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# THE EMPLOYMENT CONTRACT BETWEEN ETHICS AND ECONOMICS

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**Abstract** Lindblom, Lars 2009. *The Employment Contract between Ethics and Economics. Theses in Philosophy from the Royal Institute of Technology* 35. 151 + x pp. Stockholm. ISBN 978-91-7415-467-2.

This thesis investigates what work ought to be like. The answer it presents consists of an outline of a liberal theory of justice in the employment contract based on theory developed in the area of political philosophy. The thesis also examines issues of efficiency—How should measures to improve working conditions be evaluated?—and the ethical implications of the economic theory of employment contracts and the neoclassical theory of the market.

Paper I: A theoretical framework is introduced for the evaluation of workplace inspections with respect to their effects on working conditions. The choice of a concept of efficiency is discussed, and its relation to criteria for a good working environment is clarified. It is concluded that in order to obtain reliable information on the effects of different inspection methods, it is necessary to perform controlled comparative studies in which different methods are used on different workplaces.

Paper II: This article outlines the structure of a Rawlsian theory of justice in the employment relationship. The theory answers three questions about justice and the workplace. What is the relationship between social justice and justice at work? How should we conceive of the problem of justice within the economic sphere? And, what is justice in the workplace? Reasons for a specific construction of a local original position are given and arguments are presented in support of a principle of local justice in the form of a choice egalitarian local difference principle.

Paper III: The political philosophy of John Rawls is applied to the moral dilemma of whistleblowing, and it is shown that the requirement of loyalty, in the sense that is needed to create this dilemma, is inconsistent with that theory. In a discussion and rejection of Richard De George's criteria on permissible whistleblowing, it is pointed out that the mere rejection of loyalty will not lead to an extreme position; harms can still be taken into account.

Paper IV: The case is made that if contemporary economics of the employment contract is correct, then in order to explain the existence of employment contracts, we must make the assumption that the contracting parties are attempting to deal with decision-theoretic ignorance. It follows that the course of action that the employer chooses to take when acting from authority cannot be justified by consent, since the informedness criterion of consent cannot be satisfied under ignorance. It is then suggested that in order to achieve justification of acts of authority, there must be in place a real possibility to contest employers' decisions.

Paper V: According to Ronald Dworkin's theory of equality of resources, mimicking the ideal market from equal starting points is fair. According to Dworkin, the ideal market should be understood as described in Gérard Debreu's influential work, which implies that we should conceive of trade as taking place under certainty. There are no choices under risk in such a market. Therefore, there is no such thing as option luck in the ideal market. Consequently, when mimicking this market, we cannot hold people responsible for option luck. Mimicking this market also implies that we ought to set up a social safety net, since rational individuals with perfect foresight would see to it that they always have sufficient resources at each point in life. Furthermore, the idea of insurance is incompatible with the ideal market.

*Keywords:* Justice, work, efficiency, desert, consent, contestability, workplace inspections, whistleblowing, the market, equality of resources, justice as fairness, the employment contract.

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To Lotta and Elsa, Olle and Jack



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# INTRODUCTION

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This thesis deals with the following very general question: What should work be like? There are, obviously, many ways to answer this question. One could reply that work should be fair,<sup>1</sup> that it should help us develop as persons,<sup>2</sup> that it should be productive and efficient,<sup>3</sup> that it should be safe<sup>4</sup>—the list of possible values or goals to be pursued continues.<sup>5</sup> There is also the issue of what perspective one should take when asking this question. Should one ask: What sort of job should I have? How should the economic system of society be organized? How should this workplace be run? I will attempt to provide one approach to systematically answer the questions of what work should be like, while taking into account the diverse nature of the issue.

The answer consists in an outline of a liberal theory of just working conditions. I will approach the issue of work from the perspective of justice. More specifically, I will investigate the ethics of the employment contract with the help of some influential theories in the field of political philosophy. The focus of the thesis will be on John Rawls's theory of justice as fairness. There are two reasons why I have chosen to focus on Rawls. The initial reason was mere pragmatism. I found that there was a lack of connection between the discourse on the goal of good work and the debate on justice in political philosophy.<sup>6</sup> Since much of contemporary political philosophy has been developed in response to Rawls, working with his theory would allow us to see quite easily what other positions in the debate would imply regarding the issue of work and justice. The second reason, which emerged during my work on Rawls, was that justice as fairness seemed basically right.<sup>7</sup> The liberal theory of justice in the employment relationship that I will present is a development of Rawls's theory of justice as fairness, but I will also discuss ideas related

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<sup>1</sup>See, for instance, Bowie (1998) and Rowan (2000).

<sup>2</sup>Aristotle (1985) is a famous example of this view. Karl Marx's philosophical and economic manuscripts may also be read in this light. (See the selection in Marx (1994).) See also Arendt (1958). Cf. Dewey (1950).

<sup>3</sup>Much management literature can be interpreted as striving for this goal; see, for instance, Hammer and Champy (1998), and Drucker (1974).

<sup>4</sup>See LaDou (1994) or Goetsch (1999).

<sup>5</sup>See also Applebaum (1992) and Grenholm (1988).

<sup>6</sup>Pence (1979) inspired the focus on Rawls.

<sup>7</sup>I am focusing on Rawls (2001) in the papers, since this is Rawls's final statement of his theory, but, of course, one cannot get a full view of his work without taking his other writings into account: Rawls (1971, 1996, 1999c,a,b, 2007). Freeman's works (2003; 2007) have also been important sources. My feelings towards Rawls's

to that theory, such as the idea that consent justifies employer authority. In order to deal with that question, I will make use of some ideas from Philip Pettit. While investigating the market as an ideal of justice, I will discuss Ronald Dworkin's theory of equality of resources.

The title of the thesis situates the employment contract between ethics on one side, and economics on the other. The thesis deals with economics in three senses. First, Paper I of the thesis discusses the question of how one should go about evaluating measures to improve working conditions and in it the concept of efficiency plays a core part. It was this work on efficiency that led me to the research on justice in a way that will be explained below. The second respect in which the thesis deals with economics is that it is concerned with the same economic matters that any developed economic theory deals with. The normative theory presented has implications for the regulation of the market and of employment contracts, which makes it very important to have a view of how those institutions work. Therefore, and thirdly, two papers deal directly with economic theory; the theory of employment contracts and the theory of general equilibrium. Furthermore, any ethical theory that suggests revisions in how we get along in the economic sphere is bound to be met by objections of an economic nature. Any defense for the "intrusion" of justice in the economic sphere will do well by having a view on the economics of the subject matter.

Apart from the introduction, the present thesis consists of five papers which have been written separately. In this introduction, I will try to explain how one could read the thesis as a more or less coherent whole, while also spelling out some attractions of the view I favor, as well as noting some open questions. Section 1 is devoted to clarifying what questions a normative theory of work will have to deal with. I suggest that it must provide answers to questions relating to social justice, cooperation in the workplace and the role of work in individuals' lives. In section 2, the core of the theory of justice in the workplace will be presented. My suggestion will be, very briefly, that the employment relationship ought to be regulated in accordance with Rawls's two principles of justice on the social justice level; that in the context of cooperation within the workplace, a local choice egalitarian difference principle should hold, and that when it comes to individuals' labor choices, consent and Pettit's notion of contestability are sufficient for justification. In section 3, the concept of efficiency and its relation to the view of justice that I espouse will be discussed. The upshot of that discussion will be that it is imperative that we define

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work seem quite similar to Philippe Van Parijs's. He says of his attitude towards Rawls that he "often [has] the feeling that, deep down, he's got it all right" Van Parijs (1998, p. 90). This is not to say that I, or Van Parijs, think Rawls is always right. To complicate things, I have found myself having much the same reaction when reading Cohen (2008) recently.

the goals we aim for in order to use the notion of efficiency. Sections 4 and 5 deal with issues raised by economic theory, and in this sense I will continue to pursue the topic of efficiency. In the first of these sections, I will sketch the neoclassical theory of the market and put it in the perspective of Dworkin's theory of equality of resources. Then I proceed to argue that the ideal market gives, under reasonable assumptions, prescriptions similar to those of Rawlsian domestic justice. In the next section, I outline the economic theory of employment contracts. It is pointed out that this theory makes assumptions that are different than those of the theory of the ideal market. We need to stipulate ignorance to explain employment contracts, but this undercuts the idea that employer authority is justified by consent, and points us in the direction of Philip Pettit's idea of contestability. In section 6, then, we turn to the question of desert and its sibling marginal productivity reward. Here I try to show that my Rawlsian theory provides intuitively plausible answers to questions regarding under which conditions reward in line with marginal productivity is deserved. Section 7 concludes by discussing, what I consider to be, the most important future research in this area. Extended abstracts of the papers are collected in section 8.

