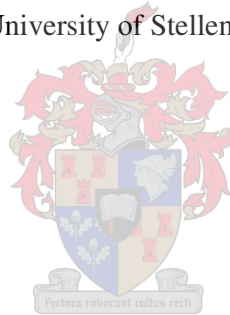


**JUSTICE, ENTITLEMENT AND INHERITANCE:  
Exploring Theoretical Grounds for the Rectification of  
Manifest Injustices through an Analysis of Inheritance**

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Thesis presented in fulfilment of the requirements for the degree of Master of Arts at  
the University of Stellenbosch



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## DECLARATION

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

Signature.....

Date.....

## ABSTRACT

This thesis explores the possibility of promoting social justice through the direct confrontation and rectification of manifest injustices in our existing social institutions and practices, as opposed to the more conventional theoretical approach of attempting to offer comprehensive accounts of ideal justice based on the identification of ultimate principles of justice or perfectly just institutional arrangements. Through an analysis and moral evaluation of the intergenerational transfer of wealth through the practice of inheritance, the study attempts to illustrate how a narrower theoretical focus on specific existing social institutions and practices will enhance conceptual clarity regarding their morally relevant features and, by taking the actual social and political context into account from the outset, increase the political and real-world relevance of the resulting proposal. This study also offers a thorough examination of property rights, because an understanding of the nature of ownership and the justificatory theories of entitlement claims necessarily provides the background context against which the issue of inheritance has to be addressed. As property rights give specific people claims to resources to the exclusion of others, any considerations on property rights also brings up questions of distributive and social justice. Within this broader framework of property rights and distributive justice, this study seeks to show that inheritance is not only inconsistent with the values underlying capitalism, but also an unfair and outdated practice that helps to perpetuate economic and social inequality, which undermines the ideal of democratic citizenship. To this end, a proposal is made to cap inheritance by placing an upper limit to the amount an individual will be allowed to bequeath to any other individual(s). It is argued that this limit should be high enough to allow for the transfer of a family home and objects with sentimental value, but not so high as to ensure a life of complete leisure to future generations. The merits of inheritance taxation will then be discussed in detail and arguments in favour of limiting inheritance will be subdivided into three broad categories: The first concerns the legitimacy of the practice of inheritance itself, as well as the tension between the liberal-democratic principles underlying capitalism and the practice of inheritance, the second relates to the undesirability of the social outcomes that are realised based on the practice of inheritance, and the third focuses on the potential gains that the alternative arrangement will bring.

## OPSOMMING

Die tesis ondersoek die moontlikheid dat sosiale geregtigheid deur die direkte konfrontasie en regstelling van ongeregtighede in ons bestaande instellings en praktyke bevorder kan word, in teenstelling met die meer konvensionele teoretiese benadering wat poog om alomvattende teorieë van ideale geregtigheid op die identifikasie van finale beginsels van geregtigheid of volmaakte institusionele organisering te baseer. Die studie poog om deur die analise en morele evaluering van die praktyk van erflating te illustreer dat 'n nouer teoretiese fokus op spesifieke bestaande sosiale instellings en praktyke die konseptuele duidelikheid aangaande hul moreel relevante aspekte kan verbeter, en dat die relevansie van voorstellings verhoog kan word deur die werklike politieke en sosiale konteks uit die staanspoor in ag te neem. Die studie bied ook 'n deeglike analise van eiendomsreg aan, omdat 'n begrip van die aard van eienaarskap en die teorieë wat besitsreg regverdig noodwendig die agtergrond konteks skep waarteen die kwessie van erflating aangespreek moet word. Omdat eiendomsreg vir spesifieke mense regte tot hulpbronne gee tot die uitsluiting van ander, bring enige oorwegings aangaande eiendomsreg ook die kwessie van sosiale geregtigheid na vore. Binne hierdie breër raamwerk van eiendomsreg en sosiale geregtigheid, poog die studie om te wys dat erflating nie net teenstrydig is met die waardes onderliggend aan kapitalisme nie, maar ook 'n onregverdige en verouderde praktyk is wat bydra tot die voortbestaaning van ekonomiese en sosiale ongelykheid, en dus die ideaal van demokratiese burgerskap ondermyn. Die studie stel voor dat erflating beperk moet word deur 'n limiet te plaas op die bedrag wat enige persoon van ander persone af kan erf. Die meriete van erflatingsbelasting word in detail bespreek en argumente ten gunste van 'n limiet op erflatings word breedweg in drie kategorieë verdeel: Die eerste betref die legitimititeit van die praktyk van erflating self, sowel as die spanning tussen die liberaal-demokratiese beginsels onderliggend aan kapitalisme en die praktyk van erflating; die tweede het betrekking tot die onaanvaarbare sosiale uitkomst wat ontstaan vanweë die praktyk van erflating; en die derde fokus op die verbetering wat alternatiewe praktyke kan bring.

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## Contents

<b>Introduction</b>	1
The focus and significance of a discussion of inheritance taxation	4
<b>1. Rethinking Theoretical Approaches to Social Justice</b>	
Introduction	10
1. Considering Theoretical Approaches to Social Justice	13
1.1. Contractarianism	14
<i>Infeasibility, Redundancy, and Non-Institutional Transgressions</i>	19
<i>The Empirical Acceptability of Particular Principles of Justice</i>	22
<i>From Rational to Reasonable; From Self-Interested to Agreeable</i>	27
1.2. Extrapolating ‘Justice’ from Real World Values and Practices	36
<i>The Interpretive Approach: Evaluating Walzer’s Spheres of Justice</i>	37
<i>The Descriptive Approach: Rescher’s Realist Conception of Fairness</i>	44
<i>A Compromise: Miller’s Context-Sensitive Critical Approach</i>	47
1.3. The ‘Realization-Focused Comparison’ Approach	50
<i>Sen and Shklar: Addressing Manifest Injustices</i>	50
<i>Practical Reasoning</i>	54
Conclusion: Addressing Manifest Injustices	56
<b>2. Property and Entitlement: Justificatory Theories of Ownership</b>	
Introduction	59
1. The Conception of Property	60
1.1. Two Popular Misconceptions about Property	65
1.1.1. The Myth of Complete Ownership without Government	65
1.1.2. The Myth of the Radically Independent, Self-Made Individual	70
2. Justificatory Theories of Ownership and their Implications for the Practice of Economic Inheritance	75
2.1. The Relation between Property Rights and Individual Liberty	76

2.2. Acquisition through Labour	83
2.2.1. Self-Ownership and Control over External Resources	84
2.2.2. Incentives and Dessert	89
2.3. Considerations of Utility and Efficiency	94
3. Citizenship and Moral Equality	98
4. The Importance of Empirical Facts for the Moral Evaluation of Social Practices	102
Conclusion: Property as Malleable Social Relation	104

### **3. Analysing and Addressing Injustices Inherent in the Practice of Economic Inheritance**

Introduction	106
1. On Inheritance Taxation: Literature Review	108
2. The Current Situation	112
3. Rationales for Redistribution: Against an Aristocracy of the Rich	114
3.1. Increasing Inequality and Unprecedented Political Influence	116
3.2. Social Stratification and the Inheritance of Material Wealth and Economic Status	119
3.3. On Fairness and Responsibility: Moral Equality and Claims from Necessity	124
4. Walking the Thin Line? On Incentives and Entitlement	129
4.1. Taxes, Labour and Leisure (for high incomes)	130
4.2. Savings, Consumption and Investment	135
5. The Proposal to Cap Inheritance	136
6. Objections and Refutations	143
6.1. Family as a Special Relationship	143
6.2. Small Businesses and Farms	145
6.3. The ‘Destruction of Capital’ / Inefficient Allocation	147
6.4. Undermining Altruism	148
6.5. The Will of the Testator	150
Conclusion and Recommendations	153
<b>Bibliography</b>	<b>156</b>

## INTRODUCTION

The aim of this thesis is to argue for the rectification of a manifestly unjust practice in contemporary democratic societies, namely the intergenerational transfer of economic wealth and status through inheritance. In recent years, inheritance tax law has been a subject of heated political debate in the United States and the United Kingdom. While opponents from both the liberal and conservative sides used rhetoric and disarming anecdotes in their quest for support, important issues, such as reasonable moral justifications for proposed policies, assessments of the costs and benefits involved to various individuals and social groups, and the nature of the social context that will be affected by these decisions, have largely been neglected. Especially on the conservative side, populist campaigns have been aimed at framing the inheritance tax as an unsympathetic ‘death tax’ which further deprives already grief-stricken families by taking from them what is legitimately theirs. This study aims to show that the inheritance tax is not a sinister evil, but rather one of the few truly benign ways available to government in which to promote equity through redistribution.

A fair assessment of the moral acceptability of the practice of economic bequest requires a careful analysis of property rights, because property rights inform and delineate the rightful extent and limits of legitimate control, use and transfer possibilities that property owners enjoy over objects. Property rights can be regarded as an indispensable feature of our global economic system and are an important determinant of the way in which we construct our social reality. By creating a system of claims and entitlements, property rights effectively define the degree of control people can enjoy over given resources to the exclusion of others. The idea of ‘ownership’ has become so customary and pervasive that we often fail to reflect on its ethical implications when we discuss this issue within a legal or economic context, despite the fact that our implicit beliefs regarding property rights and entitlement greatly affect the structure of society and consequently also the actual lives that people are able to lead in reality. In this study an attempt will be made to reassert the contingent nature of property rights, by indicating that there is nothing *necessary* about the specific manner in which we chose to administer property rights, but that it is simply based on a social consensus that developed rather haphazardly over time. By



examining the various elements which combine to constitute full ownership, the possibility of alternative conceptions of property rights will become apparent. The implication of this is that we can and should reflect on the desirability of our present property arrangements, as the distribution of property frequently has a decisive impact on the current and future prospects of individuals.

While the legitimacy of the practice of inheritance crucially depends on our understanding of property rights, the meaning and content of property rights are in turn heavily influenced by our interpretation of the apparently conflicting values of liberty and equality. What we correctly owe to each other as fellow citizens of a democratic state, and what each of us can rightfully claim exclusive ownership over within this context, are questions that have troubled political philosophers for generations and have given rise to many different answers and much disagreement. These issues of social justice are frequently framed as involving a fundamental trade off between liberty and equality: It is argued that, on the one hand, protection of individual liberty requires absolute property rights over oneself and one's resources - a practice which can give rise to great social and economic inequalities; while, on the other hand, equality necessitates that resources have to be redistributed from the affluent to the poor - a task which is impossible to achieve without infringing on the former notion of individual liberty. In an attempt to find a solution to this apparently irresolvable conflict between liberty and equality, the nature and functions of the ideals of liberty and equality within a democratic context will be closely examined and carefully explicated, in order to demonstrate that the seemingly intractable clash between liberty and equality disappears when each of the ideals are upheld in a consistent and reasonable manner. In contrast to the claim that liberty and equality are necessarily incompatible, this study contends that neither of these values can be realised in the absence of the other - individual liberty for all is conditional on a healthy degree of equal standing and recognition before the law and within the state, and any claims to democratic equality is illusory when individuals are not similarly free in all democratically relevant respects. This is clearly illustrated by the fact that any consistent application of the values which individuals appeal to in the moral justification of private property ownership, which is usually taken to be inextricably linked with the idea of individual liberty, necessarily has broadly egalitarian implications. This is a vitally important observation, as sweeping generalisations in

the name of either liberty or equality are frequently invoked to deter further investigation and preclude fruitful debate concerning potential political and economic arrangements according to which we can structure and improve our communal social reality.

The continued predominance of theories of justice which attempt to defend acceptable social arrangements and institutions by appealing to a single principle, combined with the fact that liberty and equality are still popularly contrasted as the fundamental principles of the opposing ideological positions of liberalism and socialism, reflected my attention back towards an exploration of the way in which we attempt to ground our intuitive and rational conceptions of injustice in normative philosophical theory. The engagement with theoretical accounts of, and approaches to, social justice brought an awareness of gradual shifts within political philosophy: from an idealist search for a single abstract principle or set of principles that can serve as the foundational value for our institutional arrangements or basic structure; to an excessive focus on existing real-world customs, laws and institutions as the source from which local and particular understandings of justice can be extrapolated; to the relatively recent amalgamation of both approaches in engagements with questions of social justice which combine a belief in universal values with a context-sensitive and issue-orientated focus. These perceived shifts, which correspond broadly to the contractarian, interpretive and comparative approaches to social justice, should obviously not be interpreted as corresponding rigidly to a timeline – elements of each approach can be found to varying degrees in the thoughts of different philosophers over the entire range of time – but rather as a contention that different ways of engaging with political philosophical questions enjoyed a period of dominance or flourishing at various points in time. The aim of this overview is to emphasize the implications that the choice of theoretical approach to social justice has for the nature of the outcome and recommendations of the proposed theory, and in particular also for its potential real-world applicability. Accordingly, my intention is to offer a tentative overview of the current state of moral political philosophy and the problems inherent to the way in which we have been approaching the debate. The possibility of promoting social justice through the direct confrontation and rectification of manifest injustices in our existing social institutions and practices, as opposed to the more conventional theoretical approach of attempting to identify ultimate principles or

perfectly just institutional arrangements, is also explored. The re-emergence of the comparative approach to social justice, as propagated by Amartya Sen in his recent book, *The Idea of Justice*, provided a natural complement to my project by offering an approach to the moral evaluation of social structures which combines a commitment to universal values with responsiveness to the nature of the actual political and social reality. The hope is that a narrower theoretical focus on specific existing social institutions and practices will enhance conceptual clarity regarding their morally relevant features and, by taking the actual social and political context into account from the outset, increase the political and real-world relevance of the resulting proposal.

### **The Focus and Significance of a Discussion of Inheritance Taxation**

The progression of this thesis offers an account of my philosophical journey in reverse: it begins with the general moral framework by attempting to give a brief overview of our current theoretical approaches to questions of social justice, and develops in the direction of the specific through the application of acquired insights to the moral evaluation of the practice of economic inheritance.

The study begins by examining the effect that the choice of theoretical approach to social justice has on the nature and potential real world applicability of the outcome and recommendations of the emergent theory. Chapter one will evaluate three different approaches to theorizing about social justice, namely the contractarian, interpretive and comparative approaches, in terms of their real-world relevance and moral acceptability. First, the dominant contractarian tradition, which typically uses the device of a social contract to explicate the legitimate principles of government that free and rational individuals would agreed to as the basic terms of their association, will be assessed in terms of the feasibility and usefulness of its theoretical proposals, as well as in terms of the acceptability of its motivational grounding. The result is the contention that, as a flexible tool, the social contract has limited power to persuade those who are not already inclined to adopt its supposedly impartial perspective, and yet it may impede compromise and complicate moral assessments by bundling diverse issues together. Instead, Scanlon's 'agreement motive' is introduced as a useful tool for moral reasoning and evaluations, because it provides impartial terms for

reasonable social cooperation by basing moral agreement on the search for principles that others, who are similarly motivated, cannot reasonably reject. Following this, the interpretive approach, which endeavours to derive the context-specific meaning of social justice by extrapolating from ideas and values inherent in existing customs, laws and social practices, will be evaluated in terms of the moral acceptability of its relativistic implications. The outcome is a firm rejection of the interpretive approach, because it inevitably reinforces the status quo and favour established privilege over the fates of those who are marginalized and exploited. Finally, the focus will shift to the ‘realization-focus comparison’ approach, which concentrates on comparing societies that have existed or could feasibly emerge in order to draw attention to, and promote the removal of, manifest injustices in our world. The objectives of this approach is considered to be preferable to both the contractarian approach’s search to identify ideal but unattainable solutions and the interpretive approach’s tendency to defer moral authority to the status quo, because the comparative approach balances a sensitivity to real-world contexts with a resolute belief in absolute moral right. In following this approach, this study will take the nature of the actual societies that emerge from a combination of institutional arrangements, interaction and individual behaviour into account when attempting to address the manifest injustices inherent in the practice of economic inheritance through feasible, justice-enhancing reforms. The reason for this is the conviction that it is more fruitful to formulate and advance arguments aimed at affecting positive change in society than it is to search for and argue over some abstract transcendental ideal, because the ultimate goal of reflections on justice should be to improve the lives that people are able to lead now and in the foreseeable future.

It is against this background and with these considerations in mind that the focus will be redirected to the issue of the allocation of private property. Current systems of property arrangements in much of the developed and developing world have given rise to crippling and pervasive social and economic inequality. Yet, many people are of the opinion that this is simply an unavoidable side-effect of capitalism, the economic system that is otherwise credited with the creation of previously unimaginable progress and affluence. The rest of this study will be dedicated to illustrating that our current property rights institution is not inevitable, and that specific changes to the existing framework can enhance both its moral justifiability

and the desirability of the social outcomes associated with it. In line with the more pragmatic ‘realization-focus comparison’ approach, which concentrates on directly addressing manifest social injustices, the main focus will be on assessing and rectifying the injustices inherent in the practice of economic inheritance. To this end, the idea of an inheritance cap will be introduced, whereby an upper limit will be put to the amount an individual will be allowed to bequeath to any other individual(s). Before this proposal can be formulated and defended, it is essential to provide the necessary moral framework and relevant empirical facts pertaining to the social context within which this issue will be addressed. For this reason, chapter 2 outlines and engages in the theoretical debate concerning the legitimate role that the values of freedom and equality play in our conception of and moral claims to property, by illustrating the interdependence of liberty and equality through the revelation that any consistent moral justification of property, even on the basis of liberty, inevitable has egalitarian implications. This observation is based on a careful examination of property rights, which is undertaken because an understanding of the nature of ownership and the justificatory theories of entitlement claims inevitably provides the background against which the issue of economic inheritance has to be addressed. Chapter 2 also comments on the role that history and ideology play in our conception of the legitimate scope of ownership, before offering an exposition and explanation of the elements which combine to constitute full ownership, in order to emphasize the contingent and socially determined nature of property rights. The existence of property rights is generally defended with reference to justificatory theories of ownership, which are respectively based on the principles of liberty, labour-desert, and utility or efficiency. By drawing extensively on existing literature, the central arguments in support of these justificatory principles will be briefly analysed, in order to show that none of the justificatory theories of property rights prove to be decisive and complete in their own right. Because of the perceived strong link that has traditionally been established between private property and the idea of liberty, special attention will be given to the meaning and scope of personal freedom within a democratic society, in order to indicate that the unconstrained pursuit of ‘freedom’ does not constitute a coherent or defensible political ideal. Similarly, every meaningful claim based on an appeal to the justificatory principles necessitates the existence of a fair and equitable socioeconomic framework. Further, the careful evaluation of the merits and shortcomings of the justificatory principles reveals that the consistent application of each principle to the moral assessment of the issue of

economic inheritance unavoidably leads to the restriction of the size and scope of economic bequests.

As all the justificatory principles of ownership have unavoidable egalitarian implications, attention briefly turns to an assessment of the legitimate scope and limitations of the ideal of equality within contemporary democracies. Despite its relatively recent rise to prominence, 'luck egalitarianism', which aims to draw clear-cut distinctions between undesirable outcomes due to choice and undesirable outcomes due to chance or misfortune as a basis on which to discriminately apply egalitarian policies, is rejected on the basis that it has incurably problematic consequences for our view of human individuals, because it neglects to acknowledge the way in which our ability to assume responsibility is itself significantly influenced by our socialization and material circumstances during our formative years. Couple this with the growing tendency to attempt to eliminate the effect of morally arbitrary natural endowments on outcomes by 'compensating' those who are relatively disadvantaged in terms of talents and abilities for their less desirable genetic makeup, and it becomes clear that this luck egalitarianism depends on a deplorable vision of human beings as objects that can be scrutinized, measured and ranked as innately superior or inferior in relation to each other. Instead, the idea that equality, at its best and most expansive, represents a relational standing of moral equality between individuals, is briefly defended. Moral equality can be safeguarded through a combination of constitutionally or legally protected rights, which includes access to a certain basic level of material resources, and by limiting the extent and impact of economic inequality. After indicating that luck egalitarian idea of drawing a sharp distinction between choice and chance is counterproductive, Nussbaum's capabilities approach is advanced as the most appropriate and functional current interpretation of moral equality for pluralistic democratic societies, because it serves as a guiding principle in establishing the minimum standard of what can be deemed acceptable social and economic arrangements within the context of self-governing citizenship. The restriction of economic inheritance is shown to be consistent with and important to both the safeguarding of moral equality and the reduction of economic inequality.

The final section of chapter 2 discusses the implications that empirical facts concerning the nature of our social reality should have for the legitimacy of claims

which are made in the name of social justice. Our beliefs regarding the nature and functioning of our society should not be unreflectively offered as facts, but must be subjected to intense scrutiny and empirical investigation. A concern for empirical accuracy should inform and constrain our interpretations of our collective social world, so that our theories can honestly pertain to our shared social reality. This chapter concludes by emphasizing the conditional nature of our understanding of property rights by underscoring the fact that property is a malleable social relation which can and should be fairly interpreted in, and adjusted to, the relevant actual social context to ensure that it fulfils its intended functions.

Having established both the malleability of property rights and the need to limit the extent of inequality in the preceding chapter, and in keeping with the aim of directly addressing manifest social injustices, the final chapter will introduce a proposal to cap inheritance as a feasible alternative to our existing practice of virtually unlimited bequest. Chapter 3 begins by outlining how the current situation of extreme economic inequality is partially caused and notably exacerbated by the intergenerational transfer of wealth, in order to show that the practice of inheritance is outdated and unjust, and calls for urgent rectification. As the main concern of this case study is with the negative social realizations which arise due to the practice of economic inheritance and the morally arbitrary intergenerational reproduction of wealth it entails, certain exceptions are made to the application of the inheritance cap, notably in the cases of spousal bequests, bequests aimed at providing for genuinely dependent children, and some instances of charitable giving. There are many distinct and diverse merits to inheritance taxation, and they will all be discussed in detail without attempting to identify which one proves to be the decisive argument in support of this practice. Sen calls this use of a number of different reasons to argue in favour of a specific action ‘plural grounding’, and contends that, if various considerations all lead to the same conclusion, then it is not necessary to waste time and effort on attempting to reach consensus on their relative importance in order to accept their recommendation. We can agree that a social practice is unjust and calls for urgent rectification without being able to determine, or reach agreement on, what should be regarded as the dominant reason that serves as the ultimate justification for our decisions and actions. This study will offer a cluster of arguments in favour of limiting inheritance which can broadly be subdivided into three categories: The first focuses on the questionable legitimacy of the practice of inheritance. As illustrated in chapter 2, the liberal-

democratic principles to which we generally appeal for the justification of personal property rights cannot be satisfactorily extended to include bequests. Reforming inheritance law will enhance the scope of democratic values and increase the degree of consistency and fairness with which these principles are applied across individuals. The second group of arguments all concerns the undesirability of the social outcomes which are realized based on the practice of inheritance. The detrimental effects of the extreme inequalities of economic and political power which are maintained and intensified through the inheritance of wealth will be discussed. Particular attention will also be given to the role that inheritance plays in the perpetuation of the effects of past social injustices, as is for example the case with continued economic disadvantage due to historical racial discrimination in both the United States and South Africa. Moreover, an attempt is made to illustrate that many of the economic arguments made in defence of bequests are highly questionable and empirically inaccurate. Finally, the focus will be shifted to the potential gains that alternative arrangements can bring, most notably through the extension of democratic equality to the economic sphere. By providing resources for basic necessities and comparable comprehensive education for all citizens, we can ensure that all children will have a reasonable opportunity to develop and realise their potential to the fullest extent, regardless of the morally arbitrary nature of the situation they were born into.

Based on the arguments offered above, a proposal to limit the size of intergenerational economic bequests will be formulated. The aim is to allow some scope for parental concern and sentiment, while simultaneously limiting the adverse and unfair consequences associated with sizeable economic bequests. However, it is essential to note that the practice of inheritance has a long and persistent tradition and is an important feature in the establishment and maintenance of the current status quo, so any proposals to change it is likely to encounter strong resistance from various sources. For this reason, thorough attention will be given to analyzing and refuting prominent objections against inheritance taxation, such as the accusations that it undermines altruism, discount the importance of family relationships, leads to the demise of farms and small businesses, victimises the rich, infringes on individual liberty, and is bad for capitalism in general. After these objections have been addressed, concluding remarks and suggestions for future research will be offered.



## Chapter 1: Rethinking Theoretical Approaches to Justice

### Introduction

Political philosophers have written extensively on the idea of justice since the time of Ancient Greece, yet the notion of distributive justice as the *redistributive allocation of resources* is fairly new, and could date back as little as 200 years. In *A Short History of Distributive Justice*, Samuel Fleischacker traces the way in which the phrase ‘distributive justice’ has changed in meaning from the time of Aristotle to today, in order to show that “for most of human history practically no one held, even as an ideal, the view that everyone should have their basic needs satisfied” (2004: ix, 2). An important reason for this could be the fact that we have only recently developed an understanding of all human beings as equals before the law and as moral subjects who should have certain rights and entitlements on the basis of their humanity. Understanding how the meaning of distributive justice, which is often used interchangeably with ‘social justice’, has changed will make us sensitive to the novelty of the contemporary undertaking to adequately define and describe the content of this concept.

In recent decades, the amount of theories and discussions concerning social justice has increased almost exponentially. More thinkers are working, writing and publishing in the field of political philosophy than ever before, as indicated by the huge increase in articles, journals and books dedicated to this subject (Kymlicka, 2002: viii). In *Contemporary Political Philosophy*, a book which aims to give a reasonably comprehensive overview of prominent theories in contemporary Anglo-American political philosophy, Will Kymlicka writes that the “growing diversity of approaches, each with its own vocabulary and preoccupations” makes it seem like

contemporary political philosophy is simply a disconnected series of discrete arguments or debates, each developing according to its own inner logic, unrelated to the rest of the field. The dizzying array of new theories in the last decade only increases this sense of fragmentation and dislocation (2002: ix).

Despite the prevalence of the idea of social justice within contemporary political philosophy, the precise meaning of the phrase ‘social justice’ is not obvious. This is

due to the fact that there is still a great deal of disagreement about what exactly social justice requires. Accordingly, the definitions of social justice that thinkers offer differ considerably, because their interpretation and evaluation of the principles that should underlie or inform our conception of social justice significantly determines how they understand and delineate the phrase. The upsurge in both the quantity and diversity of positions and approaches within the field of social justice has further complicated the issue by making it progressively more difficult to identify what some of these theories have in common. However, as Kymlicka aptly phrases it, we should not let the multiplication of theories

obscure the fact that political philosophers must all grapple with some common problems, and must do so in the light of the same realities of modern life, with its characteristic needs, aspirations, and complexities [...] *[W]e miss the point and purpose of these different theories if we do not keep sight of the common issues they are dealing with* (Kymlicka, 2002: ix - x, my italics).

The identification of common objectives enables us to assess whether we are making progress towards achieving them, and we should not shy away from identifying cases where new theories offer better answers to common problems (ibid). Without this hope of making progress towards a better understanding of what social justice requires and how it could be advanced in practice, our engagement with political philosophy would be futile.

Unfortunately, in critical discussions of particular theories of justice the emphasis currently predominantly falls on what differentiates one approach from another, or on criticising specific features of a particular theory, instead of pursuing the potentially fruitful path of considering the similarities inherent in the common ideas and ideals that inform our understanding of social justice<sup>1</sup>. Instead of analyzing and discussing specific issues in the hope of reaching agreement, the overwhelming majority of contributions tend to fall on either end of the following two extremes: Thinkers either strive to offer comprehensive, detailed substantive accounts of what justice entails; or they nitpick over highly abstract theoretical points of specific theories. At the one

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<sup>1</sup> This emphasis on differentiation and distinctness in theories and criticism might well be exacerbated by the significant weight that is currently placed on publications within academia, as originality is a prominent criterion for acceptance to highly rated journals.

extreme, in an attempt to offer accounts of justice that are both coherent and exhaustive, theorists tend to disregard or glance over areas of agreement in favour of emphasizing features of their preferred theory which distinguishes it from, and arguably recommends it over, alternative accounts of justice. At the other extreme, aside from the essential and constructive role that critical evaluations often play in improving and refining theoretical accounts, theoretical objections are frequently elaborated at a level of abstraction that would not translate into practical differences in the implementation of a theory when real-world constraints, such as reasonable limits to our access to information, have been incorporated. Consequently, the extent of disagreement between some thinkers seems greater and more crippling than it needs to be, and at first glance the field of study appears to be one of overwhelming discord instead of a slow but steady progression towards a largely shared conception of what social justice requires<sup>2</sup>.

Given the significant increase in the quantity and variety of theoretical approaches within political philosophy, it is surprising that the focus still predominantly falls on offering or critically assessing comprehensive substantive theories, while remarkably little attention is given to methodology and the effect that the chosen approach has on the nature, accuracy and relevancy of the proffered theory. The purpose of this opening chapter, accordingly, is to explore how we think about social justice, and, more specifically, to examine the effect that different theoretical approaches to social justice has, both on the nature of the conclusions we reach and for their applicability to real-world scenarios. This chapter will be dedicated to the comparison and evaluation of three different kinds of approaches to theorising about social justice. The claim is not that all theories of justice can be neatly divided into these three categories – there will always be a degree of overlap, and some theorists will combine features from more than one approach – but rather that an attentiveness to the kind of approach that is favoured can be informative in itself, as it tends to greatly influence the nature and outcome of the debate. The objective is to indicate that the type of approach a theorist chooses when attempting to formulate a theory of justice, or to engage with an issue in the context of social justice, significantly influences the range and character of his arguments, conclusions and recommendations. Accordingly, it is

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<sup>2</sup> By this I do not mean to imply that there will ever be perfect agreement on the nature and claims of social justice, but simply that the general evolution has been characterised by numerous concessions and acknowledgements of the merits of other theories, instead of direct opposition, as often appears to be the case within the context of narrowly focused and abstract critical discussions.

essential that political theorists and philosophers pay careful attention to the effects their choice of approach has on the scope, applicability and practical feasibility of their theoretical contributions to issues concerning social justice. The final result is the conviction that the comparative approach, which focuses on addressing and rectifying manifest injustices in a society by comparing its institutional arrangements and social realizations with that of actual societies or societies that could feasibly emerge, is the most useful and worthwhile approach to the advancement of social justice. The rest of this study applies the insights developed in this chapter to the moral assessment of the practice of economic inheritance, because it can be identified as a manifestly unjust practice on the basis of its inconsistency with acceptable justifications of private property ownership and the moral undesirability of its social realizations, and consequently a proposal for the reform of the practice of economic inheritance is offered.

### **1. Considering Theoretical Approaches to Social Justice**

The idea of considering the influence of particular approaches on the nature and content of a given theory of social justice occurred to me while I was reading Amartya Sen's new book, *The Idea of Justice*, in which he draws a distinction between two possible approaches to social justice, which he labels 'transcendental idealism' and 'realization-focused comparison' respectively (2009: 7). As the 'transcendental idealism' approach roughly corresponds to the well-known categorization of some theories as constituting 'contractarian' approaches to social justice, while the 'realization-focused comparison' shares its concern for directly identifying and addressing injustices with works such as Judith Sklar's *The Faces of Injustice* (1990), I will retain these categories under the broader headings of Contractarianism and Comparative Justice. I have, however, added a third category for the evaluation of those theories that aim to base their accounts of social justice on the beliefs and values embedded in existing social practices and norms, because this branch of enquiry has grown in prominence as an alternative approach in recent years. This third branch, of which Michael Walzer's *Spheres of Justice* (1983) is arguably the most well-known example, can best be described as embodying a descriptive-normative approach to justice, as it draws extensively on the ideas and values inherent in established beliefs and practices to offer a pluralistic account of justice and distributive criteria. It relies heavily on history and anthropology, and accordingly is highly relativist in nature. David Miller's *Principles of Social Justice* (1999) and

Nicholas Rescher's *Fairness: Theory and Practice of Distributive Justice* (2002) will also be mentioned under this heading.

The rest of this chapter will thus be dedicated to the discussion and evaluation of these three different approaches to social justice, before a detailed motivation is offered for why the theoretical accounts aimed at directly identifying and addressing specific injustices, as is illustrated throughout the rest of this study in relation to the practice of economic inheritance, is preferable and has the most real-world relevance. Contractarianism will be examined first and most extensively, because it has been the dominant approach to justice within political philosophy ever since Rawls' seminal work, *A Theory of Justice* (1971), first breathed new life into the 'social contract' tradition. Another reason why contractarianism serves as a good starting point in this discussion is the fact that the other two approaches largely developed in response to the perceived shortcomings of hypothetical contract theories. The descriptive-normative approach, which regards justice as highly context-dependent, questions the *validity* of hypothetical contractarianism; while the realization-focused comparison approach, aimed at directly identifying and rectifying instances of manifest injustice, questions both the *adequacy* and *usefulness* of the contractarian approach.

### 1.1. Contractarianism

Contractarianism refers to a prominent tradition in political philosophy which uses the device of a social contract to explain the legitimate content and moral principles of government. The idea of using the social contract to explain the origin of government or to justify a specific form of political organisation is one of the most prominent and enduring features of political philosophy. While aspects of social contract arguments "can be traced to well before the conventional identification of their founding in mid-seventeenth century English political thought" (Shapiro, 2003: 109), the contractarian approach first gained prominence through the works of philosophers such as Hobbes, Locke and Rousseau, who all endeavoured to give their account of what constitute just social and political arrangements through reference to a 'social contract' that delineates the rights of individuals and stipulates the kind of political institutions they would or should agree to within the state of nature. Contemporary philosophical discussions mainly draw on this tradition in the form of its twentieth century counterpart, which can be dated back to Rawls' revival of the social contract device in

the 1958 paper “Justice as Fairness” and later, in extended form, in *A Theory of Justice* (1971). The main difference between the classical and contemporary interpretation of the social contract device is that the former thinkers conceived of the social contract as an actual agreement, whether entered into explicitly or through tacit consent, while contemporary theorists regard the contract as merely hypothetical, designed in an attempt to confer legitimacy onto an envisioned system of government with reference to what would be consented to by rational individuals under certain ideally specified conditions.

The classical social contract was not a mechanism that enabled theorists to discover or reveal the ‘true’ or ‘real’ nature of the world or of the origins of social cooperation, whatever they might have believed themselves, but rather a device they used in the hope of persuading their audience of the merits of their arguments. The kind of society that a given theorist argued should arise as a result of the social contract heavily depended on the original intention and life outlook of the theorist in question. The characteristics attributed to the original ‘state of nature’, and the dominant urges and inclinations ascribed to human nature, notably influence the theorist’s account of the legitimate nature of government. This can easily be illustrated in light of the greatly varying conclusions reached by prominent social contract theorists such as Hobbes, Locke and Rousseau, who all appealed to the state of nature as a baseline but each favoured a form of government that vastly differed from that proposed by the others. In *Leviathan*, Hobbes, who wanted to re-establish and defend the absolute power of the monarch, Charles II, after the outbreak of the British civil war, sketched the ‘state of nature’ as a situation of “war of all against all” and in which a person’s life was “solitary, poor, nasty, brutish, and short” (Hobbes, 1973: iii). Accordingly, Hobbes argued on practical grounds that the establishment of a powerful and undivided sovereign, in the form of an absolute monarch, was the only feasible ‘social contract’ under which a person could enjoy security of his person and life (Hobbes, 1973: 63 - 66). In contrast, Locke, who wanted to justify the progressive acquisition of property and wealth by the landowning classes, portrayed the process through which civil society became established as something amicable and desirable (Gough, 1976: xviii). Although at times somewhat ambiguous about the character of the state of nature, Locke leaned towards painting it in a more positive light. Locke therefore restricts the role of the state to the function of protecting individuals and their

possessions by deciding controversies and enforcing sentences, and insists that the legislative should be subjected to removal through majority vote (Locke, 1976: 3-13). In an attempt to oppose the doctrine of unlimited property as introduced by Locke, Rousseau favoured the establishment of a government in which greater equality could be achieved, and provided arguments for the justification of a limited amount of private property for everyone (Macpherson, 1978: 29). It is thus not surprising that Rousseau conceived of the 'noble savage' and correspondingly sketched the state of nature as a condition of perfect freedom, in which every person was at liberty to enjoy the fruits of the earth. To Rousseau, the introduction of private property is the cause of much misery and the impetus for slavery, because private property has corrupted human nature and made it impossible to return to the original and desirable condition of freedom. Subsequently, the best available option is to introduce a government based on the 'general will', as the individual can only remain free by obeying a law which he had imposed on himself (Rousseau, 1978: 30 - 36). The nature of these examples make it abundantly clear that the theory of each of these philosophers is constructed in such a way as to ensure that the most desirable solution to the envisioned problems inherent in the state of nature is always in keeping with their ideological position or agenda.

When the social contract tradition was revived in 1971 by John Rawls in an attempt to "offer an alternative systematic account of justice that is superior ... to the dominant utilitarianism of the tradition", it was "highly Kantian in nature" and it explicitly aimed to "generalize and carry to a higher level of abstraction the traditional concept of the social contract" (Rawls, 1999: xviii, 3). As Ian Shapiro argues in *The Moral Foundations of Politics*, the contemporary hypothetical version of the social contract developed in response to the major difficulties associated with the classical interpretation. Not only has a social contract never been enacted as the basis for the establishment of a political society on either an empirical or a normative level, but anthropologists were contesting the very notion of the 'pre-political man'. The "implication was that Aristotle had been right all along to insist that man is naturally a political animal" (Shapiro, 2003: 111). The possibility of convincingly referring to a genuine pre-political 'state of nature' as the logical starting point from which to explain and justify existing or envisioned forms of government and other social arrangements was thereby eliminated.

However, existing societies, which are marred by the presence of power inequalities and self-interested behaviour, also do not offer a satisfactory alternative initial situation of equality from which individuals can negotiate the appropriate terms of future cooperation. So, in order to provide the appropriate setting in which individuals can fairly decide on “the principles of justice for the basic structure of society”, Rawls envisioned the hypothetical ‘original position’ that had to be entered into behind a ‘veil of ignorance’, designed to strip people of their existing identities, interests, attributes and any awareness of their current positions in life, thereby giving them a degree of impartiality (1999: 10 – 11, 118). The explicit objective of the original position construct was “to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves” (Rawls, 1999: 16). By using a theoretical construct of an initial situation similar to traditional social contract theory’s ‘state of nature’, Rawls thus attempts to determine the principles of distribution which all rational people might agree is fair and acceptable. Rawls argues that individuals in the original position, who are unaware of their own situation or prospects, will choose according to the maximin rule, which dictates that they “adopt the alternative the worst outcome of which is superior to the worst outcome of the others” (1999: 132 - 133). In other words, individuals in the original position aim to “maximize the expectations of the least favoured position” (Rawls, 1999: 69). In addition, Rawls also introduces a ‘strains of commitment’ condition of finality, whereby an agreement is only valid if parties are “able to honor it under all relevant and foreseeable circumstances”, because this principle internalises a concern not to live in poverty or under conditions of severe hardship (1999: 153). Based on this, Rawls formulates two principles of justice for institutions, with the aim of giving both liberty and equality their due consideration:

First principle: Each person is to have an equal right to the most extensive total system of equal liberties compatible with a similar system of liberties for all.

Second principle: Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with



the just savings principle, and (b) attached to offices open to all under conditions of fair and equal opportunity.

These principles are ranked in lexical order, which means that liberty will always enjoy preference, and can only be restricted on the conditions that a “less extensive liberty” will strengthen “the total system of liberties shared by all” and that this “less than equal liberty” must be acceptable to those with the lesser liberty (Rawls, 1999: 266). In this way, a new tradition arose in which the hypothetical social contract is used to (1) describe the appropriate initial situation within which the agreements that arise could be considered as fair, and (2) give and defend an account of what the agreed principles of justice, i.e. the rules governing legitimate social institutions and structures, would be. According to this approach, systems of government are thus “legitimated in terms of the consent they would receive from rational persons in a suitably characterised position of free choice” (Gauthier, 1998: 23). Rawls felt that this “procedure of contract theories provides [...] a general analytic method for the comparative study of conceptions of justice” (1999: 105). His own theory of justice became greatly influential and marked the beginning of the hypothetical contractarian tradition that is still a dominant force within philosophical thinking about justice.

Rawls’ thorough exploration of many fundamental questions sparked debate and renewed intellectual interest in the question of social justice. His theory of justice has been hailed as the “most searching investigation of the notion of justice in modern times” and has been widely cited as the most significant work on this topic during the past century (Arrow, 1973: 245). From the time of its first publication, Rawls’ theory was met with many criticisms that challenged or elaborated specific aspects thereof in an attempt to refine understanding and work out the implications of certain ideas. Despite many critical essays that examine various points which are perceived as problematic within the broader framework, most scholars recognize the immense achievement inherent in explicating a thorough and deeply nuanced theory in such a consistent and systematic manner. Nevertheless, a growing number of thinkers have since questioned the validity or usefulness of the contractarian approach itself, and have proceeded to offer alternative understandings of, and approaches to, the subject of social justice. The rest of this section will be dedicated to a systematic discussion and appraisal of some of the most compelling criticisms against the contractarian

tradition. When a specific example is required to illustrate a point, I will resort to using *A Theory of Justice*, as it remains to be one of the most prominent and esteemed examples of a hypothetical contract theory. For the purpose of these discussions, I will assume a basic knowledge and understanding of the main tenants of Rawls's seminal theory of justice, as a fair and nuanced discussion of it is beyond the scope of this chapter and would detract from the focus of the main arguments. The general aim is to indicate the direction in which the tradition has evolved, and to elucidate why the claim that the contractarian tradition has served its purpose seems justified.

