

Equality and Responsibility
in contemporary political philosophy

By Emily Muller

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In Partial Fulfillment of the Requirements for the Degree of

MASTER OF ARTS

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Political Philosophy**

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Manitoba in partial fulfillment of the requirement of the degree
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ABSTRACT

In this thesis, I consider an argument posed by John Rawls concerning the effects of luck on principles of just distribution. Despite his convictions about the capacity of luck to undermine claims of desert, Rawls maintains that it is sometimes fair to hold individuals responsible for their political and social choices. I consider a criticism of this view offered by G. A. Cohen, and advance a response to this criticism which I believe successfully defends the coherence of Rawls' commitments to responsibility. I then suggest that this response requires support for the idea that there is something about the nature and practice of just institutions which makes it fair to hold individuals responsible for their choices. To provide this support, I appeal to T. M. Scanlon's view on choice and responsibility. Scanlon's view provides at least one way to maintain the claim that choice is significant to distribution even when it is accepted that choices are thoroughly suffused with luck. Finally, I consider Ronald Dworkin's position on individual responsibility for the cultivation and pursuit of expensive tastes. Dworkin argues that it is fair to hold individuals responsible for their tastes even when this practice results in inequalities between individuals. I consider a criticism of this view, also advanced by Cohen, and consider a possible response to this criticism. I argue that Dworkin, no less than Rawls, has a reason to adopt the approach to responsibility I advanced to counter Cohen's initial objection. This approach involves viewing responsibility claims as embedded in institutions of justice.

Introduction:

Distributive justice concerns the branch of political philosophy which determines what it is fair for individuals in a society to have, and to ask of one another. In order to make such determinations, it is important to decide what factors should be considered in order to judge individuals' fair shares of goods. Even when there is agreement about what kinds of goods we should redistribute, a question remains over what rules we should adopt to govern this distribution. We generally agree, for example, that how tall a person is compared to others should not play any role in what it is fair for him to have. Philosophers often disagree about what factors a just distribution must take into account. Some argue that one's merit, or one's place in a social hierarchy, are relevant considerations of what individuals deserve, while many contemporary liberal philosophers disagree with such views. One contentious candidate for inclusion in the class of relevant criteria for distribution is individual choice. The relevance of choices is in doubt because choices are, in many ways, affected by aspects of a person's existence which fall outside his control. It has been argued that the goal of a liberal distribution of goods is to alleviate inequalities between individuals which result from luck. We think, for example, that aristocracies distribute goods unfairly just because it is wrong to base an individual's life prospects on something so far from his control as the circumstances into which he was born. The extent to which choices are infected with luck, therefore, is sometimes held to militate against recognition of a legitimate role for individuals' choices in determining a just distribution. The project of this thesis is to assess whether or not this concern about luck does in

fact undermine the relevance of individuals' choices to what they should have in a just liberal society.

In Chapter One, I consider an argument posed by John Rawls concerning the effects of luck on principles of distribution. Despite his convictions about the capacity of luck to undermine claims of desert, Rawls maintains that it is sometimes fair to hold individuals responsible. I consider a criticism of this view advanced by G. A. Cohen, and advance a response to this criticism which I believe successfully defends the coherence of Rawls' commitments to responsibility. In Chapter Two, I suggest that the response proposed in Chapter One requires support for the idea that there is something about the nature and practice of just institutions which makes it fair to hold individuals responsible for their choices. To provide this support, I appeal to T. M. Scanlon's view on choice and responsibility. Scanlon's view provides at least one way to maintain the claim that choice is significant to distribution even when it is accepted that choices are suffused with luck. Finally, I consider Ronald Dworkin's position on individual responsibility for the cultivation and pursuit of expensive tastes. Dworkin argues that it is fair to hold individuals responsible for their tastes even when this practice results in inequalities between individuals. I consider a criticism of this view, also advanced by Cohen, and consider one of Dworkin's responses to this criticism. I argue that Dworkin, no less than Rawls, has a reason to adopt the approach to responsibility I advanced in Chapter One. This approach involves viewing responsibility claims as embedded in institutions of justice.

My aim in the three chapters is to demonstrate the utility of a conception of responsibility derived from principled political and social institutions of justice. This conception is, I argue,

significantly more defensible than the view that responsibility-claims operate as independent determinants of these principles. I hope, through the arguments I present and those I develop, to show that this institution-dependent view of individual responsibility is also compelling.

Chapter One

John Rawls has famously argued that no one deserves to have the advantages which arise from one's character and abilities because no one deserves to have his characters or abilities.

This argument suggests that the our society, which purports to reward individuals for merit and to establish legitimate inequalities which arise from differences in skill, is unjust because it does not recognize that these individual differences in merit are largely attributable to luck. Rawls' position on distributive justice establishes a reason to think that this luckiness should play a lesser role in determining what people should have, and what they owe to one another, than it presently does.

It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of natural endowments, any more than one deserves one's initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit.¹

In this chapter, I want to explore what acceptance of such an argument entails for Rawls' understanding of individual moral responsibility in a liberal society. To this end, I will consider Rawls' argument in depth, and then examine it in the light of a specific criticism of his position on individual responsibility offered by G. A. Cohen in "The Currency of Egalitarian Justice". Cohen argues that Rawls' theory embraces inconsistent commitments to holding individuals

¹ Rawls, John. *A Theory of Justice*. Cambridge, Mass: Harvard University Press, 1971, p 104.

responsible. On the one hand, Rawls argues that, owing to the role luck plays in shaping the lives of individuals, they cannot be held responsible for their characters or what they do with them. On the other hand, Rawls argues that it is reasonable to hold individuals accountable for their ends, and also that a just society is one which holds citizens responsible for their tastes. It is possible, however, to successfully refute Cohen's criticism that these two positions are inconsistent by stressing the institutional nature of Rawls' commitment to holding individuals responsible for some of their choices.

Rawls argues that the primary goal of distributive justice in a liberal society should be to redress the inequalities present in both the natural distribution of assets and abilities and in individuals' environments. Social and political practices may either reduce or exacerbate these native differences in individuals' characters, skills and social and environmental resources. Natural inequalities, Rawls argues, result from factors which operate outside of any individual's will, and therefore function as matters of 'brute luck'. A just society must refuse to sustain the inequalities attributable to luck because these inequalities are contingent, arbitrary and an affront to social justice.

There is no necessity for men to resign themselves to these contingencies. The social system is not an unchangeable order beyond human control but a pattern of human action. In justice as fairness, men agree to share one another's fate.²

An individual's social environment and natural assets affect his share of goods in ways which Rawls argues are fundamentally arbitrary from a moral point of view. That someone beside me on a bus was born blind while I was born sighted reflects an inequality in the natural distribution

² *Theory of Justice*, 102

of goods. It is unreasonable to think that the blind person is responsible for her condition in a way which is morally significant, and it is by virtue of this lack of responsibility that we think it unjust that her life be allowed to go less well than mine because of her blindness. In a liberal society like ours, most citizens would be willing to redistribute some additional resources, such as extra tutors and Braille machines, to redress the perceived unfairness brought about by the blind woman's relative lack of resources. The idea that some inequalities produced by brute luck provide grounds for compensating those who are less well-off in society is not particularly controversial. However, Rawls' argument supports the more controversial claims that much of what we take to be essential to the person, notably one's talents, abilities and even character, arise in ways which are actually a lot like being born sighted or blind, and that this realization has consequences for what individuals can be thought to deserve.

I: the natural lottery argument and critical reception

The argument Rawls uses to support this view is called the Natural Lottery Argument (NLA). A standard way of interpreting the argument is as follows:

1. Each individual has basic sets of abilities which do not belong to him in virtue of anything he has done. These sets belong to him, in other words, only in the sense that the blind woman's blindness belongs to her.
2. If a person's having X is not the result of anything that he has done, he does not deserve to have X. This is one way of understanding what we mean when we say that the woman in the example does not deserve to be blind.

3. Therefore, as a result of premises 2 and 3, no one deserves his basic sets of abilities.
4. Everything that a person can do he can do only by employing his basic sets of abilities; it is impossible to think that anyone's actions can be divorced from his abilities to reason, to exert effort, or to act.
5. If a person does not deserve to have X, and X makes Y possible, then the person does not deserve to have Y. If I do not deserve the money I took from your dresser, I cannot then deserve the ice cream I have purchased with it.
6. Therefore, because of premises 3, 4 and 5, no individual deserves to be able to perform the actions that he does, and consequently no individual deserves to reap the benefits his actions make possible.³

Rawls concludes from this argument that by distributing unequal shares of wealth to its talented and untalented citizens, a meritocratic society violates an aim of just liberal distribution, namely to make distribution rest on matters of moral significance rather than on the morally arbitrary effects of brute luck.

Allan Zaitchik raises a problem for Rawls' NLA which identifies a problem with premise 5 of the presented argument.⁴ Zaitchik argues that Rawls' idea that a person deserves a certain benefit only if he also deserves the grounds for this desert leads Rawls' argument to regress. What, Zaitchik asks, has Rawls left available as a possible interpretation of justifiable grounds for claims of desert? The NLA clearly indicates that morally arbitrary factors, or products of

³ This interpretation of Rawls' argument is roughly similar to George Sher's, provided in chapter 2 of Sher's *Desert*, (1987) Princeton University Press. Princeton, NJ., p. 24.