## I. THREE QUESTIONS ABOUT WORK

First things first, how should we understand the issue of justice and work? A useful way to view the philosophical debate on work is to start with Russell Muirhead's distinction between social and personal fit. Work can fit the requirements of society or those of the individual performing the work—or if we are lucky, both. Personal fit is achieved when “work contributes to our own development and expression.”<sup>8</sup> A moral theory of personal fit provides an answer for each person to the question: What sort of work should I do? So, this is one question we ask about work; a second question has to do with what Muirhead calls social fit. We have realized such fit when “our abilities are aligned with the tasks or jobs society needs performed.”<sup>9</sup> To discuss social fit means that we have to deal with the question of how work should be organized in society.

As Muirhead points out, this dichotomy is an idealization; any theory dealing with work will have to discuss both questions to some extent. The answer you give to one of these questions will constrain what answers are feasible to the other question. It may even be the case that an answer to the question of, for instance, personal fit decides what the proper theory of social fit is and vice versa. An example might be Aristotle's theory of justice, in which our human essence is realized through intellectual pursuits, and where

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<sup>8</sup>Muirhead (2004, p. 2).

<sup>9</sup>Muirhead (2004, p. 2).

this essence also determines the just way of organizing the economy.<sup>10</sup> In this thesis, I will take the issue of social fit as my point of departure. There are, of course, many ways of spelling out an answer to this problem,<sup>11</sup> but any such answer would presumably have to deal with the question of justice at some point. It is hard to see how one could present an ideal of social fit, an ideal of how work should be organized in a society, without attempting to justify this ideal as just. In this sense, the issue of how work should be organized in a society becomes a part of the problem of justice.<sup>12</sup>

In a way, I will also approach the question of personal fit as an issue of justice. I will not claim that a person cannot be wrong about what work is fitting for him or her, and I do not want to rule out the possibility that we may need a substantive ideal of personal fit. I will only assume that this is a useful research strategy to first investigate the implications of liberalism before deciding if we ought to also turn to the more difficult issue of the content of a justified theory of personal fit. Moreover, given the wide diversity of goods that can be sought at work, it is not obvious that we would be successful in trying to force them to fit together within one theory.<sup>13</sup> What I will do, then, is investigate the claim that if justice, in my preferred sense, is implemented, then we can say that there is personal fit between a job and a person if the person has consented to the job and there is a possibility for that person to contest decisions within the workplace. In this sense, the thesis presents a thoroughgoing liberalism, it argues for justice in terms of institutional design, and presents an account of personal fit in terms of choice.

At this point, we have identified two questions of the ethics of work: on the one hand, the goals of the individual and on the other, the justice of society. This distinction leaves something important out of the picture, namely, cooperation within the workplace. For instance, how should the surplus of the firm be distributed? We need a normative ideal to also regulate such social issues, which are distinct from the societal issues that Muirhead focuses on. This further category, we can call workplace fit. This is a third question we tend to ask about work. There are important similarities between the question of workplace fit and social justice. When you come into work, you enter a group of people under an institutional scheme that allocates benefits and burdens and that is, on good days, capable of being governed. A further similarity comes into focus when we take into

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<sup>10</sup>See Aristotle (1985).

<sup>11</sup>Muirhead's (2004) book contains fine discussions on, for instance, Aristotle's and Marx' projects in this area.

<sup>12</sup>David Miller explains the issue of social justice as opposed to, for example, retributive justice, as the moral problem that appears when we are within the circumstances of social justice. He says, "if we do not inhibit bounded societies, or if people's shares of goods and bads do not depend in ways we can understand on a determinate set of social institutions, or if there is no agency capable of regulating that basic structure, then we no longer live in a world in which the idea of social justice has any purchase." Miller (1999, p. 6).

<sup>13</sup>See Arneson (1987).

account the goal of social fit: that “our abilities are aligned with the tasks or jobs society needs performed.” For such reasons, I investigate fair terms in the employment contract as a question of justice.

## 2. JUSTICE

The moral problem of work, then, has at least three aspects. To put it in the Rawlsian terms that will be used below, we want to know how work would be organized in a just basic structure (social fit), we want a conception of local justice of work (workplace fit), and we would like to achieve an attractive view of work and personal fit as a part of our comprehensive doctrines. What I will do in this thesis is to take Rawls’s framework for thinking about justice as my point of departure. Now, Rawls’s own theory of justice, justice as fairness, is a theory of domestic justice and deals only with justice within a society.<sup>14</sup> Local justice concerns “principles applying directly to institutions and associations.”<sup>15</sup> This is, in other words, a way of approaching what I named workplace fit. Domestic justice is lexically prior to local justice, which means that it constrains the local justice of the workplace. The principles of local justice are to be set up for each institution on the basis of its own aims and purposes. Rawls points out that “[o]ne should not assume in advance that the principles that are reasonable and just for the basic structure are also reasonable and just for institutions.”<sup>16</sup>

The structure of the liberal theory of work will have the following form. The first question, that of social justice, will be answered by political philosophy; the implications of justice as fairness will be spelled out. The question of workplace fit will be answered by adapting the framework of John Rawls’s political liberalism to the circumstances of local justice. The question of personal fit will, as I have said, be approached only indirectly. The idea is that a job can be justified on a personal level if it has been consented to properly and if there is a real possibility of contestation present within the workplace. If there are fair background conditions and full (fair) consent and contestability, then *prima facie* there is nothing wrong with a contract from either the social, local or personal fit perspective. The remainder of this section will be devoted to outlining the ethical content of the theories that I use to answer the three questions of fit.

Justice of fairness consists of two lexically ordered principles. Rawls’s first principle reads: “Each person has the same inalienable claim to a fully adequate scheme of equal

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<sup>14</sup>Rawls (2001) conceives of justice as having three levels; global, domestic and local justice. I do not discuss global justice in this thesis. For the record, I prefer Thomas Pogge’s (1989) Rawlsian theory of international justice to Rawls’s (1999b) own.

<sup>15</sup>Rawls (2001, p. 11).

<sup>16</sup>Rawls (2001, p. 11).

basic liberties, which scheme is compatible with the same scheme of liberties for all.”<sup>17</sup> These rights are:

Freedom of thought and liberty of conscience, political liberties [...] and the freedom of association, as well as the rights and liberties specified by the liberty and integrity (physical and psychological) of the person; and finally the rights and liberties covered by the rule of law.<sup>18</sup>

This principle is intended to guide the design of the institutions of the basic structure of society. Paper III illustrates the idea that institutional design comes first by discussing whistleblowing. The standard way of defining whistleblowing is that it concerns a conflict between the duty of loyalty to the organization where one works and the political liberty of free speech, within the context of a grave safety issue or serious immorality on the part of the organization.<sup>19</sup> To have this problem, one must assume that the institution of the workplace does demand, ethically, such loyalty. From a Rawlsian perspective, however, any part of the basic structure that constrains the freedom of speech is problematic. Within the constraint that socially necessary labor should be allowed,<sup>20</sup> institutions are to be designed on the basis of the two principles, and the first principle, with its demand for freedom of speech, is lexically ordered above other considerations. Only trade-offs between basic liberties are allowed. The trade-off here is between, on the one hand, letting loyalty act as a cover for immoral or very unsafe practice and, on the other hand, the value of free speech. Standard business secrets are, perhaps, necessary components of a well-functioning institution of the firm and, as such, justice as fairness allows them, but banning whistleblowing is not necessary for the functioning of firms. The institution of the workplace must be designed so that it is compatible with basic liberties. Free political speech is a basic design requirement for the workplace, whereas loyalty cannot be given such an important role. On this account, the institution of the workplace cannot demand loyalty in situations that call for whistleblowing. Since the conflict between loyalty and free speech cannot appear, ideally, in situations that call for whistleblowing, blowing the whistle is allowed on the Rawlsian view.<sup>21</sup> There may be other issues in the field of business ethics that could be approached from this perspective. Employment contracts that infringe on other political liberties or on the liberty of conscience seem unjust. Clearly,

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<sup>17</sup>Rawls (2001, p. 42).

