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Title	What we owe to children: A rawlsian perspective in an irish context
Author(s)	Cahill, Audrey R
Publication Date	2013-10-02
Item record	http://hdl.handle.net/10379/4706

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WHAT WE OWE TO CHILDREN: A RAWLSIAN PERSPECTIVE IN AN IRISH CONTEXT

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THIS THESIS IS SUBMITTED IN PARTIAL FULFILMENT FOR THE DEGREE OF
PH.D.
AT THE NATIONAL UNIVERSITY OF IRELAND, GALWAY

OCTOBER 2013

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WHAT WE OWE TO CHILDREN

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DECLARATION OF WORK

I, Audrey Cahill, hereby certify that this thesis, which is approximately 74,000 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

A SUMMARY OF CONTENTS

This thesis begins from the premise that a just state ought to be concerned for how children actually turn out. The basis for this claim is grounded in the contemporary liberal view that each person ought to have the fundamental freedom to lead the life they choose, given an equal right accorded to others. This thesis makes the claim that the circumstances of childhood generate a range of disadvantages, rooted in childhood, that frustrate the liberal goal of free and equal moral persons. In this context the central aims of this thesis are as follows:

1. To establish why the state ought to be concerned about the circumstances of childhood
2. To determine what is required of justice, and subsequently what types of policy are needed, to successfully ameliorate the effects of the circumstances of childhood.

In order to answer these question we provide a thorough review the work of John Rawls, presented as justice as fairness, to determine what we owe to children from the view of social justice. To this end we explore the limitations placed on the role of the state in ensuring the outcomes of children as free and equal moral persons. This leads to our interpretation of Rawls' Difference principle that applies directly to children over a wide range of Primary Social Goods (PSG). We find support for this interpretation in the work of Rawls and recent developments in equality and freedom theory. In the penultimate chapter we flesh out how Rawlsian justice, in this light, can be implemented in an Irish context to ameliorate the circumstances of childhood.

Glossary of Acronyms & Abbreviations

ASU	Anarchy, State and Utopia by Robert Nozick
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CSO	Central Statistics Office
ESC	Economic, Social and Cultural Rights
EU-SILC	European Union Survey on Income and Living Conditions
FEO	Fair Equality of Opportunity
FMF	Free Market Fairness by John Tomasi
GDP	Gross Domestic Product
GNP	Gross National Product
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
KWS	Keynesian Welfare State
NAPS	National Anti-Poverty Strategy
NAPincl	National Action Plan for Social Inclusion
OECD	Organisation for Economic Co-operation and Development
OSI	Office for Social Inclusion
POD	Property Owning Democracy
PSG	Primary Social Goods
Restatement	Justice as Fairness: A Restatement by John Rawls
SILC	Survey on Income and Living Conditions
SWS	Schumpeterian Workfare State
Theory	A Theory of Justice by John Rawls
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children's Fund
WSC	Welfare State Capitalism

ACKNOWLEDGEMENTS

My interest in the perplexities of (dis)advantage was first awakened by the penetrating characterization of Rashers Tierney in the RTE screen adaption of James Plunkett's classic *Strumpet City*. As a child of Dublin city this broadcast was to penetrate the core of my being, and while I was too young to fully understand the complexities of disadvantage, I could at once recognize the injustice that continually befell Rashers and many of his friends. This thought provoking dramatization was to stay with me throughout my successful business career, across two continents and two decades. It acted as a continual reminder of questions of justice and, more importantly, the dilemma of inequality.

It was therefore with great pleasure that I accepted a NUI Galway Doctoral Fellowship to research child poverty in contemporary Ireland. This award facilitated my success in obtaining a three-year Irish Research Council Post Graduate Fellowship, the result of which is this thesis. I am also grateful for the financial support received from the Galway Write-up Bursary. This funding enabled me to finally complete my project.

I would like to thank my supervisor Dr Richard Hull for fostering the development of my ideas with his incisive and constructive feedback and encouragement. I was fortunate to attend UCSD as a Visiting Scholar under the supervision of Professor Richard Arneson. Professor Arneson is an extremely generous teacher who also extended his hospitality to my family making our visit a truly fruitful and rewarding experience.

Finally, much gratitude goes to my friends and family for being constant sources of strength and encouragement and for carrying the burden of childcare over these busy last few months. Special thanks to my mother-in-law Elizabeth Dobbie for the inordinate amount of childcare and encouragement she has provided over the last few years. Finally, I would like to thank my husband Ian for his unflagging support during these testing times and my amazing children for being the shining beacons of hope and opportunity that only children can be.

For
Oisín, Caoimhe, Mossie and Realtín.

In 2012, one in ten Irish children lived in consistent poverty, with just under one in five at risk of poverty (EU –SILC, 2012).

Consistent poverty grinds. It wears childhood out. It gets in the way of potential, like a dam in a stream. (Fergus Finlay Barnardos, 2013).

Our vision is to make Ireland the best small country in the world in which to grow up and raise a family, and where the rights of all children and young people are respected, protected and fulfilled; where their voices are heard and where they are supported to realise their maximum potential now and in the future (Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People 2014-2020, p. 4).

INTRODUCTION

1.1. Central Problems and Aims

Ireland has had a long and complex history with poverty, a history that has played a defining role in shaping the values and beliefs of contemporary Irish society. The preamble to the Irish Constitution asserts that

We, the people of Éire,

Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial,

Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation,

And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations,

Do hereby adopt, enact, and give to ourselves this Constitution (Bunreacht Na hEireann 1937, p. 2).

Promoting the common good while sustaining the dignity and freedom of the individual are therefore central to the role of the Irish State. As such, Ireland broadly fits within the liberal democratic tradition with its commitment to equality and freedom. Poverty, given its potential to undermine these ideals, has long been on the Irish governmental agenda. Substantial inroads have been made in tackling poverty and developing the Irish economy during the eighty or so years since the enactment of the Constitution.

Extensive work has been done in developing a universal state education system, a welfare system and creating an economic platform for Irish goods and services. Under this direction Ireland has been a country transformed, with the late 1990's and the first part of the 2000's seeing substantial decreases in relative poverty rates and significant inroads in reducing consistent poverty. The recent recession has seen these figures rise again, with recent EU SILC figures reporting that half of Irish society would be at risk of poverty if it were not for social welfare payments. The actual, post social transfer, figures for 2011 show both relative and consistent poverty increases to 16% and 6%

respectively. These figures are likely to grow given the current economic outlook. When we break these figures down into age cohorts we see that despite successive government initiatives children have continually experienced higher levels of poverty than the national average. This thesis makes the case that child poverty is just one expression of what we term as the circumstances of childhood and that these circumstances generate a range of disadvantaged, rooted in childhood, and largely ignored in political philosophy and theories of justice. In this context the central aims of this thesis are as follows:

1. To establish why the state ought to be concerned about the circumstances of childhood.
2. To determine what is required of justice, and subsequently what types of policy are needed, to successfully ameliorate the effects of the circumstances of childhood.

There is a guiding intuition at the centre of most work relating to children's rights and child poverty that is best captured by John Roemer:

...[I]t is unfair if children from different social backgrounds systematically fare differently in life: it is a mark of inequality of opportunity. Fairness, therefore, would seem to require that the distribution of child outcomes be independent of the socioeconomic circumstances of the family that raises the child (Roemer 2012, p. 482).

Childhood is currently thought of as spanning from birth, through puberty to adolescence. It is a time of physical, cognitive, and emotional development that usually is marked by a lack of autonomy and responsibility, albeit gradually reducing as the child develops. As such, childhood is usually described as requiring asymmetrical relationships, where guidance, dependence and reliance are essential for achieving maturity. This development process is pivotal to how we understand and value childhood, in that childhood is usually valued as a necessary step on the path to adulthood and not necessarily for itself. While we may value a happy childhood the end goal is usually entry to adulthood. There is something quite fundamentally different about the death of a child compared to that of an adult, there is a sense that more is lost, that more potential and opportunity are foregone. We all want our children to grow up and become adults in their own right, to develop their own sense of

themselves and to lead their own lives. This, it seems, is the main goal of childhood: growing into oneself.

The institution of the family is normally taken as the best vehicle for nurturing and aiding this development process. However, this has not always been the case. Philippe Aries (1973) traces the idea of childhood to the 17th century followed by the emergence of the family as a leading societal institution in the 18th century. Aries argues that historically children either did not count or passed quickly into adulthood. This is evidenced in art and literature by the absence of children or the portrayal of them as small adults, for instance in the way children are portrayed wearing the same clothing as adults. Aries argues that the educational developments, particularly the idea of schooling, prolonged the period of childhood, and gave rise to childhood as a separate concept from adulthood. Whether or not Aries is correct in assigning the significance of education in the advancement of the idea of childhood, he is correct in suggesting that the contemporary idea of childhood is a relatively recent phenomenon, one that has gained further momentum over the last century. Every aspect of childhood is now big business. On the legal front, laws that safeguard and protect children and their rights fill the statute books. On the economic front, children are a massive industry with the Liverpool Victoria insurance company estimating the cost of raising a child, from birth to 21, at £218,000 (The Guardian, 2012). There is a host of academic work dedicated to the particular complexities of children in the medical and scientific fields. With the notable exception of David Archard (1993, 2002), political philosophy, on the whole, has yet to embrace the idea of childhood as something discrete and worthy of attention in its own right. A simple and compelling explanation for this lack of interest is that political philosophy deals in normative statements about the just society and not how justice applies to particular individuals. Theories of distributive justice, how the benefits and burdens of society are to be distributed, ought to produce principles that apply universally.

1.2. Context and Relevance

What is it about childhood that requires special attention compared to other temporal slices? One thing for sure is that childhood is a necessary passage into adulthood and therefore is a phase of life through which all adults must pass. While this goes some of the way to providing an argument to justify special treatment in theories of justice,

Introduction

intuitively it is felt that more is needed. Perhaps we can point to the vulnerability of children and their reliance on the behaviour and actions of others as a further form of justification. However, the same could be said for other periods of time, say for example, old age, or particular medical conditions or disabilities. The question we need to answer is why childhood ought to warrant special consideration above all else? This thesis argues that there are fixed conditions which pertain to the period of childhood alone, which make it stand out from other considerations. We shall refer to these conditions as the circumstances of childhood. The circumstances of childhood pertain where responsibility for one's life is externalised for a prolonged period of time, resulting in inequalities that are likely to propagate throughout the entire life cycle, some of which will be deemed unjust. For sure, old age, disability or illness may also create such conditions. What is different about childhood though is that every child is subject to these conditions over a prolonged period of time, therefore making it the rule rather than the exception. Also, children have yet to assume responsibility for their outcomes and are, as such, dependent on the actions of others. At any given point in time, a large proportion of society will therefore have their lives determined by others. Surely, this, in itself, must make childhood a particular concern for social justice. Added to this, is the fact the inequalities experienced over a prolonged period of time are difficult (some may even argue impossible) to overcome at later stages of life and have a tendency to lead to cumulative disadvantage. There is something in this propensity to propagate that makes the unjust circumstances doubly or triply unjust (one could argue). On this basis, this thesis asserts that any theory of justice which claims to have an egalitarian leaning must accept considered responsibility for how children actually turn out.

Childhood requires substantial dependence on others that goes far beyond any ideas of reciprocity or fair play. What is required by childhood is an external duty of care. Who is responsible for this duty of care and how well it is administered will directly affect the long term outcomes of the child.

Children have no option but to depend on this external duty of care, therefore we can refer to the externalisation of responsibility as the circumstances of childhood. Since each child will benefit from differing levels of external care we must accept that the circumstances of childhood produce substantially different outcomes for each individual child. Drawing on the work of Brian Barry these inequalities in outcomes can

be coarsely attributed to three distinct but mutually inclusive elements: that of choice, resources and opportunities (2005, p. 43). It can be argued that these three categories are what is necessary in order to pursue one's life plan with the pursuance of one's own life plan being the measurement of most egalitarian leaning theories of justice.

A child's ability to choose will be severally limited by the resources and opportunities available to them and choices made on behalf of a child will affect any subsequent resources and opportunities pertaining to the child. If we take the example of education we can clearly see the three categories in operation. Where a child goes to school is not a choice they can make independently, yet it has a substantial impact on the level of education attainable which will subsequently affect their available resources and opportunities later in life. The choice will depend on external factors such as available schooling, parental affordability and parental preferences. These external factors will of course depend on previous choices, resources and opportunities available to the external duty of care parties, whoever they may be. While childhood inequality may be seen as an unavoidable condition of life, having the bad luck to be born in the wrong place, or time, or to poor parents etc. can hardly be termed as just. We will explore this point further when we come to look at the transmission of (dis)advantage from parent to child.

In *Why Social Justice Matters* Barry asserts that

Children start with, and grow up with, an enormous variety of different resources. On the basis of just a few facts about a child, such as its social class and its race or ethnicity, we can make a good predication of where it will finish up in the distribution of earnings, the likelihood that it will spend time in jail, and many other outcomes, good and bad (p. 41).

While there are always exceptions to the rule, we cannot get away from the simple economic analysis which shows that inequality has a propensity to be passed from one generation to the next.

One of the reoccurring questions of this thesis will be to ask how this duty to care for children ought to be met by the sometimes conflicting demands of the institution of the family and those of the State. What is sufficient to say for now is that both public and

private responsibilities are needed to ensure the unjust inequalities created by the circumstances of childhood are limited. To assume the duty of care begins and ends with the family is to assume a naïve and simplistic model of society. In contemporary society it can be seen that, to an increasing extent, we are outsourcing part of our parental duty of care to children through external childcare. This means that regardless of our view of the private family the reality of how we live our lives today includes a large public element. This thesis aims to show that not only is a public concern for children necessitated by our way of life, rather than our leading theories of justice and our ideas of personal responsibility are dependent on that concern.

It is undeniable that the family in which each of us grows up has a deeply formative influence on us – on the kind of person we want to be as well as the kind of person we are. This is one of the reasons why one cannot reasonably leave the family out of “the basic structure of society”, to which the principles of justice are to apply (Okin 1989, p. 213).

The Problem of Family and Intergenerational transmission of advantage

Questions regarding intergenerational justice normally ask what one generation owes to another with regard to distributive justice. There is a large and expanding body of work that explores how intergenerational and familial relationships ought to be conducted: Ackerman (1999), Barry (2005), Brighouse & Swift (2014), Fiskin (1983), Munoz-Darde (1998), Rawls (1991, 2001), Roemer (2012), are among the many contributors to this field. This thesis will explore some of these thinkers, and their ideas, as we seek to understand how liberal theories of justice apply to children. In a broad sense children and the idea of childhood are implicit in all questions regarding intergenerational justice: what we owe children as a society, as parents and as non-parents, what we owe future and distant children, what we owe others by nature of our own childhood etc. The general thrust of this thesis can be described as one relating to intergenerational justice. However, since we are interested in how theory can impact on children’s lives in contemporary Ireland, our concern can be contained to one particular aspect of intergenerational justice, that of the transmission of (dis)advantage from parent to child. Of particular interest will be how familial relationships reinforce and augment this transmission. The general claim is that if we value freedom and equality for all, we must be concerned with the effects of intergenerational transfer and its *ipso facto* potential to diminish or advance the freedom and equality of the next generation: What one

generation passes on to another matters not only for the generations involved but for successive and possible past generations as well. Government policy will heavily influence what societal benefits and burdens are transmitted to successive generations. However, perhaps the greatest impact on an individual's life is that of familial transfer, what we inherit from our parents and family during the period of childhood. In *Silver Spoons and Golden Genes* (a phrase Steiner attributes to Thomas Nagel) Hillel Steiner divides these transfers into two types:

initial genetic endowment and an enormous variety of post-conception inputs which most obviously include gestational, nutritional, medical, and educational factors (1998, p. 186).

Therefore the extent to which people's lives go, both in childhood and in adulthood, is heavily dependent on the circumstances of their childhood both genetic and post-conception inputs. While the nature of these circumstances is general to all (as described by Barry) the content of these circumstances is dependent on the transfers children receive from others, both within and outside the family. Given the dominant status of the family in the child rearing process, it is most plausible that the family plays the strongest role in how children develop. The paradox for the liberal state then is how to uphold the ideals of individual freedom and equality, whilst, at the same time, respecting the institution of the family and the privacy that it entails.

Transfers from the State and the Family are not mutually exclusive and may have very different and conflicting outcomes for children. How political philosophy is to navigate this gap has primarily focused on the definition of parental legitimacy rather than on what is owed to children. This inattention to children can be explained in various ways. Firstly, liberal theories of justice tend to draw on concepts that are normally associated with adulthood; rationality, autonomy, agency and responsibility¹. Secondly, there is still some lingering attachment to the idea that children are in some ways owned by their parents. While liberals are likely to endorse the moral separateness of children, this does not automatically generate an equal level of status; children's moral status being seen as a diminished version of adult moral status. The first explanation can be linked to the

¹The force of this view can be traced to John Locke's account of childhood and the claim that children lack the rationality necessary to exercise their natural freedom and rights and as such cannot participate in society as full citizens. For discussion on this see Archard's "John Locke's Children" in *Children: Rights and Childhood*, (1993, pp. 5-6).

suggestion earlier that we value childhood not for itself, rather for where it takes us: adulthood. This gives rise to the idea of children as citizens in waiting and hence validates their lack of direct attention by political philosophers. The second explanation is hard to pin down and is ultimately more uncomfortable for a liberal theorist to defend. The thesis of self-ownership, and the rights devolved from it, eradicates the idea of children as the sole property of parents, however, parents still wield extensive legitimate power over their children's religious, cultural and moral education. The line blurs between what counts as legitimate power as a guardian and legitimate power as a proprietor. These fuzzy borders are complicated by the divide between what are seen as issues belonging to the private as opposed to the public realm. In situations of neglect it is easier to deny the proprietor rights of parents: a parent never has the right to starve, sell or abuse their child. However, the harm principle is highly dependent on what is classed as neglect and on what is seen as neglect. A parent may be held accountable for failing to ensure the opportunity for a decent standard of education, however, we may say that it is a private matter for the parent to decide whether a naturally gifted child is developed to their potential or not. What falls within a decent standard of education is highly debatable: whether the musically gifted Johnny ought to be provided with music lessons seems to lie within parental decision alone. Things become more complex when we consider matters of health, religion and sexuality. Can parents legitimately pass on their preferences and tastes to their children? Adam Swift and Harry Brighouse have written extensively on such matters by addressing what constitutes parental rights and responsibilities (2014). Andrew Williams and Paula Casal (2004) question who ought to bear the costs of raising children and have developed the idea of children as social products. There is also an overriding assumption that if we get justice for adults right it will trickle down to children.

While acknowledging that families clearly have a strong interest in investing in the future social and economic wellbeing of their children and that this interest is normally to the benefit of the society in general, we need to ask what effect this transmission from parent to child has on our fundamental values of justice. More specifically among the many facets of intergenerational justice this thesis focuses on the concern that inequality has a long-term effect on equality of opportunity and intergenerational mobility.

1.3. Project Overview

The aim of this thesis is to apply a Rawlsian perspective to the issue of child poverty in contemporary Ireland. The theory of justice that Rawls defines, justice as fairness, has at its foundations a strong commitment to the values of Freedom and Equality. These values are also found in the Irish State's obligation to promote "the common good while sustaining the dignity and freedom of the individual". Over the last four decades the canonical work in matters relating to social justice has been Rawls' *A Theory of Justice*. The resultant theory takes seriously the justness of parent to child transmission and the morally arbitrary outcomes this tends to produce. It seems plausible that a thorough investigation of what Rawlsian justice guarantees to children will be highly illuminating to our central questions regarding what the State owes to children, and what (if any), policy implications this entails.

Samuel Freeman best summarizes why we should be interested in attaining Rawlsian justice in the following

Rawls, however, assumes that, in a modern democratic society our conception of ourselves as free and equal is of great importance to any reasonable person's self-image and respect; it also occupies a significant position within any reasonable comprehensive moral, philosophical, or religious views, whatever they may be. All of us, then, assuming we are reasonable and rational, should have sufficient reason to want to live according to a conception of justice that affirms our self-respect and status as equal citizens, and so that also enables us to pursue our conception of the good and the fundamental values of our comprehensive views. We should have, then, Rawls contends, a higher-order interest' in preserving our equal status and self-respect as free citizens, and in maintaining the moral powers that enable us to take part in social co-operation. (Freeman 2007, p. 330)

Our research will be divided into two parts: the first will be theoretical in nature and will fully explore Rawls' ideas and some of the leading responses to Rawls. We will dedicate three chapters to understanding Rawls. The first chapter will provide a thorough account of Rawlsian justice, the second will assess how Rawlsian justice accounts for childhood, and finally the third chapter will offer an alternative interpretation of the difference principle. Part Two will also include two further chapters. Each will consider

the ideals of freedom and equality, and the roles they play in shaping justice. In the second part we will adopt a practical perspective by looking first at the issue of child poverty in a recent Irish context and second at how Rawlsian theory might address this issue.

Chapter Two: Rawls' Justice as Fairness

This chapter takes an in-depth look at the classic work of John Rawls, *A Theory of Justice* 1971. This text established Rawls as the fore runner in contemporary political thought with the bulk of subsequent political theory either being a defence or response to Justice as Fairness as laid out in the text. The initial ideas of justice as fairness can be found in earlier articles most notably *Distributive Justice* 1967 with clarification and refinement found in the recent *Justice as Fairness: A Restatement* 2008. However, *A Theory of Justice* remains the canonical text in Rawlsian theory. As such, chapter two is an attempt to describe the apparatus of Rawlsian justice as fairness. This allows us to consider the way in which Rawlsian justice may address our central questions and facilitate policy formulation. Beginning from the Kantian perspective of the separateness of persons and a recognition of the moral arbitrariness of starting places, we show how Rawls establishes a theory of justice that embodies an account of citizens as free and equal. The account is built on the idea of the social contract and, as such, it is the idea of social cooperation, or in Rawlsian terms, reciprocity, that establishes the equal footing of citizens, and defines the boundaries of individual freedom. Justice derived from such a premise is best described as social justice and, as such, provides a good place for assessing our questions regarding children and deprivation within Ireland. The principles of justice that satisfy the ideals of equality and freedom are chosen behind a veil of ignorance and, while ideal in nature, they provide a road map for how we ought to structure our societies given our commitment to fairness. While accepting the Rawlsian account as a plausible framework for addressing the issues of childhood and child deprivation we suggest that it is not entirely clear how and when justice as fairness ought to apply to children. Rawls' treatment of childhood is equivocal at best, which leaves him open to the charge of neglect and even exclusion. This seems paradoxical given Rawls' concern for the moral arbitrariness of starting places and his commitment to the separateness of persons. In the following chapter we explore Rawls' account of childhood and how justice as fairness might apply to children.

Chapter Three: Rawls, Children and the problem of the Family

This chapter provides a detailed investigation of how Rawls accounts for children and his use of the family in developing and maintaining justice as fairness. Justice as fairness is based on a concept of society as one of cooperating members and as such is forced to view children as future citizens, or more accurately citizens in waiting. What is not clear is whether this diminution in citizenship equates to a reduced moral status and, if so, how this can be reconciled with a thesis based on the separateness of persons. Are children to be counted as equal recipients of Rawlsian justice? Unfortunately, these are complicated questions that Rawls does not address. What is clear is that while Rawls is keen to address intergenerational justice and the intergenerational transmission of advantage, he does so by side stepping the issue of the moral status of children. Children are placed under the guardianship of heads of households, and are therefore not recognised as Rawlsian contractors. The difficulty is then how Rawlsian justice applies to those that cannot be contractors. This does not mean that non-contracting parties are excluded from Rawlsian justice, as the implementation of the principle of fair equality of opportunity would largely be directed towards children. However, the difference principle, as a principle of reciprocity, is grounded in the idea of social cooperation and as such, seems, at least in the first instance, not to apply to children. Rawls' final formulation supports this view, with the difference principle directed towards the least advantaged group. While it is likely that children will account for some percentage of this group, any benefits provided by the difference principle will apply at the level of the representative man or to the head of household. On this reading it seems that the difference principle is not directed at children in general, nor can it ensure that the least advantaged children are included within the worst advantaged group.

While Fair Equality of Opportunity (FEO) may put children at the centre of policy issues, the difference principle would ensure that children were considered as parts of households rather than discrete moral recipients of justice. This can be seen as a continuation of the modern commitment to the institution of the family, and, for sure Rawls does afford significant importance to the family in the upbringing of children, however, there is more at play here. The family is essential for two roles within Rawlsian justice: firstly, as the developer of the two moral powers, and secondly, as a conduit for the freedom of association. Capacity for the two moral powers determines the basis of

equality and, as such, determines those that can be recipients of Rawlsian justice. The first moral power relates to a capacity for a sense of justice and the second a capacity for a conception of the good. The second role places the family outside the scope of justice while the first requires the family to operate within the scope of justice. There is quite an obvious tension then in how the principles of justice and the institution of the family are to interact. This tension will also have an effect on the role incentives play in Rawlsian justice. FEO is meant to ensure that incentives operate on a fair playing ground; however, the family with its dual role and multiple loci will impinge upon the effectiveness of FEO. While Rawls recognises the limitations placed on FEO by the family he fails to recognise the significance of placing the development of the two moral powers outside the scope of social justice. This chapter highlights these limitations; firstly, the inconsistency between the concept of citizen in waiting and the idea of separateness of persons, and secondly, the inconsistency in locating the development of the two moral powers outside the realm of justice as fairness. One remedy is to locate the family within the realm of justice as fairness, however, as Sandel argues this would lead to an unpalatable form of family relationships (1982, p. 179). Susan Muller Okin suggests that the difference principle should apply within the family (1989, p. 94), however, Rawls rejects the idea that the family is part of the basic structure of society (2001, p. 10). Rawls does suggest that the difference principle may provide some compensation for the limitations placed by the family on FEO. For this reason, in the concluding chapter on Rawls, we ask how the difference principle may be made to achieve this, and whether it could also be made to address the limitations of the family, as uncovered in the course of this chapter.

Chapter Four: Rescuing the Difference Principle.

In this chapter we take seriously the suggestion by Rawls that the difference principle may act as compensation for the failing of FEO due to the effects of the Family. The priority of FEO over the difference principle and the lexical requirement of Rawls' special conception of justice prohibit such a compensatory role and hence the suggestion by Rawls is an intriguing one. It would be too quick to dismiss it as a superficial or insignificant comment. Let us remind ourselves of Rawls' project: specifically, to define the principles of a fair society, and, more generally, to establish when inequality is just given the separateness of persons, the morally arbitrary nature of talents and abilities, and the reciprocity and incentives required by social cohesion.

Given the ethos of Rawls' project it seems inconsistent that he would accept the family's influence over the transmission of advantage as beyond the scope of justice. As such, it seems that there might be more at work in the meaning of the difference principle than its last formulation implies. In an attempt to understand the motivation and formulation of the difference principle, the chapter provides a thought provoking account of the various aspects of the principle by exploring its distribuendum, distribution set and distributees. This exploration of the difference principle leads us to suggest the possibility of interpreting the difference principle in a way that would allow it to apply directly to children over a wide range of primary social goods (PSGs). We argue that this interpretation is required for our concerns to be at least partially resolved.

The second part of our research leads to a focus on the ideals that Rawls held as central to social justice: Equality and Freedom. There are three things we want to establish from this study: firstly, what these ideals mean for children, secondly, what advancements have been made post Rawls, and thirdly, whether we can find any support for our interpretation of the difference principle.

Chapter Five: The Egalitarian impulse looks to equality theory post Rawls to assess how advancements in this field might address the problems raised in chapter two and three and more generally the issue of children and justice. We begin by describing the ways in which equality can be valued. Using Raz's (1988) powerful distinction we discuss the implication of valuing equality intrinsically or instrumentally. This leads to us explore Parfit's (1991) powerful objection to Equality; the levelling down objection. It is clear that any role equality plays in Irish society will be for its instrumental value. Parfit asks if concern for equality is really a concern for the worst off. We hope to show that the priority approach fails to pay enough attention to the equality gap thereby ignoring the cohesiveness and stability required by Irish society. This discussion generates further support for why justice as fairness represents a viable framework for Ireland. Next we move to questions regarding the currency of egalitarian theory. Here we find major advancement on Rawls' PSGs both from Sen (1979) and Dworkin (1981). Dworkin's luck egalitarianism with its description of brute luck supports our assertion that the difference principle ought to apply directly to children. We also discuss the work of

John Baker (2007) in defining the conditions of equality and suggest that Baker's framework may be useful when we come to consider questions of policy.

Chapter Six: The Ideal of Freedom

Like the preceding chapter we now turn our attention to understanding the role Freedom has to play in ideas of justice. We begin by considering Berlin's (1958) account of political freedom as negative liberty. This leads us to consider the idea of economic freedom, and, in particular the extreme libertarian view put forth by Nozick in *Anarchy, State and Utopia* (1974). Nozick bases his theory on the inviolable rights to self-ownership. The idea is that we have certain property in person rights that the State ought not to interfere with. The idea of property in person sits well with the notion that freedom, and the free market, are highly correlated. The chapter shows that the implications for children are severe, with parents granted property rights in children. This seems strikingly at odds with a thesis based on the ideas of self-ownership and intuitively at odds with our concern for children and poverty. The chapter serves to highlight the difficult terrain involved in assigning obligations to the child, to that of parental duty, and that of state obligation. We review two left libertarian approaches to see if a softer libertarian stand can be made to accommodate our concern for the circumstances of childhood. We find some elements of hope in the work of Van Parijs (1997, 2011) and draw on this in chapter 8.

Part Two

Chapter Six: Child Poverty in Ireland

The aim of this chapter is to highlight why child poverty trends in Ireland signify systemic inconsistencies in how Irish society is currently structured compared to the founding principles of equality and dignity found in the Irish constitution. The figures presented in this chapter unequivocally show that children currently experience, and have done so for several decades, higher rates of poverty compared to any other age group in Irish society. Although Ireland currently has the highest rates of family allowances across OECD nations, this is not enough to counteract the negative effects of parent to child transmission of (dis)advantage. Neither was economic progress. While Ireland has successfully implemented policies to reduce consistent poverty among the youngest and oldest in society, its relatively high levels of income inequality enhance the impact of intergenerational transmission with positive effects for some and negative

effects for others. This arbitrary transfer from parent to child undermines the nation's founding principles of equality and fairness. The effect of poverty in teenage years has significant impact on the outcomes for their future self, and this cohort has consistently had the highest poverty rates. The conclusion of this chapter is that unless we make strides to reduce income inequality, child poverty will remain unacceptably high regardless of economic climate.

Chapter Seven: From Philosophy to Policy

Beginning with Rawls' Property Owning Democracy and supported by the ideal/non-ideal debate we provide an interpretation of the difference principle that while Rawlsian, in essence, connects with the basic income work of McLaughlin & Baker (2007) and Van Parijs (1997). By examining Rawls' assertion that Welfare State Capitalism (WSC) fails to satisfy the Rawlsian principles of justice, and his defence of Property-Owning Democracy (POD) as the only viable socioeconomic regime that can fully satisfy both principles of justice². In doing so, we seek to understand Rawls' reasons for limiting economic freedom, particularly in the form of productive resources.

We then test whether Rawls' assertions must commit him to anti-capitalist types of regimes. O'Neill (2012) provides strong arguments for why fair equality of opportunity and fair worth of liberty could be achieved by policies implemented within a WSC; however, he asserts that the difference principle, when taken as extending to a full range of social primary goods, can be institutionalized only under conditions associated with POD. While accepting O'Neill's arguments for fair equality of opportunity and fair worth of liberty, we focus on whether the difference principle can be interpreted in such a way so as to be operable in a capitalist market. Drawing on the work of Thomas Paine (1797), and more recently Stuart White (2010), we present a case for implementing the idea of a Basic Capital Grant.

² Rawls also states that a liberal socialist regime can satisfy the two principles of justice, however, he argues that given our historical circumstances, POD is the mostly likely regime to succeed (2001, p. 130).

JUSTICE AS FAIRNESS

Rawls (1921-2002) was an American philosopher from the analytic school whose main interests lay in Political Philosophy, Liberalism, Justice and Politics. He is most noted for his important and lasting contribution to liberal political philosophy with his leading work *A Theory of Justice* (1971), acclaimed as creating a revival in political philosophy (Lessnoff 1999, p. 229). Rawls' aim within this work is to define and defend a concept of social justice by attempting to solve the problems of distributive justice by utilizing the framework of social contract theory. In doing so, Rawls blends liberal democracy, the market economy and the redistributive welfare state. Within this work Rawls aims to provide an "alternative systematic account of justice" that is superior to the dominant ideas of utilitarianism and intuitionism (1999, p. xviii). In the face of moral pluralism, this heralds a return to the traditional approach to political philosophy, resulting in what Rawls terms as the "most appropriate moral basis for a democratic society" (p.xviii). Rawls describes the resultant theory as "justice as fairness", from which he derives two principles of justice: the liberty principle and the difference principle. These principles give priority to equal liberty and equal opportunity, justifying inequality of income and wealth only if it benefits the least well off. Rawls argues that these are principles of justice that any rational individual would accept if they were unaware of their current position and abilities within society, making them fair and universal principles of justice.