⁴ Zaitchik's "On Deserving to Deserve." *Philosophy and Public Affairs*. 1977; 6: 370-388.

luck, cannot constitute such grounds. Zaitchik identifies the problematic claim in Rawls' argument to be premise 5, the claim that X deserves Y, in virtue of Z, only when it is true that X deserves Z. This claim cannot rule out subsequent claims that in order to deserve Z, an individual must also deserve its grounds, and the grounds for these grounds, *ad infinitum*. Thus, Zaitchik concludes, because this regress will (a.) never stop, and (b.) the path of its regression will eventually lead back to natural abilities in any event, Rawls has left no possible ground for a claim based on desert. If Zaitchik is right about this regress effect, Rawls has effectively ruled out the idea that anyone ever deserves any benefit at all. Rawls' position, then, seems to be that no claims of desert can be legitimate, regardless of the kinds of desert which we might consider relevant to distribution.

Zaitchik suggests that this infinite regression produces such a strong anti-desert conclusion that defenders of desert claims can effectively adopt it as a *reductio ad absurdum*. If Rawls' argument leads to the claim that no one deserves anything at all, and if this conclusion is as patently absurd as many critics have taken it to be, then Rawls' argument is a bad one. Because this strong anti-desert conclusion is so counter-intuitive, Zaitchik thinks that the burden of explanation falls on Rawls rather than on those who would reject his argument as simply absurd.⁵

II: the inconsistency challenge to Rawls' account

⁵ Critics like George Sher argue that Rawls has not yet met this burden and that the way Rawls reads premise 5 above is indefensibly strong. Sher, an advocate of the centrality of our pre-theoretical intuitions about desert to considerations of distributive justice, provides a theory of desert which assumes that Rawls' burden to justify the strong conclusion that no one deserves anything has not been adequately met.

I want to focus on another criticism which Robert Nozick advances against Rawls, and which is later more fully developed by G. A. Cohen.⁶ Zaitchik claims that Rawls gives up too much in the NLA, by ruling out not just some but all forms of desert. How great a problem this is for Rawls depends largely upon whether or not we need a concept of desert to make sense of justice, distribution or individual responsibility. The worry with the NLA discussed in section one is that Rawls' view is so extreme that it is untenable. Nozick and Cohen marshal another worry, which is that Rawls' position on individual desert is inconsistent. This inconsistency problem suggests that Rawls' commitments in the NLA are essentially at odds with other claims he makes about individual responsibility for ends. Nozick claims that:

[Rawls'] line of argument can succeed in blocking the introduction of a person's autonomous choices and actions (and their results) only by attributing everything noteworthy about the person completely to certain sorts of "external" factors. So 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 self-respect of autonomous beings; especially for a theory that founds so much (including a theory of the good) on a person's choices.⁷

This suggests that the strong reading of the NLA is inconsistent with what are arguably the principal aims of Rawls' project. This new criticism suggests that there are compelling reasons for Rawls himself, and supporters of his position, to reject the NLA, reasons based on the coherence of Rawls' position as a whole. This inconsistency challenge arises from Rawls' view of the role that individuals' choices should play in determining a just distributive pattern. It

⁶ Nozick, Robert. *Anarchy, State and Utopia*. New York: Basic Books, Inc., Publishers, 1974., Cohen, G. A. "On the Currency of Egalitarian Justice." *Ethics* 99 (July 1989): 906-944.

⁷ *Anarchy, State and Utopia*, 214

seems, at first glance, that Rawls' assumptions about the capacities of individuals to make choices, and the legitimacy of holding them responsible for their choices, contradicts the assumptions about their capacities and responsibility which are at work in the NLA.

Rawls argues that the goods which liberal societies should distribute are resources, rather than welfare. Rawls' reasons for promoting the distribution of resources, in the form of primary goods, result from his consideration of expensive tastes. He argues that claims made in the service of expensive tastes suggest that just distributions need to be attuned to more than simply the welfare levels, judged either in terms of pleasure or preference satisfaction, of individual members of a political community. Rawls' claim that individuals with expensive tastes should, in at least some cases, be held responsible for the costs of their choices gives him a reason to reject welfare as the object of redistribution, and hence an indirect reason to accept the view that liberals should redistribute resources instead.

Imagine two individuals with very different tastes. One likes potatoes and beer and the other oysters and champagne. The former has inexpensive tastes and the latter has expensive tastes. If an ideal social distribution envisaged equalizing welfare across all individuals, it would need to allot more funds to the champagne drinker in recognition of the fact that he needs more resources to get the champagne from which he derives welfare than the beer drinker needs for beer. By catering to expensive tastes, the ideal of equal welfare fails to recognize what Rawls identifies as the fundamental moral capacity of individuals to develop and modify their tastes in the light of what their fulfillment costs other people, or in other words, in light of the demands of fairness. Rawls argues that his own position on distribution, which involves resources, called

‘primary goods’, need not cater to the needs of the champagne drinker, and is therefore arguably a better ideal.

In defending the distribution of resources over the distribution of welfare, Rawls states: It is not by itself an objection to the use of primary goods [rather than welfare as a metric for determining a just distributive scheme] that it does not accommodate those with expensive tastes. One must argue in addition that it is unreasonable, if not unjust, to hold such persons responsible for their preferences and to require them to make out as best they can. But to argue this seems to presuppose that citizens’ preferences are beyond their control as propensities or cravings which simply happen [...] The use of primary goods [assumes] a capacity to assume responsibility for our ends.⁸

The second sentence in Rawls’ statement here suggests a limitation on the implications he is willing to recognize as arising from the NLA. On one strong reading of the NLA, it seems entirely possible to argue that individuals do not deserve to bear the costs of “their lack of foresight or self-discipline” because the sources of both are surely their natural sets of abilities or their environment.⁹ Yet this is a consequence which Rawls would be unwilling to accept, as the above quotation makes clear. If we do not deserve to benefit from our talents, why is it reasonable to assume that one should bear the negative costs of having expensive tastes?

The inconsistency challenge arises from this consideration of expensive tastes as Cohen is able to charge that Rawls invokes an inconsistent conception of the person as a responsible agent. The problem is that it is difficult to see why Rawls himself does not recognize the NLA as a candidate response to the challenge he poses for a defender of compensation for expensive tastes. The simplest answer to why it might be unjust to hold individuals accountable for the

⁸ “Social Unity and Primary Goods” in *Utilitarianism and Beyond*, ed. A. Sen and B. Williams (Camb; CambUP, 1982) pp.168-9.

⁹ *Ibid*, 169.

burdens of their expensive tastes is that they are not sufficiently responsible for bringing them about, and therefore not in a position to deserve the inequalities which result from their positive and negative effects. In this vein, Cohen argues “the problem with [Rawls’] picture of the individual as responsibly guiding his own taste formation is hard to reconcile with claims Rawls elsewhere uses in a fundamental way to support his egalitarianism,” (914).

This criticism targets the same problem as Nozick’s claim that Rawls’ commitments to autonomy are undermined by his acceptance of the NLA. Nozick poses the following dilemma: either people have freedom of choice, and so should be credited with the benefits of their decisions to develop their natural abilities and to use them, or they are not free in this way at all, and so should not be allowed to benefit from good choices or suffer from bad ones. While the NLA denies the first horn of this dilemma, Rawls’ discussion of expensive tastes seems to commit him, at least in part, to denying the second horn as well.

Cohen’s reading of Rawls is more sensitive than Nozick’s to the degrees of freedom which Rawls might be able to accept. Cohen argues that Rawls need not say that individuals are not free ‘at all’ in order to claim that their abilities and actions cannot be separated from, and are irrevocably influenced by, causes over which the individual exerts no control. The NLA need not commit Rawls to the less reasonable claim that external forces are the sole determinants of individuals’ actions. On Cohen’s reading of Rawls, individuals may be partly deserving of reward for some portion of their efforts, yet the practical difficulty of assessing this portion provides a good reason to avoid basing a distributive scheme upon it. This sensitivity to degrees of external influence does little, however, to rescue the NLA from the substance of Nozick’s

criticism, for Cohen's amendment contributes little a resolution of the inconsistency problem.

Surely individuals' tastes, like their talents, are determined by a combination of internal and external forces. Rawls seems to accept in the NLA that the influence of external factors serves to remove any basis for judgments of personal desert. Why would the presence of external factors influencing individuals' abilities to form and revise preferences not count in the same way?