<sup>18</sup>Rawls (2001, p. 44).

<sup>19</sup>Cf. Vandekerckhove and Commers (2004), and see De George (2006) for the most influential treatment of whistleblowing as a moral problem.

<sup>20</sup>Cf. Rawls (2001, pp. 162–163).

<sup>21</sup>See also Hirschman (1970) for a fascinating take on the social science of exit, loyalty and voice.



physical or psychological harassment is unjustifiable. Freedom of association sanctions the right to enter into unions.

Let us now turn to Rawls's second principle, which reads:

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.<sup>22</sup>

This principle consists of two parts—fair equality of opportunity (FEO) and the difference principle, which are lexicographically ordered, with the opportunity principle taking precedence. FEO aims to achieve equality of status between citizens. It implies that beyond formal equality, in the important sense of entry into positions being open to all, each person should also have a fair chance of seizing those opportunities. Rawls outlines fair equality in the following manner:

[T]hose who have the same level of talent and ability and the same willingness to use those gifts should have the same prospects of success regardless of their social class of origin, the class into which they were born and develop until the age of reason.<sup>23</sup>

This formulation does not quite do justice to the importance Rawls attaches to the equal standing of citizens, but we can say, without too much distortion, that when it comes to the business enterprise, the core demand of FEO is that discrimination should be forbidden.<sup>24</sup> It is important to notice that the positions, *i.e.*, those that each should have equal opportunity to hold, are to be designed so that they uphold the ideal of equal status.<sup>25</sup>

Let us now turn briefly to the implications of the difference principle: inequalities should be to the greatest benefit of the least advantaged members of society measured over a lifetime. How does it affect the workplace? Does the difference principle imply that minimum wage regulations are justified? Should firms maximize profits? The answer to both questions will likely be a properly qualified yes. However, it should be noted that the difference principle is a consequentialist principle and that we can only find out what it implies by doing hard empirical work.

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<sup>22</sup>Rawls (2001, pp. 42–43).

<sup>23</sup>Rawls (2001, p. 44).

<sup>24</sup>Under less ideal conditions, however, the most efficient way to approach equality of opportunity may well be to implement a policy of affirmative action. However, here we are concerned with the ideal of justice, not non-ideal theory.

<sup>25</sup>Cf. Wasserstrom (1977). For an alternative preference-based theory of discrimination, see Alexander (1992).

What is the relationship between the difference principle and FEO? In short, they are parts of one principle. FEO deals with the social contingencies of the basic structure and the way they affect talents and ambitions, whereas the difference principle handles the inequality that could result from differences in (natural) talents<sup>26</sup> even after the opportunity principle has done its work.<sup>27</sup> Even if the more talented would have a better chance of attaining some coveted position, the gains that they would obtain from this must be such that they can be found justified by the difference principle. It is not only the difference principle that has egalitarian distributive implications. The first principle demands the fair equal value of the political principles, and FEO says that, to the extent that inequality in terms of income and wealth threatens equality in terms of opportunity, there ought to be redistributive taxation (such as taxes on inheritance and on wealth). In this sense, FEO constrains the kind of inequalities that the difference principle would allow.

This, then, is my proposed answer to the question of social fit. Institutions where work is carried out should be designed in a way consistent with the two Rawlsian principles of justice. Let us now turn to workplace fit or, in Rawlsian terms, the local justice of the workplace.<sup>28</sup> What is justice in regards to cooperation within the workplace? I attempt to answer this question in Paper II by adapting the Rawlsian framework to the question of justice in the workplace. The principle that, in the final analysis, ends up being chosen by the parties of the local original position can be summed up in the following paraphrase of the difference principle:

*Social and economic inequalities within workplaces in societies well-ordered by justice as fairness are to satisfy the conditions that they are to the greatest benefit of the least advantaged co-workers of the workplace, unless they are*

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<sup>26</sup>Why is the development of innate talents included under FEO? Would it not be enough to focus on equality in terms of a more narrow conception of citizenship? One central reason for this is the goal of pure procedural justice. If the development of such talent falls outside of the domain of justice, then there seems to be two approaches we could take. On the one hand, we could go for the illiberal position of banning any education outside of what is needed for the equal citizen narrowly defined. On the other hand, we could say that education over the adequate level is up to the parents. The first alternative is clearly not acceptable, whereas the second has some intuitive appeal. See the excellent papers by Satz (2007) and Anderson (2007) in an issue of *Ethics* devoted to such issue. Even though these papers discuss educational policy more than fundamental principle (which makes this comment slightly unfair), I want to claim that the adequacy approach to education would give rise to a problem at the level of principle. If we aim only for adequacy, this means that some children will have better opportunities than others. This will, I assume, vary with the income of the parents. In the same vein, the narrow interpretation of FEO would reproduce class. We must include talents under the domain of FEO.

<sup>27</sup>See Rawls (1999c, p. 87).

<sup>28</sup>The term 'local justice' is borrowed by Rawls from Elster (1992), but this aspect of his theory also seems inspired by Walzer's (1983) work on complex equality.

*the result of choices for which agents ought to be held responsible, in which case, goods should be distributed according to desert.*

The principle applies to choices within the institution of the workplace, which, as we have seen, is designed on the basis of the domestic theory of justice. It is derived in two steps. First, I develop a conception of the workplace inspired by Rawls's conception of the problem of social justice. The idea here is to investigate the notion of a fair and reciprocal contract. The conception contains an account of the parties involved in the employment contract, the co-workers, of the basis of cooperation in the workplace, and of a local version of the original position. The second step involves putting this conception to work within the constraint of the domestic theory. After evaluating several different principles on the basis of how they deal with rights and liberties, reciprocity and desert, the parties of the local original position settle on the local choice egalitarian difference principle above.

It might be surprising to find that a Rawlsian conception of justice could lead to what amounts to a luck egalitarian principle of justice.<sup>29</sup> This will be discussed further in section 6, as well as in Paper II, but let me just sketch out the reasoning. Rawls denies that desert should play any role in the theory of social justice since that would let contingencies brought about by what amounts to two lotteries—nature and nurture—affect the distributions of goods. However, when we are developing a conception of justice for use inside institutions within a society where justice as fairness is implemented, the two-lottery argument does not apply. The reason for this is that if what Rawls calls background justice is in effect, there is no longer any Rawlsian reason to disallow that desert affect the local distributions of goods. I will return to this issue in section 6.

Finally, let us turn to the problem of individual fit. Here I assume that consent can provide justification, but since the information condition for proper consent cannot be satisfied for acts of authority within the employment contract (for reasons explained below), we will need something more to achieve justification. I argue in Paper V, with the help of theory developed by Phillip Pettit,<sup>30</sup> that mechanisms must be in place that guarantee a real possibility to contest decisions, policies, etc. within the workplace. What is needed for contestability is transparency with regard to decision-making, channels through which all members of the firm can make their concerns heard in an equitable manner (such as ombudsmen and unions) and a governance mechanism that is responsive to contestations and settles them fairly, perhaps in terms of an ideal co-determination process. In other words, there ought to be a potential *basis* for contestation, an opportunity

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<sup>29</sup>It might not be surprising if one subscribes to Will Kymlicka's (1990) interpretation of contemporary political philosophy.

<sup>30</sup>See Pettit (1997, 2000, 2001).

for voice, or as I write, *channels*, and a *forum*. Ideally, most acts of authority would be justified by not being contested.