We focus our examination of theories of justice on Rawls as most of the work on distributive justice in recent years has been, in some shape or form, a response to the ideas outlined in *A Theory of Justice*. As such, *A Theory of Justice* can be defined as the epicentre for much of the debate surrounding the idea of what we owe to each other. While Rawls has little to say directly about children (we will discover that this is a common criticism of contemporary political philosophy), his ideas pertain to the structure of society both in how we arrange our institutions and how we shape our relationships therefore, indirectly, Rawls has a lot to say that will impact the lives of children, particularly those that fall within the category of the least advantaged.

2.1 *Rawls' Interpretation of Justice*

Central to a Theory of Justice is the idea of justice as fairness, which Rawls presents as "...a theory of justice that generalizes and carries to a higher level of abstraction the traditional conception of the social contract" (1999, p .3). The result is a conception of social justice, which embodies the ideas of cooperation, self-interest and rationality which are central to the contractarian framework while rooting its foundations firmly in the Kantian inviolability of persons. The aim of justice as fairness is to provide a superior alternative to the utilitarian and intuitionist conceptions of justice by complying with the Kantian imperative to treat persons as ends in themselves, thereby providing a concept of justice that can be universally accepted regardless of differing concepts of the good. Rawls limits his theory to the realms of social justice and as such produces principles of justice that apply to the basic structure of society. Rawls derives his principles of justice through the process of *reflective equilibrium*: a state where our considered (and tested) judgements match our principles.

Rawls disputes utilitarianism by arguing that we have an "intuitive conviction of the primacy of justice" that is driven by a Kantian commitment to the idea that each person has an "inviolability founded on justice that even the welfare of society as a whole cannot override" (1999, p. 3). Therefore it is highly unlikely that the utilitarian calculus of social interest can be both maximizing and just as "...there is no reason in principle why the greater gains of some should not compensate for the lesser losses of others; or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared by many" (p. 23). Utilitarianism therefore has the potential to deny the Kantian imperative to treat each person as an end in themselves and never merely as a means. Rawls aims to show that justice as fairness represents a superior conception of justice as it is both a maximizing function and provides strict compliance to the Kantian imperative, thereby obeying the first principle of justice in a maximizing way. While Utilitarianism aims to maximise utility, it pays no regard to how utility is dispersed. Justice as fairness includes a maximizing function by incorporating the principle of efficiency into the concept of reciprocity. Reciprocity dictates the dispersal of the benefits and burdens of society and as such can be a maximising principle whilst obeying the Kantian imperative. Rawls also contends that justice as fairness solves the moral plurality problem and the subsequent issue of priority, which are systemic to Intuitionism. Rawls argues that intuitionist theories have two features: they consist of a

plurality of first principles without a mechanism for deciding among them. However, the process of reflective equilibrium allows for the weighting of principles and the resultant justice as fairness is independent of a conception of the good. While Rawls acknowledges that no theory can be completely void of intuition, the primacy of justice demands principles of justice which must be universal. Intuitionism with its competing plurality of first principles fails the primacy test and furthermore provides no explicit method for weighting principles and hence fails to solve the issue of priority (p. 30). Justice as fairness designates the Kantian primacy of justice in persons as the overriding first principle of justice to which all subsequent principles must obey with the lexical ordering of subsequent principles providing a solution to the priority problem of competing principles. We will see later how Rawls uses the ideas of the Original Position, the Veil of Ignorance and lexical ordering to provide such universality. By defining the primacy of justice as a Kantian imperative Rawls claims to have provided a theory of justice which is superior to both Utilitarianism and Intuitionism. In order to assess the validity of this claim we need to understand the mechanics of how justice as fairness works. However, before we can do this, we must first examine the remaining component of Rawls' guiding principle of justice, the use of the social contract.

For Rawls the role of justice is closely linked to the idea of society. To understand Rawls' reliance on the social contract we need to clearly define the meaning of justice and its subsequent role, as two separate ideas, pertaining to justice. Rawls acknowledges that there is an intrinsic sense of justice, indeed justice as fairness relies on this intrinsic nature in order to ensure universal acceptance of the primacy of justice regardless of individual ideas of the good life. Rawls refers to this as our universal sense of justice. However, Rawls wishes to contain the limits of justice as fairness to that of social justice. "Many different kinds of things are said to be just and unjust... Our topic, however, is that of social justice" (p. 6). The question for *A Theory of Justice* then becomes one of how social justice is best served given that the primacy of justice is based on the inviolability of persons. For Rawls the answer to this can only be found in the mechanism of how we choose to interact. For the primacy of justice to be violated there needs to be two parties; a violator and a violated. Social interaction needs to have taken place to generate an unjust situation. Since the primacy of justice can only be violated by social interaction then the principles of justice must govern how we choose

to interact. This argument enables Rawls to rely on social contract theory declaring “justice is the first virtue of social institutions, as truth is of systems of thought” (p. 3).

A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust (p. 3).

Therefore, in a Rawlsian sense, justice and society are intrinsically linked with society seen as a “cooperative venture for mutual advantage” that is “typically marked by a conflict as well as by an identity of interests” due to the condition of moderate scarcity (p. 4). Since individuals are not indifferent to how the benefits of their co-operative venture are distributed, with each preferring a larger, than lesser share, conflict will necessarily arise and therefore with it the need and role of social justice. Rawls maintains that individuals are rational and able to understand what promotes their own ends making mutual agreement and co-operation desirable. This combination of mutual co-operation and conflict causes problems for distributive justice but ultimately has the ability to deliver the solutions to these problems, through the mechanism of the social contract – by solving the conflict through mutual agreement. Rawls refers to this as the circumstances of justice.

Thus, one can say, in brief, that the circumstances of justice obtain whenever persons put forward conflicting claims to the division of social advantage under conditions of moderate scarcity. Unless these circumstances existed there would be no occasion for the virtue of justice, just as in the absence of threats of injury to life and limb there would be no occasion for physical courage (p. 110).

The rules of society’s major institutions, its ‘basic structure’, assign the fundamental rights and duties of individual members of society. Since this ‘basic structure’ contains various social positions and men’s life expectations are dependent on their social and economic circumstances, the “institutions of society will favour certain starting places over others” (p. 7). Rawls argues that “it is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must first apply” (p. 7). The issue, for Rawls, is not that inequality exists, but to define how and when these inequalities can be just; the result being justice as fairness. Social justice is achieved with the mutual agreement of what is the just distribution of society’s benefits and burdens (p. 5). A society that gets this right can be classed as a just society.

2.2 *Social Contract and the Original Position*

Having clearly established the circumstances of justice Rawls needs a method to determine the associated principles of justice. Given the different beliefs and values of the individual members of society we are faced with the problem of choice. How are we to achieve universally acceptable principles of justice given this choice? For Rawls the solution to this moral plurality choice problem can be found in the implementation of the initial situation found in social contract theory.

The intuitive idea of justice as fairness is to think of the first principles of justice as themselves the object of an original agreement in a suitable defined initial situation (p. 102).

Expanding on the ideas of Locke, Rousseau and Kant, Rawls conjures up the idea of a hypothetical state of nature, which he describes as the original position. “The concept of the original position...is that of the most philosophically favored interpretation of this initial choice situation for the purposes of a theory of justice” (p. 16).

The purpose of the original position is to reflect the circumstances of justice, to enable a solution by agreement and to ensure this solution is a just one. “In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract” (p. 11). The original position produces “...principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association” (p. 10). Rawls places constraints on the parties in the original position by limiting the alternatives open to them and knowledge of their circumstances. Rawls refers to this as the formal constraints of the concept of the right. Rawls does not claim that these conditions follow from the concept of the right merely that the reasonableness of justice as fairness requires these constraints.

If the principles of justice are to play their role, that of assigning basic rights and duties and determining the division of advantages, these requirements are natural enough (p. 113).

Rawls outlines five constraints placed on the alternative principles of justice available to the parties of the original position; generality, universality, publicity, ordering and

finality (p. 114). The principles of justice chosen in the original position must comply with each constraint.

- General: the principles must be formulated without reference to names or rigged definite descriptions.
- Universal: they must hold for everyone in virtue of their being moral persons.
- Publicity: the parties must evaluate conceptions of justice as publicly acknowledged and fully effective moral constraints on social life.
- Ordering: the principles chosen must impose an ordering on conflicting claims
- Finality: the principles chosen must be the final court of appeal in practical reasoning.

As well as placing constraints on what type of principles can be chosen, Rawls limits the information on personal circumstances available to the parties in the original position, in order to ensure that no one has an unfair advantage or bargaining power. Rawls' argument for doing so is based on the circumstances of justice and the reasonableness that any solution must provide: while we want principles based on generic self-interest, in order to surmount plurality issues we must avoid principles chosen for self-interest based on personal knowledge. The reason for this is simple; the principles chosen must satisfy the formal constraints of the concept of the right. Since this is a hypothetical situation the principles chosen must represent principles that would be chosen by anyone and everyone: the original position does not represent a time or place. Rather, it can be seen as a template for solving the circumstances of justice, and as such, available to any society at any time. To make this possible the principles of justice must be chosen behind a 'veil of ignorance' where

no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like...the parties do not know their conception of the good or their special psychological propensities (p. 11).

The veil makes all the contracting parties equal and hence solves two problems; firstly it removes all grounds for disagreement between the rational self-interested contractors and thus the uncertainty as to what they would agree on and secondly it makes the relation of the contractors to each other fair and equal – where no one can have a bargaining advantage or power. It must be noted that while personal information is

excluded, general information and facts must be available to the parties to the original position: this is implicit in the use of contractarianism and the subsequent circumstances of justice. Rawls assumes that since all contractors start in a position of equality, are self-interested and behind the veil of ignorance, then the principles of justice they would choose would satisfy the constraints of the conception of the right, thereby providing what Rawls determines as the primary principles of justice.

In order to move from here to the principles of justice derived by Rawls we need to introduce some further assumptions surrounding the original position. As it stands, parties to the original position understand the circumstances of justice, the constraints of the concept of the right, are placed behind the veil of ignorance and have some general facts available to them. We (and they) must know something else about their collective general circumstances in order to see how we move from here to Rawlsian principles of justice. In order to achieve this Rawls introduces several ideas on the rationality of the parties and general economic principles that would be subsequently accepted. The first idea is one of mutually disinterested rationality. The idea of rationality is inherent in the use of social contract theory and therefore is an underlining assumption of the Rawlsian theory of justice. One of the basic assumptions of the circumstance of justice is that parties are guided by self-interest with each requiring a larger share of some desired social product. This generic self-interest is part of the human psychology and therefore is inherent to any possible parties to the original position. Rawls adds the further stipulation that the parties will not be moved by envy and are purely motivated by mutually disinterested rationality. Rawls justifies his side stepping of envy and other emotions by claiming that these emotions tend to make everyone worse off and can be said to be collectively disadvantageous, thereby disallowing them a place in a theory of justice based on contractualism. In any event principles of justice so formed will have a stabilising effect on society, which will in turn eliminate the conditions that give rise to disruptive attitudes (p. 125). Mutually disinterested rationality gives us parties to the original position who "... know that in general they must try to protect their liberties, widen their opportunities, and enlarge their means of promoting their aims whatever these are" (p. 123).

Put in terms of a game, we might say: they strive for as high an absolute score as possible. They do not wish a high or low score for their opponents,

nor do they seek to maximize or minimize the difference between their success and those of others (p. 125).

While mutual disinterest will remove competing claims among the parties, we still need some method for ranking the competing claims which will be common to all parties. In order to achieve this Rawls puts forward the process of reflective equilibrium: a process of testing our moral beliefs against other beliefs, revising and redefining them, in order to achieve the greatest level of coherence (Daniels 1989, p. 2). Rawls argues that since judgments may be distorted

the best account of a person's sense of justice is not the one which fits his judgments prior to his examining any conception of justice, however, rather the one which matches his judgments in reflective equilibrium.... this state is one reached after a person has weighted various proposed conceptions and he has either revised his judgments to accord with one of them or held fast to his initial convictions (p. 43).

Rawls claims that he uses this method of reflective equilibrium in order to derive justice as fairness therefore Rawls assumes that the parties to the original position also commit to this process.

2.3 The formulation of Rawls' principles of justice.

Having constructed the original position in such a way Rawls is now ready to determine his principles of justice through the process of reflective equilibrium. Rawls claims that the resultant principles are the only principles available to parties in the original position and therefore are superior to both utilitarianism and intuitionism theories of justice. By use of the contractarian framework Rawls ensures that we have a well ordered society where "ideally the rules should be set up so that men are led by their predominant interests to act in ways which further socially desirable ends" (p. 49). In order to select principles of justice which satisfy this claim we need to establish what are socially desirable ends and how best to achieve these ends.

Rawls maintains that happiness is the achievement of a life's rational plan, which in turn is the satisfaction of interests (p. 80). Socially desirable ends must aim for the maximization of individuals' rational life plans. Indeed, Rawls argues that the

contractors to mutual agreement are driven by their desire for, what Rawls terms as, the maximum possible of “social primary goods” as they are the “...things which it is supposed a rational man wants whatever else he wants” (p. 79). Being the things needed in order to achieve our life’s plan, social primary goods, as such, are subject to the structures of society. In essence, they are the benefits and burdens of social cooperation and are therefore subject to the circumstances of justice. Rawls defines social primary goods as consisting of rights and liberties, powers and opportunities, and income and wealth and as such are

what persons need in their status as free and equal citizens, and as normal and fully cooperating members of society over a complete life (p. xiii).

It is clear then that the principles of justice must guide the distribution of social primary goods, however, in what fashion is this to be done? With none having the bargaining power required to secure a larger share for themselves and with each preferring more than less, an equal split of social primary goods seems the natural decision for the parties to the original position to reach. While at first glance this may make sense, we need to remember that the motivation to enter into the social contract was for the mutual benefit of social cooperation. This implies that greater rewards are expected from social cooperation than each could secure on their own. With this in mind we may conclude that parties to the contractarian framework may be happy to accept an unequal split as this would still represent an increase over their pre contract state. Along these lines, it may be argued that a rising tide lifts all boats and therefore the marginal increase achieved through co-operation will be beneficial to all, however, this does not provide an argument for equal distribution merely one for social co-operation. Indeed some inequality in society may lead to a more proficient and successful society as rewards or incentives may produce greater efficiency and hence larger benefits for all. Rawls is clear here that while the general conception of justice as fairness requires that all primary social goods be distributed equally, an unequal distribution may be just as long as it is to everyone’s advantage.

If there are inequalities in income and wealth, and difference in authority and degrees of responsibility, that work to make everyone better off in comparison with the benchmark of equality, why not permit them? (p. 131).

Inequality in all social primary goods is not permissible though as this would not be to everyone's advantage; in order to retain the stability of the social contract all parties need to be free and equal, in order to retain their free and equal status all parties must maintain equal rights and liberties.

The basic rights and liberties and their priority are said to guarantee equally for all citizens the social conditions essential for the adequate development and the full and informed exercise of their two moral powers – their capacity for a sense of justice and their capacity for a conception of the good (p. xii).

This gives Rawls his first principle of justice, the principle of liberty, governing the social primary goods of rights and liberties:

First Principle: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others (p. 53).

Rawls defines basic rights and liberties as

political liberty... and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person,...; the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law (p. 53).

These social primary goods are to be equal and cannot be overridden by any further principle thereby granting them priority or, as Rawls states, lexical ordering.

How are we to distribute the remaining social primary goods? As society is seen as a cooperative venture for mutual benefit Rawls argues that the parties to the original position will accept the principle of efficiency. Drawing on Pareto optimality (as one goes up another goes down), formulated so as to apply to the base structure, Rawls asserts that “a configuration is efficient whenever it is impossible to change it so as to make some persons (at least one) better off without at the same time making other persons (at least one) worse off” (p. 58).

Thus we can say that an arrangement of rights and duties in the basic structure is efficient if and only if it is impossible to change the rules, to redefine the scheme of rights and duties, so as to raise the expectations of any representative

man (at least one) without at the same time lowering the expectations of some (at least one) other representative man (p. 61).

This gives us a guide as to how we are to distribute the remaining social primary goods, however, we need some method for choosing between the competing efficient distributions in order to ensure not merely an efficient distribution, but also a just distribution. According to the Principle of Efficiency, assuming a fixed stock of goods between two parties A and B, there will be a number of efficient points on the curve AB ranging from the peripheral points of, all to A none to B and at the other end of the scale, all to B none to A. The curve joining these two points will be made up of several differing (competing) efficient points. However, since each party has Kantian inviolable rights, a distribution must be both efficient and just. Therefore, the principle of efficiency must be acted on by a principle of justice. It is quite obvious that the parties to the original position would not wish to choose the peripheral points as these would carry an all or nothing risk which would not be mutually beneficial. We have already stated that inequality may be desirable so how are we to choose which distribution is best likely to maximize the share of each representative man? In order to choose which point along the AB curve (or in the region OAB where O is the origin) is to be selected as maximizing both efficiency and justice we need to determine an acceptable and universal principle of justice that the parties to the original position could agree to. In summary we can ascertain the parties to the original position are motivated by the principle of efficiency, with each preferring a larger to lesser share of the distribution of social primary goods and with none having a bargaining advantage over the others, and with equal rights and liberties securing their free and equal status in the negotiation process (granted by Rawls' first principle). Given these circumstances Rawls argues that the principle of justice selected to work on the principle of efficiency would be based on the maximin rule. The maximin rule tells us to rank alternatives by their worst possible outcome with the superior worst possible outcome being selected. While this method ignores the best possible outcomes, probabilities, expected values, and subsequently weighted averages, it ensures that negative outcomes are minimized. Rawls argues that there are certain circumstances which would make maximin preferable to other selection principles; situations of uncertainty making probabilities and expected values difficult to ascertain and where grave risks are involved (p. 133). Rawls has defined the original position in such a way as to reflect these circumstances. Since we have already

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established that an equal distribution would not seem reasonable for all social primary goods and that each party prefers a larger to lesser share we can conclude that parties to the original position would accept an unequal division only if it benefited all: in other words, if inequality in the distribution created a larger share of goods from which all benefited then this would be the least worst outcome for all and as such represents the maximin principle. Applying this thinking to the remaining social primary goods, powers and opportunities, and income and wealth, Rawls is now able to formulate his second principle of justice, although it must be noted at this point that this reflects his first definition of the second principle, which is further extended by the process of reflective equilibrium.

Second principle draft one: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all (p. 53).

Thus we distinguish between the aspects of the social system that define and secure the equal basic liberties and the aspects that specify and establish social and economic inequalities (p. 53).

The second principle applies "...to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility" (p. 53). The former is regulated by part (a) of the second principle and the latter by part (b). Rawls acknowledges that the phrases "everyone's advantage" and "equally open to all" are ambiguous and concludes that the second principle as initially defined has four possible meanings, as shown in the matrix below (p. 57)

	<u>Everyone's advantage</u>	
<u>Equally open</u>	<u>Principle of efficiency</u>	<u>Difference Principle</u>
Equality as careers open to talents	Systems of Natural Liberty	Natural Aristocracy
Equality as equality of fair opportunity	Liberal Equality	Democratic Equality

On reflective equilibrium Rawls notes that part (b) ("attached to positions and offices open to all") extends to include the principle of "fair equality of opportunity". "The role

of the principle of fair equality of opportunity is to ensure that the system of cooperation is one of pure procedural justice” (p. 76). The circumstances of justice require pure procedural justice as “...there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair...” (p. 75). Thus the principle of fair equality of opportunity expresses the conviction that if some places were not open to all on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them (p.84).

Rawls is at pains to ensure that the principle of fair equality of opportunity is understood as substantial more than formal equality of opportunity and, as such, is not subject to the objection that it leads to a meritocratic society. The principle of fair equality of opportunity is held in priority just like the principle of liberty (albeit second to the principle of liberty) and cannot be overruled for a better distribution of income and wealth. This is because it reflects the requirements of pure procedural justice and is tied to the potential for self-realization

Those kept out...would be justified in their complaint not only because they were excluded from certain external rewards of office however, because they were barred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties They would be deprived of one of the main forms of human good (p. 73).

However, Rawls recognizes that “fair equality of opportunity” is an ideal that can only be imperfectly carried out at least as long as the institution of the family exists (p. 251). We will return to this point in the following chapter.

Rawls’ difference principle is arrived at by further development of part (a) of the second principle and asserts that inequality is just, if and only if, it benefits the least well off.

The higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society (p. 65).

The acceptance of a maximin principle of justice would lead to this stipulation of benefits for the least well off. Rawls extends the second principle to include the difference principle on the basis of the following arguments. The primary subject of justice is the basic structure of society as its effects “are so profound and pervasive, and present from birth” (p. 82). As the basic structure favours some starting places over others, the two principles of justice must regulate the inequalities that follow. Rawls splits our place in society into two components, the first defined by equal citizenship and the second by our place in the distribution of wealth. Equal citizenship is protected by the first principle so that leaves us with inequalities flowing from the second principle. As noted earlier Rawls wants to allow for some level of inequality in the second principle as he assumes that (p. 83) “primary social goods are sufficiently correlated with differences in authority and responsibility.” However, Rawls argues that since our starting places are dictated by the effects of “natural accident and social circumstance”, no one should benefit from them unless it is to the benefit of the least well off. Rawls further argues that since “...inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for” (p. 86).

The difference principle represents, in effect, an agreement to regard the distribution of natural talents as in some respects a common asset and to share in the greater social and economic benefits made possible by the complementarities of this distribution (p. 87).

Rawls does agree that the more advantaged have a right to their natural talents, a right that is protected by the principle of liberty. The difference principle does not deny this right rather it limits it by the rules of a fair system of social cooperation. The difference principle should not be considered a principle of redress rather it is dependent on the fair play associated with the idea of reciprocity. Rawls’ constructs his account of reciprocity by drawing on H.L.A Hart’s³ fair play account of political obligation:

when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission (1955, p. 185).

³ In a footnote to *A Theory of Justice* Rawls acknowledges the work of H. L. A. Hart, “Are There Any Natural Rights” *Philosophical Review*, vol. 64 (1955), pp. 185f as a significant influence on the idea of reciprocity (1999, p. 96 footnote 26).

Justice as Fairness

The moral arbitrariness of natural talents and starting places means that the inequalities which flow from them can only be just if all benefit. The difference principle provides for the stipulation that the least advantaged should benefit and the process of chain connection ensures that these benefits flow upwards thereby allowing the difference principle to achieve the reciprocity so needed in social cooperation. “No one had an antecedent claim to be benefited in this way, and so to maximize a weighted mean is, so to speak, to favor the more fortunate twice over” (p. 88). This is linked with what Rawls terms as the distinction between liberty and worth of liberty. Equal liberty for all is provided by the liberty principle, however, Rawls acknowledges that the worth of liberty is not the same for everyone. How well we can use our liberty reflects its worth and since some have greater resources than others, they will have a higher worth of liberty. Rawls argues that “the inability to take advantage of one’s rights and opportunities as a result of poverty and ignorance, and a lack of means generally...” affects the worth of liberty (p. 179). However, Rawls argues that the difference principle compensates for a lesser worth of liberty as “the capacity of the less fortunate members of society to achieve their aims would be even less were they not to accept the existing inequalities whenever the difference principle is satisfied” (p. 179).

Returning to the four options outlined earlier, we can immediately rule out any consideration of Natural Aristocracy with acceptance of the arguments for the principle of fair equality of opportunity. Additionally, the difference principle rules out any system based on natural liberty and liberal equality, we are thereby left with democratic equality as the only principle of justice available to parties to the original position.

Once we try to find a rendering of them which treats everyone equally as a moral person, and which does not weight men’s share in the benefits and burdens of social cooperation according to their social fortune or their luck in the natural lottery, the democratic interpretation is the best choice among the four alternatives (p. 65).

Rawls combination of the “difference principle” with the “principle of fair equality of opportunity” provides what he terms as “Democratic Equality”. This leads to the final interpretation of the second principle of justice as follows:

Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity (p. 72).

Rawls is applying his conception of justice to a society that has attained a reasonable level of wealth where basic liberties assume a greater importance than other social primary goods, so much so, that they merit “lexical priority”.

This is an order which requires us to satisfy the first principle in the ordering before we can move on to the second, the second before we can consider the third, and so on. A principle does not come into play until those previous to it are either fully met or do not apply (p. 38).

And, as such, the first principle has priority over the second, with the principle of equal opportunity having priority over the difference principle. Rawls argues that this avoids the balancing question normally left to intuition and provides a solution to the priority problem.

In summary,

Justice as fairness can be understood as saying that the two principles previously mentioned would be chosen in the original position in preference to other traditional conceptions of justice, for example, those of utility and perfection: and that these principles give a better match with our considered judgments on reflection than these recognized alternatives. Thus justice as fairness moves us closer to the philosophical ideal; it does not, of course, achieve it (p. 43).

2.4 The limitations of the Rawlsian principles of justice

Rawls' use of the social contract firmly roots his concept of justice in the ideas of mutual agreement and advantage that are implicit in fair play ideas of political obligation. However, his reliance on the Kantian imperative and the primacy of justice implies that the concept of justice is far greater than established by the social contract model. If justice came into play only once we have agreed to mutually beneficial cooperation then surely it is secondary to the contract and not primary as Rawls suggests. However, Rawls needs justice to be primary in order to lead to his two principles and so as to maintain stability this does not establish the primacy of justice. If

the social contract is what is important, why does the justness of this contract count for so much? Rawls' setup requires justice in order to maintain the original position and the circumstances of justice, however; does this requirement on justice lead us to conclude that justice is primary? These are complex questions regarding the nature of justice, which Rawls attempts to avoid by limiting his theory of justice to that of social justice, however, his reliance on the primacy of justice and the developments of the moral powers sense seems at odds with this. In the following chapter we will discuss Rawls' justification for these limitations in scope.

This ambiguity in the nature of Rawlsian justice generates the claim that justice as fairness is set up in such a way as to prohibit the choice of alternative principles of justice: the original position and the circumstances of justice are set up in such a way, as to make Rawls principles of justice the only possible outcome. The question is therefore whether justice as fairness is more a theorem than a theory. We do not take up this concern as we are interested in applying justice as fairness in the non-ideal context. Regardless of our stand on this, *A Theory of Justice* has been, for the last four decades, the canonical text in all matters related to social justice.

Looking just at the mechanics of a *Theory of Justice* we can see that Rawls' principles of justice give priority to civil and political rights over socio-economic rights, as reflected by Rawls' worth of liberty concept. This reflects that in the economic sphere, Rawls considers inequality to be inevitable and just inequality to be possible. While the difference principle ensures that any inequality is to the advantage of the least well off, it does not attempt to quantify what level of inequality is just or attempt to reduce "justified inequality". However, as we will explore, in chapter eight, justice as fairness addresses our concern for the equality gap through the wide dispersal of productive resources. While Rawls dismisses the idea of setting a social minimum (p. 251) chapter eight explores the importance of this minimum when applying Rawlsian theory particularly in non-ideal contexts. Rawls' reluctance to establish a base line through which none should fall lies in his commitment to Hart's political obligation of fair play discussed earlier. Non-co-operating members those who choose "to surf all day off Malibu" must find independent means of support for this type of political obligation to hold. However, where that leaves those on the margins of society, or those for whom social cooperation is not possible, is not addressed by Rawls. Rawls' commitment to

blocking the transmission of disadvantage that is “so pervasive and present from birth” seems at odds with the cooperating requirement. How cooperation is determined, and how it relates to Rawls’ commitment to the inviolable rights of the individual will be teased out in Chapter Three.

For those included in Rawls’ social contract, what can be said about the distribution of the benefits and burdens of social cooperation? Rawls bases his social primary goods on what a reasonable man is presumed to want in pursuit of his life’s plan: rights and liberties, powers and opportunities, income and wealth. His use of social primary goods has raised interesting questions regarding what it is presumed a reasonable man will want or need, and hence what is the currency of justice. It may be argued that the pursuit of our life’s plans depend on our aspirations and our abilities, or our preferences and satisfactions: I may desire to be a fashion model however, I may not possess the natural endowments or the financial resources required to replicate said natural endowments, in order to achieve my life’s plan. In this light the Rawlsian list of social primary goods as the currency of justice seems too simplistic. These issues, among others will be explored in Chapter Five and Six when we look at the developments in equality and liberty theory post Rawls.

Conclusion

Little has been said in this chapter regarding what Rawlsian justice owes to children. Rawls starts from a premise that seeks to mitigate the morally arbitrary inequalities in natural endowments and social contingencies, and as such, is a theory of justice that speaks directly to the issue of intergenerational transmission from parent to child. On one hand it seems highly improbable that children can be made to count among those that co-operate, however, on the other hand fully cooperating members of society do not spring forth from nowhere. The principle of fair equality of opportunity seems to suggest policies that will apply directly to children and the principle of liberty is likely to include a commitment to children’s rights. However, like most political thinkers, Rawls does not explicitly address how justice as fairness relates to children. Therefore over the next two chapters we attempt to do just that.

RAWLS, CHILDREN AND THE FAMILY

The previous chapter provided a thorough account of the Rawlsian apparatus, from which we may reasonably assert that Rawls had little to say about childhood or children. And while in the literal sense this may be true⁴, it does not follow that Rawls was not concerned or indeed motivated by the injustices created by the circumstances of childhood or that justice as fairness fails to adequately reflect these circumstances. The Rawlsian framework, as founded on the countenance of injustices from, what Rawls terms as, the arbitrariness of social contingencies and natural endowments seems to be in the same spirit as the arguments presented in our introduction, for why childhood is so pertinent to our ideas of justice. Therefore, the aim of this chapter is to take a critical view of what Rawlsian justice means for children. We do this by first asking if children are included in the original position and then how the principles of justice are to apply to the period of childhood. This leads us to explore what constitutes free and equal contractors and Rawls' topography of moral development. This raises questions concerning the moral status of children and their potential to be future citizens. To address these concerns we look at Rawls' use of the institution of the family in combination with the limited scope of justice as fairness.

3.1 Who are the recipients of Rawlsian justice?

At the heart of Rawlsian justice is a drive for establishing universal principles of justice, regardless of conceptions of the good. It does not necessarily follow from this that such principles would provide universal coverage merely that the principles derived would be acceptable to those eligible for Rawls' contractarianism. Therefore it is essential to explore who would be likely to be covered by Rawlsian justice and in particular what this means for children and childhood.

Rawls is clear that justice as fairness covers complete lives therefore we may draw the initial conjecture that the consideration of different temporal stages, in particular the

⁴ Except for section 70: The Morality of Authority in which Rawls specifically focuses on children and the nature of moral development.

circumstances of childhood, is not a necessary condition for meeting the requirements of the two principles of justice. The Rawlsian claim is that justice as fairness has the capacity to deliver justice to all parties to the contract at all times. In simple contractarian terms those covered would be those that are party to the contract although it is plausible (and assumed by Rawls) that the individual parties may wish to extend this to third (non-contracting) parties to which they have an extended interest. Rawls explicates this claim by stating that “those who can give justice are owed justice” (1999, p. 446) reflecting the reciprocal basis of justice as fairness. Lending itself neatly, to the complete lives thesis, is the invoking of a veil of ignorance to which the parties to the original contract are subject, and leading to an impartial state where

no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like...the parties do not know their conception of the good or their special psychological propensities (1999, p. 11).

In this light, justice as fairness could be read as a theory of justice “by the people for the people” with the earlier (*Rawlsian*) proviso that “those who can give justice are owed justice”. As such, we may wish to make the claim that, the impartiality of the veil of ignorance renders the necessity to consider the circumstances of childhood (or any other temporal stage), as a constraint on justice, redundant: children and childhood are provided for in the one size fits all approach that would be taken by the veiled contractors.