### *Feasibility, Redundancy and Non-Institutional Transgressions*

The first few lines of criticism against contractarianism discussed here draws heavily on those developed by Amartya Sen in his latest book, *The Idea of Justice*. Sen distinguishes between two approaches to justice, namely the *transcendental institutionalism* approach, as pursued for example by John Locke, Jean-Jacques Rousseau, Immanuel Kant and John Rawls; and the *realisation-focused comparison* approach, versions of which can be found in the work of Adam Smith, Mary Wollstonecraft, Karl Marx and John Stuart Mill, amongst others. According to Sen, *transcendental institutionalism*, which corresponds to the contractarian mode of thinking, narrowly concentrates on identifying ultimate perfect justice and the institutional structure that epitomizes it, whereas the *realisation-focused comparison* approach focuses on comparing the justness of the outcomes of actual or feasible societies in terms of the lives that people are able to lead in reality (2009: 5 – 8). Sen favours the latter approach and devotes much of his book to the examination of “realization-based comparisons that focus on the advancement or retreat of justice” (2009: 8). This approach will be evaluated in detail in section 1.3., so the discussion here will be limited to Sen's critique of contractarianism under his label of ‘transcendental institutionalism’.

Sen criticises ‘transcendental institutionalism’, i.e. contractarianism, on various grounds. For Sen, the most problematic feature of this approach is the excessive focus it places on the identification and description of perfect justice and on the characterisation of the institutional arrangements most capable of embodying this ideal. Sen's most severe criticism of this approach is that, by overwhelmingly

concentrating on the nature of ‘the just’, it often fails to develop criteria according to which possible practical social arrangements can be ranked relative to each other in terms of being more or less just (2009: 5 – 6). By predominantly concentrating on the depiction of ideal justice and perfect institutions, transcendental institutionalism usually fails to offer any insights on how to reduce injustice and advance justice in existing real world contexts through practical reasoning. This intense preoccupation with the characterisation of the perfectly just society is deeply troubling to Sen, because he questions the *feasibility* of ever reaching reasoned agreement on exact principles of justice, even under conditions of impartiality and unbiased scrutiny (2009: 9). People may share the same broad beliefs and ideals without ever being able to reach agreement on a single comprehensive theory of justice. This is particularly problematic in the context of contemporary contractarian theories, as they tend to operate on the basis of an accept-or-reject logic, whereby one either endorses all proposed principles and the exact weight attached to them, or reject the construct as a whole. Considering the complexity and depth of theoretical disputes and the prevalence of imperfections and mistakes in reality, it seems unlikely that a consensus will be reached on what constitutes a perfectly just institutional structure and how this arrangement could be successfully implemented on a practical level. As Sen argues,

if the diagnosis of perfectly just social arrangements is incurably problematic, then the entire strategy of transcendental institutionalism is deeply impaired, even if every conceivable alternative in the world were available (2009: 11).

Sen illustrates the improbability of unanimous agreement with reference to Rawls’ theory of justice, by questioning whether one unique set of principles of justice would transpire under the conditions of the original position (2009: 11). Rawls himself gave up this claim in his later works<sup>3</sup>, and as Sen emphasizes, “once the claim to the uniqueness of the Rawlsian principles of justice is dropped [...], the institutional programme would clearly have serious indeterminacy” (2009: 12). If people are unable to agree on the unique set of foundational principles of a particular account of social justice, the entire institutional framework that is built on that foundation comes tumbling down.

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<sup>3</sup> See Rawls, J. 1993. *Political Liberalism*. New York: Columbia University Press, in particular pp. xvi – xxi. Rawls also discusses the difficulties of arriving at a unique set of principles in the original position in *Justice as Fairness: A Restatement* (2001), pp. 132 – 134.

Sen's second, related criticism is also directed at the hypothetical contractarian tradition's aim of identifying ideal societies "that cannot be transcended in terms of justice" (2009: 6). If we allow for a moment that somehow, despite the plurality of viewpoints, every individual magically agreed on endorsing a single conception of 'the perfectly just society', it is still highly questionable whether this consensus will prove to be helpful in guiding decisions between feasible real-world alternatives. In other words, this criticism concerns the *redundancy* of accounts of perfect, but unattainable, just social arrangements. As Sen formulates this, "if a theory of justice is to guide reasoned choice of policies, strategies or institutions, then the identification of fully just social arrangements is neither necessary nor sufficient" (2009: 15). An unachievable ideal theory of justice is not sufficient, because it cannot be chosen as an implementable strategy for the establishment of a just society; it is not necessary, because it does not offer a solution to the problem of comparative judgements, i.e. of choosing between the available viable alternatives. Sen uses the example of artwork to exemplify this line of reasoning: To illustrate, let's assume that the *Mona Lisa* is the ideal, most perfect picture in the world. Even if we are aware of this fact, it would be of no particular help to us if our task was to choose between a Dali and a Picasso, for example, between *The Persistence of Memory* and *Guernica*. This is because "there are different dimensions in which objects differ [...]; descriptive closeness is not necessarily a guide to valuational proximity" (Sen, 2009: 16). As Sen quips, a person who prefers red wine to white wine might still choose white wine over a mixture of the two, even though the latter is closer to red in an obvious descriptive sense, as well as in make-up and colour (ibid). Similarly, two real world institutional arrangements might approximate our ideal version to the same degree but in different respects, leaving us uncertain about the criteria we should use in determining which one is preferable in absolute terms. Upon reflection, it seems clear that the identification of the ultimate, but impossible, perfectly just social arrangement is of little use in guiding our choice between actual, imperfect but feasible alternatives.

Furthermore, because the focus of 'transcendental idealism' is primarily on creating the ideal institutions, not enough attention is given to the actual societies that will emerge from this arrangement (Sen, 2009: 10). The excessive emphasis on institutions is particularly problematic given that non-institutional factors, such as people's behaviour and interactions, are often reduced to mere assumptions or stipulative requirements, despite the fact that they greatly impact on outcomes in reality. As Sen points out, "the presence of remediable injustice may well be connected with

behavioural transgressions rather than institutional shortcomings” (2009: x). We have to be attentive to the outcomes that specific institutional arrangements generate and measure these realizations against the explicit and implicit aims of the chosen institutional structures. Ultimately, the concern of justice has to be with the actual lives people are able to lead, and not only with the institutional landscape they find themselves in. To be fair, Rawls is acutely aware of this limitation in his own theory, and argues that he assumes ‘perfect compliance’ because he believes that ideal theory is “the only basis for the systematic grasp of these more complex problems”, namely, the pressing and urgent problems of everyday life (1999: 8). Rawls’ theory thus explicitly assumes that every person will “act justly and do his part in upholding just institutions” (ibid). While I am greatly sympathetic to Rawls’ intentions, I have to contend with Sen that “the focus on actual lives in assessments of justice has many far-reaching implications for the nature and reach of the idea of justice” (2009: xi), and that the reduction of human behaviour to a mere assumption has to be regarded as placing a serious limitation on the usefulness and applicability of the principles of transcendental contractarian theories to real world scenarios.

To sum up: Sen’s criticisms of hypothetical contractarianism are, firstly, that the identification of unique principles of perfect justice might well be (a) *infeasible*, due to the plurality of defensible view points that could make reasoned agreement on particular principles of justice a permanent impossibility<sup>4</sup>; and (b) *redundant*, because the identification of an unachievable, ultimately just society and its institutional arrangements is of little help in guiding our choice between available but imperfect real-world options. Secondly, the overwhelming focus on identifying the ideal institutions is problematic, because individual behaviour and social interaction significantly affect the real-world outcomes, and accordingly also the actual lives that people are able to lead.

### *The Empirical Acceptability of Particular Principles of Justice*

Another popular line of criticism questions the empirical validity of claiming that the particular principles of justice advanced by a given contractarian theory would in fact

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<sup>4</sup> As mentioned earlier, this position is affirmed and elaborated on by Rawls himself in *Political Liberalism*; however, the prominence and influential nature of *A Theory of Justice* allows for a discussion and evaluation of the work on its own terms.

be chosen under the specified hypothetical conditions<sup>5</sup>. It asks whether the theorist's proposed consensus represents an accurate account of how and what people would choose in the envisioned context. The difficulty here is that the described hypothetical situation almost never pertains to reality, which makes it very challenging to 'disprove' the theory in practice. However, ultimately the appeal of any theory of justice has to lie in its persuasive force, i.e. in its ability to convince people of the accuracy of its account and the appropriateness of its conclusions. Rawls, for example, acknowledged in the preface to *A Theory of Justice* that "a convincing account of basic rights and liberties, and of their priority, was the first objective of justice as fairness" (1999: xii). Rawls also proposes that his conception "*best approximates our considered judgements of justice* and constitutes the most appropriate moral basis for a democratic society" (1999: xviii, my italics). Thus, if individuals do not believe any given theorist's arguments, his contractarian theory fails to achieve its aim, namely that of establishing its account of justice as the correct one. This point can once again be illustrated best through the use of Rawls' Theory of Justice as an example.

As stated earlier, Rawls uses the 'original position' to describe the appropriate initial status quo of equality which "insures that the fundamental agreements reached in it are fair" (1999: 11, 15, 17). People within the original position are assumed to be equal because of their similarity as moral persons and as creatures that have "a conception of their good" and are "capable of a sense of justice" (Rawls, 1999: 17). The veil of ignorance, behind which individuals enter into the original position, strips them of knowledge of their place in society, their social status, their "fortune in the distribution of natural assets and abilities", their "conception of the good" and their "special psychological abilities" (Rawls, 1999: 11). In other words, individuals know virtually nothing about their own identity, abilities, psychology, beliefs and situation

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<sup>5</sup> The idea of grounding normative conceptions of justice on empirical perceptions is obviously controversial. As Jon Elster remarked in this regard, "it would be a fundamental mistake to think that information about the proportion of people in a society who believe, say, in the moral wrongness of abortion is relevant in the construction of a theory of morality or justice" (1995: 92). But this is not what is being attempted here, and the discussion does not support the idea that justice depends on the perception of the majority. Rather, it is an attempt to illustrate that a contractarian theory of justice that appeals to the real-world normative decision-making process of individuals in support of the acceptability and validity of its conclusions needs to, on some level, reflect what the actual considered moral choices of individuals would look like, if it wishes to be considered as persuasive. Empirical studies of justice cannot and should not substitute for argument, but they "can shape the structure and focus of argument" and point us in the right direction when it comes to assessing the potential for the voluntary acceptance and practical implementation of the theory (Elster, 1995: 94).

in life. They are basically defined as rational, self-interested people who have to decide on the appropriate principles of justice under conditions that prevent them from tailoring the principles to their own advantage.

What would people in this situation choose as the principle according to which the distribution of income should be determined? As is well known, when it comes to the question of the distribution of economic advantage, Rawls argues that individuals in the original position will choose according to the maximin rule, which, as stated previously, holds that individuals in the original position aim to “maximize the expectations of the least favoured position” (Rawls, 1999: 69). Although it is not possible to precisely replicate the original position in practice, the underlying intention, namely that of enabling people to engage in rational deliberation in the absence of knowledge about their own attributes and fate, can be closely approximated. In an experiment by Frohlich, Oppenheimer and Eavy, individuals were given a chance to choose between four distributive principles, amidst ignorance of their own place in the corresponding income spectrum. While it is true that these individuals still knew their own characteristics and psychological dispositions, they were aware of the fact that none of these would influence their place in the reward schedule, which they knew would be randomly assigned after distributive principles have been agreed upon. In effect, knowing that your own physiological make-up and talents will have no predictable influence on your economic prospects is very similar to being ignorant of your talents altogether. This experiment thus represents a sincere effort to prevent deliberation from being heavily influenced by any participant’s personal inclinations or self-interested motives, as Rawls posits would happen when reproducing the original position in everyday life (1999: 127). As Frohlich et al. argue, “as an ethical argument, this [i.e. Rawls’s theory of justice] would only be compelling if - as the ideal were approximated empirically - the behavior of individuals came to approximate what was predicted in the ideal case” (1987: 609). The researchers accordingly took great care in simulating the requirements and conditions of the original position as closely as possible.

After recruiting undergraduate students who have never studied Rawls or other theories of distributive justice, the researchers ran the following experiment 44 times in 3 different locations:

Subjects read a text introducing them to four of the distributive principles that Rawls required to be considered in the original position: (1) the Rawlsian principle of maximizing the floor; (2) the principle of maximizing the average; (3) the principle of maximizing the average with a floor constraint; and (4) the principle of maximizing the average with a range constraint. After a short definition of each principle, subjects were asked to rank them from most to least preferred and to indicate their confidence in this ranking. Subjects then read a text which described how each principle could lead to different income distributions being selected as [...] the most preferred. To illustrate, income distributions were included that, implicitly, invoked some of the trade-offs which might result from choosing one principle rather than another. (Frohlich et al, 1987: 612).

Subsequently, participating students were tested to make sure that each of them had a thorough grasp of the various distributive principles. They were then asked to rank the distributive principles again. The students were then randomly assigned to a position within the income distribution that corresponds to their chosen distributive principle, and accordingly paid *pro rata* (Frohlich et al., 1987: 612 – 613). This phase of the experiment was followed by another during which students were divided into groups, tasked with the aim of discussing the principles of justice and attempting to reach unanimous agreement on a single distributive principle. This second phase corresponds to Rawls idea that the principles of justice should be decided through a process of deliberation and reasoned agreement.

The results of these experiments were quite striking, particularly because “*no group ever selected maximizing the floor as their preferred principle*”, which is what choice according to Rawls’ maximin rule would require (Frohlich et al., 1987: 617). Out of a possible total of 220, this principle had the lowest number of first-place rankings (N = 9) and the highest number of last-place rankings (N = 106)<sup>6</sup>. Apart from the impressive fact that all groups managed to reach a consensus, the overwhelming popularity of the principle of maximizing the average income subject to some floor constraint – what Rawls refers to as the “intuitionistic” principle – was the most notable finding (Rawls, 1999: 32). It was the first choice of individual rankings in two-thirds of the cases and chosen by over 75 percent of the groups (Frohlich et al.,

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<sup>6</sup> A study by Menachem Yaari and Maya Bar-Hillel also found that subjects had an aversion to both utilitarianism’s lack of compassion and the difference principle’s potential to necessitate wastefulness (see ‘On Dividing Justly’ in *Social Choice and Welfare*. 1(1984): 1 – 14).



1987: 617). Interestingly enough, this principle also satisfies Rawls 'strains of commitment' condition of finality, whereby an agreement is only valid if parties are "able to honor it under all relevant and foreseeable circumstances", because this principle internalises the concern not to live in poverty or under conditions of severe hardship (1999: 153). In another variation of the experiment, Frohlich and Oppenheimer also show that people continue to affirm their chosen principle after its practical effects became apparent (1990: 473).

It may be possible to argue that the simulated conditions of the experiment did not satisfactorily fulfil the requirements of the original position, but it is important to remember that the acceptability of Rawls' choice of principles ultimately rests on the persuasive force of his arguments. One possibility is to object that the experiment "do not place people in a real situation of risk", but in this case it would be difficult to explain "the strong preference for having a floor constraint as opposed to simply maximising the average income" (Miller, 1992: 580):

It appears that the experiments did in fact succeed in inducing the relatively conservative disposition that Rawls thinks appropriate to the making of choices of this sort, but that this expressed itself in support for an income floor rather than the difference principle (ibid).

The veil of ignorance and the original position remain hypothetical constructs designed to compel us to endorse Rawls' conclusion of what constitutes the principles of justice as fairness. If people are neither inclined to choose the maximin option in a context that is the closest viable approximation of the original position, nor convinced by the theoretical arguments in support of this choice, there is no reason to believe that Rawls' principles of justice as fairness will ever be accepted. It is possible that Rawls was simply wrong in dismissing desert as a major criterion for income distribution, as a wide range of studies suggest that popular opinion "gives a central place to desert in thinking about justice"<sup>7</sup> (Miller, 1992: 590). Individuals balance a concern for the poor with a "sensitivity to the need for incentives to maintain productivity" in considerations about fair principles for distributive justice (Frohlich & Oppenheimer, 1990: 474). This may be due to the fact that people believe that

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<sup>7</sup> The popular appeal of the notion of desert and the potential role it has to play in the context of social justice will be discussed in Chapter 2.

rewarding those who deserve it is itself also a matter of justice, both because they feel that individuals' efforts are intrinsically valuable and because the productive use of individuals' talents contribute to the wellbeing of society as a whole.

Despite the fact that the above criticisms apply specifically to Rawls' version of the hypothetical contract, it nevertheless clearly illustrates the significant challenge to the contractarian tradition's aim of finding unanimous consensus on a single basic principle of distribution. Although hypothetical social contract arguments "are exercised in ideal theory", the aspiration in the end is to "produce tangible payoffs for arguments about politics in the real world" (Shapiro, 2003: 115). The tremendous empirical support for maximizing the average income subject to a floor constraint seems to indicate that individuals recognise and employ several different criteria of distribution, which means that a pluralistic account of distributive justice may well be the democratically favoured approach, and that the prospect of consensus on particular ideal principles and comprehensive theories of justice remains to be a far-fetched dream. On a more positive and hopeful note, the widespread popular support for truncated utilitarianism indicates that achieving broad consensus on some elements of social justice, such as balancing a concern for need-satisfaction with incentive considerations and the principle of desert, remains a real possibility.

*From Rational to Reasonable; From Self-Interested to Agreeable*

The final segment of the critical discussion of contractarianism seriously considers the question of whether the hypothetical social contract still has an important or irreplaceable role to play within political philosophy. Sen's criticism made it clear that consensus on unique principles of justice may be infeasible, given the plurality of view points; and that the overwhelming focus on the identification of ideal but unattainable institutions may well be both redundant, because it does not guide our choice between practical alternatives, and worrying, because it neglects to give adequate consideration to social realizations. Empirical evidence seems to indicate that individuals acknowledge multiple criteria of distribution, and overwhelmingly favour a pluralistic approach that intuitively weighs and balances different concerns over the choice of unique principles of justice. Given the severity and reach of these criticisms, it seems reasonable to enquire whether the construct of the hypothetical

social contract still performs some functions that cannot be fulfilled by another theoretical approach to justice. My contention is that this question can best be answered with reference to the recent movement away from the assumption that individuals are motivated by pure rationality and unchecked self-interest and towards motives of reasonability and agreement within contractarian accounts of social justice. Throughout this section, I will selectively draw from insights developed by Paul Kelly in two articles of his, respectively entitled “Contractarian social justice: An overview of some contemporary debates” (1998) and “Justifying ‘justice’ – Contractarianism, communitarianism and the foundations of contemporary liberalism” (2005).

Rawls’ specification that the principles he suggests are the ones that would be chosen by *rational, self-interested* persons in an initial position of equality gave rise to much criticism, notably also in the form of questioning why rational, self-interested persons would be willing to enter behind the veil of ignorance to begin with (1999: 10, 14). It can be seen as a question of ‘motivation’: “why should real people in full knowledge of their identities acknowledge the purchase of such a radically abstract moral identity and therefore acknowledge whatever principles are chosen behind the ‘veil of ignorance’?” (Kelly, 2005: 232). On a superficial level, this criticism can easily be circumvented, because the aim of Rawls’ theory is precisely to describe the principles of justice that people *would* choose in *an initial situation of equality*. The impetus for entering behind the imagined veil of ignorance is thus implicit in the aim of deciding on principles for cooperation which are justifiable from a fair and impartial moral perspective, and the hypothetical construct of the original position simply attempts to illustrate the “appropriate initial status quo” (Rawls, 1999: 11). However, at a deeper level, the issue at stake is really whether there is a good justification for the prioritization of impartial over personal concerns. For communitarians like Sandel, there is an unbridgeable gap between the abstracted person in the original position and the real individual whose moral stance should, supposedly, be influenced and shaped by the contractual agreements that this unencumbered, unrecognizable person entered into behind the veil of ignorance. The original position “rules out the possibility of ... constitutive ends” by forcing a distinction between the values a person *has* and the person she *is* (Sandel, 1984: 86). According to these communitarians, our beliefs, values, and relationships make us who we are, and decisions made in the absence of knowledge regarding these important features of ourselves cannot be endorsed in

good faith. The device of the hypothetical contract does not by itself offer any persuasive incentive to individuals, who are not already inclined to adopt the impartial perspective, to assume this stance.

In an effort to overcome this communitarian criticism, David Gauthier attempts to formulate a hypothetical mutual advantage theory in which “*real*, determinate individuals” are the parties to the agreement (1986: 9). In *Morals by Agreement*, Gauthier offers a contractarian rationale for moral action which “seek[s] to forge a link between the rationality of individual maximization and the morality of impartial constraint” (1986: 20). As Gauthier regards the “inability to show the rationality of compliance” as the weakness of traditional contractarian theory, he aims to give an account of moral behaviour that would be endorsed by rational, self-interested persons (1986: 15). The logic of this mutual advantage theory accordingly requires that entering into the hypothetical contract must be advantageous to every party in order to make agreement possible (Moore, 2005: 213). Only individuals who can make a positive contribution to the interests of others will be included in cooperative interaction and, consequently, only those who “contribute to the production of the benefits of social cooperation” will be able to make claims of justice on the contributors (Moore, 2005: 222, 213). As Gauthier states, morals by agreement “denies any place to rational constraint, and so to morality, outside the context of mutual benefit” (1986: 16). Social justice, in this context, can be seen as strictly a matter of approximating proportional reciprocity.

The undesirable and morally unacceptable implications of Gauthier’s theory are immediately clear. The only ‘moral’ principles that can be derived from Gauthier’s premise of self-interested rationality would probably exclude poor, disabled and destitute people from considerations of justice on the basis that they do not contribute enough to the product of social cooperation to make mutually advantageous interaction with them possible. This approach will validate a social context in which, as Gauthier colourfully explains,

the rich man may feast on caviar and champagne, while the poor woman starves at his gate. And she may not even take the crumbs from his table, if that would deprive him of his pleasure in feeding them to his birds (1986: 218).

For Gauthier, any presumption in favour of a claim on behalf of the woman would come from misleading ourselves into assuming that some relation exists between these two individuals (1986: 218). Given that Gauthier's moral principles have to be self-interestedly advantageous and can be present only under conditions of mutually beneficial cooperation, they "cannot generate duties to meet the needs of others or to rescue those in dire straits" (Moore, 2005: 14). Even in spite of the fact that Gauthier endorses several objectionable implications as part of the consequences of the theory, the mutual advantage contract nevertheless remains incapable of reconciling unchecked self-interest and impartial morality. In "Gauthier's contractarian morality", Margaret Moore points out that 'morals by agreement' runs into the well-known problems of (a) struggling to justify the removal of unequal starting positions for the purpose of the initial contractual bargaining process, and (b) encountering difficulties in explaining why participants would uphold their agreements if they could benefit from cheating (2005: 215). While Gauthier claims that his theory does "not assume any fundamental concern with impartiality" but only one that is "derivative from the benefits of agreement", his argument in favour of "constraining the initial bargaining position" so that no person would be worse off "than she would be in a non-social context of no interaction" is distinctly moral in nature (1986: 17). As Moore points out, "differential powers, in practice, in real-life bargains, translate into different points at which agreements—and compliance with agreements—become rational" (Moore, 2005: 222). There is thus no reason, based on pure self-interested rationality as propagated by Gauthier, why a rich and powerful individual should refrain from getting other individuals to enter into an agreement on disadvantageous terms through threat of hardship or force. These individuals may not comply voluntarily, but if they are nevertheless better off than they would be if they refused to accept, the idea of an agreement for mutual advantage still holds. Moore convincingly argues that Gauthier's aim to derive moral principles from the non-moral premise of self-interested rationality is compromised at crucial points, when his arguments depart from the assumptions of mutual benefit in an effort to attain acceptability from an impartial perspective (2005: 215). She concludes by suggesting that

...the principles of morality *cannot* be demonstrated to be self-interestedly rational: there is an unavoidable gap between reason and morality, between what

is acceptable from the standpoint of self-interested agents, who are not interested in the interests of others, and what is acceptable from the impartial standpoint (Moore, 2005: 216, my italics).

Self-interest may be “an unproblematic motive for human action”, but it is ill-equipped as a foundation for morality and social cooperation (Moore, 2005: 213). The difficulty in accommodating unconstrained self-interest within moral frameworks is clearly apparent in the complexity of the elaborate constructs that theorists have to create in an attempt to argue or define away some of its less desirable implications. As mentioned earlier, there are valid objections against the kind of rational choice decision-making Rawls attempts to elicit in the original position, specifically through reference to the maximin rule of the difference principle. Rawls seems to prefer an outcome in which people decide to maximize the prospects of the worst-off individual by adopting the maximin rule over the equally rational (but arguably less moral from Rawls’ perspective) choice of maximising one’s expected yield subject to a floor-constraint. Rawls tries to deter rational, payoff-maximizing risk-taking behaviour by making the stakes of the original agreement particularly high, through his insistence that the “agreement is final and made in perpetuity” (1999: 153). The implicit assumption is that individuals in the decision context of the original position are “almost exclusively concerned with the possibility that they may be the worst of” (Frohlich et al., 1987: 608). This is problematic, because, as discussed earlier, although individuals display a level of prudence in their decision-making, their average degree of risk-aversion is not nearly high enough to elicit widespread support for the difference principle. The issue at stake is that Rawls wants to obtain a specific outcome, namely the maximin solution which requires maximizing the prospects of the worst off (1999: 132 – 133), and he achieves this by *modifying* the risk-taking tendencies of the persons in the original position. Rawls “wants compliance to be the outcome of our sense of justice”, but by attempting to preclude the individuals in the original position from choosing a utility-based principle, such as maximizing average expected utility, through the incorporation of the ‘strains of commitment’ argument, Rawls restricts the decision possibilities in the original position through an *illegitimate* moral constraint (Kelly, 1998: 187 - 188). The justification of the maximin decision rule can only come from the fact that it is “the only way of producing the desired outcome”, and as such cannot be defended through reference to

the nature and requirements of the original position alone (Barry, 1995: 61). The ‘strains of commitment’ argument that Rawls offers in defence of the choice of the difference principle is extremely problematic, as Kelly eloquently explains, because

... it is not merely a modification to the psychology of the contractors, rather it is the incorporation of a moral principle that has the effect of making Rawls’ whole account of the ‘original position’ and choice behind the ‘veil of ignorance’ redundant. The real force of this criticism is that *the incorporation of a free standing moral test for the outcomes of the ‘original position’, the authority of which is derived external to the specification of the ‘original position’, does appear to make the whole contractarian device redundant* (1998: 188, my italics).

These observations bring us back to questioning the usefulness and suitability of the tendency of so many contractarian philosophers to, either implicitly or explicitly, insist or require that morality has to be grounded in rational self-interest. The idea of a contract seems to suggest “a process of self-interested bargaining”, but this in turn appears to imply that morality can be grounded in nothing more than the search for personal advantage (Scanlon, 1998: 5). In *What We Owe Each Other*, Scanlon initiates a shift away from this precarious base for morality by acknowledging the presence of an ‘agreement motive’, which assumes that parties, in addition to seeking a desirable outcome for themselves, are also “moved by the aim of finding principles that others, similarly motivated, could not reasonably reject” (1998: 5). On this account, an act is wrong “if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no-one could reasonably reject as a basis for informed, unforced general agreement” (Scanlon, 1998: 153). The advantage of Scanlon’s account is that it is a full knowledge contract aimed at determinate, real-world individuals, which means that it can avoid the communitarian critique of abstract and unencumbered persons, while still upholding formal equality by allowing everyone the opportunity to veto any unjustifiable imposition of burdens on themselves for the personal benefits of others (Kelly, 1998: 189).

Although Scanlon's theory is not intended as a theory of justice, but rather as an account of how to make moral judgments of right and wrong, the motivational basis he identifies can be incorporated into theoretical accounts of justice, as is done by Brian Barry in *Justice as Impartiality*. Barry, who conceives of his contract as political in nature, regards the aim of a theory of justice as providing the terms of reasonable social cooperation instead of espousing a complete morality. In addition to discarding the assumption of unbridled rationality, Barry avoids the difficulty of explaining why self-interested individuals would be willing to adopt the impartial perspective by assuming the existence of a Scanlonian 'agreement motive' (Kelly, 1998: 190). Barry presupposes "the existence of [...] the desire to live in a society whose members all freely accept its rules of justice and its major institutions" (1995: 164). The reason for "voluntarily constraining the pursuit of the good within the limits set by justice as impartiality" stems from the awareness that "it sets out the only terms upon which there is any hope of reaching agreement" (Barry, 1995: 164). In this way, Barry argues, a "direct connection" can be made between the demand for impartial rules and institutions, on the one hand, and the motivation that "people in real life have for observing the constraints imposed by impartial justice", on the other (1995: 165). The motivation to "accept the burdens of reasonable justification" partially originates in the recognition that the alternative, namely that of upholding rules and institution through threats and coercive practices, is greatly undesirable (Kelly, 1998: 190). The acceptability of Scanlon's account of moral wrong and Barry's theory of justice as impartiality accordingly depends on whether such an agreement motive exists. Scanlon argues that the "desire to be able to justify one's actions to others on grounds that they could not reasonably reject" is quite strong in most people, since they will "go to considerable lengths, involving quite heavy sacrifices", for the sake of avoiding admissions of guilt or the acknowledgement of the unjustifiability of their actions (1982: 116 -117). The predisposition of individuals to deny wrong-doing, and to defend themselves against allegations thereof, appears to support the contention that many people feel the need to justify their decisions and actions to themselves and others. As Kelly remarks in this context,

if such a motivation [to seek agreement on terms others could not reasonably reject] was wholly absent, then the theory would obviously collapse as no one would have a reason to accept it, but equally *there would be no reason for*



*individuals to be interested in issues of justice* either (Kelly, 1998: 190, my italics).

The serious engagement with questions of justice necessitates the existence of a human inclination to care about the interests of others, for example in the forms of a desire to limit unfair treatment and a concern to eliminate or ameliorate the pain and suffering of fellow human beings. This awareness repudiates the tendency of philosophers to endeavour to ground their moral theories in narrowly self-interested, rational choice; particularly because this premise has proven to lead to unattractive conclusions which take a lot of skilful manoeuvring and slight of hand to eradicate or overcome. Justice, by its very nature, requires “a shared willingness to modify our private demands in order to find a basis of justification that others also have reason to accept” (Scanlon, 1998: 5). Without this desire to find impartially acceptable rules, the outcome of any negotiations or bargaining process cannot be considered a matter of justice, but will simply be a reflection of the relative bargaining power of participating parties.

Finally, to return to the question of whether the hypothetical contract device and, by implication, the contractarian tradition itself still has a vital and irreplaceable function to fulfil within the sphere of political philosophy: The idea of a hypothetical social contract brings together “a distinctive moral position”, the defence of which “is ultimately provided by its articulation in a particular theory and its ability to expose and undermine rival views whilst withstanding internal criticism” (Kelly, 1998: 191). Even when the notions of strict rationality and narrow self-interest give way to the ideas of reasonability and the agreement motive, the helpfulness of the contractarian device as a construct capable of eliciting impartial, unbiased moral decision-making remains severely questionable. The assumptions built into the contract through the specifications of the character and inclinations of the participants, as well as the nature of the initial situation, can be shown to be much more important in determining the nature of the contractarian outcome than the values the philosophers explicitly attest to adhere to. To illustrate, even when we limit our focus to philosophers within the neo-Kantian tradition, who all assume that individuals within the initial choosing situation are primarily concerned with the preservation of individual autonomy, the range of outcomes arrived at from this premise remains

bewildering (Shapiro, 2003: 141). Nozick posits that the endorsement of the minimal state is the only justifiable outcome, Robert Paul Wolff concludes that individuals would favour anarchy, Dworkin argues for extensive health and social insurance, Harsanyi makes a case for utilitarianism, and Rawls contends that people would opt for the difference principle which promotes the best outcome for the worst-off. These differences are not necessary results revealed by the use of the contractarian method or based on the shared commitment to individual autonomy, but rather the consequences of the philosophers' "differing assumptions about human psychology and about how the social world operates causally" (ibid.). One cannot help but conclude that "the abstract commitments do considerably less work, and the controversial empirical ones do considerably more work, than theorists [...] are generally willing to acknowledge" (ibid.). When considering the diversity of positions and recommendations philosophers, who all start from a similar basic premise, manage to arrive at, it seems plausible, even likely, that we may never be able to convince all individuals to voluntarily accept the same comprehensive theory of justice. There is far too great a diversity of viewpoints, beliefs and vested interests for such a consensus to be attainable. The contractual device does not protect us from our biases or prevent subjective preferences from infiltrating the philosopher's account of justice. If anything, the construct serves to obscure controversial ideological assumptions by lending an air of fair and impartial process to the arguments and the outcome.

Ultimately, a sensible assessment seems to point to the conclusion that the contractarian tradition has served its purpose, and that moral philosophers may be better served by moving beyond the use of the contractarian device in their efforts to settle moral disputes. When examining the idea of the social contract carefully, it becomes clearly apparent that it is an extremely flexible tool that has "very few implications, and is used for all sorts of reasons, and generates quite contrary conclusions" (Boucher & Kelly, 2005: 2). Moreover, if individuals are not already inclined to adopt an impartial perspective, the device of the contract itself adds nothing in terms of persuasive force in compelling them to negotiate on these grounds (Boucher & Kelly, 2005: 9). Contractarian accounts of justice also potentially impede compromise and may make sensible assessments and discussions of specific problems more difficult, because they tend to entangle diverse issues closely together in a

comprehensive theory, which can then either be accepted or rejected in its entirety. In addition to this, the complexity and abstract nature of comprehensive contractarian accounts of justice make assessment of their real world feasibility, effects and the outcome they will generate incurably problematic.

It seems reasonable to argue that Scanlon's 'criteria for justification' for the assessment of specific issues will probably be more constructive in encouraging consensus and enabling greater real-world applicability for theoretical considerations. Scanlon's idea of basing moral agreement on the search for principles that others, similarly motivated, cannot reasonably reject, gives us a useful guideline according to which specific questions can be assessed on impartial grounds. In Section 1.3, I will elaborate on why this approach to justice may well prove to be more fruitful in the promotion of justice in the real world than the contractarian alternative. The next section, however, will be devoted to a short overview and appraisal of the interpretive, descriptive-normative theoretical approach to justice, which has gained prominence as an alternative to contractarian accounts of justice throughout the past few decades.

## 2.2. Extrapolating 'Justice' from Real World Values and Practices

The previous section presented an extensive critique of the appropriateness and usefulness of the contractarian approach for the promotion of social justice. In contrast, this section will give a brief overview and critical evaluation of the accounts of social justice of some of the most prominent philosophers from the 'descriptive-normative' tradition<sup>8</sup>. The aim is to illustrate the moral unacceptability of attempts to formulate theories of justice based on the interpretation of shared communal values, or on the claims established by existing social customs and institutions. The motivation for focusing on Michael Walzer's *Spheres of Justice* stems from the influential nature of the work within the tradition of 'interpretive' justice. David

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<sup>8</sup> This name is derived from Jon Elster's classification of theories of justice as falling into descriptive, normative or explanatory categories (1995:81). Walzer's interpretive approach combines the identification of socially held perceptions of justice with the more critical task of discovering and interpreting conflicting, repressed values to aid the establishment of defensible social meanings. *Spheres of Justice* can thus best be defined as blending the descriptive approach with a normative element.

Miller's *Principles of Social Justice* is commented on because it partially developed in response to, and as an attempt to overcome, perceived deficiencies in Walzer's account of justice. In addition, Nicholas Rescher's *Fairness: Theory and Practice of Distributive Justice* is evaluated because of its commitment to taking seriously the idea that the claims determined by convention, positive law and existing social practices determine the nature of justice, and not the other way around.

*The Interpretive Approach: Evaluating Walzer's 'Spheres of Justice'*

Michael Walzer is an important contemporary opponent of the still prevailing contractarian tradition and its distributive paradigm. Walzer's *Spheres of Justice*<sup>9</sup> attempts to give an account of what a "complex egalitarian society" that is "free from domination" should look like (1983: 17, xiii). For Walzer, domination is "always mediated by some set of goods", and accordingly the achievement of complex equality would require that social goods are distributed "for distinct and 'internal' reasons" derived from "our shared understandings" and conceptions of social goods and their meanings (1983: xv, xiv). The ideal of complex equality does not require the repression of individuals; the goal is rather to understand and control social goods on the basis of their "actual, concrete, positive, and particular" meaning (Walzer, 1983: xiii, 18). Respecting social meanings implies that distribution cannot be coordinated and that the diversity of distributive criteria must reflect the diversity of social goods (Walzer, 1983: xv, 18). In a complex egalitarian society, goods will be held monopolistically, as Walzer claim they will always be in the absence of perpetual state intervention, but ordinary men and women will maintain "the resistance to convertibility" of goods, which will prevent small inequalities from being multiplied through the conversion process (1983: 17). The conversion of one good into another "when there is no intrinsic connection between the two" is a form of tyranny, because it constitutes the invasion of a sphere "where another company of men and women properly rules" (Walzer, 1983: 19). Based on these considerations, the open-ended distribution principle that Walzer arrived at requires that

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<sup>9</sup> Although a brief account of the main tenants of Walzer's theory is given here, basic knowledge of *Spheres of Justice* is assumed for the purpose of this discussion.

[n]o social good  $x$  should be distributed to men and woman who possess some other good  $y$  merely because they possess  $y$  and without regard to the meaning of  $x$  (1983: 20).

The task of the philosopher, accordingly, is “to interpret to one’s fellow citizens the world of meanings that we share” so that the way to distributive justice, which Walzer equates to “the art of differentiation”, can be found (1983: xiv, 19). This is done without any appeal to foundational commitments, by drawing on examples from history and anthropology instead of economics and psychology (Walzer, 1983: xviii). Based on the requirements of the open-ended principle and Walzer’s interpretation of social meanings, the three criteria of free exchange, desert, and need arise as distributive standards which respectively apply to different spheres (1983: 21).

Probably the most severe criticism of the ‘interpretive’ approach to justice concerns a feature on which Walzer’s theory prides itself, namely that it is “radically particularist” and relativist in its focus (1983: xiv). A given society is regarded as just when its “substantive life is lived [...] in a way faithful to the shared understandings of its members” (Walzer, 1983: 313). According to Walzer, there is no way of comparing or ranking societies in terms of justice or with reference to their understandings of social goods. Doing justice to actual people simply requires that we respect “their particular creations” (ibid.). However, it is severely questionable whether inherited social norms and traditional customs can be regarded as the personal and particular creations of existing individuals, and, even if they could, whether this counts as a reason to accept them unquestioningly. Three of the most prominent difficulties associated with the understanding of justice as the adherence to shared, common meanings are, firstly, that the reality of genuinely pluralistic societies calls into question the accuracy of any reference to inclusively shared traditions and understandings; secondly, that the problems of psychological ‘framing’ makes the possibility of detecting fixed meanings dubious, and thirdly, that the presence of inherently unequal power relationships in most societies presents a significant obstacle to the interpretation of oppressive and exploitive practices as constituting truly and freely ‘shared’ understandings.

The pluralistic nature of most modern nation states, which include a multiplicity of diverse communities within their borders, seriously undermines the claim that a single, aligned conception of the meanings of various social goods can emerge as a real possibility. The idea of isolated, constitutive communities, in which all members share identical or greatly similar conceptions of social goods, cannot be satisfactorily reconciled with our current political structures (Kelly, 2005: 233). In this way, pluralism challenges the very essence of the notion of a ‘common substantive life’ that is based on ‘shared understandings’ of all members. In addition to the reality of pluralistic societies, the effort to determine what individuals understand to be the nature of a social good will be particularly susceptible to the ‘framing problem’, whereby the phrasing of the question can prompt vastly different responses to substantially equivalent content from the same individual within the same context (Elster, 1995: 87). The fact that “different conceptions of justice can be elicited by describing the same allocative issue in superficially different terms” casts severe doubt on the robustness and bearing of ‘common understandings’ (ibid.). For example, while Americans generally oppose direct wage subsidies for labourers in ailing industries, they support the provision of cheap energy to industries for the purpose of maintaining employment, despite the fact that “the two phenomena are essentially equivalent” (ibid.). Clearly, different responses to the same issue can be elicited by placing the emphasis on superficially different features thereof. The negative impact of the framing effect may well prove to be particularly acute in cases where there are disagreements about the meaning of a social good, especially as the more powerful group can use its access to media to manipulate perceptions regarding the issue in favour of its preferred outcome<sup>10</sup>. Finally, the existence of inherent unequal power relationships, which both inform and are reflected in everyday beliefs and practices, constitutes a good reason to “be especially wary of the deliverance of commonsense morality where we may most expect them to express a bias arising from an inequality of power” (Barry, 1995: 10). Walzer himself acknowledges that, in societies where social meanings are “integrated and hierarchical”, justice will “come to the aid of inequality” (1983: 313). In this way, Walzer’s approach is biased in favour of the existing status quo, and will frequently serve to “reinforce rather than

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<sup>10</sup> A persuasive example of an actual incidence in which a political issue, namely that of estate taxes on the rich, was carefully framed through lobbying and manipulative advertising to change the popular perception thereof, will be discussed in Chapter 3.

challenge the social divisions between the rich and poor” (Bellamy, 2005: 180). In the absence of appealing to universal values, a notion that Walzer rejects outright, his theory offers no satisfactory way to criticise unfair or harmful existing social practices.