### 3. EFFICIENCY

My work on this thesis began with a question about efficiency. In Paper I, Sven Ove Hansson and I start out with the supposition that the efficiency of workplace inspections is an essential issue in workplace health and safety. We argue that if the goal is to gather reliable information on the effects of different inspection methods, it is necessary to perform controlled comparative studies in which different methods are used on different workplaces. This is the core point of the paper, but we also raise the issue regarding the content of the concept of efficiency itself.

What does efficiency mean? Very simply, it means the satisfaction of goals. To determine the degree to which goals have been reached means, at the most general level, to determine the degree of efficiency in the satisfaction of these goals. When there is only one goal, the term *effectiveness* is often used. It means that this goal is satisfied to as high a degree as possible. The term *efficiency* refers to two or several goals. It has been achieved with respect to the given goals if and only if none of these goals could have been achieved to a higher degree without some of the others being achieved to a lower degree.<sup>31</sup> It follows that when we talk about the efficiency of a policy, for example, then efficiency must always be defined in relation to a set of goals. In the evaluation of workplace inspections, there are two types of goals that have to be taken into account: first, the goals that refer to conditions in the workplace and to the quality of work life in general; secondly, the goals that take costs into account. A measure is *cost-efficient* to the extent that it is efficient with respect to two goals: improvement and cost minimization. More precisely, it is cost-efficient if and only if no alternative exists that achieves a better effect at the same or lower price, or less expenditure for the same or better effect. Fundamentally, however, in order to answer the question of whether workplace inspections serve as efficient means to improving the quality of work, we need to have a conception of what ideal of work we are hoping to achieve. The upshot of this research is that we need a definition of the goals work is to serve.

My suggestion is, then, that improvements should be understood in terms of the theory of justice in the workplace that I outline in this thesis. This theory suggests that when we are investigating the efficiency of the workplace, we should keep five goals at the forefront: protecting basic rights, achieving equality of opportunity, distributing income

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<sup>31</sup>See Le Grand (1991).

so that the least advantaged members of society are as well off as possible, satisfying the local difference principle and achieving consent and contestability.

Attaining these goals to as high level as possible may or may not be efficient according to the standard way of understanding efficiency in economics. Pareto efficiency is achieved “if there is no alternative allocation that leaves everyone at least as well off and makes some people strictly better off.”<sup>32</sup> Better off is to be understood here in terms of welfare, *i.e.*, preference satisfaction. This is the standard account of efficiency and much can be said on its behalf. However, when efficiency is understood in that way, a conflict arises between justice and efficiency.<sup>33</sup> Justice may lead away from efficiency, and vice versa. Notice, though, that deciding to use the economic conception of efficiency involves a normative choice. The choice I recommend is to start from the theory of justice proposed in this thesis. A disagreement on this issue means that we have a dispute over basic values, not the general concept of efficiency.

It might be thought that the Rawlsian approach to justice does not go well with a focus on efficiency. Since the two principles are lexically ordered, one could think that we would not be allowed to try to improve the situation of the least advantaged until FEO is fully implemented. I do not think this is a useful reading of the idea of lexical ordering in justice as fairness. We can, following Thomas Pogge’s reading of Rawls,<sup>34</sup> think of lexical ordering in two ways, as design priority or as implementation priority. Design priority means that in setting up—designing—the ideal of justice, fair equality of opportunity has priority over the difference principle. Implementation priority means that when drafting policies to achieve justice, we should first implement policies that secure the basic liberties; only then are we allowed to draft policies to secure fair equality of opportunity, and not until this ideal is fulfilled are we permitted to start trying to achieve a distribution in accordance with the difference principle. We would not be allowed to spend any money on the poorest people in society until we had achieved equal opportunity. This is not a very attractive idea. It is also quite difficult to get this interpretation of lexical priority to cohere with the idea of the second principle being one principle.<sup>35</sup> The basic puzzle that this idea of priority creates is why we are committed, in the name of justice, to achieve less justice than we could attain. Why accept this very strict procedural constraint? Why not maximize expected value in terms of justice, or why not be a prioritarian, in the sense

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<sup>32</sup>This quote comes from Varian (1990), but similar characterizations can be found in most any textbook.

<sup>33</sup>See Okun’s (1975) classic. See also Frank Knight’s (1923) discussion of values and efficiency and Stigler (1981) for a criticism, in my viewpoint, not successful, of Knight’s views.

<sup>34</sup>Pogge (1989, p. 127).

<sup>35</sup>Such a chronological interpretation cannot be right, because the priority rule would rule out any application of the difference principle and would destroy Rawls’s argument for a property-owning democracy. Any change in the basic structure in order to implement the difference principle would upset FEO.

of Rawls's general conception of justice,<sup>36</sup> when it comes to the implementation of justice as fairness? However, when we design a theory for the basic structure, the lexical ordering seems like a good idea; it leads us to a conception of justice that includes a good deal of our pre-theoretical intuitions. The distinction we should make, then, is between what justice consists of (the ideal) and how to get there (implementation), and I submit that Rawlsians are only committed to the lexical priority in the former sense. This means that justice as fairness can align with common sense in that if the least advantaged are very badly off and the FEO problem is minor, it is preferable to direct the resources at hand to bettering the position of the least advantaged.

#### 4. THE MARKET

It might seem at least somewhat plausible to think about efficiency in the way I propose, but any plausibility may dissipate if it were found that my account was in contradiction with that paragon of efficiency—the market. Moreover, the market is not only appreciated for its efficiency. There is also a certain justice to it. This is not only the view of Robert Nozick.<sup>37</sup> For instance, Richard Posner has argued that wealth maximization is a good way of finding the middle ground between utilitarianism and Kantianism.<sup>38</sup> Now, in the Rawlsian framework, the market does not have independent moral status. Instead, the market will be justified if it is an efficient means to achieving justice. Still, an account of justice in the economic sphere would be incomplete without a discussion of the market. In Paper V, we will look into a very influential theory that puts the market at the core of the theory of justice, Ronald Dworkin's equality of resources. In this section, I will briefly investigate the general equilibrium theory of the market, which Dworkin makes use of, and delineate the argument in Paper V. This will also set the stage for the next two sections.

What, then, is the market? There are many different accounts of the market<sup>39</sup>—neoclassical, Austrian,<sup>40</sup> Marxian<sup>41</sup>—and furthermore, it seems that different markets work according to different principles; the financial market works differently than the employment market which, in turn, functions in a different way than the market for fruit.<sup>42</sup> However, at the core of almost any account of the market claiming to have nor-

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<sup>36</sup>See Rawls (1999c, p. 54).

<sup>37</sup>Nozick (1974).

<sup>38</sup>Posner (1981). See also Friedman (1962).

<sup>39</sup>See Charles Lindblom (2001).

<sup>40</sup>See Hayek for a crash course.

<sup>41</sup>See Marx (1994).

<sup>42</sup>Cf. Cooper (2008) and perhaps also Akerlof and Shiller (2009).

mative appeal in itself are the ideas of Adam Smith.<sup>43</sup> His ideas were fully developed to the stage of deductive theory by Debreu<sup>44</sup> and Arrow<sup>45</sup> in the fifties. Their neoclassical account of the market is the purest—no transaction costs—and, at least in many aspects, the most attractive account of the virtues of the market.

On this account, resources are defined by their physical attributes, their location and the time of delivery. Agents, either in their role as producers or as consumers, are rational in the sense that they conform to the conditions of rational choice under certainty.<sup>46</sup> Markets are conceived of as taking place at a point in time where all goods, future and present, are sold (the market clears). As the definition of commodities includes the time of delivery, there is no use for any further markets, since all possible transactions will have been made. From roughly these assumptions, one can prove that the market, in this specific sense, will reach a Pareto optimal equilibrium. There are no probabilities in this model; the agents make choices under certainty. In actual markets, there is uncertainty, so is there a way to include risk into the model? The answer is yes, and the way that it is done is elegant.