However, as we stated earlier, the possibility of universal acceptability does not equate to universal coverage, the important prior work having been done by the reliance on the contractarian structure. While the complete lives thesis and the veil of ignorance may be said to work towards establishing the possibility of universal acceptance (of sorts) they do very little of the work required for establishing universal coverage. The veil is applied to the motivation of choice and has no role to play in who is the chooser of principles of justice. The complete lives thesis says nothing more than justice is to be reckoned over a complete life. While Rawls aims at impartiality through universality this is somewhat *ex post*, in that coverage of contractarian principles of justice are determined in the first instance by who is party to the contract. The focal question then is who can be contractors and how does this effect eligibility for Rawlsian justice? The

very nature of a contractarian structure demands strict criteria for establishing the set (or sets) of parameters that define contractors. And while it is rational to suggest that some must choose for all there seems to be an undeniable prima facie force to the idea that social justice requires an impartiality that is at risk when some determine for others. This concern is particularly strong for any theory that draws on the foundations of equality and liberty such as Rawls' justice as fairness. Therefore we need to keep this prima facie concern in mind as we explore the parameters that define Rawls' contractors.

The first obvious question given our concern for children seems to be whether children can be parties to the Rawlsian contract? The second more important question is whether they need to be? Regarding the first question the veil of ignorance would seem to imply that the capacity to form contracts is available to all, children included, otherwise we have seepage of information through the veil⁵. On any rational rendition of childhood this seems implausible. While there is some everyday examples of guardians and children (or some other forms of dependent relationship) entering into contracts they tend to be the kind that run along the lines of "if you do x you will receive y" or in the negative form "if you do not do x you will lose y". It can be said that these everyday examples tend to be of the carrot and stick variety and are therefore excluded from the original position, where no one is to hold a bargaining power over another. It would seem reasonable to say that children develop, over time, the cognitive and emotional capabilities required for contract making, however it is not necessary to determine a precise development timeline, as the point established is that, at least, during some stage of childhood the ability to form meaningful and binding contracts, as required by principles of justice, is not available and hence the impartiality of the veil can at the very least be only partially applied: the parties to the contract can at the very least know that they are adults including what might be classed as young adults. We need to explore further what this means for children, however for the moment it is

⁵ Parties to the original contract do not know what generation they belong to only that they are contemporaries (1999, p. 140) and the Just Saving principles (Section 44) implies that they may belong to a generation that does not yet exist. The metaphysics of this is irrelevant to Rawls all that is required is the absence of knowledge which would lead to partiality.

acceptable to say that we may still be able to accept the Rawlsian proviso that “those who can give justice are owed justice” albeit only narrowly⁶.

Rawls would argue that the impartiality of the veil need not rely on the assumption that the capacity to form contracts exists throughout all stages of the lifespan, merely that the contractors do not know any personal temporal information (although as we have already seen this is not quite the case). The impartiality comes not from the actuality (Rawls is at pains to point out that the original position is merely a theoretical construct), however, from the contractors absence of any knowledge to the contrary. Given our understanding of child development and the ex post nature of the veil we can concur with Rawls, children cannot, and as such ought not, be parties to a contract that determines principles of justice. On the face of it we seem to have answered both our initial questions. However, the second and more important question of whether they should be party to the contract has not been fully expounded. Given our prima facie concern for impartiality our second question demands that we consider not only whether children themselves should be party to the contract but also the derived question of whether the circumstances of childhood should, in some way, be reflected in the conditions of contract. To answer this question we need to examine in more detail the “who and how” of Rawls’ contractors and in doing so we ought to keep in mind the prima facie concern for impartiality that arises when some choose for all.

3.2 Free and Equal Rawlsian contractors

In *Theory* Rawls asked “what sorts of beings are owed the guarantees of justice”, to which he contends that the natural answer seems to be limited to moral persons on the grounds that

first they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life): and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree (1999, p. 442).

Rawls sets these two moral powers as the necessary criteria for determining who can be free and equal contractors and as such who can be party to Rawlsian justice. In *Justice as*

⁶ While very young children are able to understand and conform to the idea of justice it would be hard to prove that this was the case with newborns and infants.

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Fairness: A Restatement Rawls reiterates that what is necessary in free and equal persons to form contracts is the capacity for two moral powers.

One such power is the capacity for a sense of justice: it is the capacity to understand, to apply, and to act from (and not merely in accordance with) the principles of political justice that specify the fair terms of social cooperation. (ii) The other moral power is the capacity for a conception of the good: it is the capacity to have, to revise, and rationally to pursue a conception of the good (2001, p. 19).

While, on one hand, this gives us quite a comprehensive and objective doctrine on the requirements for determining free and equal moral persons (one that is not likely to apply to children), the (repeated) use of the word capacity leaves Rawls open to the subjectivity of determining what constitutes capacity and more importantly how this is effected in Rawlsian justice.

The important work in Rawls' description of the two moral powers is therefore done by the prefix of capacity, making the requirement an issue of potentiality rather than attainment (1999, p. 445). Rawls stresses that the potentiality for moral capacity is sufficient for generating a claim to justice (p. 444) therefore we might want to say that a person in a coma ought to be covered by Rawlsian justice on the grounds that they previously had the capacity and/or they may again have a capacity for the two moral powers however, it is not obvious how justice should be executed in this case. While it might be irrelevant or unnecessary to consider the application of the requirements of fair equality of opportunity, and it may be obvious that the coma status has no relevance on the implementation of the difference principle, we cannot have such clarity on how the liberty principle, with its lexical priority, ought to operate. This example is raised merely to show that once we bring in the subjectivity of capacity then we need to be clear about the way in which justice is affected by this spectrum of capacity. Are we to assume that there is a sliding scale of what is required by justice, dependent on some capacity ratio? Ought children, with their developing capacity, receive less justice compared to adults or indeed compared to their future self? Rawls explicitly rules this out in *Theory* (1999, p. 446) saying that capacity and not realization is the catalyst for justice: "a being that has this capacity, whether or not it is yet to be developed, is to receive the full protection of the principles of justice" Given our coma/liberty dilemma

it is not yet clear how Rawlsian justice is to operate for children. All that we have established is that while children are unlikely to be parties to the contract they are owed the full protection of the principles. Whether the Rawlsian apparatus actually delivers this has yet to be tested. A good place to begin this task is to establish what the word capacity means in the context of the two moral powers and the justice that they establish.

While it may be tempting to directly relate a specific moral power to a prescribed characteristic of Rawlsian contractors this would be to ignore the interplay between the two characteristics (Free and Equal) which correlates (not corresponds) to the interplay between the two moral powers. The capacity to possess and pursue a reasonable life plan will, to a certain extent, be influenced by the capacity for a sense of justice, and a sense of justice will in turn be shaped by the capacity for a conception of the good (particularly the capacity of others)⁷. To relate free to one moral power and equal to the other would miss the important interplays that are a necessary part of realising capacity. We need to take a closer look at how the two required moral powers create justice by examining their interrelatedness and what this means for children. At this stage it may be interesting to note that the suggested interrelatedness tends to come into force once we move from initial capacity to (some) actual development of the moral powers. It is reasonable to suggest that while we are born with the capacity of the two moral powers it is only through the physical, cognitive and emotional development of childhood that the capacity is realised and that since this is an evolving process it is naturally a dependent one. In this way, what Rawlsian justice means for children will have the circular effect of influencing a child's ability to realise their capacity of the two moral powers and hence for their ability to become true Rawlsian contractors in their own right.

3.3 The Rawlsian topography of moral development

Drawing on modern psychology Rawls outlines three stages of moral development: morality of authority, morality of association, and finally, morality of principles⁸. Morality of authority is deemed a primitive level and is thus associated with that of a

⁷ Rawls to some extent also draws this conclusion in his discussion on "The Unity of the Self", section 85.

⁸ For further reading see *A Theory of Justice* section 72.

young child. Rawls argues that a child develops a sense of morality, based on precepts, through a loving relationship with their parents/guardians. It is through this relationship that the child learns of what is expected of him and what is deemed worthwhile. Given that this type of morality develops as a response to interaction with others, particularly our parents and guardians, it is very much shaped by the moral powers of others. Rawls describes this stage of moral development (p. 466), as being “disposed without the prospects of reward or punishment to follow certain precepts that not only may appear to him largely arbitrary however, which in no way appeal to his original inclinations.” In no way does this type of morality meet either of the requirements for determining free and equal contractors (of either *Theory* or *Restatement*) however, children can be said to have the sufficient capacity and, as such, are owed the guarantees of justice. The second stage of moral development is that of morality of association: where morality is shaped by the (p. 409) “moral standards appropriate to the individual’s role in the various associations to which he belongs.” As a child’s understanding of her various relationships and her place within them grows, so too does her moral development moving her from a command led approach to a morality based on common sense. At this stage the development of the two moral powers is still very much shaped by the expectations of others, so again we fail to meet the free and equal criteria required by the contractors, however, they can be said to be owed the guarantees of justice. It is only when a morality of principles has been reached that we can truly be deemed to have acquired the moral powers deemed necessary for the purveyor of Rawlsian justice:

we develop a desire to apply and to act upon the principles of justice once we realize how social arrangements answering to them have promoted our good and that of those with whom we are affiliated. In due course we come to appreciate the ideal of just human cooperation (1999, p. 415).

On the Rawlsian topography of moral development it is clear that while capacity for the two moral powers is all that is required to be owed the guarantees of justice, what this guarantee constitutes can only be determined by those that meet a high order realisation of the two moral powers: those that are classed as free and equal contractors. Having conceded earlier that given their lack of emotional and cognitive abilities children ought not to be contractors (or in general choosers of principles of justice) should we be satisfied with this arrangement? It seems likely that our earlier, *prima facie*, concern that

arose when some determine for others and the related question concerning the circumstances of childhood are not yet fully addressed. Some exploration of what this moral topography means for children may help illuminate our concern.

Since Rawls' moral development can be said to be determined by some weighted mixture of natural capacity, relationships with parents and guardians, and external associations we can conclude that an individual's potential to turn capacity into the necessary realisation is heavily influenced by externalities. We could postulate that the move from capacity (someone who is owed justice) to realisation (someone who determines justice) is determined by the formula $C \sim R = \sum \text{Amp1} \cdot \text{Amp2} \cdot \text{Ext}^9$ over a reasonable moral development timeline. If we assume that we start with a capacity containing negligible attainment at birth that develops with the possibility of full attainment over a defined timeline (as Rawls' topography requires) then it should be clear that a very young child's development will be heavily influenced by externalities rather than capacity and that while this shapes their current realisation of the two moral powers it also has the power to limit future development and attainment. This strong reliance on externalities seems to undermine the power of the ideals of free and equal contractors and the potential to achieve such a status. Returning again to our question; if capacity owes us the guarantees of justice why does the necessary realisation of the two moral powers matter? In answer we would say that it matters on two fronts, firstly for our concern for children and secondly for our concern for justice. It matters for children as we have yet to establish what constitutes the guarantees of justice and it matters for justice itself as moral development of the current cohort of children is required for the continuation of a stable society.

We have clearly established that while children cannot be free and equal contractors their capacity for the two moral powers is sufficient to owe them the guarantees of justice. Are we to assume that the guarantees of justice refer to Rawls' two principle of justice? If so, then we are saying that children are owed equality of liberty, fair equality of opportunity and the difference principle. From a Rawlsian perspective this seems implausible particularly given his support for paternalism and his topography of moral development. While we will explore these areas in the subsequent sections it seems plausible to make the initial conjecture that the principles of justice are to operate in

⁹ Where Amp1=attainment of moral power one, Amp2 attainment for moral power two and ext=externalities.

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such a way as to make possible the attainment of the two moral powers. In this way, children are seen as future citizens with claims on justice based on their future status as free and equal contractors. The concern with this is that future attainment is heavily dependent on externalities and therefore the guarantee afforded by the idea of capacity alone can only be a limited version of Rawlsian justice. In short, it can be said that having the capacity for the two moral powers gives you a shot at Rawlsian justice however, meeting the stringent requirements of free and equal contractors, to which the principles of justice are to fully apply, is determined by how various externalities affect the development of the two moral powers. The arbitrariness of this seems very much at odds with the Rawlsian thesis and seems to weaken the foundations of equality and freedom upon which Rawlsian justice rest. For children this raises two pertinent dilemmas: how do the Rawlsian principles of justice apply to children and furthermore how does justice in childhood affect one's ability to be a free and equal contractor in the future?

Our concern for Rawlsian justice itself relates to the stability requirements of a well ordered society. If society is seen as a continuum then social justice requires a continuum of free and equal contractors to ensure the stability of society. If justice relies on the attainment of the two moral powers and attainment of the two moral powers relies largely on externalities then this stability is put in question as at the very least the pool from which the stability is maintained is limited, which in turn limits the span of justice. If a child does not attain the necessary moral development it has continuing impact on future offspring and so on. Rawls argues that an important feature of justice is that it should generate its own support: stability should come from the conception of justice itself and not be controlled by external parties.

The requirements for the two moral powers seems to limit the scope of Rawlsian justice possible for children and yet the topography of moral development which underwrites the moral powers requires more work from the period of childhood than any other timespan: children cannot be afforded the same principles of justice and yet the fate of future moral development is in the hands of children (as propagators of the next generation).

The preceding arguments highlight a clear incoherence in Rawlsian justice between his conceptions about to whom the principles of justice are to apply (based on attainment of morality of principles) and to whom the guarantees of justice (based on capacity) are owed. This incoherence prohibits us from answering the question of whether the Rawlsian apparatus can deliver justice for children. To overcome this we must now turn our attention to how Rawls incorporates children and childhood into justice as fairness through the institution of the family.

3.4 The Family as trustees of justice

The family plays several pivotal roles in justice as fairness: firstly as founders of Rawlsian justice¹⁰ secondly as educators of the sense of justice, thirdly as stabilisers of a well ordered society, fourthly as safe guardians of intergenerational justice through just tax savings, and finally each member has the possibility of being a cooperating member of society. As well as all round purveyor of justice, the family is also the reproducer of the arbitrary social injustices that Rawls is seeking to address. As such a thorough account of the Rawlsian family is needed. In the following sections we look at how Rawls builds his arguments for what we call the heads of household thesis, we expound upon the family's role as educator of the moral powers and finally we look at the scope of justice as fairness and how it relates to the family. In doing so, our concern is always how justice relates to children and specifically whether the Rawlsian apparatus can deliver the guarantees of justice through the mechanics of the family.

We concluded earlier that children ought not to be party to the original contract based on their cognitive and emotional underdevelopment. This is in line with Rawls' view that children have not yet developed their moral powers to attain the status as free and equal contractors. Given that justice as fairness is to represent a complete lives theory we need to see how children and childhood is accounted for in the original position. Rawls repeatedly refers to the parties as representative men¹¹ and suggests that while it is not required it may be helpful to "think of the parties as heads of families...." (p. 111). Rawls compounds this by suggesting that parties to the original position are not to see themselves as individuals but as "parties representing continuing lines of claims and

¹⁰ Parties to the original position are to think of themselves as representatives of family lines.

¹¹ Although the contractors do not know their gender Rawls repeatedly uses the term representative men. See Okin *Justice, Gender, and the Family* (1989, p. 101).

care for their immediate descendants...” (p. 160). Hence the veil of ignorance is further reduced as not only do the parties know they are adults, they also know that they represent heads of households. If we refer back to our earlier *prima facie* concern regarding the impartiality required when some chose for others we need to ask whether the Rawlsian heads of household thesis provides this impartiality. A charge raised by Karen Green is that Rawlsian paternalism relegates concern for women and children, with regard to justice, (1995, p. 135) “to the male individual’s sphere of private concern”. While Rawls’ repetitive usage of the term *representative men* is probably indicative of the 1970 conception of a head of household it could just as easily represent nothing more than the author’s writing style. In *Justice Gender and Equality* Okin points out that gender is not something that could be known in the original position (1989, p. 101); this is acknowledged by Rawls in *Restatement*. While this dilutes the Green charge somewhat, can Green’s claim be said to be true for children? We have already established that parties to the contract are aware they are adults, probably heads of households, and Rawls endorses paternalism, however, can this be said to diminish the impartiality of the veil of ignorance? If we accept that children should not be contractors, does not that commit us to a paternalistic model? In most cases it seems plausible to think that family would do better by children than strangers would, either way, both would represent a paternalistic approach of a kind. What we need to ask is what the implications of paternalism are for children with regard to justice. There seem to be two obvious questions here. Firstly, does paternalism affect the principles chosen, and secondly, does paternalism effect how principles of justice relate to children? We can dismiss the first question by asking whether the head of household thesis confers partiality for children in general, or whether each head of household can attain partiality for their own children. Since the contractors are not to know their own place in society it seems that this paternalism can only affect children in general and possibly for the better. Given our ideas on children as contractors it seems rational that we accept such a generalist paternalistic model as our only choice: if children cannot choose then somebody must choose for them. As such, there appears nothing wrong with Rawls’ heads of household thesis as far as impartiality in the selection of principles of justice is concerned. This still does not answer our question regarding how justice relates to children though. For Rawls, this is not a concern as children are held in trust by the family until they are ready to take their place as citizens (when they have attained the capacity for the two moral powers). Rawls’ definition of the contractors as free and

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equal persons possessing the two moral powers requires him to adopt this holding bay approach to children. A concern with this is that, seen in this light, children's moral claims are inextricably dependent on the arbitrary family situations they find themselves in until they are able to demonstrate the necessary moral development to make discrete claims of their own.

We raised a similar concern earlier when we discussed Rawls' topography of moral development. Expounding on this concern further we can now say there are two serious objections to the trustee approach: firstly, it ignores the discrete moral status of children and as such views them as subject to domination by another's moral status, and secondly, it devolves potential moral development to the dependence on others. On Rawlsian grounds it excludes children from citizenship as they are not seen as *self-authenticating sources of valid claims*, which is a necessary condition for meeting the free criteria for *free and equal persons* (2001, p .23). The second objection comes from the observation that if we are to accept children as having subordinate moral status (as any moral theory based on future attributes must) then we must, by virtue of our principles of justice ensure that all have an opportunity to develop the necessary moral development to attain discrete moral stati otherwise they cannot meet the equality requirement of citizenship. The concern lies in whether the family, particularly as used by Rawls, is capable of delivering such opportunity.

In part answer to the first question we can regard the issue as not whether children are party to the contract but whether they are seen as having moral claims in their own right, as children and not future adults: if justice covers complete lives then citizenship should also cover complete lives. Children do not need to be contractors in order to be treated as citizens however, the principles of justice must be applicable to children in a similar fashion as they are to adult citizens. Rawlsian principles, given our ideas of paternalism, simply cannot meet this demand as the lexical priority of the liberty principle cannot be met. Rawls does consider situations where lexical ordering can be relaxed for the sake of justice and maybe this would solve the issue of childhood. In this way children could be seen as equal citizens however, with a differing worth of liberty. The real dilemma comes with the family's role of educator and curator of the two moral powers. While it would be easy to base our objection on Rawls' portrayal of an outdated version of the family that is both idyllic and traditional, it is not sufficient, as what is

pivotal to our argument is the very use of the institution of the family, which by Rawls' own admission, lies outside the scope of his inquiry. It is this last point which generates the most concern.

3.5 *The scope of justice as fairness*

In the beginning of *Theory* Rawls is quite clear that the institution of the family falls within the basic structure of society and as such is subject to the principles of justice (1999, p.). However, he limits the scope of his inquiry to the “special case of the problem of justice” within nation states. “I shall not consider the justice of institutions and social practices generally, nor except in passing the justice of nations and of relations between states” (p. 7). In doing so, Rawls acknowledges that the principles required for the basic structure may not hold for all cases: “These principles may not work for the rules and practices of private associations or for those of less comprehensive groups” (p. 7). At first this limited scope may not seem to raise issues concerning the paternal approach we have accepted: given the family's pivotal role in justice as fairness and its inclusion in the basic structure this limiting of scope should have no consequences for the institution of the family. However, as we will see later the implications for private associations have a profound effect on how justice as fairness is to regulate the internal workings of family life.

In *Restatement* Rawls defines the scope further by outlining three categories of justice: local (pertaining to institutions and associations), domestic (pertaining to the basic structure) and global (pertaining to international law) (2001, p. 11). By Rawls' own assertion justice as fairness makes no attempt to deal systematically with local justice. “In general, principles for the basic structure constrain (or limit), however, do not determine uniquely, the suitable principles of local justice.” (pp. 11-12). While justice as fairness is to work inwards and outward from the domestic to the local and global the (p. 12) “characterization of the basic structure does not provide a sharp definition, or criterion, from which we can tell what social arrangements, or aspects thereof, belong to it.” The idea being that we start with a *loose characterization* of a *rough idea* and after reflective equilibrium we compare to our considered convictions. In defining the limits of his inquiry in this way Rawls restates justice as fairness as a political conception of justice for the special case of the basic structure of a modern democratic society¹². In

this respect it is much narrower in scope than comprehensive philosophical moral doctrines such as utilitarianism, perfectionism, and intuitionism, among others. It focuses on the political (in the form of the basic structure), which is but a part of the domain of the moral. The reason Rawls requires such a limited focus is

to make it possible for a political conception to be the focus of an overlapping consensus: that is, to gain the support of at least the reasonable comprehensive doctrines that endure and gain adherents over time (2001, p. 183).

Rawls' motivation for limiting his scope stems from his concern for equal liberty as seen by his lexical ordering of the first principle of justice. The roots of this concern go back to Rawls' search for universally acceptable principles of justice, which requires the accommodation of a plurality of conceptions of the good. In this way, the equality granted by justice as fairness is secondary to the liberty demanded by differing and possible competing conceptions of the good. Adults are seen as free and equal contractors with equal liberty to pursue their own reasonable conceptions of the good and as such justice as fairness has little to say about the internal operations or relations of these conceptions. What this is to mean for children, who by their nature, are raised in the context of another's conception of the good upon which their own conception will surely depend is simply left unanswered. If justice as fairness requires the limitation of scope to protect the contractor's liberty then how is it also to afford and protect the liberty of children, in the here and now, so to speak, and the future potential of such liberty?

Rawls' justification of the limited scope

We have already attested to the fact that Rawls perceived the institution of the family as part of the basic structure and therefore subject to the principles of justice however, the focal point is on the structure and not the internal relation. In both *Theory* and *Restatement* we get a detailed discussion justifying how the principles of justice are (not) to apply to private associations (among which can be counted the institution of the family):

the principles of political justice are to apply directly to this structure, however they are not to apply directly to the internal life of the many associations within it, the family among them (2001, p. 163).

¹² While the difference between political justice and comprehensive doctrines was not discussed in *Theory* the arguments for the family as outside the scope of justice are discussed in section 71.

In an attempt to distinguish between what constitutes structure as opposed to internal life Rawls draws on the analogy of the church where justice as fairness imposes certain essential constraints on ecclesiastical governance however, where the process of unelected bishops and cardinals need not be, in Rawls' view, democratic. We may try to raise a Rawlsian objection on the grounds of fair equality of opportunity, particularly positions open to all. However, Rawls is clear, private associations belong to the realm of liberty of conscience, as self-imposed obligations, and are therefore protected lexically by the principle of liberty (1999, p. 181).

What is interesting about this is Rawls' take on associations as an expression of equal liberty of conscience. The freedom to form associations is seen as part of the individual's rights to pursue a comprehensive doctrine, one which they can freely form and shape as they see fit (albeit within the structural boundaries of justice as fairness). When we consider the family from the point of view of its adult members we may reasonably conclude that it can be a form of association which can be freely entered into and exited from. We cannot say the same for its non-adult members who are born into an arbitrary association to which they are inescapably tied for a substantial period of time and by Rawls' own admission the effects are "so pervasive and present from birth".

What we do get in both *Theory* and *Restatement* is a lack of clarity about what constitutes an institution over an association. The examples of churches and universities seem to match our considered convictions of the definition of association, however, it is only the family that is described as both. It seems sensible to conclude then what is required of a club or church is less than what is required of a family on the grounds that clubs and churches are freely chosen whereas families are not. We may argue that any association can never fully represent a free choice for a child given their natural state of dependency and as such the family is no different from any other association. However, this would be a failure to recognise the pivotal role the family plays in the natural development of the child not to mention the pivotal role it plays in Rawlsian justice.

In *Restatement* Rawls defines a well ordered democratic society as neither a community nor an association on the grounds that it is a closed social system (2001, p. 40) "in that

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entry into it is only by birth and exit from it is only by death.” Following this line of argument we suggest that while the family is not a society neither is it merely an association on the grounds that it is a partially closed system into which people are arbitrarily born. Given the nature then, of the family, and its importance in the propagation of justice as fairness, it seems that more is needed to be said on how the requirements of structure (principles of domestic justice) are to interact with its internal relations (local justice).

Rawls does offer some discussion stipulating that while freedom of association is protected by the liberty of conscience it cannot override or devalue the generic principle of liberty: “the adult members of families and other associations are equal citizens first: that is their basic position” (2001, p. 163). He suggests “we distinguish between the point of view of people as citizens and their point of view as members of families and of other associations” where “...political principles do not apply directly to its internal life however, they do impose essential constraints on the family as an institution and guarantee the basic rights and liberties and fair opportunities of all its members” (2001, pp. 163-164). Unfortunately, Rawls does not develop this line of thought, therefore we are left unclear as to how these “essential constraints” would operate on the family or which, if any, principles of justice would be guaranteed by them. We will see in chapter eight how the socio and economic regime that Rawls advocates, a Property Owning Democracy, works to ensure a wide dispersal of ownership in productive assets and as such, goes some way towards blocking the transmission of advantage from parent to child. However, the effects of this are far from clear and do not address Rawls’ own claim that FEO cannot be fully realised due to the institution of the family.

Rawls argues that distinguishing between people as citizens and as members of families does not represent a split between the political and non-political domains. Rawls argues that this is a distinction between political (domestic) justice which applies to the basic structure and other conceptions of justice (local and global) that apply to associations. This leads us back to our earlier question of what is required of the guarantees of justice to children as delivered through the institution of the family. While Rawls is clear that all are owed the guarantees of justices, the limited scope of justice as fairness forces him to sidestep the issue of how justice relates to children, in both their initial situation, as children, and their future potential as citizens.

Rawls defines the family's pivotal role in the basic structure of society in two essential ways; firstly as the purveyor of reproductive labour thereby providing the necessary continuum of society and secondly as the curator of a sense of justice thereby enabling future citizens (children) to develop the two moral powers necessary for becoming *free and equal* members of society (1999, p. 467) (2001, pp. 162-168). In this way the family can be said to be a propagator of justice as fairness and as such it seems strange that Rawls is not drawn into what is required by the family in order to successfully propagate the principles of justice

3.6 Dilemmas caused by the family and Rawls' limited scope

Our initial prima facie concern regarding the impartiality of social justice has been developed along two separate lines: firstly, can justice as fairness account for the discrete moral status of children, and secondly, have children an equal potential of attaining the status of free and equal citizens required by justice as fairness. We concluded that although Rawls views children as future citizens, justice as fairness can be said to recognise their discrete moral status, in that children are owed the guarantees of justice. However, what this guarantee of justice amounts to remains unclear in terms of the principles of justice. The pressing concern is that while we accept the Rawlsian paternal treatment of children there remains questions regarding whether the trustee approach can be adequately carried out by the family given Rawls' limited scope of justice.

As we suggested earlier, from the child's standpoint, it can be argued that the family constitutes an arbitrary situation that can be best described as a natural endowment and therefore ought to fall with the bounds of justice as fairness. Combining this with our concern for the limited scope of justice as fairness, particularly in relation to the family's dual status of institution and association, should we conclude that the family needs to be treated as a matter for domestic justice, and if so how would this pertain to familial relations? In *Liberalism and the Limits of Justice* 1982, Sandel offers us a disparaging account of family life should Rawlsian principles of justice apply directly to the family (p. 179). Not only would this contravene the first principle of justice, it also fails to recognise the differing development needs of children and the often life-enhancing complexities of the childrearing process. While it seems reasonable that justice should

preclude certain unfair treatments of children such as those based on gender, birth order or ability, it seems unrealistic to expect all internal familial relationships to be ordered in this way. Parents should value children equally as this seems to be the most basic responsibility a propagator has towards the propagated; however, this does not lead us to conclude that children can make justice claims for all inequalities in treatment. While the harried mother may employ techniques for cutting the cake fairly she cannot and ought not to employ equal treatment all of the time. Muller Okin in *Justice Gender and the Family* argues for including the family in political conceptions by making a case for applying the difference principle directly to the family. However, Rawls specifically rules this out in a footnote on page 10 of *Restatement* on the grounds that justice as fairness is to apply to the basic structure and not the internal associations within it. While Okin's idea may act as a good guide for parenting, it is also not clear that that is a requirement of justice or how this would aid our remaining questions. In response to Cohen's claim that the basic structure is insensitive to social norms, Ronzoni makes the counter-claim that principles of justice apply to institutions by indicating which social condition they should bring about (2008, p. 203). In this way, while the principles of justice may not apply to familial relationships they would indicate which social conditions were necessary for a just basic structure. This fits with Rawls' ideal of the connections between local, domestic and global justice and as such does not seem to address our concerns.

In fairness Rawls does reflect to some extent on the issues of family, particularly pertaining to its capacity to limit the principle of fair equality of opportunity, which leads him to question whether justice as fairness requires the abolishment of the family (1999, p. 448). Rawls rejects this suggestion on the grounds that family seems to be the best way of raising children and indicates that the difference principle may provide compensation for the family's limitations on fair equality of opportunity (however, he rejects Okin's earlier expansion).

The acknowledgment of the difference principle redefines the grounds for social inequalities as conceived in the system of liberal equality; and when the principles of fraternity and redress are allowed their appropriate weight, the natural distribution of assets and the contingencies of social circumstances can more easily be accepted (1999, p. 448).¹³

¹³ This argument can also be found in *Justice as Fairness: A Restatement* (2001, p. 163).

Munoz-Dardé in *Rawls, Justice in the Family and Justice of the Family* questions Rawls' commitment to the institution of the family by considering if state run orphanages would guarantee children the necessary conditions for their upbringing while avoiding the limitations placed on FEO (1998, p. 45). Munoz-Dardé argues that a state run orphanage would not be able to sufficiently develop children's moral powers and as such would undermine the original concern for equality of opportunity.

Conclusion

Our concern in this chapter has been how Rawls' justice as fairness applies to children. Our initial questions firstly asked whether children should be parties to the original position and secondly whether they needed to be. Having reviewed Rawls' criteria for determining the two necessary powers for free and equal contractors we concluded that given a reasonable account of child development, which Rawls' topography of moral development can be said to be, it is rational that children ought not to be parties to the original position. While this answered our first question, it raised serious concerns regarding our second question, particularly pertaining to how the circumstances of childhood are reflected in Rawlsian principles of justice. In Rawlsian terms children's citizenship is held in trust by the institution of the family until they meet the necessary criteria of a free and equal person. Children are seen as moral persons in waiting, so to speak, and as such do not have the same moral claims as adult citizens. The universality that Rawls tries to achieve, by sustaining the ability to contain a plurality of reasonable conceptions of the good, causes him to limit the scope of his investigations to domestic justice at the cost of local and global justice. This focus on the basic institutions of society at the expense of internal relations forces Rawls to adopt an idea of the family which is inconsistently developed and applied within the Rawlsian framework: in one sense the family is central to the propagation of justice as fairness and in the other it is outside the bounds of justice as fairness. Since it is likely to be the inner workings of the family that will decide its success as a propagator of justice as fairness, more needs to be demanded of it on the grounds of justice itself. The problem for Rawls is that further demands on the family have the consequence of limiting the liberty of heads of households, which undermines the liberty of conscience (of adult citizens only) so needed by the plurality of conceptions of the good. This leads us to conclude that Rawls' definition of moral status leaves children open to the detriments of the

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circumstances of childhood and subject to the arbitrary influence of the family, subordinating them to moral persons in waiting and possibly limiting their ability to achieve the status of free and equal contractors. While Rawls to some extent recognises the tension created by his account of the family, he points to the difference principle as both a limiting force and a reason for acceptance. In the following chapter we take a look at the historic formulation of the difference principle to see if it can support Rawls' claim and resolve our remaining concerns regarding the moral status of children and their potential to be free and equal contractors.

THE DIFFERENCE PRINCIPLE REVISTED

In the last chapter we explored what justice as fairness meant for children. This led us to explore Rawls' topography of moral development and in particular its relevance for determining the free and equal criteria of Rawlsian contractors. In conjunction with this we looked at how Rawls' dependency on the vehicle of the family shaped both the actual and potential justice delivered to children. From this we concluded that Rawls' justice as fairness reflects a trustee approach to children with parents/guardians, or to be precise the institution of the family, acting as trustees for the future moral claims of children. While we accepted the use of a trustee approach we raised two main concerns with the Rawlsian version. Firstly, there is a lack of clarity regarding how Rawlsian justice actually accounts for children, in the here and now as opposed to their future selves. This is reflected in the lack of coherence between the guarantees of justice (which children are owed) and the principles of justice (which are delivered to children via the vehicle of the family). Secondly, the criteria used to determine free and equal contractors is subject to the limitations of the family and as such raises concerns for children's potentiality as future citizens and also generates stability issues within Rawls' self-supporting framework. While Rawls recognises the potential negative impact of the family on the principle of fair equality of opportunity he fails to recognise the more serious concerns regarding the family's influences on the moral powers and subsequently the problem with locating the family within the realms of domestic justice and as such outside the scope of social justice. In Rawls' opinion the dilution of fair equality of opportunity by the family will be accepted by contractors as the advantages attained through the difference principle more than outweigh the limitations of FEO. In this section we provide an in depth exploration of the ideas which motivate the difference principle with the aim of establishing whether some, if not all, of our concerns for children can be resolved by reference to the difference principle. In doing so we put forward an interpretation of the difference principle that addresses our concerns for children and suggests how the difference principle might be made to ameliorate the circumstances of childhood.