David Miller defends Walzer against these charges by contending that criticism of existing practices and institutions remains possible, because the interpreter can act as a “connected critic” who attacks by pointing out divergences between the professed ethical code of the society and actual behaviour (1995: 3). However, this still leaves the theory entirely vulnerable to the charge of facilitating social oppression by reinforcing the status quo. Miller’s ‘connected critic’ can only act on *perceived* divergences between social norms and practices, but remains impotent in the face of the successful subjugation of those who are not accorded a voice within the society. The fate of lower caste members in some Indian communities, as well as the position of women in Muslim societies, are only two examples of questionable social hierarchies that linger beyond reproach on Walzer’s account of justice, because the professed norms are not in conflict with behaviour, but actually support and reinforce it. The one option within Walzer’s framework of justice that remains open to any prospective critic of these societies is to search for “repressed” principles or underlying values that contradict the accepted social meanings and to interpret them for the society (Walzer, 1983: 313). But when looking at Walzer’s own assessment of the situation in contemporary Iran, the difficulty of interpreting such principles in a convincing and defensible manner becomes evident. As a religious republic, Iran draws virtually no separation between mosque and state, and accordingly effective citizenship is denied to non-Muslim minorities (Walzer, 1995: 288). Walzer argues that, on his interpretation, justice requires that the Islamic republic should give full autonomy to all other religious communities. He bases this recommendation on the principle of reciprocity, which, although rejected by Muslim fundamentalists, Walzer maintains “is not *a wholly external idea*” (1995: 289, my italics). The contentious point here is that, even if Walzer is right in claiming that the notion of reciprocity is not completely foreign to this society, reciprocity definitely does not qualify as one of *their* constitutive ‘social meanings’, and the impetus for acting on it can only come from external, and therefore non-local, values. The only reason for accepting a value that is in conflict with the shared ideas of the community must come from the

motivation that this value represents what is 'right' – a claim that can only be made by admitting the existence of universal norms. Walzer's insistence that every account of justice must necessarily be local and particularistic obviously precludes this possibility, and Walzer is left no recourse other than to simply offer his interpretation of justice so that it can be entered into comparison, and either accepted or rejected, along with all other proffered accounts.

The same sense of uneasiness accompanies Walzer's discussion of the Indian caste system, which he believes serves as "a test for theoretical coherence" for him (1983: 313). While Walzer maintains that one can describe "a caste system that meets (internal) standards of justice", which, within the framework of *Spheres*, is exactly equivalent to a *just caste system*, his description of an outside visitor's attempt to persuade the population of the incorrectness of their social arrangement as "an entirely respectable activity" betrays the spirit of his parochialism (Walzer, 1983: 314 - 315). Given that justice is "rooted in the distinct understandings of places, honors, jobs [...] that constitute a shared life", that "there are no external or universal principals that can replace it", and that "to override those understandings is (always) to act unjustly", by Walzer's own logic the visitor's attempt should not only be considered to be misguided, but also out rightly wrong and unjust (*ibid.*). Walzer's use of terms such as 'argue', 'convince' and 'false doctrine' in his portrayal of the visitor's endeavour has no place within his account of justice, because it introduces the notion of cross-cultural commensurability that he otherwise so strongly rejects (Elster, 1995: 92).

The difficulties associated with correctly interpreting the 'social meanings' of goods, which refers both to the literal meaning of the goods and the distributive criteria attached to them, are not limited to attempts to give accurate accounts of justice for other cultures. In the case of liberal democratic America, Walzer argues that "workers' control of companies and factories" would be "the appropriate arrangements in our society", as a coherent account of Americans' beliefs about political power would allegedly translate into support for industrial democracy



(Walzer, 1983: 318; Miller, 1995: 9)<sup>11</sup>. Even if we find this interpretation desirable, it does not appear to be reflected in anti-socialist political rhetoric and the widespread commitment to the sanctity of private property. Barry's tongue-in-cheek rejoinder to interpretive accounts of justice seems quite apt in this context:

Claims to derive conclusions from the allegedly shared values of one's society are always tendentious. If they were not, it would have to be regarded as a remarkable coincidence that the shared values a political philosopher says he has detected always happen to lead to conclusions he already supports (1995: 5).

As soon as the nature of shared meanings or understandings becomes a matter of subjective interpretation, the door is opened for a vast range of possible accounts, and there is little to prevent interpretations from becoming increasingly divergent and arbitrary. Walzer accepts this implication, and even maintains that there is no "neat procedure for generating or testing different accounts" (1983: 21). While Miller argues that requirements of consistency and coherency should contribute to the assessment of different interpretations of social meanings, Walzer contends that "the ultimate test of an interpretation must be its capacity to persuade participants in the culture at large that it gives the best 'reading' of their beliefs" (Miller, 2003: 6 – 8; Walzer, 1988: 28). So, in effect, Walzer's best criterion for the evaluation of different accounts of social meanings basically stipulate that the right interpretation is the one that will be favoured by the majority of the members of the culture – an assessment rule that leads us straight back to the objection that *Spheres of Justice* merely reinforces the status quo. Based on careful considerations, it would be fair to assert that a major shortcoming of Walzer's account of justice is that it "lacks a sufficiently critical perspective on the operation of power among social groups", and consequently regularly denies the possibility of reforming unfair social practices to those most in need of change (O'Neill, 1997: 8).

Subsequent to the publication of *Spheres of Justice*, Walzer attempted to address these difficulties by modifying his stance on universal values. Instead of resolutely insisting

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<sup>11</sup> Even something as basic as Walzer's tendency to appeal to 'equal citizenship' in cases where the distributive principle for social goods are in dispute "cannot be defended as self-evidently consistent with prevailing beliefs". For the complete argument see Miller, D. 1995. 'Introduction' in *Pluralism, Justice, and Equality*. pp. 12 – 16.

that justice only consists in adhering to local and particular social meanings, Walzer granted that justice in the form of “a kind of minimal and universal moral code”, which includes prohibitions against murder, deceit and extreme cruelty, runs across all cultures (1988: 22)<sup>12</sup>. It is hard to see how this view can be made compatible with the general relativist stance of *Spheres*. Consider, for example, the validity of allowing the prohibition against murder to count as an exception to the rule of socially-determined justice on the basis that it is understood to be universally accepted. If it is not empirically accurate that every type of murder is condemned in all societies, then there are no legitimate grounds for acknowledging the demands of this ‘external’ moral code, other than appealing to *objective* universal moral values. The widespread practice of honour killings in countries such as Pakistan, Jordan, India, Syria and Morocco is in direct conflict with the endorsement of the prohibition against murder as a universal taboo. The practice of honour killing “goes across cultures and [...] religions” and is estimated to be the cause of the death of about five thousand women annually (Mayell, 2002). Not only are honour killings socially accepted in certain societies, they are also sometimes even explicitly legally permitted, as for example in Jordan, where part of article 340 of the Penal Code states that “he who discovers his wife or one of his female relatives committing adultery and kills, wounds, or injures one of them, is exempted from any penalty” (Altstein & Simon, 2003: 11). Honour killings form an unambiguous part of the ‘social meanings’ of a number of cultures, with men proudly publicising their ‘righteous’ behaviour and entire village communities uniting in condoning these acts (Denyer, 2008). Regardless of how wrong and despicable we may think these killings are, on Walzer’s criteria they clearly constitute part of the ‘social meanings’ inherent in these cultures, and should not be judged according to principles from external value systems. The appeal to a ‘minimal and universal moral code’ that is relevant to all societies contradicts and undermines the foundational principle of Walzer’s entire project, because it shows that justice is not relative and cannot be taken to be merely a function of traditional customs and social preference. The implications of Walzer’s

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<sup>12</sup> Even in *Spheres of Justice* Walzer argued that certain conceptions of social goods are reiterated in many, and perhaps even all, human societies, but that this is “an empirical matter” which cannot be determined by philosophical argument (see footnote, p.314). Clearly, the universal moral code he subsequently alludes to does not satisfy this empirical criterion.

endorsement of local and particular values as the ultimate arbiter of justice are too crass and morally objectionable to be considered an acceptable approach to justice<sup>13</sup>.

Ultimately, Walzer's theory leaves us with an unsatisfactory choice between two rather undesirable outcomes: Either we accept the 'meanings' of goods as defined by embedded values, established beliefs and existing practices and institutions, however cruel or unfair they may be; or we choose among available interpretations of repressed or underlying principles the portrayal of social meanings which most accurately reflect our society – a process that will most likely either lead to value claims which are highly controversial and contested, or simply once again lead us back to re-affirmations of the status quo. There are no reasons to believe that existing understandings, customs and institutions are necessarily just – except potentially in a strictly definitional sense, whereby their laws and customs are merely defined as constituting 'justice' – and the prevalence of oppression and exploitation in actual societies caution against the presumption in favour of harmoniously shared social understandings. Walzer's own tendency to lapse into arguments which implicitly depend on the existence of universal moral values for their validity during his own assessment of justice in particular societies noticeably reveals the uneasy, problematic and ultimately insufferable nature of local, relativistic accounts of justice. Even from a conceptual point of view, the notions of different spheres of justice and the shared meanings of social goods do not serve as useful theoretical tools in determining neat and amicable answers to the question of what social justice means or requires in a given society.

*The Descriptive Approach: Rescher's Realist Conception of Fairness*

Another thinker who follows the descriptive-normative approach is Nicholas Rescher, who argues in his book, *Fairness: Theory and Practice of Distributive Justice*, that fairness consists in adhering to legitimate claims based on existing social practices, positive law, and conventions (2002: 6, 16). Rescher's descriptive approach to justice

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<sup>13</sup> There are many other problematic facets to Walzer's theory, most notably the difficulty of determining what counts as legitimate spheres and social meanings, as well as understanding what is gained by conceiving of social justice in this manner, but they are not essential to this discussion and have been explored extensively elsewhere (See, for example, Waldron, J. 1995. 'Money and Complex Equality', and Bellamy, R. 2005. "Justice in the Community: Walzer on pluralism, equality and democracy").

differs from the 'interpretive' method of Walzer in the sense that he does not attempt to discover underlying principles or meanings, but regards the claims a person have as "substantially a matter of social reality" (2002: 1). Justice, understood as strict fairness, resides in "allocating shares in mathematical proportion with claims" based on the legal structure and customs of the society concerned (ibid.). For Rescher, the question as to whether the socially established practices regarding claims are fair is *illegitimate*, because "claims determine fairness and not the other way around" (2002: 6). This stems directly from his belief that local tradition, rather than "theoretical general principles of ethics" or universal abstract justice, is the normative basis on which notions of desert and entitlement should be assessed (Rescher, 2002: 4, 6). Not even the historical question of "who came by what [and] how in the past" affects the legitimacy of the "established and currently prevailing principles of claim-establishment" (2002: x). This is supposedly justified because history is "beyond unravelling" and the "prime concern" of principles of fairness is "process and not product", as assessed in the present (2002: x, 13). Somehow, Rescher seems to infer from the mere fact that certain institutions, customs, and laws became generally established practices, that it implies that they are just (2002: 4, 6). People *should* get "what the sedimented stabilization of social process attributes to them", because they have come to accept them as appropriate, and "if this were not so those arrangements would have been changed by now" (ibid.). The presumed appropriateness of this view is further supported by Rescher's insistence that a viable society needs stable rules, so that even if the prevailing order is not regarded as ideal, it should be tolerable and "sufficiently just" for practical purposes (ibid.).

Although Rescher holds that procedural impartiality is an essential part of fairness and requires the equal application of laws "for which there is a valid rationale", he nevertheless argues that claims are legitimate whenever there is "good reason to think that the practice at issue is one that rebounds, on balance, to the advantage of the group as a whole" (2002: 23, 8). Apart from the difficulty inherent in determining the criteria according to which something can be judged as being advantageous to the whole, there is no reason to believe that social practices that are economically or otherwise advantageous in sum also establishes claims which are *morally* valid. This context-dependent conception of fairness again leads to a situation in which the nature of 'justice' is completely relative. It offers no grounds on which to condemn

discrimination, oppression, abuse or deprivation, because it completely ignores the injustices, misfortunes and unequal power relations that have contributed to, and still influence, the choice and nature of existing institutional, legal and traditional practices. Moreover, the claim that the endurance of existing practices attests to their justness is highly suspect when taking into account that the legitimacy of claims are solely derived from established laws and customs – a situation that makes the very notion of legitimate change impossible. Despite its claims to normative validity, Rescher's theory amounts to little more than a thinly veiled endorsement of the status quo and an unreflective defence of established privilege.

It is difficult to take Rescher's account of fairness as a serious contender for a theory of justice, but at the same time it would be impossible to reject it without appealing to universal values or principles – which is exactly the basis on which these accounts should be refuted. In the face of the grotesque and horrific human actions and practices that mar our history, we have to acknowledge that established customs that developed unreflectively and haphazardly from situations of inequality and oppression do not offer acceptable moral guidelines for present and future behaviour. It is time to accept once and for all that “history and anthropology have only limited value as bases for thinking about justice” (Kelly, 1998: 195 - 196). As Shklar illustrates through an example in this regard, the best case in favour of slavery before the Civil War was not that slaves had always been recognised as property, but that “abstract justice was socially meaningless” and that slavery was an indispensable part of the South's culture and even necessary for the enablement of citizens' republican virtues (1990: 116). Keeping in mind the virtually endless historical examples of oppression and social disenfranchisement, it should be clear that tradition is “often nothing but the evidence of silence”, and that “the acceptance of defeat cannot be taken as consent” (Shklar, 1990: 124). Despite our ignorance of the best and most just possible laws and outcomes, our well-intentioned, critically examined and factually informed ideals probably throw greater light on acceptable criteria of justice than coincidentally established and frequently exploitative social practices. By starting out with the explicit aim of creating a society that could be considered just from the perspective of all its citizens, the probability of success in terms of fairness is markedly greater than those norms and customs that were built on the basis of active discrimination, exclusion and blunt preferential treatment.

*A Compromise: Miller's Context-Sensitive Critical Approach*

The problematic features of Walzer's interpretive and Rescher's descriptive accounts of justice cast doubt on the usefulness of engaging with moral questions on these grounds. Is there any value in looking to existing practices and beliefs for guidance in determining criteria for justice or resolving moral disputes? In *The Principles of Social Justice*, David Miller develops an interpretive account of justice which, in addition to using established understandings of values and practices, does not shy away from incorporating universal moral principles in his evaluating and criticism of existing customs and institutions. The resulting theory provides a much more defensible account of social justice and offers a useful framework for engaging with moral questions in a manner that is sensitive to the existing context without losing or compromising its critical edge. Miller's explicit motivation for paying closer attention to the current social context and being more sensitive to popular opinion is that the incorporation of these features assist in the development of a theoretical account of justice that is less abstract in character and potentially has greater political relevance (1999: x).

Partially in response to *Spheres of Justice*, Miller develops an alternative interpretive account of justice to Walzer's idea of distributing social goods according to their meanings, by arguing that theories should take 'modes of human relationship' as their starting point. Miller contends that "we can best understand what demands of justice someone can make of us by looking first at the particular nature of our relationship" (1999: 25). His aim is thus to "identify the *underlying* principles of justice that spring directly from the various modes of relationship, and [...] explain the shape of associated institutions" (1999: 25 - 26). Miller admits that real-world relationships are often "complex and multifaceted", but he nevertheless maintains that they can be analysed "in terms of a small number of basic modes", which he labels *solidaristic community*, *instrumental association*, and *citizenship*<sup>14</sup> (ibid.). A solidaristic

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<sup>14</sup> Morton Deutsch offered a slightly different context-dependent conception of justice based on relationships, arguing that distributive relations between family members are guided by need, among friends the principle of equality governs, and the principle of equity which links rewards to contributions applies to professional relationships. For a comparison, see "Equity, Equality and Need" in *Journal of Social Issues*. 31(1975): 137 – 149.

community refers to a situation in which people share “a common identity as members of a relatively stable group”, and the principle of justice that corresponds to this relation, which is probably best epitomized by families, is distribution according to need (Miller, 1999: 27). The next mode of relationship is instrumental association, where people voluntarily relate to each other in a utilitarian manner for the purpose of achieving personal aims through collaboration with others, as for example within the framework of economic transactions and productions. Within this context, the distributive criterion of rewarding individuals according to desert applies (*ibid*). The third mode of relation that Miller identifies is that of citizenship, in which people share “a common social and political status” and are seen as bearers of rights and obligations on the basis of their membership of the society (1999: 30). Equality is regarded as the appropriate distributive principle when people relate to each other as citizens.

Miller combines his empirical investigation of the different modes of human relations and their respective distributive criteria with a sharp awareness that judgments about the type of relation between people can at times be very difficult to make in practice (1999: 34, 28). This problem can easily be demonstrated with reference to instrumental association in the economic sphere, where the prevalence of complementarities in production makes it difficult to determine the relative contributions of individuals and consequently also the size of reward they rightfully deserve. Matters are further complicated by the pervasiveness of formal employment structures with graded positions, because measuring whether people receive the appropriate compensation requires both an assessment of the fairness of the remuneration-level for their position and of their own competence and effort level (*ibid.*). In contrast to the methodology followed by Walzer and Rescher, whereby the existing practice guides what counts as just, finding the correct solutions in these situations becomes a matter of careful reflection and deliberation, because empirical “evidence is not decisive from a normative point of view” (Miller, 1999: 34). Judgements should pay careful attention to which solutions and distributive principles can be regarded as both feasible and fitting to the situation and the relevant mode of association (Miller, 1999: 35).

Another prominent obstacle to analysing the demands of justice with reference to the mode of relation between people is that individuals can “disagree about the purpose of association” (Miller, 1999: 29). Miller argues that practical conflicts of this kind can often be settled with reference to “the nature of the good being allocated” (1999: 36-37). For example, if people disagree about whether it is acceptable for someone to use his influence to secure a job for a family member, the conflict between claims based on family solidarity and instrumental association should be settled by examining the nature of the distributed good, which in this case is the employment opportunity. Seeing that ‘jobs’ can be properly understood as belonging to the economic paradigm, it falls within the sphere of instrumental association by definition, and its allocation should thus be governed by this mode of association. In this context, the expression of family solidarity is inappropriate and an “unjust intrusion” (ibid.). Finally, apart from the fact that people can disagree about the purpose of their association, it is also possible for people to misunderstand their relationship to others. For example, individuals might attempt to “minimize the extent of [their] relationship to others”, because they are self-interestedly motivated to lessen the demands or claims that others can make on them in the name of justice (Miller, 1999: 39). The potential for constructive critical engagement that Miller’s approach offer is once again manifestly apparent in this situation. Miller insists that “some degree of correction is possible” in these circumstances, because we can engage philosophically with each other and draw on normative considerations and empirical facts to clarify the appropriate conception of the relevant relation between individuals (1999: 37).

Miller is not claiming that conceiving of the demands of justice in terms of the relation in which people stand towards each other will make the assessment of legitimate demands of justice easy or clear-cut. Rather, he acknowledges that we will face multiple practical dilemmas in which it will be unclear which choice of principle should guide our personal or public considerations (Miller, 1999: 32). The evaluation of the nature of the obligations that are implicit in the different modes of association should be regarded as an additional conceptual tool through which the claims of justice can be analysed and assessed. For Miller, citizenship counts as a patent example of a mode of association that is often poorly understood, because people do not acknowledge the full implications of this form of relation, and accordingly they often refuse to recognize the demands of justice that individuals within a society can



make on each other. By steering clear of a wholehearted endorsement of relativism, Miller illustrates that philosophical engagement with existing beliefs and practices can be relevant and rewarding when attempting to develop an approach to social justice that has political relevance and offers suggestions for actual social reforms. Miller's line of argument will be further explored in relation to citizenship in Chapter 2, while the analyses of distributive criteria in terms of modes of association, as demonstrated in this section, will be implicitly applied to the case of the practice of inheritance in Chapter 3.

### **1.3. The 'Realization-Focused Comparison' Approach**

In an exploration of justice that shares the commitment of Miller's approach to respond to practical concerns, Amartya Sen has developed a "comparative perspective" that aims to overcome the limitations of the contractarian tradition in its quest to advance justice in the real world (2009: xi). Drawing on the alternative Enlightenment tradition of attempting to reduce injustice through comparative assessments, as pursued in different ways by philosophers like Adam Smith, Mary Wollstonecraft, Jeremy Bentham and John Stuart Mill, Sen dedicates his latest book, *The Idea of Justice*, to the development of the 'realization-focused comparison' approach, which concentrates on comparing societies that have existed or could feasibly emerge in terms of their justness. This final section of the evaluation of theoretical approaches to justice will be devoted to a discussion of Amartya Sen and Judith Shklar's concern with the often overlooked necessity of dealing with manifest injustices in our social arrangements and interactions.

#### *Sen And Shklar: Addressing Manifest Injustices*

Rather than devoting its attention to the search for a perfectly just yet unattainable society as is customary practice within the contractarian tradition, the objectives of the realization-focused approach are primarily to draw attention to, and promote the removal of, manifest injustices in our world (Sen, 2009: 8 – 9). In addition to evaluating laws and institutions, this approach also focuses on the actual behaviour of people and the outcomes that are reached through the combined interactive effects of these factors, and aim to suggest feasible changes and alternatives instead of pointing

to a perfect situation that could never be achieved. This shift in focus is based on Sen's conviction that

a theory of justice that can serve as the basis of practical reasoning must include ways of judging how to reduce injustice and advance justice, rather than aiming only at the characterization of perfectly just societies – an exercise that is such a dominant feature of many theories of justice in political philosophy today (2009: ix).

This concern, i.e. that theorists do not give adequate consideration in their theoretical accounts of justice to the prevalence of widespread injustices that occur in spite of legislative rules, has already been eloquently voiced and carefully elaborated by Judith Shklar in *The Faces of Injustice* (1990). Shklar examines the tendency of what she refers to as the 'normal model of justice' to reduce injustice to "a prelude or to a rejection or breakdown of justice, as if injustice were a surprising abnormality" (1990: 17). In a criticism that is closely resonated by Sen's objection to the overwhelming emphasis that is placed on the identification of perfect institutions, Shklar ascribes this failure of the normal model to its propensity to narrowly conceive of justice in terms of rules which determine the status and entitlements of citizens (ibid). The problem is not with the principle of legality itself, but the normal model's "complacent view of injustice and its confidence in the ability of the institutions that it underwrites really to cope with iniquity" (Shklar, 1990: 18). For Shklar, this confidence is both unfounded and troublesome, as the vast majority of injustices occur continuously and during ordinary times within established and operative political and legal frameworks (1990: 19). Occurrences of injustice permeate our institutional structures and social interactions, often without being addressed or even noticed.

The real problem for Shklar is that philosophers who uphold the normal model of justice miss a great deal due to the narrow focus of their projects. Their theories offer no mechanism for coping with transgressions, and tend to "shun injustice" by taking for granted that it "is simply the absence of justice, and that once we know what is just, we will know all we need to know" (Shklar, 1990: 15). The centuries-long injustices perpetrated against women, minorities and others in the past still have an

immense impact on the present, and ignoring them creates new injustices and belittles the plight of those who are struggling because of it (Christiano & Christman, 2009: 2). By neglecting to acknowledge the prevalence of complex and enduring passive injustice as a social phenomenon, the normal model limits opportunities for meaningful protest and the rejection of social practices and institutions<sup>15</sup> (Shklar, 1990: 9, 116). The everyday sense of injustice that is “eminently political” and can be interpreted as our “most basic claim to dignity” is thereby subdued (Shklar, 1990: 83, 89). The experience and proclamation of a sense of injustice is not only one of the few appropriate and available reactions to unwarranted social deprivation, but also an impetus to look beyond the mandates of existing rules for potentially better and fairer ones<sup>16</sup> (Shklar, 1990: 84, 108). It is precisely the feeling that something is unfair that often serves to impel us to examine the situation more closely and to act in defence of ourselves or out of compassion for others.

Philosophy is better suited and located than any other academic discipline to analytically examine and evaluate our political reality from a moral perspective that gives adequate recognition to the importance and fate of diverse human lives. To shy away from the real-world problems that mark the everyday existence of many individuals not only negates the value of engaging theoretically with political issues within our discipline, but makes light of the moral responsibility we assume when we propose solutions to normative questions of political justification and social justice. The line of reasoning offered by both Sen and Shklar compels us to see the pursuit of social justice as more than a search for ideal laws and perfect institutional structures. They remind us that political philosophers have an obligation to engage with the concerns of people and the shortcomings of structures in the context of the actual world, because that is where the impetus and urgency for moral argument comes from. Assessing existing practices and institutions from a moral point of view will

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<sup>15</sup> This idea that traditional philosophy is ill adapted to the task of responding to political dilemmas also permeates the work of Hannah Arendt, who examined the troubled relation between politics and philosophy in *Between Past and Future*, and distanced herself from traditional philosophy, because of its excessive focus on the individual and human singularity despite our human condition of plurality, and from philosophers, because they “ignore, deny or trivialize the significance of world-altering political matters” (Hull, 2002: 11, 42, 9) Arendt’s symbolic movement is thus inspired precisely by a philosophical and political commitment to actively engage with pressing issues in reality through the means of a more “socially critical, concrete, [and] accountable” philosophy (Hull, 2002: 36 – 37).

<sup>16</sup> Iris Young makes a similar point in *Justice and the Politics of Difference* when she asserts that “normative reflection arises from hearing a cry of suffering or distress, or feeling distress oneself” (1990: 5).

likely prove to be a difficult and messy process, but “at the very least, [we] might begin to shorten the distance between theory and practice when [we] look at our many injustices, rather than only at accounts of what we ought to be and do” (Shklar, 1990: 16). When the fact that our current conception of distributive justice has very recent origins is taken into consideration, it helps to explain the absence of adequate measures to improve the lives of many individuals through much of human history and increases our comprehension of the immensity of the task that is still ahead of us. It casts a new light on the state of our current social structures and customs, by revealing that many inherited social institutions and practices still need to be reformed and improved in order to address the demands that our new awareness of the value of every human life, and the rights that every person should have to shape and influence her own life prospects, brings. Great advances have been made in our abstract and theoretical acceptance and appreciation of the ideal of allowing every individual significant opportunity for self-determination and actualization, but our success in translating this into adequate institutional and practical arrangements is still lagging far behind. It is essential that we examine our established ideas and customs critically with the aim of exposing and removing any embedded prejudices or preferential treatment, instead of passively adhering to these embodiments of values from the past. What humanity has once believed and consented to might not live up to the standard of what could be considered fair and equitable practices in our contemporary world. The stronghold that the guidelines from tradition and received ideas has on the way in which we perceive and make sense of the world around us should not mislead us into believing that we cannot do better, or prevent us from resolutely searching for the social arrangements that best embody the values that we acknowledge and continuously pay lip service to on an abstract level.

The task of evaluating practices in terms of their relative justness, as compared with feasible alternative arrangements, forms a substantial part of the objective of this study. Drawing on the ideas of Sen and Shklar, the focus will be on addressing manifest injustices in the current laws and institutional framework that govern the practice of economic inheritance. Incorporating Miller’s notion of evaluating what social justice demands with reference to the mode of relation between humans and the nature of the good being distributed, the arguments that democratic citizenship requires restricting the size of economic inheritance will be advanced. The narrow

focus on manifest injustices in a social practice and the laws that govern it stems from the conviction that, for the purpose of affecting change, it is more fruitful to focus theoretical philosophical arguments concerning social justice on concrete and clearly delineated problems with implementable solutions, than on general claims of what justice demands which have vague and impractical requirements.

### *Practical Reasoning*

In addition to the problems with ideal theory discussed above in section 1.1., there are two practical reasons why I believe that this approach of addressing specific instances of injustice is preferable to comprehensive theories in terms of its ability to affect positive changes and actual improvement in reality. The first reason has to do with human psychology, and the second with the nature of the political process. Firstly, there is convincing evidence that people are psychologically more willing to engage and contribute resources in cases where problems of moral import are clearly defined and have manageable solutions. When the scope of the problem seems vast and the obstacles to improvement seem insurmountable, individuals are much more likely to do nothing and try to altogether avoid confrontation with the uncomfortable issue. If we really care about justice, then our theoretical engagement with the issue should encompass a genuine concern for the potential our arguments have to affect positive change within our actual political situation. What should be at stake in philosophical reflection on justice is not the awe-inspiring eloquence and exhaustive precision of a particular theory, but the impact that our intellectual contributions could have on the lives that people will actually be able to lead in reality. To pretend that our detached and overtly idealistic murmurings have a direct positive impact on real-world outcomes is to deceive ourselves. If there is clear evidence that people are more susceptible to and compelled by moral insights derived from reflections that focus on specific issues, we have a moral responsibility to incorporate this into our approach to theorizing about justice.

The framing and presentation of a problem significantly influence our perception of how possible it is to address and resolve this problem, which in turn markedly affect our willingness to engage with the issue. An interesting example of a research experiment that neatly illustrates this point can be found in Abhijit Banerjee and

Esther Duflo's *Poor Economics: A Radical Rethinking of the Way to Fight Global Poverty*; a book in which they similarly argue that the best way to address the problem of global poverty is to "think of the challenge as a set of concrete problems that, once properly defined and understood, can be solved one at a time" (2011: 3). In a recent experiment, students were given \$5 to complete a short survey, after which they were shown a flyer and asked to make a donation to the Save the Children charity. There were, however, two different flyers, and half of the students were randomly selected to be shown the one, while the others saw only the other. The first flyer, which consisted of a list of short descriptions of disasters – food shortages or droughts that affect millions of people in Malawi, Zambia, Angola and Ethiopia – prompted students to give an average contribution of \$1,16 per person. The second flyer featured a picture of a 7-year-old Malawian girl, Rokia, and described how the charity would use donations to work with her community to help provide her with food, education and basic medical care. Students who saw the second flyer, "in which the plight of millions became the plight of one", contributed \$2,83 on average (Banerjee & Duflo, 2011: 2). It is clear from this that students showed a much greater willingness to accept some responsibility for helping when the problem seemed manageable and they were offered a potential solution, but were deterred when the challenge were presented on a much larger scale. When we focus on big, broad questions, we become so overwhelmed by the immense complexity and conceptual intractability of the problem that we trick ourselves into believing that there are no right or better answers, and that, by implication, there can be no moral obligations on us to act.

The second reason for focusing directly on addressing injustices as opposed to forwarding comprehensive abstract theories has to do with the political process. The fact that any reforms that aim at making a society more just has to be enacted through the political process is something that moral philosophers have often chosen to ignore. Given the political opposition in general to redistributive policies and consequently the immense political will and focused agenda required to affect change, philosophical 'nitpicking' on an extremely idealistic, highly abstract and severely impractical level might well do much more harm than good. It supplies ample ammunition to those who want to dismiss distributive projects and their underlying claims as bizarre, unrealistic and unachievable, especially because many of the

perfectionist approaches to theories of justice are entirely guilty in the face of these charges. Instead, it is essential that we, as political philosophers, redirect our attention to issues and areas of investigation in which reasonable assessment and rational, logical arguments can in fact affect change for the better. Even if progress is incremental and not all-encompassing in the immediate future, any movement in the right direction (to correct injustices and change the fate of the deprived or oppressed) is greatly preferable to projects that cannot be realised and make the very endeavour seem like a fairytale or a hopeless reach for pie-in-the-sky solutions. As a logical requirement, any achievable approach to justice must have some workable proposal of how the current social and political context can be systematically transformed into a more just and acceptable alternative. To assume a blank slate devoid of vested interest and questionable human inclinations is to condemn even a theory based on the noblest intentions to utter and devastating failure.

### **Conclusion: Addressing Manifest Injustices**

Social justice, understood as the fair allocation of resources and opportunities within society and between individuals, is a fairly recent idea that could date back as little as 200 years. Our contemporary appreciation of the moral equality of all human beings prompts us to reconsider and re-evaluate our established and inherited social customs and institutional structures, in order to ensure that they are fair and to address the areas where they fall short of upholding the values we have come to embrace. Despite the significant increase in the amount and diversity of theories concerning social justice, the emphasis still predominantly falls on offering or critically assessing comprehensive substantive theories, while remarkably little attention has been given to methodology and the effect that the chosen approach has on the nature, accuracy and relevancy of the proffered theory. The aim of this chapter was to illustrate how the use of different theoretical approaches to justice tends to induce philosophers to formulate their accounts of social justice and their recommendations in diverse ways that correspond to, and partially depend on, the nature of the approach they favoured. The resulting insights also serve to theoretically validate and explain the choice of approach adopted throughout the rest of this study.

The three theoretical approaches to social justice evaluated in this chapter are the contractarian, interpretive and comparative approaches. Contractarian political philosophers, who make use of the hypothetical contract device, habitually promote comprehensive theories of justice, the acceptability of which depends on the acceptance of a set of unique weighted principles or rules that should be embodied in the institutional structures of the society concerned. The criticisms of this approach, which were discussed at some length, include the objection that, given the reality of pluralism, people may never be able to agree on a unique set of principles, which draws into question the feasibility of contractarian agreement. Further, the overwhelming focus on ideal but unattainable institutional arrangements could be regarded as both redundant, because it does not guide our choice between imperfect but viable alternatives; and worrying, because the lives that people will actually be able to lead also crucially depends on human behaviour and the nature of the current social context. Finally, the fact that the outcome of the hypothetical contract largely depends on the implicit assumptions philosophers make about the nature of people and the real world, as opposed to the values and principles they explicitly profess, undermines the usefulness of the social contract as a device that enables impartial and informed moral agreement.

The interpretive approach, which conceives of justice as relative and context-dependent, attempts to ascertain the demands of social justice with reference to the claims and underlying principles of existing social practices and institutions, and has been shown to be both prone to legitimating the status quo and unable to find grounds on which to condemn severely discriminatory or exploitative social practices. As illustrated, this descriptive-normative approach can only lead to a morally acceptable account of social justice when it combines its context-sensitive interpretations with the conviction that there are, at least some, universally valid moral principles.

The third approach of realization-focused comparison, which aims at assessing current social practices and institutions from a moral perspective by comparing them with existing or feasible alternative arrangements, is the approach to social justice that will be favoured throughout this study. Although this approach of directly addressing injustice does not offer a complete, all-encompassing answer to the question of what social justice demands, the contention is that any move in the right direction of



making institutional structures more just and consequently improving the lives that people are able to lead is deeply worthwhile in itself. The ability to combine sensitivity to the current social context with clear and implementable objectives for change makes this approach particularly appealing, because it creates a sense of moral urgency and advances ideas that are politically relevant and practically feasible.

As argued and illustrated in this chapter, it is not surprising that, due to the complexity and scope of the task, any attempt to give a complete systematic account of what justice entails will encounter many difficulties and will be met with objections from various angles. However, we may nevertheless be able to achieve broad consensus on specific issues of moral importance when we focus our attention on reaching agreements on worthwhile outcomes through reasonable, unbiased arguments which are factually informed and sensitive to our actual social reality. Political philosophy, in the final analysis, has to occupy itself with elucidating concrete moral problems and finding possible solutions to them. This is not to say that there is no place for ideal theory, which may well play an important role in shaping the moral disposition of the time, but rather a caution that, as political philosophers, we should be wary of devoting too much of our intellectual energy to endeavours that have, at best, very limited practical relevance.

This rest of study will apply the realization – focused comparison approach to the investigation of the issue of economic inheritance, to examine the fairness and moral justifiability of the current practice of the intergenerational transfer of wealth. Attention will also be given to the nature of actual societies that emerge due to the practice of economic inheritance, in order to assess their moral desirability and to compare the current social realizations to that of feasible alternative bequest practices. By focusing on this clearly delineated and concrete issue with potential practical solutions, the hope is that the moral imperative to act will be greater and that the resulting proposal will have greater relevance from a political perspective.

## **Chapter 2: Property and Entitlement: Justificatory Theories of Ownership**

### **Introduction**

This study set out with the objective of finding the best way to deal with questions of social justice. Chapter one offered a re-examination of three prominent theoretical approaches to social justice, and argued that the comparative approach, which aims to identify and address manifest injustices, might well be the most useful and influential, as it combines a belief in universal values with a sensitivity to actual social contexts. By comparing social arrangements that have existed or could feasibly emerge in terms of their relative justness, clear and implementable objectives for change can be identified, which can help to advance justice in the real world. The remainder of this study attempts to use the comparative approach to address and argue for the rectification of the manifest injustices inherent in the practice of economic inheritance. To this purpose, the present chapter provides a theoretical analysis of our conception of and moral justifications for private property, as our understanding of and beliefs concerning private property necessarily provide the framework within which the practice of inheritance has to be analyzed and assessed.

This chapter begins by examining and challenging two of the most prominent and enduring misconceptions about property, because these misconceptions present significant obstacles to unbiased evaluations and warranted reforms of our current property rights system. The first misconception, namely that individuals have absolute property rights that precede the existence of government, is problematic because it makes any restrictions to the rights of owners appear illegitimate. By masking the fact that property rights are contingent social constructs, the absolute conception of ownership limits the potential for the formulation and implementation of alternative property arrangements. However, an examination of the various elements which combine to constitute full ownership makes the diversity of existing property rights and the possibility of alternative property arrangements clearly apparent. The second misconception is the idea that a society consists of radically independent individuals who are solely responsible for the extent of their success and therefore wholly entitled to the gains from their productive endeavours. Empirical evidence about the instrumental role that social context plays in enabling personal success strongly

contradicts this account of the self-sufficient individual, and shows that it is acceptable for the government to tax property in order to promote certain social objectives. The examination of popular misconceptions about property makes the flawed reasoning on which many current presumptions concerning property rights are based clearly apparent. The implication of this is that we can and should reflect on the desirability of our present property arrangements, as the distribution of property frequently has a decisive impact on the current and future prospects of individuals.

The existence of private property rights is customarily explained and justified with reference to both its intrinsic merits and the positive effects it is believed to have. The moral justifications of private property, which are usually based on the principles of liberty, labour, and utility or efficiency, form the subject of section 2. After examining the merits, shortcomings and implications of the arguments made on the basis of these principles, two conclusions emerge: The right to unlimited private property *cannot* be justified with reference to the claims established by a single particular principle, and any consistent justification of private property rights inevitably has some egalitarian implications. Each subsection concludes by considering the implications that the acquired insights on the particular justificatory principle of private property ownership have for the moral defensibility of the practice of economic inheritance. A careful assessment of the legitimate scope of the moral claims that can be made on the basis of the various justificatory principles indicates that the practice of economic inheritance cannot be justified on these grounds, because it is inconsistent with the underlying values that individuals usually appeal to in defence of private ownership.

In light of the fact that any consistent justification of private property rights has strongly egalitarian implications, section 3 offers a brief investigation of the rightful extent of the moral claims we can make on each other in the name of equality. Historically, a close link has been established between private property ownership and individual liberty, and the idea that unlimited private property is essential to individual liberty continues to be remarkably salient. However, as was indicated in section 2, the right to unlimited private property *cannot* be justified with reference to the claims established by a single principle, and any consistent justification of property rights inevitably has broadly egalitarian implications. The values of liberty and equality, which are traditionally regarded as conflicting, cannot exclusively be

appealed to as the foundational values of social justice, as a coherent account of either is dependent on a substantial endorsement of the other. Individual liberty for all is conditional on a healthy degree of equal standing and recognition before the law and within the state, and any claims to democratic equality is illusory when individuals are not similarly free in all democratically relevant respects. This relationship is blatantly clear in the fact that a logically consistent defence of private property on the basis of individual liberty necessarily has egalitarian implications. Because the laws that a society enact affect the prospects of every person, they should be impartially justified - a process which requires that citizens should stand in a relation of moral equality to one another. In order to achieve the aim of establishing mutual respect and equal recognition between citizens, equality should be understood in terms of the capability to fully function as a human being. This implies both that there is a material basis to equality and that the fair and sufficiently equitable distribution of resources within society is a matter of social justice.

The final section argues for the importance of empirical evidence in the moral assessment of social institutions and practices. Empirical studies elicit overwhelming and widespread agreement on abstract principles of distributive justice among individuals from diverse social and economic backgrounds, even while there remains to be substantial disagreement on the practical assessment of the causes of personal success in existing societies. This means that a fair and accurate empirical account of the nature of our actual social context can be helpful to the resolution of certain intractable moral disputes. Since this chapter offers a theoretical analysis of the justificatory principles of private property in order to sketch the moral background against which the practice of economic inheritance should be assessed, this closing section motivates the extensive incorporation of empirical facts concerning our social reality in the next chapter, which evaluates the practice of economic inheritance from a moral perspective.

### **1. The Conception of Property**

Property rights are a central component of our current global economic order and an important determinant of the way in which we construct our social reality. The idea of 'ownership' has become so customary and pervasive that we often fail to reflect on its

ethical implications when we discuss this issue within a legal or economic context, despite the fact that our implicit beliefs regarding property rights and entitlement greatly affect the institutional structure and practices we legitimize in our society, and consequently also the actual lives that people are able to lead. By creating a system of claims and entitlements, property rights effectively define the degree of control individuals can enjoy over given resources to the exclusion of others. The extent to which entitlement claims and property rights impact on the existence of individuals should not be trivialised or underestimated. The difference between having and not having frequently affects the ability of people to meet their own basic needs and provide for their children, but in extreme cases the difference is not a matter of relative discomfort but a question of survival. In *Poverty and Famines*, Amartya Sen makes this link explicit when he writes that “starvation is the characteristic of some people not *having* enough food to eat... not... of there *being* not enough food to eat” (1982: 1). The entitlement claims that we as a society recognise or deny can determine whether individuals are able to sustain themselves and take part in social and productive activities as well-functioning persons.

