<div align="center">**Social Justice and Equality:**
Opportunity and Class in the Welfare State

Neil Hibbert</div>

I/ Introduction

Ongoing welfare state restructuring involves an ideational shift from the politics of entitlement to the politics of opportunity. The politics of entitlement are most closely associated with T.H. Marshall's theory of universal citizenship and unconditional social rights (Marshall, 1964). Advocates of welfare reform are critical of unconditionality for political and economic reasons. According to Bowles and Gintis, 'egalitarian strategies should abandon what has hitherto been an exaggerated emphasis on overriding market outcomes through tax and transfer policies', which, they argue, are too economically and politically 'expensive' (Bowles and Gintis, 1998:10). Similarly, Giddens suggests that, '(c)lassical social democracy thought of wealth creation as almost incidental to its basic concerns with economic security and redistribution' (Giddens, 1998: 99).To fix this oversight, egalitarians 'have to shift the relationship between *risk* and *security* involved in the welfare state, to develop a society of 'responsible risk takers' in the spheres of government, business enterprise and labour markets' (100). For this reason, he argues for replacing ''after the event' redistribution' with the 'redistribution of possibilities'' (101). Retrieving the legitimacy of the welfare state is thus widely thought to compel a shift from outcome distributions to the distribution of opportunities.

The new politics of the welfare state have received theoretical support from the political theory of what Elizabeth Anderson has labelled *luck egalitarianism* (Anderson, 1999). In luck egalitarian theory, the political legitimation demand of equal respect strictly relates to justice; respecting the equality of citizens means treating their interests fairly (Miller 1999: 231). Like luck egalitarianism, Rawls believes that citizens are treated with equal respect when their shared institutions are regulated by principles of justice (Rawls, 1993; 1999). They differ, however, on questions concerning the demands and proper scope of justice. Rawls's idea of democratic equality consists of equal basic liberties, fair equality of opportunity, and the difference principle; it is the difference principle that luck egalitarianism rejects from the principle of equal respect. The difference principle is unconditional and operates independently of conditions of opportunity. That is, it redistributes across classes regardless of the reasons different citizens find themselves in certain classes. Luck egalitarianism rejects the unconditionality of the difference principle because it redistributes without regard for how specific inequalities arose, and thus will compensate deserved inequalities, thus compelling some citizens to compensate for the choices of others.

This paper proceeds as follows: section II examines Rawls's theory of the relationship between justice and equality and explains why he believes that both opportunities and outcomes are necessarily independent subjects of justice. As a result, Rawlsian social justice permits unconditionality in social policy. In section III, the luck egalitarian argument against treating outcomes as an independent subject of justice is presented through its rejection of democratic equality and the difference principle. It will be demonstrated that luck egalitarianism rules out unconditional social rights because of the normative importance placed on respecting the

1

choice/circumstance distinction in determining just inequalities and entitlement. Section IV explores two elements of what is called the 'ethos' argument against the institutional implications of luck egalitarian conditionality. From institutional concerns, the ethos argument advocates separating equality from justice, and considering the demands of equality in a more pluralistic manner. It is argued that the 'ethos' argument against luck egalitarianism fails, and that the political demands of egalitarian legitimacy require the priority of justice in institutional regulation – that justice is in fact the first virtue of institutions. To justify unconditionality in social policy, what must be shown is that the luck egalitarian interpretation of fairness fails to show equal respect to disadvantaged citizens; it is argued, in section V, that because of the impossibility of achieving fair equality of opportunity the subject of social justice must include both opportunity and outcome dimensions of class structuring in welfare states.

II/ Democratic Equality

The institutional concerns of luck egalitarianism are best understood in contrast to, or as a rejection of, Rawls's theory of democratic equality and its form of guidance to treating citizens as free and equal through the regulation of institutional formation by justice as fairness (Rawls, 1999: 65-73; Cohen, 1989: 738-9). According to Rawls, the principle of equality helps sift between different efficient – in the sense of Pareto optimal – 'arrangements of the basic structure' by illuminating which efficient distributions, and specifically the inequality therein, also satisfy the criteria of egalitarian justice (1999: 61). An assessment of the efficiency of a basic structure, Rawls argues, should consider the life chances attached to different class positions, as regards the expectations of representative members (1999: 58). By taking only the perspectives of established social classes, any social system can be efficient, regardless of whether the objective qualities of different classes, and of the processes of mediation through which persons find themselves in one class or another, are justifiable to equal citizens. This gives us good reason, Rawls contends, to separate justice from efficiency. To illustrate the distinction, Rawls gives the example of serfdom; 'under certain conditions serfdom cannot be significantly reformed without lowering the expectations of some other representative man, say that of landowners, in which case serfdom is efficient' (1999: 61). In an egalitarian framework, however, the serf class would be considered unjust because of the denial of basic freedoms to it, and the modes of determining membership in it. As a condition of the legitimacy of the egalitarian state, '(j)ustice is prior to efficiency and requires some changes that are not efficient' to the structure of social classes (1999: 69).

Thus, a basic question answered by egalitarian theories of justice is; what aspects of class structuring in welfare states are properly taken as subjects of social justice? As mentioned, luck egalitarianism can fruitfully be assessed as a critique of Rawls's extension of the principle of equality into the functioning of distributive institutions. Rawls applies the principle of equality to determine the fairness of different elements of class structuring. Interpreting, imposing, and extending the idea of moral equality in institutional formation has, he argues, shaped the historical development of liberal political advocacy, as well as liberal disagreement (Rawls, 1999: 62-5). Rawls provides a three-stage unfolding of the intuitive demands of equality, with each stage possessing unique implications for egalitarian principles of justice and for the scope of their demands in institutional formation. At each stage, the scope of egalitarian justice expands and its demands are heightened, progressively limiting the range of legitimate outcomes. The three

stages are; natural liberty, liberal equality, and democratic equality. In the first two interpretations, equality compels justice to regulate the distribution of opportunities. In the third stage, democratic equality, both opportunities and outcomes are necessary subjects of social justice.

