sup> John Roemer, "Equality and Responsibility," *Boston Review*, 20 (1995): 3-7.

<sup>56</sup> Thomas Hobbes, *Leviathan*