The Difference Principle Revisited

4.1 *Why the difference principle is pivotal to justice as fairness*

The essence of justice as fairness turns on the very notion of a difference principle as it is this principle which tells us how far from equality we can justly travel. However, it may be more precise to say the motivations behind the difference principle, rather than the principle itself, are what guide Rawls' determination of justifiable inequality. The preceding principles of justice, while of lexical importance, tell us nothing novel in the distribution debate, that is, justice as fairness without the difference principle would be nothing more than an argument for formal equality, a different argument for sure, however, not a new one. It is the difference principle that provides the revolutionary nature of justice as fairness by aiming to solve the problem of social justice or put another way by determining just, and as such unjust, inequality. Rawls heralds the difference principle as providing the solution for "the problems of social justice" as it demonstrates the reciprocity and efficiency so needed by the contractarian approach. Regardless of lexical ordering, the difference principle enhances the work done by the preceding principles by adding to their functionality: as we will see later not only do the preceding principles provide their own distribuendum they also serve to limit the span of the difference principle and in this way aid the definition of justified inequality.

4.1.2 *The ideas expressed by the Difference Principle*

Earlier, we discussed how the Difference Principle comes about as a result of the convergence of the principles of reciprocity and efficiency and as such it reflects what Philippe Van Parijs describes as (2003, p. 200) "...a transparent and elegant way of articulating an egalitarian impulse and a concern for efficiency." The unequal gains offered, to individuals, by the principle of efficiency provides the initial (and continuing) incentive for social cooperation while the idea of reciprocity provides the stability so needed by the Rawlsian well-ordered society. The difference principle reflects a convergence of the principles of efficiency and reciprocity by recognising the moral arbitrariness of natural contingency and social fortune in the accumulation of social product and the resulting distribution of incentive and advantage. An understanding of how these principles work (tempered by the veil)¹⁴ leads the parties to the original

¹⁴ The veil of ignorance applies only to personal information and as such the contractors have knowledge of basic societal and economic facts. The contractors understand how incentives lead to increased efficiency in the social product however they also appreciate the role luck plays in translating this increase into personal advantage. They understand that social cohesion and stability need a reciprocal approach. As such the veil tempers the natural reaction to avail of existing advantage when choosing principles of justice.

The Difference Principle Revisited

position to adopt a maximin criterion giving us the very simple idea that inequality must be arranged to the benefit of the least advantaged (difference principle). Rawls later provides a more sophisticated definition by saying the difference principle coupled with FEO

removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged (1999, p. 75).

This provides us with a very clear definition of what Rawls intends the difference principle to be: a point beyond which inequalities in the social and economic realm are determined as morally unjust. As such what is interesting about the difference principle, and as a consequence what makes it the pivotal device in the Rawlsian framework, is that it is the only principle of justice that aims at an unequal distribution and, as such, provides the mechanism for how far, and in what way, inequalities can be justly maintained by the base structure of society. Inequality, in this respect, is not only seen as just, it is essential, in that all do better due to the incentive provided by the prospect of unequal shares. Those with greater talents or abilities are incentivized to work harder resulting in a larger social product of which they are entitled to a greater share, on the proviso that cooperation requires reciprocity due to the arbitrariness of natural talents and social contingencies. The end result is that inequality must be to the benefit of all. From the viewpoint of the least advantaged entitlement to a share of the increased social product is required by reciprocity as it is in part due to the arbitrary unjustness of the distribution of natural talents and abilities¹⁵. Social cooperation demands the idea of reciprocity and efficiency relies heavily on the incentive, bringing these ideas together we get justifiable inequality on the grounds that all benefit from the gains brought by inequality: this is in effect the ethos of the difference principle.

4.2 *Defining the difference principle*

Rawls provides us with several evolving variants of the difference principle, the first formulation stipulating that social and economic inequalities are to be arranged so as to

¹⁵ I use the term “in part” here to highlight that while all are entitled to a share of the benefits and burdens of social cooperation, that entitlement includes an element based on desert and merit. If X and Y both initially belong to the LAG then they are entitled to a distribution based on the difference principle however if X chooses to take advantages of more of the incentives on offer than Y does, then the individual entitlements will be different possibly removing X from the LAG. The idea is that the distribution of societal product is based on both incentive and the difference principle.

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be reasonably expected to be to everyone's advantage with the final formulation arranging the same said inequalities to the greatest benefit of the least advantaged. However, we can also consider Rawls' general conception of justice as the initial expression of the difference principle with differences from equality only justifiable if they are to the benefit of all. Rawls draws a similar analogy by observing "that the difference principle, or the idea expressed by it, can easily be accommodated to the general conception of justice. In fact, the general conception is simply the difference principle applied to all primary goods..." (1999, p. 73). This way we can see the various formulations as a progression of the underlying motivation of contractarian theory as social conditions improve: reciprocal advantage. To view the difference principle from the standpoint of the final formulation only, is to underestimate the significance of the role the difference principle can play in achieving social justice. Beginning with the idea that inequality is justified only if it benefits all, as systems of social justice evolves over time we arrive at the perfectly just scheme where, against a background of equality, social and economic inequalities are to be arranged to the greatest benefit of the least advantaged. The difference principle then is not just a part of Rawls' special conception of justice rather it is an expression of the underlying ethos of Justice as Fairness: mutual benefit through cooperation or as otherwise stated reciprocal advantage. Rawls highlights the significance of the difference principle in his early paper *Distributive Justice*, stating "the only novelty in the following remarks, if there is any novelty at all, is that this framework of institutions can be made to satisfy the difference principle" (p. 141). Set in this context then we can begin to analyse what the various formations of the difference principle might mean for children and how it might be made to ameliorate the circumstances of childhood. Let us remind ourselves of the second principle of justice of which the difference principle relates to part (a):

Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity (1999, p. 72).

In *Restatement* Rawls reorders the wording of the second principle so that FEO comes before the difference principle presumably to reflect its lexical priority¹⁶:

¹⁶ Rawls' describes this revision as "merely stylistic".

The Difference Principle Revisited

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle) (2001, p. 42).

This reinforces the idea that the final formulation of the difference principle is always applied within background institutions in which the principle of equal liberty and FEO are satisfied (2001, p. 61) as prescribed by Rawls' "special conception of justice". This is commonly referred to as the background assumption of equality. This gives rise to an immediate concern: it seems paradoxical to say that the limitations placed on FEO by the family can be offset by the difference principle when the application of the difference principle requires the satisfaction of the lexically prior FEO. This also raises the questions of whether the final formulation (both in *Theory* and the restyled version in *Restatement*) of the difference principle itself can ever be applied given that its formulation is dependent on the prior fulfilment of firstly the principle of liberty and secondly FEO. If FEO fails to be fully satisfied, due to the influence of the family, then surely Rawls' special conception of justice has not yet been attained. Do we therefore go back to an earlier version of the difference principle? The answer to this I think is in part yes and in part no. The yes alludes to our earlier remark that the various formulations of the difference principle should not be taken in isolation of each other; with earlier formulations implied in the final version. The no response comes from that idea that the paradox as such is based on an interpretation of the second principle that implies FEO is directed towards some specific social primary goods while the difference principle towards others. Given that both work together to create democratic equality this seems unlikely. Therefore we have two reasons for suggesting that the paradox may be circumnavigable: firstly the evolving nature of the difference principle and secondly the indeterminacy of the division of PSGs across the elements of the second principle. This leads us, for now, to accept (or at least not to refute) Rawls' assertion that the difference principle renders the remaining social barriers to FEO due to the effects of the family acceptable.

To provide a more complete answer to our opening questions it may prove useful to examine the three main elements of the final formulation of the difference principle in respect of 1) social and economic inequalities; 2) the greatest benefit question and 3) the

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least advantaged. These can be thought of, in turn, as the distribuendum, distribution set and the distributees of Rawls' difference principle.

4.3 *The Distribuendum - Social and Economic Inequalities*

What is to be distributed according to the difference principle is not obvious with Rawls using the somewhat obscure terminology of "social and economic inequalities".

Although this is a term that is widely used in practice, it can be used to describe many different bundles of goods. With no consensual definition to guide us, what is of interest to us then, is what Rawls meant by "social and economic inequalities" and specifically how this relates to the PSGs to which justice as fairness is to apply. While it may be reasonably clear what constitutes economic inequality, social inequalities are likely to be less substantive and quantifiable. Let us remind ourselves then of what Rawlsian justice seeks to distribute: rights and liberties, powers and opportunities, and income and wealth broadly construed as PSGs. These are said to be (in part¹⁷) "what persons need in their status as free and equal citizens, and as normal and fully cooperating members of society over a complete life." Which of these PSGs relates to social and economic inequalities is also not as obvious as might first appear. It is easy to assume that the difference principle is only to guide the distribution of income and wealth (as the editor's forward to *Restatement* does on page xi) with rights and liberties dispensed by the (first) principle of liberty and powers and opportunities by FEO¹⁸. However, in the following section we argue that to do so is to both underestimate the role of the difference principle in achieving democratic equality and to miss the underlying significance of self-respect in justice as fairness.

The idea of self-respect and its role in justice as fairness is somewhat ambiguous in *Theory* with several references to its importance as the "main" or "most important" primary good (1999, p. 386, pp. 468: 469) yet it is excluded from Rawls' broadly construed list of PSGs. We may want to argue that the intangible nature of self-respect prevents it from being something that can be distributed by the base structure of society

¹⁷ PSGs make up just a part of what people need; primary goods are made up of naturally occurring and social occurring goods. In Rawlsian terms the just state distributes PSGs only. This may be the reason why the primary good of self-respect does not initially appear in Rawls' list of PSGs yet is deemed the most important primary good.

¹⁸ Samuel Freeman suggest that while the least advantaged are determined in terms of income and wealth this is mainly a heuristic device with wellbeing actual determined by a wider index of primary goods in *Rawls* 2007 p. 113.

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and while in a certain sense this may be true, in that intrapersonal comparisons would seem impossible, this does not preclude us from saying that societal distributions do affect self-respect. A more plausible reason for its exclusion from the list of PSGs could be that Rawls viewed the priority of liberty as ensuring "...equality in the social bases of esteem" (Theory 1999, p. 478). Rawls did acknowledge that since a sense of one's worth may, to a certain extent, "hinge upon their institutional position and their income share" then "when necessary the expectations of the less advantaged can be understood so as to include the primary good of self-esteem"(p. 478). The situation is clearer in other works with *Distributive Justice (1967)* (p. 138) specifying justifiable inequalities as those pertaining to "...the distribution of income and wealth and the distinction in social prestige and status which attach to the various positions and classes". While *Theory* is ambiguous in its treatment of self-respect it does state that the "primary social goods that vary in their distribution are the powers and prerogatives of authority, and income and wealth". As the difference principle is the only distribution mechanism for just inequalities, then we must conclude that Rawls meant the term "social and economic inequalities" to pertain to a wider range of goods than just income and wealth, one that takes account of the societal bases of self-respect and the powers and prerogatives of authority.

Rawls addresses this ambiguity in Restatement by adopting a normative conception of the primary goods extending the list to 1) rights and liberties, 2) freedom of movement and free choice of occupation, 3) powers and prerogatives, 4) Income and wealth and 5) the social bases of self-respect. These are the goods needed to complement his political conception of the person as free and equal. What are these new terms? Are we to assume they are in addition to the PSGs outlined in *Theory*? I think not, when we view the difference principle in light of its role in achieving democratic equality it is easier to see how the societal bases of self-respect and the powers and prerogatives of authority are related to the primary goods to which democratic equality, as expressed by FEO and the difference principle, pertains. As such I argue that there is fluidity to what criteria governs the distribution of the PSGs other than Rights and Liberties. This has crucial implications for whether we accept Rawls' assertion that the difference principle can be made to account for the limitations placed by the family on FEO. In our subsequent section on background equality we will flesh this idea out further. For the moment, we accept Samuel Freeman's interpretation of primary goods as

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including not simply their share of income and wealth, but also their opportunities for powers and positions of office, non-basic rights and liberties, and the institutional bases of self-respect. The difference principle is the criterion for the just distribution of these primary goods as well (2007, p. 113).

4.4 *The Distribution Set - Greatest Benefit*

That leads us to consider the second component of the difference principle “greatest benefit”. Again the terminology used by Rawls is quite obscure. In defining the *distribuendum* we provided clarity on what constitutes greatest benefit, we now need to consider how we go about maximising such benefit. If we start from Rawls’ general conception of justice which states that all primary goods (social values) are to be distributed equally unless an unequal distribution is to everyone’s advantage (1999, p. 55), we can conclude that the lower limit of expected benefit must be at the point of equal shares and therefore the “greatest benefit” must be some point which maximises the additional benefits which arise from the inequality/incentives offered to create efficiency gains (the gains that move us from a zero sum to a non-zero sum situation). At first glance it may appear perverse to say that an unequal division will result in better prospects for all, as surely only an equal share can maximise returns to all. This is true for zero sum situations only where an increase for one necessitates a decrease for another and vice versa. If we imagine dividing a fixed stock of goods, as in the case of Marty’s¹⁹ harried mother dividing a cake, then the only fair distribution must be an equal division, as this is the only distribution that can possibly maximise the return to the divider. Rawls’ social cooperation takes us beyond the fixed cake scenario, so to speak, into the realm of the non-zero sum. The strict definition of a non-zero sum situation is where the parties aggregate gains and losses are either less than or more than zero thereby enabling us to increase the social product (with the equal possibility of decreasing social product) through cooperation. Therefore, in such instances, it now becomes reasonable to assume that an unequal share in the increased product of social cooperation will attract the potential for higher returns for all. While non-zero sum situations, in their own right, leave us open to the possibility of a decrease in the returns, the difference principle prevents this by only allowing inequality if it benefits the least advantaged. This further reinforces the idea of a minimum threshold of

¹⁹ In *Rawls and the Harried Mother* William R. Marty compares Rawlsian justice to a piece of folk wisdom that ensures a fair division of a pie: let the slicer have the last piece. Marty argues that “mothers have used this technique to settle squabbles between their children from time immemorial” (2003, p. 292).

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equality. These ideas are fleshed out in more detail in chapter seven. For the purpose at hand let us return to the aim of democratic equality: to remove the “indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged” (1999, p. 61). This particular position marks the point of the greatest benefit and can be found by tagging the expectations of the least advantaged man to those of the most favoured representative man. Starting from a position of equality Rawls argues that incentives offered by inequality to the most favoured representative man must also, by virtue of the difference principle, raise the expectations of the least advantaged man. A perfectly just scheme, one which maximises the greatest benefit, occurs when “no changes in the expectations of the better off can improve the situation of the worse off.” Any further gains to the most favoured representative man will have the effect of lowering the expectations of the least advantaged man and will therefore be unjust. The root idea behind this is that the only reason to move from the starting position of equality in the original position is on the basis that it must improve the expectations of all. Some argue that this allows too wide a gap between the least advantaged position and the most favoured representative man with large gains to one party being justified on the grounds of creating miniscule gains to the other party. However, Rawls is clear, relative inequality matters as “even larger difference between rich and poor makes the latter even worse off, and this violates the principle of mutual advantage as well as democratic equality” (p. 69). At this stage it is worth reiterating that the difference principle is to work in tandem with the lexically prior principles and therefore any inequalities allowed by the difference principle must not put at risk the equality gained by FEO and the principle of liberty or the social bases of self-respect that is required in determining free and equal citizens. In the two party situation outlined above “there is a maximum gain permitted to the most favoured on the assumption that, even if the difference principle would allow it, there would be unjust effects on the political system and the like excluded by the priority of liberty” (p. 71). While the most favoured man may have the potential to achieve further gains it would be at the expense of justice and therefore would be beyond their expectations. We have established three important implications here: firstly the difference principle implies a starting place of equality (a minimum threshold so to say), secondly social product should be maximised until no further marginal returns to the least advantaged can be obtained, thirdly advantages to the most favoured group must support the principles of liberty and FEO while marginally

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increasing the benefits of the least advantaged. The, often unrecognised, implication of this is that the expected benefit to be maximised is not just that of the least advantaged (as the formulation of the difference principle implies) but the expected benefit of all. All move upwards from the starting position of equality, some achieve greater expectation due to incentives on offer, others due to the difference principle and others a mixture of both. As such we have established that there is a minimum and a maximum threshold within which the greatest benefits to the least advantaged position attains²⁰. Any increases from equality represent a Pareto improvement, generating a scheme of cooperation that, while classed as just throughout, is not the optimal scheme. Only with maximisation of returns to the least advantaged group (position) can the scheme of cooperation be classed as perfectly just.

4.5 The Distributees - The Least Advantaged Group

How does an idea that begins with mutual advantage and the proviso of benefiting all²¹ end up as an instruction regarding the “the least advantaged group” (LAG)? We already have a sense of how this may occur given our discussion on the distribution set: the LAG will be above the initial situation of equality (the minimum), below the maximum allowable advantage and will provide the criteria for how we move from one to the other. However, this in itself is not enough to justify why the difference principle focuses on the least advantaged. To understand this move it is important to note that the focus on the LAG only comes to fruition once Rawls’ special conception of justice pertains. This coincides with the first part of what Rawls describes as the relevant position from which society is to be judged: that of equality. Rawls supposes that “for the most part persons hold two relevant positions: that of equal citizenship and that defined by his place in the distribution of income and wealth” (1999, p. 83). Once equality has been achieved through the first principle and FEO the remaining relevant position is that of income and wealth index. One suggested approach is to look to the interests of the least advantaged person and then the next and so on. Rawls’ refusal to take this approach is based on the idea that the principles of justice are meant to regulate basic institutional arrangements and are not specific instructions on who gets what. “We cannot have a coherent and manageable theory if we must take such a

²⁰ For further discussion and graphical representation on why this suggests a social minimum see chapter eight.

²¹ See first formulation of the second principle “reasonably expected to be to everyone’s advantage” (1999 p. 52).

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multiplicity of positions into account....Therefore we need to identify certain positions as more basic than the others and as providing an appropriate standpoint for judging the social system” (1999, pp. 13-14). Viewed in this context and drawing on the idea of chain connection outlined in chapter 2 we can see how a theory that ensures the benefits of all is best measured in terms of the gains to the least advantaged position. It is also worth pointing out that while much of the graphical representation of the difference principle refers to LAG the idea relates to a position and not a particular group. The subtlety of this is that individuals can move in and out of the LAG and as such the difference principle is not directly towards individuals but towards social and economic positions. Samuel Freeman best captures this nuance of the difference principle by describing it as “a rule for making the rules” (1999, p. 85). In his discussion on relevant social positions Rawls outlines the criteria necessary for defining the LAG:

Thus this group includes persons whose family and class origins are more disadvantaged than others, whose natural endowments (as realized) permit them to fare less well, and whose fortune and luck in the course of life turn out to be less happy... (1999, p. 83).

We can make two claims for how this definition of the LAG accounts for children:

- 1) Children living in disadvantaged families are included in the LAG on the grounds that their family meet the necessary criteria.
- 2) All children are included in the LAG on the grounds that they have yet to fully realize their natural endowments and, as such, fare less well than their future selves.

The first claim though weaker is unproblematic in that it claims the poor children are benefactors of the difference principle, at least through the vehicle of the family. This would be considered a reasonable and uncontested account of Rawlsian justice. The second claim is far stronger in that it would direct the difference principle towards all children, or at least those who have not yet fully realized their natural endowment. In this way it could be said to address the circumstances of childhood. Whether children would be direct benefactors or not seems a secondary question, as the idea that the LAG should include all children is, in itself, novel and powerful. We will now look for support in the body of Rawls’ work to support our second claim.

4.6 *Background of Equality*

Before we move on to ascertaining whether the difference principle can solve any of the concerns we raised in earlier sections it may be useful to say some more on the context in which the final formulation of the difference principle operates: a background of equality where the principle of liberty and the principle of FEO are attained, alternatively described as Rawls' special conception of justice. The lexical priority of liberty with its resulting freedom of association generated our concern regarding the family's influence in the development of a sense of justice, a necessary step in the development of free and equal citizens. Any compensation by the difference principle for reduced liberty is explicitly ruled out by Rawls' special conception and as such we can have nothing further to add at this turn. However, as we referred to earlier the lexical priority of FEO is less exact with an element of fluidness needed to achieve Democratic Equality. As an example of this fluidity we can point to the PSGs over which FEO is to pertain. While it seems obvious that opportunities are to be distributed under the auspice of FEO this can only be said of opportunities in a certain sense. The principle of FEO is said to ensure pure procedural justice, with the requirement that "social and economic inequalities are to be arranged so that they are ... (b) attached to offices and positions open to all under conditions of fair equality of opportunity". While a just base structure can ensure that offices and positions are open to all, the conditions necessary to achieve FEO are harder to substantiate and indeed to control. In *Restatement* Rawls provides a clearer description of these conditions: "supposing that there is a distribution of native endowments, those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin, the class into which they were born and develop until an age of reason" (2001, p. 44). The first thing to note here is that the conditions for FEO refer to "prospects" and not outcomes (this is in line with the role incentives play in JF). This is a point worth reflecting on, as the requirements of a just state may be more readily established for the alternative approach based on outcomes than for one that deals merely in prospects. The use of the term prospects implies the influence of something else on outcomes, other than state distribution and because of this FEO ought never to provide a definitive point of equality. Remember however, that democratic equality is to provide such determinateness and therefore we can say with reasonable assurance that since FEO and the difference principle are to work in tandem to achieve democratic equality it is reasonable to presume that both can be

employed in the distribution of the social primary goods other than rights and liberties²². One of the conclusions we can draw from this is that, while Rawls favours a market economy for mediating incentives, the difference principle requires a strong and dominant state redistribution process which Rawls describes as a Property-Owning Democracy (1999, p. 242). The significance of this is understated in *Theory* and with it the underplaying of the resultant implication that justice as fairness requires, in Rawls' opinion, a move from capitalist society to one where the means of production is widely owned²³. This required shift in economic systems highlights the limited range in inequality allowed in JF and the subsequent distributional policies, as directed by the difference principle, needed to continually reinforce the boundaries of this range.

4.7 *Rawls and Children*

Having thoroughly explored the meaning and implications of the difference principle we can now begin to address our concerns. Let us begin with a reminder of the objections raised in the previous chapter to the trustee approach to justice for children adopted by Rawls:

- 1) We established that there is a lack of clarity regarding how Rawlsian justice actually accounts for children due to the incoherence between what is owed by the guarantees of justice (dependent on moral capacity) and what is ultimately delivered by the principles of justice (dependent on the heads of households thesis).
- 2) Our second objection argued that the criteria used to determine free and equal contractors are highly influenced by the familial relationships. Since familial relationships fall outside the scope of *Justice as Fairness* this generates two concerns: (a) the development of the necessary moral powers is unnecessarily arbitrary and, as such, potentially dilutes the prospect of attaining future citizenship and (b) the plausibility of justice as fairness generating its own support is unrealistic. Both of these concerns generate stability issues for Rawls.

In *Theory* Rawls claims that the institution of the family, with its role in caring and raising children, necessitates constraints on the application of FEO and that these

²²A similar view is expressed by Samuel Freeman who extends this to include non-basic rights and liberties (2007, p. 113) and Martin O'Neil (2012, pp. 90-91).

²³ Rawls amends this oversight in *Restatement* however substantial discussion can be found in Part IV A Theory of Justice.

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constraints can somehow be better accepted when the difference principle is met. The purpose of this chapter was to test the validity of this claim against the objections outlined above. Let us first examine the conditions needed to meet this claim. Rawls is clear that the requirement of FEO is not based on principles of efficiency rather on the need for self-realisation and the ability to pursue a life plan of one's own (1999, p. 73). The purpose of FEO then is to establish fair opportunities so that people with similar talents and similar motivations can fairly compete for positions of office and other social benefits. This necessitates a wide range of PSGs to which FEO pertains including education, healthcare and limitations on concentrations of wealth (1999, p. 63). It also dictates that FEO must be said to be a principle that relates to individuals or at the very least a rule that directs universal policies. For FEO to make any sense this requirement must be extended to all who are owed the guarantees of justice and not just equal and free contractors. Limitations in FEO, therefore, can only be made acceptable by a difference principle that operates on similar terms. This has two significant implications for children, firstly they must be the direct recipients of the benefits of the difference principle and secondly the difference principle must relate to similar PSGs as FEO. We can only accept Rawls' claim if these two implications seem plausible.

Our definition of social and economic inequalities and our arguments for the fluidity of PSGs allows us to readily accept the second implication. The first is harder to establish. As we have seen in the previous section, Rawls adopts a trustee approach to children with citizenship being seen as a future state, and as such, children cannot be classed as socially cooperative (in that they do not normally directly add to the cooperative product). The result is that children cannot be counted among the relevant positions of income and wealth. As we stated earlier on the weak interpretation we can say that children belonging to families within the LAG will be indirect recipients of the distribution of the difference principle. There are two problems with this, firstly the least advantaged children and the children born within the LAG are not necessarily one and the same and secondly, we cannot ensure that the benefits of the difference principle are passed on the children within the households of the LAG. Examples of these situations are many and varied. Consider the child of an earner outside of the LAG who has a costly addiction or is simply neglectful of their parental duties. These children may well be among the least advantaged in society however, they will not register as members of the LAG. How about the child who is well cared and provided

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for however, whose expectations are limited due to the customs and traditions of their heritage or the gender stereotypes of their parents? These children will not be able to fully avail of FEO nor will they have the benefit of the difference principle to offset these limitations. We may well be able to reflect certain conditions with the determination of the LAG like weighting for family size or costs of disability/medical care however, it is quite possible that the LAG in Rawlsian terms will not equate to the least advantaged children, on this weaker interpretation. In situations where it does correspond children face the same limitation to the difference principle as that of FEO – the limitations of family. If we accept the weaker interpretation of the criteria necessary to be included with the LAG it seems unlikely that the conditions needed to accept Rawls' claim can be found within Rawls' own framework. However if we adopt the stronger interpretation that all children, by virtue of their unrealized (or yet to be realized) natural capacities, are participants of the LAG then we have good reasons to support the difference principle as capable of addressing the limitations placed on FEO by the family.

At this point, we might want to say that Rawls' assertion was never meant to apply to children as they are outside the Rawlsian framework. As such, Rawls would simply be saying that adults whose opportunities were limited due to the effects of their family (or the positive effects of others families) would accept this more readily due to the benefits they may or may not receive in adulthood from the difference principle (depending on whether they were in the LAG). However, there is enough contra evidence within Rawls' body of work to render this implausible. Firstly, future citizens do not spring forth from nowhere and as such children are vital to the Rawlsian apparatus. We have argued that Rawls did not fully develop the implications of this; however, that is not to say that he did not recognise the moral claims of children. Secondly, as we have seen in the previous section, it is "capacity" that determines the moral person which in turn generates the guarantees of justice. Thirdly, FEO is directed at individuals and given its emphasis on education this includes children. Fourthly, the second formulation of the difference principle is directed towards everyone's advantage and is only overridden by the final formulation once the background conditions of equality have been met. We therefore have a strong case for claiming that the difference principle ought to apply at the individual level at least during childhood years. Then, and only then, can Rawls' assertion make sense. Beyond the childhood years, the family should pose no further

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arbitrary limitations and the difference principle could return to addressing the needs of the LAG only. Defined in this way, the difference principle as presiding over a range of PSGs, and directly attributable to children could make more readily acceptable the limitations placed on FEO by the institution of the family and as such we would be in a position to accept Rawls' claim. Some have argued that FEO imposes direct restriction on family life, a claim that Rawls rejects. A difference principle directly attributable to children would not seek to impose such restrictions on family life, rather it would add another level to the relationship between the State and the child, a relationship that is independent of the family within which children live.

This leads to the striking realisation that Rawls' ideas on justifiable inequality may have more relevance to children than his ideas of equality: as there appears to be nothing in Rawls' moral topography that would force us to adopt the trustee approach to our interpretation of the difference principle. This is in contrast to the existing research on the family and liberalism, that we discussed in chapter one. This body of work has tended to focus on the implications of FEO for children. Our interpretation of the difference principle removes the involvement of the family in the distribution of justice, thereby solving the limitations of FEO and provides a new avenue of interest. Since PSGs are assumed to be what we need over a complete life, then it makes sense to apply the difference principle across all age cohorts. This interpretation would render the difference principle the most powerful tool in the Rawlsian apparatus for children and justice as it directly ameliorates the circumstances of childhood. We can also say that since the difference principle can only be implemented by the state, it is, as such, resistant to the effects of the family. This could have wide ranging implications for children given that the difference principle would constantly redistribute until only allowable inequalities remained, meaning that any negative effect of the family on the application of FEO or the development of the two moral powers, would be continually partially negated by the difference principle.

Let us recap on the justification of interpreting the difference principle in this way. Firstly, given that the difference principle is to regulate inequalities in PSGs over a complete lifetime, it ought to apply to children directly in a way that the principle of liberty can only partially achieve. Secondly, since the difference principle is to be regulated through state activity it is resistant to the effects of the family. Thirdly, given

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the aims of democratic equality the difference principle can be said to preside over more than just income and wealth. Fourth and finally, given the importance of self-respect the difference principle is to apply to all children and not just those of the least advantaged group. As we have shown in the preceding paragraphs, our interpretation of the difference principle would render it the most powerful tool in Rawlsian justice for children. While we would not need to change the wording or order of the second principle, our interpretation makes two important departures from conventional interpretations:

- a) The difference principle is to operate over a wide range of PSG.
- b) All children are included in the LAG.

All that remains to be asked is whether this interpretation would resolve our objections to the trustee approach and the resultant inability to address the circumstances of childhood.

Our first objection would be largely resolved given that the incoherence between what is owed by the guarantees of justice (dependent on moral capacity) and what is ultimately delivered by the principles of justice (dependent on the heads of households thesis) would be mostly resolved. If we adopt Freeman's list of the relevant PSGs for the difference principle then the only PSGs to be distributed in trust would be the basic liberties. Given that basic rights are enshrined in legislation, this would leave very little within the trust of familial relationships. In any respects what was owed to children would be clearer and hence the incoherence would be resolved.

The first part of our second objection rested on the fact that the family were given a pivotal role in the moral development of children. This left children's moral development subject to the lottery of the arbitrary family situations they found themselves in and at risk of being forever excluded from Rawlsian justice. We agreed with Rawls that this did not in itself suggest the need to abandon the institution of the family. The solution to this concern is to somehow ensure that moral development is not wholly dependent on familial relationships. Our interpretation of the difference principle would take us much closer to this goal. The general paradox of freedom of association as discussed in the previous chapter would still exist in the sense that a child's moral development will be very much shaped by their parent's conception of the

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good. This is a problem that *Theory* fails to surmount and one that *Restatement* with its focus on the political conception tries to side step. Rawls argues it may well be the price we have to pay for the benefits of raising children in family settings. FEO with its focus on self-respect and education could go a long way to counteract such potentially negative effects of the family. However, this would only be achieved by adopting our interpretation of the difference principle. The lexical priority of the first principle would still leave some concern regarding the child's ability to develop the two necessary moral powers. Given the priority of liberty over equality there is no way of resolving this in Rawlsian terms. As we said in the last chapter Rawls completely rejects Okin's suggestion of applying the difference principle to familial relationships on the grounds that it denies the priority of the principle of liberty. And here we return to the dilemma of children as moral persons in waiting. The second part of our second objection is likely to be subject to the same restrictions.

Conclusion

In this section we have taken a thorough exploration of Rawlsian justice and how it might relate to children and the amelioration of the circumstances of childhood. In doing so, we have raised several objections to Rawls' handling of children as future citizens and, as such, moral persons in waiting. The main thrust of our argument lies in the pivotal role played by the family in the development of the two moral powers. The body of this chapter explored Rawls' suggestion and looked to the difference principle as a possible remedy. In doing so, we have suggested a possible reinterpretation of the difference principle that would allow it to apply directly to children over a wide range of PSGs. We argue that this interpretation is required for our concerns to be at least partially resolved. In the following sections we suggest possible policy formulations that may devolve from this interpretation.