The first justice-based restriction on inequality is the demand of formal civil equality, or 'natural liberty'. Natural liberty is set against hierarchical structures of formal social classes with constitutive levels of unequal freedoms, such as that of serf or slave. According to natural liberty, 'positions (that) are open to those able and willing to strive for them will lead to a just distribution. Assigning rights and duties in this way is thought to give a scheme which allocates wealth and income, authority and responsibility, in a fair way whatever this allocation turns out to be' (Rawls, 1999:57-8). Thus, natural liberty rules out 'formal barriers' to equality, and considers any distributive outcome just so long as it is the result of free market exchanges.   Natural liberty rejects formal institutions of inequality, such as slavery, because the determinants of it as a social class are morally arbitrary and so are unjustifiable to equal citizens. It rejects the legitimacy of slavery not because of the nature of its distributive outcomes (i.e., the objective situation of the slave class, or the extent of inequality) but because, rather, of the unjustifiability of its determinants (i.e., formal or civil inequality between groups).

Institutionally, the natural liberty interpretation of the demands of moral equality in a theory of egalitarian justification advocates a system of equal basic liberties, and so also a free labour market, the distributive outcomes of which are regulated only by the principle of 'careers open to talents'. Rawls, however, faults natural liberty for leaving in place inequalities that should be eliminated from the intuition that gave rise to the barring of formal barriers. Natural liberty is, he argues, an incomplete conception of the demands of equality in a theory of social justice. The reasons given against formal inequality by natural liberty compel further regulation, and overriding, of inequalities in opportunity. The diminished life chances of members of a slave class are unjust because of the moral arbitrariness of their determinants. But by unfolding this intuition and applying it to a system of natural liberty, Rawls suggests that the 'most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by (other) factors so arbitrary from a moral point of view' (Rawls, 1999: 63). Rawls specifically has in mind the 'social contingencies' and the 'cumulative effects' of prior distributions that determine persons' starting positions in life. Inequality of opportunity resulting from being born into one informal social class over another is as equally arbitrary as formal restrictions on freedoms, and so must be regulated by the egalitarian state.

Thus, the 'liberal interpretation' of the demands of equality holds that; 'positions are not only open in a formal sense, but that all should have a fair chance to attain them...(i)n all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class' (Rawls, 1999: 63). Liberal equality therefore builds on natural liberty by concerning itself with informal 'starting line' considerations. Because of the persistence of arbitrariness in natural liberty, the demands of equality are not met with formal equality alone, and in some further way they require actual, or real, equality of 'chances'.   The politics of liberal equality demand that, '(f)ree market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of

3

economic events and preserves the social conditions necessary for fair equality of opportunity' (1999: 63). The injustice of arbitrary inequalities, such as those stemming from social contingencies, generates demands on social resources to overcome their determinants. The vision of liberal equality is a *meritocratic* social order.

Both natural liberty and liberal equality are opportunity-oriented conceptions of the demands of social justice; it is access to, rather than the conditions of, the class structure that is within their respective scopes. When the conditions of opportunity fairness are satisfied, the actions and decisions of individuals determine fair entitlement. Rawls argues, however, that liberal equality is also replete with arbitrary deviations from equality. In liberal equality, fair equality of opportunity will not obtain because of differences in natural capacities, and their suitability for the social system at any given point. Moreover, the possession of certain attributes should not give rise to unconditional entitlement, since determination of their rewards is socially structured. As Sen argues, the concept of merit cannot hold independent value in an egalitarian theory of entitlement because its definition is qualified and instrumental, and so does not have relation to moral entitlement (Sen, 2000). Societies, he argues, will necessarily 'develop an incentive system and a concept of merit that will work towards valued consequences' (9). This development will necessarily favour some attributes and virtues (or the possession of different market capacities) over others depending on the developmental nature of the society in question – a raw materials economy will favour brawn, whereas a knowledge economy favours other, more cerebral traits and technical qualifications. Merit is therefore not objective or timeless, but is derivative, and, '(i)n the incentive approach to merit, it is a characteristic of actions, not of people as such' (12). So if equality is a distinct value, and different than the value of fair initial opportunities in economic competition, entitlement must not be determined according to market-based merit. In other words, equality must come in before the 'race' and independently fix the range of its possible outcomes (Cavanagh, 2002: 85-7). It is the derivative nature of merit that leads Rawls to expand the scope of justice to include outcomes and to reject a role for desert in determining institutional entitlement. Natural liberty and liberal equality leave in place structures of outcome inequality that should be reformed because of the ultimate moral arbitrariness of class structuring as determined by various societal contingencies. With this step, Rawls arrives at his conception of democratic equality and the difference principle; once we move away from a system of natural liberty 'we cannot be satisfied short of the democratic conception of equality' (Rawls 1999: 65). The difference principle overrides market distributions of income and legitimizes outcome inequality by appealing to overall improvements in well-being. Because of the inevitable arbitrariness of sources of inequality, the difference principle, Rawls argues, is necessary to justify inequality to the worse off. Thus, in democratic equality, both opportunity and outcome aspects of class structuring are subjects of social justice.