It makes no sense to say that external factors contaminate and undermine the claim that individuals are sufficiently responsible for their talents but not for their tastes. To sustain such a statement would require citing a morally significant difference between tastes and talents thereby making the former an appropriate subject of the NLA while the latter is not. But this is surely impossible if the source of moral arbitrariness is the presence of external forces. This problem suggests that Rawls' claims about responsibility are not really determined by the principles expressed in the NLA. For example, Rawls could, it seems, have concluded instead that the opposite stance on desert is called for in the NLA, that is: individuals should be credited with their actions but not their preferences. This is simply because, according to the objection, Rawls doesn't provide a reason as to why tastes, but not talents, give rise to legitimate claims of individual responsibility. In advancing this opposite conclusion, Rawls could have capitalized on the ethical intuition that it is reasonable to punish people for deeds but not for judgments. The inconsistency criticism therefore cites a lack of justification for Rawls' seemingly selective interpretation of the implications of the NLA. Cohen presents the inconsistency problem as follows:

We can wonder why partial responsibility for effort attracts no reward at all while (merely) partial responsibility for expensive taste formation attracts a full penalty (and those who keep their tastes modest reap a welfare reward). And if we shift to the wholesale responsibility motif, then we can wonder why beings who are only in a limited way responsible for the effort they put in may be held wholly responsible for how their tastes develop.¹⁰

I will propose a response to this challenge in what follows.

It is worth noting here that critics like Sher and Zaitchik can gain support for their criticisms by recognizing Cohen's inconsistency problem. Zaitchik and Sher claim that it is unreasonable to base a theory of justice on, or otherwise accept the view that, no one ever deserves anything at all. Rawls, by invoking a form of personal responsibility in his argument against catering to expensive tastes, suggests that he himself is unable to avoid referring to individuals as deserving, in some sense of the word, for very long. These critics can claim that Rawls cannot simply accept the regress argument, for it threatens to undermine claims of responsibility for tastes which he clearly supports. The inconsistency thereby lends some support to the idea that a distributive theory of justice which takes the total abdication of desert as its starting point is doomed to either contradict itself or fail on other grounds.

III: *a solution to the inconsistency problem*

I propose that the inconsistency problem admits of resolution. The way to understand Rawls' apparent contradictions is to contextualize the claims he makes with respect to talents, on the one hand, and tastes, on the other. It does seem that there is no morally significant difference

¹⁰ "Currency of Egalitarian Justice", 915-916.

between tastes and talents that Rawls can appeal to in defending the claim that we are responsible for the first but not the second. But I do not think that the best way to understand Rawls' position is to hold him to the view that individuals are responsible for their tastes but not their talents.

In "Kantian Constructivism in Moral Theory: the Dewey Lectures 1980", Rawls claims that ideally just institutions would not cater to expensive tastes because an ideally just society would produce political subjects who could fairly be held responsible for adjusting their preferences in light of what their fulfillment costs others.¹¹ This reasoning need not rely on any form of pre-institutional accounting for individuals' responsibility for their preferences because it derives from the idea that citizens of a just society are given opportunities to form their plans in light of whatever share of goods they may expect to have. Therefore, Rawls can discuss an attenuated, institutionalized kind of responsibility, carried on the shoulders of just institutions, and avoid reliance upon the traditional notions of individual moral responsibility and desert which he clearly rejects in formulating the NLA.

Rawls can, therefore, deny that there is a morally significant difference between tastes and talents because the difference at work in his two considerations of responsibility comes from the different contexts in which his claims operate. The significant difference between Rawls' claim that individuals should not be held to deserve the advantages conferred by their talents and

¹¹ Rawls, J. "Kantian Constructivism in Moral Theory: the Dewey Lectures 1980" *Journal of Philosophy* 77, p. 545. The following reading of Rawls' position on individual moral responsibility is also gleaned from: "Fairness to Goodness" *Philosophical Review* 84, (1975): 551-554; "A Kantian Conception of Equality," *Cambridge Review* 96 (1975) 96-97; "Social Unity and Primary Goods pp.167-170.

his claim that individuals can be held responsible for the costs of their expensive tastes is that the principles of justice are already at work in support of the latter claim.

Rawls is not engaged in an indefensible inconsistency when he says that there is just cause to hold individuals responsible for their tastes even though individuals do not deserve the burdens and rewards of their talents. Simply put, Rawls can avoid the inconsistency by first agreeing that no one deserves anything, and then arguing that our commitment to hold individuals responsible for their choices can be supported in another way. He can evade the worry, therefore, by explaining why appeals to desert are unnecessary, as well as morally problematic for the reasons advanced in the NLA.

I will now consider whether it is plausible to think that Rawls would respond to Cohen's inconsistency challenge the way I have suggested he should. Rawls is committed to two claims which work to support this view. First, Rawls holds that there is something about the nature and practice of just institutions which makes it fair to hold individuals responsible for some of their choices. Second, Rawls' texts support the idea that he thinks fairness operates as a virtue of the institutional structures required to define it.

Rawls holds that assessments of fairness, consisting of what individuals owe to one another, are parasitic on previously established principles of justice.¹² In *Political Liberalism*, Rawls advocates something like the position on institutions and fairness which I have attributed to him.¹³

¹² I believe Rawls' commitment here is sometimes discussed in terms of his larger project to defend the priority of right over deliberations about what is good.

¹³ Rawls, J. *Political Liberalism*. New York: Columbia University Press, 1993.

[In assessing the weight of individuals' claims in matters of justice,] we start with a basic idea of a society as a system of fair cooperation. When this idea is developed into a conception of political justice, it implies that, viewing citizens as persons who can engage in social cooperation over a complete life, they can also take responsibility for their ends: that is, they can adjust their ends so that those ends can be pursued by the means they can reasonably expect to acquire in return for what they can reasonably expect to contribute.¹⁴

It is not clear here what relationship Rawls is really identifying between the society as a system of fair cooperation and individuals who can take on responsibility. By 'take responsibility for their ends', I assume Rawls means that individuals should bear the burdens imposed by their choices. It seems plausible to construe Rawls' statement as suggesting that his conception of political justice, realized in societal institutions which promote fair cooperation, gives individuals opportunities to form expectations about what will happen to them. One explanation for this view is that by ensuring conditions which are fair, others have done their bit to make it fair for a person's outcomes to be affected by her choices. I assume Rawls is not simply arguing from "individuals can form expectations" to "individuals must bear costs", because the fairness of the society would play no role in such a contention.

This passage, like much of Rawls' writing on the subject, is ambiguous. He seems to imply that there is a sense in which individual agents are really responsible for the adjustment of their preferences. Perhaps Rawls' thought here is that, when the conditions established by the principles of justice are operative, individuals have no reason to complain of bearing the costs of the choices they make under such conditions. Consideration of Rawls' commitments concerning desert suggest that he means that it is fair to hold individuals responsible for reasons other than

¹⁴ Ibid, 34.

pre-institutional desert, reasons somehow associated with the functioning of social and political institutions. This supports a central idea of institutional considerations of responsibility, the idea that there is something about the practice of institutions which makes it fair to hold individuals responsible for their choices.

Rawls does not appeal to responsibility to support the principles which define just institutional arrangements, nor does he invoke claims of individual responsibility to serve as constraints on what counts as just institutions and practices. Because Rawls discusses personal responsibility for tastes only within a framework already circumscribed by a just distribution, there is a morally significant difference in the content of Rawls' claims about tastes and his claims about pre-institutional desert for talents. This moral difference is, moreover, not peripheral but central to Rawls' account of personal responsibility and its role in liberal philosophy. This reading underpins the second claim I attributed to Rawls, that fairness operates as a virtue of the institutional structures which define it. By not using desert claims to support his view of fair distribution, Rawls puts himself in a position to reject Sher's notion that strong intuitions about personal and moral desert should act as yardsticks by which to measure the practical virtues of our institutions of political justice. The NLA can be read as Rawls' argument not against desert for talents *per se* but about the dangers of recognizing pre-institutional desert claims more generally.

Rawls argues that the limited sense of desert in which individuals' claims represent legitimate expectations, which are established by social institutions, "presupposes the existence of a cooperative scheme; it is irrelevant to the question whether in the first place the scheme is to

be designed in accordance with the difference principle or some other criterion”.¹⁵ It is fair to claim, therefore, that Rawls allows desert claims only given institutions. This allows for claims of desert such as the following. If there is a rule which states that anyone with a GPA of 4.0 will receive a given fellowship, and you have a GPA of 4.0 and yet fail to receive this fellowship, then you did not get what you deserve, according to the rule of deserving which has been established by the institution awarding fellowships. You simply deserve, in an institutional sense, whatever the rules of institutions stipulate that you should receive.

It is clear that, for Rawls, institution-dependent claims are the only legitimate desert claims individuals make in matters of distributive justice. He argues that someone who is advantaged by the natural distribution of assets “cannot say that he deserves and therefore has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways which do not contribute to the welfare of others.”¹⁶ An individual yet deserve things, in a limited institutional sense, but he can do so only after a co-operative scheme, and the principles which define it, have been established on other grounds.

Having made this case for the plausibility of Rawls’ willingness to accept my interpretation of his commitments on responsibility, I want to add that, even if Rawls is shown not to uphold the claim about institutional responsibility which I have attributed to him, it is nevertheless worth considering. First, it helps to solve the inconsistency problem which Cohen raises for Rawls’ position on individual responsibility. Second, a commitment to desert-independent claims of responsibility suggests a way to understand the role played by primary

¹⁵ *Theory of Justice*, 103

¹⁶ *Ibid*, 104.

goods in meeting the conditions which make considerations of fairness, including the fairness of individuals' responsibility, legitimate. This position, I believe, is plausible even if Rawls himself does not accept it.