Despite the immense importance of property rights in our everyday existence, the precise meaning and content of property rights remain highly controversial. This is partly because property rights are endowed with the dual function of both governing the use of objects and allocating items of social wealth to specific individuals or groups (Harris, 1996: 4). Accordingly, the way in which property rights are defined and the rules of acquisition are formulated is highly contentious, as it will favour some individuals and impact negatively on the prospect of others.

Throughout time, philosophers and political thinkers have attempted to give meaning and content to the concept ‘property’, as well as indicate its proper role in society. In the hope of increasing the authority and persuasiveness of their accounts of the meaning and rightful functions of property within society, theorists have tended to appeal either to ‘state of nature’ explanations of the emergence of private property or to the historical origins of property for validation. Both these strategies are unsuccessful for the same reason, namely that there simply is not only one possible or appropriate conception of property rights. ‘State of nature’ theories aim to either describe the conditions of life in a time that pre-dates the establishment of civil

society or to sketch a hypothetical scenario of idealised conditions under which people collectively decide on the appropriate social institutions and arrangements. These theories then proceed by speculating on how and why a certain system of property rights would arise under these conditions, and attempt to use this to justify and defend a particular property rights institution. However, state of nature explanations fail to prove that any particular property arrangement is necessary or unavoidable, since their outcomes differ significantly and seem to be greatly dependent on the nature of the initial condition that the particular theorist envisioned. One only has to look at the diverse conclusions that political philosophers such as Hobbes, Locke and Rousseau reach about the appropriate role of government and the nature of property to realize that state of nature theories do not reveal the ‘true character’ or ‘essence’ of property<sup>17</sup>. Speculative arguments that begin with unowned objects, which are freely available to be appropriated by anyone, and end with a particular and ‘inevitable’ system of property rights, are merely thinly veiled ideological prescriptions.

The second strategy, that of tracing the historical development of property in order to determine its ‘original’ or ‘intended’ meaning, also has little of substance to offer, because our understanding of property rights has changed significantly over time. In “The Origins and Evolution of Property Rights Systems”, which considers the main stages in the emergence and consolidation of property, Francesco Parisi shows that, even though the institution of property is almost as old as recorded history and has persistently formed a fundamental part of human society, it remains remarkably dynamic. The concept of property and “the privileges, obligations and restrictions” delineated by ownership have been subject to substantial alterations throughout history, and the “evolution of the legal and social conceptions of property reveal a close relationship between changes in an economic system and shifts in the structure and content of property rights”<sup>18</sup> (Parisi, 2004: 64, 65). Our understanding of property

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<sup>17</sup> These well-known accounts of the legitimate nature of government can be found in Hobbes, T. 1973. *Leviathan*. London: Everyman’s Library; Locke, J. 1976. *The Second Treatise of Government (an essay concerning the true original, extent and end of civil government)* (edited by J.W. Gough). Oxford : Blackwell; and Rousseau, J.J. 2010. *The Social Contract: Original Edition*. United States: Madison Park.

<sup>18</sup> Noyes emphasizes the limited role of law in determining the legitimate nature and functions of property rights when he writes that the “law finds the institution of property in existence, ... and, far

rights is thus both responsive to and influenced by our socioeconomic context. In *The Guardian of Every Other Right: A Constitutional History of Property Rights*, a book which traces the central role property rights had in the American constitutional order<sup>19</sup>, James Ely similarly highlights the unfixed nature of property and the way in which it has evolved over time in response to changes in the legal, ideological, political and economic conditions (2008: xi, 8). The nature of property changes over time, so that “once common types of property may cease to have legal recognition”, as was the case with the abolition of slavery, which “effectively destroyed property of considerable value” (Ely, 2008: 6). Alternatively, new forms of property, such as the establishment of intellectual property through the patent system, can in turn become a significant source of wealth (ibid.). The manner in which property arrangements evolved, as well as the conditions on which property rights were granted, differ significantly from place to place, depending on a great number of factors, such as the governing political system, the relative scarcity of land, previous ownership claims and so forth. Frequently, the system according to which private property was allotted, developed unsystematically<sup>20</sup>; and personal and political favouritism, individual profiteering, exploitation and unjustified exclusion formed an integral part of transactions<sup>21</sup>. Even more disconcertingly, some governments simply assumed ownership of entire colonies, without considering or providing for the entitlement claims of the original inhabitants. When private property was established on a continent through the encroachment on land already possessed by others in the form of collective property, there can be no claims to fairness or acceptability of appropriation (Harris, 1996: 115). For all these reasons it is fair to assert that the history of property “is a sordid one”, and while studies of the past can offer empirical accounts of how private property rights emerged in different settings, it cannot serve

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from creating its varieties, is occupied only in defining, maintaining and validating them” (1936: 18). Noyes, C.R. 1936. *The Institution of Property*. New York: Longmans, Green & Co. p. 18.

<sup>19</sup> For another detailed account of the legal history and genesis of property rights in the United States, see Siegan, B.H. 2001. *Property Rights: From Magna Carta to the Fourteenth Amendment*. New Brunswick: Transaction Publishers.

<sup>20</sup> For examples and discussions see Liggio, L.P. and Chafuen, A.A. 2004. “Cultural and Religious Foundations of Private Property”, pp. 3 - 47 and Parisi, F. “The Origins and Evolution of Property Rights Systems”, pp. 64 - 84 in *The Elgar companion to the economics of property rights* (edited by E. Colombatto). Cheltenham, UK: Edward Elgar.

<sup>21</sup> See Anderson, T.L. and Hill, P.J. 2003. “The Evolution of Property Rights” in *Property Rights: Cooperation, Conflict, and Law* (edited by Terry L. Anderson & Fred S. McChesney). pp. 124 – 129; and Libecap, G.D. 1993. *Contracting for property rights*. Cambridge, England : Cambridge University Press.

as a normative guideline of morally acceptable conduct (Becker, 1977: 2). It also cannot offer a neutral or objective account of the meaning and functions of property rights.

### **1.1. Two Popular Misconceptions about Property**

Property is both an idea and a concrete reality (Liggio & Chafuen, 2004: 3), and when it comes to the legitimate conception and functions of property, ideology and practice “diverge in sharp and irreconcilable ways” (Singer, 2000: 8 - 9). While the *idea* of property revolves around absolutist conceptions, the *institution* of property in reality imposes substantial limitations on the rights of owners (ibid.). The prevailing ideology regarding ownership poses considerable obstacles to warranted and essential reform of existing property rights. Two of the most prominent ideologically motivated misconceptions that need to be overcome concern, firstly, the relation between the existence of property rights and the government, and secondly, the relation between the individual and society. The following sections challenge both the idea that individuals can have absolute property rights in the absence of government, as well as the view that individuals are capable of creating immense wealth independent of the existence and support of an extensive social infrastructure. The erroneous reasoning underlying these misconceptions impedes significant property rights reforms and therefore has to be addressed before the functions of property rights in our contemporary society can be fairly assessed.

#### **1.1.1. The Myth of Complete Ownership without Government**

Many people “uncritically assume that there is only one possible conception of property rights” (Eligido, 1995: 411). They take for granted the absolute conception of property rights, which consists in the idea that an individual has full, all-inclusive and unlimited property rights over an object that she owns. This understanding of property, as “a unified and monolithic set of sovereign powers” (Christman, 1994a: 8), limits the potential for a constructive and nuanced discussion of potential reforms which could increase the moral justifiability and social desirability of our current system of property rights.



Property rights are frequently portrayed as preceding the establishment of government, as is for example the case in Robert Nozick's *Anarchy, State, and Utopia* (1974), in which the existence of the state itself is explained and justified with reference to the instrumental role it plays in the protection of rights, including and especially that of property<sup>22</sup>. The popularity of the notion that private property predates the existence of government can be traced back at least to Locke's influential *The Second Treatise of Government: An Essay Concerning the True Original, Extent and End of Civil Government*, in which he stipulates that the 'law of nature' requires that "no one ought to harm another in his life, health, liberty or possessions" (1976: 5). The government, on Locke's account, is established precisely to uphold and enforce the law of nature; which implies that the government is established to protect already existing rights, including that of property (Locke, 1976: 6). The impact of Locke's conception of property is "difficult to overstate", and it played an important role in establishing the idea that there exists a strong link between the preservation of liberty and the protection of property rights<sup>23</sup> (Ely, 2008: 17; Siegan, 2001: 46 - 47). The rights of property owners came to be viewed as a safeguard against arbitrary government, and property rights as constraining the scope of legitimate government action. However, this stance is incorrect because it inverts the actual relationship between property rights and government: The establishment of government enables and enforces the existence of property rights, because it provides the legal framework essential to the creation and protection of property rights, and thus government necessarily precedes property rights.

The problem with the incorrect view of the logical order of priority between government and the rights of property owners is that it makes reasonable discussion regarding the appropriate scope and limits of property rights almost impossible. If the question regarding the appropriate limits to the rights of owners is approached by

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<sup>22</sup> Even the *Declaration of Independence* states that government is instituted to secure the rights of citizens to 'Life, Liberty and the pursuit of Happiness'; implying that these rights, although not including property rights, precedes the creation of government.

<sup>23</sup> Locke's theory never established full and unlimited property rights; however, philosophers such as Nozick who drew on Locke's labour theory of ownership often aimed to establish "permanent bequeathable property rights" in objects. For a detailed discussion of Locke's property rights, see Screenivisan, G. 1995. *The Limits of Lockean Rights in Property*. Oxford: Oxford University Press, as well as "Property Rights" in Simmons, J.A. 1992. *The Lockean Theory of Rights*. New Jersey: Princeton University Press.

assuming that any restrictions on the extent of property rights represent an unfair infringement by the government on the legitimate claims of the owner, too much has already been conceded before the discussion has even begun (Elegido, 1995: 411). A potential reason for the general strong presumption in favour of property holders is offered by Murphy and Nagel in *The Myth of Ownership*, who compellingly argue that well-entrenched conventions are internalized by people in such a way that that they acquire the appearance of natural norms:

The conventional nature of property is both perfectly obvious and remarkably easy to forget. We are all born into an elaborately structured legal system governing the acquisition, exchange, and transmission of property rights, and ownership comes to seem the most natural thing in the world. [...] Any convention that is sufficiently pervasive can come to seem like a law of nature – a baseline for evaluation rather than something to be evaluated. Property rights have always had this delusive effect (Murphy & Nagel, 2002: 8, 9)

According to social psychologists, this tendency of people to forget the conventionality of certain objects and “imbue social regularities with an ‘ought’ quality” is one of the most commonly observed characteristics of social existence (Lerner, 1980: 10). Instead of regarding property rights as a legal convention which delineates the rightful claims and restrictions of ownership, people often mistakenly regard regulations as limits on the pre-existing rights of property owners. But property rights are created by the legal system which defines, allocates and enforces ownership rights. In fact, private property itself “is a form of regulation”, because property rights adjudicate conflicts between separate sets of property rights and between property rights and personal rights (Singer, 2000: 8). Ownership is thus not a straightforward and absolute right, but a complex idea that can be subdivided into simpler elements. This is very well illustrated in A.M.A. Honoré’s seminal essay on the subject, aptly entitled *Ownership*, which delineates eleven elements which are all associated with the notion of ownership. Honoré’s list identifies the following elements:

1. *The right to possess*, in other words, to exercise physical control over the object or exclude others from the benefits thereof.
2. *The right to use*, in the literal sense as well as gaining the right to personal enjoyment from the utilization of the object.

3. *The right to manage*, in the sense of determining who can use the object and in what manner.
4. *The right to income*, that is, to derive benefit from allowing others to use the object in exchange for money.
5. *The right to capital*, in other words, the right to consume, alter or destroy the object.
6. *The right to security*, which means that the object cannot be expropriated.
7. *The power of transmissibility*, which allows for the bequest of the object.
8. *The absence of term*, which implies that ownership extends to an indeterminate length in time.
9. *The prohibition of harmful use*; in other words, restricting the owner from using the object in a manner that is harmful to others.
10. *Liability to execution*, which implies that the object can rightfully be ceased as a repayment for outstanding debt.
11. *Residuary character*, that is, the existence of regulations which govern the reversal of lapsed ownership rights (1961: 107 – 147).

Absolute ownership, which would consist in having property rights to the full range of elements, is only very seldom acquired in practice. Nevertheless, the fact that all-inclusive property rights are rarely granted does not undermine the certainty or security with which property is held. For example, a given individual's ownership of a trust fund will not be questioned based on the fact that her rights are restricted to receiving income and excludes the right to its capital or management (Becker, 1977: 19). Similarly, a person might have the right to the income and management of a business property, but only limited use or possession thereof due to lease agreements which assign these rights over to another legal entity for a specific duration of time. Yet, a person can be said to have property rights over an object or idea as long as she has an entitlement claim, which could consist of any of the first eight elements, combined with some notion of security (Becker, 1977: 192). The necessary measure of security is provided by trespassory rules, which impose obligations "on all members of society, other than the individual or group who is taken to have some form of open-ended relationship to a thing, not to make use of the thing without the consent of that individual or group" (Harris, 2003: 5). In contemporary societies, where property rights are supported and enforced by legal systems, trespassory rules are customarily backed by civil or criminal sanctions. The essential features of a

property institution thus consist in any entitlement claim from within the ownership spectrum which is supported by the corresponding trespassory rules.

When one considers the various elements which combine to constitute full ownership, the possibility and diversity of alternative conceptions of property rights become apparent. As the concept of property or ownership varies depending on the nature of the objects in question and the relevant social context, the ownership spectrum can range from a mere property interest to full ownership. It is therefore clear that the certainty and security of ownership do not depend on the individual having 'absolute property rights' over an object, but merely on the condition that these rights are well defined and enforced. Property rights only exist because they are established by the law and enforced by the state. Disintegration of trust in an established system of property rights does not occur because people were not granted all-inclusive ownership rights, but when certain protected rights are illegally and unexpectedly undermined. Security does not imply that the content of property rights cannot change, but simply imposes the requirements that decision-making takes place with a high level of transparency, to enhance predictability and limit uncertainty, and that changes are implemented gradually, to allow time for the adjustment of existing expectations. It is therefore possible to specify and limit the extent of property ownership in such a way that it upholds certain ideals and serves particular social objectives. Awareness of this fact opens up scope for the reconsideration of property rights, and indicates that it is possible to revise the entitlement spectrum of our current system of property rights, without undermining the validity, certainty or benefits of ownership.

The tendency to unreflectively regard property rights as absolute also notably influences the way in which people think about taxation, because the feeling of natural entitlement that accompanies this view encourages them to regard taxes as something that takes from them what is entirely and legitimately theirs. But the current distribution of wealth is a *result* of the legal convention of property rights, not a self-justifying fact of nature, and complacency about the status quo does not make it just. Pre-tax market outcomes cannot be regarded as a presumptively just baseline according to which the fairness of tax policies should be assessed, because taxes and property rights are not independent norms, but are both inextricable parts of the

system which generates these outcomes. The following excerpt from Murphy and Nagel neatly elucidates the intricate relationship between property rights and taxes:

Private property is a legal convention, defined in part by the tax system; therefore, the tax system cannot be evaluated by looking at its impact on private property, conceived as something that has independent existence and validity. Taxes must be evaluated as part of the overall system of property right that they help to create. Justice or injustice in taxation can only mean justice or injustice in the system of property rights and entitlements that result from a particular tax regime (2002: 8)

It is essential to remember that property rights are “not the starting point but the conclusion of difficult ethical issues” about the correct balance between different values such as individual liberty, interpersonal obligation, responsibility and just desert (Murphy & Nagel, 2002: 10). Property rights are pliable social constructs which can be reconsidered and adapted in order to respond to changing social circumstances and concerns. Existing property right systems should therefore be evaluated in terms of the fairness and desirability of their social realizations.

### **1.1.2. The Myth of the Self-made, Radically Independent Individual**

The second ideologically motivated misconception which significantly influences the property rights debate concerns the nature of the relationship between the individual and society. The libertarian conception of the radically independent individual, who, detached from any social context or need for cooperation, is solely responsible for her success and entitled to all of the gains from her endeavours, has been remarkably influential. However, the degree to which our own achievements and ability to function is dependent on social cooperation and context is much greater than this simplified view suggests. The actions of others, the nature of the laws and institutions in our society, and the state of knowledge and information we have access to all significantly influence and partially determine what we will be able to do and accomplish during our lifetimes. As Walzer expressively observes, it is a central fact about our associational life that,

over much of its range, it isn't the work of that liberal hero, the autonomous individual, choosing his or her memberships, moving freely from group to group in civil society. Instead, most of us are born into or find ourselves in what may well be the most important groups to which we belong – the cultural and religious, the national and linguistic communities within which we cultivate not only our identity but character and whose values we pass on to our children (without asking them). Our membership in these communities is also likely to determine, or at least influence strongly, our standing in the social hierarchy and our central or marginal location in social space. [...] The room is more limited, our movements more predictable, the difficulties we encounter more common to ourselves and our fellows, then liberal theorists have been ready to admit. (2004: x – xi)

The idea of the radically independent individual is problematic because it encourages some to unreflectively assume a sense of absolute entitlement, even when much of what they own was not the result of personal effort. It also tempts individuals into ignoring the plight of others who were not responsible for the detrimental circumstances they were born into and might not have had meaningful opportunities to escape them. When assessing social outcomes, the importance of empirically accurate information, or at least a credible and defensible interpretation of real-world phenomena, should not be underestimated. Different notions of the extent of an individual's dependence on society often underlie deep disagreements about the claims of justice in contemporary societies, which means that we need to confront the question of the appropriate understanding of the relation between the individual and society (Taylor, 1985: 291). Because this chapter explores the appropriate conception of property rights, this section briefly motivates why the libertarian picture of the radically independent, self-made individual is incorrect, and argues that the idea of absolute entitlement that is based on this view is similarly unfounded.

The idea that individuals are completely responsible for the extent of their entrepreneurial achievements and financial success becomes dubious when it is placed within a historical context. The relationship between societal development and individual life chances is neatly articulated in William Rosen's book, *The Most Powerful Idea in the World: A Story of Steam, Industry, and Invention*, which shows that, even though farming and settlements date back to 10 000 BC, "by any

quantifiable measure, including life span, calories consumed, or child mortality, the lived experience of virtually all of humanity did not change much for millennia after the Agricultural [...] Revolution spread around the globe” (2010: xv). The average per capita GDP in real terms, which gives some indication of human productivity, remained virtually unchanged for seven thousand years, with people living no better in the seventeenth than the seventh century (Rosen, 2010: xvi). The “worldwide per capita GDP in 800 BCE - \$543 – is virtually identical to the number in 1600” (ibid). By all measures of human welfare individuals are substantially better off today than they were before 1800 in every region of the world. While some individuals were obviously relatively better off than others in the past, the difference between individual situations was less extreme than it is today. The historical context a person finds herself in is a much greater determinant of an individual’s overall life outlook than personal achievement. To illustrate this point, at 35 years, individual life expectancy in 19<sup>th</sup> century France is 25 years less than that of someone born in the Republic of Congo in 2000 (Rosen, 2010: xvi). Even the smartest, most innovative and hardworking individual living in the 18<sup>th</sup> century would have faced worse prospects than an average individual representative of the entire living world population today. This strongly suggests that a significant component of an individual’s life prospects is due to societal features beyond her control. The levels of knowledge accumulation, technological progress and infrastructural development that exist at the time when we are born significantly influence our life prospects in ways that we cannot deny or claim personal responsibility for, and because these advances depend on the social cooperation and individual contributions of current and past citizens, it would be reasonable to argue that we owe a debt to society and should contribute to it in return.

Significant progress in the living conditions of humans also cannot be attributed to the achievements of solitary individuals. The best explanation for the improvement of human lives, as Rosen argues, comes from the democratization of invention (2010: xxiii): The notion that “ideas are property” provided ordinary citizens with the incentive to invent, and these multitude of incremental improvements enabled the development of the first steam engine, which “incorporated hundreds of other inventions, both small and large,” in its design (Rosen, 2010: xxiv, xxii). The immense progress that was made from the 18<sup>th</sup> century on originated due to “a unique

combination of law and circumstance (which) gave artisans the incentive to invent, and obliged them to share the knowledge of their inventions” (Rosen, 2010: xxiii). Regulation and social cooperation played an essential part in establishing a favourable environment for technological progress and advances in knowledge. In addition, the popular idea that significant improvement is mainly due to exceptional individuals who act in isolation has also been disproved. In “The Myth of the Sole Inventor”, Mark Lemley illustrates that “the canonical story of the lone genius inventor is largely a myth” by referencing the circumstances under which scores of noteworthy new inventions occur (2012: 709). As Lemley summarises,

surveys of hundreds of significant new technologies show that almost all of them are invented simultaneously or nearly simultaneously by two or more teams working independently of each other. *Invention appears in significant part to be a social, not an individual, phenomenon* (2012: 711).

It is clear that the establishment of a regulatory system precedes the potential profits any individual can enjoy from her invention. Without legislative enforcement of ownership, the development of ideas is not a lucrative endeavour, since creations can easily be duplicated without any regard for the person who made the initial design. Even the ability to make substantial profits from an invention is greatly dependent on the establishment of an extensive infrastructural framework for production, transport and communication. Accordingly, the existence of a well-functioning government and an organized society plays an important and fundamental role in establishing the market conditions that enable individuals to achieve great things and make considerable profits. The state, which can thus be regarded as the ‘silent partner’ in every business enterprise, takes its rightful share through taxation (Fried, 1995: 237). One way of conceiving of the relative productivity of the individual and the state would be to compare the wealth that Bill Gates has accumulated in the United States to what he might have accumulated if he grew up in a rural part of Burundi. A recent book by Brian Miller and Mike Lapham, entitled *The Self-Made Myth and the Truth about How Government Helps Individuals and Businesses Succeed* (2012), tries to show how wealth is really created by presenting prominent affluent business leaders’ accounts of the important role that public investment and support played in their success.



Individuals do not have any claim to exclusive income from their endeavours, but have to contribute to the maintenance of the system that enables and contributes to their success. Taxes are essential to the creation of property rights, which do not exist independently of the tax system, and taxes therefore cannot violate property rights (Murphy & Nagel, 2002: 58). The governmental tax system “is an essential part of the background which creates the legitimate expectations that arise from employment contracts and other economic transactions,” and should thus not be viewed as an illegitimate constraint on free individual pursuits (Murphy & Nagel, 2002: 37). The fairness and desirability of the tax system should be assessed with reference to the property and wealth distribution that develops as a result of it, and not the inverse. An individual’s wealth is dependent on the legal order of her society, which means that the nature of government laws raises questions of justice. Every wealth distribution, including the existing one, requires moral justification and should be assessed in terms of the fairness of the system which generates it. As Murphy and Nagel neatly summarise this issue:

We cannot pretend that the differences in ability, personality, and inherited wealth that lead to great inequalities of welfare in an orderly market economy would have the same effect if there were no government to create and protect legal property rights and their value and to facilitate mutually beneficial exchanges. [...] There is no market without government and no government without taxes; and what type of market there is depends on laws and policy decisions that government must make. In the absence of a legal system supported by taxes, there couldn’t be money, banks, corporations, stock exchanges, patents, or the modern market economy – none of the institutions that make possible the existence of all contemporary forms of income and wealth. *It is therefore logically impossible that people should have any kind of entitlement to all their pretax income* (2002: 17, 32; my italics).

The importance and pervasiveness of social organization is undeniable, and critics who reject the idea of ‘society’ are not offering a substantially different account of human interaction, but are simply refusing to acknowledge the fact that any rule or law, even one aimed at enforcing some form of restraint, requires the cooperation of all members of society for its successful implementation.

## 2. Justificatory Theories of Ownership and their Implications for the Practice of Economic Inheritance

The previous section illustrated that property rights are contingent legal conventions which can be defined with particular aims in mind and evaluated in terms of the moral desirability of the social outcomes that are realized because of them. Property rights can thus be constructed with the explicit aim of promoting certain moral or practical objectives, such as safeguarding individual liberty, establishing greater equality, providing incentives for productivity, rewarding effort, encouraging efficiency, etc. Having illustrated the malleable nature of property rights and the diverse possibilities for its formulation, this section will turn to the question of the moral justification of private property rights, and, in particular, to the implications that these justificatory principles have for the practice of economic inheritance.

The existence of private property rights is generally defended with reference to justificatory theories of ownership, which are most frequently based on the principles of liberty, labour-incentive and utility; although there is no decisive agreement on which principle should be dominant or on the relative weight that should be afforded to each. While these principles seem to introduce ideas of a very abstract nature, our convictions regarding their suitability as justifications for property rights have important implications for how we regulate ownership in the real world. There seems to be a broad consensus among prominent contemporary theorists of comprehensive justificatory accounts of property that unlimited private property *cannot* be justified with reference to the claims established by a single particular principle. In *A Theory of Property* (1990), Stephan Munzer argues that private property rights can be justified most satisfactorily through a “pluralist theory” which, depending on the type of property in question, functions according to priority rules that are respectively based on the “irreducible principles of utility and efficiency, justice and equality, and desert based on labour” (Munzer, 1990: 303, 3). Even though they tend to ground their arguments differently, a significant number of contemporary property theorists, including Becker in *Property Rights: Philosophic Foundations* (1977), Macpherson in *Property: Mainstream and Critical Positions* (1978), Christman in *The Myth of Property: Towards an Egalitarian Theory of Ownership* (1994), Harris in *Property and Justice* (1996), Waldron in *The Right to Private Property* (1998), Singer in

*Entitlement: The Paradoxes of Ownership* (2000), and Murphy & Nagel in *The Myth of Ownership: Taxes and Justice* (2002), all argue that any consistent justification of property rights will have some egalitarian implications. It is beyond the scope of this study to offer an account of all these theories, but I will draw on some of the arguments developed in them throughout the following section. In keeping with the explicit aim of this study, namely that of addressing the manifestly unjust practice of economic inheritance, this section will offer a concise exploration of the merits, shortcomings and implications of the main justificatory principles of private property rights, before taking particular note of how each of them pertain to the practice of economic inheritance.

### **2.1. The Relation between Property Rights and Individual Liberty**

The idea that unlimited private property is essential to individual liberty is remarkably salient in everyday discussions of property rights. The perceived link between individual liberty and property rights has already been implicitly addressed in the discussions of the myths of absolute ownership and radical individualism throughout section 1.2., but the exceptional resilience of this idea can perhaps be best understood when placed in historical context. In *The Guardian of Every Other Right: A Constitutional History of Property Rights*, James Ely specifically attempts to offer “a historical perspective on the contemporary debate about economic liberty”, and shows that “contradiction and ambiguity” mark the history and constitutional protection of property rights (2008: xi, 9). Historically, the protection of property is strongly identified with individual liberty, because property ownership was regarded as the economic basis for freedom from governmental coercion (Ely, 2008: 17, 3). The immense importance attached to property was partly due to the fact that property in land was the principle source of wealth and social status during the 18<sup>th</sup> century, and partly due to the particular circumstances and philosophical heritage of colonists which further induced them to affirm the sanctity of property rights (Ely, 2008: 6, 17). Colonists, who came from England where property ownership was highly concentrated and most people “had no realistic prospect of owning land”, often emigrated because the colonial ‘headright’ system of land distribution granted each immigrant ownership of a certain amount of property (Ely, 2008: 11). The resulting widespread ownership of land, combined with the presence of English policies that

threatened the economic interests of property owners, solidified the philosophical link between the protection of property rights and the enjoyment of political freedom (Ely, 2008: 25, 41).

Yet, in reality the link between individual liberty and the protection of private property was neither absolute nor clear-cut, for two prominent reasons. Firstly, numerous laws were enacted to restrict owners in the use and sale of their land, which implies that owners did not have unrestrained liberty to take advantage of their property as they saw fit (Ely, 2008: 19). The regulation of private economic interests to promote the common good were widely accepted (Ely, 2008: 33). Secondly, the same legal provisions that were enacted to formalize the link between individual liberty and the protection of private property also, highly paradoxically, clearly and explicitly defined and established the legal status of slaves as a form of property that could be purchased, sold, inherited, taxed or confiscated to pay the owner's debt (Ely, 2008: 15, 46). Remarkably, colonists failed to notice the "inconsistency between the exaltation of liberty and the institution of slavery" (Ely, 2008: 16). In an examination of the history of taxation and slavery and their relations to democracy, entitled *American Taxation, American Slavery*, Robin Einhorn also emphasizes this contradiction when he argues that one of the most important sources of the idea that government is the main danger to liberty and property can be traced back precisely to the threat that the rise of democratic government in the United States represented to slavery: it restricted the 'liberty' of some individuals to hold 'property' in other people (2001: 8). The clear and insurmountable inconsistency inherent in simultaneously ratifying slavery *and* the individual right to property on the basis of liberty reveals the prominent and blinding role that ideology plays in our thinking about property. It also illustrates that government can have a constructive, instrumental role in the establishment and extension of freedom to individuals who have been victims of oppression at the hands of others who claimed their right to domination in the name of individual liberty. The link between individual liberty and unlimited private property is by no means as clear-cut as has traditionally been assumed: The presence of laws that formally establish slavery within a constitution aimed at the protection of individual rights and liberties plainly demonstrates the extent to which individual freedom is dependent on the relative standing of individuals in relation to one another.

The persistent conceptual link that people draw between individual liberty and property ownership is apparent in the popularity of the absolute conception of ownership, which embodies the idea that individuals have a moral right to do whatever they please with the property they own, irrespective of the needs of others (Eligido, 1995: 411). However, as was extensively discussed in section 1.2.1 and 1.2.2, the idea of absolute ownership is flawed because it ignores the fact that property rights are legal conventions which cannot exist without the presence of government and taxes. Taxes and property rights are thus inextricable parts of the same regulatory system. Traditionally, views on the role of freedom in the justification of private property were divided between those who favoured ‘negative liberty’, which holds that liberty should be measured by the absence of external restrictions, and those who advocated ‘positive liberty’, which is associated with the ability of an individual to influence and shape her own life. Proponents of negative liberty usually argue that the minimal state, established solely for the purpose of protecting individual rights and property, is the most extensive state that can be morally justified (Nozick, 1974: ix, 3 – 53). However, given that government necessarily precedes the establishment of property rights and that a property rights system itself is a form of regulation that places external restrictions on all individuals to the benefit of some, critics object that the minimal state constitutes a completely arbitrary baseline (Screenivisan, 1995: 123). The inclusion of private property right regulations in the claims that should be upheld and enforced by the minimalist state is at odds with the rest of the libertarian doctrine, which aims to minimize all forms of external restrictions. As no special rationales are offered for why private property rights should be viewed as a freedom-based right for select individuals and not as regulations against all<sup>24</sup>, the libertarian view, which maintains that almost all limits to property rights represent illegitimate restrictions of individual liberty, is clearly untenable. Property rights simply cannot be justified through a straightforward appeal to unrestricted liberty.

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<sup>24</sup> The potential libertarian justification of private property rights through the extension of self-ownership to ownership of external resources will be discussed and shown to be unsatisfactory as a basis for the establishment of moral claims to non-universal private property in section 2.2.1.

Additionally, it remains highly questionable whether the idea of advancing freedom can even be regarded as a “coherent political project”, as it appears to be impossible to appeal to this one value in all morally challenging situations without running into contradiction or coming up against arguments which appeal to the same value in order to defend directly opposing conclusions (Nussbaum, 2006: 61 – 62). For example, the freedom of individuals to possess and keep unrestricted quantities of land limits the ability of land reform projects that one could argue is essential for many freedoms for the poor. Accordingly, societies that attempt to justify their political practices on reasonable grounds “have to evaluate human freedoms, saying that some are central and some trivial, some good and some actively bad” (Nussbaum, 2006: 63). The hesitancy to label some ‘freedoms’ as bad is evident in the fact that half of the states within America still do not regard forced intercourse within marriage as genuine rape; and that the introduction of sexual harassment legislation is often protested on the basis that it reduces freedom (ibid). It should, however, be clear that the freedom of men to harass women in the workplace is definitely either *inferior* to the freedom of women to follow economic careers without being subjected to humiliating, discriminatory and restrictive practices, or that the ‘freedom’ to harass is simply a *bad* freedom in itself. The imperative to conscientiously evaluate human freedoms, and to protect and restrict them according to the constructive or detrimental outcomes they facilitate, is undeniable. Even the negative notion of freedom “requires a background conception of what is significant”, according to which some restrictions will be judged insignificant, and others of lesser or greater importance (Taylor, 1985: 219). The bizarreness of measuring freedom only by the absence of external obstacles quickly becomes apparent when one considers that, by this logic, the overall liberty of citizens of a country solely depend on the number of coercive rules enacted in that society, which means that a citizen of a country like Germany or the United States could be regarded as less free than a citizen of Malawi or Afghanistan – an assessment which is clearly at odds with our conventional understanding of freedom (ibid). Discrimination among motivations is crucial to our conception of freedom, because freedom itself derives its significance from the fact that we are purposive beings (ibid). So, if the value of freedom lies in the scope it gives individuals to act autonomously by permitting meaningful, identity-conferring choices which enable individuals to create a decent and purposeful life, then we “must be committed, on pain of arbitrariness, to conferring on [...] (individuals) rights to the resources they

need in order to lead such a life (Fabre, 2002: 253). This brings us back to the difficulty of establishing the correct balance between the claims of various individuals in the distribution of property rights. The problem of reconciling the liberal right to property with the equal effective right of all individuals to use and develop their capacities can be stated as follows:

When the liberal property right is written into law as an individual right to the exclusive use and disposal of parcels of the resources provided by nature and of parcels of the capital created by past work on them, and when it is combined with the liberal system of market incentives and rights of free contract, it leads to and supports a concentration of ownership and a system of power relations between individuals and classes which negates the ethical goal of free and independent individual development (Macpherson, 1978: 200).

The cumulative effect of the preceding arguments creates a strong case in favour of conceiving of property ownership as something that enables individuals to effectively exercise their freedom by enhancing their autonomy. Although some have argued that the articulation of property in terms of an individual right is wrong, because it “does not fit with other individual constitutional rights, which generally empower all persons equally and relate to individual worth and dignity” (Rapaczynski, 2004: 209); it is equally possible to insist that the mistake is rather that the individual right to property has been unnecessarily narrow in its formulation (Macpherson, 1978: 201). If liberty constitutes an essential justificatory principle for private property ownership, it has to be based on a more nuanced and realistic account of what and how the protection of private property rights contributes to the realization of individual freedom.

Property is certainly instrumental to establishing individual worth and dignity, and, as will be shown here, if the existence of private property can be consistently defended on the basis of liberty, it inevitably has universalistic implications. Evidence from psychological studies overwhelmingly supports the notion that property ownership is intimately linked with feelings of autonomy and competence. As Margaret Radin argues, some control over external resources is essential to self-development and personhood (1982: 957). Radin therefore insists that the basic right to *personal*

*property* should be recognized, as these property rights provide the necessary assurance of control, which plays an integral part in an individual's development as a competent, well-functioning human being (1982: 1013, 957). Personal property here is meant to refer to objects, such as family homes, that become inextricably part of the individual and thereby acquire a qualitative individual and social importance far beyond that of other property rights. Accordingly, there is a *prima facie* case for allowing all individuals access to sufficient personal property to enable them to become fully functioning individuals within their social context. In case of conflicting claims, *fungible property* rights should, to a certain degree, yield to personhood interests, because these interests are of such central importance to individual development (Radin, 1982: 1013 - 1015). Besides the positive consequences that personal property has for self-development and personhood, the possession of resources is also intricately connected to a sense of personal control and the experience of efficacy and competence (Furby, 1980: 31). Humans are "inherently motivated to interact effectively with their environment" to the extent that it is both pleasurable and highly rewarding to experience the contingent relationship between one's actions and their effect on the surroundings (White, 1959: 230). The ability to influence and organize one's environment helps create a sense of personal capability and responsibility, which in turn is conducive to individual agency and well-being. Moreover, because control of objects becomes closely tied to control over other individuals, possession heavily influences power relations between people, which make property rights an extremely important determinant of political socialization and organization (Furby, 1980: 38, 40). The complete absence of access to personal property is thus both detrimental to an individual's personal well-being and to her potential to function effectively socially, as it undermines her ability to interact on equal terms with others. From both a psychological and a social perspective, the critical importance of widespread, preferably universal, ownership of some personal and private property is undeniable.

The idea that general property ownership constitutes an essential aspect of the moral justification of private property on the basis of liberty is in agreement with the views of many contemporary property theorists. In *The Right to Private Property*, Jeremy Waldron examines various rights-based arguments for private property and argues that the Hegelian approach, which interprets property as a basic human interest, is the



most convincing (1988: 343 – 389). On Hegel’s account, private property is very important to the ethical development of individuals, because it enables individual self-assertion, promotes mutual recognition and establishes a sense of responsibility (Waldron, 1998: 2). Once again, acceptance of this stance entails both that private property is morally legitimate and that *everyone should have property* (Waldron, 1998: 423 – 445). The distributive implication of this view is to impose a universal basic minimum property provision, while leaving substantial leeway for different social and economic institutions. Joseph Singer similarly argues that, because the ability to earn and use property is essential to obtaining a living, access to property inevitably constitutes a fundamental part of social justice (2000: xii). By emphasizing the connection between property and social relationships, Singer contends that “limits on each owner may be necessary to preserve liberty for all” (Singer, 2000: 15). Ownership should be understood as entailing both the granting of rights and the adoption of obligations, and when property rights “adversely affect the legitimate interests of others then those property rights must be limited, by law, to protect those interests” (Singer, 2000: 13, 17, 16). This view is also supported by C. Edwin Baker, a leading scholar of constitutional law, who argues in *Property and Its Relation to Constitutionally Protected Liberty* that “collective control (over some aspect of property) does not necessarily limit, but can further, important aspects of individual liberty” (Baker, 1986: 741 – 742). Based on the preceding discussions, it should be clearly apparent that arguments from liberty can only successfully establish grounds for the protection of the private property of some if it allows for the provision that a minimum amount of private property should be available to all. Some account of ‘positive’, autonomy-enhancing liberty can thus serve as a justification for private property, on the condition that it confers benefits onto all citizens.

In relation to the practice of economic inheritance, the justificatory principle of liberty clearly dictates that the size of bequests should be limited. Because it is impossible to appeal to the value of freedom in all morally challenging situations without running into contradiction, it is necessary to consider the relative importance of different kinds of freedoms and make judgments regarding which freedoms are essential, as opposed to trivial, to human well-being. In the context of property ownership, individual liberty can be used to defend the moral importance of some personal property for every individual, because it is instrumental to the establishment of individual

autonomy and competence. However, the right to unlimited property acquisition and transfer cannot be justified on the basis of individual liberty, because it is not of central importance to human development and well-being, and it has the adverse effect of skewing power relations and giving some individuals excessive influence over the lives of others, thereby severely restricting their freedom. Economic inheritance should thus be structured so that it counters the extreme concentration of wealth and promotes the widespread dispersal of property ownership. Accordingly, limits to the size and scope of bequests is consistent with the justificatory principle of liberty and would be recommended on the basis of arguments that establish moral claims to ownerships on these grounds.

## **2.2. Acquisition through Labour**

The idea that property can be directly acquired through labour has a long history and is closely related to the idea of individual freedom, as the acquisition of objects of value is regarded as the appropriate reward for voluntary work effort. The labour theory of acquisition became influential due to John Locke's *Two Treatise of Government*, which was first published in 1689. Locke, who wanted to oppose absolute monarchy and defend the rights of landowners against the license of the king, argued that property was a *natural right* which existed prior to the formation of government and was therefore independent of it (West, 2003: 20 – 21). The immense influence of Locke's theory is partly due to the popularity it enjoyed in the United States during the eighteenth century, where it provided the philosophical basis for the colonists' belief in the sanctity of property and their right to independence from Great Britain. Locke's argument begins with the assertion that "every man has a property in his own person" and consequently "the labour of his body and the work of his hands [...] are properly his" (1976: 15). This idea of 'self-ownership' is then extended to include property rights in external objects. On Locke's account, because labour is "the unquestionable property of the labourer", a person can, by mixing his labour with some object in the state of nature, make that object his own property, as he has attached something of himself to it and thereby acquired the right to exclude other people from using it. Locke implicitly places a limit on the amount of property an individual can appropriate, by stating that a person can have "as much land as (he) tills, plants, improves, cultivates, and can use the products of", on the condition that

“there is enough and as good left in common for others” (1976: 17, 15)<sup>25 26</sup>. The Lockean argument for the acquisition of private property through labour gave rise to two distinct justificatory principles of ownership, namely the ‘natural rights’ argument that centres on the notion of self-ownership, and the labour-desert / incentive argument<sup>27</sup>.