But in having made the move to democratic equality, why should an egalitarian permit class structuring, or inequalities at all, if, as is argued, fair equality of opportunity proves so elusive? By removing the effects of formal, circumstantial, and genetic barriers to equality we are perhaps left with the position that 'differences in occupational achievement should not affect incomes' (Barry, 1989: 219-223). There are two important reasons why justice does not require complete distributive equality in Rawls's theory of democratic equality. First, Rawls is not committed to distributive equality for distributive equality's sake. Instead, his egalitarian

distributive demands are situated within a broader conception of social cooperation that has at its foundation the importance of general improvement of conditions (mutual advantage). It is the gains of social cooperation that is the subject of social justice. Within this system, equality is not a strict distributive demand but rather a more abstract condition of the legitimacy of the system of cooperation. The legitimation imperative of treatment with equal respect allows for accumulation concerns to sit along side of distributive ones, with equality trumping accumulation in some instances (when basic liberties are in question) and accommodating it in others (matters of overall well-being and the provision of incentives). Thus, against the strict distributive interpretation of egalitarianism, Rawls offers the difference principle as the sole structural justification for deviations from equal entitlement; '(i)njustice, then, is simply inequalities that are not to the benefit of all' (Rawls, 1999: 54). However, in this system of structurally determined entitlement, individuals will make decisions regarding the incentives before them as accords with their own conception of the good. Thus, the second legitimate source of inequality is the role of choices within a structured system of entitlement. Even in a conception of social justice that regulates outcomes, the choices made by persons can legitimately give rise to unequal entitlement. Decisions such as those regarding the development of the skills society seeks to draw out through incentives, pursuit of different career paths, setting leisure/work ratios, etc., must be permitted to give rise to different holdings. Thus, an outcome-inclusive conception of justice does not eliminate the role of choices in determining entitlement, it only structures the scope of choices in ways that are fair to those not necessarily possessing the equal capacity to meaningfully choose.

To sum up, in Rawls's theory of democratic equality justice regulates both *opportunity* and *outcome* components of class formation. Democratic equality requires the unconditional redistribution of life chances across class positions, regardless of how the class position of any specific person is determined. The extent of life chances attached to classes constitutes an independent subject of justice. Thus, in democratic equality, fair equality of opportunity pertains to obtaining positions in an independently regulated class system.

III/ The Luck Egalitarian Critique of Democratic Equality

Luck egalitarianism shares with democratic equality the foundational position that treating individuals with equal respect requires, foremost, the extension of fairness to institutional functioning – that equal respect is the 'sovereign virtue of political community' and is the condition of its legitimacy (Dworkin, 2000: 1). They diverge, however, on the extent of the institutional demands of social justice. Specifically, luck egalitarianism rejects democratic equality's move away from an opportunity-based conception of fairness. As discussed above, the subject of the difference principle is class-based outcomes (class situations), and it redistributes life chances regardless of how individual outcomes are thought to have arisen. In other words, the difference principle is *unconditional*; i.e., it fixes entitlement independently of opportunity issues, and is attached to objective positions in the class structure, rather than to individualized situations. It is, therefore, like other universal institutions of the welfare state, since entitlement to it is conditional only on holding the status of citizenship.

This extended basis of entitlement, according to luck egalitarianism, fails to treat persons with equal respect, and thus democratic equality is not an acceptable account of egalitarian legitimacy. Luck egalitarianism denies that entitlement can be legitimately fixed outside of

assessing how distributive shares arise. The motivation behind this position is the importance placed on the choice/circumstance distinction in distributive justice. Luck egalitarianism picks up on Rawls's rejection of equality of welfare for equality of resources (the primary goods) as the basis of inter-personal comparisons in matters of social justice (Rawls, 1999a: 369-70; Kymlicka, 2002: 75). Citizens, Rawls argues, must be held 'responsible for their ends', and cannot legitimately foist responsibility for the satisfaction of expensive ones onto societal institutions. This would be unfair to those who have adjusted their tastes in line with reasonable expectations; '(w)e normally feel that unchosen costs have a greater claim on us than voluntarily chosen costs' (Kymlicka, 2002: 73). The primary goods account for this by functioning as all-purpose means, or 'resources', so as to hold persons responsible for their choices as to what they do with them. This intuition – the importance of choosing – is thought to undergird Rawls's arguments against natural liberty and liberal equality; namely that they permit the effects of unchosen factors on distribution.

The difference principle is thus charged with functioning against the reasoning that leads Rawls to reject natural liberty and liberal equality; '(w)hen inequalities in income are the result of choices, not circumstances, the difference principle creates, rather than removes, unfairness' (Kymlicka, 2002: 75). Equality is, in this view, an issue of 'comparative fairness', based on the position 'that it is bad for some to be worse off through no fault of their own...(whereas) deserved inequalities are not bad at all' (Temkin, 2003: 782, 767-8). To overcome, or avoid, the unfairness involved in being compelled to compensate for the choices of others, social justice must be approached from an 'individualistic' basis, rather than the class based focus of the difference principle (Dworkin, 2000: 117). Dworkin argues that 'equality is in principle a matter of individual right rather than one of group position' (114). For Dworkin, egalitarian social justice must 'allow the distribution of resources at any given moment to be...ambition-sensitive' while being 'endowment insensitive' (89). An ambition-sensitive distribution allows for choices to lead to just inequalities, and permits those who gain from their choices to 'retain' what they have acquired. Equality requires a distributive scheme that permits those with similar ambitions – and who make equivalently sound decisions – to achieve similar levels of gains. Achieving opportunity fairness turns on mitigating the distributive effects of unchosen endowments. With opportunity fairness, luck egalitarian entitlement is conditional on the brute/option luck test (73-4). There are four broad possibilities of entitlement standing with regard to the brute/option luck test: (i) those who suffer from bad brute luck are entitled to compensatory resources, while (ii) those who prosper from good brute luck are not entitled to the whole of their gains; conversely, (iii) those who suffer from bad option luck are not entitled to further compensatory resources, while (iv) those who prosper from good option luck are entitled to those gains.