Chapter Two

In this chapter, I will identify a line of support for accepting the institutional response to Cohen's objection to Rawls. This stands in addition to my claim, made in chapter one, that the institutional response helps to resolve the inconsistency problem. In order to claim that factors associated with brute luck make it unreasonable to think of individuals as morally responsible for their talents, Rawls must also accept that this fact about brute luck undermines every sense in which it might be appropriate to hold individuals pre-institutionally responsible. The worry with this view is that, while it evades the inconsistency criticism, it may yet make it impossible for Rawls to sustain his commitments to individuals' responsibility for ends. We might, for example, only be interested in choice and responsibility in the service of our judgments about desert. If this is true, the resolution of the inconsistency problem which I developed in chapter one will remain unsatisfying.

By appealing to the Value of Choice account, developed by T. M. Scanlon, Rawls can reject the idea that our reasons for holding individuals responsible are essentially bound up with claims of individual desert.¹⁷ I want to use Scanlon's account to illustrate the kind of reason which could support the practice of holding individuals responsible even if no one actually is responsible. I hope to construct a plausible suggestion as to how Rawls, or any defender of institutional desert, might defend an interest in the moral significance of individuals' choices

¹⁷ These ideas are presented in Scanlon's *What We Owe to Each Other*. Cambridge Mass: Harvard University Press, 1998.

despite concerns about luck. It is important to provide such a defense because the institutional response to the inconsistency problem is successful only to the extent that it can generate an account of responsibility which can explain why we should remain interested in individual responsibility even after we sever the connection between responsibility and pre-institutional desert.

I. Scanlon's Value of Choice Account:

Scanlon sets out to resolve the problem of how the practice of holding individuals responsible for their choices could be compatible with the Causal Thesis that agents' actions are entirely, or substantially, determined by external forces. He argues that, properly understood, the claim that it is reasonable to impose substantive responsibilities on individuals in a political community remains untouched by the causal objection I have been discussing. The Causal Thesis may force us to disregard some ways of talking about responsibility and how it works, but it does not undermine the reasons we have to value giving individuals the opportunity to make choices and to have these choices affect what happens to them. Having choices affect what happens to individuals is here equivalent to the idea of bearing the costs, or reaping the benefits, of choosing. The reasons we have for being interested in people's choices and their responsibility for them, Scanlon argues, do not depend on the false belief that the source of the actions is something other than external influences, despite common ways of discussing freedom and responsibility.

Scanlon argues that considerations of individual moral responsibility are well-served by drawing a distinction between attribution and substantive responsibility. Attribution relates to whether an action can be traced to an agent. We find, for example, that someone is not attributively responsible for his actions when the source of the actions is a tumor putting pressure on his brain, or a set of electrodes being manipulated externally. Ascriptions of praise- or blameworthiness rely on the possibility of attribution. Deliberations about the content of these attributions, however, are separable from considerations of what individuals owe to one another. What individuals owe to one another represents the set of their substantive responsibilities. These, Scanlon argues, are assessed with reference not to praise- or blameworthiness, but with reference to the conditions in which individuals make their choices.

Evaluations of moral desert are, on Scanlon's view, distinct from, and so unnecessary to, the content of individuals' substantive responsibilities. This content is determined by what individuals owe to one another and what individuals can expect. This separation between moral attributions and substantive responsibilities clearly supports the institutional move to base assessments of responsibility claims on something other than desert. The circumstances in which individuals make choices are important for Scanlon because it is these circumstances which determine whether or not a given opportunity to choose is valuable. More importantly, shortcomings in the circumstances an individual is placed in when making choices may give her a reason to complain about bearing the costs which result.

Scanlon's idea is that the justification for holding individuals responsible for choices does not rest on the claim that these choices are voluntary, but instead on the claim that these choices

are valuable. He provides a preliminary list of reasons to value opportunities for letting choices affect what happens to individuals which are entirely independent of concerns about the causal sources of agents' behaviour. One of the reasons we have for valuing choices is instrumental. This is the sense of value which we employ when we decide, for example, that individuals should choose what they wear. It is plausible to assume that people will be happiest and most comfortable when they wear what they prefer. So, the choice about what to wear should be left up to them. Individuals in general have an instrumental reason to value opportunities to make such choices for themselves. This instrumental sense is only one of ways in which Scanlon thinks individuals value the opportunity to determine outcomes by making choices. If I let the people in my family buy their own Christmas presents they are, to my discredit, far more likely to get what they want than if the choice is left up to me. So, there is arguably little instrumental value in my choosing their gifts. But in choosing gifts myself, I recognize the value of letting my choices reflect the way I feel about these people, and to reflect my best guess as to what they would like. There is also a sense, Scanlon thinks, in which people value having the opportunity to make choices because of the symbolic value this practice confers. When I allow a sixteen-year-old cousin to make choices about his behaviour which are usually made only by adults, I am offering him a kind of recognition of his agency which he has a reason to value. Proof of this last value can be found in our willingness to see the unjustified absence of this recognition as a palpable harm. I am not interested in defending each of these kinds of value, but only in demonstrating that each of these values is insulated from the Causal Thesis, as none assumes that the value of a choice depends on the chooser being free from external influence. On Scanlon's

view, moral agency basically concerns the capacity to be an arbiter of the multitude of external forces which guide us, and which our individual differences ensure guide us differently. It does not depend, as the worry based on the Causal Thesis assumes, on the idea that individuals are in some way free from these influences.

Scanlon argues that if we in society make it possible for individuals to benefit from the value associated with choice, individuals do not have a reason to complain of the burdens that may result from their choices. It would be unfair, Scanlon argues, if other people, having ensured that the individual has a reason to value the choice situation he has been given, must compensate him for the costs of the choice he makes as if this value had not been conferred. To this end, Scanlon writes:

Once we understand the positive reasons people have for wanting opportunities to make choices that will affect what happens to them, what they owe to others, and what others owe to them, we can see also how their having had such opportunities can play a crucial role in what they can reasonably object to.¹⁸

The criticism that Rawls is completely unable to justify holding individuals responsible can be negated if Scanlon is right that there are values, other than those associated with desert, which can justify making individuals bear the burdens of expensive tastes. One could, following Scanlon, accept the Causal Thesis and yet still contend that the value associated with allowing people the opportunity to benefit from choices-dependent outcomes serves in some way to justify making them bear the costs of their choices as well. This conclusion provides a potential answer the concern raised earlier as to what possible reasons there might be, aside from pre-institutional desert, to justify claims of responsibility. One can dismiss this concern by basing a commitment

¹⁸ Ibid, 251.

to the significance of individuals' choices, for distribution, on factors which operate independently of judgments about desert. These factors might include the desert-independent values which Scanlon's work draws into focus.

This argument for institutional responsibility is notably similar to arguments made by advocates of deterrence, as opposed to retributive or desert-based, theories of punishment. Many have argued that it is unfair to base punishment for violations of the law on the basis of what the criminal deserves for the same reasons that Rawls identifies desert claims as problematic. It does not follow from this claim, however, that we should not detain criminals, for surely we have good instrumental reasons for doing so. Anti-desert theorists argue that there is a justification independent of desert, namely deterrence, which can do all the work to justify punishment previously attributed to ascriptions of blameworthiness. Similarly, I suggest that Rawls can claim that there is a desert-independent reason, stemming from the value of choices, which can support the legitimacy of distributive claims made on the basis of individual's choices.

II. Opportunity as a Justification for Substantive Responsibilities

Scanlon holds that the value of choices, and hence the legitimacy of obligations resulting from these choices, depends on the opportunities in which an individual makes choices. I have developed the following two examples to illustrate the sense in which Scanlon thinks opportunities ground substantive obligations. The idea that the moral significance of choice depends on the opportunities one had to make an informed and valuable choice can explain the difference in the following claims for compensation.

Case One: During the war, person A was given a free pack of cigarettes every day. He was completely unaware of the addictive properties of cigarettes, and of the health risks associated with smoking. Now it is impossible, or exceedingly difficult, for him to quit. He becomes ill and risks financial ruin, in addition to the costs to his health. He claims that it is unfair for him to bear the burdens associated with his ill-informed choice to begin smoking.

Person B makes a claim against the tobacco companies which, while arguably valid, is substantially weaker:

Case Two: Despite prominent warnings placed on cigarette packages, B began smoking at the age of 18 due to social pressure and the image, long supported by tobacco companies, that smoking is cool. She was told that smoking was addictive by public notices and teachers who were required by legislation to present this information in school, but didn't heed these warnings. She then argues that she never chose to become addicted, but only to survive a difficult adolescence.

Both A and B ask for compensation on the basis of claims that the tobacco companies, and/or the state, ought to have done more to increase their opportunities to make a better choice than they did. The difference between these cases is that this claim is more obviously true in the case of Person A, who was given no warning at all, than in the case of Person B, who can only claim that the warnings she did receive were not good enough. The legitimacy of these claims for compensation to offset the costs of choices seems to depend, just as Scanlon has suggested, on the circumstances in which the individuals made their choices.