THE EGALITARIAN IMPULSE

The aim of this chapter is to provide a clear account of why equality is so pertinent to our ideas of social justice. In doing so, we not only provide a defence of Rawls' reliance on equality, as one of the two necessary conditions for defining moral personhood, we also seek to find advancement on Rawls' egalitarian impulse: one that speaks to children in a way that Rawls does not. This will allow us to provide an account of how the principle of equality applies to children and as such, how equality may be best implemented to promote the interests of children.

Following *A Theory of Justice*, the equality debate focused on ideas relating to distributive justice, with questions of distribution taking centre stage. Given this, we may make the initial conjecture that egalitarian justice requires equal shares and that anything short of that is not equality. However, how equality is interwoven in theories of justice is not as straightforward as our initial conjecture might suggest. As Dworkin (1981, p. 185) notes “people can become equal (or at least more equal) in one way with the consequence that they become unequal (or more unequal) in others.”²⁴ Even if we are committed to equality as the fundamental principle of justice we need to define the necessary conditions required by equality and the subsequent implications for justice. We can do this by defining what is required by moral equality between persons. The range of available answers to this question produces surprisingly different outcomes for the conditions deemed necessary for egalitarian justice. Indeed, when equality is woven with another ideal such as freedom, the shape of equality must be made to accommodate the other ideal, further complicating and redefining the necessary conditions of justice. However, we will begin by asking what the following questions mean for our ideas of equality in its own right. Firstly we look at how we value equality: do we value equality for itself, intrinsically or for how it affects another value, for its instrumental value. This leads to Parfit's definition of Telic and Deontic egalitarians and allows us to determine

²⁴ Sen also questions what the correct metric of equality should be in *What is Equality* 1979 and as early as 1875 Marx had denounced equality in favor of a needs based approach see *Critique of the Gotha Program*.

when inequality is just. The second question considers the scope of egalitarian thought: to whom is egalitarian justice is owed. A closely related question is whether timing matters: is it more important to be equal at certain time slices or over complete lives. The third question dominated the post Rawlsian debate for several decades and deals with what is commonly referred to as the currency of equality question: what is it that equality requires to be distributed or put another way what is the interpersonal metric of comparison. Question four considers Parfit's claim that some appeals to equality actually have their bases in concern for the worst off rather than the ideal of equality and therefore show a commitment to prioritarianism rather than egalitarianism. And finally the fifth question is raised by Elizabeth Anderson's critique of luck egalitarianism where she asks what ought to be the point of equality. The answer to these questions will help define the possible parameters of egalitarian justice and its subsequent implications for children and the circumstances of childhood.

5.1 *The Value of Equality*

The way in which we value the ideal of equality will greatly influence the type of distributive justice we are most likely to endorse. In *The Morality of Freedom* Joseph Raz defines two ways in which value can be attached: intrinsically and instrumentally (1998, p. 177). Intrinsic value is when we value something for itself, whereas instrumental value is when we value something because of the consequences it is likely to have. If we value equality intrinsically then an equal outcome will generally be more desirable than an unequal outcome. This does assume that equality is a primary principle of justice. Assigning intrinsic value to equality does not however commit us the valuing equality above all else. Instrumental value can be seen as derivative and intrinsic value non-derivative. We either value something for itself regardless of its consequences or we attach value to something because of the consequences that it derives. Not everything of intrinsic value will have instrumental value and vice a versa. Derek Parfit (1991) draws on the intrinsic/instrumental distinction by providing the most powerful objection to equality theory, the Levelling Down Objection and in doing so provides a defence of the Prioritarian view. Parfit's aim is to show that much egalitarian thought values equality for its instrumental value rather than its intrinsic value and as such reflects a commitment to the priority view rather than to egalitarianism. We will take up the equality versus priority debate later in the chapter, for the moment it is useful to

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take a look at the early stages of Parfit's argument to gain an understanding of how equality might be valued and the consequences this can have for egalitarian justice.

In his 1991 Lindley Lecture *Equality or Priority?* Parfit utilises Raz's two concepts of value to establish the difference between two types of egalitarian theory. Parfit suggests that if we value equality intrinsically then we endorse the following statement:

The Principle of Equality: It is in itself bad if some people are worse off than others (p. 84).

Parfit describes proponents of this view as Telic or Pure Egalitarians. Although the ways in which we can be equal are many and varied Parfit suggests that to count as Egalitarians we need to be concerned with people being equally well off (p. 3). As an aside, it is interesting that Parfit qualifies the principle of equality by suggesting in the notes that we may wish to add "through no fault of or choice of theirs"²⁵. It would seem though that if we choose to accept this caveat we can no longer be said to value equality intrinsically, a point Parfit does not seem to recognise. However, this is merely a note, and as such not relevant to the distinction at hand. Returning to the principle of equality, intrinsic value then commits us to an equal outcome rather than an unequal outcome: there will never be a case when inequality is actually preferred. On this reading Telic Egalitarianism speaks more to inequality than it does to equality as it cannot distinguish between alternative levels of equality: valuing equality intrinsically cannot tell us whether it is better to be equally well off or equally badly off. This leads to Parfit's powerful objection to equality: the Levelling Down Objection.

Using the example of the *Divided World* Parfit also shows how valuing equality intrinsically can lead to situation where inequality is bad even if it has no bad effects. We are asked to consider two possible states for two halves of the world's population who are unaware of each other's existence:

- (1) Half at 100 Half at 200
- (2) Everyone at 145

²⁵ See note 8 of Parfit's *Equality or Priority* (1995).

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Telic egalitarians will reject the first state on the basis that while it is better that people are on average better off in, it is bad if some people are worse off than others. Since equality has positive intrinsic value we should aim to bring about state (2). What is objected to in state (1) is not the effect of the inequality, as neither half are aware of the other, rather it is objectionable purely on the grounds that the inequality itself is bad.

Since Egalitarians tend to promote some form of redistribution from better off to worse off, the aim of the levelling down objection is to show that this can sometimes lead to what most would consider objectionable forms of redistribution:

- (a) Better for no one and worse for some
- (b) Better for no one and worse for all.

Parfit's argument is simple: since Egalitarians are concerned with the gap between individuals they must commit to endorsing a worsening of the condition for some even if this is better for no one.

Egalitarians that do not value equality intrinsically and above all need make no such commitment to the principle of equality as defined earlier and as such are open to endorsing unequal outcomes on the grounds that the resultant inequality has instrumental value in that it generates better results for all.

While narrower in scope, Deontic Egalitarianism escapes the levelling down objection and enables us to promote the ideal of equality along with other ideals such as efficiency or liberty. The types of egalitarian theories that we will be considering in this chapter will lean heavily towards Parfit's Deontic version or as with Rawls in earlier chapters, a hybrid version of the two. While deontic egalitarianism may still aim at equality it will not be for the value of equality in itself. It can be argued that this constitutes a very weak commitment to the ideal of equality however; we will address this later when we come to discuss the currency of equality. As we are interested in liberal theories of justice that promote both equality and freedom such weakness will not immediately concern us, that is, at least not at first glance. The implications for children are that while they may have certain equal rights in statutory terms some level of inequality must be borne in other areas. Since a deontic distribution is more likely to favour economic

inequality, the concern must lie with determining a sufficiently suitable limit to inequality, so as to ensure that our initial concern for equality is not undermined. Where the limit is drawn will depend on our reasons for valuing equality in the first instances. This is particularly important when considering the opportunities and outcomes of children. However, before we do that it is worth considering the scope of egalitarian justice and its implications for childhood.

5.2 *The Scope of Equality*

Questions on scope ask us to consider to whom egalitarian justice is owed. If we are Telic Egalitarians then the scope of equality may be unrealistically wide: given that equality is valued for itself, the scope of equality will extend to all mankind and most likely beyond humanity. Deontic Egalitarians who are interested in equality for its instrumental value will have a more defined and limited definition of the scope of equality. Acceptance of Parfit's argument that "equality among persons" is what matters, is insufficient for ensuring that justice applies to children. An account of what is required by moral personhood is needed before we can be sure what the guarantees of justice owe to children. Much of the theory discussed here relies on the idea that justice is owed to citizens of nation states. The argument is based on the premise that since justice is best achieved through the institutions of the basic structure of society it must be limited to the scope of that structure. The problem with this view is how citizenship itself and its derivative claim of justice apply to children. As we discussed in length in the section on Rawls, ideas of citizenship often pertain to contributing members of society, resulting in children being viewed as citizens in waiting. In the Rawlsian framework, this leads to children's claim to justice being held in trust by the institution of the family. We argue that this leaves children exposed to the effects of the transmission of disadvantage and therefore undermines not only the Rawlsian idea of fairness but also that of equal and free persons.

When we turn to discussing the currency of equality we will look at the citizenship view in Dworkin's work to see if that proves more amenable to children. However, for the moment it is enough to say that citizenship views fail to take account of the discrete moral claims of children based on their moral personhood.

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The subjects of egalitarianism can be best delineated by distinguishing between relational and non-relational accounts of justice. The citizen argument, particularly Rawls', is based on an account of the relationship between people and the production and distribution of societal benefits and burdens. Chris Armstrong notes that

It is because given individuals share certain goods between themselves, or cooperate together to achieve a particular end, or stand in a common relation to a particular Institutional structure, that some form of equality is appropriate between them (2009, p. 2).

Alternatively, non-relational accounts claim that individuals are entitled to justice not on account of any relationship they might bear with others rather on account of their being, primarily, individual persons or, on their moral personhood. Appeals to moral personhood will often support a global scope of egalitarian justice however, this will depend on how moral personhood is defined. Appeals to rationality and autonomy will often exclude young and very young children as well as some of those that are severely disabled. While non-relational views are likely to be global in scope this does not preclude them from also ignoring the moral distinctiveness of children.

Given our concern for the morally arbitrary nature of inequality in children's lives it seems implausible that any theory of equality would not directly address how it relates to the period of childhood. However, as we discussed in the introduction children are often the orphans of political philosophy.

5.2.1 The Proper Unit of Egalitarian Concern

An extension to the question regarding scope involves the definition of the proper unit of egalitarian concern. Building on the work of McKerlie (1989), Larry Temkin outlines the implications of three different time slice approaches to determining equality: complete lives, simultaneous segments and corresponding segments. Both Rawls and McKerlie support the complete lives view. This suggests that aggregate equality/or inequality is what matters. The contention is that time spans can act to offset each other: for children this would mean that a disadvantaged childhood could be offset by an advantaged adulthood. Consider the following example

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	Child	Adult
John	8	2
Mary	2	8

John and Mary are equal on a complete lives view however; this seems to be at odds with theories of justice that seek to negate the injustices of “natural accident and social circumstance”. Both the simultaneous and corresponding segments view time slice inequality as objectionable. To understand the difference between these two let us consider the following example:

	T1	T2	T3
John	8	2	
Mary		2	8

This example considers the issue across generations with Mary born after John and their only simultaneous time being T2. On this example both complete lives and simultaneous segments deem Mary and John equal, with complete lives comparing the aggregate and simultaneous segments only concerned with T2. Only on a corresponding segments view is the inequality between John and Mary’s childhood objectionable. The complete life view depicts what McKerlie describes as changing place egalitarianism. For sure, if we value equality intrinsically we may be persuaded by changing place egalitarianism as it could be argued as a necessary condition for restoring equality. The same cannot be said for egalitarian theories that allow some form of just inequality particularly those that rely on ideas of responsibility and autonomy. Temkin argues that while

However, bad it may be for one person to be much worse off than another for half of his life, and much better off than the other for the other half, it seems it would be much worse for the one person to be worse off than the other for his entire life (1993, p. 239).

And while I agree that changing places does seem to intuitively trump non changing places over the long range, this does not diminish the importance of corresponding segments. In chapter seven we will see the significance of this view when we compare the recent trends in poverty across teenagers compared to that of old age pensioners.

On anything other than a pure egalitarian reading simultaneous segments will not present an issue. And as I have already suggested any theory that endorses economic inequality based on notions of individual autonomy and responsibility must endorse the corresponding segment view during the period of childhood. Of course we might ask if the corresponding view is to count for childhood, why not other age cohorts or even across complete lives. It could also be suggested that all children across all generations must therefore be equal, on this view. However, as Temkin suggests, there is not one correct answer and each must be taken in context of the claims of a particular situation. Our reasons for supporting the corresponding view during childhood are based on our concern to address the arbitrary starting positions that children are born into and the negative effects parent to child transmission have on our foundational ideals of equality and freedom. Given this it would seem that to understand equality with reference to children we ought to adopt a corresponding segment view.

5.3 The Currency of Egalitarian Justice

Post Rawls the debate in egalitarian thought has mainly addressed what is commonly referred to as the currency of equality question or as referred to earlier, Equality of What: what it is that a just society ought to distribute equally. The focus of this debate is to view equality in terms of distributive justice. As we mentioned in the introduction, equality in one metric can generate inequality in another and therefore defining the correct metric of egalitarian justice seemed of paramount importance. While this question was raised by Marx in the *Critique of the Gotha Programme* as early as 1875, it was not until the works of Sen 1979 and Dworkin 1980 that the real debate regarding the currency of equality was ignited. Both Sen and Dworkin provide deontic accounts of equality as a response to Rawls, however, their ideas produce very different visions of what egalitarian justice ought to deliver, regarding issues of scope as well as currency. Given that these two ignited the debate, with very different outcomes, it will be useful for our purpose to explore each argument in detail.

5.3.1 Dworkin

Dworkin's contribution came in the shape of two articles *What is Equality? Part 1* and *What is Equality? Part 2*. The articles were published in quick succession, the first in the summer of 1981 and the second in the autumn of the same year and provide both a response to and development of Rawlsian principles of justice. The two papers show

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that granting equality of welfare requires unequal levels of resources and vice versa equal resources result in unequal levels of welfare. The first article presents a case for defining equality in terms of welfare and the second a case for defining equality in terms of resources. Dworkin rejects the first account and, like Rawls, endorses equality of resources. In the first article Dworkin states that equality of welfare creates distribution schemes that (1981, p. 186) "...treats people as equals when it distributes or transfers resources between them until no further transfer would leave them more equal in welfare."

Dworkin begins by considering the situation of a father who must choose how to distribute his estate to his children: does he give each an equal share (equality of resources) or take into account their differing welfare needs. Each of the children is given different attributes that drive different levels of welfare (p. 186) "one of whom is blind, another a playboy with expensive tastes, a third a prospective politician with expensive ambitions, another a poet with humble needs, another a sculptor who works in expensive material." It is worth noting that given the nature of the attributes described Dworkin merely considers the just distribution among adult children and not children per se, nor is any reference being made to the claims to justice during the period of childhood. As with Rawls, we must aim to consider how Dworkin's account might appeal to the claims of children. Returning then to Dworkin, if we are to endorse equality of welfare then each adult child is entitled to inherit different shares of their father's wealth depending on their welfare needs: the poet with humble needs would receive the least and the rest would receive higher though different shares dependent on the accepted conception of welfare. The aim that each child had an equal level of welfare would require a differential split of the father's wealth as each child's need would require different amounts of resources to achieve equal welfare. On this basis one possible outcome would see the child with expensive tastes inheriting the largest share and the child with the humble need the lowest share while the other children received shares somewhere in between depending on their welfare needs. Dworkin feels we should be troubled by this outcome. While Dworkin acknowledges that it may be reasonable to suggest that the blind child has a greater claim on the wealth of the father, on the grounds that they require more to sustain their wellbeing, he is particularly troubled by the greater claim of the child with expensive tastes. In this way, Dworkin introduces the idea of deservingness and responsibility into our concept of moral

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equality. On this account the claims of the prospective politician and the sculptor's fall somewhere in between the others: higher than the child with expensive tastes and lower than the child with the disability. If our concern truly lies with the welfare of each child then surely how they value their lives is what matters and not how others think they ought to value their lives? However, if we accept this, we are invoking equality only for its instrumental value in the pursuit of personal liberty. This goes some way to explaining why the child with the disability may have a greater claim over their siblings, in that they may require more inheritance to ensure similar levels of liberty. (We will see later that Dworkin's account of equality includes an account of liberty.) The question we have to ask is why the condition of expensive tastes is viewed differently from the condition of disability? Dworkin suggests that (p. 235) "expensive tastes are embarrassing for the theory that equality means equality of welfare precisely because we believe that equality, considered in itself and apart from questions of efficiency, condemns rather than recommends compensating for deliberately cultivated expensive tastes."

Exploring the idea of personal preferences further Dworkin defines the role responsibility plays in determining moral claims. In the first example, we have Louis who sets out to deliberately cultivate some new expensive taste or ambition that once cultivated will diminish his welfare, on the chosen conception, to the extent that he now requires more wealth than others. In the second case we have Jude, who having once had humble needs easily satisfied now finds himself wishing to increase the success of his life by cultivating new tastes. While Jude's new tastes require additional wealth they do not require more than what others have, due to his initial low baseline. Dworkin argues that there is a very clear difference in how these claims due to cultivating tastes should be met: Louis does not have a claim whereas Jude does. For Dworkin the difference comes down to what one can expect from society in comparison to others. The difference is that Louis asks that more than an equal share of social resources be put at the disposal of his life while Jude asks only that something closer to an equal share be put at the disposal of his (p. 239).

Therefore, in Dworkin's terms, we are free to make the best sort of life we can, however, we are not free to trespass on the fair share of others. As such, Dworkin argues that we must reject the idea of equality of welfare on the grounds that it does not

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support the fair shares principle. In the end, it is not the deservingness of a particular welfare need that matters, rather how it relates to the needs of others and their prior equal deservingness. In this way, it can be argued that Dworkin is appealing to the prior idea of fairness and not equality. However, Dworkin's idea of fairness lies in his definition of equality as political equality. Dworkin is seeking to find the conception of equality that best meets an attractive political ideal by treating people as equals. If we are concerned about the distribution of societal benefits and burdens, as we are, then our concern for treating people as equals must be paramount to our conception of equality. Equality of welfare fails this test as it allows the welfare requirements of some to impinge upon the requirements of others and thereby fails to treat people as equals.

In the second paper on *What is Equality?* Dworkin seeks to define what he means as equality of resources. Dworkin unlike most other theorists does not see equality and liberty as distinct or potentially antagonistic ideals. Instead, Dworkin's account of equality requires a certain level of liberty, including economic liberty, which results in the idea that while we should start from a position of equal resources we do not, and ought not, end in such a position. Dworkin devotes the third paper on *What is Equality? The Place of Liberty* to defending this account of liberty.

I try to defend, however, a much more general claim: that if we accept equality of resources as the best conception of distributional equality, liberty becomes an aspect of equality rather than, as it is often thought to be, an independent political ideal potentially in conflict with it (2000, p. 121).

For Dworkin then, what is important is the starting place of equality of resources, beyond that liberty demands that inequality must follow. However, not all inequality will be just and Dworkin takes account of this by treating inequality that arises due to choice differently from inequality due to circumstance. By including liberty as part of what defines equality Dworkin is attempting to show that the market economy is not the enemy of equality as usually suggested. On the contrary, the market is pivotal to Dworkin's theory of equality of resources as it accommodates an equal starting place and makes possible the correct measurement of personal choices by defining them in terms of value to others. In this way equality allows for personal freedom though not at the expense of the fair share of others.

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Dworkin's economic market takes the form of an auction. He begins by asking us to consider how those shipwrecked on a remote island, with no means of trade or immediate rescue, are to divide the abundant resources of the island among them. We could take every category of resource on the island and begin to divide it evenly among the immigrants, however, this may not always be possible or indeed useful. Assuming the immigrants arrive on the island with no means of wealth Dworkin suggests that the only fair method of division of goods is through an auction. The use of the auction model is defended on the grounds that it is the only mechanism that can take account of the indivisibility of certain resources and account for individual values. The auction, as an expression of an economic market allows the resources to be measured by what others are willing to pay for them. This represents the true value of personal resources and satisfies the requirement that we ought not to trespass on the fair share of others. The auction not only meets the envy test "no division of resources is an equal division if, once the division is complete, any immigrant would prefer someone else's bundle of resources to his own bundle" (p. 285), it also avoids the situations of indivisible, unusable or unwanted resources. Each immigrant enters the auction with an equal share of valueless clamshells that they can use to bid for resources. In this way, the immigrants have equal purchasing power and equal liberty to attain the resources they prefer. The auction ends when the envy test has been met and as such is Pareto efficient, in that no one can be made better off without someone else being made worse off. Dworkin acknowledges that the envy test will eventually fail as some immigrants fare better than others. How are we to account for the differences that arise in resources post auction? If we are to assume that anything goes after the initial equal starting position than we are endorsing a libertarian approach that promotes liberty over equality. Remember, that while Dworkin's account of equality includes the idea of personal liberty it is still very much an egalitarian theory therefore it needs some mechanism for determining what inequalities are just post auction.

If we return to the example of the children in part one and place them in this type of auction the child with the expensive tastes will have purchased a smaller bundle with an equal share of clam shells. It will be the bundle that best reflects his personal choices and best serves his needs. Equality of resources treats him as an equal both in terms of purchasing power and in terms of liberty. The blind child may not fare so well at an

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auction as his disability may hamper his use of his equal share of resources or may reduce the value of the resources available. Earlier we noted that while Dworkin felt that there was something in the disabled child's claim that warranted an additional share, its appeal could only in part be explained by an equality of welfare theory. The validity of this claim needed to be grounded in equality of resources. The process of the auction cannot take account of disability other than by way of reflecting the preferences of the disabled child and as such provides no grounding for an additional claim based on disability. This is further hindered as values are based on the preferences of others. While the auction may prove successful in attaining equal purchasing power it cannot yet be said to fully reflect equality of resources. Dworkin needs something more than equal purchasing power to address the issue of disability and for determining whether the resulting inequality that must arise post auction is justifiable.

In response to this Dworkin distinguishes between what he calls option luck and brute luck. Option luck is the luck that derives from deliberate and calculated choices whereas brute luck is due to circumstances. The idea behind this is to determine the difference between outcomes that people ought to be held accountable for and outcomes that are beyond the control of the individual and as such generate redistributive claims. Using the example of the immigrants, those who choose to work hard to increase the value of their bundle are entitled to the gains made and those who choose to neglect their bundle are not entitled to compensation for any losses that might follow, as both can be said to have option luck: they are both free to make what they can with their initial bundles. To make the conscientious immigrant pay for the losses of the negligent, or to fund such compensation from a central pot, would not be to treat them as equals. Both are accountable for the choices they make, and as such, whether those choices lead to a good or bad outcome, is of no relevance Dworkin's equality of resources. What you do with your resources is a matter of personal liberty. Therefore the equality of resources that was achieved through the auction must naturally lead to inequality due to the differences in individual choices. Option luck, either good or bad, can play no role in claims to equality of resources: if I gamble and win, the greater share of resources, afforded to me, is justified on the basis that I took a calculated risk. And the alternative, if I gamble and lose, I can have no claim for compensation. We start with an equal share of resources and how we choose to spend/invest those resources is a matter of liberty and as such not a concern for a theory based on equality of resources.

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However, not all luck arises from personal choices and Dworkin's second account of luck, brute luck, accounts for the kind of luck that is dependent on our circumstances, unchosen luck, so to speak. Dworkin explains the difference with the following example

If I buy a stock on the exchange that rises, then my option luck is good. If I am hit by a falling meteorite whose course could not have been predicted, then my bad luck is brute... (p. 293).

Since brute luck arises through unchosen circumstance Dworkin argues that individuals ought not to be held accountable for bad brute luck. Can we continue this line of thought by suggesting the same for recipients of good brute luck: individuals ought not to be entitled to the benefits that flow from brute good luck. If two equally hard working Dworkinian immigrants purchase two adjacent plots of land that look comparable from both the immigrants' perspectives, and if one turns out to be barren or suffers the effects of a natural disaster, the outcome can hardly be said to be just, in the same way as that of the negligent immigrant's outcome. The owner subject to brute bad luck can be described as unfortunate. However, while the other immigrant may be described as fortunate it may also seem unfair to penalise the fortunate immigrant who happened to purchase the highly fertile plot. Does the claim for compensation due to brute bad luck generate a counter claim for redistribution from those with brute good luck? Given that both arise from circumstances and not choice then the answer must be yes. The challenge now is how to compensate for brute bad luck within the framework of the market. Dworkin suggests that the answer comes in the relationship between brute and option luck. Dworkin argues that brute luck can be turned into option luck through the use of hypothetical insurance markets. The application of a hypothetical insurance market for brute bad luck requires the use of a thin veil of ignorance: in the case of the immigrants neither has knowledge of the quality of the plot they are bidding for or when and where a natural disaster might strike. Both are exposed to the same risk of brute luck. Since all have the option of purchasing insurance they can negate the risk of bad brute luck. As such, additional claims are not based on redistribution due to bad brute luck, rather they become claims to compensatory distribution based on the option to insure. The claim for compensation is now based on the choice to insure, or not to insure. If we fail to insure and have bad luck we now experience bad option luck and as such are responsible for the gamble we took.

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Dworkin develops two hypothetical insurance models, one for disabilities and the other for natural endowments. These models are based on the distinction between the person and their circumstances; a view that assigns tastes and ambitions to the person and physical and mental powers to circumstances. In this way, Dworkin seeks to arrange institutions so that the distribution of benefits and burdens is ambition-sensitive and endowment insensitive. In reality, compensation for unchosen inequalities would be funded through a progressive taxation system to which all citizens would contribute. Inequality generated through choice would be morally just.

Dworkin's approach along with other Luck Egalitarians has the most to say on what justice owes to children as it is an approach to equality that aims at levelling the playing field while endorsing ideas of responsibility and desert. Like Rawls, Dworkin endorses a scope limited to citizenship, however, unlike Rawls', there is nothing within the structure of the Dworkin framework that limits children's rights to familial relationships. Any inequality generated from the circumstances of childhood counts as unchosen circumstances as such, including, but not limited to, genetic disposition, economic and social status, health, education, cultural experiences and aspirations. Given the dependent nature of childhood, with its lack of voluntary choice and responsibility, any inequality among infants and the very young must count as brute bad luck and as such ensures, on Dworkin's model, entitlement to compensation. As children mature and they can be held more responsible for the choices they make their moral claim will naturally lessen. As such, children really are treated with equal concern and respect and are not held to ransom by the option luck of their parents. While Dworkin does not consider children in their own right in *What is Equality*, the conclusions we draw are implicit in his framework. His later work *Sovereign Virtue* directly considers this question of dependency when it explores how a hypothetical insurance scheme might operate. Here, Dworkin is clear,

because the hypothetical insurance approach is designed to serve the needs of an ethically sensitive theory of justice by making distribution sensitive to choice and conduct, and it must therefore not be used to condition distribution to one group – children - on the conduct of another - their parents (2000, p. 339).

Dworkin suggests that the dilemma can be framed by asking a different question, that of how much insurance would children buy against being born to “indigent and unemployed parents”. The solution provided by the hypothetical insurance market

could be bought by “prudent guardians” (presumably the State is such) and paid for on a long-delayed “instalment plan”.

If equal respect and concern requires an equal starting place or equal purchasing power, as in Dworkin’s auction, then Dworkin (along with other luck egalitarians who hold the unchosen inequality premise) must endorse total equality during the period of childhood through strict adherences to equality of opportunity. On the other hand, were we to ignore equal starting place and concentrate on compensation for brute bad luck only, then Dworkin at least ensures the priority of distributional justice is directed towards children.

5.4 *The correct unit for interpersonal comparison*

A couple of years earlier Sen in his 1979 Tanner Lecture *Equality of What* provided a very different alternative to the question of the currency of equality. Like Dworkin, Sen’s account of the correct egalitarian standard for interpersonal comparisons has an inbuilt notion of liberty however, unlike Dworkin Sen’s egalitarian impulse leads him to reject resource accounts of equality. This rejection has its roots in an account of justice that is based on human capability and freedom. The argument is twofold: firstly social justice needs to recognize the diversity of human beings and secondly wealth is not the good we are seeking as it is merely useful for the sake of something else. Sen argues that equality requires the denial that a person’s well-being be judged exclusively in terms of their utilities or primary goods (p. 212) and rather that what is needed in the framework of well-being is the notion of basic capabilities, like the ability to live to an old age or the ability to participate in political activities (p. 218). The focus is on what a person can do or how they function in their society. Therefore how we ought to distribute the benefits and burdens of society depends not only on a particular pattern of distribution (say equality) but also on how people are able to make use of distributed resources. The main thrust of Sen’s argument is that by ignoring human diversity Rawls has failed to understand the nature of advantage. The claim is that “judging advantage purely in terms of primary goods leads to a partially blind morality” (p. 216). The implications of this are that Rawls has got the *Equality of What* question wrong by ignoring the reality of how people’s lives actually turn out. What we ought to be interested in is not the distribution of goods per se rather what those goods do for human beings. Sen argues

that Rawls' reliance on primary goods fails to recognize this relationship between people and goods:

Rawls takes primary goods as the embodiment of advantage rather than taking advantage to be a relationship between persons and goods (p. 215).

Sen's concern is that

the conversion of goods to capabilities varies from person to person substantially, and the equality of the former may still be far from the equality of the latter (p. 219).

While using primary goods as an index goes some way to understanding the relevance of non-utility information to moral judgments it cannot fully account for the translation of resources into well-being or put another way the capability individuals attain from distributed resources. Sen suggests that both utility and resource theories fail to fully capture the ideas implicit in demands for equality when

it is argued that resources should be devoted to remove or substantially reduce the handicap of the cripple despite there being no marginal utility argument (because it is expensive), despite there being no total utility argument (because he is so contented), and despite there being no primary goods deprivation (because he has the goods that others have), the case must rest on something else (p. 218).

Sen suggests the "something else" can be met by an "interpretation of needs in the form of basic capabilities", an interpretation he calls "basic capability equality" (p. 218).

For the moment we will move from Sen to Nussbaum's interpretation of the capability approach, as it provides a more detailed account of what the currency of egalitarian justice ought to be. We will return to Sen in the following chapter when we look at his account of freedom.

5.5 The Capability Approach

In *Frontiers of Justice*, Nussbaum develops Sen's capability approach (CA) into a set of basic capabilities that are required to live a life of dignity and correct for the power imbalances inherent in asymmetrical relationships. In doing so, Nussbaum provides an

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alternative to primary goods and extends the currency of egalitarian justice debate. As such, it is worth taking a look at Nussbaum's account as even though it cannot be quite said to be an egalitarian theory, it has at least a strong egalitarian impulse. Nussbaum argues that since the social contract theory relies on the belief and assumption that cooperation is pursued for the purpose of securing mutual advantage among "free, equal and independent", persons who are roughly equal, it thereby excludes members of society with whom we have an asymmetrical relationship: children, the elderly, and the disabled (p. 156). Nussbaum suggests that this approach relies on a narrow account of social cooperation. As a superior alternative Nussbaum offers up her version of CA that feels free to use an account of cooperation that treats justice and inclusiveness as ends of intrinsic value from the beginning, and that views human beings as held together by many altruistic ties as well as by ties of mutual advantage (p. 158).

Nussbaum builds her account of moral personhood from the Aristotelian account of human dignity and the Marxist idea of a need for plurality of life activities. This represents a further departure from contractarianism by adopting the Aristotelian idea of dignity rather than Rawls' Kantian conception of the person. Nussbaum argues that while Rawls makes his personhood reside in rationality, by adopting the Aristotelian approach, she is able to capture the full extent of human nature of which rationality is merely a part. This approach also draws heavily on the idea of "truly human functioning" as described by Marx in his 1844 *Economic and Philosophical Manuscript*. Nussbaum argues that for Marx, (p. 74) human beings are "in need of a totality of human life-activities". From these two principles Nussbaum creates a theory of justice that

from the many characteristics of human form we select some that seem so normatively fundamental that a life without any possibility at all of exercising one of them, at any level, is not a fully human life, a life worthy of human dignity, even if the others are present (p. 181).

While Sen's focus is on functioning Nussbaum is concerned with capabilities. The just society is one who enables you to live the life you value not one that ensures it. Although Nussbaum does acknowledge the special case of children and guardianship (p. 172) she does not develop this further. In this respect, while real freedom is important

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to Nussbaum it is not the central aim. Rather the just society is one which is concerned with providing a minimum threshold for all. Above this threshold inequality is not only justified it is also protected by rights of individual liberty. However, Nussbaum does provide for a lexical ordering not unlike Rawls by insisting on strict equality for religious liberty, liberty of speech and political liberty (p. 179). The remaining capabilities produce claims of an adequate standard achieved through a minimum threshold. In this way Nussbaum's capability approach can be described as a sufficientarian approach.