An unconditional welfare state institution (such as the difference principle) fails to treat persons in category (iv) fairly by taking their chosen gains to compensate for the 'chosen' loses of persons in category (iii). By permitting this sort of distributive unfairness, a state based on democratic equality fails to extend the principle of equal respect to all citizens by not respecting the outcomes of these aspects of their choices. This occurs in much the same way that forcing persons with moderate tastes to help support the expensive tastes of others violates the equal standing of the former by treating them as means to meet others' ends; instead, 'treating people with equal concern requires that people pay for their own choices' (Kymlicka, 2002: 75). Thus,

redistributing life chances to classes, rather than to individuals, unfairly compensates certain persons for the choices they made, which subsequently diminished their life chances and placed them in the relevant class.

The demands of fairness, in the luck egalitarian view, pertain to the distribution of opportunities, and its dynamics determine what aspects of outcomes are to be adjusted or stabilized. As an opportunity conception of fairness, luck egalitarianism is a theory of justice linked to the intuitive demands of liberal equality, which accounts for bad brute luck stemming from both socioeconomic backgrounds or circumstances, and from the natural lottery – the distribution of talents, disabilities, etc. If all aspects of brute luck can be 'immunized' against, and fair equality of opportunity is obtained and reproducible, then outcomes must be considered fair and so left alone, as they will reflect the elements of good and bad option luck. In the meantime, altering distributive outcomes is done to compensate for bad brute luck that was not addressed in the distribution of opportunities, and so entitlement will be conditional on proving that one is worse off because of bad brute luck.

To sum up this section, in luck egalitarianism, what one is entitled to is determined by what one deserves as established by the brute/option luck test. That is to say, under luck egalitarianism the nature of the choices of persons significantly determines institutional entitlement. Heath argues, '(t)he broader ideal that informs this view is one of a society in which reward is exactly proportional to desert'; and so, in a system regulated by luck egalitarian principles, '(i)f anyone asks why so-and-so has such-and-such, it would be possible to tell a story that would justify that precise endowment' by sorting out the various roles of brute and option luck, and establishing individual entitlement on that distinction (Heath, 2005: 25). This contrasts with Rawls's rejection of a desert principle relevant to social justice beyond that pertaining to institutionally determined entitlement. For Rawls, social justice unconditionally determines the range of permissible outcomes, or legitimate entitlement, without regard for how any given individual got to be in one class or another. Outcome based aspects of class formation concerning the extent of life chances associated with objective class positions are rejected by luck egalitarians as an independent subject of justice, since fixing entitlement prior to applying the brute/option luck test would infuse unfairness into the system by redistributing to those who are worse off because of their choices. Redistribution in the opportunity framework endorsed by luck egalitarianism is conditional and depends on a 'fine-grained' evaluation of matters of choice and circumstance in individual situations; the individual focus differs from the class-based approach to redistribution in Rawlsian social justice (Mapel,1989: 14-8).

IV/ The 'Ethos' Critique of Luck Egalitarianism

The institutional implications of the luck egalitarian normative distinction between brute and option luck are quite stark – unconditionality is ruled out in social policy design. Though luck egalitarianism is directed against the unconditionality of the difference principle, its reasoning naturally extends against other institutions with the same, citizenship-based form of entitlement. Unconditionality fixes entitlement before class mediation and thus obfuscates, it is argued, the proper moral connection between choices and entitlement. However, unconditional social rights undergird the formation of the modern welfare state and provide much of the social glue and bonds of solidarity in welfare regimes (Marshall; Rothstein, 1998). By tying entitlement to one's status as a citizen, unconditionality prevents many bases of stigma and dependency, and their

exploitation, from forming in society as is influenced by relations to states, markets, and families.

Given its fairly radical institutional implications, it is perhaps unsurprising that luck egalitarianism has come under significant attack from egalitarian critics. One general but identifiable form of criticism of luck egalitarian justice has emerged that might be categorised as an *ethos*-oriented argument against certain of its considerations of the connection between justice and equality (Anderson; Scheffler, 2003; Wolff, 1998). This section assesses two strains of the ethos argument. An ethos refers to a general combination of a group or community's values and their application to its practices (Wolff, 1998: 105). An egalitarian ethos is a bundle of non-prioritized values including fairness, freedom, respect, etc., and stands in opposition to a theory of egalitarianism that prioritizes one aspect at the exclusion of other related values. The connecting feature of ethos arguments is the stress placed on the importance of keeping conceptual distance between justice and the ideal of equality in egalitarian theory by denying the 'lexical priority' of fairness and subsuming its value in a broader theory of the political demands of an egalitarian community. By prioritizing fairness, luck egalitarianism is argued to 'conceive of equality as an essentially distributive ideal', whereas the idea of an ethos alludes to a more general or 'broader conception of equality' (Scheffler, 2003: 31), in which distributive fairness is one aspect of an egalitarian political community, but is not constitutive of it.

The first ethos-based charge is that luck egalitarianism is ultimately an '*intra-egalitarian*' distributive debate, the arguments of which are 'addressed primarily to other egalitarians' (Scheffler, 2003: 13). It has, therefore, limited value to broader arguments concerning justification. The primary question that luck egalitarian theory aims to answer is, what should egalitarians equalize (or, 'equality of what')? Scheffler argues, however, that a full egalitarian political theory does not consist solely of an answer to 'what should we equalize'. The more foundational concern is, rather, 'why should we equalize', which will appeal to deeper ethical reasons beyond the value of distributive justice (13). And it is in seeking answers to the latter (justificatory) question that illuminates and orders considerations in the former (distributive) one. Without answering the more foundational justificatory question, the appeal of luck egalitarianism is limited, and its isolated discussion of the 'equality-of-what' debate will come off as 'arbitrary, pointless and fetishistic' (23). Indeed, luck egalitarian considerations of distributive justice are akin to defending 'rival versions of utilitarianism' without defending the priority of utility 'in the first place' (14). In the case of egalitarian political theory, it is the more abstract assumption of moral equality, and the related social and political ideals of equitable relationships between equal persons, that have distributive implications; thus, distributive questions 'must be controlled by a broader understanding of equality' (23).