### 2.2.1. From Self-Ownership to Control over External Resources?

The ‘natural rights’ argument proceeds from the assumption that every person has a right over, i.e. property in, his own mind and body. This natural right is then extended to include the right to absolute private property by arguing, firstly, that a person’s actions also belong to himself and, secondly, that mixing it with something thereby gives him rights over, and ownership of, the thing in question. The issue of self-ownership has been the subject of extensive debate within political philosophy<sup>28</sup>, with disagreements regarding the rightful ownership of individuals’ talents accounting for a particularly contentious aspect of the debate. Partly because I believe this issue has already been satisfactorily resolved within political philosophy, partly because I consider the self-ownership to world-ownership argument to be rather weak and fundamentally flawed, and partly because the strongest objections to it has already been presented in section 1.2.2., the subsequent discussion of it will be rather brief.

The idea that self-ownership can lead to full ownership or absolute property rights over objects arguably gained prominence within political philosophy after Robert Nozick used this form of natural rights argument in his (in)famous ‘Wilt Chamberlain’ example in *Anarchy, State, and Utopia*. While Nozick treats Locke’s

<sup>25</sup> For excellent and detailed discussions of Locke’s account of property rights, see Screenivisan, G. 1995. *The Limits of Lockean Rights in Property*. Oxford: Oxford University Press; and Simmons, J.A. 1992. ‘Property Rights’ in *The Lockean Theory of Rights*. pp. 222 – 306.

<sup>26</sup> John Christman also shows that Locke’s own argument does not justify absolute property rights as a natural right, and that natural right arguments, based either on the moral significance of labour or on the importance of the conditions at the time of first appropriation, are insufficient to justify *full* ownership rights. According to Christman, “Locke took seriously the limitations of what natural rights to property amount to”, namely use and management rights (1986: 178). See Christman, J. 1986. “Can Ownership be Justified by Natural Rights?” in *Philosophy and Public Affairs*. 15 (2): 156 – 177.

<sup>27</sup> For an account of Locke’s own view on inheritance, see Waldron, J.J. 1999. “Locke’s Account of Inheritance and Bequest” in *Locke’s Moral, Political and Legal Philosophy*. Dartmouth: Aldershot. pp. 299 – 311.

<sup>28</sup> In this regard, see, for example, Cohen, G.A. 1995. *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge University Press; Kernohan, A. 1990. “Rawls and the Collective Ownership of Natural Abilities” in *Canadian Journal of Philosophy*. 20 (1): 19 – 28.

‘mixing your labour’ metaphor with disdain, by asking whether he would acquire ownership rights to the ocean by uniformly mixing his can of radioactive tomato juice with it; he nevertheless fails to offer any alternative theory of acquisition and implicitly relies on the labour theory of ownership as support for his assertion that “things come into the world already attached to people having entitlements over them” (1974: 160). According to Nozick, the redistribution of an individual’s income or assets through taxation is unacceptable because it violates the individual’s natural right to control over his own mind and body<sup>29</sup>. Nozick uses the Wilt Chamberlain example to illustrate this point. He sketches a situation in which a basketball player, Wilt, charges an audience a separate fee, in addition to the price of the ticket, for the pleasure of seeing him play. Assuming that all members of the audience happily comply, Nozick argues that Wilt should be entitled to keep all of the extra money, because the compulsory redistribution of the product of Wilt’s labour allegedly amounts to the same as giving other people *part-ownership* of Wilt (1974: 172). Nozick arrives at this conclusion based on the following steps of reasoning:

Seizing the results of someone’s labour (through taxation) is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, *they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a property right in you* (1974: 172, my italics).

As Nozick believes that Wilt’s ownership of his body also gives him ownership of his actions, he argues that taking part of the product of Wilt’s labour is equivalent to forcing him to work, which counts as a form of slavery, and amounts to the same as granting others part-ownership of him. If this line of arguing is correct, it would be unacceptable *not* to allow people to have property rights to everything they earn or create, as the failure to do so would infringe on the individual’s most basic autonomy over himself and his body - an outcome that is clearly unacceptable and unjust. The

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<sup>29</sup> Eric Mack also regards individual’s rights to non-interference and the accompanying extension to full property rights as the central tenant of social justice. See Mack, E. 2009. “Individualism and Libertarian Rights” in *Contemporary Debates in Political Philosophy* (ed. by Christiano, T. & Christman, J.) Oxford: Blackwell Publishing, pp. 121 – 136.

simplest and most straightforward refutation of this argument is to allude back to section 1.2., by emphasizing that the establishment of government *precedes* the existence of property rights, which can only be established and enforced through the use of resources acquired through taxation. There is thus no such thing as absolute or full ownership in the absence of government regulation and taxation, which means that it is logically impossible that people should have any kind of entitlement to all their pre-tax income.

Another way of objecting to the labour justification of property rights is to point out that the fact that we have control over our own bodies and minds does not mean that we ‘own’ the products or effects of our actions. The natural right arguments for acquisition through labour depends crucially on the presupposition that ownership of our minds and bodies necessarily extends to ownership of our actions which, in turn, leads to ownership of the things we do or create through them. However, this is not necessarily the case. The way in which, for example, Wilt Chamberlain’s actions are his is not linked to ownership; his actions are his in a sense analogous to the sense in which his headache is his, and there is “no compelling reason for assimilating this to proprietorship” (Ryan, 1983: 226 - 227). If we accept that the products of a person’s actions are not by default wholly his property, then taxing Wilt’s income for the purpose of redistribution does not constitute forced labour, but merely an enforced contribution to the society he is part of (ibid). Nozick is mistaken in assuming that a compulsory financial contribution from an individual is the same as stripping that individual of choice and forcing him to work (1974: 172). Nozick fails to take seriously the significant difference between not getting everything you might want from a purely self-interested perspective and truly being deprived of meaningful autonomous choices and actions. The assertion that taking a portion of Wilt’s income is equivalent to granting part-ownership over him is unconvincing at best, especially when taking into consideration that no one is forcing him to play basketball and that he must be aware that his income will be taxed even before he starts playing. Wilt’s decision to play, *in spite of* the fact that he will not be able to appropriate the full amount of money paid by the audience to watch him, is still based on free choice. His ability to play basketball and earn money from doing something that he most likely finds enjoyable is also crucially dependent on various factors beyond his personal control, such as the cooperation of his team-mates, the willingness of spectators to

pay to view the sport and the existence of governmentally created transportation infrastructure that enables everyone to get to the court. Even the existence of and esteem for the sport, which creates the opportunity for players like Wilt to participate in and earn a living from it, are heavily dependent on the effort and ideas of others, and thus on the cooperative social context he finds himself in.

More generally, as George Brenkert suggests during his thorough analysis and convincing denunciation of self-ownership in 'Self-Ownership, Freedom, and Autonomy', one should generally object that "the use of 'slave' and 'slavery' by libertarians to refer to non-contractual obligations is both morally offensive and conceptually questionable", because it uses the term in a morally cavalier manner that abstracts from the historical context and grave meaning of the term (1998: 45). Brenkert argues that self-ownership is "not attractive, forceful, or appealing", because it completely ignores the fact that the development of every individual's body, skills and competencies are all to varying degree due to the care, concern, expense and time of others (1998: 47 - 48). The idea that we have no grounds for moral claims upon each other is implausible and the excessive emphasis on self-ownership "skews our moral understanding of ourselves" (ibid). Brenkert dismisses the idea of self-ownership on the basis that it includes a set of assumptions and values that has nothing to do with an individual's rightful control rights over his mind and body (1999: 53). The notion that it is necessary to conceive of talents and natural abilities as either fundamentally 'self-owned' or 'collectively owned' in order to arrive at a satisfactory conception or justification of property rights is highly dubious.

Along similar lines, John Christman persuasively argues that "there are two importantly different aspects of ownership which must be considered separately and justified according to crucially contrasting considerations" (1991: 28). Christman accordingly distinguishes between *control rights*, which protect "autonomy interests" and are justified on the basis of individualistic interests such as liberty, autonomy and self-determination; and *income rights*, which protect the right to receive income from assets and the right to enjoy increased benefit from (relinquishing) ownership<sup>30</sup> (1994a: 7; 1991: 29; 1994b: 231). For Christman, control rights can be interpreted as

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<sup>30</sup> This distinction corresponds closely to the one drawn by Radin between *personal property* and *fungible property*, as discussed above.

preserving the essence of self-ownership, as it helps protect the individual's ability to exercise autonomous choices independently of external influence and to have some control over her external environment (1994b: 239, 247). Income rights, in contrast, are uniquely conditional and, because they serve an allocative function, are subject to the principles that govern distribution within the society concerned (Christman, 1991: 28, 30, 33; 1994a: 8). As Christman explains, "while a right to income from trade or rent of an asset is itself fixed, the *content* of that right – exactly what it is one has a right to – is not, since that depends on market factors over which the right holder could make no presumptive claim" (1994b: 246). These market-related factors include relative bargaining power, transaction costs and the "surpluses created by the efficiency of the existence of market structures and information-gathering mechanisms" (Christman, 1991: 31). As income flows presuppose and reinforce the existing distribution of resources, and are intrinsically dependent on market features for which individuals can claim no personal responsibility and reward, they are subject to limitation in the form of taxation in order to protect the control rights and autonomy interests of other citizens (1991: 33- 44). As Christman concludes, "when one separates the right of increase from rights of possession, one's normative conclusions concerning the right to property in a just society are significantly altered" (1994a: 4). The value that is conventionally attached to self-ownership stems from the awareness that it enables individuals to make certain meaningful choices autonomously and gives them the ability to manage significant aspects of their lives. The core moral appeal of self-ownership thus concerns the ability of every individual to decide and shape her own existence in important ways, and not the right to maximum or unlimited resource accumulation at the expense or to the detriment of the rest of society.

A consistent moral defence of self-ownership has broadly egalitarian implications, so when the practice of economic inheritance is assessed on this basis, the resulting recommendations entail the restriction of excessive wealth concentration in favour of a more inclusive property distribution. To the extent that the idea of self-ownership can be regarded as a compelling basis for the moral defence of private property rights, it has to concern the protection of identity-conferring and autonomy-enhancing *personal* property for all, as oppose to a few individuals' right to unlimited *fungible* property. In so far as the idea of self-ownership can be morally justified, it concerns

the protection of the individual's interest in exercising a degree of autonomous control over her own life, and has no bearing on the right to unlimited resource acquisition. The ideal of securing a degree of individual autonomy for every person can best be achieved when property ownership is widespread and when the excessive concentration of wealth, which tends to give some individuals undue power and influence over others, is curtailed. In relation to the practice of economic inheritance, the recommendation made on the basis of the ideal of self-ownership would have to be in line with the objective of extending personal property ownership, and accordingly the inheritance of vast amounts of wealth should be limited in favour of the more widespread distribution of some basic property for all individuals.

### **2.2.2. Incentives and Desert**

The second argument for the acquisition of property through labour, which is not as explicitly clear in Locke's theory, is the labour-desert argument. The central tenet of the labour-desert argument holds that when a person uses his labour to improve or create something out of objects that he found in the state of nature, he acquires property rights to the thing in question because "the improvement of labour makes the far greater part of the value" (Locke, 1976: 22). This argument is based on the assumptions that individuals should benefit from their productive endeavours and that others are not made worse off by any individual's appropriation of property for private use. Within contemporary thought, the desert-based argument for property acquisition through labour operates along two dimensions: Firstly, in pragmatic terms, rewards are regarded as pre-requisites for exertive labour because they provide the incentives for productive effort. Secondly, people generally believe that an individual who voluntarily dedicates time and effort to work has a legitimate moral claim to reward for the constructive contribution she makes to society. Yet, despite the clear views that people apparently have regarding the role of incentives and desert in the assignment of reward, it is often difficult to make fair and accurate judgments about these claims in practice.

The need for incentives to incite effort and performance is affirmed by most people. In an empirical study on beliefs about social justice, 85 percent of people agreed that "giving everybody about the same income regardless of the type of work they do



would destroy the desire to work hard and do a better job” (Miller, 1992: 565). In this way, substantial inequalities in economic rewards are rationalized with reference to the idea that great variation in attainable rewards increases the competitive effort and productivity of individuals (Brittain, 1977: 1). Accordingly, property rights are used to define the “structure of incentives that lead people to struggle, compete and cooperate in order to satisfy their needs and ambitions” (Colombatto, 2004: xiii). Although independent accumulation “does not necessarily derive from any universally admired contribution to society”, it usually at least requires some effort and exertion on the part of the wealth recipient (Brittain, 1978: 9).

The ideal of a productive society, in which all individuals are motivated to work and thereby contribute to the prosperity of the society as a whole, reinforces the need for and importance of incentives. While the instrumental role that incentives play in inducing or motivating productive effort is fairly self-evident, the form that these incentives need to take in order to be effective is fiercely contested. For example, economists disagree on the relative size of the reward that would be required to entice people to do certain jobs, and on the effect that changes in the payoffs of certain employment positions would have on individuals’ willingness to work. In addition, the effect of inheritance taxation on incentives is somewhat ambiguous. While high levels of inheritance taxation could decrease parents’ incentive to keep working and accumulate more money, because they cannot bequeath it all to their children, this effect is offset by the increased incentive on behalf of the children to work harder and earn more money, as the absence of the expectation of a sizeable future inheritance increases their need to save for future consumption and security. In contrast, children who know that they will receive a substantial inheritance have less incentive to become productive members of society, and might lose sight of the role that purposive productive projects play in terms of identity-formation and self-realization. Although it is not clear on a theoretical level which of these two effects will be greater, empirical evidence strongly suggests that the overall effect of a significant increase in inheritance taxation on incentives will be positive. Large bequests tend to undermine productivity, because it contradicts the productivity ideal according to which people earn financial rewards to entice, and on the basis of, their productive contribution to society (Haslett, 1997: 135 – 140). These issues will be further analysed in Chapter 3, in which the relative importance of particular incentives, as

well as the effects that inheritance taxation has on individuals' incentives to work and save, will be assessed on the basis of empirical evidence.

Multiple empirical studies of beliefs about social justice also indicate the overwhelming popular support for desert "as a major criterion for income distribution" (Miller, 1992: 580, 590). Fairness requires that a distinction should be drawn between what the lazy and the hardworking deserve, and yet, in practice it remains extremely difficult to accurately judge what an individual is entitled to on the basis of desert. One of the factors that markedly influence our perceptions of what individuals deserve is the norms inherent in the existing status quo. Assessments of desert consistently reveal a strong 'status quo bias': People are "heavily influenced by existing pay scales" in their assessments of fair incomes, with cross-national studies indicating that, between a top executive and a manual labourer, Swedish respondents regard an income differential of 3 to 1 as fair, while American respondents perceive a differential of 15 to 1 as fair<sup>31</sup> (Miller, 1992: 587). This status quo bias is the result of two human psychological tendencies. Firstly, people commonly imbue social regularities with a sense of moral rightness and inevitability. Accordingly, people tend to take their cues about what counts as fair rewards from their surroundings, which means that the proper preconditions for being judged as 'deserving' by others are, for the most part, socially determined (Lerner, 1980: 10, 11). Secondly, the effect of the status quo bias is reinforced by the prominent impact that 'adaptive beliefs' have on perceptions of fairness: Apart from relying on our empirical reality for information regarding what counts as fair, we also subconsciously adjust our perception of fairness to fit the existing world. As social psychologist Joseph Lerner convincingly explains, we feel a need to make sense of our surroundings, so we construct the "belief in a just world" in order to create the illusion that we live in a manageable and predictable environment, because this has great functional benefits for our ability to "engage in long-term goal-directed activity" (Lerner, 1980: 9). Our 'belief in a just world' is a coping mechanism that both serves our illusion of being in control and protects us from the pain we will experience if we fully acknowledged and internalized the grave misfortune and suffering many individuals experience on a

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<sup>31</sup> The influence of the status quo on judgments of the justness of outcomes is also well-documented in relation to the distribution of income, with cross-national studies revealing that "concrete judgments of fairness reflect existing patterns of social distribution" (Miller, 1992: 587).

daily basis. We assign deservingness to individuals who benefit from fortuitous good fortune and, as empirical research clearly shows, we frequently blame victims for their misfortune and hold them personally responsible for their fates, even in the presence of overwhelming evidence to the contrary (Lerner, 1980: 4, 39 - 53). This happens because people construe events to fit the 'just world' belief, by overemphasizing 'token' examples from personal experience (Atkinson, 1977: 54), by internalizing morality tales and cultural wisdom, by imposing fake causality on occurrences, and by reinterpreting the character of the victim (Lerner, 1980: 12 - 21). The belief that people get what they deserve is so pervasive and well socialized that victims of misfortune often experience guilt and shame in reaction to grave injustices that they have suffered (Lerner, 1980: 123 - 136). Our intuitive evaluations of desert therefore cannot be regarded as straightforward, morally valid grounds for claims of reward.

The difficulty of fairly assessing what people deserve for their productive effort is further exacerbated by the fact that, even though we tend to take our cue for what counts as fair from social surroundings, we are not particularly good at accurately gauging the state of our empirical reality. In a very recent article entitled "Americans Want to Live in a Much More Equal Country (They Just Don't Realize It)", psychologist and behavioural economist Dan Ariely illustrates that substantial discrepancies exist between actual, estimated and ideal distributions of wealth (see Figure 1, 2012). People tend to think that wealth is much more equally distributed than it actually is, and favour a distribution that is even more equal than their estimated distribution. After asking 5522 study participants, Ariely found that "the ideal distribution described by this representative sample of Americans was dramatically more equal than exists anywhere in the world, with 32% of wealth belonging to the wealthiest quintile down to 11% by the poorest" (2012). This stands in stark contrast with the reality: The top 20 percent owns 84 percent of the wealth, while the bottom 40 percent owns only 0.3 percent of total wealth. Experimental studies similarly indicate that the vast majority of people believe that the current range of incomes are too great and that individuals favour top-to-bottom income ratios of between 9 and 12 to 1 as part of a fair economic system (Miller, 1992: 568, 565 - 566). This ratio is astronomically narrower than that which actually exists in the United States, where the top 0.01 percent currently earn 250 times as much as the

*average* income (not the lowest) (Piketty & Saez, 2003: 13). A greater awareness of the disparities between the existing and desired income and wealth distributions can clearly be instrumental in inducing citizens to mobilize politically in order to affect change in existing policies and institutions.

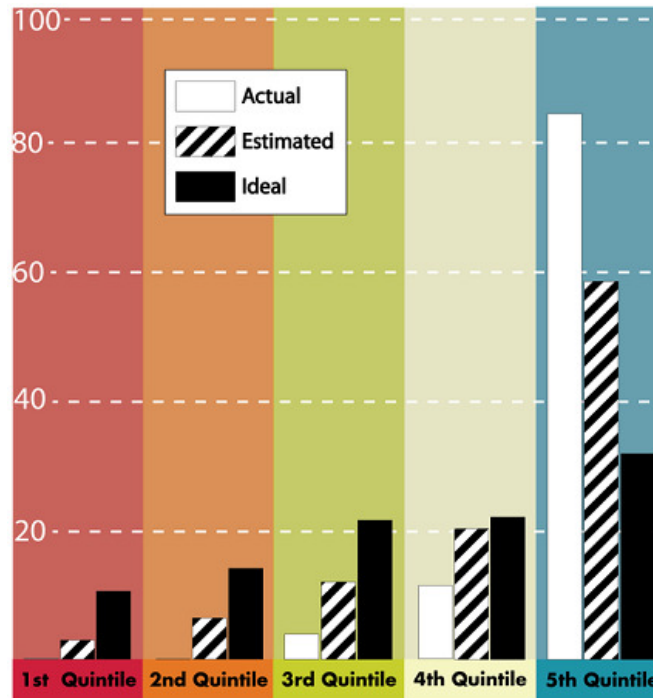


Figure 1. The actual, estimated and ideal distributions of wealth by quintile in the United States, 2012.

Accurately determining what individuals are entitled to on the basis of desert is extremely complicated, because of our human psychological tendencies to imbue social regularities with a sense of moral correctness, while simultaneously adjusting our perceptions of fairness to fit our perception of our empirical reality, which, it turns out, is itself greatly inaccurate. Moreover, the high prevalence of collaborative productive endeavours means that it is often difficult to determine the relative contributions of particular individuals. Finally, on a more fundamental level, practical assessments of desert are complicated by the fact that the notion of desert entails responsibility: A person can only be truly deserving of a reward if she is personally responsible for the achievement that resulted in her earning it. The fact that morally irrelevant attributes such as ability and advantageous social background play a significant role in individual outcomes brings the question of fairness to the forefront. Given that judgments of desert is always relative and necessarily informed by

comparative assessments, asserting that any given individual deserves something (while others do not) can only be fair when the background conditions that these individuals face are sufficiently similar. Intergenerational social mobility, which “refers to the relationship between the socio-economic status of parents and the status their children will attain as adults”, serves as an important empirical indication of the extent to which individuals can be held personally responsible for their success (Causa & Johanssen, 2009: 5). Accordingly, chapter 3 attempts to offer a fair account of the nature of our current social context, and draws on empirical data to investigate the extent to which property acquisition is based on desert, as opposed to social background and institutional factors.

All the issues discussed above show that assessments of desert are extremely complicated, and that judgments of entitlement based on desert are tentative at best. A fair evaluation of the extent to which desert-based arguments establish morally valid claims to property ownership significantly depends on the nature of the social context in question. At any rate, it remains impossible to defend the practice of economic inheritance on the basis of desert. The justificatory principle of desert-based property acquisition stands in direct opposition to the practice of economic inheritance, as the heir can have no desert-based claim to her acquired fortune. On these grounds, economic inheritance is entirely illegitimate, as those who inherit wealth receive an unfair and undeserved advantage over others who work hard for their income. Some insights on the implications that considerations of desert have for the practice of economic inheritance will be offered within its relevant context in Chapter 3.

### **2.3. Considerations of Utility and Efficiency**

The institution of private property is also often defended on the basis that it increases utility and efficiency. Property rights form an essential component of our economic system. Within this context, the role of private property “can hardly be overemphasized”, and there is a strong positive correlation between the enforcement of private property rights and economic performance (Columbatto, 2004: xiii). The very possibility of a market economy crucially depends on the existence of property rights, because in the absence of ownership no one can make entitlement claims over any object, and all notions of exchange and trade are meaningless. Utility, which

refers to the “abstract measure of the satisfaction or happiness a consumer receives from a bundle of goods”, is also regarded as a morally relevant criterion within philosophy, because the promotion of human well-being, which in the economic context relates to the satisfaction of preferences, is considered as a worthwhile moral objective (Mankiw, 2004: 462; Munzer, 1990: 197). Efficiency, defined as the “property of society getting the most from its scarce resources”, is also assumed to promote the maximization of happiness by limiting waste (Mankiw, 2004: 148). Within economics, individual preference satisfaction can be regarded as the common concern which links utility and efficiency, both of which should be maximized through the use, possession and transfer of property rights when it is allocated correctly (Munzer, 1990: 196, 202). The correct allocation of property rights, in turn, depends on the free workings of the market, where competition for resources ensures that the market price reflects the relative value that people attach to different goods, and allows everyone to obtain a selection of goods based on his own relative preferences, as these transactions will only take place when all parties “expect to be better off *according to their own personal measures of value*” (Hayek, 1982: 71; De Alessi, 2003: 91). However, this dominant conception of efficiency in economics neglects to take the value that people without property attach to resource access into consideration, which seriously undermines the validity of the claims that the market is capable of *maximizing* efficiency. It also brings the notion that utility and efficiency can serve as moral principles into question, because the value and dignity of many individuals are completely excluded from these calculations. The idea that economic policies can be judged purely “positively” according to their contribution to efficiency merely pushes the normative issue back a step, for the choice of efficiency as a desideratum and the definition of efficiency are, again, value-laden (Goodwin, 1997: xxvii). From the perspective of moral philosophy, efficiency thus cannot be regarded as an important social objective, unless the content of the concept is determined in such a way that it embodies and reflects our moral concerns.

The assertion that the free market is capable of maximizing the utility of consumers and producers fatefully depends on the assumptions of perfect competition; namely that people have complete information; that all products are identical; that buyers and sellers are so numerous that the influence of each is negligible; and that production operates at zero profit (Mankiw, 2004: 64). Evidently, this is never the case, and the

existence of market power based on discrepancies in wealth brings the applicability of the notion of utility as moral standard into disrepute. Moreover, it is severely questionable whether the objective of maximizing a utility can even be regarded as a coherent and meaningful project in itself. From a practical perspective, the complexity of our world, the difficulty of finding ways to accurately measure the quality and quantity of utility, the cost and invasiveness of this kind of information gathering, the administrative infeasibility of such an endeavour, the insurmountable difficulties posed by the problem of moral hazard, and the presence of conflicting and contradictory claims based on appeals to the same value are all valid concerns; because any one of these obstacles may well conclusively undermine any aspirations to the successful completion of this project<sup>32</sup>. Due to the virtual impossibility of accurately calculating or measuring the quantity of ‘well-being’ or ‘utility’ that will be generated through the implementation of a proposed theory, proponents have been known to resort to *occult numbers* - confident appeals to a favourable cumulative outcome based on “arcane and unexhibited calculations” (Anderson, 1993: 69). In truth, “there is no objective social scale for measuring, aggregating, and comparing the welfare gains and losses of the same or different groups of individuals” (De Alessi, 2003: 90). The *pretence* of the possibility of knowing how best to ‘maximize’ utility and when the optimal outcome has been reached seems to entice individuals to presuming outcomes on the basis of scant or non-existing empirical evidence. Consequently, justificatory arguments that attempt to establish full ownership rights on the basis of utility and efficiency are “hopelessly indeterminate”<sup>33</sup> (Christman, 1994a: 8).

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<sup>32</sup>The difficulties inherent in the process of attempting to maximize a given principle, as well as the moral objections to the outcomes of these practices, are multiple and form the subject of a substantial literature in political philosophy, which I will not even begin to attempt to discuss in any great detail here. For some examples, see Scanlon’s thorough and persuasive critique of well-being as the “master-value” where he argue against the “idea that there is a single notion of well-being that should play a central role both in individual decision-making and in the justification of moral principles” in *What We Owe Each Other* (1993: 8, 108 – 143); Elizabeth Anderson’s impressive defence of the pluralism of values and extensive, convincing critique of consequentialism in *Value in Ethics and Economics* (1993: 223); Rawls’ critique of utilitarianism’s aggregative character and baseline assumption that welfare is the only feature that requires normative concern in *A Theory of Justice* (1999: 14 – 30); Mark Sagoff critique of the concept of preferences as neither clear nor useful in “Should Preferences Count” in *Land Economics* 2. 1994 (May): 127 – 145.

<sup>33</sup> For a more comprehensive discussion of efficiency, utility and utility maximization within property rights systems, see Christman, 1994a: 98 – 123.

Despite its popularity, the strategy of ‘maximizing’ utility also appears to be a poor and futile goal due to the existence of incommensurable values. A mayor problem with contemporary economic theory is that “it takes for granted a one-dimensional understanding of human goals, restricted to the maximization of the satisfaction of existing, unchanging desires for ever more private consumption” (Ackerman, 1991: 49). Consequently, the “mainstream of economic theory has become rigorous and elegant in its logic, but indecisive as to the welfare implications of most actual policies” (Ackerman, 1991: 81). Amidst the abundant plurality of goods that can differ in kind and quality, and the multitude of “norms that express fundamentally different ways of valuing people and things” (Anderson, 1993: xiii), the attempt to identify a singular yardstick by which all norms and goods can be measured becomes glaringly naïve. Two goods can be regarded as “incomparable in intrinsic worth” when we do not consider them to be candidates for the same “mode of evaluation” (Anderson, 1993: 70). The notion that everything humans care about can be translated into one value represents a very unattractive and limited conception of the nature of human existence and concerns. Any attempt at moral justification needs to be attentive to “the richness and diversity of our concerns and find a place for the full range of our responses to what we value” (Anderson, 1993: xii). This accentuates the need to give greater attention to the safeguarding of rights, the provision of basic requirements for the satisfaction of needs, and the realization of desirable outcomes, instead of narrowly focusing on the maximization of some particular value such as utility.

When it comes to the justification of private property acquisition on the basis of utility and efficiency, the assessment becomes significantly more complicated and uncertain. In relation to the practice of economic inheritance, neither of these principles leads to absolutely clear-cut recommendations. Utility cannot serve as a practical guideline according to which the best social practices can be determined, as accurate measures or estimates of the utility generated by a specific arrangement are impossible to obtain. The relative efficiency of any particular social arrangements, as compared with any other, can only be assessed with a reasonable degree of accuracy when the alternative options are implemented and examined in practice. However, one clear observation that can be made regarding the relationship between efficiency and economic inheritance is that at high levels of inequality, which is partially caused and



greatly exacerbated through the intergenerational transfer of large fortunes, the market system becomes inefficient. High inequality slows down growth, lowers productivity, shrinks GDP, decreases efficiency and causes instability (Stiglitz, 2012: 117). The largely unrestricted intergenerational transfer of wealth significantly contributes to the maintenance of a vicious circle: “Inequality is cause and consequence of the failure of the political system, and it contributes to the instability of our economic system, which in turn contributes to increased inequality” (Stiglitz, 2012: xi). When the political system does not correct market failures, it creates a “vicious downward spiral” in which both the political and economic systems become “fundamentally unfair” because it leads to enormous increases in inequality, which create market distortions and give a few individuals undue power and influence over others (ibid.). From an efficiency perspective, it is thus essential that excessive inequality should be limited, and the restriction of the size and scope of economic bequests has an important role to play in preventing the continuation and intensification of high levels of wealth inequality.

### 3. Citizenship and Moral Equality

Careful analyses of the justificatory principles of ownership indicate that any consistent defence of private property tend to have broadly egalitarian implications, and yet, the meaning and requirements of the ideal of equality continues to be disputed. Accordingly, this section presents a brief account of the appropriate understanding of equality within contemporary democracies. In recent decades, after attention was drawn to the fact that equality in one respect implies inequality in others, there has been a shift away from the pursuit of simple outcome-based equality to an examination of the relevant respect in which people should be rendered as equal as possible<sup>34</sup> (Sen, 1992: 13). This trend intensified with the rise of ‘luck egalitarianism’, which aims to eliminate the effects of luck on outcomes by drawing a sharp distinction between outcomes an individual can be held responsible for (‘option luck’) and outcomes that are beyond personal control and could not have been

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<sup>34</sup> See, for example, Cohen, G.A. 1989. “On the Currency of Egalitarian Justice” in *Ethics*. 99(4): 906 – 944; Arneson, R. 1989. “Equality and Equality of Opportunity for Welfare” in *Philosophical Studies*. 55(1): 77 – 93; Dworkin, R. 1981a. “What is Equality? Part 1: Equality of Welfare” in *Philosophy & Public Affairs*. 10(3): 185 – 246 and 1981b. “What is Equality? Part 2: Equality of Resources” in *Philosophy & Public Affairs*. 10(4): 283 – 345.

foreseen ('brute luck'), so that they can employ redistributive criteria which are "ambition-sensitive and endowment-insensitive" (Dworkin, 1981b: 311). The explicit aim of luck egalitarians is to compensate individuals for their lesser prospects, but "only for those welfare deficits which are not in some way traceable to the individual's choices" (Cohen, 1989: 914). However, the attempt to draw a fundamental distinction between choice / option luck and chance / brute luck has deeply undesirable consequences for our conception of human individuals, because, in their attempt to determine whether individuals can be held responsible for certain outcomes, luck egalitarians have to make "demeaning and intrusive judgments of people's capacities to exercise responsibility and effectively dictate to them the appropriate uses of their freedoms"<sup>35</sup> (Anderson, 1999: 289). Accordingly, as luck egalitarianism "makes the basis for citizen's claims on one another the fact that some are inferior to others in the worth of their lives, talents, and personal qualities", luck egalitarianism "fails the most fundamental test any egalitarian theory must meet", namely that of showing equal respect and concern for all citizens (Anderson, 1999: 289). Luck egalitarianism thus has the negative consequence of presenting a vision of human persons as objects that can be measured, graded and classified as inherently superior or inferior relative to each other. While the impulse to eliminate morally irrelevant features from consideration in terms of desert is understandable, the costs of implementing this principle in practice are clearly too high. Classifying people in this manner threatens to undermine the fundamental aim of affording each other equal dignity and respect, and can have harmful consequences for, or even erode, our understanding of individuals as human beings of equal moral worth.

In contrast, the capabilities approach, as conceived of and developed by Martha Nussbaum, offers an attractive and appropriate interpretation of the ideal of equality, as it is centred on the idea that social justice is best understood as a moral responsibility to ensure that every individual is in a position of capability to function in certain areas (Nussbaum, 2006: 53). It acknowledges the reality that every individual's life begins and progresses amidst an inextricable blend of countless

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<sup>35</sup> In addition, there are multiple practical difficulties inherent in attempting to determine when, and to what extent, occurrences or outcomes are due to choice, whereby an individual deserves the reward or loss, and when they are due to luck or misfortune, which implies the need for redistributive taxes or compensation. Natural disasters, health problems and accident are among the scenarios that can easily be used to illustrate the precariousness of trying to neatly distinguish between the relative contributions made by choice as opposed to chance.

different influences, environmental factors and arbitrary coincidences that all contribute to shaping who a person becomes and what she manages to achieve, and implicitly recognizes that “the line of separation between injustice and misfortune is a political choice, not a simple rule that can be taken as a given” (Shklar, 1990: 5). By focusing from the outset on what individuals are actually able to do and to be, the capabilities approach is well-situated to address all important aspects of inequality, both inside the family and between larger social groups (Nussbaum, 2006: 55). The idea that comparative quality-of-life assessments are central to political and social justice is advocated by both Nussbaum and Sen, but only Nussbaum endorses a list of Central Human Capabilities<sup>36</sup>, which is constructed with the purpose of safeguarding human dignity and enabling a life of “truly human functioning” (Nussbaum, 2006: 57). To this end, Nussbaum identifies ten central capabilities which are open to further specification, but “in some form are all part of a minimum account of social justice: a society that does not guarantee these capabilities to all its citizens, at some appropriate threshold, falls short of being a fully just society”, regardless of its level of affluence (ibid). At the same time, in order to protect and respect an individual’s ability to choose for herself, the “appropriate political target is capability and not functioning<sup>37</sup>” (Nussbaum, 2006: 70). The list is deliberately specified in a “somewhat vague and abstract way”, precisely in order to allow room for deliberation and specification by citizens and their legislatures (Nussbaum, 2006: 59)<sup>38</sup>. In a sense,

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<sup>36</sup> Sen explicitly refuses to endorse any account of central capabilities, because he believes that such an endorsement inhibits democracy in international debates. Further, Sen seems to regard capabilities as instances of the “more general good of human freedom” (Nussbaum, 2006: 61), which is problematic in light of the discussion of freedom in chapter 2. Sen’s blanket endorsement of freedom as capability is “hopelessly vague”, and makes assessments in terms of justice impossible (Nussbaum, 2006: 64).

<sup>37</sup> Instead of distinguishing between capability and functioning, Sen prominently draws the distinction between well-being and agency (Nussbaum, 2002: 14).

<sup>38</sup> The capabilities approach as a philosophical project aim at providing a minimum, workable account of social justice has been carefully formulated and comprehensively articulated by Nussbaum, and it is beyond the scope of this study to replicate it here. Arguably, the best synthesized account and updated overview of the capabilities approach, along with some discussion of its philosophical justification (Nussbaum, 2000: 103), can be found in Nussbaum’s *Women and Human Development: The Capabilities Approach* (2002).

The only respect in which I slightly disagree with Nussbaum’s account of capabilities is her contention that the endorsement of autonomy as a central human value is a mistake, because it “shows deficient respect” for citizens whose comprehensive perception of the good life does not include this ingredient by suggesting that their lives are “less worthwhile than other lives” (Nussbaum, 2006: 67, 68). While I agree with Nussbaum that we should respect people’s choice to obey authoritarian religions, I maintain that autonomy should be included and upheld as a central capability (not functioning), because it serves as a necessary and essential safeguard against oppression, in a world where many women’s right to autonomous decision-making is still denied by men on the basis of traditional and religious values.

Nussbaum's capabilities approach has an affinity to the conception of citizenship that underlies the ideal of liberal democracy. The legitimization of a liberal democratic system of governance depends on the existence of citizens who enjoy an equal standing before the law and freely engage with each other for the purpose of cooperative governance, and accordingly the establishment and maintenance of a certain mode of relation or association between all citizens form part of the fundamental objectives of a liberal democratic state. The relevance of our understanding of citizenship to questions of social justice is based on the contention that "citizens cannot understand themselves as political equals unless they also enjoy substantial measures of social equality" (Miller, 1999: 31). The rightful extent of this equality of status has important ramifications for how we think regarding the provision of the resources necessary to enable all individuals to function as full citizens (*ibid*). The conditions for liberal democracy and the conditions of liberal democratic citizenship are thus mutually reinforcing – one cannot flourish in the absence of the other, and it is only with reference to the other that the requirements of each can be fully explicated. This affinity between the process of justifying norms of social justice and the nature of contemporary democratic states is clear in the common acceptance of the fact that "the motivational force of any possible justification [of normative theories] requires the equal recognition of those to whom the reasons are addressed" (Kelly, 1998: 185). As a legal and ethical relationship, citizenship entails both rights and obligations (Miller, 1999: 31). The fact that every one of us is born into a society in which members stand in a relation of interdependence and influence, and in which actions of others impact on the prospects of individuals in positive and detrimental ways beyond their control, compels us to search for institutional arrangements that are fair and tolerable to everyone whose opportunities and conduct are significantly shaped by their presence. Our commitment to the moral equality of all human beings prompts us to search for agreement on terms that everyone could reasonably be expected to find acceptable, and our willingness to observe the constraints of impartial justice stems from the fact that "it sets out the only terms upon which there is any hope of reaching agreement" (Barry, 1995: 9, 12), as the alternative of coercively enforcing political structures on others is morally reprehensible.

The value of equality, at its best and most expansive, thus represents a relational standing of moral equality between individuals, which can be safeguarded by effectively protecting a range of individual rights while simultaneously limiting the extent of inequality within a society. These individual rights should include effective access to the material resources necessary to enable basic functioning. The merit of interpreting moral equality in terms of the protection of basic rights and the fulfilment of contextually-determined access to basic material resources is that it represents a morally attractive ideal which is also practically achievable. Nussbaum's capabilities approach currently offers the most appropriate and functional interpretation of moral equality for pluralistic democratic societies, and, in combination with policies aimed at limiting the extent of economic inequality, it provides a useful framework for practical assessments of, and engagements with, concerns of social justice. The next chapter will show that the restriction of economic inheritance is consistent with and important to both the safeguarding of moral equality and the reduction of economic inequality.

#### **4. The Importance of Empirical Facts for the Moral Evaluation of Social Practices**

Empirical facts about our social context are relevant to considerations of social justice because they play a central function both in determining the veracity of the claims that are made and in delineating the extent to which the implementation of a policy could be considered achievable. Yet, almost without exception political philosophers "have failed to consider the bearing that empirical findings might have on their formulation" of accounts of social justice (Miller, 1992: 555). Questions which should be assessed on a factual level are often treated as issues open to subjective interpretation. As deep disagreements regarding the demands of social justice are frequently informed by disparate ideas of the extent to which individuals are dependent on society in realizing their goals, the need to confront the underlying assumptions about our social context and human nature will remain instrumental to the resolution of many moral disputes (Taylor, 1995: 291). What counts as acceptable claims on the basis of social justice has to be partially determined with reference to the factual accuracy of its underlying assumptions.

Empirical studies elicit overwhelming and widespread agreement on abstract principles of distributive justice among individuals from diverse social and economic backgrounds, even while there remains to be substantial disagreement on the practical assessment of the causes of personal success in existing societies (Miller, 1992: 585; Kluegel & Smith, 1986: 2), and, by implication, on whether achieved outcomes are fair and acceptable from a moral perspective. Conflicting beliefs regarding the relative importance of various factors in determining personal success lead to considerable differences of opinion on the fairness of existing societies. Accordingly, the greatest challenge to the advancement of just practices in democratic societies appears not to lie in the strive for consensus on the exact principles of justice, but in the promotion of an adequate understanding of, and accurate knowledge concerning, the nature of our communal social reality. For this reason, the final chapter draws heavily on empirical evidence to outline the nature of our actual social context, in order to offer a more realistic account of the effects that the practice of economic inheritance have on the actual life prospects of individuals, as well as on the overall fairness of the basic social structure.

The fact that many moral disagreements are informed by contrasting perceptions of the nature of our social reality does not imply that accurate empirical information concerning the actual nature of our social reality will automatically lead to the easy resolution of these moral disputes. Yet, the broad consensus that exists between individuals from all different socio-economic backgrounds about abstract principles of distributive justice is a source of hope, because it allows for the possibility of positive change, by showing that better understanding of, and information regarding, the actual state of affairs can lead to wider agreement on what can be regarded as necessary and acceptable moral objectives in the context of democratic societies. We can improve the process by which we exercise our judgement if we “do our cognitive best, exercise our most critical analytical reasoning, empirically test and compare our theories and ideas in order to determine which are false and which closely approximate the truth” (Hammond, 1996: 6). As Sam Harris writes in *The Moral Landscape: How Science can Determine Human Values*, questions about moral values are really questions about the well-being of conscious creatures. Differences of opinion on moral questions are to a large extent due to the incompleteness of our knowledge about human well-being, and the range of acceptable views will become

narrower as opinion becomes increasingly constrained by fact (2010: 10). The dichotomy between how we think about physical health and how we think about mental or societal health reveals a bizarre double standard, which is predicated on the assumption or pretence that we do not know anything about human well-being (2012: 19). But human well-being

entirely depends on events in the world and on states of the human brain. Consequently, there must be scientific truths to be known about it. A more detailed understanding of these truths will force us to draw clear distinctions between different ways of living in society with one another, judging some to be better or worse, more or less true to the facts, and more or less ethical. Clearly, such insights could help us to improve the quality of human life - and this is where academic debate ends and choices affecting the lives of millions of people begin (Harris, 2010: 2 – 3).