The aim of the approach is to provide an account

of core human entitlements that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires (p. 70).

Nussbaum's account of these entitlements is as follows:

- 1 *Life*. Being able to live a worth-while life of normal length.
- 2 *Bodily Health*. Being able to have good health including, nourishment, shelter and reproductive health.
- 3 *Bodily Integrity*. Being able to move freely from place to place. To be secure against violence, sexual assault and domestic violence. Having opportunities for sexual satisfaction and a choice in reproductive matters
- 4 *Senses, Imagination, and Thought*. Being able to use the senses, to imagine, think and reason in a "truly human way".
- 5 *Emotions*. Being able to have emotional intelligence and not having one's emotional development blighted by fear and anxiety.
- 6 *Practical reason*. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life.
- 7 *Affiliation*. (A) being able to live with and towards others. Having social empathy and interaction. (B) having the social bases of self-respect and non-humiliation.
- 8 *Other Species*. Being able to live with concern for and in relation to animals, plants, and the world of nature.
- 9 *Play*. Being able to laugh, to play, to enjoy recreational activities.
- 10 *Control over one's environment*. (A) *Political*. Being able to participate effectively in political choice. Having right of participation, freedom of speech and association. (B) *Material*. Being able to hold property, having the right to

work and for work relationships being based on mutual recognition (pp. 76-78).

The list of capabilities is not an exhaustive account of political justice. It is open-ended and has undergone modification since conception and is sure to undergo further modification in the light of criticism and as a reaction to changing social conditions. It is however, non tradable in that one capability cannot be traded off against another. While the capability approach is not intended to provide a complete account of social justice it is a system which provides for a minimum level of entitlements to all, in line with what is required to live a life of dignity. Nussbaum presents this list of capabilities “as the source of political principles for a liberal pluralistic society” that can achieve “consensus among people who would otherwise have very different comprehensive conceptions of the good” (p. 70).

By changing the focus from goods, to how people use goods, we might think that Sen is taking us back to the welfare debate that both Rawls and Dworkin reject. Sen’s, and in particular Nussbaum’s, account of a life worth living may bear some resemblance to the rhetoric of welfare however, it neither involves or promotes the idea of personal preferences or utility in the way that welfare theorists do. Rather, the idea of well-being is construed in terms of the substantive freedoms people have reason to value, in relation to each other. Rawls argues that primary goods do take account of basic capabilities, however these are construed as the capabilities of citizens as free and equal persons (2001, pp. 168-176), which brings us back to our concern for Rawls’ inability to deal with the period of childhood. On this view, it looks as if capabilities have a lot more to offer children than primary goods: firstly the scope of Nussbaum’s approach includes children and secondly the capabilities on offer allow for the natural process of child development. Sen/Nussbaum’s approach can be said to improve on Rawls’ in two important ways: the State’s obligation to provide all citizens with threshold capabilities ought to go some way to limiting the effects of the family on fair equality of opportunity and widening the currency debate ensures that the development of the two moral powers is not monopolised by the family. However, to borrow a term from Richard Arneson, “two cheers for capabilities....rather than the usual three”. The lack of the third cheer comes from Nussbaum’s endorsement of the threshold approach. One of the main problems with threshold approaches is that they ignore the gap:

resources are employed in getting all to the basic level, however nothing is said about what goes on above this level. If the level is set suitably high enough this may not matter, but setting a high level is likely to run contrary to the ideals of threshold theorists: otherwise they would simply be pure egalitarians. It seems to be strange that an approach that is based on our relations to others does not address the issue of the equality gap; however, a similar criticism could be made of Dworkin's hypothetical insurance model and his commitment to equal concern and respect. This concern has initiated a move away from distributive justice and towards ideas on relational justice which we will discuss later in the chapter.

5.6 *Equality or Priority?*

Returning now to Parfit, let us recall that the point of his taxonomy of egalitarian value was to open up the debate concerning the differences between egalitarianism and prioritarianism. Parfit argues that if we are persuaded by the levelling down objection, we adopt the Deontic View of equality, as we do not hold the view that inequality is, in itself, bad. Given this, we need to establish an alternative basis for arguments calling for redistribution, for Parfit this can only be on grounds of priority rather than equality. The priority view is having concern for the worst off and as such provides an alternative to the equality argument for redistribution. On the priority view, benefiting people matters more the worse off these people are (Parfit 1991, p. 101). Highlighting the differences between these arguments states

The mere fact of inequality is not, in itself, bad for people who are worse off. Such inequalities may be naturally unfair. And it would of course be better for these people if they themselves were better off. But it would not be better for them if, without any effects on them, the other people were just as badly off (p. 111).

Returning to the example of the Divided World the Priority View could endorse a move from state one to state two. While this would consequentially represent a move to equality, with the better off losing more than the worst off gain, the rationale would be based on improving the absolute level of the worst off rather than appealing to the ideal of equality and as such is not subject to the levelling down objection. The problem with Parfit's priority view is that it cannot address the equality gap as to do so would be a move away from priority back to valuing equality intrinsically. There is no in between

for Parfit, either we value equality for itself and are therefore always constrained by the levelling down objection or we value equality for its instrumental value in improving the lives of the worst off. In Chapter Eight we will look at the ways in which Rawls attempts to find this middle ground.

5.7 *The problem with distributive justice*

Iris Marion Young argues that a fundamental mistake of distributive justice theories, including Rawls, is the emphasis placed on the currency of justice. Young suggests that instead we ought to think of social justice in terms of the relationships people have with each other. Young criticises Rawls on two fronts:

First, it tends to focus thinking about social justice on the allocation of material goods such as things, resources, income, and wealth, or on the distribution of social positions, especially jobs. The focus tends to ignore the social structure and institutional context, that often help to determine distributive patterns...and [secondly] the concept of distribution represents them as though they were static things, instead of a function of social relations and processes (1990, pp. 15-16).

Young argues that instead of focusing on distribution, a conception of justice should begin with the concepts of oppression and domination. While Young does not address the circumstances of childhood directly she does address the need to focus on social group differences and their effect on structuring social relations.

Responding to Young's work, McLaughlin and Baker have developed a framework for thinking about social justice through what they term as "equality of condition". This framework is dependent on the

broadly speaking, the belief that people should be as equal as possible in relation to the central conditions of their lives. Unlike Rawls's and other liberal egalitarian theories, it is not about trying to make inequalities fairer, or giving people a more equal opportunity to become unequal, but about ensuring that everyone has roughly equal prospects for a good life, that they are equally *enabled* and *empowered* in living their lives (2007, p. 63).

McLaughlin and Baker go on to suggest five types of conditions that enable people to lead successful lives: respect and recognition, resources, love, care and solidarity, power

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and finally work and learning. McLaughlin and Baker argue that this five-dimensional framework contains both distributional and relational elements and as such is a more adequate framework for analysing inequalities and developing social policy (p. 65). Equality of condition is not about making inequalities fairer or providing more equal opportunities, rather it is about ensuring that everyone has a roughly equal prospect for a good life. Given the prominence of McLaughlin and Baker in the field of social policy within Ireland, we will return to this approach in our section on policy formulation.

In *What Is the Point of Equality?* Elizabeth Anderson makes a similar point by launching a scathing attack on what she terms Luck Egalitarianism. Anderson argues that luck egalitarianism reflects a fundamentally flawed conception of justice (1999, p. 295) that is based on a misunderstanding of the point of equality. Anderson argues that much of the contemporary writings on egalitarian theory have at their core a flawed understanding of the point of equality in that they are

dominated by the view that the fundamental aim of equality is to compensate people for undeserved bad luck – being born with poor native endowments, bad parents, and disagreeable personalities, suffering from accidents and illness, and so forth (p. 288).

Anderson's claims that any egalitarian theory must have both a negative and positive aim where

the proper negative aim of egalitarian justice is not to eliminate the impact of brute luck from human affairs, but to end oppression which by definition is socially imposed. Its proper positive aim is not to ensure that everyone gets what they deserve, but to create a community in which people stand in relations of equality to others (p. 288).

Anderson suggests that in their race to rebuke objections to egalitarianism, like the levelling down objection and the resource translation objection, luck egalitarians have limited the space in which equality can operate resulting in theories of equality which share a common core of capitalism and welfare state (p. 262). This hybrid ensures market governance for what you can be personally responsible for and welfare insurance for anything relating to brute bad luck (p. 292).

Conclusion

The central aim of this chapter was to highlight the importance of equality to our ideas of justice, the differing ways in which it can be interpreted and the array of outcomes this can produce, especial for children. In this respect, the sheer volume and diversity of work on the issue of equality in the last four decades is a testament to Rawls' commitment to equality as a central ideal in social justice. While Dworkin promoted the role of equality of opportunity and highlighted the relationship between responsibility and equality, his separation of luck into brute and option provides us with a strong argument for why social justice ought to apply directly to children. While, Sen highlighted the limitations of the resource approach we find that Rawls' PSG may be made to accommodate capabilities. The threshold approach taken by Nussbaum however, falls short of addressing issues of transmission of disadvantage above the line and fails to recognise that inequality must have an upper and well as a lower limit. We find much to favour in the arguments for relational equality and have noted similar objections to the limitations in Dworkin, Sen and Parfit's differing egalitarianism. However, we hope to show in chapter eight why the relational arguments do not extend to Rawlsian justice and how the social regime recommended by Rawls for realising justice can have both a concern for priority and equality as well as social relationships, particular the circumstances of childhood. However, Rawls accepts that *Theory* failed to highlight the extent to which economic inequality would be limited by the realisation of justice as fairness, therefore at the very least, this body of work helped to bring to light an important though less known aspect of Rawlsian justice.

FREEDOM AND THE OPPORTUNITY FOR FREEDOM

It is very easy to think of many ways in which we can be unfree and in its most reducible form it is simply to be restricted. I am currently unfree to live on Venus or fill the role of the lead tenor at my local operatic society, as I have neither the necessary mode of travel nor the gendered tones at my disposal. In both cases, I am in some way restricted however, neither can be deemed as unjust. The justness of freedom or unfreedom then seems to lie not in the restriction, rather in how the restriction comes into force or in the contextual setting of this restriction, in our case social justice. The question we need to ask then is when does freedom, or lack of it, become a concern for justice? Or to put it another way what is required of freedom by justice. In a general sense, freedom can be described as the power to live as one chooses while respecting the freedom of others. While this might be said to be a common sense notion of freedom it has some weighty philosophical underpinnings: ideas relating to self-determination and realisation, autonomy and responsibility, and the relationship between the person and the state. This chapter will attempt to unpick some of the ideas with the intention of exposing how theoretical ideas of freedom relate to children and the circumstances of childhood. As a background to this, we will keep in mind the paternalistic requirements necessitated by the developing moral and cognitive capabilities of children. However, autonomous beings do not spring forth from nowhere, and as such, we are interested not only in the idea of freedom, rather more specifically in the opportunity for developing freedom.

6.1 Positive and Negative Freedom

Settling on a definition of freedom can be difficult; as Isaiah Berlin says “...the term is so porous that there is little interpretation that it seems able to resist” (1969, p. 121).²⁶ However, Berlin in his famous essay, *Two Concepts of Liberty* (1958), contains this porous

²⁶ *Two Concepts of Liberty* had been delivered 11 years earlier at Berlin’s Inaugural Lecture at University of Oxford 31 October 1958.

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nature within two political concepts, that of negative and positive freedom. The idea of distinguishing between positive and negative freedom can be traced back to Kant, however, it was Berlin's work during the 1950's and 60's, notably his lecture and essay *Two Concepts of Liberty* in 1958 where the distinction is extensively examined and defended. Since then, much work in the liberal tradition has endorsed a negative concept of freedom although there has been some support for adopting the positive concept. Negative freedom is a sense of freedom as an absence of barriers, obstacles or constraints. Positive freedom is the more substantive idea of taking control of one's life, self-determination or self-realisation. According to Berlin the kind of freedom that concerns justice ought to be that of political liberty. Indeed, like Berlin most authors use the two terms interchangeably. This gives us a notion of freedom that is limited to its political nature and addresses the question we raised in the introduction regarding the justness of freedom or unfreedom. To exemplify this Berlin quotes Helvetius:

The free man is the man who is not in irons, nor imprisoned in a gaol, nor terrorized like a slave by the fear of punishment...it is not lack of freedom not to fly like an eagle or swim like a whale (1969, p. 122).

Quite simply then, freedom can be best expressed by the absence of external constraints on liberty. Recent work from civic republicans and from within the liberal tradition challenges this definition and we will look at this later in the chapter. First it is useful to start with Berlin's account of the distinction between negative and positive freedom and his reasons for endorsing the negative account.

The notion of negative freedom is one based on the idea of freedom "from". Berlin asserts that we adopt a negative sense of freedom when we consider the following question

What is the area within which the subject—a person or group of persons — is or should be left to do or be what he is able to do or be, without interference by other persons (pp. 121-122)?

On this interpretation of freedom we are free if we can do what we are able to do without restrictions from others. We are not free if some externality restricts our actions. Berlin best captures the idea by stating

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You lack political liberty or freedom only if you are prevented from attaining goal by human beings. Mere incapacity to attain a goal is not lack of political freedom (p. 122).

The problem of this individualistic account of freedom is how to address conflicting claims for freedom. The area in which we are free cannot be unlimited as this would lead to social chaos. The question then for the negative concept of freedom is, when ought a person's freedom be curtailed? Or put another way, when is it just to interfere with an individual's freedom? The second formulation brings out the idea that for Berlin a reduction in one person's freedom is an absolute loss of freedom even if it is justified by some other value, such as on the grounds of equality or solidarity.

Everything is what it is: liberty is liberty, not equality or fairness of justice or culture, of human happiness or a quiet conscience. If the liberty of myself or my class or nation depends upon the misery of a number of other human beings, the system which promotes this is unjust and immoral. However, if I curtail or lose my freedom, in order to lessen the shame of such inequality, and do not thereby materially increase the individual liberty of others, an absolute loss of liberty occurs (p. 125).

An implication of the negative sense of freedom is that we must establish a frontier between the realm of private life and that of public authority.

liberty in this sense means liberty *from*; absence of interference beyond the shifting, but always recognizable, frontier (p. 127).

Freedom defined in the negative sense is therefore freedom from interference within a state controlled area as such it is freedom as political liberty.

While negative freedom involves an absence of some kind of external obstacle, positive freedom has more to do with the presence of internal factors like autonomy, self-determination and self-realisation.

above all, to be conscious of myself as a thinking, willing, active being, bearing responsibility to my own ideas and purposes. I feel free to the degree that I believe this to be true, and enslaved to the degree that I am made to realize that it is not (p. 131).

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Berlin argues that freedom in the positive sense is involved in the answer to the following question “what, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?” (p. 122). As such it is a question concerned with “who governs me” as opposed to “how far does government interfere with me”. Berlin argues that these are logically distinct questions. He also finds the second question a better representation of what political liberty ought to be.

The desire for self-determination or self-realisation is what defines humanity from other creatures. How these ideas relate to freedom is not a straightforward matter. The wish to be your own master may lead one to pursue desires that are unattainable or unavailable, however, this does not necessarily generate a claim for justice on the grounds of lack of freedom, at least not in the political sense. Take the earlier example of the desire to live on Venus, it is true in one sense that I am unfree to pursue this desire however it seems obtuse to say that justice should be concerned with this unfreedom.

Take Helvetius’ example of to “fly like an eagle or swim like a whale”, these desires seem trivial compared to the lack of freedom that comes from obstruction from externalities. If travel to Venus was possible, and say maybe, essential for survival, it is likely that the lack of freedom for just a few, would now be seen in a different light, as non-trivial and most likely unjust. While lack of freedom for all would be dismal and devastating for society it does not conjure up quite the same sense of injustice. That is, unless it involves forced impediment by some other externality, say another society, but this injustice would be now based on the negative sense and not the positive. Assuming this is not the case, the change of view, when some are unfree, is independent of any concern for self-mastery, the work is now being done by appeals to social justice. When travel to Venus is possible and necessary, then it ought to be available to all, anything short of this would be a violation of freedom in the political sense. This would be further enhanced if there was some external obstruction prohibiting travel to Venus, say that society refused to build the ramps necessary for wheelchair users.

Berlin provides another reason for rejecting positive freedom that he refers to as the paradox of positive freedom. This paradox is based on the idea that while we are self-

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directing by nature we are plagued by a divided self, the very nature of which allows others to “justifiably” assert their governance. As such the positive sense of freedom includes the danger of authoritarianism.

It is one thing to say that I may be coerced for my own good which I am too blind to see: this may, on occasion, be for my benefit; indeed it may enlarge the scope of my liberty. It is another to say that if it is my good, then I am not being coerced, for I have willed it, whether I know this or not, and am free (or ‘truly’ free) even when my poor earthly body and foolish mind bitterly reject it, and struggle against those who seek however benevolently to impose it, with the greatest desperation (p. 134).

Once I take this view, I am in a position to ignore the actual wishes of men or societies, to bully, oppress, torture in the name, and on behalf, of their ‘real’ selves, in the secure knowledge that whatever is the true goal of man ... must be identical with his freedom – the free choice of his ‘true’ albeit often submerged and inarticulate, self (p. 133).

6.2 Freedom as Property Rights

Of particular interest to the central question of this thesis is the idea of economic freedom as this plays a central role in the transmission of intergenerational advantage. The idea of economic freedom seems to fit well with the idea of negative freedom in non-ideal (real) contexts, in that economic freedom is normally seen as a pro tanto right, restricted somewhat by the necessary contribution to funding the state. Indeed, capitalism is often heralded as the purveyor of individual freedom, with capitalism and democracy usually going hand in hand. For this reason, we now look at the work of Robert Nozick, particular that of *Anarchy, State and Utopia, 1974* (ASU from now on). ASU is a direct response to Rawls’ *A Theory of Justice* and advocates a single principle of justice approach based on the promotion of individual liberty above all else rather than the reflective equilibrium offered by Rawls. It is heralded as the libertarian answer to, not only Rawls but, the very idea of distributive justice itself. Given its promotion of liberty and economic freedom it fits well within this chapter although it must be noted that Nozick presents his theory as justice based on rights and not freedom per se. We will return to this point after examining the key arguments made by Nozick.

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In short, ASU can be said to provide an argument for the free market, absolute property rights, and the minimal state. The objective of the text is to explore the nature of the state, its legitimate functions and its justification (1974, p. ix). Like Rawls, Nozick is engaging in moral debate and rests his argument on the 'Kantian imperative'. This, Nozick argues, creates what he terms as, moral "side constraints". The pursuit of all goals, including justice, is to be subject to moral constraints regarding individuals' inviolable rights. The conclusions Nozick draws from this moral imperative are, however, in complete opposition to the conclusions drawn by Rawls, as seen in his difference principle. *ASU* attempts to establish four important points:

1. There is a moral basis for the inviolability of certain individual rights
2. Given 1 rights, particularly economic rights, are the single principle of justice
3. Given 1 & 2 only a minimal state is justified
4. Given 1,2 and 3 patterned distribution or any form of redistribution is unjust

The thesis of self-ownership claims that since your life, your liberty and your body belong to you, only you have the right to decide what happens to them. This sounds very similar to Berlin's description of positive freedom, however, as we will see Nozick's formulation is more in tune with the idea of negative freedom (or at least negative rights) as it holds coercion to be morally unjust. Nozick's account has its foundation in the second formulation of the Kant's Categorical Imperative to "act in such a way that you always treat humanity...never simply as a means, but always at the same time as an end". Treating people as ends and not merely means, leads to the idea of property in persons including one's body and hence labour. The conclusion Nozick draws from this thesis is that we ought not to force someone to suffer a loss or disadvantage just so another may gain, as to do so would be to ignore the 'separateness of persons'. In fact, Nozick argues that enforceable duties to aid others are morally wrong. This does not prevent Nozick from acknowledging that the moral thing to do might be the provision of aid, merely that enforcement of aid is to override the priority of self-ownership. We may wish to aid and we ought not to be restrained from doing so, however, the point is, that based on the theory of self-ownership we ought not to be forced to aid others. While something may be morally right we cannot be forced into moral obligation, as to do so would be to violate the enforceable duty not to interfere with each other's separateness. Moral duties become matters of personal discretion and in this way the inviolable duty of self-ownership becomes the boundary of our rights.

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Nozick's famous eye transfer example helps to clarify the point. Here we are asked to consider whether it is acceptable to transfer from those with two healthy eyes to those who are blind, assuming it is safe to do so. It might be true that a society where all have one workable eye is better (on some measure of welfare or fairness) than a society where some can see and others cannot however, this does not generate a moral obligation of transfer from the sighted to the blind. The idea of this type of obligation, whether enforced or not, seems intuitively at odds with our ideas of self-ownership and freedom.

Like Rawls, Nozick is keen to criticise utilitarianism on the grounds that it doesn't "properly take rights and their non violation into account" and "instead leaves them a derivative status" (p. 28). Nozick claims that utilitarianism places rights at the end state, meaning that the end result may justify violating these rights (p. 29). In contrast to this, Nozick places these constraints "as side constraints upon the actions to be done" where "The rights of others determine the constraints upon your actions." (p. 29).

The side-constraint view forbids you to violate these moral constraints in the pursuit of your goals: whereas the view whose objective is to minimize the violation of these rights allows you to violate the rights (the constraints) in order to lessen their total violation in the society (p. 29).

The thesis of self-ownership, protected by moral side constraints gives rise to the moral view that agents initially fully own themselves and have certain property rights in external things. This foundational idea gives rise to Nozick's theory of justice based on absolute property rights which he calls Entitlement Theory. The basic premise of this theory can be seen in another of Nozick's famous arguments, the Wilt Chamberlain argument. In this argument Nozick shows how patterned distributions (like any form of distributive justice) are incompatible with liberty, or to put it another way, how liberty upsets patterns. Starting for a non-entitlement distribution (say equality) Nozick shows how voluntary choices will always lead to a distortion of the pattern. While Nozick's observation is simple it is nevertheless highly perplexing to liberal egalitarians. Nozick asks

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If D_1 was a just distribution, and people voluntarily moved from it to D_2 , transferring parts of their shares they were given under D_1 , (what was it for if not to do something with?) isn't D_2 also just? (p. 161).

The questions build from the Wilt Chamberlain example which can be said to be the *sine qua non* of Nozick's theory. It asks us to consider the example of a popular sports man whose contract includes a relatively small cut of the ticket fee (twenty five cents) that, due to his prowess and popularity, leads to a substantial fortune. Two important questions follow from this example, the first, more obvious one, is on what grounds can Chamberlain be forced to redistribute what was freely given to him, and the second, more subtle question is, why ought individuals' voluntary choices be redirected or overridden by redistribution. Rawlsian answers to both these questions would be grounded in the principle of reciprocity. While Nozick may well accept the idea that people cooperate and that this may produce gains in societal efficiency, he does not draw the same conclusion regarding the political obligation of such reciprocity.

From each according to what he chooses to do, to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they've been given previously (under this maxim) and haven't yet expended or transferred (p. 160).

The shorter version reads as follows "from each as they choose, to each as they are chosen" (p. 160). Clearly, Nozick's slogan contains a commitment to personal liberty above all else.

The entitlement theory of justice is made up of three principles; "just acquisition", "just transfer" and the "rectification of injustice" (pp. 151:152). This theory of justice does not rest on the concept of what should or ought to happen, rather is a theory based on whether the process or history of distribution is just. Nozick is not interested in the end distribution, rather in how the current distribution came about. The areas of concern are therefore the process and history of a particular distribution. This leads to Nozick's rejection of distributive justice on the basis that justice lies in the process / history of transactions rather than the end result/distribution. In short, if the outcome is a result of free choices that it is a just outcome.

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The entitlement conception of justice in holdings makes no presumption in favour of equality, or any other overall end state or patterning (p. 233).

This is similar to Nozick's argument for moral constraints being placed at the side and not the end as they are tied to the Kantian imperative of an individual's inviolable rights. For Nozick the principle of distributive justice would simply say "...that a distribution is just if everyone is entitled to the holdings they possess under the distribution" (p. 151). Nozick bases his argument for process over end result on the view that distribution itself is something of a misleading concept. Nozick argues that there is no central distribution process which shares out the goods or services of society rather "what each person gets, he gets from others who give to him in exchange for something, or as a gift" (p. 149). Any state intervention in this voluntary exchange would be a violation of the individuals' rights to choose and to be chosen. Therefore, the question of justice concerns how things come to be acquired rather than who should acquire what. The subject then becomes "justice in holdings" rather than distributive justice. Nozick maintains that there are three ways in which a holding can be just: by just acquisition, by just transfer and by rectification of injustice.

The principle of acquisition describes how a person can become the owner of a previously un-owned thing. Nozick begins by considering Locke's labour theory of property where property rights are acquired by "mixing one's labour with un-owned objects.

As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property (Locke, Section 32, p. 15, 1690).

Through a series of illuminating questions, Nozick examines the boundaries, of what can reasonable be mixed with labour to create property rights (pp. 174-175). Does an astronaut come to own Mars by landing on it, does building a fence make you owner of the fence or what the fence encompasses? Similarly, what happens to property rights when mixing objects: Nozick asks if we spill our tomato juice into the sea do we lose something or gain property rights in the sea? Nozick argues that it is implausible to view improving objects as granting property rights since if the stock of objects is limited one person's ownership may worsen the situation of others. Granting this Nozick refers to what he terms the Locke's proviso: that there be enough and as good left in common

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for others (sect 27). Nozick opts for a weaker version of this proviso saying “you must not make anyone worse off by your appropriation” (p. 176) thereby introducing the idea of justifiable compensation. Nozick justification for this weaker proviso is based on what he describes as the infeasibility of the stricter ‘leaving enough and as good’: in a situation of limited stock with a unsatisfied claimant Z, then those from A to Y, cannot be deemed to have legitimate property rights. For property rights to be permanent and inheritable we need to adopt the weaker proviso.

The principle of transfer states that a person becomes the legitimate owner of something if (a) it is already legitimately owned and (b) the owner freely transfers it whether a gift, market exchange or whatever.

A distribution is just if it arises from another just distribution by legitimate means (p. 151).

Any distribution that is forced is unjust and hence any state redistribution must be unjust.

The third principle, the principle of rectification of injustice, deals with rectifying past injustices in the first two principles. While Nozick acknowledges that tracing past injustices may be complex, the Kantian imperative compels us to “make use of the best subjunctive information about what would have occurred”. If on examination the current distribution differs then one of the descriptions yielded, from our examination, must be realized (p. 153). Nozick acknowledges here (in the footnotes) that if there are several probable distributions then consideration about distributive justice and equality may “play a legitimate role in this subsidiary choice” (p. 153). It is assumed though that these considerations only arise when a known injustice has arisen and is too complex to untangle.

In summary, Nozick’s theory of justice in holdings, states that ownership is just if the owner is entitled to them by the principles of acquisition or transfer or the principle of rectification of injustice. If each individual’s holdings are just, then the total set or distribution of holdings is just (p. 153).

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Nozick's entitlement theory is therefore based on historical principles; "it depends on what actually has happened" (p. 152) as opposed to any structural principles of justice. Structural principles such as utilitarianism which looks to yield the greater sum of utility, or Rawls' difference principle which looks to yield some trade off in happiness and equality, deny the individual their just entitlement and hence violate the Kantian imperative to treat humanity as ends and not simply means (Nozick 1974, pp. 154:155). This is due to the fact that structural principles base their concept of justice in the structure or pattern of a distribution rather than how the distribution came about. Like the argument for moral side constraints, justice based on end results will always violate the individual's rights.

Thus we have an historical justification for the slogan "from each as they choose, to each as they are chosen".

6.2.1 Can the State be just? – The night watchman approach

If the principle of entitlement leads to a set of just distributions does this also lead to a just State? Presumably, on any definition of what constitutes a State, the answer must always be yes. Since just distributions come from free personal choices with no enforceable obligation, then we need to consider the role the State has to play, if any, in advancing the just society.

Nozick asks "If the state did not exist would it be necessary to invent it?" (p. 3). He then uses state of nature theory to show how the minimal state would naturally evolve from anarchy and how it is also the only justifiable form of state. Since Nozick wishes to refute the anarchist view of the immoral state he chooses the state of nature as "...nonstate situation in which people generally satisfy moral constraints and generally act as they ought" (p. 5). This starting point Nozick describes as "the best anarchic situation one could reasonably hope for" (p. 5). This is a very different view to the Hobbesian state of nature and is more in line with Locke (Lessnof 1999, p. 255). The aim is to show that, if from this anarchic state of nature the minimal state arises "by a process involving no morally impermissible step", or that it is superior to the "most favoured situation of anarchy", or at the very least it is "an improvement", then "this would provide a rationale for the states existence; it would justify the state." (p. 5). Nozick then draws on the idea of moral side constraints to show how the anarchic state

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of nature would naturally evolve through the free market to a system of private protective associations, which would lead to the ultra- minimal state and finally to the minimal state. Since the minimal state is morally legitimate if each transition is morally legitimate, Nozick aims to show that the transition from private agencies to ultra- minimal state violates no one's rights and secondly that the transition from ultra- minimal to minimal state must morally occur, as to remain in the ultra-minimal state would be to violate the moral side constraints. (p. 52).

While Nozick appears to offer extensive freedom, at least in the form of economic rights, the paradox of this is that at best it can only equate to freedom for a limited temporal range: it cannot address issues across generations. The entitlement theory with its slogan "from each as they choose, to each as they are chosen" undermines the thesis of self-ownership in that the chosen/unchosen are heavily dependent on the choices of others. While this dependence might seem reasonable in the Wilt Chamberlain free market example, the fairness of supply and demand cannot translate to relationships of an asymmetrical nature.

To flesh out these points further let us consider how the entitlement theory considers transfers from parent to child. There are two immediate observations: the right to bequeath and the burden of cost. The principle of just transfer grants parental rights to bequeath. Nozick argues that when redistributive theorists make claims against the right to inherit they ignore the right to give. The right to choose is protected by the idea of self-ownership therefore any attempt to block the transmission from parent to child, either through inheritance or capital gains tax, is seen as a violation of our inviolable rights. In this way parents are at liberty to freely give to their children. The second observation follows then, if parents have the right to bequeath and the State does not have the right to intervene, the full burden of raising children must be borne by the parent. The second observation causes no problem for Nozick as, enforceable sharing of the costs of children is, like any form of taxation, on par with forced labour and as such a denial of inviolable rights.

This rhetoric finds a lot of support in the populace, as reproductive matters tend to be viewed as part of the private realm. There are however, three obvious problems with this view. Firstly, adults without children receive benefits from other people's children (society as a continuum) and as such ought to bear some of the costs, secondly the

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force of these conclusions diminishes when viewed from the child's perspective and finally the thesis of self-ownership is itself undermined. The first point is fairly obvious and one we discussed in the introduction to this thesis. The second point continues to crop up as it reflects the adult oriented view taken by philosophers in general. Nozick's neglect though raises the most concern. On a Nozickian reading, viewed from the child's perspective, our right to choose will be severely limited by the rights and histories of our parent's right to choose and be chosen. This leaves children in the vulnerable place of solely relying on the right to be chosen. Legal rights, it seems, such as those laid down in the UN Convention on the Rights of the Children, are tantamount to enslaving adults without children, by forcing them to share the costs of children. As such, children are fully dependent on the adults who raise them and as such, are subject to *all and only that*, which the adult(s) chose to give. While the minimal state might provide at least some safeguarding measures for children against the potential abuses inherent in this model, it is not certain that this would be the case. Our third point will help illuminate this further. The thesis of self-ownership as built on the idea of property in persons generates strong individualistic rights pertaining to what a person can and cannot be forced to do particularly by the State. How this thesis is to account for children and families is very unclear. If the thesis of self-ownership applies to children then their sole dependency on parents seems at odds with this thesis. If we suggest that self-ownership requires autonomy and therefore only applies to adults, then we need to determine who the proprietors of children are. To suggest that children belong to their parents is to grant property rights in others and thereby invalidate Nozick's starting premise. It seems then that the thesis of self-ownership as applied by Nozick cannot account for children or across generations.

Nozick addresses these concerns in *The Examined Life* (1989), where he attempts to establish limits of the principle of transfer. These limits are heavily influenced by Nozick's interpretation of personhood and how legitimate claims to property are generated. Nozick argues that as the mixing of labour and property generates entitlement, so too, does the *mixing* of parent and child. Nozick suggests that "*children themselves form part of one's substance*" (p. 28) and are part of our "*extended identity*" (p. 30), therefore they too are entitled to the property of parents. This supports Nozick's focus on the right to bequeath. However, he acknowledges that when bequests span generations the resulting inequalities seem unfair (p. 30). Intergenerational transmission of advantage then becomes limited to the wider identity of the benefactor. This is

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facilitated by what Nozick describes as the *subtraction rule*: people can bequeath only the amount that they themselves have added. This prevents the continual transmission of advantage from one generation to the next. In a surprising move, Nozick suggests that this could best be achieved through the restructuring of the system of inheritance tax. While this would go some way towards restricting the transmission of wealth it can at best only partly address the issues of transfer of advantage. It also fails to acknowledge children as discrete moral persons.