According to Scheffler, luck egalitarianism presents a cramped view of the correct response to the question posed in his title; 'what is egalitarianism'? Scheffler argues that, 'equality is most compelling when it is understood as a social and political ideal that includes but goes beyond the proposition that all people have equal moral worth' (33). In the fuller egalitarian ideal (or ethos), a 'society of equals expresses a normative ideal of human relations' (34). Indeed, Scheffler contends that '(w)hen we say, for example, that a friendship or a marriage should be a relationship of equals, we do not mean merely that the participants are of equal moral worth but also that their relationship should have a certain structure and character' (33).

But the relationship of citizenship is not like a marriage or a friendship. First, spouses and

friends know one another, whereas citizens are largely strangers. Second, and relatedly, spousal and friendship relationships are voluntary, and membership in a political community is not. Because the bonds of a marriage or a friendship are voluntarily entered into by its members, the conditions of entry will largely shape its terms. They are, moreover, foremost relationships between persons, and so are governed by the norms of inter-personal morality concerning what we owe to others with whom we have forged 'special ties'. Voluntary social unions, including friendships and marriages, are ends in themselves, take numerous forms, and so partly constitute the very diversity a theory of justice seeks to accommodate.

As comprised by diverse voluntary social associations and relationships, an egalitarian political community is characterized by Rawls not as a social union per se, but as 'social union of social unions'(Rawls, 1999: 462-4). In its treatment of reasonable diversity, the egalitarian state must remain neutral between conceptions of the good. Thus, any idealized end in particular, relational or otherwise, cannot serve legitimation functions in a pluralist society. Instead, a separate morality is needed to find political agreement amongst deep social and economic diversity. Because of the fact of disagreement, relationships between citizens are governed by principles of justice and rights, whereas we normally expect that (well going) marriages and friendships are regulated by something else entirely.

Thus, for the purpose of legitimate governance, the task of citizenship is the search for some basis of political unity amongst a plurality of private ends, without privileging some over others in justification. Political unity amongst societal diversity is found in the common interests of citizens regarding the shared institutional structure that connects them. The relationship between citizens and institutions, and the morality in question, is necessarily political and concerns what is owed to us as equal citizens in terms of institutional treatment, not the realization of what we owe to each other through shared institutions. As equal citizens we are owed justice and share the interest in receiving it. Equal respect for the interests of citizens is, Dworkin argues, the 'pre-condition of political legitimacy' (Dworkin, 2000: 2). It is because of reasonable diversity that principles of justice must apply to institutions and so equal respect is realized by regulating institutional functioning and formation by egalitarian principles of justice. Luck egalitarianism is, therefore, properly assessed as a theory of egalitarian legitimacy, rather than as a more fetishistic distributive debate. Its distributive principles emerge from its account of the demands of equal respect as determined by the choice/circumstance distinction.

Distinguishing between brute and option luck in institutional and policy design is advanced by luck egalitarians as necessary to realize the legitimation imperative of treating the interests of citizens with equal respect. Luck egalitarianism, in this framing, is presented as an alternative to the Rawlsian unfolding of the demands of equality by arguing that extending its implications to include the unconditionality of the difference principle fails to treat citizens with equal respect. In other words, luck egalitarianism is advanced as a competing theory of the range of egalitarian legitimacy as established by principles of justice. Like Rawls's unfolding of the principle of equality, luck egalitarianism begins by first rejecting the libertarian position of natural liberty for failing to show equal respect for the relevant interests of citizens by demonstrating the moral arbitrariness of the sources of unequal opportunities it permits through its failure to address the effects of brute luck. Luck egalitarianism thus gives reasons why something must be equalized, and the subsequent answer to the question of what (and what not) is shaped by the

prior arguments. Identifying justice as the first virtue of institutions is neither 'arbitrary' nor 'fetishistic', but is a response to deeper justificatory concerns in a pluralist society. It is from this perspective that luck egalitarianism must be evaluated – as a theory of the implications of moral equality, and the requirements of equal respect, for the range of egalitarian legitimacy.

The second ethos-oriented criticism against luck egalitarianism can be called the argument from *self-respect.* The argument from self-respect largely accepts that egalitarian demands pertain first to institutions; however, it further suggests that the justificatory demands of the egalitarian state are not solely distributive fairness, as luck egalitarianism holds. Rather, an equally important egalitarian demand is self- respect (Wolff). At times the demands of self-respect and distributive fairness conflict, and it is appealing to the broader norms of an egalitarian ethos that must guide prioritization.

As seen in its rejection of democratic equality and the difference principle, luck egalitarianism rejects unconditionality in social policy because it unfairly compels some citizens to compensate for the choices of others. Luck egalitarianism rules out coming to the aid of those who are poorly off because of bad option luck. Luck egalitarians are, however, prepared to accept this because for them '(e)galitarianism is constituted by a lexically prior notion of fairness' (Wolff: 103). Wolff argues against this interpretation of egalitarianism, and contends that 'there is more to a society of equals than a just scheme of distribution of material goods' (Wolff: 104). Instead he proposes that 'there are, in fact, at least two ideas which are equally central to egalitarianism...(and) that there can be a degree of tension between them...(t)he two ideas are 'fairness' and 'respect''' (106). Because there is more than one 'underlying' value of an egalitarian society, we must assess institutional functioning not just in terms of distributive fairness but also with regard to the attitudes and sentiments they create amongst citizens towards one another, since '(t)here may also be goods that depend on the attitude people have toward each other' (104) – namely, self-respect.