A contract for the transfer of a commodity now specifies, in addition to its physical properties, its location and its date, an event on the occurrence of which the transfer is conditional. This new definition of a commodity allows one to obtain a theory of uncertainty [...] formally identical with the theory of certainty developed in the preceding chapters.<sup>47</sup>

The solution, in other words, is to let the agents choose between lotteries. The agents choose under risk; each outcome is assigned a probability.<sup>48</sup> They have full information about these lotteries. This move purchases some realism to the model, but notice that the cognitive burdens it places on agents become even more demanding. To be able to evaluate the actual states of affairs that will ensue, agents must now keep in mind all possible futures of the world contained in the lotteries. The resulting Pareto efficient equilibrium has many attractive features, but loses much of its attraction when one realizes that this goal can be achieved from any prior distribution of resources. If some people have nothing before trade starts, an equilibrium where they still have nothing will still be efficient. Ronald Dworkin's theory of justice attempts to combine the attractions of this account of the market with those of egalitarianism, and we shall now turn to his work.

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<sup>43</sup>Smith (1993).

<sup>44</sup>Debreu (1959). For an up-to-date picture of the state of contemporary microeconomics, see Bowles (2004).

<sup>45</sup>The final version Arrow's account is in Arrow and Hahn (1971).

<sup>46</sup>Cf. Harsanyi (1977).

<sup>47</sup>Debreu (1959, p. 98).

<sup>48</sup>See Resnik (1987).

For Dworkin, the neoclassical account of the market is at the core of the theory of justice. When introducing his theory, equality of resources, he states: “[T]he idea of an economic market, as a device for setting prices for a vast variety of goods and services, must be at the center of any theoretical development of equality of resources.”<sup>49</sup> For Dworkin, it is necessary to make use of the notion of the market in order to explicate the ideal of equality. This ideal is based on two intuitive principles: that it is equally important that each life goes well and that persons are responsible for their ambitions. He argues against Rawls, claiming that he fails to take responsibility seriously, since justice as fairness does not register desert characteristics, and since the difference principle concerns the least advantaged group and not single individuals. The first basic problem he finds is that justice as fairness is not fine-tuned enough. The difference principle works to improve the lot of the least advantaged group in society. Equality, however, Dworkin says, “is in principle a matter of individual right rather than group disposition.”<sup>50</sup> Equality of resources is an attempt “to provide a description [of] equality of resources person by person, and the considerations of each person’s history that affect what he should have, in the name of equality, do not include his membership in any economic class.”<sup>51</sup> The second problem Dworkin identifies has to do with responsibility. He argues that Rawls fails to take seriously individual history and choice. By invoking the difference principle, Rawls mistakenly “supposes that flat equality in primary goods, without regard to differences in ambition, taste, and occupation, or to differences in consumption, let alone differences in physical condition or handicap, is basic or true equality.”<sup>52</sup> The goal of equality of resources is that the distribution of resources should be ambition-sensitive, but not endowment-sensitive. Inequalities resulting from contingencies of endowment—wealth or talent—must be rectified. In order to include a way of handling inequality in talents, Dworkin proposes a hypothetical insurance scheme. This scheme is discussed in Paper V, and I will not go into this complicated issue here.

When we start trade with equal shares, the market is the measure of justice, according to Dworkin, since its resulting distribution of goods is a function of people’s decisions. The theory can be made vivid through a thought experiment. Think of survivors coming ashore in the aftermath of a shipwreck on a deserted island.<sup>53</sup> All agree that no one has any justifiable prior claims to the resources on the island and they decide to hold an auction

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<sup>49</sup>Dworkin (2000, p. 66).

<sup>50</sup>Dworkin (1981, p. 340).

<sup>51</sup>Dworkin (1981, p. 340).

<sup>52</sup>Dworkin (1981, p. 343).

<sup>53</sup>The thought experiment is developed in chapters 2 and 3 of Dworkin (2000). See also Dworkin (2002, 2004, 2006).



in order to distribute them fairly to each. An auctioneer<sup>54</sup> is put in charge of finding the fairest way to price the resources on the island. The auction continues until what is known as the envy test is satisfied, *i.e.*, each immigrant prefers his or her bundle of goods to anyone else's. This distribution of goods is thoroughly just since it starts from equality and any deviation from equal shares is explained by people's ambitions. However, we have to consider a further aspect of distributive justice; as time marches on, some people will have had accidents or have been struck by other kinds of misfortune. The envy test will no longer be satisfied. To handle this, Dworkin makes a distinction between brute and option luck. Option luck has to do with how deliberate gambles turn out, whereas brute luck concerns plain, bad unforeseeable luck, such as being hit by a meteorite. Victims of brute luck should be compensated, but those who are hit by bad option luck should themselves carry the costs. Insurance provides a bridge between brute and option luck. If available, it converts brute luck into option luck. Justice in distribution co-varies with option luck.

Thus, Dworkin positions the market at the center of the theory of justice, and one reason for this is to improve on Rawls's alleged oversights of not including responsibility as a factor which should affect just distributions, and of not presenting a theory that gives specific distributive answers person by person. Dworkin's theory puts the market as an ideal in the best possible light. Moreover, it illustrates some important aspects of the notion that we ought to mimic the market.<sup>55</sup> First, there is the difficulty of incorporating risk in the model of the market while retaining the features of that model which proponents of equality of resources find attractive. Second, that the market under certainty has rather egalitarian implications. For the first point, remember that Dworkin has set out to find a way to fairly divide resources, but in order to incorporate the risk needed to make sense of the concept of option luck into the model of the market, he would have to follow Debreu in redefining resources. According to this new definition of commodities, it is not concrete resources that are traded on the ideal market, but rather the value of lotteries, of contingent claims. However, it seems clear that Dworkin should prefer the certainty interpretation, since he argues that the reason we should take resources as the metric of justice is that people need to have a secure sense of what resources are available when

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<sup>54</sup>The reason that Arrow and Hahn—in that other classic statement of neoclassical general equilibrium analysis Arrow and Hahn (1971)—re-introduce the auctioneer, who made his/her first appearance in the work of Walras, is to make this point about full information. This auctioneer is also a hint that Dworkin is thinking about the Arrow-Debreu model.

<sup>55</sup>I have the impression that part of the motivation behind Dworkin's work is to respond to Posner. For Posner's views on the moral standing of the market, see Posner (1981). For a law and economics perspective on ethics and the market, see also Trebilcock (1993).

planning their lives and forming their preferences.<sup>56</sup> Including risk, and hence redefining resources, means that there could and most probably would be actual inequality in actual resources even if Debreu's commodities were distributed strictly equally. For instance, if you and I hold a lottery over who should get the banana we both crave, then prior to the draw, the expected value of our "tickets" is equal, yet after the draw, one of us will have to go without fruit. Using lottery tickets as the distribuendum of an egalitarian theory of justice seems inappropriate if it is to capture any intuition of the importance of having access to actual means to live on.

If risk cannot be included in the account of the ideal market under Dworkin's assumptions, then I claim that there is no room for making a justified distribution dependent on option luck, since such luck cannot be obtained under certainty. Furthermore, rational agents choosing under certainty will adhere to the Pareto principle and not make themselves needlessly worse off. Assuming, with Dworkin, that people care about the future, we can, it seems, conclude that they will make sure they have access to enough resources at each point in time to carry out their life plans. This seems to imply that no one will fall below the level of welfare that they would get from a strictly equal share of the social product. Therefore, mimicking the market implies a rather high safety net. The ideal market is consistent with a rather stringent form of egalitarianism. A motivation for writing Paper V, albeit only implicit in the text, is to show that the Dworkin's view of justice comes close to the Rawlsian view, in the sense that it implies a high safety net for the least advantaged.

As I said at the beginning of this section, one motivation for discussing the neoclassical account of the market was that it seemed almost mandatory when talking about justice in the economic sphere. However, it also sets the stage for the two following sections. In the next section, I will look into the implications of employment contracts, and during that discussion it will, hopefully, become clear that the information assumptions of the general equilibrium theory are not consistent with the information assumptions needed to explain the existence of employment contracts. This suggests a problem for the mimicking the market idea; the ideal market lacks firms and employment contracts, which make it somewhat peculiar to use as an ideal of economic justice. This section also lays some groundwork for section 6, where I will attempt to show how individualized responsibility-sensitive distributions are consistent with the Rawlsian theory I propose.