In chapter 7, we discuss the extent to which transmission from parent to child has affected the outcomes of Irish children, however, for now it is enough to say that placing children's outcomes solely on parental obligations is to treat children as the property of parents. While Nozick's right to bequeath is likely to strongly resonate with those that choose to bear children, we can only enforce that right by treating children as the private property of others rather than as citizens of society. This seems very much at odds with the ideals laid down in the Irish Constitution. Nozick's entitlement theory serves to strengthen our concerns regarding the transmission of intergenerational (dis)advantage.

Nozick might argue that our concern regarding the asymmetrical nature of the parent-child relationship is dependent on a prior commitment to the idea of desert: as in the concern can only be raised when the thesis of self-ownership entails the notion of desert. While a notion of desert can be said to be implicit in the Nozickian thesis the claim merely gives rise to a right of non-interference and not a right to desert. In this way the only thing you deserve as a self-owner is non-interference. Nozick would then argue that the transfer of advantage from one generation to another, in no way interfered with the rights of the unchosen. This is to say that, if X transfers to x no injustice is done to y. Firstly this ignores the equality gap between x and y, a point we address next by looking at Cohen's claim that a lack of money equals a lack of freedom. However, it also ignores x and y's right not to receive. Nozick claims that arguments that focus on the right to inherit ignore the right to bequeath (p. 168), however, we can similarly claim that by focusing on the right to choose Nozick ignores the right not to inherit (or the right not to accept what has been chosen for us). This is practically relevant when the transmission from parent to child is of disadvantage.

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6.3 *Poverty as a form of Political Unfreedom*

Like most libertarian views, implicit in Nozick's entitlement theory is the idea that lack of money is not an impediment to liberty. However, in *Freedom and Money*, Cohen argues that to be poor is to be pro tanto less free than if you are rich (p. 177).

There are lots of things that, *because* they are poor, poor people are not free to do, things that non poor people *are*, by contrast, indeed free to do (Cohen 2011, p. 167).

Cohen is responding to the conceptual claims in Berlin's arguments for adopting the concept of negative liberty and in Rawls' distinction between liberty and the worth of liberty. For proponents of liberty then poverty is not a lack of freedom per se, rather a lack of being able to exercise freedom and, as such, the State ought to be concerned with freedom rather than poverty (p. 172).

Cohen argues that both Berlin and Rawls accept the conceptual claim that freedom relates to a lack of interference and not a lack of ability. While neither draws the libertarian conclusion that poverty is not a matter for the just State they concede "that poverty is a lack of means, and that it therefore entails lack of ability rather than lack of freedom" (p. 173).

Cohen asks us to imagine a moneyless society and without private property. Freedom is operated on a State run tradable ticket system in that what you are free to do is dependent on the ticket you have. The analogy is supposed to suggest to us the way in which we use money in a capitalist economy. The difference being that capitalism allows us to convert money into capital, in the form of private property. Cohen argues that the Right view private property in two ways, ones that endorse the negative concept of liberty and one that refutes it.

The Right profess to be hostile to interference, as such, but they do not really oppose interference as such. They oppose interference with the rights of private property, but they support interference with access by the poor to that same private property, and they consequently cannot defend property rights by invoking the value of freedom, in the sense of non-interference (p. 187)

Nozick's entitlement theory suggests that we collect property rights based on the right to non-interference of our freedom. However, the Cohen example shows that while private property is one man's freedom it is another's unfreedom. The unfreedom

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promoted by the idea of private property, is not that of Helvetius' "fly like an eagle or swim like a whale" rather it conforms to Berlin's concept of negative freedom, in that the trespasser is denied the liberty to access others private property and in this way is politically unfree.

The Cohen example raises interesting dilemma for those that endorse the libertarian ideal of non-interference. It also shows how poverty can be seen as a form of political unfreedom.

A further argument for why poverty is a lack of freedom can be found in the work of Amartya Sen, which we discussed in the previous chapter. Sen argues that our level of freedom or unfreedom can be ascertained by looking at our capability to live a life that we value (1999, p. 74). Life is about "beings and doings" or put another way, how a person functions in society. "Functionings" reflect the various things a person may value doing or being. Sen argues that the measure of a person's well-being "can be seen as the vector of his or her functioning" (1992, p. 39). The combination of an individual's feasibly achievable functioning is what Sen determines as their capability set. The capability set therefore determines a person's "...real freedom to lead one type of life or another" (p. 40).

Developing on Sen's work further, Wolff and DeShalit show that real (dis)advantage has a tendency to cluster, in that those who are disadvantaged in one way, are often forced to take risks that produce further disadvantage (2007, pp. 65-66). Likewise those advantaged tend to be in a less risky situation ultimately enabling them to pursue further advantage in a way that those disadvantaged cannot. This brings out the significant relationship between risk and disadvantage as defined by the notions of corrosive disadvantage and fertile functioning. The former is what makes a life go badly by creating further disadvantage and the latter is what makes a life go well by creating further advantage. Wolff and DeShalit make the argument that freedom requires the genuine opportunity for secure functioning and that poverty reduces this opportunity.

6.4 *The distinction between Liberty and Freedom*

We began this chapter by suggesting the ideas of freedom and liberty, are one and the same. Much like Berlin, this chapter and the three earlier chapters on Rawls uses the two terms interchangeably. Berlin gave us good reason for why this should be the case particularly when we are using these terms in the political sense. However, Jonathan

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Wolff argues that failure to distinguish the two terms has hampered the debate on what types of social economic regime best support the value of freedom (1997, p. 345).

Starting from Hohfeld's definition of a liberty right, Wolff defines liberty in terms of an absence of duty and freedom in terms of possibility

I am at liberty to do x if I have no duty not to do x. Clearly if I have a duty not to do x, and this is properly enforced against me, then it will follow that I am *unfree*, by the previous definition, to do x (p. 349).

Does private property restrict freedom as Cohen suggests or does it merely create a duty on the trespasser to restrict their freedom? As Wolff states, "you can never be unfree to do what you actually manage to do, whatever the rules decree" (p. 350). While private property prohibits the liberty of Cohen's trespasser it can only affect his freedom if the duty of negative liberty is enforced.

This draws out what Wolff describes as the distinction between permissibility and possibility with freedom depending on consideration of possibility, and liberty on consideration of permissibility (p. 353).

Nozickian justice relies on permissibility considerations only and ignores any considerations of possibility. However, Cohen's claim that private property entails both freedom and unfreedom, does not now have to hold. If private property can be made to accommodate the possibility or the opportunity for freedom then we may be able to find some middle ground between the two.

6.5 Left Libertarian Approaches to Opportunity for Freedom

In *Real Freedom for All* 1995, Philippe Van Parijs address the libertarian challenge that equality and liberty are mutually exclusive. By making a case for what Van Parijs describe as real freedom, and as such, real libertarianism, Van Parijs builds a case for an unconditional basic income for all.

Parijs argues that

libertarians rightly stress the importance of formal freedom, but formal freedom does not exhaust the real freedom that must feature in any defensible ideal of a free society (p. 4).

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The just society based on real freedom satisfies the following three conditions:

1. There is some well enforced structure of rights (security)
2. This structure is such that each person owns herself (self-ownership)
3. This structure is such that each person has the greatest possible opportunity to do whatever she might want to do (leximin opportunity) (p. 25).

The first two conditions are similar to Nozick except for the fact that Van Parijs is clear that the thesis of ownership applies to all. Children are therefore persons in property in their own right and as such cannot be held fully dependent on parental obligation alone. The third condition introduces the idea of freedom as opportunity and therefore goes beyond our ideas of formal freedom. It also introduces the idea of leximin opportunity. This maximises opportunity so as to ensure “that the members of a (maximally) free society are *all* as free as possible” (p. 25). We start maximising the opportunities for the person with the least opportunities and work our way up until all are as free as possible. This works much in the same way as Rawls’ difference principle.

Formal freedom is defined as freedom that can be coerced whereas real freedom “is not only a matter of having the right to do what one might want to do, but also a matter of having the means for doing it ”(p. 4).

While trade-offs between the three conditions will be necessary, as each has the potential to limit the other, the priority will be one that leximinizes real freedom.

Van Parijs suggests that there is no prior commitment to socialism or capitalism in his definition of real freedom. Rather, he advocates the best socio economic regime to support real freedom is one that can afford the highest sustainable unconditional income, subject to the constraints of everyone’s formal freedom.

Van Parijs makes laudable steps towards social justice, however, the idea of a basic income alone is subject to the same concerns we had regarding threshold or sufficiency theories: they cannot address the equality gap. We will return to Van Parijs work in our chapter 8 when we look at implementing Rawlsian justice in a capitalist society.

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A recent attempt at bridging the gap between freedom and equality is John Tomasi's recent work *Free Market Fairness* (FMF from now on) (2012.) Tomasi attempts to merge the idea of social justice with the free market. FMF express Tomasi's commitment to two central libertarian ideas, firstly that a free market enables self-realization, and secondly that a free market develops through the Hayekian idea of spontaneous order. Therefore FMF endorses private property as a basic liberty, and limited or minimal government. Tomasi also wants to endorse the ideal of social justice, particular that of Rawls. However, given that Rawls requires a wide range of public goods and continual redistribution of productive resources, how then is Tomasi to square the circle, so to say. Tomasi does so by arguing that the Rawlsian principles of justice can be adapted to the defence of Market Democracy. He does this by affirming social justice as the "ultimate standard of institutional evaluation" (p. 87) while affirming a thick concept of economic liberty that is absent in Rawls.

It seems at this early stage that Tomasi fails to evoke Rawlsian justice in several important ways

- 1) Tomasi offers wide economic liberty and not actual wide dispersal of property
- 2) Tomasi's commitment to spontaneous order seems intuitively at odds with Rawls' idea of pure procedural justice
- 3) Tomasi fails the footing of equality test as there is no upper limit to justifiable inequality

There is something appealing in Tomasi's defence of a thick conception of economic liberty: his argument for why economic liberty should be a basic liberty. Tomasi suggests that "the right to start a business, personally negotiate the terms of one's employment, or decide how to spend (or save) the income one earns – are essential parts of freedom too" (2012, p. xi). There is something in this that appeals to the Rawlsian idea of being able to affirm our conception of the good.

Unlike strict libertarians, Tomasi's conception of economic liberty is not absolute, rather it is a thick conception as opposed to Rawls' thin conception. The difference is vital. Tomasi's rebuttal of absolute economic liberties makes room for his desire to

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ensure a social minimum, however, his thick conception prescribes economic liberty as a basic liberty.

Conclusion

By far the strongest rebuttal of Rawls' work, to date, is Nozick's *ASU*. Nozick's entitlement theory rejects Rawls' grounds for redistribution and indeed for the whole project of redistribution and social justice. In Nozickean terms justice is the protector and purveyor of liberty alone and is best achieved through the forces of the free market. Poverty or other forms of disadvantage are not a matter for justice or the State. While we may choose to come to the aid of others we, individually or collectively, are not morally obliged to assist others. This is an extreme libertarian approach that does not resonate with the ideal of equality. While Nozick makes a strong case for the right to bequeath he does not address the right not to inherit and this severely limits his account of liberty and freedom. The paradox is that the basis of Nozick's defence of the right to bequeath, the extended self, can also be used to justify the right not to inherit: it would be strange to argue that the loving parent would choose to bequeath their disadvantage to their child. While Nozick makes a strong case for economic liberty at an individual level *ASU* cannot address the transmission of disadvantage from parent to child or generation to generation. We could argue that inheritance of any kind contravenes the very notion of non-interference implicit in the entitlement theory however; a stronger argument is to assert that the Nozickean freedom fails to account for the opportunity for freedom that is required by the circumstances of childhood. In this way, it fails to satisfy the very concept at the heart of Nozick theory: the thesis of self-ownership. Cohen, Wolff and Van Parijs give us further argument for why economic disadvantage severely limits freedom and why freedom cannot be restricted to economic freedom. While the ideal of freedom is central to our ideas of social justice it must also include the opportunity for freedom that is grounded in our idea of moral equality. In the next chapter we look at the practical implications of the transmission of disadvantage and how this reflects our account of the circumstances of childhood.

CHILD POVERTY IN CONTEMPORARY IRELAND

The 2005 UNICEF report card highlights child poverty in rich nations as a growing problem with the number of children living in poverty increasing in 17 out of 24 OECD countries (p. 2). The report card goes on to highlight Ireland as having, regardless of the economic boom, “exceptionally high rates of child poverty” (p. 5). Subsequent data published by the Central Statistics Office (CSO) and drawn from their annual Survey In Living Conditions (SILC) shows that Irish children continually experience higher levels of poverty and deprivation than any other age cohort. The latest available figures show that for 2011, 106,827 children (9.3%) were living in consistent poverty, a rate very similar to the 2004 figures reported as unacceptable by UNICEF (9.2%). The same pattern can be seen in the 2011 “at risk of poverty” figures (18.8%) and the deprivation rate (32.1%). These figures are significantly higher than the corresponding headline figures of 6.9%, 16% and 24.5%. The purpose of this chapter is therefore to explore child poverty trends in Ireland over the last decade, and to assess the impact these trends have on our commitment to a fair and stable society built on the foundations of equality and freedom. We begin by describing the way in which poverty is understood and hence measured. This allows us to understand the attributes that are associated with poverty and the poverty cycle. In this respect we acknowledge the pioneering approach Ireland has taking to measuring and monitoring poverty, and its associated deprivation. Next, using data from the SILC Thematic Report on Child Poverty, we analyse the data further with the purpose of understanding the trends highlighted in the report. While this report generates a significant concern about the future of child poverty rates in general, we place a stronger emphasis on the trends in the rate of poverty among Irish teenagers. We then discuss why Irish rates of child poverty generate significant moral concern in the context of what constitutes a fair and stable society. We do this by turning our attention to the Irish evidence of the impact of intergenerational transmission of disadvantage from parent to child, both in how the child experiences childhood, and in the adult outcomes of poor children. The findings of this report lead us to discuss the connection between poverty and equality. The

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overall aim of the chapter is to provide the practical impetus for why Irish society needs to become a more equal society.

7.1 Methods of Measurement: Ireland's Pioneering Approach

To understand the recent trends in child poverty in Ireland it is essential to first define what we mean by poverty. Ireland has been at the forefront of defining poverty measurement over the last two decades (Nolan 2010 and UNICEF 2012) and has made substantial inroads to addressing the difficulties with defining poverty by absolute or relative income terms. The convention has been to measure a standard of living in economic terms by drawing a minimum income line and then counting the number of people who fall below this line (Sen 1992, p. 102). The measurement can be made in absolute terms, as in the extreme poverty threshold, set by the World Bank at a \$1.25 a day or in relative terms, which compares an individual's income to an acceptable relevant minimum in a given society. In developed nations the established practice for defining child deprivation has been to measure relative income poverty by setting a minimum baseline at a percentage of the national median, usually 50% (Ireland tends to use 60% to report headline figures). The relative measure tells us how well we are doing (or not doing) compared to our fellow citizens. Therefore this measure can give a good indication of the spread of income equality in a nation and takes account of the different costs of living in different countries. The idea is simple, since the cost of living varies across nations, the poverty line must take account of this. Given that the poverty level is dependent on the national economy different countries can have significantly different relative poverty lines. The problem with using only income thresholds, whether absolute or relative, is that they can produce counterintuitive results when used to compare nations. According to the absolute poverty line mentioned earlier there are no poor people living in Ireland. The relative poverty measure attempts to address these differences across nations, however, it too can produce counterintuitive comparative results. The UNICEF 2005 Child Poverty league ranked Ireland 5th from the bottom with countries such as Poland, Hungary and the Czech Republic having lower percentage levels of child poverty (p. 6). However, no one seriously considered that Irish children's experiences of poverty were higher than the plight of children in these economically challenged countries. Rather the ranking reflected a weakness in the comparative ability of relative figures, and said more about rising inequality levels in Ireland than it did about the Irish child poverty level. When used for comparing year on year trends at a national level the Irish relative poverty figures are useful in that they show cross

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sections of society were not advancing at similar rate and that income inequality was therefore rising. We will return to this point later, when we explore the equality implications of poverty. For now it is enough to say that measuring poverty on income levels does not capture the multidimensional nature of poverty, and as such can provide a misleading picture of those most seriously affected by poverty. This is something that Ireland's theorists and policy makers understood several decades ago (Callen 1993, p. 141). Poverty analysis in Ireland has long since taken the approach of considering outcomes in terms of non-monetary deprivation indicators as well as income-based measures.

In its simplest terms, to be deprived means to go without something that is normally available. To this extent we all experience some form of deprivation. However, when we talk about deprivation, it is usually in the context of what falls below an acceptable level. Where the line of acceptability is drawn determines who is classed as deprived, and what social policies, if any, are put in force to target this deprivation.

Drawing on the work of Peter Townsend²⁷ the 1997 Irish National Anti-Poverty Strategy defines deprivation as

People are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally. As a result of inadequate income and resources people may be excluded and marginalised from participating in activities which are considered the norm for other people in society (Combat Poverty Agency 2005, p. 23).

While this definition focuses on economic deprivation it also recognises the complex connection between income poverty and social exclusion. The Nobel Prize winning economist Amartya Sen takes this clustering of disadvantage further by asserting that “poverty must be seen as a deprivation of basic capabilities rather than merely as lowness of incomes.” (1999, p. 87). We discussed Sen's approach in detail in our earlier chapters on equality and freedom, and we will look at some of the practical applications of this approach later in this section. However, we will begin by describing the poverty

²⁷ For further information on Townsend canonical definition of relative poverty see *Poverty in the United Kingdom: a survey of household resources and standards of living*, Harmondsworth: Penguin Books, 1979 p. 31.

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measures pioneered by Ireland and used to produce the data on child poverty trends in Ireland.

7.1.2 The At Risk of Poverty Measure (AROP)

At-risk-of-poverty rate is calculated by ranking individuals by their equivalised income, from smallest to largest in a given year, and identifying the median value. The poverty threshold is then calculated at 60% of this median value. Any individual whose income falls below this poverty threshold is deemed to be at risk of poverty, relative to others, in that particular year. This particular measurement is used by the EU, OECD and UNICEF when measuring and reporting on poverty.

The median value is deemed a better reflection of where incomes fall as it avoids the skew from extremely high or low incomes that can distort mean figures. As we have seen earlier, in times of rising incomes the poverty threshold will also rise, and as such its main purpose is to indicate how well some are doing compared to others. After a decade of sustained growth the Irish 2005 figures still showed high AROP rates largely due to the fact that while incomes had doubled they had not increased at the same rate for all. As such, this poverty measure is also a good indication of how equal a society is.

The AROP rate is calculated on equivalised income. This is an attempt to capture total household income and household size and provides a more accurate account of income poverty across age cohorts. Equivalised income is calculated by dividing gross household income by the equivalised household size. The current national equivalence scale attributes a weight of 1 to the first adult, 0.66 to each subsequent adult (aged 14+) and 0.33 to each child in the household. The equivalised household size of a family constituting 2 adults and 2 children under 14 would be 2.32 ($1 + 0.66 + 0.33 + 0.33$), a similar family with one of the children 14+ would be 2.65. Since the family with the older child has a higher denominator their equivalised income, all other things being equal, would be lower. Lone parent households, similarly constituted, would have respective equivalised size of 1.66 and 1.99. The size and constitution of the household therefore greatly affects the equivalised household income and, as such, has the potential to influence who falls above or below the poverty line. To highlight the bias involved in measuring this way let us consider two households. The first comprises two adults, one worker one carer and two children. The second household is made up of

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one working lone adult and two children under 14. The first family has an equivalised size of 2.32 and the second 1.66. If the two working adults earned the same salary, say 35,000 euro, then the lone parent household looks significantly better off, with an equivalised household income of 21,084 euros compared to 15,086 euros for the two parent household. Intuitively we may argue that this approach is correct given that household income needs to provide for all those within the household and as such smaller households should need less. However, this does not recognise the costs of running the differently constituted households, in our example the biggest difference potentially being that of childcare costs. Presumably in the two adult, one carer family this cost is borne within the context of the family (as man hours rather than euros), whereas the working lone adult may have substantial monetary childcare costs, thereby greatly reducing the overall household disposable income. To go some way towards addressing issues like this, the AROP is calculated on gross household income, comprising earnings and social transfers. Social transfers include state payments, such as, unemployment benefits, old age benefits, child allowances, family allowances, housing allowances and other welfare payments. In our example above, heavily subsidised childcare for the lone parent household, or payment for child caring duties to the stay at home parent would have the equalising effect needed for relative comparison of households. Given that neither of these particular policies are likely to be in place, it is worth stressing that results obtained through the process of equalization are ipso facto skewed by the existing social policies. This is particularly significant for analysing existing trends and developing strategy.

7.1.3 The Deprivation Rate

The second measurement of poverty used is the deprivation rate. An individual is defined as being materially deprived if they live in a household that reports experiencing an enforced lack of two or more of the following eleven items:

1. Two pairs of strong shoes
2. A warm waterproof overcoat
3. Buy new not second-hand clothes
4. Eat meal with meat, chicken, fish (or vegetarian equivalent) every second day
5. Have a roast joint or its equivalent once a week
6. Adequate household heating during the last year through lack of money

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7. Keep the home adequately warm
8. Buy presents for family or friends at least once a year
9. Replace any worn out furniture
10. Have family or friends for a drink or meal once a month
11. Have a morning, afternoon or evening out in the last fortnight for entertainment.

This is the revised list developed by Whelan (2007) and has been incorporated into the recent National Anti-Poverty Strategy (NAPS). Non-monetary indicators have also recently been adopted by Eurostat with deprivation being defined as the inability to afford at least three of a set of nine items (CSO 2008, p. 83).

7.1.4 Consistent Poverty – the combined approach

An individual is considered to be in consistent poverty if they are both AROP and they are materially deprived, as described above. These have been the main measures used in monitoring poverty levels across Ireland for the last two decades. Data is collected annually through a Survey on Living Conditions (SILC) undertaken and published by the Central Statistics Office. The figures and headline trends are widely available and used by theorists, lobbyists and government departments. They also feed into UNICEF and OECD reports on Child Poverty in developed nations. This pioneering approach to poverty measurement has enabled Ireland to react to trends that cannot be garnered by income analysis alone. A recent development in this area has been the steep rise in those NOT AROP and experiencing material deprivation. Were it not for the collection of data on deprivation this alarming trend would not have been so visible in the short term. Therefore, it is important to view the three measurements as part of the overall picture of poverty in Ireland, each contributing in their own right and by their cumulative effect.

7.2 Child Poverty: An overview of recent levels and trends.

A plethora of reports on poverty have shown that children routinely experience higher levels of poverty than adults in Ireland (Corbett 2004, UNICEF 2005 & 2007, Ireland CPA 2004, and SILC (2001 to 2011)). This is a trend that has withstood the economic cycle of boom and bust. Since measurement began, a simple rule of thumb is that households with children consistently experience higher levels of poverty than households without

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children. Where individualised (as opposed to equivalised) data are available, children are shown to experience higher levels of poverty and deprivation than adults. In this section we focus on the data produced in the *Survey on Living Conditions (SILC) Thematic Report on Children 2004-2010*. This report reproduces data on poverty statistics from the individual annual SILC reports with the purpose of providing further analysis on the circumstances of children, under 18 years of age, living in Ireland during the period 2004-2010. The report covers an economic period that includes the height of the boom years, the dive into recession and the beginnings of the road to economic recovery. The report was published in 2012, and since then the annual SILC for 2011 has become available. We make use of the 2011 data and earlier data where appropriate. The summary of the main findings are as follows:

- Income levels for households with children are falling faster than for those without children
- As in earlier years, the 2010/2011 AROP figures are substantially higher for households with children than for those without children
- When we exclude family allowances from disposable income the rate of households with children AROP doubles
- Among children the highest risk rates occur in the 12-17 age band
- Deprivation for households with children is substantially higher than for those without children
- In all years, consistent poverty is substantially higher for households with children than for households without children.

Using the tables provided in the report we further analyse the figures to see why, and in what way, child poverty is embedded in the structures of Irish society.

7.2.1 Income, Household Constitution and Poverty

Using income figures from the CSO reproduced in table 1a of the report, we provide the following table summarizing the data across years, and provide analysis of year on year and cumulative changes (p. 11). The first table we produce highlights the trend in household income derived from what can be best summarised as employment activity²⁸

²⁸ Total direct income is comprised of employment income, employer's social insurance contributions, cash benefits or losses from self-employment and other direct income.

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Table A	Average weekly direct income		Year on Year % Change		Cumulative % change 2004- 2010	
	Household with children	Household without children	Household with children	Household without children	Household with children	Household without children
Year						
2010	901.18	597.30	-11%	-5%	-12%	3%
2009	1,010.66	627.96	-11%	-9%	-1%	8%
2008	1,135.88	692.34	-3%	-6%	11%	19%
2007	1,174.20	736.34	10%	4%	15%	27%
2006	1,064.53	706.83	6%	18%	4%	22%
2005	1,007.69	600.68	-2%	4%	-2%	4%
2004	1,023.79	580.26				

There are a number of illuminating points we can draw from this table for the period 2004 -2010

- Households with children consistently earn higher incomes from employment than households without children
- In both real and monetary terms income from employment has fallen for households with children over the period. The same cannot be said of households without children
- While households with children have experienced a **12% decrease** in nominal income from employment households without children have experienced a **3% increase** over the same time period.

Table B uses similar data drawn from the same report for analysing net disposable income (p. 11). This is the income figure used for determining poverty rates and includes all social transfers and taxation.

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Table B	Average weekly disposable income		Year on Year % Change		Cumulative change 2004-2010	
	Household with children	Household without children	Household with children	Household with children	Household with children	Household with children
Year						
2010	955.43	745.93	-7%	-2%	5%	21%
2009	1,031.94	763.39	-6%	-4%	13%	24%
2008	1,100.06	795.65	-2%	1%	21%	29%
2007	1,117.64	786.58	14%	7%	23%	28%
2006	980.76	736.70	5%	14%	8%	20%
2005	930.85	644.30	2%	5%	2%	5%
2004	910.28	614.83				

The figures shown above are prior to equalisation and, as such, are not adjusted for family size. The key findings are

- While nominal income rose for all over the period households without children saw four times the increase of those with children.
- From its highest point in 2007 households with children have seen three consecutive annual decreases in disposable income, a cumulative drop of 162.21 euros a week, 14.5% of income. Households without children experienced a much lower drop of 5% over the same period.
- The 5% nominal gain made by households with children is likely to be negative when adjusted in for inflation.

A large proportion of the difference in disposal income between households with and those without children can be explained by the payment of old age benefits. A far greater percentage of these payments are made to households without children (under 18) and these social transfers have seen substantial increases of over 50% from 126.03 euros in 2004 to 190.15 euros in 2010. Social transfers to households with children tend to be in the form of unemployment benefit and/or family allowances. While both forms of benefit have increased during the period, they are significantly lower in nominal value, and as such, their increase has not met the rate of decline in employment income. Unemployment benefit has increased on average from 31.23 euro to 80.67 euro

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and combined family benefits from 85.11 euro to 138.83 euro, increases of 158% and 63% respectively.

It is clear from the figures above that by far the largest proportion of the costs of raising children are met by the labour activity of heads of households, and that while social transfers to households with children have increased since 2004, the overall disposal income for these households has fallen in real terms. It is therefore unsurprising that these households continually find themselves amongst the poorest in Ireland. What the figures also show is that social transfers can lift people out of poverty, as the marked economic improvement in pensioners has shown. The dilemma of course, is how to fund further social transfers given the shrinking social resources.

7.2.2 Trends in AROP Rates

In all years the “at risk of poverty rate” (AROP) for individuals living in households with children was higher than for those in households without children. The 2010 figures reported 18.7% of households with children AROP compared to 11.8% of households without children. We have suggested above several reasons why this should be the case. Further evidence can be garnered from the movement in AROP figures from 2004 onwards. These figures show that in 2004 your chance of being AROP was fairly independent of whether the household contained children or not (20% compared to 18.6%). By 2010 households without children had a substantially reduced chance of experiencing poverty, whereas households with children remained at pretty much the same rate. In 2004, 20% of households with children were AROP and by 2010 very little had changed with 18.7% AROP. While inroads in poverty reduction were made in the intervening years, most notably the 2008 low of 15.6%, the recession has seen these figures creep up steadily from 2008 onwards. When we remove family allowances from the disposal income figure the AROP rate immediately doubles from 18.7% to 38.6%, in 2010. While households without children AROP also increases, on the removal of family allowances, this is not nearly as marked (from 11.8% to 13.6%). When we look at AROP less all family allowances, for households with children, over the period a very different pattern to that of the headline figures emerges. The following figures abridged from Table 2A (p. 22) help illuminate this pattern:

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Year	AROP rate	AROP less family Transfers	Rate of change
2010	18.70	38.60	2.06
2009	15.90	32.70	2.06
2008	15.60	30.50	1.96
2007	17.60	31.60	1.80
2006	19.10	31.80	1.66
2005	20.40	32.10	1.57
2004	20.00	29.80	1.49

The rate of change figures in the fourth column, express the rate at which AROP rates increase, for households with children, when we remove social transfers relating to family allowances from disposable income. What is really interesting about this rate is that while the period 2004 to 2009 saw steady decreases in AROP rates, the rate at which families were dependent on social transfers to keep them above the poverty threshold steadily increased. We can draw two important points from this, firstly, regardless of economic cycles an increasingly significant number of households with children rely on social transfers in the form of family allowances to stay above the poverty line, and secondly the inroads in poverty reduction seen in the boom times were largely due to increases in social transfers.

The report also shows that while significant inroads were achieved in reducing the numbers of lone parent households and large family households (+3 children) AROP these still remain the highest at risk groups albeit they account for a small cross section of society. More surprisingly is that the chances of experiencing poverty for the households comprising 2 adults and 1-2 children has significantly increased from 11% in 2004 to 15.9% in 2010. Households with one person at work have also seen an increase. This reinforces that point that government intervention through social transfers does impact on poverty levels. When intervention is focused, as has been the case for lone parents and OAPs, poverty levels have dropped. What is also reinforced, is that the remit for intervention needs to be widened to include groups that were not previously thought to have high “at risk” levels. These groups are facing increasing difficulties in staying above the poverty line through independent/economic means.

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Interestingly the report provides breakdown across different periods of childhood and we can see from table 2c that the 12 to 17 age band have a higher at risk rate across all years. In 2004 the AROP rate for this age cohort was 27.2, very similar to that of the 65+ age cohort. By 2010 the 12-17 age band remained alarmingly high at 26.1% compared to 9.62% of 65+, a national average of 15.8% and a household with children average of 18.7%. What causes this band to have a higher risk than other child cohorts is not examined within the report and this is a point we will return to later. For the moment we wish to merely highlight the significance of these figures and suggest that one possibility for their remaining high levels is lack of government intervention.

7.2.3 Trends in Deprivation Rates

The deprivation rates rose steadily between 2007 and 2010 for all individuals however, as with the AROP rate, households with children experienced significantly higher levels of deprivations compared to households without children, 28.2% compared to 14.6%. By far the largest annual increase in deprivation can be seen in individuals living in households with children during 2010, an increase from 19.5% to 28.2%. While the official rate of deprivation is measured by enforced deprivation of 2+ items (from an official list of 11), the report also records the percentage of those experiencing deprivation of one item. The growth in this deprivation indicator spans a similar upward and recently steep course and is therefore a warning of further increases to the official rate in times to come. Another notable fact is that while deprivation is increasing for all, the gap between households with children and those without, is growing: in 2010 figures for 2+ items show 28.2% of households with children were deprived compared to 14.6% for households without children. When we look at deprivation of 1 item, the gap is even wider at 44% of households with children compared to 25.3% of households without children. In 2004 the gap was smaller at 16.5% versus 10.7% and 27.5% versus 19.3% respectively. Unsurprisingly, those among the AROP figures experienced far higher levels of deprivation (39.4% 2+ items and 64.7% for 1+ item) than the national averages. While households without children who are AROP also have high levels of deprivation 32.1%, the gap between households with and without children, even among this group, remains wide (32.1% versus 42.7%). What we can say about this is that, while deprivation rates are steeply increasing for all, households with children currently experience the highest levels of deprivations and that this is growing at a substantially faster rate than for the rate of households without children.