While Wolff rejects the luck egalitarian position of the lexical priority of fairness in an egalitarian political theory, he accepts, or 'asserts', the luck egalitarian interpretation of the requirements of fairness, namely the 'opportunity thesis', which states that '(f)airness is best understood in opportunity terms' (103). As suggested, the institutional implications of an opportunity conception of justice are highly conditional forms of welfare provision. So Wolff inquires if and how implementing an 'opportunity conception of justice will lead to any sort of loss of respect-standing for individuals' so violating the demands of the egalitarian ethos (110).

The most pertinent threat posed to self-respect by imposing a distributive system of opportunity fairness is, he argues, from forced 'shameful revelation'. In such cases persons are 'required to demean themselves...to do things, or reveal things about themselves, that they find shameful' (109). This is especially acute, Wolff argues, in cases 'where a particular trait is valued within an agent's culture, (and) to admit that one does not have it can lead one to believe that one will, as a consequence, acquire a lower respect-standing' (110). How, then, does the implementation of an opportunity conception of justice reduce self-respect through compelling shameful revelation?

Recall the nature of the conditions of the luck egalitarian conception of justice – the brute/option luck test. To be entitled to benefits – to make legitimate benefit claims – one must show that one has suffered from bad brute luck. This sort of condition is rightly thought to

undermine one's standing as an equal citizen, since claims are not made as an equal, or from an equal entitlement status, but are made from a claim of inequality and inferior status – that one lacks the virtues valued and rewarded in one's society (Anderson: 312). Wolff takes the case of a well functioning market economy with relatively high levels of, what he calls, 'objective opportunities' (matters of the 'choices, options, or possibilities one faces') (113). In such a context, an unemployed person, to qualify for benefits, must show that she lacks what Wolff calls 'subjective opportunities' (the necessary talents and abilities for the available employment opportunities). To press a legitimate claim, 'one is required not merely to admit but to make out a convincing case that one is a failure, unable to gain employment even when there is no difficulty for others...(t)his removes any last shred of dignity from those already in a very unfortunate position' (114).

To avoid shameful revelation we should, Wolff argues, favour unconditionality in social policy – that this introduces unfairness into the social system is a 'price worth paying' (117). Thus, an important political fact is that elements of egalitarianism conflict, and so at certain times we must choose between them, and in doing so deny the lexical priority of fairness. Institutional design thus involves weighing predictable outcomes and prioritizing values by appealing to a broader egalitarian ethos (105).

This argument against the priority of fairness fails, for, as argued above, the demands of egalitarian political legitimacy pertain to the egalitarian state and compel institutional treatment of citizens with equal respect. Citizens are treated with equal respect when the distributive functioning and ongoing formation of the institutional structure that binds them in that political relationship is regulated by principles of justice upon which reasonable agreement could be reached amongst them. Such principles are based on agreement between citizens, rather than private persons, and are therefore public. They concern the reasonable expectations citizens can hold and therefore citizens can have knowledge of them when making decisions. Equal respect is thus realized through the *priority* of fairness and social justice delineates a range of legitimate distributive outcomes of political and economic processes based on this prioritization. Concerns of trust, self-esteem, and solidarity (what might be called issues of *motivation*) occur within this range and at the level of policy making – if one legitimate policy option preserves the self-respect of citizens better than another, we have good motivational reasons to choose it. But we cannot, without violating equal respect, deviate from the demands of justice and impose policies outside of the range established by justice for the sake of motivational goals and other values that comprise its broader normative constellation. That is to say, justice both identifies political ends and imposes constraints on their pursuit. While self-respect is surely significant in egalitarian theory, the egalitarian state surely cannot be held responsible for the subjective reactions of its citizens to just institutions, nor can they override the demands of justice.

In luck egalitarianism, unconditional welfare institutions fall outside the range of legitimacy for the well-known reason that forcing some to compensate for the choices of others fails to treat the former with equal respect. Wolff unproblematically accepts this conception of justice as opportunity fairness, and so his advocacy of unconditional welfare policies for promoting self-respect, and for the broader concern of the egalitarian nature of the relationships between citizens, falls outside the range of legitimacy established by luck egalitarian principles of justice. Promoting self-respect must occur within the bounds of equal respect for the shared

11

interests of citizens – receiving justice.

A possible response might be to point out that the distribution of self-respect is properly understood as a demand of justice, as does Rawls in his list of the primary goods (Rawls 1999a: 362-3), and as Cohen might be interpreted with regard to his notion of advantages which includes both opportunity resources and actual well-being (G. Cohen 1989; Wolff: 116-7). If the distribution of the 'social bases of self-respect' is a subject of justice, then respect and fairness do not sit beside one another, but the distribution of respect is a constitutive aspect of distributive fairness. Institutions which reduce self-respect – as the case of applying the brute/option luck test or condition of entitlement surely does – are ruled out at the level of fairness.

The luck egalitarian has two possible responses to this objection to preserve the desired conditionality. First, the luck egalitarian could simply reject a basis of comparison that includes self-respect, such as the idea of primary goods or advantages, in favour of one that does not explicitly do so. This though would be somewhat arbitrary given the importance of self-respect to most people and the rational inclusion of its distribution in an acceptable basis of comparison between persons relevant to social justice; there is, as Wolff contends, no good reason to restrict egalitarian distributive concerns to the allocation of material goods. So the luck egalitarian might accept the distribution of self-respect (or more precisely, its social foundations) as a matter of justice. Even with this admission, however, it could still be maintained that it does not come into play against the preferred conditionality. The luck egalitarian can argue that extending justice to victims of bad brute luck is showing the utmost respect for their interests, and that there is nothing properly shameful about claiming legitimate entitlement. Extending entitlement beyond market participation shows concern for the value of one's 'worth as a moral person' by enabling persons to 'realize their highest-order interests and advance their ends with self-confidence' independently of the price one's labour commodity fetches (Rawls 1999a: 366). Thus, a loss of self-respect in such a scheme is not an objective quality of institutions but a subjective experience; from the perspective of luck egalitarian institutional design, it is indeed 'inappropriate shame' (White, 2004: 274).