Another example can defend an even stronger position on the role played by conditions for choosing in grounding claims that individuals should be held responsible. First, consider the following claim against bearing costs. Residents of Wolseley, a neighborhood in the city of Winnipeg, were not specifically told what evening their neighborhood would be fogged for mosquitoes and this may give them a reason to complain if they become sick as a result of the chemicals. They have a reason to complain about this outcome which is distinct from the reasons open to residents outside Wolseley. In general, residents of the city are told what night their areas are to be fogged in order to maximize their opportunity to avoid undue exposure to malathion. It is suggested, for example, that one close one's windows during the fogging to offset the risks associated with the practice. Due to controversy over the fogging this season, and arguably the city's insidious tactics to evade dealing with this controversy head on, residents of Wolseley were not given this standard notification. These residents have a reason to complain because the city gave them an unreasonably reduced opportunity, compared to other Winnipeg residents (and compared to the opportunities Wolseley residents have had access to in the past), to close their windows that night, and thereby avoid potential contamination. The opportunity to choose to avoid contamination was not as valuable as they had a reason to want and to expect it to be. An absence of acceptable conditions undermines the obligations to bear the costs of having closed the windows or not.

Looking at the harm in this example, it is tempting to believe that it is the involuntary exposure to harm which can support Wolseley residents' complaints against the city. But placing the emphasis on opportunities for choosing suggests another interpretation. Just as an absence of

acceptable conditions undermines responsibility, reasonably sufficient background conditions can, on Scanlon's view, make it fair to impose the burdens of outcomes on individuals even in the absence of an explicit choice being made. This stronger position is that the presence of reasonable opportunities can serve to justify the imposition of burdens on individuals even in the absence of explicit choice. This position has gives less weight to the idea of voluntariness. For example, if the city of Winnipeg tells residents about the practice of fogging for mosquitoes, and the recommended precautions, by radio, newspaper, and television, it may have done its job well even if I fail to see or hear any of this information. Doing this job well may require the city to take additional measures, such as posting large billboards giving relevant information in prominent places, to try to inform those who are unlikely to listen to the radio, watch t.v., or read the paper. But even these measures cannot guarantee that I, who have been at home writing a thesis, will get the information I need to make this decision well.

Notice that in this example, I am just as badly off as the Wolseley residents, yet I have fewer grounds, and arguably no grounds at all, to support the claim that the city ought to have done more to warn me. Scanlon stresses the latter part of this claim, arguing that compensation involves assessments of who owes what to whom. Judgments about what is owed rely on judgments about what individuals have good reason to insist on in order to legitimate the imposition of choice-dependent outcomes. I have a good reason, whether I am in Wolseley or just haven't heard the news, to want to know more about the fogging than I do. But only the Wolseley residents have a reason to want to have been treated differently.¹⁹ This second type of

¹⁹ This may seem puzzling, as I clearly have a reason to have wanted more warning than I got. I might, for example, have reason to want an individual to have come to my house and rung my doorbell to tell me that my street would be

example, in which a choice was not made at all yet the conditions I was placed in were fair, leads Scanlon to conclude that:

One important virtue of the Value of Choice account is that it allows the various conditions under which a choice is (or could be) made to be taken into account separately from the fact of a choice itself, and to be given the independent significance appropriate to them.²⁰

He goes on to argue that the view that what grounds responsibility claims is voluntary choice concentrates on the possibility of choosing otherwise, and, in doing so, “focuses our attention in the wrong place.”²¹ For Scanlon, what is important is not whether a choice was made, or made voluntarily, but rather the value of an individual’s opportunity to choose and whether or not others have done enough to guarantee this value.

These examples hinge on the presence or absence of reasonable warnings, but Scanlon’s view can encompass far more than this as well. It is possible to see Scanlon’s insight as supporting a comprehensive distribution of resources similar to the one Rawls advocates. Rawls argues that considerations of fairness take place only after the principles of distribution have been brought in to play. Rawls’ basic list of primary goods, which are distributed according to these principles, consists mainly of features of institutions, like basic freedoms and access to opportunities for education and development. One reason to think primary goods are necessary

fogged, since I haven’t been out to see the other notices. I am assuming in this example that the city residents have approved a system for alerting individuals, which balances safety and efficiency, through a method of deliberation which I would agree with. The Wolseley residents have not been treated in accordance with the expectations which prior practice and legislation support, whereas I have, even though being treated in accordance with expectations has done me very little good.

²⁰ *What We Owe to Each Other*, 261.

²¹ *Ibid*, 269.

for grounding individual responsibility is the idea that these goods help to establish conditions which guarantee the value of individuals' choices.

III. Scanlon's Value of Choice vs. the Desert-based Theories

Scanlon's position provides an alternative to the standard reading of the relationship between choice and responsibility. This standard reading, which Scanlon labels the Forfeiture View, holds that it is crucially important whether an outcome actually resulted from a conscious decision on the part of the agent. On this view, someone who makes a bad choice, which reduces her welfare, doesn't deserve compensation for the negative outcome because this outcome is "her own fault". This reading suggests that a person is responsible for her fate when she chooses and/or acts deliberately. Although this view is probably most closely related to our everyday intuitions about responsibility, there are good reasons to reject it. The first reason to reject this view is that it is not necessary. Scanlon argues that:

From the fact that a person, under the right conditions, took a certain risk, we may conclude that he alone is responsible for what happens to him as a result. But this need not be seen as reflecting the special legitimating force of voluntary action in the way the Forfeiture View would suggest. The mere fact that [this person] was placed in conditions in which he had the choice...may be sufficient.²²

A second reason to reject the Forfeiture View is that background conditions for choosing can sometimes be sufficient by themselves to ground responsibility. The above example in which I fail to notice available precautions aims to show that it may be reasonable to hold someone responsible just in virtue of adequate conditions. If this conclusion is reasonable, explicit choice

²² Ibid, 260.

plays far less of a role in justifying the imposition of substantive duties than the Forfeiture View would suggest. The Forfeiture View places considerably more weight on the idea of voluntariness than does Scanlon's view. Scanlon uses the following example to support this claim.

The difference between a person who entered into an unfavorable agreement because he completely ignored an alternative that was made known to him and a person who entered into such an agreement because that alternative was concealed from him does not lie in the fact that the former agreed voluntarily while the latter did not.²³

The difference between these two is instead that the opportunities available to the first person were unavailable to the second. Both have a reason to want to know about the alternatives available to them, but only the second can claim that a lack of recognition of this reason on the part of others serves to undermine the validity of the contract he has signed. The Forfeiture View, Scanlon argues, conflates voluntary choice with the legitimacy of outcomes, and so cannot make sense of this difference; or, rather, Forfeiture cannot easily make sense of this difference by appealing to voluntariness alone.

A third reason to support Scanlon's Value of Choice account is that the Forfeiture View seems to rely on commitments to individual freedom which are undermined by the Causal Thesis. The Forfeiture View suggests that a person is responsible just because she made a choice, as she could have chosen otherwise than she did. But this statement requires an understanding of "could have" which is compatible with the Causal Thesis, and Rawls' arguments about luck give some hint as to the difficulties associated with such a position.

IV. Objection to Scanlon's Value of Choice

²³ Ibid, 261.

It is tempting at this point to pose the following counter-argument to Scanlon's Value of Choice account. Often being able to choose is not very valuable, and this is especially true for individuals who consistently make bad choices. They may make bad instrumental decisions, represent themselves inadequately or in ways which give offense, etc. Scanlon argues that individuals *in general* stand to gain from allowing their choices to affect them in the ways I have discussed, and so have good reasons to endorse policies which make such opportunities for choice-dependent outcomes available. But this response may yet be unsatisfying to an individual who continually suffers the burdens of her bad choices. Scanlon's view is that it is fair to hold individuals responsible for choices because of the value of these choices. But this suggests that holding individuals responsible is patently unfair in cases in which this value to the individual is absent.

Scanlon argues that "bad choosers", like everyone else, have a reason to insist on conditions for choosing which are able to support the value of their choices. This gives the bad chooser more reason than the good chooser to insist on circumstances which can offset the risks associated with making bad choices, as this is what is required to support the value of her choices. For example, I have a reason to demand being told of the potential danger to me upon entering a game park with dangerous wild animals. This is because the rest of the choices I make while in the park, such as the choice to eat my lunch at a picnic table outside and far from safety, are significantly less valuable to me when I am unable to calculate the risks involved. The bad chooser has a reason to ask for more than this. She might also insist on the presence of signs throughout the park to remind those who forget the initial warning issued at the gate, or cannot

reason from this initial general warning that it is unwise, because dangerous, to eat one's lunch outside. If she cannot read English well, she has a reason to want these signs to be presented pictorially, or in a range of languages. She might even have reason to argue that putting a very inviting picnic table quite close to a den of the lions is unreasonable, for it makes it too likely that someone like herself will make a choice which will do her harm.