We might never be able to identify a single right answer to every moral question or an ultimate best social arrangement which would enable people to have the best possible lives. This does not imply that we cannot identify options which are clearly better than many others or resolutely reject those which are unfair and detrimental to human well-being and individual life prospects. The absence of absolute certainty does not make the effort to find better, more morally compelling solutions any less worthwhile or consequential.

### **Conclusion: Property as Malleable Social Relation**

Property rights are contingent social constructs, the nature and content of which are determined by existing customs and convention, and can vary significantly. Property rights are based on a social consensus that developed rather haphazardly over time, and while the institution of private property has been retrospectively justified and is incorporated in many of our legal declarations, there has never been a point in time during which the general distribution or principles of property rights have collectively been decided on – only a process of gradual reform that has continuously been informed and constrained by previous and current entitlements. There is thus nothing *inevitable* about the specific manner in which we chose to administer property rights.

The implication of this is that we can and should reflect on the desirability of our present property arrangements, as the distribution of property frequently has a decisive impact on the current and future prospects of individuals. Accordingly, this chapter set out to assess and re-evaluate our current understanding of, and moral justifications for, private property rights, in order to establish the background conditions against which the practice of economic inheritance can be evaluated from a moral perspective.

This chapter contested both the idea of absolute ownership and the notion of the radically independent individual, who is solely responsible for her success and wholly entitled to the products of her endeavours. It demonstrated that property rights are contingent legal constructs which can and should be evaluated and reformulated on the basis of the social outcomes that are realized as a result of the existing institutional framework. Theoretical analyses of the moral principles on which justifications of the institution of private property are usually based revealed that none of the justificatory arguments of ownership prove to be complete and conclusive in their own right. An overview of the merits and implications of various justificatory principles revealed that any compelling justification of private property inevitably had broadly egalitarian implications. Specifically, it showed that, to the extent that these principles can provide a convincing moral defence of private property acquisition, they cannot be extended to include the practice of economic inheritance as it currently exists. The fact that the justificatory principles of ownership, including that of liberty, all had egalitarian implications prompted a concise look at what could be considered a relevant conception of equality within the context of contemporary democratic societies. The idea of moral equality, understood as a relational standing of mutual recognition and respect, which is safeguarded through the protection of certain rights and access to basic material resources, was propagated. Finally, the concluding section offered a motivation for the inclusion of substantial empirical evidence concerning the nature of the existing social context in moral assessments of social institutions and practices. The next chapter will draw extensively on the insights developed here in its moral evaluation of the practice of economic inheritance.



## **Chapter 3: Analysing and Addressing Injustices Inherent in the Practice of Economic Inheritance**

### **Introduction**

Inheritance taxation has been the subject of much impassioned debate ever since the Bush administration approved legislation that led to its repeal in 2010. In Britain, the conservative party also successfully campaigned for an increase in the exemption threshold for estate tax. Amid inflammatory rhetoric and the careful manipulation of public opinion, scant attention was given to important issues such as reasonable justifications for the proposed policies, assessments of the costs and benefits involved to various individuals and social groups, and the nature of the social context that will be affected by these decisions. By framing estate tax as a sinister ‘death tax’ that is levied on the estates of grieving families, the conservatives in both countries have made a lot of progress in limiting and promoting the abolishment of a tax that is generally less distortionary and more progressive than other taxes, and that could serve as an important counter to the vast inequalities in wealth that has become a very persistent feature of modern societies. This study offers an analysis of the effects and an assessment of the legitimate role of inheritance taxation in contemporary democracies. The aim is to show that a substantial inheritance tax is consistent with our understanding of the principles that justify private property ownership, and that inheritance tax plays a vitally important role in securing a relation of moral equality between citizens, by limiting the scope of arbitrary differences in life chances and by providing resources for the provision of essential services through redistribution.

This case study begins with a concise overview of the important philosophical literature on the question of economic inheritance, with particular focus on the merits of some of the prominent arguments made in support of inheritance taxation. An intriguing feature regarding the practice of economic inheritance is that it has, despite its obvious inconsistency with democratic values and practices, successfully withstood often fierce and sometimes fairly comprehensive criticisms from many renowned philosophers and economists over the course of more than a century. An overview of the present availability of empirical data on the practice of economic inheritance will be offered, before the current state of the practice of inheritance will

be examined with reference to the effects and effectiveness of existing laws. The impact of economic inheritance on the distribution of wealth and on economic inequality will be discussed, in order to demonstrate the relevance of undertaking measures to address this issue. Specific attention will be paid to the way in which the excessive concentration of wealth both exacerbates the effects of unequal life chances and affords undue political influence to the wealthy.

There are many distinct and diverse merits to inheritance taxation, and they will all be discussed in detail without attempting to identify which one proves to be the decisive argument in support of this practice. Sen calls this use of a number of different reasons to argue in favour of a specific action ‘plural grounding’, and contends that, if various considerations all lead to the same conclusion, then it is not necessary to reach consensus on their relative importance in order to accept the recommendation. We can agree that a social practice is unjust and requires urgent rectification without being able to determine, or reach agreement on, what should be regarded as the dominant reason that serves as the ultimate justification for our decisions and actions (Sen, 2009: 2). This study will offer a cluster of arguments in favour of limiting inheritance, which can broadly be subdivided into three categories: The first relates to the undesirability of the social outcomes that are realised based on the practice of economic inheritance, as the excessive concentration of wealth significantly decreases equality of opportunity and undermines the integrity of the democratic political system due to the substantial and unwarranted political influence of the wealthy. The immense economic inequality which characterizes many contemporary societies is detrimental to our understanding of individuals as moral equals, because the resulting divergence in life chances makes it improbable that individuals will conceive of themselves as standing in a relation of mutual respect and dignity. In addition, the revenue generated through inheritance taxation can be allocated to institutions which aim to improve the life prospects of children from poor socioeconomic backgrounds. The second cluster of arguments concern the legitimacy of the practice of economic inheritance itself, as well as the tension between the liberal-democratic principles underlying capitalism and the practice of inheritance. One of the major merits of the inheritance cap is that it does not violate any of the liberal-democratic principles to which we generally appeal for the justification of private property rights, but rather enhances them and increases the degree of consistency with which they are applied

across individuals. The final group of arguments involve the detrimental way in which the practice of bequest exacerbates and perpetuates the undeserved circumstances of victims of injustice and their descendents.

After the benefits of inheritance taxation has been discussed in detail, a proposal to severely limit the size of bequest will be offered. Attention will be given to the practical obstacles associated with the implementation of a substantial inheritance tax, such as the problems caused by existing expectations and by loopholes for tax avoidance. The justification of the proposal rests on the identification of the economic inheritance as a manifestly unjust social institution that is in need of urgent rectification. Economic inheritance is identified as a manifestly unjust practice on the grounds that it contradicts the values that underlie the justification of private property and threatens to undercut the moral equality of citizens by contributing to the excessive increase in economic inequality that is undermining the material basis of human dignity and mutual respect.

The practice of inheritance has a long and persistent tradition and continues to play an essential part in the establishment and maintenance of the current economic status quo, so it is important to recognize that any proposals to change it is likely to encounter strong resistance from various sources. For this reason, ample attention will be given to assessing and addressing prominent objections against inheritance taxation, such as the accusations that it discounts the importance of family relationships, leads to the demise of farms and small businesses, undermines the protection of our cultural heritage, destroys capital accumulation by removing the savings incentive, contradicts existing expectations, undermines altruism, and violates individual liberty. The final section of this chapter will be dedicated to the examination and refutation of these objections, before the conclusion will be offered together with recommendations for further research.

### **1. On Inheritance Taxation: Literature Review**

A noteworthy fact regarding the practice of economic inheritance and inheritance taxation is that it has, to a significant degree, successfully withstood persuasive commentary and even zealous, extensive criticisms from many renowned

philosophers and economist over the course of more than a century<sup>39</sup>. Adam Smith remarked that “there is no point more difficult to account for than the right we conceive men to have to dispose of their goods after death”, except for the limited case in which it is necessary to provide sufficient resources for the upbringing of dependent children (1982:63). Jeremy Bentham (1748-1832) favoured extreme inheritance taxes in “Supply without Burthen; or Escheat vice Taxation”, in which he advocated that, in cases of intestacy or where there are no direct heirs, inheritance should be abolished, because it would produce substantial revenue at a minimum sacrifice (2004: 279 – 368). John Stuart Mill (1806 – 1873), who eloquently explored the question of economic inheritance in some detail, preferred

to restrict, not what any one might bequeath, but what any one should be permitted to acquire, by bequest or inheritance. Each person should have power to dispose by will of his or her whole property; but not to lavish it in enriching some one individual, beyond a certain maximum, which should be fixed sufficiently high to afford the means of comfortable independence. The inequalities of property which arise from unequal industry, frugality, perseverance, talents, and to a certain extent even opportunities, are inseparable from the principle of private property [...]: but *I see nothing objectionable in fixing a limit to what any one may acquire by the mere favour of others, without any exercise of his faculties, and in requiring that if he desires any further accession of fortune, he shall work for it* (1975: 139).

Mill thus argued that the amount received by inheritance should be strictly limited, as the right of bequest is a privilege which is subject to the demands of social expediency (1975: 138). Mill also warned that we should not let the past influence our current views on the subject, because “like all other property rights, and even in a greater degree than most, the power of bequest may be so exercised as to conflict with the permanent interest of the human race” (1975: 135, 138). The views held by these philosophers, and by Mill in particular, closely correspond to that of the present study in sentiment, and selective references to some of their ideas are made throughout.

Within Economics, discussions on inheritance taxation during the first half of the 20<sup>th</sup> century was dominated by the influence of Italian author Eugenio Rignano, whose proposals in *The Social Significance of the Inheritance Tax* suggested that inheritance

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<sup>39</sup> Potential reasons for this phenomenon will be offered in section 2.

taxes should be ‘progressive in time’, so that the stipulated “rate of inheritance taxation levied [...] on property will increase with the number of transfers” the given property is subjected to, until it reaches the level of 100 percent (Erreygers, 1997: 37 – 38, 40). The French Christian Socialist Francois Huet made a similar proposal which distinguished between ‘self-created property’, which is earned during an individual’s lifetime and could be bequeathed freely, and ‘inherited property’, which was bequeathed to the individual in question and should be confiscated by the state upon her death (ibid.). Huet’s proposal also has fairly strong egalitarian implications, because he argued that all the property confiscated by the state in a given year should be equally distributed among adolescents of a certain age, in order to provide all individual’s with a certain amount of initial ‘basic wealth’ (ibid). The main problem with Rignano’s proposal is the practical difficulties associated with attempting to determine the value of property that is due to earnings and savings as opposed to inheritance, as the ability to earn interest on the latter significantly complicates the issue<sup>40</sup>.

Prominent opponents of inheritance taxation include thinkers like Friedrich Hayek (1899 – 1992), Robert Nozick (1938 – 2002), and Milton Friedman (1912 – 2006). Hayek, who admits that inheritance is “unquestionably one of the institutional causes of inequality”, nevertheless considers it “essential as a means to preserve the dispersal in the control of capital and as an inducement for its accumulation” (1978: 91). Friedman argues against progressive taxes in general on the basis of freedom, and states that it is “illogical” to allow individuals to enjoy their wealth and then not allow them to pass it onto their children (1962: 163 – 165). Nozick regards “bequests to children” and “gifts to loved ones” as non-arbitrary components of the fabric of justice, because they are purposive transfers (1974: 158 – 159). Inheritance is also implicitly legitimated by the second principle, namely ‘justice in transfer’, of Nozick’s entitlement theory (1974: 151). However, Nozick, who denounced his libertarianism later in life, argues in *The Examined Life* that the *right* to bequeath an object is not itself transferable by bequest, which leads to a proposal similar to those of Rignano and Solvay. A particularly adamant contemporary opponent of inheritance

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<sup>40</sup> For a more comprehensive account of discussions of inheritance in the history of economic thought, consult Hugh Dalton’s helpful *Some Aspects of the Inequality of Incomes in Modern Communities* (1920), as well as Josiah Wedgwood’s *The Economics of Inheritance* (1939).

taxation is Barry Bracewell-Milnes, who argues in his emotively titled book, *Euthanasia for Death Duties: Putting Inheritance Tax Out of Its Misery* (2002), that inheritance tax deters savings, increases consumption, and destroys wealth. In addition, Bracewell-Milnes argue that inheritance tax also causes the destruction of “immaterial wealth” that “subsists in the mind” (1997: 159). Bracewell-Milnes’ view of the effects of inheritance taxation on ‘stewardship’, wealth creation through gift giving and social harmony are also respectively elaborated in *Land and Heritage: The Public Interest in Personal Ownership* (1982), *The Wealth of Giving: Every One in His Inheritance* (1989), and *Will to Succeed: Inheritance Without Taxation* (1994). Most of the prominent claims made by these thinkers will be addressed in their relevant context throughout the course of this chapter.

More recently, philosopher D.W. Haslett argues in “Is Inheritance Justified?” that inheritance should be abolished, because it is inconsistent with the ideals underlying capitalism, namely equal opportunity, distribution according to productivity, and freedom (1986: 123, 126 - 137)<sup>41</sup>. There are exceptions to this proposal for surviving spouses, genuinely dependent children, and charitable donations (Haslett, 1986: 138 – 139). The present study differs from that of Haslett in its methodology, the depth of its analysis and in its grounding: Haslett defends his proposal almost exclusively with reference to the ideals of capitalism, while this study also attempts to provide a nuanced moral grounding based on an examination of the justificatory principles of property and the ideal of moral equality. Stephan Munzer discusses inheritance taxation under the heading of “Gratuitous Transfers” and argues for a progressive tax on recipients and defends his proposal in terms of his basic theory of property (1990: 380 – 418). In recent years, various economists have also started to weigh in on the issue of the intergenerational transfer of wealth, and specifically on the role that it plays in the increase and continuation of inequality of wealth and income. Notably, John Brittain empirically examined the influence of inheritance on inequality both in *The Inheritance of Economic Status* (1977) and in *Inheritance and the Inequality of Material Wealth* (1978). French economists Luc Arrondel, André Masson and Pierre Pestieu also made individual and collaborative contributions by attempting to

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<sup>41</sup> In an assessment of the inheritance reforms suggested by Mill, Rignano, Solvay, Huet and Haslett, Caroline Guibet-Lafaye argues that Haslett’s proposal best satisfies “the requirements of an ethics of inheritance” (2008: 25).

delineate different bequest motives and gathering empirical evidence on bequest behaviour in the United States and France. More recently, Anthony Atkinson made invaluable contributions to the empirical knowledge of the evolution of income and wealth inequality across time and across countries, by taking on the difficult task of assembling various sources of historical data in order to create a reliable and continuous data set. Well-respected French economists Thomas Piketty and Emanuel Saez also significantly contributed to the economic literature on income inequality and social mobility with their empirical accounts of the evolution and causes of income inequality in the United States throughout the 20<sup>th</sup> century.

Interestingly, philosophers and economists who support substantial inheritance taxation also have some extremely rich individuals as allies. The Scottish-American Andrew Carnegie (1835 – 1919), who led the great expansion of the American steel industry in the late 19<sup>th</sup> century, publicly supported high inheritance taxes (1903: 1-44). The Belgian chemist and industrialist Ernest Solvay (1838 – 1922) advocated extensive social reform and proposed a ‘re-iterated inheritance tax’ which is similar in sentiment to the one suggested by Rignano (Erreygers, 1997: 37, 42). Recently, over a thousand high-net-worth individuals joined the Boston-based organization, Responsible Wealth, in their Call to Preserve the Estate Tax. William H. Gates and Chuck Collins documents and comments on the contemporary state of wealth concentration and inheritance taxation in *Wealth and Our Common Wealth: Why America Should Tax Accumulated Fortunes* (2002). American business magnate Warren Buffet, who is widely regarded as the most successful investor of the 20<sup>th</sup> century and was ranked as the world’s wealthiest person in 2008, became a particularly vocal supporter of the estate tax, and personally pledged to give away 99 percent of his wealth to philanthropic causes.

## 2. The Current Situation

Critics argue that “death duties [...] are old-fashioned and form no logical part of a modern tax system” (Bracewell-Milnes, 1997: 159), while defenders of inheritance tax emphasize that the intergenerational transfer of wealth is not an incidental phenomenon or private matter - it “plays a central role in the economic world” and affects all members of society (Masson & Pestieu, 1997: 55). Despite the contentious

debates that currently surround the issue of inheritance taxation, accurate empirical information on the actual size and social significance of economic bequests has been extremely limited until recently. Before economists like Anthony Atkinson and John Brittain undertook the laborious task of gathering the best available statistics relating to the inheritance of wealth, informed discussion on the issue was constrained by the absence of adequate data, as “previous systematic empirical evidence on intergenerational earnings or income association is extremely limited” (Atkinson & Brandolini, 2009: 381 – 404; Behrman & Taubman, 1985: 144). Accurate assessments of the inheritance of wealth were further complicated by the coexistence of high nominal rates of inheritance taxation with extensive loopholes for successful but wasteful tax avoidance. The combination of a high nominal tax rate and extensive loopholes suggests that the only purpose of recent estate and gift taxes was to reassure the general population that entrenched wealth was being attacked (Cooper, 1979: 82). It created the impression that wealth was being redistributed while in the effective rate of taxation on inheritance was in fact extremely low. In *A Voluntary Tax? New Perspectives on Sophisticated Estate Tax Avoidance*, George Cooper uses actual examples to illustrate the effectiveness of inheritance tax avoidance techniques, which can be categorized according to three basic themes (1979: 4-5, 64 – 78). *Estate freezing* keeps an individual’s future growth in wealth tax-free by diverting all growth to the next generation. The creation of *tax exempt wealth* exploits loopholes in the tax code to insulate assets from taxation. Finally, a combination of “techniques for gift-giving, manipulating valuations and exploiting charitable deductions” can be used to reduce or eliminate taxes on existing wealth (Cooper, 1979: 12 - 63). Aggressive estate tax planning<sup>42</sup> continued to enable individuals to pay very low rates of taxation on bequests even while nominal rates were still quite high, with estimates putting the effective rate in France at 6 percent and that in most other countries at less than 10 percent (Vandeveld, 1997: 13).

The shortage of data, combined with the difficulty of accurately determining the actual effective rate of tax paid on bequests due to the presence of extensive loopholes, led to a situation in which estimates of the share of inherited wealth as a

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<sup>42</sup> The pervasive presence of loopholes have turned aggressive estate tax planning for the purpose of tax evasion into a profitable industry, with strategies for inheritance tax avoidance even becoming the subject of popular culture books, such as Schnepfer, J.A. 2001. *How to Pay Zero Estate Taxes*. New York: McGraw-Hill.



portion of total wealth varied greatly. Although it is generally agreed that the inherited share of total wealth is substantial, heated disagreements regarding the exact share of inherited wealth were common. Well-known economists Kotlikoff and Modigliani who each published a paper on the topic during the 1980s, could not agree on the definition of a transfer or on how to assess the actual contribution that a transfer received in the past made to wealth accumulation, and accordingly estimated the share of inherited wealth in the United States to be 80 percent and 20 percent respectively<sup>43</sup> (Arrondel et al., 1997: 100). The substantial discrepancy between these estimates seems very discouraging, but subsequent improvements in data gathering and continuous research into how the effects of various contributing factors can best be isolated in assessments of wealth accumulation offer the promise of a much clearer and informed understanding of the reality of the intergenerational transfer of wealth. Simple statistical descriptions and simulation model results all indicate that “inheritance is probably the main factor of wealth concentration among the richest part of the population, and of its intergenerational reproduction” (Arrondel et al., 1997: 104). For example, one well-respected empirical study indicates that the majority of Americans who have died rich were the beneficiaries of substantial inheritances during their lifetime (ibid), with inheritance primarily accounting for the fortunes of 67 percent of the ‘ultrarich’ in the United States by 1978 (Guibet-Lafaye, 2008: 25). The rough average of estimates of the proportion of all wealth that is inherited is given at 50 percent (Murphy & Nagel, 2002: 142), but recent research strongly suggests that this number may in reality be much higher.

### **3. Rationales for Redistribution: Against an Aristocracy of the Rich**

Even when the measuring of global inequality became a progressively more popular topic both in theoretical and policy orientated research, the focus remained almost exclusively on income inequality, even though wealth is significantly more unequally distributed than income (Decancq et al., 2009: 1; Masson & Pestieu, 1997: 57). This trend is particularly puzzling in light of the fact that inequality in the distribution of wealth is itself a major cause of income inequality (Brittain, 1978: 1). However,

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<sup>43</sup> See Modigliani, F. 1988. “The Role of Intergenerational Transfers and Lifecycle Saving in the Accumulation of Wealth” in *Journal of Economic Perspectives*. 2 (2): 15 – 140 and Kotlikoff, L.J. & Summers, L.H. 1981. “The Role of Intergenerational Transfers in Aggregate Capital Accumulation” in *The Journal of political Economy*. 89 (4): 706 – 732.

during the past decade, economists have increasingly also concentrated on the empirical assessment of the extent of wealth inequality. The aim of this section is to give a factual account of the current extent of inequality, and to explain and illustrate why such high levels of inequality give rise to morally objectionable outcomes and are detrimental to society as a whole. High levels of economic inequality are instrumental in the creation of extremely unfair market systems in which individuals from privileged socioeconomic backgrounds are almost guaranteed success and individuals from poor backgrounds have very little opportunity to escape the circumstances they were born into. This situation threatens to undermine our understanding of citizens as moral equals, because the vast differences in the life chances and outcomes of individuals restrict the possibilities for shared experiences and erode the material basis for mutual recognition and respect. In addition, high inequality endangers democracy, because it enables a few, extremely wealthy individuals to exercise undue influence over others through the manipulation of the political system. The fact that the previous inheritance tax only affected less than 2 percent of estates does not imply that either the intergenerational reproduction of wealth created by inheritance or the revenue generated through inheritance taxation is not substantial: Conservative estimates posit that, over the next fifty years, inheritance taxes on estates valued at more than \$ 5 million will generate revenues of \$ 171 billion per year (Gates & Collins, 2002: 92). The absence of inheritance taxes will help lead to the establishments of a new ‘aristocracy of the rich’, as a small number of individuals and their descendants gain the ability to insulate their wealth from the rest of society while becoming immensely successful at manipulating the rules of political cooperation in their favour. Consequently, social and political institutions and practices become increasingly unfair and unjustifiable from a moral perspective.

High economic inequality is not an incidental phenomenon, but the result of the interaction between various market forces and governmental policies. As Nobel Prize-winning economist Joseph Stiglitz writes in his latest book, *The Price of Inequality: How Today's Divided Society Endangers Our Future*, “inequality is cause and consequence of the failure of the political system, and it contributes to the instability of our economic system, which in turn contributes to increased inequality” (2012: xi). Government policies, in the form of laws, regulations and institutions, shape market forces, which in turn help to determine the extent of inequality (Stiglitz, 2012: 26).

Accordingly, it would be fair to assert that “government policies have been central to the creation of inequality in (countries like) the United States” (Stiglitz, 2012: 6). When the political system fails to correct market distortions, these distortions lead to vast increases in economic inequality, which in turn causes both the political and economic system to become fundamentally unfair, as a few rich individuals gain undeserved economic advantages and undue political influence over others. At high levels of inequality, incentives are not directed at creating wealth, but at taking it from others. In contrast to the claim that the current system leads wealth to ‘trickle down’, it causes the income of most individuals to shrink, while riches accrue at the top at the expense of others (ibid.). The degree of economic inequality can thus, to a large extent, be influenced and determined by political decision-making. As the intergenerational transfer of wealth partially causes and greatly exacerbates high inequality, an account of the negative effects and morally undesirable consequences of high inequality has significant effects for the moral justifiability of the practice of economic inheritance.

### **3.1. Increasing Inequality and Unprecedented Political Influence**

The exorbitant extent of economic inequality in the United States can be illustrated with reference to both income and wealth. In 2007, the average income of the top 0.1 percent of American households was 220 times larger than the average income of the bottom 90 percent (Stiglitz, 2012: 2). To put this in greater perspective, on average, every individual in the top 0.1 percent received the same amount of income in a day and a half as an individual in the bottom 90 percent received in a year (Stiglitz, 2012: 4). This means, roughly, that the top 0.1 percent received the same compensation for 12 hours of work as an average representative individual from the bottom 90 percent receives for about 1960 hours of work. Moreover, the richest 20 percent of income earners receive more in total after tax income than the bottom 80 percent combined (ibid). Wealth is even more unequally distributed than income, with the top 1 percent holding more than 33 percent, the top 20 percent holding approximately 85 percent of total wealth, (Stiglitz, 2012: 2, 147) and the bottom 40 percent holding only 0.3 percent of total wealth (Ariely, 2012). The immense concentration of wealth at the top end of the income distribution makes it clearly apparent that a carefully implemented

inheritance taxation policy can have an important and substantial impact on the overall distribution of wealth within a society.

The extent of inequality within a society is not a matter of pure chance, but heavily dependant on the choice of institutional structure and the laws enacted within that society. Empirical research indicates that policy decisions greatly affect the distribution of income and wealth. For example, after displaying relative stability for decades, the gap between the highest and lowest income earners started to widen sharply from the end of the 1970s (Atkinson, 2007: 1 - 2). While the average income of the top 0.01 percent was 'only' 50 times the average income in 1970, by 1998 this ratio increased to 250 to 1 (Piketty & Saez, 2003: 13). The Tax Reform Act of 1986 definitely greatly contributed to this change, because just after the top marginal income tax rates were sharply cut in 1986, income inequality increased significantly in 1987 and 1988 (Piketty & Saez, 2003: 11). This latter trend is clearly observable in countries like the United States, the United Kingdom, and Germany, who all employed similarly orientated tax-cutting policies (Atkinson, 2007: 22). Based on results derived from an empirical assessment of income distribution data from 1913 to 1998, economists Piketty and Saez argue that the decline in income tax progressivity since the 1980s, coupled with the estate tax repeal of 2001, will further greatly increase wealth concentration and inequality during the next decades (2003: 24). The current situation is neatly captured in the contention that

what has most dramatically changed in the twenty-first century are the decreased progressivism of income taxes, the large-scale removal of corporate dividends from the tax base, the curtailment of inheritance taxes, now reviled as taxes on dying, and as a consequence of the scaled-up monetary windfalls, a greater reliance on lobbyists and the enriching *quid pro quo* that they can deliver (Kohn, 2007: 115).

The most troubling aspect of the 2001 tax repeal was "the lack of honest debate about the implications of repealing the estate tax", as proponents of repeal spent millions of dollars on manipulative advertisements which perpetuated various false assertions about the 'victims' and effects of inheritance taxation (Gates & Collins, 2002: 4-5). In a study of the political uses of public opinion, Birney, Shapiro and Graetz illustrate how pro-repeal interest groups strategically interpreted public-opinion data to

manipulate voter perceptions and capitalize on public misperceptions about the incidence of estate tax, in order to harness a broad coalition of support from individuals who were basically acting against their own economic interest (2008: 298 – 340). In this way, a highly progressive tax which had been enacted since 1916 and affected less than 2 percent of the population, came to be portrayed as a highly salient political issue (ibid.). Given that independent polls showed that tax cuts “were among the lowest priorities for the vast majority of voters”, and that the repeal of the estate tax was considered the least popular of these cuts, it becomes further apparent that estate tax repeal only made it onto the political agenda due to the persistent personal efforts of some very wealthy individuals, who are often also large contributors to political campaigns (ibid.). As Gates and Collins emphasize, substantial inheritance taxes are necessary “precisely for the reason that estate tax repeal has become a political issue in the first place”, as the attempts and ability of extremely wealthy individuals to “shape the terms of policy debate and dictate the rules of our society” present a real threat to the successful functioning of democracy (ibid.). Advances in research have enabled us to understand how to manipulate and shape beliefs and perceptions with an increasing level of sophistication. Wealthy individuals have “the instruments, resources, and incentives to shape beliefs in ways that serve their interest”, and the extent to which they have successfully influenced public perception “testifies to the malleability of beliefs” (Stiglitz, 2012: 186, 146). Although accusations of paternalism are often made in protest against governmental efforts aimed at influencing values, it has become increasingly important that individuals realize that no value neutral field exists, and that the ubiquitous and vigorous efforts of powerful economic actors, who are committed to shaping preferences and influencing perceptions, need to be curtailed and counteracted by competing sets of values (Goodwin, 1997: 12). The belief that “government power is always more threatening to our freedom and security than the power of private actors such as large corporations” is incredibly naïve (Yack, 1996: 3 – 4). The restriction of economic inheritance, which represents one of the main causes of the excessive concentration of economic wealth and political power, is therefore essential to the preservation of well-functioning democracies.

Empirical evidence convincingly illustrates that the current levels of income and wealth inequality are extremely high and partly determined by government policies.

However, by itself this does not necessarily imply that the existing income and wealth distributions are unfair, as the unequal distribution can be due to differences in talents, skills, productivity and educational attainment, and could accordingly be considered morally justifiable on the basis of desert. However, stating that the present distribution of income and wealth is fair because deserving individuals acquire their superior wealth on the basis of exceptional talent and effort can only serve as the basis of a valid argument if this statement, i.e. that individual wealth acquisition depends mainly on effort and talent, is factually correct. The theoretical arguments that are intended to serve as a moral justification for the acquisition of private property rights, which in turn significantly determine the distribution of income and wealth, can only be considered valid when certain empirical conditions are met. If we find the contention that effort and talent are valid grounds on which to deserve greater wealth convincing, then we still have to empirically assess our social reality in order to determine the relative importance of the role that various factors, such as talent, effort, educational attainment, and social background, play in the attainment of income and wealth, before we can endorse the argument. These questions simply cannot be answered accurately on the basis of ideological beliefs or intuition, and must be decided on the basis of empirical facts about the nature of the social context in question. Different beliefs about the fairness of market outcomes and the sources that determine income inequality influence the redistributive policies chosen in a society (Alesina & Angeletos, 2005: 960), which means that it is extremely important to examine the validity of our beliefs, because it would be unacceptable to uphold moral stances which are based on factually incorrect assumptions as guidelines according to which we organize our collective reality.

### **3.2. Social Stratification and the Inheritance of Material Wealth and Economic Status**

One of the best and most accurate ways in which to empirically test the role that personal talent and effort, as opposed to social background or educational attainment, play in the acquisition of wealth is by measuring the level of intergenerational social mobility within a society. Intergenerational social mobility refers to “the relationship between the socio-economic status of parents and the status their children will attain as adults” (Causa & Johanssen, 2009: 5). Accordingly, social mobility constitutes an

important measure of the extent to which financial rewards (in the form of income and wealth) are determined by individual effort, as opposed to by parental socioeconomic background. The fact that the relationship between parents' socio-economic background and their children's educational and wage outcomes is "positive and significant in practically all countries for which evidence are available", indicates that social mobility is low in the vast majority of countries (Causa & Johanssen, 2009: 2). This strongly suggests that luck of birth, as oppose to individual effort and deservingness, plays a crucial role in determining the life prospects of any given individual.

In an empirical study of intergenerational economic mobility, John Brittain illustrates the persistent effect that an individual's starting position in terms of his socioeconomic background has on his future success (1977: 22). After constructing single measures or indexes both of each individual's socioeconomic background and his personal economic success, the individuals within the sample group were divided into tenths according to both their background and success ranks. Half of the individuals who came from the top tenth in background ended up in the top tenth themselves, while none ended up below the fourth tenth in rank. Although only about 40 percent of the individuals who started out in the bottom tenth remained there, none of them managed to escape the bottom half of the income distribution. The most striking fact of this study is that "there is not a single case of overlap of the success measures of the sons from the top and bottom tenth" – all the former individuals were better off than the latter (*ibid.*). Not one individual from the poorest background rank caught up with the worst performing individual from the tenth who had the greatest head start. This clearly illustrates the sharp contrast between the life prospects of individuals from rich and poor socioeconomic backgrounds. Another study also illustrates the profound and enduring effect that contrasting initial socioeconomic positions in life have on an individual's chance of achieving success, by showing that a disadvantaged person from the bottom 20 percent of the income distribution "has no more than a 2 percent probability of reaching the top fifth in the income distribution" (Brittain, 1977b: 54). The advantages and disadvantages due to parental socioeconomic background conditions are so pervasive and persistent, that it is fair to assert that an individual's economic status is largely inherited. As Brittain argues, people might "be less tolerant of the existing degree of inequality if there were greater

awareness of the extent to which the head starts and handicaps in life cause children to remain in the same economic rank as their parents” (1977: 55).

To make matters worse, there is compelling empirical evidence indicating that social mobility and inequality are strongly positively correlated: This means that the higher inequality is in a society, the less likely it is that an individual will be able to alter her life situation, thereby effectively condemning the majority of poor people to perpetual poverty and virtually ensuring those born into wealthy families of an existence of continued affluence – a situation that is clearly unjust. The strong link between high inequality and social mobility can be explained on the basis of the persistent effects that differential educational attainment has on individuals’ future economic prospects. Because “inequalities at one stage of life translate into inequalities at later stages”, high levels of child poverty and a lack of material resources establish a stronger link between parents’ socioeconomic background and their children’s cognitive achievements (Causa & Johanssen, 2009: 22, 25). Higher inequality also leads to lower intergenerational mobility, as wealthier parents can purchase educational advantages for their children that lower-income parents cannot afford (Causa & Johanssen, 2009: 24). In highly unequal societies such as South Africa, only a relatively small percentage of the population has the means and opportunity to attend university, which means that highly educated individuals possess scarce skills and can extract disproportionate rents, while uneducated individuals receive very low wages because of the abundant availability of unskilled labour. In countries with a more equitable income and wealth distribution, almost all individuals have the opportunity to get a higher education, which means that education-based skills are more readily available and unskilled labour is less abundant, and accordingly the difference between the salaries of skilled and unskilled labourers are less extreme. Under these circumstances, individuals are more inclined to base their preferences for higher education on their relative ability and their interests. Lower social mobility thus leads to the misallocation of abilities and talents, as many poor but talented children are denied education while some less able wealthy children receive an education they cannot fully use, which in turn cause inefficiencies which negatively impact on economic growth (Causa & Johanssen, 2009: 23).



When the circumstances of individuals from divergent backgrounds become sufficiently dissimilar, individuals from different socioeconomic backgrounds interact so little socially, that marital selection also begins to play an increasingly important role in the maintenance of inequality, as individuals tend to marry others of similar economic background (Brittain, 1977: 27). Eventually, very high inequality leads to a situation of social stratification, which refers to “the differential ranking of the human individuals who compose a given social system and their treatment as superior and inferior relative to one another in certain socially important respects” (Parsons, 1940: 841). In societies with high inequality, parental wealth and income become major determinants of an individual’s actual and potential income, because the decisions that determine future income are made at a very young age and are greatly dependent on available opportunities. However, governmental policies can effectively counter this situation, as redistributive policies have a strong positive impact on intergenerational social mobility. The removal of obstacles to social mobility can thus be advocated on both moral and economic grounds, as higher social mobility leads to greater equality of opportunity and a more efficient allocation of human resources (Causa & Johanssen, 2009: 2).

The problems associated with high economic inequality is directly related to the issue of economic inheritance, because the inheritance of wealth is a major source of economic inequality, and probably constitutes the main cause of the concentration and intergenerational reproduction of wealth among the richest fraction of the population (Guibet-Lafaye, 2008: 25). In many countries economic inheritance accounts for a very large part of all wealth possessed, and “represents the largest descending monetary transfer, three times as much as wealth received in the form of *inter vivos* gifts for example” (Masson & Pestieau, 1997: 57). Inherited wealth is generally very unequally distributed, and is a great deal more unequally distributed than income. For example, in a sampling of very wealthy families, the correlation between the inheritance left by the child-inheritor upon her death and the amount she inherited from her parents is 0.7, while the correlation between the amount inherited and the recipient’s human capital income is only in the order of 0.12 to 0.2 (Masson & Pestieau, 1997: 78). This means that the correlation between parents’ wealth and that of their children is great and persistent, whereas “incomes regress much more rapidly towards the mean” (*ibid.*). If wealth were not passed on from one generation to the

next, the continuation of rich dynasties with unparalleled individual economic prospects and undue political influence would be prevented, as the children of extremely rich parents do not necessarily also earn high labour incomes. In contrast, “the effect of material bequest is transmitted directly”, and the inheritance of substantial wealth greatly increases the overall incomes of heirs, due to the capital dividend income they receive (Brittain, 1977: 17). The implication is that, because bequests are particularly instrumental in the creation and maintenance of high levels of economic inequality, reforms to the practice of economic inheritance are extremely essential to the successful combating of economic inequality.

In addition to the negative effects associated with increases in economic inequality, economic inheritance also has the extremely undesirable consequence of perpetuating the results of injustices committed in the past. Past injustices have a tremendous impact on the present, but “their current effects often remain unacknowledged or at least ignored by the larger society and thus create fresh new injustices in the present” (Christiano & Christman, 2009: 2). To illustrate, by many definitions, when racial discrimination in the legal structure is eliminated, equality of opportunity is achieved. But if the productivity of the former victims of discrimination continues to be negatively affected by their disadvantaged background, then equal opportunity has not been realized in any practical sense (Brittain, 1977: 10). The persistent effects of racial discrimination in countries like South Africa and the United States are blatantly obvious, as, for example, “the average African American family holds (only) 10 cents of wealth for every dollar that whites possess”<sup>44</sup> (Shapiro, 2004: x). This “racial wealth gap is not just a product of differences in education, jobs, and income but rather a kind of inequality passed from one generation to the next” (ibid), as the racial and class inequalities related to family wealth remain largely unchanged over time and “continue to be structured in ways that systematically and categorically advantage some groups while disadvantaging others” (Wolff, 2010: 22 – 26). Yet, people want the injustices of the past to be forgiven and forgotten quickly, in spite of the fact that

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<sup>44</sup> See also Oliver, M. & Shapiro, T. 2006. *Black Wealth, White Wealth: A New Perspective on Racial Inequality*. New York: Routledge.

the adverse effects of previous perpetrations take decades, and often generations, to be erased or ameliorated.

The tendency of subsequent generations, who are often substantial economic beneficiaries of ill-gotten gains, to wash their hands in innocence and deny that they have any responsibility towards those their parents' generation have wronged, is extremely troubling. Because these individuals were not directly involved in or politically responsible for the regime that instituted or perpetrated the human rights violations or atrocities, they refuse to acknowledge that they might owe any debt to the victims on the basis of the privilege they received from their parents' illegitimate and morally wrong conduct. Even when possessions were stolen or people forcibly removed from their property without any reasonable compensation, the future generation usually insists that they have rightful property rights to the confiscated goods which they have subsequently inherited - a process of self-justification that often entice beneficiaries to shift the blame for their current circumstances to the victims. In these cases, the state is often unable to fairly compensate the victims due to the lack of sufficient resources, as was for example the case with the meagre reparation offered by the Truth and Reconciliation Commission to victims of gross human violations during Apartheid. Current systems of property rights unfortunately often regard present possession as the main basis for ownership claims, which means that legitimate victims' losses become irreversible due to the endorsement of resolute ownership claims on behalf of the perpetrators and their children. Because "backward-looking compensation-based models of injustice can be massively demanding [...] (and) politically explosive" (Shapiro, 2003: 128), the most effective way in which to address racial and other cumulative disadvantages due to past injustices is through a "broad class-based attack on socio-economic disadvantage", rather than through special minority rights which may create racial and ethnic hostility (Modood, 2005: 11). The restriction of economic inheritance, combined with the redistributive use of the revenue generated through inheritance taxes, constitute a potentially significant and effective way in which to reduce the effects that past injustices will have on future generations. We cannot erase the past or unmake our current social reality, but it is within our power to reconsider and alter our present institutions and practices, and do everything possible to avoid incorporating unjust behaviours and procedures into our social structures in future. A ceaseless reliance on

iniquitous practices, simply because they are well-established and embedded, not only further slights those who have suffered under it, but also continues to hurt present and future generations.

### **3.3. On Fairness and Responsibility: Moral Equality and Claims from Necessity**

Even though the effects that high inequality has on the future life prospects of individuals can be empirically shown beyond any doubt, critics of redistribution can still argue that the close relationship between the wealth of parents and that of their children is due to the inheritance of ability, as opposed to socioeconomic background influences such as educational attainment and the intergenerational transfer of economic wealth. These critics maintain that unequal income and wealth distributions can be ascribed to factors that individuals can be held personally responsible for, and insist that individuals deserve whatever income and wealth they acquire. Immense inequalities in life chances and social circumstances are thus justified with reference to differences in the inherent qualities that individuals possess, such as variances in intellect, physical strength, and other talents. Accordingly, great emphasis is placed on the seemingly inevitable and substantial inequalities that arise due to variations in individual's innate endowments.