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<sup>56</sup>See Dworkin (2000, pp. 28-29).

## 5. THE EMPLOYMENT CONTRACT AND CONSENT

How does the employment contract work? This is one of two core subjects of the present section, where I will outline the standard economic explanation of such contracts and argue that the proper understanding of such contracts shows why consent is not enough to achieve justification within the employment contract. The general idea behind the standard economic explanation of the employment contract is that when parties meet to come to an employment agreement, they face transaction costs. These costs have to do with it being impossible to foresee all relevant future events and to form proper responses to these.<sup>57</sup> They are facing a choice under ignorance, *i.e.*, they do not know the full set of future possibilities. This means that the information they have is more restricted than when they face risk, where the alternative outcomes are known, but agents have only probability estimates of the likelihood of their occurrence. Choices under ignorance are also distinct from choices under uncertainty. In the latter case, the agent lacks probability estimates, but knows the possible outcomes.<sup>58</sup> Since the parties are in the dark about important aspects of the future, they cannot agree on a complete contract, stating rules for each future contingency. Instead, they have to write a less determinate contract, which does not specify each party's obligations in every conceivable eventuality. In the place of explicit conditions in a contract, one party (the employer) is given the authority to decide what to do when the unforeseen occurs. This is, then, what provides the motivation for authority in the firm.<sup>59</sup>

Obviously, this explanation of why there are employment contracts cannot even get started if we assume full information. Choices under ignorance are doing the heavy theoretical lifting. This account of the employment contract also shows why we cannot use the theory of the ideal market, as it is understood in general equilibrium theory, to think about justice in the workplace. There can be no employment contracts in that theory (there is neither a need for money nor a place for firms in such an economy). It appears to lack an account of why there should be such things.<sup>60</sup> This seems to present a problem for Dworkin's account of distributive justice. For instance, it seems odd that we could find out the proper distribution of wages and salaries within an insurance company by investigating how resources would be distributed on a market where there are no firms,

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<sup>57</sup>Milgrom and Roberts (1992, p. 330). See also Vandenberghe (2000), Brousseau and Glachant (2002) and the articles in Bouckaert and De Geest (2000).

<sup>58</sup>For the distinction between certainty, risk and uncertainty, see Luce and Raiffa (1957). See Resnik (1987, pp. 13–17) for an overview of different modes of choice and for the term 'ignorance'.

<sup>59</sup>Milgrom and Roberts (1992, p. 330).

<sup>60</sup>For interesting discussion, see Coase (1988, 1937). See also Williamson (1985) and North (1990) for important work on institutions influenced by Coase which are seemingly congenial to Rawls's focus on institutions.

no money, no employment contracts and perhaps, not even insurance. (This is not to say that economists should not investigate the model as it is the basis of some brilliant and important work.) Furthermore, this explanation throws another familiar market-based account of justification into trouble: the idea that consent justifies what goes on in the market, *i.e.*, if there has been consent, then there is no room for complaints of unfairness.

Now, what does the idea of justification by consent mean? To count as proper consent, a decision to enter into a contract must have been made under circumstances without coercion and with relevant knowledge. In Paper IV, I focus on the knowledge condition. The argument I defend is, in a nutshell, the following: In order for any criterion concerning the level of information needed to achieve justification by consent to have any appeal, it must demand some level of knowledge above ignorance. But this, in conjunction with the transaction cost explanation of employment contracts, creates a problem: Employer authority is explained by ignorance and yet justified by consent, which demands something more than ignorance. Economic agents would only opt for incomplete contracts and employer authority when there is ignorance. This brings us to a main point of Paper IV: It seems impossible to consent, in a way that confers justification on the *acts of authority* that are based on an incomplete contract, since the information condition will not have been satisfied for the act in question. Consent is not enough, which is why we need something along the lines of contestability, which, I argue, provides us with a form of justification based on information and voluntariness appropriate to the economic sphere.

There are three institutional measures that must be implemented for there to be proper contestability. First, there needs to be transparency with regards to decision-making in the workplace. This solves the problem of information; there is no longer any ignorance about future contingencies. However, it does not solve the problem of lacking consent, since the standard theory of consent implies that if consent has not been given properly, then authority is coercive. The principle of *volenti non fit injura* says that if one has consented to an act, then one is not harmed in the morally relevant way. A very important aspect of consent as justification is that it sets the *volenti* principle into play. (This should probably have been more emphasised in Paper IV). This principle then allows us to make a distinction between somebody threatening her neighbor to get him fired and an employer warning an employee that she will be fired if she does not comply with directives. If acts of authority have not been consented to, then more information still does not allow us to invoke the *volenti* principle. As far as I can see, there are only two *solutions* to this problem of consent. We could give up on consent or we could give up employment contracts in the sense that we require prior consent to everything that is decided within the workplace. The two further mechanisms of contestability do not *solve* the problem, but they *handle* it in a manner that ought to be attractive to those who are attracted to the consent approach

in the first place. They do this by giving the employees a more direct avenue of influence than the costly exit option. This account of influence is similar to the consent approach in that it is also based on an ideal of informed choice.

To implement such influence, we need first, channels, such as unions and ethics hot-lines, through which employees can make their objections heard. This is the first step in allowing the employee to affect the decisions in the workplace. However, only having the opportunity to voice one's concerns is, of course, not enough to achieve such influence. There should be a forum where decisions on the status of the contestations are made. I suggest that institutionally, something like the German system of co-determination, could be a way to implement this idea, but furthermore, the idea is that contestation must be given a fair hearing in the forum. In order for such an idea to have any bite, we need a conception of fairness. Contestability needs norms, which brings us back to the theory of local justice. This is where I believe the conception of local justice ties in with the ideal of contestation. We could use local justice to adjudicate claims in the forum of the workplace. Contestability also incorporates the values of informedness and voluntariness within the context of social cooperation. Even if we start out from the supposition that consent is enough for justification, we are driven in the direction of a substantial theory of workplace justice.

## 6. DESERT

In this section, my first aim is to show how my Rawlsian account can handle Dworkin's point that a theory of justice should be able to evaluate individual allocations and be sensitive to considerations of responsibility. I approach this issue by showing how Dworkin's account of justice could be combined with Rawls's. This paves the way for my second aim: to show how the local justice principle can take desert into account and deliver verdicts on individual allocations of goods.<sup>61</sup> Here I explain how the reasoning within the local original position leads to a choice egalitarianism not dissimilar to Dworkin's.

Now, Rawls famously says, "No one deserves his greater natural capacity nor merits a more favourable starting place in society."<sup>62</sup> This should not be interpreted as meaning that there is never any room for desert to play a role in ethical thought. Rawls is concerned with a specific question, the design of the basic institutions of society, and denies a specific argument, that desert should play a role for the solution of this problem. The argument from the two lotteries is essentially a counter-argument against a specific application of

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<sup>61</sup>Important accounts of the value of desert can be found in Sher (1987) and Miller (1999). For applications of the concept of desert in the workplace, see Moriarty (2005) and McLeod (1996).