For Scanlon, the value of a choice depends on the opportunities one has available when making the choice. The good chooser may need less to ensure access to these opportunities than others. However, the reason a good chooser wants information at the park gate is the same reason, and just as good a reason, for the bad chooser to insist that these other precautions are met as well. There will of course be disagreement about which precautions are necessary for a choice situation to be valuable enough to ground claims of responsibility. If I speak only Gaelic, and therefore am most benefited by signage in that language, this may not be enough for me to demand that game parks throughout the world use this language. Adjudicating demands like this one is difficult, but not impossible. Despite the inevitability of such disagreements, Scanlon holds that the bad chooser, like the good, can insist on, and often get, sufficient opportunity to make choices which are valuable.

Scanlon must be able to claim that it is fair to hold individuals responsible even when they make bad choices, because otherwise one could argue that the value of choice is best preserved by letting people make choices without suffering the associated burdens. Scanlon's response to this problem of the bad chooser, presented above, can now be summarized.²⁴ First,

²⁴ Ibid, 261.

the Value of Choice account holds that it is important to place even bad decision makers in situations in which they have reason to value the opportunity for choice-dependent outcomes, because people in general have a reason to insist on a principle guaranteeing this value. Secondly, conditions which can guarantee that individuals in general have ample opportunity to make valuable choices make up only a part of what people have reason to insist upon. They also have reason to demand extra measures, perhaps like the prominent photographs of diseased lungs on cigarette packs, which serve to mitigate the likelihood of making bad decisions. "Because some people are likely to choose unwisely, it is not enough merely to warn people even if they could all protect themselves by taking appropriate precautions."²⁵ Appropriate circumstances in which to choose, therefore, do more than enable choices, they also reduce the risks associated with them.

Scanlon's idea is that circumstances which support valuable choices, as well as safeguards which help ensure that the burdens imposed by these choices are made avoidable, adequately offset the costs associated with holding individuals responsible. The right kinds of conditions can, Scanlon thinks, ensure that everyone we consider a competent moral agent has a reason to value opportunities for choice-dependent outcomes.

V. Additional Objection to Scanlon's Position

Although I generally support Scanlon's position on the relationship between moral desert, opportunities and responsibility, it is not without practical problems. The success of this position

²⁵ Ibid, 263.

on the whole will depend upon whether the principles Scanlon advances are at all practicable. The following problem strikes me as particularly difficult for a defender of this view. I argued that an individual might have a claim against the city if it failed to take extra measures, for those who do not have regular access to standard media channels, to warn people of the potential danger associated with fogging. But it is possible to provide measures of this type partly because it is clear in this case what is worth avoiding. Similarly, it seems clear that cigarettes are bad for people's health, and so reasonable that individuals would value being warned about the dangers associated with smoking. But there are so many matters on which it is much less clear what is bad and what is good.

If we were in a society in which it was understood as a hardship, due to a reduction in welfare, to cultivate expensive tastes, it might be reasonable to make it less likely for individuals to choose to develop such ambitions. There is certainly a sense in which we think this is true in our society now. It seems only fair, for example, to let the photographer know as he is developing his taste, and not only after it is too late, that the costs of the material he needs is high. There is also a sense in which, at least in our society, it would be very wrong to use this 'extra measures' justification to hide all the books in the library which correspond with expensive hobbies. (Yet we do think that some expensive hobbies, such as heroine addiction which imposes hefty burdens on those who choose to pursue it, should be curtailed in this way.) On Scanlon's view, it is not obvious how we come to agree on what measures are necessary to ensure valuable choice, and consequently what claims on the basis of insufficient measures are legitimate. The worry here is that the difference between telling the photographer it is expensive

to pursue his ambition and hiding the books is one of degree. We judge the latter precaution to be too harsh because our present society, generally, does not support the view that it is a great hardship to develop an expensive ambition.

Liberal political philosophers devote a great deal of space to the issue of which protections are justly or unjustly paternalistic.²⁶ This emphasis is best understood as an attempt to accommodate the concern I have just raised. If the freedom relevant to grounding individual responsibility is dependent on having the right set of circumstances available, the distinction between what constitutes just circumstances and what constitutes infringements of them needs to be very clearly defined. I am not yet sure, though, whether any distinction would be up to the task that Scanlon sets for it. For example, what would we do if half of the population believed that it is a great misfortune to develop expensive ambitions, but the other half thought just the opposite? This is exactly the kind of disagreement in which members of a liberal society ought to be able to peacefully engage.

The circumstantial requirements upheld by institutions which I have argued are necessary to ground claims of individual responsibility will, however, have to reflect one and not both of these viewpoints. It is unclear how such requirements should be established, or the ways in which these requirements should be subjected to criticism once established.²⁷ The worry is that it is arguably unfair to withhold the extra measures requested by individuals who think expensive ambitions are, like malathion, potentially harmful. But it is also unfair to dissuade the

²⁶ See, for example, Dworkin, *Sovereign Virtue*, Cambridge, Mass: Harvard University Press, 2000, pp. 224-5, 216-18, 269-272.

²⁷ One possible solution to the problem I am here posing is to invoke Rawls' veil of ignorance, and suggest that fair precautions are those which individuals would agree to if they did not know which side of the debate their own inclinations and preferences would lead them.

development of such preferences for those who think that a life well-lived involves sacrifice for noble ambitions. It is certainly unfair, and otherwise difficult to accommodate, the position that there should be different precautionary measures available to these two groups.

One way to address this objection may be to suggest that the best kinds of precautions are ones which give the choice to individuals, without encouraging or discouraging them to close their windows, or avoid certain books, or not. Although this suggestion is, I think, on the right track, it misrepresents some of what precautions do. Scanlon writes that “safeguards enhance the value of choice...by making it less likely that people will choose” to do what is harmful for them to do.²⁸ But this assumes, I think too easily, that it will be either possible or appropriate for distributive institutions to determine what is harmful for individuals to do and to pursue.

Certainly there are cases in which harm is clear, but there are many cases in which it is not.

Principles of a liberal distribution of resources can incorporate Scanlon’s position, which offers a clear picture of how substantive obligations might be justified without recourse to desert, to defend the view that it is fair to hold individuals responsible for the costs of some of their choices. Let me now summarize the strengths of the position on choice and responsibility which Scanlon advances. First, this position does not base responsibility claims on desert, and is therefore not undermined by arguments suggesting that individuals are not sufficiently deserving of the outcomes generated by their choices. Second, the institutional account I argued for in chapter one supposes that there is something about the practice of institutions which can ground claims of responsibility. This is, in many ways, a puzzling assertion. This claim is only plausible,

²⁸ *What We Owe to Each Other*, 264.

I think, when what grounds claims of responsibility are conditions outside an agent, such as the liberties and opportunities which she has available to her when making choices. Although Scanlon's account holds that part of what justifies the burdens associated with choices is the value, to the individual, of having opportunities for choice-dependent outcomes, this value is directly tied to facts about the external circumstances which support such opportunities.

Scanlon's Value of Choice account suggests that substantive claims can be grounded by appropriate background conditions for choice. This position provides a compelling alternative to the view that we are only interested in choice insofar as it can support claims of pre-institutional moral desert.

Chapter Three

In this chapter, I will present Ronald Dworkin's position on individuals' responsibility for expensive tastes.²⁹ Dworkin holds that it is fair to hold individuals responsible for some of their tastes, and some of the choices they make in the pursuit of these tastes. His claims about individual responsibility have been the subject of much discussion in the last decade, and it is in virtue of his prominence as an exponent of responsibility for choices that I consider his position here. I aim to show that Dworkin, no less than Rawls, can defend his position against criticism by adopting an institutional approach to the role of responsibility in a just liberal distribution.

I: Dworkin's position on expensive tastes

Dworkin holds that our judgments about individual moral responsibility fundamentally rely on a distinction between individuals' ambitions and their endowments. Inequalities in the latter are seen to reflect brute luck. Like Rawls, Dworkin argues that distributive justice aims at alleviating the inequalities produced by luck. The aspect of responsibility which Dworkin is most concerned with is the basis of individuals' moral obligations to bear the costs of some of the disadvantages and burdens of their situations themselves. In other words, Dworkin is interested in defending some sense in which it is appropriate to hold individuals responsible for their

²⁹ Although Dworkin's work on this subject first appeared in dozens of articles, the main tracts of his theory have been compiled in his monograph *Sovereign Virtue*. I cite only this book as a convenience, as I am fairly certain there is nothing significant in Dworkin's published work on responsibility which is unavailable in this text.

actions. Dworkin argues that individuals should be relieved of misfortunes which result from factors attributable to brute luck. Brute luck, for Dworkin, includes a person's talents, health and strength but excludes a person's ambitions, preferences, judgments and tastes. A person who is born blind deserves compensation on this view in a way that a lazy person does not. The blindness does not stem from any choices of the individual, but from bad luck. A person has the attribute of laziness, in contrast, if she chooses not to work, or chooses to work less hard than others with similar abilities. The attribute is tied to a person's choices.

There is an ambiguity here, however, as it is not clear what work is done by the idea that a choice is really made in the case of laziness. The chief difference between laziness and blindness is that being lazy is a way of responding to one's opportunities whereas blindness limits the responses which one has available. These traits are nonetheless similar in that both limit one's capacity to engage in certain activities. Blindness but not laziness deserves compensation on Dworkin's model of equality of resources. In this chapter, I will further examine Dworkin's commitment to seeing these two cases as distinct.