The argument against luck egalitarianism from self-respect fails because it does not provide sufficient reason to reject the priority of fairness in a theory of egalitarian legitimacy (as luck egalitarianism should be considered), nor, if included as a condition of fairness, does it necessarily compel the rejection of luck egalitarianism's proscribed conditionality on welfare policies – the brute/option luck test. But the implications of imposing luck egalitarianism onto institutional design are likely as severe as prognosticated by critics such as Wolff; '(w)e have quite a lot of experience of conditional schemes of welfare payments, and this experience is not encouraging...in the real world this does not give us egalitarianism. Rather, it gives us Thatcherism, in which the poor are singled out for insulting levels of scrutiny' (110, 112). If correct, luck egalitarianism rules out the legitimacy of the primary structure of progressive socioeconomic reform and solidarity construction in liberal democratic societies. To include universal welfare state institutions in the range of egalitarian legitimacy, the demands of egalitarian justice must be worked out in a form that rejects the strict opportunity interpretation of fairness and the brute/option luck condition of legitimate redistribution. Thus, the legitimacy of universalism requires a conception of social justice that includes both opportunity (market situation) and outcome (class situation) aspects of socioeconomic processes. Towards this end,

12

the next section defends Rawls's conception of democratic equality against luck egalitarian arguments of its illegitimacy for its inclusion of outcomes.

V/ Against the Opportunity Conception of Social Justice

One way to equalize opportunities across classes is to decommodify different aspects of social and economic life, and distribute them on the basis of social rights of citizenship. Take the example of health care, and surrounding issues of illness and disability. To move closer to fairness, the effects of unchosen ailments and disabilities would need to be addressed through policies. In a universal system of health care provision, distribution of one of the most important elements of life is removed from the market and is distributed according to need rather than capacity to pay. This necessarily lessens inequality in life chances since entitlement to a resource central to life chances is separated from the ability to afford it. Decommodification of services such as health care dampens the effects of social background and class membership on opportunity, and so is likely required in numerous socioeconomic spheres to realize liberal equality.

Nevertheless, both Dworkin and Kymlicka fault Rawls's theory of democratic equality for being insensitive to those suffering from health related issues in comparing opportunity levels (Dworkin, 2000: 113-5; Kymlicka, 2002: 71-2). Being sensitive to natural differences and capacities in the distribution of opportunities requires approaching justice in an 'individualistic' way, rather than a class-based approach. As a subject of justice, classes require differentiation, and sorting between their members, in order to get to a 'fine-tuned' conception of equal respect. Kymlicka argues that Rawls's interpretation of the primary goods as specifically social goods neglects important inequalities in natural goods, such as ability and health. By not compensating for natural inequalities, Rawls fails to treat individuals with health issues with equal respect; though '(t)he difference principle may ensure that I have the same amount of social goods as a handicapped person...the handicapped person faces extra medical and transportation costs...a burden caused by her circumstances, not her choices. The difference principle does not remove that' (Kymlicka, 2002: 71).

It is the case that Rawls does not include health care in his list of primary goods – though he suggests that to it 'we may add should it prove necessary' (Rawls, 1993: 181). However, he further holds that a political theory of social justice is not meant to answer all questions (political and otherwise); rather principles of justice function to set a legitimate range of institutional formation and functioning, and hopefully 'yields reasonable answers' to questions of policy (Rawls 1993: 21). The design of health policy takes place at the legislative stage, and its aim, Rawls argues, 'is to restore people by health care so that once again they are fully cooperating members of society' (Rawls 1993:184; Rawls here follows Daniels, 1985). He, thus, also views health care in largely opportunity terms. Since universal entitlement is necessary to overcome the effects of social background on opportunities, instituting a social right to health care is likely encouraged. And democratic equality permits universal entitlement to health care because of the unconditional inclusion of distributive outcomes within the scope of justice.

The same is not the case with luck egalitarianism. Though it does explicitly compensate for disabilities at the opportunity stage – and so conceives of health care in opportunity terms – its principles appear inconsistent with a universal system of distribution. For to do so would fail to implement the brute/option luck test or condition on entitlement. An unconditional system of entitlement permits those who require health care through their choices (e.g., inactivity, poor diet,

13

dangerous leisure activities) to receive it at the expense of those who have taken preventative measures throughout their life (e.g., exercising, eating well, safe leisure activities). With exclusive opportunity fairness, the choices one makes determines what one morally deserves, which in turn determines institutional entitlement.