<sup>62</sup>Rawls (1971, p. 102).

the value of desert. Since social justice aims to set up the fair background conditions for responsible choice, responsibility and desert come into play for Rawls *after* we have organized the basic structure justly. Rawls aims to achieve what he calls background justice. Even if social and natural backgrounds still play a role, these are now just and the two-lottery argument against desert is no longer applicable. This is so because the basic structure is designed according to principles that would be chosen by free and equal persons under fair conditions. The basic structure is a result of ideal choice, and not by contingencies; there are no more lotteries. Therefore, Rawls can go on to say that when background justice is achieved, “[i]t is left to the citizens as free and equal persons, secure in their rights and liberties and able to take charge of their own life, to avail themselves of the opportunities guaranteed to all on a fair basis.”<sup>63</sup>

Background justice is an excellent idea, but as Rawls himself points out, there are at least two different kinds of justice problems.<sup>64</sup> On the one hand, there is what Rawls calls distributive justice, and I prefer to call social justice,<sup>65</sup> which deals with the *structure* of the institutional framework in a just society. Justice as fairness is an example of a theory in this area. On the other hand, when we think about justice, we are also interested in the way we should divide (or rather, allocate) a given bundle of goods among a given set of individuals, knowing their preferences, needs and desires. Here we ask, “Who should get what?” Rawls calls this *allocative justice*.<sup>66</sup> This is the typical problem in economic analysis, and it is exemplified by the auction thought experiment at the heart of Dworkin’s theory of justice. I prefer to label the first justice problem “social justice”, since one may say, without misusing ordinary language, that allocative justice also deals with questions of justice in distribution. A theory of justice of the first kind deals with the background conditions for transactions, whereas theories of the second kind concern the properties of transactions. It should be obvious that there would be no contradiction in holding a theory of each kind as true. Moreover, it seems that we should hold such a combined view. Let us return to the debate between Rawls and Dworkin and try to outline this combination argument.

From a Rawlsian perspective, we find, then, that we need, in addition to the two principles, an individualized and responsibility-sensitive allocative principle. The Rawlsian needs to respond to Dworkin’s critique; we are interested in who gets what. Furthermore, we will have genuine questions about allocative justice, even if justice as fairness is imple-

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<sup>63</sup>Rawls (2001, p. 171).

<sup>64</sup>Rawls (2001, p. 50).

<sup>65</sup>I follow Miller’s (1999) usage.

<sup>66</sup>Rawls (2001, p. 50). In a sense, allocative justice also deals with social issues, but social justice seems appropriate for conceptions of justice that set the stage for social cooperation. Furthermore, there may be allocative issues to reconcile without there being social cooperation.

mented. One specific such question would have to do with justice in the workplace. Can Rawlsian background justice give an answer to the question of, say, fair wages? It seems not, because the principle that governs the distribution of income in society deals with the distribution between groups. The difference principle points to a specific shape of the curve of distribution of resources in society, but it is silent on the question of whether or not the salary specific people receive in a society that has implemented that curve is fair. When the difference principle has been applied, it is still possible that within the given range, individuals have wages different from what would be just. We cannot use the two Rawlsian principles of justice to solve this question because it is not a problem concerning the background of transactions, but a question of justice *in* transactions. Moreover, we tend to expect the determination of wages to take responsibility factors, such as ambition and choice, into account. A common intuition is that a person who works more hours should get more money in return. When background justice is in effect, we would want an allocative principle of justice that takes choice into account.

If we instead start from equality of resources, we find ourselves in the position that we need to complement that theory with a conception of background justice, which defines the property rights that the ideal market starts out from. Furthermore, doing so allows us to solve the problems that, as Elisabeth Anderson has pointed out, plague the so-called luck egalitarian theories of justice.<sup>67</sup> (These problems appear on the standard interpretation of equality of resources, but not on the one I suggested in Section 4.) One problem is called *the abandonment of the prudent*. A person who is struck by several incidents of bad option luck may end up in a situation in which he or she is unable to afford insurance. It might be more prudent to feed one's children than to pay the insurance bill. Such a person could have made all of the reasonable choices and still end up uninsured. If this person finds himself or herself in a traffic accident, it would be just that the ambulance passes by, since this would be an example of option luck. This problem is related to a further difficulty: *the lack of a safety net*. There is something counterintuitive about a theory of justice in which, even if only in principle, the fact that some people have absolutely nothing is considered just. There is, in principle, no limit to how low one can fall in a society governed by such principles. Should equality of resources, in its standard interpretation, be rejected for these specific reasons? No, since it could be understood as a conception of allocative justice. To the extent that luck egalitarianism is silent on background justice, there will be no contradiction or incoherency in appending a conception of social justice, such as justice as fairness, to that theory.

Now, in this thesis, I present a thoroughly Rawlsian account of justice, so I should

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<sup>67</sup>Anderson (1999). For a different and complex criticism of luck egalitarianism, see Hurley (2003). For other influential versions of luck egalitarianism, see Arneson (1989) and Cohen (1989).

explain how I have come to conclusions similar to those of Dworkin. In paper II, I argue that when developing a theory of justice for the workplace, we also need to present a conception of the problem we are attempting to solve. The conception I suggest amounts to an attempt to capture the ideal of a fair and reciprocal contract. The local original position then tries to make this idea vivid. The parties of the local original position evaluate principles by going through three comparisons. In the first comparison, the parties prefer a consequentialist principle to principles that guarantee local rights and liberties, since justice as fairness on the domestic level protects enough such rights and liberties that ensure that work will be decent in a well-ordered society. They specify the consequentialist principle in the second comparison. Since the value of reciprocity is of overriding importance to the co-workers, the parties will settle on the difference principle, in its standard form, at this point. Here the Rawlsian conception of the problem of workplace justice plays a decisive role. Utilitarian principles are not reciprocal, and this counts against them within the Rawlsian conception of workplace justice. In the final comparison, the parties take the value of desert into account. The choice egalitarian local difference principle incorporates this value, as well as reciprocity, and is the final choice of the local parties.

The parties take account of desert for several reasons. First, the original position is a device which is designed to model all relevant, and only the relevant, reasons of fairness for the problem(s) of justice. As I indicated above, the value of desert seems a part of the common sense view of justice. Of course, being part of common sense is no guarantee that a value ought to play a role in the theory of justice. This is the case for desert with regard to the problem of social justice, where the two-lottery argument seems successful. However, as I have also tried to make plausible, that argument does not apply when we turn to local justice. Indeed, a reason to implement justice as fairness is that it provides the background conditions appropriate for free and responsible choice. Furthermore, the account of desert for the economic sphere that I propose in Paper II is based on an intuition about deservingness that seems to be shared among people all over the ideological spectrum, from libertarians to Marxists.<sup>68</sup> The intuition is also at work in Dworkin's liberal account of justice. The idea is that people deserve what they produce, their marginal productivity. A further reason that motivates the inclusion of the value of desert in the local original position is that it would capture the intuitions of the combination argument just discussed. For such reasons, the parties of the local original position are forced to take account of desert, and end up choosing the choice egalitarian local difference principle.

Let us end this section by returning to Dworkin's two criticisms of justice as fairness.

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<sup>68</sup>I am following Kymlicka's (1990) analysis here.



When the choice egalitarian local difference principle is in effect, we get distributions that take desert into account. This is something it shares with equality of resources. When there is no place for desert attributions, the local principle distributes according to the local difference principle. Rawls and Dworkin differ on the best account of equality, but they do agree that goods ought to be distributed in some egalitarian manner if there are no desert considerations that would lead us in another direction. This means that within the workplace, distributions of goods will be responsibility-sensitive and egalitarian. On both accounts, each person should get what he or she deserves, which means that both theories answer the question of “Who gets what?” on an individual basis. The local principle has implications for justice in distribution person per person. This means that we can, at least for the case of the local justice of the workplace, answer Dworkin’s criticism against the Rawlsian account of justice by showing how we can take account of both his criticism and his own contribution.

## 7. CONCLUDING REMARKS

In this thesis, then, I outline a liberal theory of just working conditions. I hope that this introduction has given some guidance regarding how the papers could be read together as one thesis. Of course, a lot of the most important work remains. First, almost all of the applied work lies in the future. Paper III deals with one very specific aspect of Rawls’s first principle of justice, but as noted above, that principle itself appears to have many implications. It might be the case that FEO has other implications for the workplace than the ban on discrimination. We need, of course, to find out how the difference principle regulates the economic sphere. How do we best implement contestability? What does the choice egalitarian local difference principle imply about, for instance, reward policies in actual firms? This thesis presents a way of approaching such issues, but it does not deliver the final answer on these difficult questions.

Second, with this rather complex theory of justice in the workplace, how does one go about designing evaluation studies on the basis of this theory? As is pointed out in Paper I, often, the most feasible way of carrying out evaluation studies is by measuring something tractable, such as money or accidents. This does not change if one defines improvements in the way I suggest. However, the problems that one looks at may change, *e.g.*, the infringement on liberty takes on a certain salience if the first principle of justice as fairness is brought to bear on work. The hands-on work of designing evaluation studies lies in the future.