Dworkin's interest in the role of personal responsibility is, as it is for Rawls, most clearly evident in his discussion of expensive tastes and what they entail for a just distribution of resources among individuals.³⁰ Dworkin expresses great sympathy for the idea that people do not deserve any compensation for the expensive tastes they choose to cultivate. Dworkin holds that a just distribution of resources requires that individuals be made to bear the costs of at least some of their choices. Dworkin rejects equality of welfare as a political ideal because it is unable to

³⁰ See *Sovereign Virtue*, pp. 48-59

make sense of this commitment to justifiable inequalities in welfare which result from differences in taste. Dworkin therefore concludes that resources, rather than welfare, should be the subject of an egalitarian distribution. A just liberal distribution, Dworkin argues, is one which provides equal resources to its citizens.

G. A. Cohen has advanced a series of objections to Dworkin's position on expensive tastes.³¹ Cohen agrees with what he supposes is Dworkin's idea that individuals who are genuinely accountable for their choices do not deserve compensation for the inequalities which result from them. Cohen goes on to argue, however, that genuine accountability requires more than Dworkin seems able to accept. In a great many cases, individuals' choices are suffused with elements of luck, which Cohen argues Dworkin, as a resource egalitarian, has reason to view as worthy of compensation.

In considering this criticism of Dworkin's position, I aim to show that the best defense available to a resource egalitarian is to adopt an institutional account of responsibility claims. By invoking this defense, Dworkin can interpret claims against compensation for tastes as complex statements about what a just distribution has a mandate to distribute, rather than simply as claims that individuals with expensive tastes deserve, in virtue of their choices, to have less than others. For example, the claim that Susan deserves to bear the costs of her choice to sit in the very front of the arena (in seats which are in great demand), rather than take a chair in the middle somewhere (a much less desirable location), is equivalent to the claim that a just distribution could justify the inequalities which might result from choices such as Susan's. Her choice, and

³¹ Cohen's criticism of Dworkin, like his criticism of Rawls, is discussed in "On the Currency of Egalitarian Justice".

the attendant costs, is morally significant as opposed to morally arbitrary and so they do not merit compensation from our distributive practices. This significance means that there is no reason to redress the resultant inequality on the grounds that its cause was morally arbitrary. The effects of moral arbitrariness, or brute luck, and not the presence of inequalities per se, motivate Dworkin to argue for compensation of inequalities.

It is possible to read Dworkin's project as an advancement of an institution-dependent commitment to personal responsibility, as opposed to a pre-institutional account. This is possible because Dworkin's account neither clearly commits him to pre-institutional desert, nor to its dismissal. It is my hope that, in examining a defense of Dworkin's view on choice-based inequalities, it becomes clear that a defender of resource, as opposed to welfare, egalitarianism has abundant reason to align her commitments about individuals' responsibility with an institutional account.

II. Cohen's criticism of Dworkin:

G. A. Cohen has presented several challenges to Dworkin's position on the role which luck and choice play in determining what inequalities warrant compensation on a just distributive scheme. Cohen makes the case that even when individuals are recognized as making choices on the basis of their preferences, these preferences are often dictated by aspects of their personality for which individuals cannot legitimately be held responsible. For example, if I have an especially sensitive pallet, it may be very unpleasant for me to drink cheap wine and this unpleasantness may lead me to buy wine which is more expensive than the wine my friends

choose to buy. It seems clear that I chose to purchase the expensive wine, but I did not choose to have the sensitivity which makes it difficult for me, but not for others, to enjoy a bottle which would cost me considerably less. Cohen argues that the most appropriate way to understand my choice to purchase the wine is to see it as a consequence of my involuntarily expensive taste. This taste for better wine is surely a matter of brute luck, and, following Dworkin's own commitment to compensate individuals for inequalities which result from brute luck, I should be compensated for the additional cost of the better wine. The sensitivity of my pallet is, on Cohen's view of tastes, not of my own making and so akin to a mild handicap. It should be compensated for on the very same grounds we employ when justifying compensation for handicaps. Cohen holds that it is reasonable to hold individuals responsible for the costs of their expensive choices only when it is true that individuals are in fact responsible for making the choices they make, because only "genuine choice excuses otherwise unacceptable inequalities."³² The inequality in resources which results between me and my friends who can drink cheaper wine is, Cohen thinks, unjustifiable.

The alleged injustice of inequalities based on expensive tastes seems particularly acute when we consider the case of expensive ambitions. Cohen offers the example of a photographer who finds that his ambition to succeed in photography will require an enormous sacrifice of his resources, as he will need to purchase expensive lenses and chemicals. He could choose not to purchase this expensive equipment, but only at the cost of not pursuing his ambition to become a photographer. (This is similar to the choice available to me in the first example. I can choose not

³² "On the Currency of Egalitarian Justice", p 931.

to buy an expensive bottle of wine but only at the cost of drinking wine which I find very unpleasant.) Failure to pursue his ambition would make the would-be photographer miserable. It seems unfair that he, and not his friends whose ambitions are easier to satisfy, should be faced with the prospect of being either poor or dissatisfied with his life. The point Cohen wants to press with the example is that the cause of the photographer's suffering, the negative consequence associated with not buying the expensive equipment, could not have been chosen by the agent because his ambition was not deliberately cultivated. In fact, it is a consequence which he would likely avoid if it were possible to do so. Although unbidden, the high cost of his ambition now exerts a force, or a welfare limiting condition, which operates like the handicaps for which Dworkin is willing to compensate. Cohen suggests, therefore, that Dworkin is being inconsistent when he argues that welfare limiting handicaps deserve compensation as opposed to expensive tastes, like the average lazy person's expensive tastes for leisure. The average lazy person seems unlikely to have chosen his taste for laziness. And this failure to choose at the level of taste, on Cohen's view, undermines claims of responsibility. Cohen argues:

I distinguish among expensive tastes according to whether or not their bearer can reasonably be held responsible for them. There are those which he could not have helped forming and/or could not now unform, and then there are those for which, by contrast, he can be held responsible, because he could have forestalled them and/or because he could now unlearn them.... There are all kinds of reasons why a person might want to develop an expensive taste, and it is each person's business whether he does so or not. But it is nobody else's business to pick up the tab for him if he does.³³

Louis, the subject of an example Dworkin uses in his discussion of responsibility for tastes, is an individual who 'schools himself into' an expensive taste for champagne. Louis does

³³ Ibid, 923.

not have a sensitive pallet, but tries to cultivate one in pursuit of snobbish vanity. The mere fact that Louis is made profoundly unhappy by anything less than a surplus of champagne with every meal does not, Cohen and Dworkin agree, give us any reason to think that funds should be redistributed so that Louis might be allowed to avoid such a disappointment. Where Dworkin and Cohen disagree fundamentally is with respect to the cases which are more difficult than Louis's. For Dworkin, the photographer with the expensive hobby is a lot like Louis, while for Cohen the photographer deserves a kind of compensation which Louis has, in virtue of his choices, forfeited.

The failure of welfare equality to make sense of Louis, and our reasonable disinterest in his self-induced need, leads Cohen to advocate a position which he calls equality of opportunity for welfare. His position aims to provide an alternative to both equality of resources and equality of welfare. Equality of opportunity for welfare can support compensation for tastes which are involuntarily formed, like the photographer's, while still providing reasons for rejecting the claims of the willing champagne-addict. Cohen's criticism of Dworkin, then, is that in his failure to distinguish Louis from the photographer, Dworkin falls short of his own stated commitment to alleviate the effects of brute luck on individuals.

In responding to Cohen's criticism, a resource egalitarian can either claim that individuals are responsible for their tastes and ambitions in a way which Cohen fails to realize, or that accountability doesn't play the role in grounding responsibility claims which Cohen thinks it does. Perhaps a resource egalitarian could accept the view that once certain initial conditions are met, individuals are responsible for their choices in such a way that it is fair to

hold them responsible. Cohen offers a second objection, however, which makes this first approach to defending resource egalitarianism look less promising. He argues that, even if we accept the problematic idea that the photographer is responsible for his ambition, it seems unreasonable to think that he is responsible for the costs associated with the pursuit of this ambition. Cohen argues that “the typical unrich bearer of an expensive musical taste would regard it as a piece of bad luck not that he has the taste itself but that it happens to be expensive.”³⁴ Cohen thinks that this fact about luck and cost serves to undermine Dworkin’s position not to compensate the photographer. The cost of photographic material is, after all, determined by a multitude of factors: the location and scarcity of materials, the number of other people who want the same goods as well as how badly others want these goods, the costs of transporting goods to the photographer, etc. There is no way to make a good case for the claim that the photographer is responsible for bringing these factors about, and so it is impossible to claim that the photographer is accountable for the costs of the photographic equipment. Cohen states his willingness to agree with Dworkin that, to the extent that people are indeed responsible for their tastes, resulting inequalities in the relevant welfare are justifiable. Because the photographer is not really responsible for the costs of his choices, the inequalities which result from this cost being relatively high are not inequalities which it is reasonable to expect him to suffer. The challenge to Dworkin is to defend the idea that individuals are generally responsible for their expensive tastes to an extent which could justify resulting inequalities. Cohen’s second

³⁴ Ibid, 927.

worry is that, in a great number of cases in which Dworkin wants to justify inequalities which result from tastes, it is clear that individuals are not responsible for their tastes being expensive.