This raises the first argument against the luck egalitarian opportunity conception of fairness; fair equality of opportunity requires fixing outcome entitlement. Keeping with the health care example, what significant mitigation of health issues at the opportunity level can occur does not require specific instances of compensation, but a broader societal framework of structural management of the impact of differences in ability and capacity on opportunities. For example, persons who rely on wheelchairs for their mobility needs require ramps, not stairs, to get into buildings, and other forms of support to normally function in a system of social cooperation. These things will exist prior to the determination of whether or not any one wheelchair bound person is responsible for her condition in such a way that would preclude the transferring of resources to build the needed assistance into society's infrastructure. Thus, extending access to public goods and broadening citizenship-based entitlement are necessary measures to move closer to equal opportunities. Institutions of that sort lessen the salience of class membership in expectations and prospects since important social means are removed from the market. Decommodification of numerous aspects of society is necessary to work towards equalizing opportunities; however, it does so by affecting the objective condition of class situations prior to processes of individual mediation. Equal opportunity requires controlling outcome inequalities through establishing the range of entitlement independent of market choices and actions. Issues of equal opportunity cannot be divorced from structures of inequality. And furthermore, working progressively towards fair equality of opportunity necessitates that the focus on economic outcomes is beyond providing an absolute social minimum, and instead regulates relative levels of social inequality, since permitting large outcome inequalities has numerous structural implications for on-going opportunities (Barry 2005: 173-4). To this end, luck egalitarianism is self-defeating since what is required to achieve institutional treatment with equal respect – structural regulation of socioeconomic outcomes – is, under its justificatory framework, ruled out.

However, while social rights, such as one to health care, can go rather far in controlling against arbitrary factors in the distribution and worth of opportunities, there are limits. There are certain disabilities, and other mediating factors that, as much as we might seek to mitigate against their effects, *will* influence distribution. This informs the second, and perhaps most important, criticism against an opportunity conception of social justice; the impossibility of achieving fair equality of opportunity.   If in fact opportunities cannot be fully equalized through neutralizing the effects of unchosen or arbitrary factors, individual choices alone cannot fairly determine entitlement. Rather entitlement must be determined independently of considerations of deservingness based on responsibility and choice in a market system. Because of the limits of institutions, egalitarian entitlement must be based on what Buchanan calls 'subject-centered' considerations, whereby rights are grounded in 'fundamental moral equality' and 'objective needs' rather than 'strategic capacities', or market desert (Buchanan, 1990: 231).

The inevitability of unequal opportunities appears to be Rawls's primary reason for endorsing democratic equality and extending the principles of justice to outcomes.   He argues that even in a well-ordered society, unavoidable factors will persist as barriers to full equality of

14

opportunity, and moreover, 'they cannot possibly be justified by an appeal to the notions of merit or desert' (Rawls, 1999: 7). One clear example is the issue of disabilities that even unconditional health care provision cannot overcome in terms of defusing their standing as a barrier to equal chances. Equalizing opportunity resources fails to account for and appreciate the broader concerns of social context and issues faced by the disabled (Macleod, 1998). Thus, Rawls does not fail to extend the choice/circumstance distinction, rather he realizes, and accounts for, its limits with regard to the impossibility of achieving fair equality of opportunity, and so also the absence of a context that would give full normative force to choosing in determining entitlement levels.

Rawls suggests further that, '(i)t is impossible in practice to secure equal chances of achievement and culture for those similarly endowed' (Rawls, 1999: 64). A second barrier to equal opportunity is the family. According to Rawls, 'the principle of fair opportunity can only be imperfectly carried out, at least as long as some form of the family exists' (Rawls, 1999: 64). Differences in inner-familial cultures shape the development of individual capacities, and even the 'willingness to make an effort, to try' is dependent upon 'happy family and social circumstances' (64). However, the priority of the basic liberties likely prevents either high levels of intrusive regulation into familial culture – beyond protection of member's equal liberties – or its outright abolishment and the move to collective raising of children for the purpose of equalizing opportunities.

Thus, certain social and natural facts (such as disabilities and inter-familial differences) must be accounted for in a theory of justice. Otherwise the social fate of citizens is left to arbitrary contingencies that need not be respected in an egalitarian society. The clear implication of accepting permanent barriers to equality of opportunity is that the extent of outcomes must be regulated by egalitarian principles of justice. In an institutional structure that necessarily favours some positions over others, the choices made by situated persons cannot determine justifiable entitlement levels. Rather a range of permissible outcomes must be structured by a 'framework of public rules' and a variety of policy mechanisms, which establish legitimate expectations. It is to, Rawls argues, the inevitable barriers to equal opportunity 'which the principles of social justice must in the first instance apply' (Rawls, 1999: 89). Thus, choice pertains to the 'legitimate expectations' of a just social system, which are not previously or contemporaneously affected by exogenous claims of 'moral desert' (273). A theory of social justice that includes outcomes within its purview allows for choices to lead to inequalities; however, legitimate claims made on the basis of choice pertain to institutionally determined entitlement, not to a pre-institutional conception of desert and some form of an undiminished income, the diminishment (or enhancement) of which is the subject of social justice.

VI/ Conclusion

Working towards fair equality of opportunity is an important egalitarian goal. One reason this is so is that diverse spheres of opportunity are themselves important egalitarian ends – outside of ensuring fair economic competition, spheres of opportunity also function as spaces of individuality, and provide room for the capacity to establish and pursue ends (Sugden: 784-5). Moreover, by extending choices, inequalities between persons will emerge based on different personal valuations and corresponding decisions made within shared spheres of opportunity. And there are good egalitarian reasons to respect such choices and to hold the various choosers

responsible for them.

  What this paper argued, however, is that the scope of permissible outcomes of choice must be constrained by a 'background' conception of social justice, that functions to structure entitlement independently of the choices made by citizens. Because equality of opportunity is only imperfectly realizable, treating citizens with equal respect requires determining entitlement based on other, 'subject-centered', considerations beyond market-based deservingness . It is only when the range of permissible outcomes, or entitlement, is regulated by egalitarian principles, that inequalities in the 'natural distribution of assets and the contingencies of social circumstances can more easily be accepted' (Rawls, 1999: 448). Rather than undermining the value of opportunity and choice, independently fixing entitlement in accordance with other considerations legitimizes its continued extension in egalitarian societies, even when its worth to citizens will inevitably be inequitable.

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16

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