However, there are two fundamental problems with this view, which relate to its conceptions of ability and responsibility respectively. Firstly, an ever increasing and overwhelming body of evidence illustrates that innate genetic differences in characteristics and abilities are neither as fixed nor as extreme on average as people have popularly believed is the case for decades. Even features such as height and IQ are not as genetically 'hardwired' as people generally presume. For example, by objective measures such as height and Body Mass Index, South Asian children are on average shorter and smaller than Caucasian or black children. However, the grandchildren of South Asian immigrants who have lived in the West for two generations, without any intermarriage with other communities, are more or less the

same height as other ethnicities<sup>45</sup> (Banerjee & Duflo, 2011: 29). So “although genetic makeup is certainly important at the individual level, the genetic differences in height between populations are believed to be minimal” (ibid). Similarly, on average, people who are taller are also smarter and earn more than shorter people. Yet, the effect of height on earnings “is entirely accounted for by differences in IQ”: There is no relationship between height and earning when comparisons are made between people who have the same IQ (Banerjee & Duflo, 2010: 31). Instead, these findings indicate the immense importance of good nutrition in childhood, because it plays an essential role in enabling individuals to reach their genetic potential, both in terms of height and intelligence (ibid). “Childhood malnutrition directly affects the ability of adults to function in the world” - lesser abilities in later life are mostly due to differential formative circumstances, as opposed to genetic predetermination (ibid). The point to note is that *sophisticated research increasingly proves that many of the differences in outcome between the lives of individuals are much more strongly correlated with differences in circumstances than with differences in innate endowments*. This observation is further supported by multiple empirical studies which show that access to better educational environments allow children to elevate their performance significantly. Giving children from disadvantaged backgrounds access to early childhood education and care significantly reduces the detrimental effects associated with adverse family environments, even in terms of their cognitive skills as teenagers<sup>46</sup>. The importance of access to adequate nutritional and educational opportunities are compounded by the fact that the formation of different abilities and skills correspond closely to different stages of childhood development, and when these phases are missed, full remediation can be prohibitively costly (Shonkoff & Phillips, 2000: 6).

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<sup>45</sup> The fact that children of first-generation mothers still tend to be small can be partly explained by the fact that “women who were themselves malnourished in childhood tend to have smaller children” (Banerjee & Duflo, 2010: 29).

<sup>46</sup> See, for example, Brooks-Gunn, J. 2003. “Do You Believe In Magic?: What We Can Expect From Early Childhood Intervention Programs” in *Social Policy Report*, XVII(1); Causa, O. and C. Chapuis. 2009. “Equity in Student Achievement across OECD Countries: An Investigation of the Role of Policies”, *OECD Economics Department Working Papers No.708*; Carneiro, P. and J.J. Heckman. 2003. “Human Capital Policy”, *NBER Working Paper, No. 9495*, National Bureau of Economic Research, Cambridge MA.; and Machin, S. 2006. “Social Disadvantage and Education Experiences”, *OECD Social, Employment and Migration Working Papers, No. 32*, OECD, Paris.

The second, related problem with the view that differential life outcomes depend mostly on innate individual ability and effort, and that individuals are personally responsible for and deserving of the wealth they acquire, is that this view neglects to acknowledge the way in which our ability to assume responsibility is itself significantly influenced by our socialization and formative material circumstances. The idea that responsibility must form an essential component of moral assessments has become increasingly popular in political philosophy<sup>47</sup>, because responsibility both involves favourable notions of freedom and voluntariness, and serves as the “condition for attributing an action to an agent as one for which he or she *can* be morally assessed” (Scanlon, 1998: 9). The difficulty inherent in the notion of responsibility comes from the awareness that we cannot simultaneously view people as beings who are capable of making reasonable choices for themselves *and* as hopeless creatures who are powerless in the face of their circumstances and the forces of nature. Nozick was well aware of the dilemma that this issue posed for capability-based accounts of egalitarianism, and observed that “denigrating a person’s autonomy and prime responsibility for his actions is a risky line to take for a theory that otherwise wishes to buttress the dignity and self-respect of autonomous beings” (Nozick, 1974: 214). Nevertheless, it is possible to hold that the vast majority of humans are capable of influencing and shaping their life prospects to a significant degree, while simultaneously insisting that equitable and favourable initial and formative circumstances are both necessary and highly conducive to enabling effective individual autonomy and to fostering a sense of responsibility for one’s actions. Poverty, deprivation and lack of employment opportunities may prevent some individuals from “developing the mental attitude of holding themselves responsible for their actions” (Elster, 1995: 97). A growing body of data indicates that “living in a chaotic environment or being rendered ‘helpless’, impotent to affect one’s fate, produces deterioration in the psychological and emotional integrity of the organism, human and infrahuman alike” (Lerner, 1980: 9)<sup>48</sup>.

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<sup>47</sup> Cohen credits Dworkin for “perform[ing] for egalitarianism the considerable serves of incorporating within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility” (1989: 933)

<sup>48</sup> This is consistent with Seligman’s psychological theory of ‘learned helplessness’. See Seligman, M.E.P. 1975. *Learned Helplessness*. San Francisco: Freeman.

When the background conditions into which individuals are born are greatly dissimilar and some individuals have to struggle against immense odds to be able to live a barely decent life, while others are almost assured of a life of affluence, opportunity and leisure, any notion of personal responsibility becomes blurred and unclear: It becomes impossible to simply credit outcomes to the personal choices and effort of individuals, and greatly unfair to blame individuals who never stand a meaningful chance to adequately provide for themselves for being badly off. From a moral perspective and as a matter of fairness, the costs and opportunities individuals face in their quest for achievement and self-realisation have to be sufficiently similar if we are to be able to assign reward or blame to them for the overall outcomes of their lives.

A substantial part of differences in life outcomes are thus due to difficulties and differential experiences children encounter during their formative years as opposed to absolute differences in inherent genetic ability. People tend to overstate the extent, or at least the importance, of necessary difference between individuals on average<sup>49</sup>, as well as the unavoidable implications thereof for individual life chances. Differential abilities are not objectionable, but the pervasive influence and determinative effect that arbitrary factors, such as the socioeconomic situation an individual was born into, often has on an individual's life prospects, are. Given that recent factual evidence increasingly stresses the profound effect that childhood development and experiences have on the psychological and physiological well-being of adults, it seems imperative to reconsider the status of children within philosophical discussions and political institutions. The kind of person that an individual has the opportunity to become, and the life prospects she faces, depends to a great extent on the nourishment and education she has received as a child, at a time before it could reasonably be expected of her to know or attain any better than the input she receives or to be able to function autonomously. In both philosophical and practical terms, the rights and fate of children have habitually been relegated, virtually exclusively, to the responsibility of their parents, whose decisions, interests, ideological beliefs, situation in life and degree of economic success appreciably shaped and partially determined many of their children's own life prospects. Giving voice to the autonomous interests of the

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<sup>49</sup> There are, of course, exceptions, as in cases where individuals suffer from severe mental or physical disabilities, but convincing moral arguments can be made for special provisions in these cases.

children has customarily been postponed or suspended till later in life, when they could partake in the political and economic processes and have been deemed competent to make autonomous decisions for themselves. Unfortunately, by the time that children achieve adulthood, many of the important aspects of their lives have already been determined and the scope of their future choices and prospects clearly delineated.

When we conceive of children as future adults with full citizenship rights and meaningful present claims to democratic and ethical treatment - claims that stretch beyond the morally irrelevant and blameless fact of the circumstances they were born into - it becomes hard to defend the current view that parents should be the sole bearers of responsibility and the lone arbiters or negotiators of their children's fate. If we sincerely care about individual freedom, we have to support measures aimed at granting every child the best opportunities, independent of the achievement and financial success of their parents. It becomes clear that many of the current disputes within the field of political philosophy are lacking and incomplete, because they do not, and perhaps cannot, give adequate consideration to the full implications of acknowledging extensive rights and claims of children by securing the necessary means to allow them to develop their potential. The recognition of children as future citizens with meaningful claims to ethical treatment and democratic access to opportunities serves both as an apt conceptual starting point for the evaluation of the legitimate scope of moral claims, and promotes agreement by eliminating certain problematic features and intractable disputes from considerations of social justice. It overcomes the current dilemma surrounding the conception of responsibility, because it enables us to conceive of responsibility both as a capacity that requires adequate resources for its development during childhood, and in terms of the acceptance of accountability by adults. Giving sufficient weight and attention to the rights and plights of children has important and unavoidable implications for the moral and political justifiability of our social practices and institutions, and will have far-reaching implications for the way in which we think about many thorny questions within political philosophy; including, but not limited to, the legitimate role of economic inheritance within modern democracies. On the basis of fairness and in terms of the ideals of moral equality and impartiality, a strong case can be made for curtailing the inheritance of wealth and the undeserved economic advantages it



represents, and in favour of using the revenue generated through the taxation of inheritance to secure greater access to nutrition and education for all children.

#### **4. Walking a Thin Line? On Incentives and Entitlement**

The previous section offered moral and political arguments in support of limiting the inheritance of wealth as a means of countering excessive inequality and the undesirable social realizations it creates. The focus of the present section shifts to the issue of the economic feasibility and desirability of inheritance taxation, in order to evaluate whether substantial estate taxes could be implemented in practice. Economists still find it difficult to justify the practice of material inheritance in the context of a standard theoretical economic framework, as the prospective owner of the capital has neither exerted any productive effort nor contributed towards the accumulation of its wealth (Brittain, 1977: 29). While inherited wealth greatly affects the heir's capacity to generate additional income through investments, it does not increase the productivity of his labour (*ibid.*). Yet, there exist wide and persistent disagreements about the incentive costs of taxation, including that of inheritance, among economists, because the only way to know the optimal tax rate with certainty would be by testing different possibilities empirically by implementing them in practice, which is obviously difficult and could entail substantial social costs (Piketty, 1995: 556). Opponents of inheritance tax allege that it greatly reduces the incentive to be productive, as they contend that individuals would have no reason to accumulate wealth and property when they are not allowed to bequest the majority of their amassed fortunes. In contrast, proponents appeal to the idea that restrictions to the size of bequests would enhance social justice “without endangering the incentive for individuals to work and save” as one of the major arguments in support of inheritance taxes (Erreygers, 1997: 49). The following section describes the underlying assumptions which form the basis for this disagreement, and offer empirical evidence in support of the position that substantial inheritance taxes will not be seriously detrimental to individuals' efforts to work and save. Rather, significant restrictions to the intergenerational transfer of wealth will increase the fairness and efficiency of the market, and is likely to have a positive overall effect on the productivity of individuals, without diminishing savings and investment.

#### 4.1. Taxes, Labour and Leisure (for high incomes)

Critics of taxation generally argue that taxation causes a deadweight loss to society and necessarily reduce productivity by decreasing the incentive to work, because taxes decrease net income and therefore entice people to spend more time on leisure as opposed to labour (Cooper, 1952: 43). This argument is often extended to include inheritance taxation, as opponents argue that high inheritance taxes decrease individuals' willingness to work and save, because the fact that individuals cannot bequest their fortunes to their preferred heirs reduce the incentive to be productive and accumulate wealth. Therefore, high inheritance taxes reduce the amount of hours that extremely well-paid, presumably highly productive individuals spend working, and entice them to consume more instead of investing – leading to an overall outcome that is considered to be detrimental to social prosperity. In contrast, cutting taxes is supposed to lead individuals, even those earning millions, to work more intensively and efficiently in order to increase their hourly productive contribution. However, as economist Thomas Piketty argues, the “idea that heavy taxes on very top incomes would entail huge economic distortions is purely ideological and based on zero empirical evidence” (2009). It is

*extremely naïve to imagine that this standard model provides an adequate description of labour supply and wage determination at the very top end of the labour market. No empirical study has ever been able to show that the rise in executive compensation leads to increases in executive output and productivity. In contrast, extensive empirical studies have long shown that the rise in executive compensation is better explained by a crude skimming model than by efficiency considerations. For instance, it is well known that top compensation rises as much with lucky profits (variations in profits that are solely due to factors outside managerial control, such as exchange rates and world prices) as with general profits, and all the more so in firms with dispersed ownership (Piketty, 2009; my italics).*

This section explains and offers factual evidence as to why this simple standard model of individual choices and behaviour in terms of labour, leisure, consumption and saving is not applicable to taxation at very high levels of income and wealth. Accordingly, this standard model has very limited applicability to the question of

inheritance taxation, as the relation between these incentive-based decisions and the disposal of one's wealth after death is even more indirect.

The idea that incentives are necessary to inspire people to exert themselves and participate in productive efforts is generally acknowledged and accepted, but the shape that these incentives need to take in order to be effective is often fiercely contested. At very high incomes, the correlation between the hours an individual works and the income she receives is much weaker than it is for the average labourer in the bottom 99 percent of the income distribution. This can be best explained by two factors. Firstly, the compensation of individuals at very high levels of income are often extremely weakly correlated to actual performance and, in contrast to wage and most salary earners, explicitly not dependent on the amount of hours worked. Very high executive salaries serve as a perfect illustration of how compensation is often not closely related to productive effort and merit at very high levels of income. Extremely lavish executive salaries are often defended on the basis that executives are hugely talented and uniquely skilled individuals who make exceptional and substantial productive contributions to the companies they manage, and accordingly have to be extremely well-paid on the basis of desert and in order to provide the incentive required to ensure that they remain with the company. However, the reality is a lot murkier than this justification suggests. Excessive executive salaries are usually "approved by the well-paid boards of directors that the executives themselves appoint", and executive compensation is often inconsistent with the idea of performance-based reward (Kohn, 2007: 116). In 2007, "the largest participants in the bailout program paid their chief executives an average of \$11 million, including salary, bonus and benefits", with the biggest share paid out in stock awards of \$7.4 million (Labaton & Bajaj, 2009). The fact that "compensation increases even when companies' stock prices decline with deteriorating profits" strongly suggest that corporate politics, rather than competitive market forces, are dominating (Kohn, 2007: 116). Moreover, the notion that executives can only be retained by offering them exorbitant salaries has been thoroughly debunked by recent empirical research, which shows that executives' managerial skills are decidedly company-specific, which

means that they cannot readily transfer to other companies<sup>50</sup> (Elson & Ferrere, 2012). The use of peer-group comparisons, which is supposed to align the compensation-based incentives offered to the executive of a particular company with that offered by similar companies, have the effect of gratuitously bolstering rewards and driving the ever-increasing compensation in the absence of an actual competitive market with outside opportunities for the executive's firm-specific skills (ibid.). The apparent feeble relation between performance-based desert and actual compensation becomes particularly damaging to incentive-based justification of substantial wealth when taking into account the extreme disparity between baselessly lucrative executive annual compensation and that of the typical worker, which was at a ratio of 243 to 1 in 2010 (Stiglitz, 2012: 3). This uncertain relation between effort and desert, on the one hand, and income and reward, on the other, make incentive-based arguments for the unlimited acquisition and transfer of significant wealth highly questionable.

Secondly, in contrast with individuals in the bottom 99 percent who rely mostly on labour income and for whom capital income accounts for less than 25 percent of total income, the top percentile "derive most of their income in the form of capital income" (Piketty & Saez, 2003: 17). This situation is further exacerbated by the fact that wage income as a percentage of total income is declining, while capital income (in the form of interests, dividends, rents, and shares) is an increasing share of total income (ibid.)<sup>51</sup>. To illustrate, the growth in wealth of very rich households between 1995 and 2001 "was directly related to the surge in stock prices" and the importance of capital dividends in the rapid growth of wealth and the creation of the majority of great fortunes cannot be over emphasized (Wolff, 2010: 13). Between 1989 and 2001, the number of millionaires almost doubled, while "the number of 'penta-millionaires' (\$5,000,000 or more) increased three and a half times, and the number of 'deca-millionaires' (\$10,000,000 or more) grew more than fivefold" (ibid.). This trend in wealth increase for the very rich continued at roughly the same pace between 2001 and 2007, and even though the financial crisis caused stock prices to fall more than

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<sup>50</sup> This point is strongly reinforced by numerous academic studies which indicate that individuals who were internally promoted to executive level perform better than those recruited from outside the company (Elson & Ferrere, 2012). An analysis of almost 1800 executive successions between 1993 and 2005 shows that less than 2 percent of successors were public-company chief executives before their new jobs (Morgenson, 2012).

<sup>51</sup> Entrepreneurial income, which consists of self-employment, small businesses and partnerships, is fairly constant as a share of total income (Piketty & Saez, 2003: 17).

house prices from 2007 to mid-2009, wealth inequality continued to rise steeply during this period, with the share of wealth held by the top 1 percent of individuals advancing from 34.6 to 37.1 percent, and that of the top 5 percent increasing from 61.8 to 65 percent<sup>52</sup> (Wolff, 2010: 33). In the vast majority of cases, these capital gains are not dependent on productive effort on behalf of the investor, which means that higher inheritance taxes cannot result in a decrease in the quantity or productivity of her labour. In addition, the fact that a significant share of high net worth individuals have already retired further weakens the claim that high inheritance taxes will lead to a decrease in the productivity of these individuals.

From a moral perspective, desert-based arguments cannot be used to defend the investor's right to a substantial share of the capital gains that accrued through investment, because "luck, rather than differential investment talent, is the main force driving inequality at high wealth levels" and there is obviously "no point in performance-based compensation if the performance is primarily due to luck" (Levy & Levy, 2003: 709 - 710). 'Random walk' literature on investment explains how the outcome of individual investments is in effect randomized (Thurow, 1975: 12). Some investors invest in failing businesses, others obtain average yields, while a tiny minority buy shares in very successful companies and become extremely rich. Accordingly, "a highly skewed distribution of wealth (will arise) regardless of the normal distribution of personal abilities and regardless of whether the economy does or does not start from an initial state of equality" (ibid.). A significant portion of independent accumulation is due to windfall, and should be considered as an appropriate target for taxation (Brittain, 1978: 13) Moreover, although the probability of attaining a great fortune from investment is very small, once significant wealth has been acquired, it earns the market rate of return, and no forces tend to equalize the established distribution of wealth (Thurow, 1975: 153 – 154). An inherited fortune is thus likely to continue to grow over time, which implies that "the ratio of the original value of inheritance to total current wealth is a gross understatement of the role of that inheritance" (Brittain, 1978: 16). Given that a convincing case cannot be made that an

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<sup>52</sup> This stands in stark contrast to the experience of individuals in the bottom 80 percent of the wealth distribution. The share of wealth of "the second quintile fell from 10.9 to 10 percent, that of the middle quintile from 4 to 3.1 percent, and that of the bottom two quintiles from 0.2 to -0.8 percent" (Wolff, 2010: 33). Moreover, the share of households with zero or negative net worth also expanded from 18.6 to 24.1 percent (ibid.).

investor deserves all the gains from her investment, the claim that she has a right to pass these gains on to future generations, or that they have any moral claim to it, is highly objectionable.

An additional issue which anti-estate tax activists conveniently ignore is that the disincentive to work, which allegedly comes into play when extremely wealthy people are unable to bequest any more of their wealth to their heirs, is substantially offset by the increased incentive on behalf of the heirs to be productive. When children are aware that they will not inherit significant wealth in the future, they have every incentive to work harder in order to accumulate enough wealth for their future consumption and financial security. Also, the intergenerational inheritance of wealth is suspect from an efficiency perspective, as “there is nothing in the process of acquiring capital by inheritance which gives any assurance that its new owners are best qualified to use it” (Hoover, 1927: 43). It thus seems desirable to introduce inheritance taxes that are sufficiently high to force property and wealth back into the competitive market, where competition insures that at least a significant share of it accrues to individuals who have demonstrated their capacity to put it to productive use. The fact that individuals “who have inherited the savings of others have an advantage which they may have in no way deserved, over the industrious whose predecessors have not left them anything” (Mill, 1975: 134), also shows that there should be a strong moral presumption in favour of high inheritance taxes.

#### **4.2. Savings, Consumption and Investment**

The idea that high taxes are detrimental to the incentive to work and accumulate wealth is much less convincing at very high incomes than it is in the case of typical wage and salary earners, because the correlations between hourly productive effort and reward is less clear, and the biggest share of income derives from capital dividends. The related claim, that high inheritance taxes will significantly reduce saving among the very rich, is not very compelling and is contradicted by empirical evidence on the saving behaviour of the wealthy. Although economists like Becker (1991), Kotlikoff (1992) and Bracewell-Milnes (1997) argue that high levels of inheritance taxation lead wealthy individuals to consume more and save less, because inheritance taxes make spending relatively cheaper for the rich, as they can consume

100 percent of their wealth but, after inheritance taxes have been deducted, can only transfer a smaller percentage to others through bequests (Bracewell-Milnes, 2002: 68 – 70; 1997: 182 - 192). In this way, these critics argue, inheritance taxes “cause distortion in the spending behaviour of living generations” and accordingly “death duties are widely opposed as yet another tax on saving” (Vandevælde, 1997: 9; Bracewell-Milnes, 1997: 158). However, many of the underlying assumptions of this theory are problematic. Firstly, it would be reasonable to argue that the very wealthy “already consume as much as they want or can”, so an increase in the tax rate on the wealth they leave behind after death is unlikely to raise their consumption above their optimal level (Hurd, 1990: 621). Even if a critic insists that higher inheritance taxes will lead to increased consumption because individuals would rather waste their wealth than face restrictions on the amount of wealth they can bequest, extremely wealthy individuals can only use up a limited amount of resources before their increased consumption becomes a form of economic stimulus that result in increased corporate savings or investment. Very high net worth individuals have wealth which is so vast that it cannot be consumed within a lifetime (Masson & Pestieau, 1997: 71). In a sense, it acquires “an existence of its own which in a certain way exceeds the owner’s control” (ibid.). Extremely rich individuals cannot simply destroy their capital, because if they cease saving, their substantial spending benefits the productive sector. This leads to corporate savings and investment, which are unaffected by inheritance taxation and constitute a substantial portion of society’s new capital savings and investment (Guibet-Lafaye, 2008: 29). Despite the fact that opponents claim that high inheritance taxes reduce national savings, “no such pattern is evident across countries” (Munnell, 2003: 7), as countries with higher inheritance taxes often have higher savings rates as countries with lower ones.

Furthermore, bequest is definitely not the only or even the main reason for saving: An individual’s uncertainty about her lifespan, combined with the imperfection of capital markets (relating to the annuity and housing market) and the “impossibility of leaving a negative bequest”, make it essential for individuals to engage in precautionary savings for the purpose of security and future consumption (Masson & Pestieau, 1997: 60). Besides, empirical studies show that “households with and without children have not shown significant differences in their savings behaviour” (Zou, 1995: 131; Hurd, 1986), which implies that many individuals do not save for the purpose of bequest.

This point is reinforced by the fact that wealth holdings do not decrease after retirement and that they continue to increase with age, even when individuals' present wealth greatly exceeds their current and future consumption needs. Saving by the very rich can thus best be explained in terms of the 'capitalist spirit' theory: The "continual accumulation of wealth (is) not only for the material reward that it brings, but also for its own sake" (Zou, 1995: 132). Aging high net worth individuals do not only save because they want to maintain their lifestyles and enjoy financial security. The drive for status, influence, respect and recognition definitely plays an important role in motivating individuals, and, because people are purposive beings, these factors are reinforced by the desire for self-actualization and the need to create and give meaning to our lives.

### **5. The Proposal to Cap Inheritance**

Given the important reasons offered in section 3 in favour of curtailing inequality as a means to increase the justness of our social structure and enhance the relational standing of moral equality between citizens, as well as the theoretical economic arguments presented in section 4 in favour of inheritance taxation on the basis of market fairness and efficiency, the preceding sections combined illustrate that limiting the size and scale of economic inheritance is desirable from a moral, political and economic perspective. Based on theoretical and empirical evidence, this study proposes that the best way to reform the existing inheritance framework is through the introduction of an inheritance cap. The inheritance cap can be defined as a legal limit which is placed on the amount of money that any given individual can receive from other individuals through bequests and gifts<sup>53</sup>. This limit should be expressed as a monetary value and set at a specific amount, which should be contextually determined and adjusted for inflation. The inheritance cap thus functions as a quantitative restriction on the total amount of wealth that any given individual can receive from cumulative gifts and bequests made to him/her throughout his/her lifetime. The inheritance cap applies to bequests made to any individual, with exceptions made in

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<sup>53</sup> *Inter vivos* transfers or gifts, which refer to wealth that an individual transfer to others, such as her children, during her own lifetime as opposed to after her death, should obviously be included in this amount, because it is important to ensure that estate and gift taxes operate even-handedly, by "taxing similarly situated people alike and avoiding unintended incentives to distort behaviour for tax-saving purposes" (Cooper, 1979: 10).



the cases of spousal bequests, bequests aimed at providing for the upbringing of truly dependent children or for the living expenses of disabled individuals, and certain cases of charitable giving. Spouses are exempted from any restrictions on inheritance, as marriage creates a legal and economic partnership which is often characterised by individual sacrifice and compromises which are made amid agreements of mutual ownership of assets and wealth. The money spent on dependent children while they are still minors will also be exempted from the inheritance cap, as long as these gifts are not excessively expensive durables or any form of monetary trust or fund. Additionally, charitable giving to legitimate charities should also be allowed, as long as these charities can be shown to be inclusive and do not discriminate between individuals on morally arbitrary grounds. However, the inheritance cap strictly applies to adult children, who can make no moral claim that they deserve their parents' wealth, because the inheritance cap is explicitly aimed at preventing the morally arbitrary and undeserved intergenerational reproduction of wealth.

It is difficult to simply state the exact amount at which inheritance should be capped, due to vastly differing social contexts and the necessity of undertaking empirical research that explicitly attempts to accurately estimate the effects that different quantitative limits to economic inheritance would have on the overall distribution of wealth in a particular society in order to determine the optimal policy. Nevertheless, a tentative proposal can be offered by taking the various objectives of a policy aimed at limiting the intergenerational reproduction of wealth into consideration. The main objective of the inheritance cap is to help promote democratic equality by increasing the fairness and moral justifiability of the distribution of market opportunities and wealth within a society. As the excessive concentration of wealth in the hands of relatively few individuals plays an instrumental role in the distortion of market structures and the creation of undue political influence, the inheritance cap should serve to prevent, or at least substantially curtail, the intergenerational reproduction of wealth. At the same time, based on reasons offered below, it seems morally defensible to allow some scope for parents and concerned individuals to help out others in need and grant them some financial opportunities to pursue meaningful projects, but not to ensure that they will have a life of effortless comfort and luxury. Accordingly, the limit set by the inheritance cap should not be so high that it could have perceptible negative effects on the overall fairness of the wealth distribution within a society, but

high enough to allow for the transfer of some personal property and objects of sentimental value.

The exact amount at which the inheritance cap should be set is therefore heavily dependent on the current degree of economic equality and the level of prosperity within the society in question. For example, in highly unequal societies, where some individuals stand to inherit enough to virtually guarantee a life of economic prosperity while other individuals have extremely limited opportunities, the moral imperative for very high inheritance taxes is great, as inheritance represents a morally arbitrary form of wealth distribution, which means that the inheritance cap should be set at a low level. For the sake of illustration, consider the introduction of an inheritance cap of \$ 1 million per person within the United States. This limit would allow parents to practically express their care and concern for the well-being of their children, while enabling prudent and productive children to avoid future economic hardship without securing a life of economic affluence for them. Simultaneously, it would serve as an effective measure to counteract the excessive concentration of wealth and limit the morally unjustifiable intergenerational reproduction of wealth. In a country like South Africa, in which economic inequality is extremely high and past injustices due to Apartheid continue to have a perceivable and persistent effect on the overall distribution of wealth and income, the inheritance cap should be set at a level that is low enough to substantially counteract these trends. A tentative estimate could be set at R500 000 per person.

The acceptability of these proposals can be further enhanced by earmarking the revenue generated by the inheritance cap for redistributive objectives aimed at increasing democratic equality, such as using inheritance tax revenue to give children from all backgrounds access to extensive and comparable educational opportunities which will enable them to become well-functioning individuals who have decent future prospects and can interact with others on a level of mutual recognition and respect. If fair and open access to education can be successfully implemented, as has arguably been achieved in many Scandinavian countries and Germany, a strong case could also be made for excluding the cost of tertiary education from the amount of inheritance an individual is allowed to receive. However, such a provision should only be implemented if a significant and successful effort has been made to give all

citizens a meaningful opportunity to earn access to comparable education, because otherwise differences in educational attainment would probably become a substitute for inherited wealth as the main driver of high income and wealth inequalities. By allowing every child access to the material resources necessary to build certain capabilities and giving them the ability to stand in a relation of moral equality to others, the revenue generated through the restriction of economic inheritance will be instrumental in preventing the undue domination of some individuals by others, without infringing on the rights of any living individual. The exact amount at which inheritance should be capped and how the resulting increase in revenue could best be used for redistributive objectives are worthwhile and promising topics for future empirical research.

The practical appeal of the inheritance cap lies in the fact that it only requires the reform of one aspect of our current property rights system, which can be achieved without rendering ownership claims more uncertain or complicating the enforcement thereof in any significant way. By placing a limit on the total amount of wealth that any given individual can receive during his / her lifetime through bequests, as opposed to restricting the total amount that an individual is allowed to bequeath, the inheritance cap policy encourages wealthy individuals to widen their sphere of concern to include needy or deserving employees or members of their community, while simultaneously ensuring a more dispersed and equitable distribution of wealth. In addition, the inheritance cap has the advantage of being practically feasible and achievable, because the imposition of a limit on the total amount that an individual can receive during his lifetime makes it a fairly uncomplicated tax policy in terms of administrative and compliance costs. Obviously, the implementation of an inheritance cap policy has to coincide with legislative reforms aimed at closing all inheritance tax loopholes<sup>54</sup>, as well as restricting the use of alternative and illegitimate measures for general tax avoidance, such as hiding or sheltering assets in Swiss and other offshore bank accounts<sup>55</sup>.

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<sup>54</sup> See discussion on p. 113 for examples.

<sup>55</sup> Effectively addressing these latter measures of tax avoidance may be some of the more challenging obstacles to the successful implementation of an inheritance cap, because their restriction depends on a fair degree of international cooperation. However, since these measures would be to the advantage of most governments and countries, there is a real possibility for mutual agreement.

The aim of greatly restricting the intergenerational transfer of wealth would have to be achieved through the gradual implementation of increasingly strict limits on the size of economic bequests that individuals can make and receive, so that existing expectations can have time to adjust to the new situation. It is “reasonable to suppose that motives are strongly influenced by social norms which are in their turn influenced by public policy”, which implies that the legal structure that regulates inheritance taxation influences actual behaviour and preferences, and can help shape social norms and customs over time (Vandevælde, 1997: 10; Schokkaert, 1997: 130). Consequently, instead of immediately imposing a very low inheritance cap, the current proposal contends that the legal size of economic inheritance should gradually decrease over a period of decades, until the point is reached at which each individuals could only receive a limited amount of wealth through cumulative bequests made to him / her by various individuals. When an inheritance cap policy is first implemented within a society, it should be represented in the form of a plan which clearly delineates how the size of legitimate bequests will be decreased over time, by explicitly stating the initial, future and final amount at which limits to bequests will be set, as well as the years in which these laws will take affect. In this way, mature children of wealthy individuals, who grew up with the expectation of a substantial inheritance and who might have made career and life choices in light of this expectation, will not suddenly and abruptly loose their future livelihood. Younger children, however, will learn to adjust their expectations early on and make productive choices and trade offs in line with those made by all children of parents with low or middle class levels of wealth.

The practice of the intergenerational transfer of economic wealth is outdated and inconsistent with the values underlying democratic capitalist market economics. Even though the practice of economic inheritance has been part of our social institutions for centuries, theoretical analyses and empirical evidence unambiguously indicate that it has no rightful place in moral justifications of private property ownership and that it is severely detrimental to the fair and efficient functioning of our market economy and political system due to the excessive concentration of wealth it entails. The idea that individuals can obtain property rights over objects without simultaneously acquiring the right to bequeath these objects after their death may seem unusual and strange, but this is only because we are considering it from within our current framework and

experience. The reality and possibility of diverse alternative property arrangements have been illustrated in Chapter 2, which indicated that any of a range of property interests, combined with the notion of security, can constitute a property right to a specific aspect of possession, use or transfer of an object. A close examination of the justificatory principles of ownership revealed that not only is the practice of inheritance *not* a necessary consequence of property rights, but it is clearly also inconsistent with the underlying values to which individuals customarily appeal in defence of private property ownership. It is thus not the restriction of inheritance that should be considered peculiar, but rather the fact that the practice of the intergenerational transfer of wealth became such an ingrained and pervasive feature of our modern economic system. The practice of inheritance is “based upon a legal fiction [...] of uninterrupted ownership, which involves the denial of death” (Vandeveldt, 1997: 5). Our human desire for immortality, combined with the general failure of contemporary democracies to carefully reconsider and evaluate the established economic framework in terms of fairness and consistency at their inception, contributed to the creation and continuation of a practice that can be identified as manifestly unjust.

Although, on the basis of arguments offered throughout this chapter, it may seem preferable to eliminate the practice of economic inheritance in its entirety, there are other values and considerations at stake in this decision which make an allowance for the possibility of bequeathing a limited amount of wealth seem attractive from both a moral and a practical point of view. The love and concern that many parents have for their children serve as a compelling motivation for allowing all parents the right to transfer a small amount of wealth to their children in cases of desperate need or to help them along the path to achieving some of their personal objectives. When only a limited amount of wealth is at stake, potential disadvantageous consequences in terms of a slight increase in inequality and a small decrease in economic efficiency are relatively minor, and appears to be outweighed by the moral importance parents that often attach to helping their children, as “it would be *unreasonable* to impose demands on people that did not take their natural propensities and limitations into account” (Freeman, 2009: 51). In a sense, this consideration also makes the allowance for the limited transfer of wealth desirable from a practical perspective, as any ideal, regardless of how attractive it may be to contemplate, must be regarded as utopian “if

reasonable people cannot be motivated to live by it” (Nagel, 1992: 21). A policy such as that of the inheritance cap which is aimed at practically influencing our collective form of life cannot simply impute “arbitrary motivations to people” and require of them to be and behave in ways radically different from their nature (Julius, 2003: 353). However, excessively pessimistic assessments should also be avoided, because perceptions are malleable, and people are capable of changing and improving their outlook on reality when they are offered convincing reasons for doing so. Compelling moral arguments and carefully presented factual information, such as this study attempted to offer in relation to the issue of economic inheritance, are often capable of influencing and altering existing beliefs. Moral insight and argument “can reveal and explain the possibility of political motivations which cannot be assumed in advance of moral discussion” (Nagel, 1987: 218), which means that the act of entering into moral debate can open up previously undetected possibilities in terms of the appropriate understanding of different features of society.

## **7. Objections and Refutations**

While some objections against inheritance taxation, such as the claims that it destroys the incentives to work and to save, have been raised and addressed during the preceding discussions, various prominent objections still need to be attended to. The purpose of this final section is to identify and deal with some of the popular arguments cited in defence of the practice of economic inheritance. Where the issue involved has already been implicitly addressed in the current or preceding chapters, the reference to it will be kept brief in order to avoid unnecessary repetition.

### **7.1. Family as a Special Relationship**

One of the most prominent and enduring criticisms of inheritance taxation is that it makes light of the immense importance that family relationships have for individuals. As Nozick claimed, from the point of view of conventional accounts of social justice, “families are disturbing” and must become “either units to which distribution takes place [...], or loving behaviour is forbidden” (1974: 167). However, when it comes to the issue of economic inheritance, motives are not always exclusively admirable and

altruistic<sup>56</sup>. As Nozick himself commented later in life, “the power and continuing control that many wealthy people care about, rather than the ability to enhance and express the bonds of personal relations, [means] that their compliant children or associates would have been better off without any institution of inheritance at all” (Nozick, 1989: 32). The idea that bequest necessarily expresses an intensification of a personal bond of “caring, affection and identification” to the receiver is belied by the fact that wealthy parents continue saving and accumulating wealth after retirement and into old age, “despite tax incentives to make inter vivos gifts to their children” (Vandeveldt, 1997: 8; Brittain, 1978: 11). Moreover, the fact that bequests often increase with the income of children and do not compensate children for being badly off in relative terms, indicates that parents tend to make capitalistic bequests, which are aimed at extending their influence beyond their lifetime through the creation of an industrial or financial dynasty (Arrondel et al, 1997: 110). In such cases, it is likely that bequests present a form of insurance for the testator, because it can function as “a lever by which the bequeather can during his/her lifetime, strongly influence the behaviour of aspiring heirs” (Steiner, 1992: 84). Although the intergenerational transfer of wealth has often been presented as a display of unconditional love and affection, there are several obvious indications that this view of inheritance is somewhat naïve and oversimplified.

The objection to inheritance capping made from the standpoint of family solidarity and values, such as an argument that the desire of parents to provide for their children should be respected, has some merit and helps serve as a justification for the allowance of limited bequests, but cannot be used to defend the intergenerational transfer of substantial wealth. After all, the intergenerational transfer of great wealth and the negative consequences that it creates for others through the exacerbation of economic inequality and divergent life chances is not merely a private matter, but an issue which significantly affects the overall fairness of our economic and political systems. The fact that children cannot inherit vast amounts of money does not diminish family bonds, especially as parents will be able to transfer some goods of sentimental value to their children. The abolishment of inheritance could even help individuals to think of parental contribution in broader terms of love, values, skills,

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<sup>56</sup> The various potential bequest motives are discussed below in section 7.4.

capacities and character development, instead of viewing the primary input from parents merely with reference to wealth (Haslett, 1997: 142 – 143). The value to children and society of limiting the size and scope of inheritance was also discerned by Mill, who wrote the following thoughtful passage on the appropriate relation between parental care and economic bequests:

The claims of children are of a different nature: they are real, and indefeasible. But even these, I venture to think that the measure usually taken is an erroneous one: what is due to children is in some respects underrated, in others, as it appears to me, exaggerated. [...] Whatever fortune a parent may have inherited, or still more, may have acquired, I cannot admit that he owes to his children, merely because they are his children, to leave them rich, without the necessity of any exertion. [...] It may be affirmed that in a majority of instances the good not only of society but of the individual would be better consulted by bequeathing to them a moderate, (rather) than a large provision (Mill, 1975: 136 – 137)

As Adam Smith warned along similar lines,

Nature [...] has rendered the former affection [i.e. parental tenderness] so strong, that it generally requires not to be excited, but to be moderated: and moralists seldom endeavour to teach us how to indulge, but generally how to restrain our fondness, our excessive attachment, the unjust preference which we are disposed to give our own children above those of other people (1976: 142)

One supporting argument traditionally made in favour of bequests is that, although parents also face asymmetrical information concerning their respective children's real needs and abilities, they are nevertheless still in a significantly better position to estimate these than the government (Masson & Pestieu, 1997: 63). However, "the case for estate taxation will be enhanced if between-families inequality is higher than within family-family one", which is undoubtedly the case, and if "the efficiency cost of public redistribution is not much higher than that of private redistribution"<sup>57</sup> (Masson & Pestieu, 1997: 80). As explained above, the efficiency cost of private

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<sup>57</sup> Moreover, these considerations apply only in the case of altruistic bequest – which is probably not the predominant bequest strategy. For all other types of bequest, inheritance taxation is always desirable on redistributive grounds.



distribution is substantial, as it leads to the misallocation of human capital resources, and because there are no guarantees to ensure that the children who benefit from their parents' wealth are themselves capable of putting these resources to their best use. Accordingly, even if public distribution is not always as efficient as it should be, there are convincing arguments that show that this form of allocation is still the lesser bad.

Finally, the claim that the ability to bequeath wealth to children serve as the principle motivation for saving has already been disputed in section 4, which illustrated on the basis of sound empirical evidence that adults with and without children display similar savings patterns. Individuals save for security, for future consumption purposes and for the sake of wealth itself, because of the status, influence and real and potential enjoyment it represents. In the limited case in which individuals save with the principal purpose of bequeathing substantial wealth to their children in order to create a dynasty, it is wise to note that "the mischiefs to society of such perpetuities outweigh the value of this incentive to exertion, and the incentives in the case of those who have the opportunity of making large fortunes are strong enough without it" (Mill, 1975: 138). Even if individuals who hoped to found a family in perpetuity decide not to save in the absence of their most significant bequest motive, the overall wealth distribution within a society should never be held hostage by the whimsies of a few narrowly self-interested individuals.

## **7.2. Endangering Small Businesses and Farms**

Opponents of inheritance taxation frequently object to the "ever-present threat" and burden it imposes on family firms and farms, and claim that inheritance taxation results in "social losses and losses to third parties" because it causes "family firms and landed estates to go under" (Bracewell-Milnes, 1997: 197 – 180; 198). The answer to this objection is extremely straightforward: It is simply factually inaccurate and untrue to claim that inheritance taxes pose any significant obstacle to the existence and continuation of viable or successful family farms and businesses. As William Gates and Chuck Collins convincingly illustrate in their empirical investigation of the effect of estate taxes on family farms, these arguments are 'red herrings' which are employed to distract attention away from the real beneficiaries of estate tax repeal, namely the extremely rich and entitled children of wealthy, predominantly white

multimillionaires (2002: 66). Actual accounts of farmers losing farms due to inheritance taxes are so rare that numerous investigators and inspectors, including many who propagate or support the repeal of inheritance taxes, were unable to find a single real example (Gates & Collins, 2002: 66 – 74). As far as family businesses are concerned, proponents of the abolishment of inheritance taxes are part of “a larger business lobby that deliberately blurs the distinction between ‘small business’ and ‘family’ or ‘independent’ business” (Gates & Collins, 2002: 75). Comprehensive studies indicate that “77 percent of business owners could pay estate tax without borrowing or having it affect their business” (Gates & Collins, 2002: 77). High levels of exemptions ensure that small family businesses pay virtually no estate taxes, while only multimillion-dollar ‘family’ corporations, who are legitimate targets of inheritance taxation, are forced to contribute, and never to a debilitating or even truly substantial extent.