Cohen's challenge to Dworkin is therefore two-fold. First, Cohen argues that the moral difference between cases like that of Louis, who deliberately cultivates his expensive taste, and others who develop their tastes less deliberately, is underestimated by Dworkin. The first challenge for Dworkin, then, is to explain why it is just to hold individuals responsible for choices even when they are not responsible for having the tastes which motivate these choices. If he cannot do this, resource egalitarians have a reason to accept Cohen's claim that the photographer should be entitled to compensation for his expensive ambition. The second challenge concerns the costs associated with the pursuit of ambitions, even when these pursuits are deliberate. Dworkin, Cohen argues, must explain why it is fair to hold individuals responsible for the costs of their choices, when these costs surely are not in their control.

Cohen's attack on Dworkin's position is closely related to a concern I raised about a vulnerability in the institutional responsibility position, attributed to Rawls in Chapter One. I there suggested that advocates of an institutional position must justify the claim that there is something about the practices of just political institutions which makes it fair to hold individuals responsible for some of their choices. I invoked Scanlon's account in Chapter Two to support the idea that the availability of opportunities in which to choose may fill this role. Scanlon's position may also be useful to Dworkin as well, as Cohen's criticism is most damaging if there is nothing other than responsibility for tastes which could sufficiently ground the sanctions for tastes which Dworkin supports. If there is nothing other than responsibility which could do this work, and

Cohen is right to maintain a version of the Causal Thesis which holds that because individuals are not generally responsible for developing the tastes that they do, one cannot justify holding individuals like the photographer responsible for their costly ambitions.

Institutions work in a way which makes it unlikely that their practices, however just, could bolster claims of individual responsibility. Genuine choice, as Cohen seems to understand it, is dependent on internal states of the agent, rather than on states of affairs provided by institutions. However, Cohen's criticism of Dworkin is threatening to the extent that Dworkin must rely on a commitment to the idea that it is genuine responsibility for choices which supports choice-based inequalities in resource egalitarianism.

III: Dworkin's response to Cohen

Dworkin develops several responses to Cohen's objections. I will consider one of those responses here.³⁵ Dworkin argues that Cohen's objection is essentially at odds with Cohen's own position. It targets all taste-based inequalities, even those Cohen is ostensibly willing to accept as legitimate. I will not argue for the merit of Dworkin's response, but instead try to show that the best way to make sense of its insights is to adopt an institutional position on responsibility.

In making his criticism of Dworkin's position on expensive tastes, Cohen leans heavily on a distinction between voluntarily and involuntarily cultivated tastes. This distinction may be more difficult to draw than Cohen anticipates. It is hard to imagine that cases of voluntary cultivation, in the sense that Cohen uses it, are frequent enough to be of interest. The scope of

³⁵ Dworkin's responses to Cohen's criticism of his position can be found in Chapter 7 of *Sovereign Virtue*.

Cohen's category of non-voluntarily cultivated tastes, remember, includes the photographer's ambition. The photographer case is apt to be fairly typical of cases of expensive tastes and ambitions, and so the vast majority of cases of expensive ambitions will be ones which Cohen, but not Dworkin, views as in need of compensation.

It is worthwhile to consider the sense in which Cohen holds the photographer's taste for photography to be involuntary. This taste may have come upon him even though the price tags on the equipment in the photography magazines which first sparked his interest were clearly presented. Under such circumstances, a case could be made that the photographer made a voluntary choice to not let the price of these objects offset his budding interest in them. This small change to the example shows that intuitions will differ about which taste formations are voluntary and which are involuntary, at least in many cases.

The photographer may remain unaware of the high cost of his ambition until it is already developed. But it is unnecessary, on Cohen's view, for the photographer to be so unaware in order for the expense to be considered an unjust burden. Cohen's second criticism, which focuses on the costs of choices, yields a conclusion which is so strong that even Louis's taste is unlikely to seem voluntary in the sense required to justify making him bear the high cost of his champagne brunches. If responsibility for expensive tastes requires that an agent be responsible for the costs of a given taste, no one is responsible for any tastes at all. Even Louis, it seems, would be unable to meet this rigorous standard, for he cannot exert control over what his choices cost, as these costs are determined by all sort of factors, including the climactic conditions of the vineyards which produce his drink.

Dworkin concludes that the moral significance which Cohen hopes to illuminate by contrasting the examples of the photographer and Louis is actually illusory. If we are not responsible for the consequences of the choices which we make reflecting our tastes, because those tastes are not themselves chosen, then we are not responsible for any of our expensive tastes. Dworkin interprets Cohen's argument against individuals bearing the costs of their involuntarily cultivated tastes as essentially an argument for equal welfare, despite Cohen's belief that his argument charts a third way. Cohen's position collapses back into equal welfare because the set of cases which meet Cohen's requirement for justifiable inequalities is, Dworkin argues, entirely empty. No one is accountable for costs in the way Cohen suggests is necessary, nor is anyone, even Louis, arguably responsible for his tastes for tastes.³⁶ Rather than simply limit the kinds of tastes which can give rise to legitimate inequalities, Cohen gives us good reason to think that no tastes can work this way.

Dworkin's arguments against Cohen could also be turned against his own equality of resources position, depending on Dworkin's commitments to responsibility as pre- or post-institutional. If Dworkin is seen as committed to the idea that the legitimacy of substantive obligations relies on individuals being genuinely responsible, then he, like Cohen, will have to accept that no one, or very few people, should be held responsible for their choices. It is unlikely, however, that Dworkin views his own position as depending upon voluntariness in quite the way

³⁶ See Dworkin's discussion of Louis's 'tastes for refined tastes' in *Sovereign Virtue*, p. 289.

Cohen suggests.³⁷ In discussing the case of Louis, Dworkin argues against the idea that voluntariness can explain why it is fair to hold Louis responsible. Dworkin argues:

People reason about their theories of what gives value to life in something of the same way in which they reason about other sorts of beliefs. But they do not choose that a life of service to others, for example, or a life of creative art and scholarship, or a life of exquisite flavors, be the most valuable sort of life for them to lead, and therefore do not choose that they will believe that it is. We may still distinguish between the voluntary decision someone makes to become a person with certain tastes..and his discovery of his tastes and ambitions that he just has. But the distinction is less important than is sometimes thought, because that decision is rarely if ever voluntary all the way down.³⁸

Dworkin suggests in this passage that he is aware of the causal worry Cohen raises, and that he accepts that appeals to the voluntary nature of choice will always fall short of justifying obligations because our decisions are rarely voluntary, or separable from tastes which are formed involuntarily. The onus is still on Dworkin, however, to establish an alternate source of legitimacy for the view that it is just to hold individuals responsible for some of their choices. An institutional reading of his position allows for development of such an alternative.

IV: An Institutional Answer to Cohen's Criticism of Dworkin:

Scanlon's position on responsibility offers a way to support the key claim in the most promising defensive strategy open to Dworkin, or a defender of his views. This is the claim that Cohen has fundamentally misunderstood the way choice-based inequalities must be justified in resource egalitarianism. Scanlon's position provides a compelling alternative to this view. His thesis about substantive responsibility and its justificatory conditions offers reason to think that

³⁷ It may, however, yet be the case that Dworkin believes individuals so be genuinely responsible on some basis other than voluntariness.

³⁸ *Sovereign Virtue*, 52.

Dworkin's claims about expensive tastes can be maintained consistently with his commitment to compensate for handicaps. This reason can defeat Cohen's criticism of the consistency of Dworkin's commitments toward tastes and handicaps. By adopting a position like Scanlon's, resource egalitarians can support the idea that Dworkin's position on responsibility for tastes is defensible for reasons other than the incoherency of Cohen's objection to it. It is defensible because there are reasons to hold individuals responsible for their tastes which are not derived from the problematic claim that it is appropriate to hold individuals morally blameworthy for having the tastes they do.

Conclusion:

In this thesis, I hope to have defended the following points. First, Rawls can defend his commitments to individual responsibility by adopting an institutional account of how responsibility claims work. This response is successful in addressing the worry that Rawls' commitments are inconsistent, as it makes sense of Rawls' claim that no one deserves anything at all yet it is fair to hold individuals responsible for their ends. Second, the success of the response developed in Chapter One depends in part on what, aside from the pre-institutional desert, can ground the significance of choices to just distribution. I argue that Scanlon's position, which holds that substantive responsibilities are derived from the value of choices, provides a compelling candidate for what might fill this role. Finally, I consider Dworkin's view on individuals' responsibility for tastes, and argue that Dworkin also has a reason to adopt an institutional, as opposed to pre-institutional, account of responsibility. Cohen's criticism of Dworkin's commitment to responsibility for tastes is easily defeated by the idea that the justification of substantive obligations resulting from individuals' choices is something other than the voluntary nature of choice. Such an alternate basis can be found in the desert-independent reasons Scanlon identifies for valuing choices and viewing them as significant to determining what individuals should have, and what they owe to one another.

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