Third, there are further theoretical developments that should be pursued. For instance, there seem to be theoretical gains to be made by taking account of local justice.

Can we make use of the point behind Michael Walzer's idea of complex equality,<sup>69</sup> that different areas of social life should be evaluated according to different conceptions of justice while staying committed to the more monistic theory of justice as fairness? Can local justice be generalized? Or, to take another example, the theory of local justice suggests a liberal theory of exploitation. To be exploited is roughly to be unfairly taken advantage of in a transaction, such as that between employer and employee. However, this concept fell out of favor in the 1980s, when participants in this discussion seemed to come to an agreement on the conclusion that exploitation could be reduced to a general issue of unfairness; exploitation in the workplace came out as just another aspect of general social injustice.<sup>70</sup> The theory of local justice opens up theoretical room for a specific type of unfairness within the workplace that would seem like exploitation—to not get one's fair share according to the choice egalitarian difference principle—which does not reduce to social injustice in general. A further gain is that the liberal theory does not make it so that it is the case, by definition, that employees are exploited, but it defines the situations in which it would be reasonable to use the term exploitation.<sup>71</sup>

## 8. EXTENDED ABSTRACTS

### 8.1 *Paper I: Evaluating Workplace Inspections*

A theoretical framework is introduced for the evaluation of workplace inspections with respect to their effects on working conditions. The framework identifies three important aspects of the consequences of inspections. Rule compliance may be improved. In turn, improved compliance may lead to improvements in working conditions. Moreover, inspection may have direct effects on working conditions, not mediated by compliance with regulations. The choice of a concept of efficiency is discussed, and its relation to criteria for a good working environment is clarified. Five different approaches to the normative issue of the nature of good work are identified. In the Aristotelian tradition, good work is understood as such work that leads to self-realization. It is not surprising to find that the values of safety and health take center stage in the literature on occupational health and safety. Productivity tends to define good work in management texts. That good work leads to well-being is an intuition that underlies much of the work in areas such as the sociology of work and Quality of Working Life studies. In business ethics, good work is often understood as work undertaken under just circumstances. It is concluded that in

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<sup>69</sup>See Walzer (1983).

<sup>70</sup>See Kymlicka's (1990) chapter on Marxism.

<sup>71</sup>This kind of argument, in conjunction with the work of Titelbaum (2008), suggests a possible reply to G.A. Cohen's (2008) ethos argument against the Rawlsian project.

order to obtain reliable information on the effects of different inspection methods, it is necessary to perform controlled comparative studies in which different methods are used on different workplaces. Given the facility with which such studies can be performed, it is surprising how few such studies have been made. The studies that are available provide sufficient evidence that inspections can increase compliance with regulations and that they can also increase workplace safety, but not much can be concluded about the relative efficiency of different inspection methods.

### 8.2 *Paper II: The Structure of a Rawlsian Theory of Just Work*

This article outlines the structure of a Rawlsian theory of justice in the employment relationship. A focus on this theory is motivated by the role it plays in debates in business ethics. The Rawlsian theory answers three central questions about justice and the workplace. What is the relationship between social justice and justice at work? How should we conceive of the problem of justice in the economic sphere? And, what is justice in the workplace? To fully see what demands justice makes on the workplace, we should first spell out the implications that social justice has for working conditions. Rawls's two principles are developed to guide institutional design and, as such, they are constraints on what institutions there ought to be. When this is done, we can develop a conception of workplace justice and investigate what content such local justice should have. John Rawls's political liberalism was formulated for the specific problem of a just basic structure; in order to apply it to another problem, the key theoretical concepts must be revised. The conception suggested builds on Rawls's notions of a fair contract and on his conception of the citizen as rational and reasonable as well as free and equal. In a third step, reasons for a specific construction of a local original position are given and arguments are presented in support of a principle of local justice, which takes the form of a choice egalitarian local difference principle. It is argued that this principle would be preferred by the local parties to average utilitarianism, libertarianism, the principle of desert and the two Rawlsian principles.

### 8.3 *Paper III: Dissolving the Moral Dilemma of Whistleblowing*

The ethical debate on whistleblowing centrally concerns the conflict between the right to political free speech and the duty of loyalty to the organization where one works. This is the moral dilemma of whistleblowing. Political free speech is justified because it is a central part of liberal democracy, whereas loyalty can be motivated as a way of showing consideration for one's associates. The political philosophy of John Rawls is applied to this dilemma, and it is shown that that the requirement of loyalty, in the sense that is

needed to create the moral dilemma of whistleblowing, is inconsistent with that theory. The argument starts from the Rawlsian idea that the first order of business when trying to achieve a just society is to develop just institutions. Institutions are just if they are designed in a manner that is consistent with Rawls's two principles of justice. The first principle of justice is lexically prior to possible considerations of the value of loyalty. Since loyalty constrains free speech in whistleblowing situations, it follows that we should not conceive of institutions as giving rise to claims of loyalty in potential whistleblowing situations. In this sense, there is no moral dilemma of whistleblowing. This position has been labelled extreme in that it claims that whistleblowing is always morally permitted. In a discussion and rejection of Richard De George's criteria on permissible whistleblowing, it is pointed out that the mere rejection of loyalty will not lead to an extreme position; harms can still be taken into account. Furthermore, it is argued that in this, as in most other political circumstances, the free speech argument from democracy provides the best framework for thinking about how to weigh harms having to do with information.

#### 8.4 *Paper IV: Consent, Contestability and Employer Authority*

A common idea is that market exchange is justified by consent. According to this view, agents in the market are informed of the consequences of their actions and are not coerced. This makes their acts voluntary. A problem in the application of this justification to the employer-employee relationship is pointed out. If the contemporary economics of the employment contracts correct, we must, in order to explain the existence of such contracts, make the assumption that the contracting parties are attempting to deal with decision-theoretic ignorance. This is why the parties agree to an incomplete contract in which the employer has authority. However, this implies that consent to acts of authority has been given under conditions of ignorance; it follows, then, that the course of action that the employer chooses to take cannot be justified by consent because the informedness criterion of consent will not have been satisfied due to this ignorance. Another method of justification must be sought. It is suggested that in order to achieve justification of acts of authority, there should be a real possibility to contest employers' decisions in place. This possibility is needed, rather than just more information, because if the "*volenti non fit injuria*"-principle is not in effect, then the employee is in a coercive situation. This problem of coercion must be alleviated before justification on the basis of informed voluntariness can be achieved. Pettit's idea of contestability will be applied. The firm must satisfy three conditions in order to make effective contestability possible. There must be a basis and channels for contest, which means that there must be transparency as well as effective measures to make grievances heard. There must also be a forum of contest where proper hearings of contestations are guaranteed.

### 8.5 *Paper V: Equality of Resources, Risk and the Ideal Market*

According to Ronald Dworkin, mimicking the ideal market from equal starting points is fair. This paper spells out the implications of taking the ideal market seriously for equality of resources. According to Dworkin, the ideal market should be understood as described in Gérard Debreu's influential neoclassical work, which implies that we should conceive of trade as taking place under certainty. However, if choices on the market are to be understood as being made under certainty, this has several important implications for Dworkin's theory. First, there are no choices under risk in such a market. Therefore, there is no such thing as option luck in the ideal market, since that concept only makes sense for choices under risk. Consequently, when mimicking this market, we cannot and should not hold people responsible for option luck. Second, mimicking this market implies that we ought to set up a social safety net, since rational individuals with perfect foresight and the motivation to look out for one's future, which Dworkin assumes in his arguments, would see to it that they always have sufficient resources at each point in life. Third, the idea of insurance is incompatible with the ideal market. There must be uncertainty in order for insurance to make economic sense. Insurance cannot play the fundamental role in equality of resources that Dworkin argues it should. This point opens up the question of whether the goals of the insurance thought experiments in equality of resources would be better served by some other mechanism, such as the willingness-to-pay method. Equality of resources takes on a more egalitarian character when the implications of choices under certainty are made explicit.

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