The purported adverse impact that high levels of inheritance taxation could have on small businesses and family farms could also be practically eliminated (Volcker, 2002: xiii), if high inheritance taxes ever pose a serious obstacle to the survival of these enterprises<sup>58</sup>. One possibility would be to defer the imposition of high inheritance taxes on truly small or medium sized businesses and small or medium sized farms that are actively run by families until the moment when these enterprises are sold, at which time standard rates of inheritance taxation will be imposed on the entire capital value of the asset. This creates the opportunity for children to act as stewards and preserve family traditions, but only when they are truly committed to these objectives, and not simply using sentimental arguments in order to justify the acquisition of significant personal financial gains. Children will thus have the right to generate normal to relatively generous competitive market incomes from the active and continuous management of these enterprises on the basis that their productive efforts deserve fair compensation, but they will not have any claims to the original capital value of the asset or the standard market interests it generates, as they will only be allowed to receive the amount of inheritance as stipulated by the inheritance cap at the time of their surviving parent’s death.

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<sup>58</sup> The current inheritance tax policy already contains provisions aimed at enabling “the transfer of businesses and farms if they remain family-owned and operated (Gates & Collins, 2002: 2).

### 7.3. The 'Destruction of Capital' / Inefficient Allocation

The contention that estate taxes lead to the destruction of wealth has already been raised in section 4 under the discussion of the economic impact of inheritance taxation. Despite what some critics suggest, a 50 percent tax on a property, for example, does not 'wipe out' any capital or reduce the value of the property by 50 percent – the revenue generated has to be put to use in some other economic activity (Hoover, 1927: 39, 41 - 43). Moreover, the revenue generated by inheritance taxes can be used to promote worthwhile social objectives such as wider access to basic material resources and education, which can help decrease economic inequality, which has been shown in the preceding discussions to have greatly positive effects in terms of the fairness and moral acceptability of both the market economy and the political system.

Proponents of estate tax repeal also habitually attempt to frame inheritance as a "base with no economic taxable capacity", by claiming that the social loss caused by inheritance taxation necessarily always exceeds the revenue yield (Bracewell-Milnes, 1997: 168, 190). This argument depends on the dubious idea that personal giving creates excess value, in the sense that "the act of giving at least doubles the value of the gift", while government giving necessarily always destroys wealth<sup>59</sup> (ibid). This is based on the idea that the fact that giving is a voluntary transaction implies that the benefit derived from the act of giving necessarily exceeds the value of the gift for the donor, while the recipient in turn gains the value of the gift. By this logic, the social gain generated when, for example, a father gives his son \$100, is equal to or greater than \$200, because they both benefit at least to the equivalent of \$100 in terms of personal satisfaction from the interaction. However, this view neglects to acknowledge the way in which gifts are often made on the basis of commitment and at a personal cost to the giver. Moreover, in the case of bequests, as opposed to *inter vivos* gifts, the testator simply passes on what can no longer be of use to her, having already foregone the opportunity to forego of any benefit that the objects represented to her during her lifetime. Whatever questionable value the idea that giving doubles the value of the gift might have, it cannot be applied to the act of bequeathing, where the owner only relinquishes possession at the moment where she herself ceases to be.

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<sup>59</sup> For a detailed discussion of this idea, see Bracewell-Milnes, 1989. *The Wealth of Giving*.

#### 7.4. Undermining Altruism

The final objection against inheritance taxation comes in the form of the accusation that estate taxes are inherently morally reprehensible, as they undermine the altruistic acts and intentions of parents who wish to secure a comfortable life for their children. But altruistic bequests based on “parental love and filial pity” is not the only bequest motive: Individuals make *accidental* bequests due to the uncertainty over their own lifespan; *paternalistic* bequests which are based on parents’ idea of what is good for their children, not on preferences or need of offspring; *retrospective* bequests which embody deferred reciprocity in the sense of “do(ing) unto your children as you would have liked your parents to have done unto you” (Masson & Pestieu, 1997: 68); bequests based on *pure exchange* whereby children receive education and an inheritance in exchange for taking care of their parents’ needs and security in old age; *strategic* bequests which aim to maximise the time children dedicate to their parents by motivating siblings to compete for their inheritance; as well as *capitalist* bequests whereby an individual invests all her wealth and attempts to extend her decision-making scope beyond her own lifespan by leaving an industrial or financial dynasty (Masson & Pestieu, 1997: 60 - 72).

The difficulty of gathering reliable empirical information about bequest *motives* is clearly apparent in the tendency of authors to arrive at theoretical conclusions that support their preferred bequest model (Arrondel et al., 1997: 119). When it comes to bequest motives, authors almost always corroborate their theoretical hypothesis, even when it means that studies based on the same tests frequently lead to opposite conclusions or that some authors are entirely alone in their conclusions (ibid). Despite the general uncertainty regarding what exactly motivates individuals to leave intentional bequests, there are numerous tendencies which reveal that motives are definitely not merely altruistic in the vast majority of cases. Nobel-prize winning economist Gary Becker, who popularised the idea of altruistic bequests, admitted that economists excessively relied on altruism as a motive in explaining the cohesiveness of family interests (Arrondel et al., 1997: 120). *Inter vivos* gifts are usually intentional and are thus more reflective of and informative about transfer motives than bequests made after death (Arrondel et al., 1997: 105), yet at three times the wealth received

from *inter vivos* gifts, bequests represents the largest descending monetary transfer. The average age of heirs in most developed countries is over 45, but “if parent’s intergenerational transmission were motivated only by the altruistic desire to help their children at the right moment, they should be executed earlier and in the form of gifts” (Masson & Pestieau, 1997: 56). Empirical evidence also strongly suggests that “bequests are often used as compensation for services rendered by beneficiaries” and that “neither egalitarian nor altruistic motives appear to be particularly prevalent” (Bernheim et al., 1985: 1045, 1073). The very wealthy probably do not have an operable bequest motive, because these individuals already consume as much as they want or can, which means that their wealth holdings and consumption behaviour are independent of the concern they may have for the welfare of their heirs (Hurd, 1990: 621). The size of bequests made by the richest 1 percent does not depend on the presence of children or on the income of existing children – these bequests are thus either accidental or capitalistic in nature (Arrondel et al., 1997: 110). When considering the altruistic purposes for which revenue generated by inheritance taxation can be used, and the multiple reasons individuals have for bequeathing wealth other than good intentions, the claim that inheritance diminishes altruism becomes completely unconvincing. To the contrary, charitable giving, which is exempt from estate taxes, represents the second largest deduction for large estates, after the deduction of the unlimited amount which can be transferred to surviving spouses (Gates & Collins, 2002: 127 - 132). Large estates of \$ 5 million or more donate several billions to charities annually (for example, \$ 10.3 billion in 1997), but several studies indicate that low or no inheritance taxes will substantially reduce charitable giving, with estimates of the decline placed at as much as 40 percent (*ibid*). The presence of substantial inheritance taxes thus serves as an additional incentive to individuals to make charitable donations, which are exempt from taxes and therefore represents an effective channel through which they can express their personal concern for particular community and social objectives.

### **7.5. The Will of the Testator**

In *Equality and Partiality*, Nagel argues that our inability to reconcile the “standpoint of the collectivity with the standpoint of the individual” is the central problem of political theory (1992: 3). On his view, the division between the personal and the

impartial viewpoints is the catalyst for ethical considerations within political theory, and the unsatisfactory nature of all social and political institutions are due, at least in part, to our present inability to formulate an acceptable political ideal that adequately reconciles these two standpoints, even at a theoretical level. The personal standpoint, which gives rise to “individualistic motives and requirements”, is understood to present insurmountable obstacles to the satisfactory realisation of the impersonal standpoint, which corresponds to the requirement for “universal impartiality and equality” within the context of social and political institutions (Nagel, 1992: 4-5). As Nagel summarises this point:

My claim is that the problem of designing institutions that do justice to the equal importance of all persons, *without making unacceptable demands on individuals*, has not been solved – and that this is so partly because for our world the problem of the right relation between the personal and the impersonal standpoints within each individual has not been solved (1992: 5, *my italics*).

Nagel contends that the failure to give sufficient recognition to both standpoints in moral theory and within the institutional structure of society makes the aim of defending political arrangements on the grounds of general acceptability questionable (1992: 8). While this appeared to be the case for a long time, the real question is whether the problem of the right relation between the personal and impersonal standpoint is really as fundamentally insoluble as Nagel suggests. One way of addressing this difficulty is to question what should be regarded as ‘unacceptable demands on individuals’. If it turns out that too much has been conceded to the claims of narrow individual self-interest before the moral acceptability of these demands have even been assessed, as this study argued has in fact been the case, then a space opens up in which the relative merits of the requirements of each viewpoint can be reassessed with the aim of satisfactorily reconciling the two standpoints. The weight that inherited customs and institutional arrangements, which were never designed or re-evaluated according to democratic norms, continues to carry in our present thinking and decision-making, as well as the long, and undoubtedly flawed, tradition within moral philosophy to try and justify social and institutional arrangements purely on self-interested terms, have been instrumental in perpetuating the idea that the personal and impartial viewpoints are fundamentally irreconcilable.

Although the right to make bequests is often defended on the basis that it constitutes an important expression of individual freedom, this chapter attempted to illustrate that the intergenerational reproduction of wealth associated with inheritance cannot be regarded as a private matter, but has to be understood as an influential social practice that has a significant impact on the life prospects of individuals and the overall fairness of the economic system and democratic political structure. Arguments made with the aim of influencing the terms of political or social cooperation only acquire their distinct normative force when the motivational basis of the agreement requires a willingness to adjust our private demands in the search for principles that can be justified to others, instead of merely bargaining for self-interested benefits (Scanlon, 1998: 5). The demands of impartiality are intrinsically related to the idea of justice, because it requires of individuals to accept that social structures have to embody fairness and uphold moral equality, as opposed to giving individuals what they subjectively prefer (Wissenburg, 1999: 4). “Claims to special privilege based on reasons that cannot be made freely acceptable to others” (Barry, 1995: 7 – 8), such as the desire of some wealthy individuals to be allowed to bequeath substantial amounts of wealth to their children without showing any concern for the undesirable social realizations that arise due to this practice, are not morally compelling. When impartiality is not equated with the standpoint of a faceless collective, but rather understood as a demand on each individual to justify the rules of social cooperation to others on moral grounds that they cannot reasonably reject<sup>60</sup>, the distance between the personal and the impartial position shrinks as narrowly self-interested claims give way to more measured normative arguments. The realization that every person’s life is of central importance to herself, and matters just as much to her as my life matters to me, serves as an impetus for the creation of social rules and institutions that seem fair from every individual’s perspective, as the demands of those who are badly off should count as much as those made by wealthy and influential individuals. The terms of political cooperation should thus not be decided merely on the basis of the existing balance of power, as would be the case if it was founded in unfettered self-interest,

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<sup>60</sup> This formulation comes from Scanlon’s book, *What We Owe Each Other*, in which he writes that “thinking about right and wrong is, at the most basic level, thinking about *what could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject*” (1998: 5). Scanlon’s understanding of the motivational basis for impartial agreement has already been discussed in section 1.1. of Chapter 1.

but should aim to approximate unanimous acceptability (Nagel, 1992: 48). In the case of the practice of economic inheritance, which, as this chapter clearly and extensively illustrated, has severely detrimental consequences for the fairness of the economic market and democratic political system, the personal preference of a few wealthy individuals cannot outweigh the general social importance and benefit associated with the substantial curtailment of excessive wealth concentrations through the implementation of an inheritance cap.

### **Conclusion and Recommendations**

The aim of this thesis was to argue in favour of attempting to advance social justice through the use of the comparative approach, which identifies manifest injustices and search for feasible alternative arrangements by comparing the current social structure and realizations with that of other societies. After identifying the practice of economic inheritance as manifestly unjust, an exploration of the justificatory principles of private property rights was undertaken to determine on which grounds the intergenerational transfer of wealth contradicts our moral understanding of the basis on which individuals rightfully acquire ownership over objects, to the exclusion of others. The practice of economic inheritance was shown to be inconsistent with each of the values that individuals habitually appeal to as justificatory principles for private property ownership.

After examining the way in which economic inheritance currently helps cause and exacerbate the excessive concentration of wealth, a careful analysis was offered to show how the resulting increases in economic inequality lead to unfair market conditions and enable extremely wealthy individuals to exercise undue political influence over others. The practice of economic inheritance also has the unfortunate consequence of perpetuating the effects of injustices committed in the past, as former victims continue to suffer from lesser economic prospects and limited access to wealth. Accordingly, an immense moral impetus for redistributive taxation arises, as the promotion of social mobility reduces the effects that morally arbitrary parental socioeconomic background conditions have on the life prospects of individuals. This, in turn, enables individuals to live in a relation of moral equality, as it helps provide



the material basis for mutual recognition and respect while simultaneously also counteracting social stratification.

Before offering a proposal to cap economic inheritance, the study also investigated the effects that high levels of inheritance taxation will have on the work and savings incentives of extremely wealthy individuals. Drawing extensively on insights provided by empirical evidence, theoretical arguments illustrated that high inheritance taxes only have an indirect impact on incentive decisions, and that it is extremely unlikely that substantial inheritance taxes will diminish individuals' work and savings efforts. At high levels of wealth, income is mainly in the form of capital dividends, and the relation between hours worked and compensation received is very indirect. Individuals are also shown to be purposive beings that exert productive efforts and save for various reasons other than the desire to leave bequests, such as for the purposes of security and deferred consumption, status, influence, future enjoyment and self-actualization.

Having demonstrated that the restriction of the size and scope of economic inheritance is socially desirable and morally justifiable from both a political and economic perspective, a proposal is offered to implement an inheritance cap policy, which limits the amount that any individual can receive from others during his/her lifetime through cumulative bequests and gifts. As the aim is to curtail the morally arbitrary intergenerational reproduction of wealth, this policy would strictly apply to all individuals, including adult children, but exceptions will be made for the cases of spousal bequests, bequests aimed at providing for the upbringing of truly dependent children or for the living expenses of disabled individuals, as well as certain cases of charitable giving. The limit set by the inheritance cap should not be so high that it could have perceptible negative effects on the overall fairness of the wealth distribution within a society, but high enough to allow for some practical expression of love and concern from parents in the form of the intergenerational transfer of some personal property and objects of sentimental value. The exact amount at which the inheritance cap should be set is therefore heavily dependent on the current degree of economic equality and the level of prosperity within the society in question, which implies that empirical studies that explicitly attempt to accurately estimate the effects that different quantitative limits to economic inheritance would have on the overall

distribution of wealth constitute worthwhile grounds for future research. The study concluded by citing and addressing various prominent objections against inheritance taxation.

## BIBLIOGRAPHY

Altstein, H. & Simon, R. J. 2003. *Global perspectives on social issues: marriage and divorce*. Massachusetts: Lexington Books. p. 11.

Anderson, E.S. 1999. "What is the Point of Equality?" in *Ethics*. 109(2): 287-337

1993. *Value in Ethics and Economics*. Massachusetts: Harvard University Press.

Ariely, D. 2012. "Americans Want to Live in a Much More Equal Country (They Just Don't Realize It)" in *The Atlantic*.

<http://www.theatlantic.com/business/archive/2012/08/americans-want-to-live-in-a-much-more-equal-country-they-just-dont-realize-it/260639/>

Arneson, J.A. 1989. "Equality and Equal Opportunity for Welfare" in *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*. 56(1): 77-93

Arrondel, L., Masson, A. & Pestieu, P. 1997. "Bequest and Inheritance: Empirical Issues and France-U.S. Comparison" in *Is Inheritance Legitimate? Ethical and Economic Aspects of Wealth Transfers* (ed. By Erreygers, G. & Vandevelde, T.). Heidelberg: Springer.

Arrow, K.J. 1973. "Review of 'Some Ordinalist-Utilitarian Notes on Rawls's Theory of Justice' by John Rawls" in *The Journal of Philosophy*. 70(9): 245-263.

Atkinson, A.B. 2007. "The Long Run Earnings Distribution in Five Countries: Remarkable Stability, U, V or W" in *Review of Income and Wealth*. 53(1): 1- 24.

Atkinson, A.B. & Brandolini, A. 2009. "On data: a case study of the evolution of income inequality across time and across countries" in *Cambridge Journal of Economics*. 33: 381-404.

Alesina, A. & Angeletos, G.M. 2005. "Fairness and Redistribution" in *American Economic Review*. 95(4): 960-980

Baker, C.E. 1986. "Property and Its Relation to Constitutionally Protected Liberty" in *University of Pennsylvania Law Review*. 134(4): 741 - 816.

Banerjee, A. & Duflo, E. 2011. *Poor Economics: A Radical Rethinking of the Way to Fight Global Poverty*. New York: Public Affairs.

Barry, B. 1995. *Justice as Impartiality*. Oxford: Clarendon Press.

Becker, G.S. 1991. *A Treatise on the Family*. Cambridge: Harvard University Press.

Becker, L.C. 1977. *Property Rights: Philosophic Foundations*. London : Routledge & Paul.

Behrman, J. & Taubman, P. 1985. "Intergenerational Earnings Mobility in the United States: Some Estimates and a Test of Becker's Intergenerational Endowments Model" in *The Review of Economics and Statistics*. 67(1): 144-151.

Bellamy, R. 2005. "Justice in the Community: Walzer on pluralism, equality and democracy" in *Social Justice: From Hume to Walzer* (edt. D. Boucher & P. Kelly). Taylor & Francis e-library. pp. 161 – 184.

Bentham, J. 2004. "Supply without Burthen; or Escheat vice Taxation" in *Jeremy Bentham's Economic Writings. Volume 1 : Critical Edition Based On His Printed Works and Unprinted Manuscripts* (edt. By W. Stark). United States: Taylor & Francis Routledge.

Bernheim, D.B., Schleifer, A. & Summers, L.H. 1985. "The Strategic Bequest Motive" in *Journal of Political Economy*. 93(6): 1045 – 76

Birney, M., Shapiro, I & Graetz, J. 2008. "The Political Uses of Public Opinion" in *Divide and Deal: The Politics of Distribution in Democracies*. New York: New York University Press.

Boucher, D. & Kelly, P. 2005. 'Introduction' in *Social Justice: From Hume to Walzer* (edt. D. Boucher & P. Kelly). Taylor & Francis e-library. pp. 1 -16.

Bracewell-Milnes, B. 2002. *Euthanasia for Death Duties: Putting Inheritance Tax Out of Its Misery*. London: Institute of Economic Affairs.

1997. "The Hidden Cost of Inheritance Taxation" in *Is Inheritance Legitimate? Ethical and Economic Aspects of Wealth Transfers* (edt. By Erreygers, G. & Vandeveldde, T.). Heidelberg: Springer. pp. 157 – 201.

1994. *Will to Succeed: Inheritance Without Taxation*. London: Adam Smith Institute.

1989. *The Wealth of Giving: Every One in His Inheritance*. London: Institute of Economic Affairs.

1982. *Land and Heritage: The Public Interest in Personal Ownership*. London: Institute of Economic Affairs.

Brenkert, G.G. 1998. "Self-Ownership, Freedom, and Autonomy" in *The Journal of Ethics*. 2 (1): 27-55

Brittain, J.A. 1978. *Inheritance and the Inequality of Material Wealth*. Washington: The Brookings Institute.

1977a. *The Inheritance of Economic Status*. Washington: Brookings Institute.

1977b. "On the Inequality of Life Chances" in *Challenge*. September – October. pp. 54 -55.

Brooks-Gunn, J. 2003. "Do You Believe In Magic?: What We Can Expect From Early Childhood Intervention Programs" in *Social Policy Report*, XVII(1)

Carneiro, P. and J.J. Heckman. 2003. "Human Capital Policy", *NBER Working Paper*, No. 9495, National Bureau of Economic Research, Cambridge MA

Carnegie, A. 1903. *The Gospel of Wealth and Other Timely Essays (Third Edition)*. London: Frederic Warne & Company.

Causa, O. and C. Chapuis. 2009. "Equity in Student Achievement across OECD Countries: An Investigation of the Role of Policies", *OECD Economics Department Working Papers No.708*

Causa, O. & Johansson, A. 2009. "Intergenerational Social Mobility", *OECD Economics Department Working Papers*, No. 707, OECD Publishing.

Christman, J. 1994a. *The Myth of Property: Toward an Egalitarian Theory of Ownership*. Oxford: University Press.

1994b. "Distributive Justice and the Complex Structure of Ownership" in *Philosophy and Public Affairs*. 23 (3): 225-250.

1991. "Self-Ownership, Equality, and the Structure of Property Rights" in *Political Theory*. 19 (1): 28-46

1986. "Can Ownership be Justified by Natural Rights?" in *Philosophy and Public Affairs*. 15(2): 156-177

Christiano, T. & Christman, J. 2009. "Introduction" in *Contemporary Debates in Political Philosophy* (edt. by T. Christiano & J. Christman). Oxford: Blackwell Publishing. pp. 1 – 20.

Cohen, G.A. 1995. *Self-ownership, Freedom, and Equality*. Cambridge: University Press.

1989. "On the Currency of Egalitarian Justice" in *Ethics*. 99(4): 906 – 944

Columbatto, E. 2004. "Introduction" in *The Elgar companion to the economics of property rights* (edited by E. Colombatto). Cheltenham, UK : Edward Elgar. pp.xiii – xxx.

Cooper, G. 1979. *A Voluntary Tax? New Perspectives on Sophisticated Estate Tax Avoidance*. Washington: The Brookings Institute.

De Alessi, L. 2003. "Gains from Private Property: The Empirical Evidence" in *Property Rights: Cooperation, Conflict, and Law* (edited by Terry L. Anderson & Fred S. McChesney). pp. 90 – 111.

Decancq, K., Decoster, A. & Schokkaert, E. 2006. "The Evolution of World Inequality in Well-being". Available at SSRN: <http://ssrn.com/abstract=958690> or <http://dx.doi.org/10.2139/ssrn.958690>

Denyer, S. 2008. "Indian village proud after double 'honour killing'" in *Reuters*. Friday, May 16. Accessed July 8, 2011 at <http://www.reuters.com/article/2008/05/16/us-india-honourkilling-idUSDEL29449420080516>

Deutsch, M. 1975. "Equity, Equality, and Need: What Determines Which Value Will Be Used as the Basis of Distributive Justice?" in *Journal of Social Issues*. 31 (3): 137 – 149.

Dworkin, R. 1981a. "What is Equality? Part 1: Equality of Welfare" in *Philosophy & Public Affairs*. 10(3): 185 – 246

1981b. "What is Equality? Part 2: Equality of Resources" in *Philosophy & Public Affairs*. 10(4): 283 – 345.

Einhorn, R.L. 2001. *American Taxation, American Slavery*. Chicago: University of Chicago Press.

Elster, J. 1995. "The Empirical Study of Justice" in *Pluralism, Justice and Equality* (edt. by D. Miller and M. Walzer). New York: Oxford University Press. pp. 81 – 98.

Elegido, J.M. 1995. "Intrinsic Limitations of Property Rights" in *Journal of Business Ethics*. 14 (5): 411-416

Ely, J.W. 2008. *The Guardian of Every Other Right: A Constitutional History of Property Rights, Third Edition*. Oxford: University Press. pp. ix – 204.

Erreygers, G. 1997. "Views on Inheritance in the History of Economic Thought" in *Is Inheritance Legitimate? Ethical and Economic Aspects of Wealth Transfers* (edt. By Erreygers, G. & Vandeveld, T.). Heidelberg: Springer. pp. 16 – 53.

Fabre, C. 2002. "Justice, Fairness, and World-Ownership" in *Law and Philosophy*. 21 (3): 249-273

Fleischacher, S. 2004. *A Short History of Distributive Justice*. Massachusetts: Harvard University Press.

Fried, B. 1995. "Wilt Chamberlain Revisited: Nozick's 'Justice in Transfer' and the Problem of Market-based Distribution" in *Philosophy and Public Affairs*. 24(3): 226 - 245

Friedman, M. 1962. *Capitalism and Freedom*. Chicago: University of Chicago Press.

Frohlich, N. & Oppenheimer, J. A. 1990. "Choosing Justice in Experimental Democracies with Production" in *The American Political Science Review*. 84(2): 461 - 477.

Frohlich, N., Oppenheimer, J. A. & Eavy, C. L. 1987. "Choices of Principles of Distributive Justice in Experimental Groups" in *American Journal of Political Science*. 31(3): 606-636.

Furby, L. 1980. "The Origins and Early Development of Possessive Behavior" in *Political Psychology*. 2(1): 30-42

Gates, W.H. & Collins, C. 2002. *Wealth and Our Common Wealth: Why America Should Tax Accumulated Fortunes*. United States: Beacon Press

Gauthier, D. 1986. *Morals by Agreement*. Oxford: Clarendon Press.

Goodwin, N.R. 1997. "Interdisciplinary Perspectives on Well-Being: Overview Essay" in *Human Well-Being and Economic Goals* (eds. F. Ackermann, D. Kiron, N.R. Goodwin, J.M. Harris & K. Gallagher). Washington D.C.: Island Press. pp. 1 - 14.

Gough, J.W. 1976. "Introduction" in *The Second Treatise of Government (an essay concerning the true original, extent and end of civil government)* (edited by J.W. Gough). Oxford : Blackwell. pp. vii - xliv.

Guibet-Lafaye, C. 2008. "Ethics of Inheritance" in *Philosophy Today*. 52 (1): 25-35.

Hammond, K.R. 1996. *Human Judgment and Social Policy: Irreducible Uncertainty, Inevitable Error, Unavoidable Injustice*. Oxford: Oxford University Press.

Harris, S. 2010. *The Moral Landscape: How Science Can Determine Human Values*. New York: Free Press.

Harris, J.W. 1996. *Property and Justice*. Oxford: University Press.

Haslett, D.W. 1997. "Distributive Justice and Inheritance" in *Is Inheritance Legitimate? Ethical and Economic Aspects of Wealth Transfers* (edt. By Erreygers, G. & Vandeveld, T.). Heidelberg: Springer. pp. 133 - 155.

1986. "Is Inheritance Justified?" in *Philosophy and Public Affairs*. 15(2): 122-155.

- Hayek, F.A. 1982. *Law, legislation and liberty: a new statement of the liberal principles of justice and political economy*. London: Routledge & Paul.
- Hobbes, T. 1973. *Leviathan*. London: Everyman's Library.
- Honoré, A.M. 1961. "Ownership" in *Oxford Essays in Jurisprudence*. Oxford: Clarendon Press. pp. 107 – 147.
- Hoover, G.E. 1927. "The Economic Effects of Inheritance Taxes" in *The American Economic Review*. pp. 38 – 49.
- Hull, M.B. 2002. *The Hidden Philosophy of Hannah Arendt*. New York: Routledge Curzon.
- Hurd, M.D. 1990. *Savings and Bequests*. NBER working paper 1826. Cambridge, MA.
- Johnson, H.B. 2006. *The American Dream and the Power of Wealth: Choosing Schools and Inheriting Inequality in the Land of Opportunity*. New York: Routledge
- Julius, A.J. 2003. "Basic Structure and the Value of Equality" in *Philosophy and Public Affairs*. 31(4): 321-355
- Kelly, P. 2005. "Contractarian social justice: an overview of some contemporary debates" in *Social Justice: From Hume to Walzer* (ed. D. Boucher & P. Kelly). Taylor & Francis e-library. pp. 185 – 202.
1998. "Justifying justice: Contractarianism, communitarianism and the foundations of contemporary liberalism" in *The Social Contract from Hobbes to Rawls* (ed. D. Boucher and P. Kelly). Routledge: New York. pp. 227 – 245.
- Kernohan, A. 1990. "Rawls and the Collective Ownership of Natural Abilities" in *Canadian Journal of Philosophy*. 20(1): 19-28
- Kluegel, J. & Smith, E. 1986. *Beliefs about Inequality*. New York: Aldine de Gruyter.
- Kohn, R.E. 2007. "Inflated Executive Salaries, Lobbying Excesses, and Exorbitant Election Campaigns" in *Atlantic Journal of Economics*. 35: 115-116.
- Kotlikoff, L.J. 1992. *Generational Accounting. Knowing Who Pays, and When, For What We Spend*. New York: Free Press.
- Kotlikoff, L.J. & Summers, L. 1981. "The role of intergenerational transfers in aggregate capital formation" in *Journal of Political Economy*. 89:706-732.
- Kymlicka, W. 2002. *Contemporary Political Philosophy: An Introduction (Second Edition)*. Oxford: Oxford University Press.



- Labaton, S. & Bajaj, V. 2009. "Obama calls for 'Common Sense' on Executive Pay" in *The New York Times*. February 5, 2009.
- Lemley, M.A. 2012. "The Myth of the Sole Inventor" in *Michigan Law Review*. 110(709): 709 – 760.
- Lerner, M.J. 1980. *The Belief in a Just World: A Fundamental Delusion*. New York: Plenum Press.
- Levy, M. & Levy, H. 2003. "Investment Talent and the Pareto Wealth Distribution: Theoretical and Experimental Analysis" in *The Review of Economics and Statistics*. 85 (3): 709-725.
- Libecap, G.D. 1993. *Contracting for property rights*. Cambridge, England: Cambridge University Press.
- Liggio, L.P. and Chafuen, A.A. 2004. "Cultural and Religious Foundations of Private Property" in *The Elgar companion to the economics of property rights (edited by E. Colombatto)*. Cheltenham, UK : Edward Elgar. pp. 3 - 47.
- Locke, J. 1976. "Of Property" in *The Second Treatise of Government (an essay concerning the true original, extent and end of civil government)* (edited by J.W. Gough). Oxford : Blackwell. pp. 14 – 27.
- Machin, S. 2006. "Social Disadvantage and Education Experiences", *OECD Social, Employment and Migration Working Papers, No. 32*, OECD, Paris
- Macpherson, C.B. 1978. *Property: Mainstream and Critical Positions*. Canada: University of Toronto Press.
- Mankiw, N.G. 2004. *Principles of Microeconomics (Third Edition)*. United States: Harvard University Press.
- Masson, A. & Pestieu, P. 1997. "Bequest Motives and Models of Inheritance: A Survey of the Literature" in *Is Inheritance Legitimate? Ethical and Economic Aspects of Wealth Transfers (edt. By Erreygers, G. & Vandeveld, T.)*. Heidelberg: Springer. pp. 54 – 88.
- Mayell, H. 2002. "Thousands of Women Killed for Family 'Honor'" in *National Geographic News*. 12 February.
- Mill, J.S. 1975. "Book II, Chapter 1: Of Property and Chapter 2: The Same Subject Continued" in *The Collected Works of John Stuart Mill, Volume II - The Principles of Political Economy, with some of their applications to Social Philosophy*. London: Longmans, Green and Co.
- Miller, B. and Lapham, M. 2012. *The Self-Made Myth: And the Truth about How Government Helps Individuals and Businesses Succeed*. San Francisco: Berrett-Koehler Publishers.

Miller, D. 1999. *Principles of Social Justice*. Massachusetts: Harvard University Press. pp. 1- 337.

1995. "Introduction" in *Pluralism, Justice and Equality* (edt. by D. Miller and M. Walzer). New York: Oxford University Press. pp. 1 – 16.

1992. "Distributive Justice: What People Think" in *Ethics*. 102(3): 555-593.

Modigliani, Franco, 1988. "The Role of Intergenerational Transfers and Life Cycle Saving in the Accumulation of Wealth" in *Journal of Economic Perspectives*. 2(2): 15-40.

Modood, T. 2005. "Racial equality: colour, culture and justice" in *The Social Contract from Hobbes to Rawls* (edt. D. Boucher and P.Kelly). Routledge: New York. pp. 213 – 226

Moore, M. 2005. "Gauthier's contractarian morality" in *The Social Contract from Hobbes to Rawls* (edt. D. Boucher and P.Kelly). Routledge: New York. pp. 213 – 226.

Munnell, A.H. 2003. "Introduction" in *Death and Dollars: The Role of Gifts and Bequests in America*. Washington: Brookings Institute.

Munzer, S.R. 1990. *A Theory of Property*. Cambridge: University Press.

Murphy, L. & Nagel, T. 2002. *The Myth of Ownership: Taxes and Justice*. Oxford: University Press.

Nagel, T. 1991. *Equality and Partiality*. Oxford: University Press.

1987. "Moral Conflict and Political Legitimacy" in *Philosophy and Public Affairs*. 16: 215 – 240.

Noyes, C.R. 1936. *The Institution of Property*. New York: Longmans, Green & Co.

Nozick, R. 1989. *The Examined Life: Philosophical Meditations*. New York: Simon & Schuster.

1974. *Anarchy, State, and Utopia*. New Jersey: Blackwell Publishing.

Nussbaum, M. 2006. "Poverty and Human Functioning: Capabilities as Fundamental Entitlements" in *Poverty and Inequality* (eds. B.D. Grusky & R. Kunbar). pp. 47 - 75.

2000. *Women and Human Development: The Capabilities Approach*. Cambridge: University Press.

Oliver, M. & Shapiro, T. 2006. *Black Wealth, White Wealth: A New Perspective on Racial Inequality*. New York: Routledge.

O'Neill, S. 1997. *Impartiality in Context: Grounding Justice in a Pluralist World*. Albany: State University of New York Press.

Parisi, F. 2004. "The Origins and Evolution of Property Rights Systems" in *The Elgar companion to the economics of property rights* (edited by E. Colombatto). Cheltenham, UK : Edward Elgar. pp. 64 – 84.

Parsons, T. 1940. "An Analytical Approach to the Theory of Social Stratification" in *The American Journal of Sociology*. 45 (6): 841-862.

Piketty, T. 2009. "Debates: Resenting the Rich?" in *The Economist*. April 27.

1995. "Social Mobility and Redistributive Practices" in *The Quarterly Journal of Economics*. 110 (3): 551-584.

Piketty, T. & Saez, E. 2003. "Income Inequality in the United States: 1913 – 1998" in *The Quarterly Journal of Economics*. 118 (1): 1-39

Radin, M.J. 1982. "Property and Personhood" in *Stanford Law Review*. 34(5): 957-1015

Rawls, J. 2001. *Justice as Fairness: Revised Edition* (ed. E. Kelly). Cambridge: Massachusetts Press.

1999. *A Theory of Justice: Revised Edition*. Massachusetts: Harvard University Press.

1996. *Political Liberalism*. New York: Columbia University Press.

1958. "Justice as Fairness" in *Philosophical Review*. 67: 164-94

Rapaczynski, A. 2004. "Can Constitutions Protect Private Property Against Governmental Predation?" in *The Elgar companion to the economics of property rights* (edited by E. Colombatto). Cheltenham, UK : Edward Elgar. pp.197 – 222.

Rescher, N. 2002. *Fairness: Theory & Practice of Distributive Justice*. London: Transaction Publishers.

Rosen, W. 2010. *The Most Powerful Idea in the World: A Story of Steam, Industry, and Invention*

Rousseau, J.J. 2010. *The Social Contract: Original Edition*. United States: Madison Park.

1978. "Discourse on the Origin and Foundation of Inequality" in *Property: Mainstream and Critical Positions* (edited by C.B. Macpherson). Toronto: University Press. pp.31 – 37.

Ryan, A. 1983. "Property, Liberty, and 'On Liberty'" in *Of Liberty* (edited by A. Phillips Griffiths). Cambridge: Cambridge University Press. pp. 217 – 231.

- Sagoff, M. 1994. "Should Preferences Count?" in *Land Economics* 2. May: 127 – 145.
- Sandel, M.J. 1984. "The Procedural Republic and the Unencumbered Self" in *Political Theory*. 12(1): 81-96
- Scanlon, T.M. 1998. *What We Owe Each Other*. Massachusetts: Belknap Press.
1982. "Contractualism and Utilitarianism" in *Utilitarianism and Beyond* (ed. by A. Sen & B. Williams). Cambridge: Cambridge University Press. pp. 103 – 128.
- Schokkaert, E. 1997. "Bequests and Inheritance Taxation: A Comment" in *Is Inheritance Legitimate? Ethical and Economic Aspects of Wealth Transfers* (ed. By Erreygers, G. & Vandeveld, T.). Heidelberg: Springer. pp. 126 – 132.
- Screenivasan, G. 1995. *The Limits of Lockean Rights in Property*. Oxford: Oxford University Press
- Seligman, M.E.P. 1975. *Learned Helplessness*. San Francisco: Freeman.
- Sen, A. 2009. *The Idea of Justice*. New York: Penguin Group.
1985. "Well-Being, Agency and Freedom: The Dewey Lectures 1984" in *The Journal of Philosophy*. 82 (4): 169-221
1982. *Poverty and Famines: An Essay on Entitlement and Deprivation*. Oxford: Oxford University Press.
- Shapiro, T.M. 2004. *The Hidden Cost of Being African American: How Wealth Perpetuates Inequality*. New York: Oxford University Press.
- Shapiro, I. 2003. *The Moral Foundations of Politics*. New Haven: Yale University Press.
- Shklar, J. N. 1990. *The Faces of Injustice*. New Haven: Yale University Press.
- Shonkoff, J.P. and D.A. Phillips (eds). 2000. *From Neurons to Neighbourhoods: The Science of Early Childhood Development*. Washington, DC: National Academy Press.
- Siegan, B.H. 2001. *Property rights: from Magna Carta to the Fourteenth Amendment*. New Brunswick : Transaction Publishers.
- Simmons, J.A. 1992. *The Lockean Theory of Rights*. New Jersey: Princeton University Press.
- Singer, J.W. 2000. *Entitlement: The Paradoxes of Property*. New Haven: Yale University Press.

- Smith, A. 1976. *The Theory of Moral Sentiments* (eds. D.D. Raphael & A.L. Macfie). Indianapolis: Liberty Fund.
- Steiner, H. 1992. "Three Just Taxes" in *Arguing for Basic Income: Ethical Foundations for a Radical Reform*. London: Verso. pp. 81 – 92.
- Stiglitz, J.E. 2012. *The Price of Inequality: How Today's Divided Society Endangers Our Future*. New York: W.W.Norton & Company.
- Taylor, C. 1985. "What's Wrong with Negative Liberty?" in *Philosophy and the Human Sciences: Philosophical Papers*. Cambridge: Cambridge University Press. pp. 211 – 229.
1985. "The nature and scope of distributive justice" in *Philosophy and the Human Sciences: Philosophical Papers*. Cambridge: Cambridge University Press. pp. 289 – 317.
- Thurow, L.C. 1975. *Generating Inequality: Mechanics of Distribution in the U.S. Economy*. Basic Books.
- Vandavelde, T. 1997. "Inheritance Taxation, Equal Opportunities and the Desire for Immortality" in *Is Inheritance Legitimate? Ethical and Economic Aspects of Wealth Transfers* (edt. By Erreygers, G. & Vandavelde, T.). Heidelberg: Springer. pp. 1 – 15.
- Volcker, P. 2002. "Foreward" in *Wealth and Our Common Wealth: Why America Should Tax Accumulated Fortunes*. United States: Beacon Press
- Waldron, J. 1998. *The Right to Private Property*. Clarendon: Oxford University Press.
1995. "Money and Complex Equality" in *Pluralism, Justice and Equality* (edt. by D. Miller and M. Walzer). New York: Oxford University Press. pp. 144 – 170.
- Walzer, M. 2004. "Involuntary Association" in *Politics and Passion: Toward a More Egalitarian Liberalism*. New Haven: Yale University Press. pp. 1 – 20.
1995. "Response" in *Pluralism, Justice and Equality* (edt. by D. Miller and M. Walzer). New York: Oxford University Press. pp. 281 – 297.
1988. 'Interpretation and Social Criticism' in *The Tanner Lectures on Human Values, viii* (edt. by S.M.McMurrin). Salt Lake City: University of Utah Press. p. 22, 28.
1983. *Spheres of Justice: A Defence of Pluralism and Equality*. United States of America: Basic Books.

West, E.G. 2003. "Property Rights and the History of Economic Thought: From Locke to J.S. Mill" in *Property Rights: Cooperation, Conflict, and Law* (edited by Terry L. Anderson & Fred S. McChesney). pp. 20 – 42.

White, R.W. 1959. Motivation reconsidered: The concept of competence. *Psychological Review*. 66: 297- 333.

Wissensburg, M. 1999. *Imperfection and Impartiality: A Liberal Theory of Social Justice*. London: UCL Press.

Wolff, E. N. 2010. "Recent Trends in Household Wealth in the United States: Rising Debt and the Middle-Class Squeeze--an Update to 2007." Levy Economics Institute of Bard College.

Yaari, M.E. & Bar-Hillel, M. 1984. "On Dividing Justly" in *Social Choice and Welfare*. 1 (1): 1 – 24.

Yack, B. 1996. "Introduction" in *Liberalism Without Illusions: Essays on Liberal Theory and the Political Vision of Judith N. Shklar*. Chicago: Chicago University Press. pp. 1 – 16.

Young, I.M. 1990. *Justice and the Politics of Difference*. New Jersey: Princeton University Press.

Zou, H.F. 1995. "The spirit of capitalism and savings behavior" in *Journal of Economic Behavior & Organization*. 28 (1): 131-143.