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While deprivation is increasing and the gap between those who experience deprivation and those that do not, is widening, what we are deprived of has remained pretty much stable over the reporting period. The most common experiences of deprivation were an inability to

- Replace any worn out furniture
- Have family or friends for a drink or meal once a month
- Have a morning, afternoon or evening out in the last fortnight for entertainment
- Had to go without heating during the last year through lack of money

These items report higher levels of deprivation across all households and across all years. They are the items that are consistently reported by households as having to enforcedly do without. Until recently the inability to buy new clothes was part of this list however, the availability of cheap new clothing, as reflected in the substantial drop in the consumer price index for these goods, means that this is no longer an obvious indicator of deprivation. Instead fuel poverty is now the fastest growing indicator of deprivation, with averages of those having to go without heating through lack of money, doubling from 5.4% in 2004 to 10.6% in 2010. The official definition of fuel poverty recognises the relationship between low household income and poor energy efficiency in housing stock (Boardman, 1991) therefore it is unsurprising that those AROP experience significantly higher levels of fuel poverty 16.7% for 2010. As with all other poverty figures, households with children have significantly higher risks than those without children, both nationally and among the AROP (13.2% v 6.9% and 19.6%v14.1%). While leisure and family time are necessary components of a life worth living, they may be things that we are willing to forgo in order to meet more basic needs, such as food and clothing, in the short term. The same cannot be said for fuel, particular in the Irish climate. Paradoxically, while the Irish climate may not have as much seasonal variation as other European countries like Norway or Denmark, it has substantially higher excess winter mortality rates. Healy (2000) suggests that there is a link between poor housing standards, in terms of thermal efficiency and heating systems, and high rates of winter mortality. While those in the 65+ age band and the poorest social economic group are most at risk of excess mortality rates recent studies in the UK suggest that children also experience significant health risks associated with

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fuel poverty. Findings from the Marmot review team, in their report on the health impact of cold homes, states that (2011, p. 9)

- 1) Studies show that long-term exposure to a cold home can affect weight gain in babies and young children, increase hospital admission rates for children and increase the severity and frequency of asthmatic symptoms.
- 2) Children in cold homes are more than twice as likely to suffer from a variety of respiratory problems as children living in warm homes.
- 3) Cold housing negatively affects children's educational attainment, emotional well-being and resilience.

In 2010, 13.2% of households with children went without heating at some stage in the previous year and 8.2% were unable to afford to keep the home adequately warm. For children in households AROP the figures are much higher at 19.3% and 12.9%.

7.2.4 Trends in Consistent Poverty Rates

Like the AROP and deprivation rate for all years since 2004 the consistent poverty rates was higher for households with children. In 2010 the highest rate of consistent poverty attained in households with children where no one was working at 23.6%, this was almost four times the national average of 6.2%. While annual increases in consistent poverty were experienced across the board, the gap between households with and those without children remained roughly the same with households with children having double the rate of those without children.

Like the AROP we see a statistically significant difference across the consistent poverty rates for the three childhood age bands however, the difference does not follow quite the same pattern as we noted earlier. In the table below we can see the rate of poverty for 0-5 years has been statistically lower than the other two bands for the period 2004-2010 and has been on a consistent downward trend. This is most likely to be a result of the investment made in early years' childcare and development and the benefits seen in (younger) parental education and employment occupation.

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Table D Consistent Poverty				
Year	State	0-5	6-11	12-17
2010	6.20	3.90	8.30	11.70
2009	5.50	4.40	10.60	10.60
2008	4.20	4.40	6.30	6.50
2007	5.10	5.60	8.80	7.70
2006	6.50	7.90	11.60	11.20
2005	7.00	8.00	11.40	12.70
2004	6.60	9.00	7.50	10.70

The report unequivocally shows that children are more at risk of experiencing poverty than adults in Ireland, and that this increased risk is not a result of the recession, rather it reflects a long term pattern in how the costs of raising children are met (or rather unmet). The idea of family allowances as social transfer have a long tradition in Irish society²⁹ however, it is evident from the report that they are currently not sufficient for eradicating child poverty. The trend in AROP before social transfers also show that the boom years of 2004-mid 2008 were also unsuccessful in stopping the upward trend in children's AROP. We can say that while economic growth had a substantial effect on reducing consistent poverty, this did not trickle down to children's poverty rates, particular those in the 12-17 age band.

7.2.5 Beyond the report – 2011 figures

The EU- SILC 2011 show across all measurements, poverty in Ireland worsened during 2011. The headline figures saw the AROP rate increase to 16%, with children at 18.8%, deprivation levels increased for both those AROP and for those NOT AROP, and as anticipated fuel deprivation further increased, reliance on social transfer further increased, with over 50% of the population AROP without social transfers. Consistent poverty remained somewhat steady with a statistical insignificant increase of 0.6%, however, the rate of consistent poverty remained substantially higher for children than for adults, 9.3% versus 6.8%. Given these results, the outlook for Irish children and their experiences of poverty remain as dismal as the Thematic Report on Children 2004-2010 highlighted.

²⁹ The controversial Mother and Child scheme introduced by the then Minister of Health Dr Noel Browne 1951 marked the beginning of State intervention and policy on child and families and produced much outcry from the Catholic Church and the medical profession.

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7.3 *The Problem of the teenager years: Real or Statistical?*

As we have already discussed the Thematic Report on Children highlighted the increased AROP rates for those in the 12-17 cohort, in its summary of main findings (p. 5). When we reviewed the figures for consistent poverty we found a similar pattern. Nolan et al. have previously noted this trend in *Monitoring Poverty Trends in Ireland 2004-2007*, stating that:

each year of age increases the risk of consistent poverty by 18 per cent, but the squared term suggests that this effect levels off as the age approaches 18. The age effect may arise because older children place a higher demand on resources than younger children. The greater income support for families with younger children through the Early Childcare Supplement may also have strengthened the age effect, but this has yet to be tested (2008, p. 49).

While the report suggested the need to continue to invest in policies that reduced poverty among children it did not specify any policy intervention regarding this trend. This was probably due to the authors' conviction that given sustained economic growth "it would be remarkable if there was not a downward trend in child poverty" (p. 50). The report was published less than a year before the downturn when the economic outlook for Ireland remained good. By 2009, any downward trend in poverty levels had been reversed and the headline child poverty rates were beginning to climb again. However, we would be too quick to dismiss Nolan et al.'s prediction as short lived. Analyses of the figures, over the intervening years show, that Nolan et al. were partially correct to predict downward trends, however, their findings of increased risk for each year of age was to have a greater significance than they credited. While the figures for children living in consistent poverty increased from 7.4% in 2007 to 8.2% in 2010 the pattern was not the same across the different cohorts

0-5	5.6% ↓ 3.9%
6-11	8.8% ↓ 8.3%
12-17	7.7% ↑ 11.7%

Compared to the 2004 figures (the height of the boom) substantial inroads have been made in reducing consistent poverty among the 0-5 cohort from 9% in 2004 to 3.9% in 2010 while the other two age cohorts have seen marginal increases. Neither the Nolan nor the Thematic reports explain why the risk of poverty increases as we progress through childhood. It may be as Nolan et al. suggests that older children place higher

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demands on resources and/or that government policy has focused on the early years. However, there may be some element of measurement skew involved given the differential weights assigned to children when applying equivalence scales. Recall from our earlier discussion, children >14 are treated like an additional adult (0.66), whereas children <14 are given a weight of (0.33). Viewed this way we could say we get two under 14 for the price of one over 14. If we contest the fact that older children cost double, we may be justified in saying that the figures for the 12-17 cohort are artificially inflated by the process of equalisation. However, without further study it is impossible to affirm to what extent this may be the case. Intuitively the difference in trends are unlikely to be fully explained by the differences in weight scales as the ratio in rates between the oldest and youngest child cohorts is greater than the ratios in the equivalence scales (11.7% - 3.9% compared to 0.66 – 0.33). All things considered, current figures and trends over the last decade show that teenagers have the highest rates of poverty in Ireland. More research needs to be done to understand the causes behind this trend. In the following section we discuss the proven effects of experiencing poverty as a teenager and in the next chapter we discuss one possible government policy to address the issue.

However, it is important to remember that focusing on one age cohort will not solve the overall problem of child poverty, and that policy needs to apply across the spectrum of childhood. Current levels and trends also need to be set in the context of the growing Irish demographics, which we turn to next.

7.3.1 The potential implications - The Land of Tir na Og - Folklore or Reality

Ireland has long being fabled as the land of the young and recent demographics support this notion. With over 34% of the population under 24 and 21% under 15, Ireland has one of the youngest populations in Europe, and one of the highest old age support ratios in OECD countries³⁰. The children in the 2010 data were born from 1993 onwards with roughly an equal number of children are in each age group, approximately a third in each group. This period saw a significant increase in population size from 3.6 million to 4.6 million in 2010, an increase of 26%³¹. There was also an increase in the

³⁰ This data was taken from <http://www.oecd.org/statistics/> - download table for demography 2011 old age support rates.

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birth rate from 13.8 to 16.5 and a reduction in the death rate from 9 to 6.1, rates being per 1,000 of estimated population.³² While there was some fall-off in birth rates in 2011 and 2012 (0.2 and 0.5 respectively) this is unlikely to effect the number of children in Ireland significantly over the next decade. We may even see a dip in the percentage of children within the 12-17 age group in the long term however, this group increased from 35.5% in 2009 to 37% in 2010 (in line with increasing birth rates 1993-1998). Given the population and birth statistics, this increase is likely to continue at least in the short to medium-term. The problem is therefore one with legs, since households with children continually experience higher levels of poverty, and number of children are growing, then all other things being equal, Irish levels of child poverty are likely to not only continue but they are also likely to grow as more and more children move into the older (and more at risk) childhood age brackets.

7.4 Why Poverty in Childhood Matters

There is abundant research on the effects of poverty, some of which we have referred to in our introduction chapter, and over the course of our philosophical enquiry into theories of justice. You only need to glance at the 28 page publication catalogue of the Combat Poverty Agency to see how much research has been done on poverty in Ireland alone³³. This multidisciplinary body of work is too vast and too varied to cover in any great detail within the body of this thesis. What we will do is to focus on two particular concerns. The first regards how poverty shapes children's experiences of childhood and the second relates to how childhood poverty affects future adult outcomes.

7.4.1 How Children experience poverty

The ground breaking UNICEF report on Child Poverty in Rich Nations adopted a complex measurement approach in order to capture the variety of experiences and effects of poverty on children's lives. The report measures child well-being across six dimensions: material, health and safety, education, family and peer, subjective, and behaviour across no less than 40 social indicators. The results of the study debunked

³¹Data taken from
http://www.cso.ie/Quicktables/GetQuickTables.aspx?FileName=CNA13.asp&TableName=Population+1901+-+2011&StatisticalProduct=DB_CN

³²Data taken from
<http://www.cso.ie/en/statistics/birthsdeathsandmarriages/numberofbirthsdeathsandmarriages/>

³³ You can find the list of publication produced with support from the Combat Poverty Agency, an Irish government agency at <http://www.cpa.ie/publications/index.htm>

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the idea that there is an overall relationship between child well-being and GDP per capita, as previously thought, with the Czech Republic achieving a higher overall rank compared to much wealthier nations like France, the UK and the US (2007, p. 3). The report is unambiguous on the multi-layered and harmful effects poverty has on children, and their future outcomes

The evidence from many countries persistently shows that children who grow up in poverty are more vulnerable: specifically, they are more likely to be in poor health, to have learning and behavioural difficulties, to underachieve at school, to become pregnant at too early an age, to have lower skills and aspirations, to be low paid, unemployed, and welfare dependent. Such a catalogue of poverty's ills runs the risk of failing to respect the fact that many children of low-income families do not fall into any of these categories. But it does not alter the fact that, on average, children who grow up in poverty are likely to be at a decided and demonstrable disadvantage (2007, p. 5).

This new reporting structure placed Ireland 9th from the top out of 21 OECD countries compared with 5th from the bottom out of 26 countries in the previous report card (2005, p. 4). However, Ireland's performance across the six dimensions was somewhat erratic with above average ranks in education, family, behaviour and subjective dimensions and well below average ranks in material and health dimensions. The low score on the health dimension was largely due to low levels of infants aged 12-23 months immunized against major vaccine-preventable diseases (2007, p. 15) and the low ranking in material well-being reflected Ireland's continually high levels of AROP. We discussed earlier in the chapter that the context around the AROP figures was one of increasing income levels, albeit at different rates, and as such said more about inequality than poverty. However, the link between economic deprivation and social exclusion has been highlighted as a leading effect of poverty (UNICEF 2008, p. 11). Research has shown that the idea of social exclusion as a direct effect of economic disadvantage strongly resonates with children (Redmond 2008, p. 4). In these studies children report the idea of passive exclusion by feeling left out of activities, and active exclusion by being picked on, due to their economic disadvantage.

School, as one of the few remaining social spaces, has the potential to act as an important catalyst for a child's social engagement. Policies such as school uniforms can

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act as a great leveller, however, poor children often feel socially excluded by their absence from extra curricula activities like school trips and sports (Redmond 2008, p. 4). While policies like the Early Years Care and Education Scheme and Early Start Programmes³⁴ go some way to addressing disadvantage, they cannot contend against the reality that poor children tend to go to schools located in deprived areas with other poor children. This “ghettoising” aspect of the educational system limits a child’s potential for social engagement and advancement, and ultimately dictates the quality of education they receive. This is exacerbated by the fact that education in Ireland tends to adopt a universal approach, and thereby fails to acknowledge the different starting levels and resources of deprived children. More recently, Lynch and Baker argue that the construction of merit in the education system tends to both “legitimise existing privilege and to devalue the achievements and knowledge of minority groups and individuals (2005). Rather than creating equality this policy has widened the gap within the education system, with 97% of children with parents in the higher professional bracket participating in third level education as compared to only 21% for children with parents in the unskilled manual labour bracket (Clancy 2001, p. 70). Since the education system, with equal opportunity, acts as a selection method for future occupational positions (Tovey & Share 1999, p. 215), this inequality will be maintained throughout the life cycle.

7.4.2 How childhood poverty affects future adult outcomes.

The question of how experiences of poverty in childhood affect our future adult outcomes is tied closely to the idea of intergenerational transmission of advantage, what parents give to children. In 2007, the CSO published a thematic report focusing on the intergenerational transmission of poverty in Ireland. The report surveyed persons aged 25 to 65 with the aim of assessing how experience of financial difficulties in the teenage years impacted on their financial status as adults. Participants were asked a range of questions relating to their experiences between the ages of 12 and 16 regarding their household structure and socio-economic circumstances³⁵. The focus of the survey was to assess the transmission of parental educational, occupational and financial status to

³⁴ For more information on these initiatives see http://www.citizensinformation.ie/en/education/pre_school_education_and_childcare/early_childhood_education.html. For the non-government Atlantic Philanthropies’ Children and Youth Programme in Ireland and Northern Ireland see <http://www.atlanticphilanthropies.org/region/republic-ireland>

³⁵ A copy of this questionnaire is available at www.cso.ie

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children. The wide range of participants mean that the data collected covers a 40 year period, from the early 1950's to the early 1990's. This was a time when Irish society underwent major economic and social changes which can be seen in the differences experienced across age cohorts. The report establishes a strong anti-correlation between parental educational, occupational and financial status, and experience of poverty as adults. An extract of headline findings of the report are as follows:

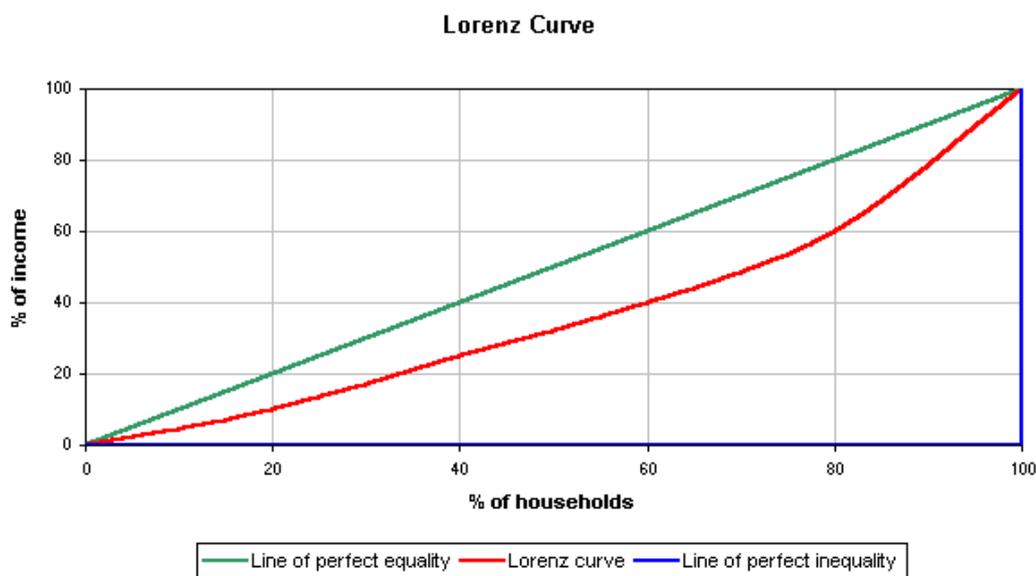
- 27% of those who experienced financial difficulties “most of the time” as teenagers were “at risk” of poverty as adults.
- Respondents who experienced financial difficulties ‘most of the time’ as teenagers were **four** times more likely to be living in consistent poverty as adults (13.3%) than those who had never experienced financial difficulties as teenagers.
- Almost one third of the unemployed respondents (32.8%) had experienced financial difficulties “most of the time or often” as a teenager.
- Almost 42% of respondents whose highest level of education was primary or below experienced financial difficulty “most to the time or often” in their teenage years.

The report provided conclusive evidence of the transmission of disadvantage from parent to child and established the long term, and reproductive, negative effects of child poverty. This report provides conclusive evidence that poverty during childhood has long societal effects for those living in poverty, and for future generations. Not only do we need to be concerned with the effects of poverty on childhood, we also need to understand the way this transmits to later stages in the life cycle, and the effects this has on future generations. This is particularly important when we adopt a social system that holds adults accountable for their economic success. The transmission rate, from parent to child, of poverty is tied very closely to the level of inequality in society. In more equal societies, children's outcomes are less dependent on their arbitrary family circumstances, and are therefore less vulnerable to the parent to child transfer. Blocking the negative effects of intergenerational transmission seems to be of crucial significance to the success of reducing child poverty rates and the effects of poverty. With this in mind we will now look at how equal a society Ireland is and what this means for children in general, and those living in poverty in particular.

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7.5 Why Equality Matters

The Lorenz curve measures the gap between rich and poor, and as such, is a measure of income inequality. The green line on the graph represents the line of perfect equality; where all have the same income, e.g. 20% of households have 20% of the combined wealth and so on.



In the above graph we can see that the highest 20% of earners earn 40% of total income and the lowest 20% of earners, earn roughly 10% of total income. This leaves the remaining population of 60% earning 50% of the available income. This is what we have come to expect from a wealthy western society: large middle class, a proportion of society falling below the poverty line and a proportion of wealthy individuals. What is interesting is to review the Lorenz curve over time to see if the spread of incomes changes. Figures for the US from the 1950s to the mid-1990s show that the shape of the Lorenz curve has changed little, implying that the cycle of income distribution is difficult to change from generation to generation (Baumol and Blinder 1997, p. 408). While we can assume that a large proportion of society is sympathetic to the plight of child deprivation, there is a strong cultural belief that on entering adulthood the individual has the responsibility to break the cycle through hard work and determination. Yet the multifaceted nature of child deprivation tells us that children living in poverty are disadvantaged when it comes to their educational and career aspirations and outcomes, that there are often negative implications for their health, and

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that social exclusion often accompanies such deprivation. Intuitively then it seems that our cultural ideas of responsibility do not fully account for the circumstances of childhood, particularly that of a disadvantaged childhood.

The Gini co-efficient is a derivative of the Lorenz Curve. It is the area between the equality line and the Lorenz curve divided by the area below the equality line. It is a standard measure of income inequality ranging from zero (when everyone has identical income) to one hundred (when all income goes only to one person). The lower the Gini co-efficient the more equal the income distribution within that society. The EU-SILC 2011 report shows little overall change in the Irish figures for the period 2004 to 2011, with Gini co-efficient of 31.8 and 31.1 respectively (table B p. 3). There was some reduction in income inequality in 2008 and 2009; however, this has been eroded by the high percentile change in 2010. Data going back to the mid 1980's can be found in the OECD Fact book 2011 showing that this overall stability in Irish income inequality rates predates the economic boom, with no significant percentile change for the period from the mid 1980's to mid-2000's. Therefore we can say that income inequality within Ireland seems to have been fairly unaffected by the boom and bust economic cycles. This is interesting, as while incomes did grow in the boom years this did not lead to social mobility as such. It also explains why the AROP figures pre social transfers for families rose year on year regardless of economic cycle. The boom years saw an increase in disposable nominal income across the board; however, this did not change the spread of income inequality. This supports the earlier argument regarding the powerful effects of familial intergenerational transmission of poverty on how children fare as adults, in Ireland.

A more transparent inequality measure is the income quintile share ratio, derived from the Gini co-efficient; it involves taking the share of income for the top one fifth of the population and dividing it by the share of income received by the bottom one-fifth. This has been roughly 5 for the period 2004 to 2011 and tells us that the top 20% of Irish earners had incomes five times that of the bottom 20%, and that this rate has remained steady regardless of economic climate. Given the dispersion of incomes the argument has been made by many that a better assessment of inequality would be made by comparing the top 10% or even 1% with those of a similar bottom level. Without

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having access to these figures we cannot comment but it is highly likely that the top 1% have a higher income share ratio to the bottom 1% than 5.

Perhaps a more fruitful use of the Gini co-efficient is in its comparative form. Comparing Ireland's Gini co-efficient to other countries tells us whether Ireland is a more or less equal society. When we compare Ireland's inequality measures to those of other European and OECD countries two facts become immediately obvious: firstly, Ireland has historically been among those countries with higher levels of income inequality, and secondly, while inequality rates are growing across the EU and OECD countries, Ireland is currently bucking this trend. Data for the 2006 Gini co-efficient placed Ireland third highest in a list of 15 EU countries, with only Greece and Portugal having higher levels of income inequality. While the UK and Italy had statistically similar figures to Ireland, the Nordic countries like Denmark, Sweden and Finland along with the Netherlands and Austria had substantially lower levels of income inequality (McDonough et al., 2009, p. 10). In general, the Ireland of the boom years was a more unequal society compared to most European nations. By 2011, this had changed significantly due to rapid growth in inequality across most other OECD countries. In the recent OECD book *Divided We Stand – Why Inequality Keeps Rising*, Angel Gurría the OECD secretary states that

Over the two decades prior to the onset of the global economic crisis, real disposable household income increased by an average of 1.7% a year in OECD countries. In a large majority of them however, the household income of the richest 10% grew faster than those of the poorest 10%, so widening income inequality (p. 22).

The report goes on to state that currently, in advanced economies, the average income of the richest 10% of the population is about nine times that of the poorest 10%.

As such, Ireland has recently moved from a country with high comparable rates of inequality to one of medium rates of income inequality. This has prompted some to argue that Ireland is now a more equal country than in the pre-boom years. To accept this however, is to misinterpret the statistics. Using inequality measures alone, not much has changed in who gets what share of society's resources, even if we all got slightly better off (see growth and recent decline in income tables A and B of this chapter). It is

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argued that the Gini co-efficient, while useful for comparison across countries, is not useful for comparing the same country over time and may even fail to capture a rise in inequality. In the HEAP Chart and Booklet (Hierarchy of Earnings, Attributes and Privilege) McDonough and Loughrey highlight how inequality measures fail to capture the ways in which inequality can widen. We are asked to consider the example of a country with two citizens, one earning £5 and the other £50. Suppose ten years later their incomes double now while their ratio of incomes is still one to ten, the absolute gap in incomes has widened from £45 pounds to £90. The report argues that this is exactly what has happened in Ireland during the boom years. The report also highlights the absence of wealth measurements in the equality statistics. According to the Bank of Ireland figures for 2006, the gross wealth of the top one per cent of the population accounted for 20% of total wealth at 100 billion euros. When residential property is removed from these figures the share of the top one per cent increases to 34% of total wealth (p. 14). The report also suggests that Irish people are concerned with levels of inequality in Irish society, with the 2009 TASC Behaviour and Attitudes poll showing that 72% of adults are concerned by the levels of wealth inequality in Irish society, and 85% of adults believe that the government should take steps to reduce income inequality (p. 2).

Conclusion

The aim of this chapter was to highlight why child poverty trends in Ireland signify systemic inconsistencies in how Irish society is currently structured compared to the founding principles of equality and dignity. The figures presented in this chapter unequivocally show that children currently experience, and have done so for several decades, higher rates of poverty compared to any other age group in Irish society. Although Ireland currently has the highest rates of family allowances across OECD nations this is not enough to counteract the negative effects of intergenerational transmission of disadvantage. Neither was economic progress. While Ireland has had some success in implementing policies to reduce consistent poverty among the youngest and oldest in society, its relatively high levels of income inequality enhance the impact of intergenerational transmission with positive effects for some and negative effects for others. This arbitrary transfer from parent to child undermines the nation's founding principles of equality and fairness. The effect of poverty in teenage years has significant impact on the outcomes for the adult and this cohort has consistently had the highest

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poverty rates. The conclusion of this chapter is that unless we make strides to reduce income inequality child poverty will remain unacceptably high regardless of economic climate.

FROM THEORY TO PRACTICE

In this chapter, we discuss how our theoretical findings may best influence real world policies that aim to address issues of intergenerational injustice. As we recall our theoretical investigations of Rawls lead us to promote an interpretation of the difference principle that presides over a wide range of PSG's and includes all children (and as such the circumstances of childhood) in the LAG. This interpretation was further supported by our review of recent debates in egalitarian and freedom theory. Given this, the clear question is now, what policy implications will follow from our interpretation of the difference principle. To answer this we need to first understand how Rawls intended justice as fairness to operate in the ideal. This leads us to review the socioeconomic regime endorsed by Rawls, known as a Property-Owning Democracy (from now on referred to as POD) and his rejection of other regimes, including welfare state capitalism (from now on referred to as WSC), like that of the Irish State. We then test the validity of Rawls' rejection of capitalism, and welfare capitalism in particular, by looking at the recent work of Martin O'Neill. O'Neill argues that it is the difference principle that leads to this objection and gives best support for a POD. We need to ascertain what Rawls' and O'Neill's claims mean for our interpretation of the difference principle in a non-ideal context. While a complete change of political and social regime may be necessary to promote Rawlsian justice can our interpretation of the difference principle avoid this? We think it can. By suggesting that O'Neill's claim appeals more to welfare societies than capitalist, we begin to build a possibility of a capitalist difference principle that address the issue of intergenerational justice.

8.1 *Rawls in a non-ideal context*

In chapter two, we noted the suggestion that Rawls' theory of justice as fairness structurally conforms to a society that blends liberalism, the redistributive welfare state and the market economy. From this we may reasonably assume that a socioeconomic regime based on a hybrid form of capitalism and welfarism is necessary to implement the Rawlsian principles of justice. Indeed, this perceived reliance on the type of mixed capitalist economy typical of western democracies forms the basis of a leading objection

to the Rawlsian view of justifiable inequality. In *Reading Rawls* Daniels argues that like many liberal theorists Rawls fails to recognise the effect of social and economic inequalities on liberty as he sets no moral restriction on the size of fair inequalities. The assertion that Daniels makes is that Rawls allows too much economic liberty at the cost of the other basic liberties, and possibly FEO and the difference principle (p. 253). However, this perceived Rawlsian support for diluted capitalism may be too quick an assumption to make. Further exploration of Rawls' body of work needs to be undertaken firstly to establish what socio-economic regimes Rawls advocates and secondly why this may be useful for Irish policy.

8.1.2 Can Rawlsian principles of justice be served by a capitalist economy?

It is true to say that, at the very heart of justice as fairness, is the idea of justifiable inequality. The lexical ordering of the principles of justice creates a spectrum of allowable inequality within the just state, mainly in the economic realm. Are we to conclude then that Rawls endorses some form of restricted capitalism? The use of contractarian theory with its emphasis on “cooperative venture for mutual advantage” that is “typically marked by a conflict as well as by an identity of interests” due to the condition of moderate scarcity, which Rawls refers to as the circumstances of justice, conjures up the notion of a regulated economy where scarce resources are exchanged by some mechanism other than an equal distribution. While this may not commit Rawls to capitalism per se, it does commit him to some form of value based market society in which the socioeconomic benefits and burdens of cooperation are justifiably distributed. Indeed, Rawls (1999, p. 131) asks ‘if there are inequalities in income and wealth, and difference in authority and degrees of responsibility, that work to make everyone better off in comparison with the benchmark of equality, why not permit them?’ This rationale is further evidenced in the characterisation of the parties to the original position who are portrayed as motivated by “mutually disinterested rationality” leading them to select principles of justice based on the distinctive but mutually inclusive ideas of efficiency and risk. The contractarian view with its need for “mutually beneficial cooperation” commits Rawls to the principle of efficiency which is arguably best served through a capitalist market. However, Rawls' theory in general makes two leading arguments for why we should opt for a regulated economy. Firstly, given that there will be several points along the efficiency curve (as discussed in chapter four) the “mutually disinterested rationality” of the parties to the original position and the uncertainty contained in the circumstances of justice, will lead them to pursue a risk

averse approach such as the maximin rule: alternatives are ranked by their worst possible outcome with the superior worst possible outcome being selected. Secondly, the moral arbitrariness of our talents, abilities and social circumstance require that no one should benefit from them unless it is to the benefit of all. These two arguments provide the basis for the difference principle and may be construed as Rawls' mechanism for regulating the market economy "...we are satisfied that under a wide range of circumstances the difference principle will lead to acceptable conclusions."

Based on the above arguments it seems that a general perusal of the Rawlsian apparatus of justice may well give a nod in the direction of a mixed economy, much like welfare capitalism, as an acceptable purveyor of justice as fairness, and as such, give rise to Daniels' earlier critique. However, as we will show, this is strongly rejected by Rawls in his last book *Justice as Fairness: A Restatement* (from now on *Restatement*). We turn our attention now to the type of Political Economy suggested by Rawls as necessary for the implementation of justice as fairness.

8.1.3 The type of political economy required by justice as fairness

Key to Rawls' discussion regarding political economy is that a socioeconomic regime must be one that realises the principles of justice. As justice as fairness applies to the basic structure of society, considerations of the background arrangements is essential. In section 42 and 43 of *Theory* and Part IV of *Restatement*, Rawls considers the family of policies required for securing background justice. To begin with Rawls defines political economy as being

concerned with the public sector and the proper form of the background institutions that regulate economic activity, with taxation and the rights of property, the structure of markets, and so on (1999, p. 235).

Economic activity is further defined as

things that are produced and by what means, who receives them and in return for which contributions, and how large a fraction of social resources is devoted to savings and to the provision of public goods (1999, p. 235).

Rawls suggests that the distinguishing aspects among alternative forms of socioeconomic regimes can be best ascertained by the following questions:

1. Who owns the means of production?
2. What proportion of total resources is devoted to public goods?

The first question has a range of viable answers running along a continuum from the extremities of free market capitalism to socialist or planned economies. This follows a similar pattern to our continuum of freedom and equality discussed in chapter four. At the extremities, liberty is usually linked with free market capitalism, and equality with command economies. At one end of the spectrum, we have output largely controlled through state owned and managed firms and at the other end output controlled by the free market. Market economy, and in particular private property, is therefore promoted in a capitalist society and usually restricted in socialist society.

The second distinction revolves around the level of public goods distributed. However, first we need to define what makes a commodity a public good. Rawls notes that public goods can be determined by the characteristics of indivisibility and publicness: goods to which all are entitled to an equal share and are publicly acknowledged as such. Rawls specifically mentions defence and health as examples of public goods however, given the requirements of FEO we can easily extend this to include education and training in a general sense and also more specifically, there is the potential, to make the case for viewing the opportunity for moral development as a public good. These goods would be political, in that they are managed through government activity rather than the free market.

Given the high level of public goods required for Rawlsian justice we may be tempted to think that this requires a command economy where supply and price are regulated by the government rather than market forces. This cannot be the case since command economies are inconsistent with the first principle of liberty, particularly with the idea of free choice of careers and occupation. While Rawlsian justice may require a socioeconomic regime that advocates a high level of public goods, it will also require a regime that allows for private property in the means of production particularly regarding human capital. This is in line with Rawls' reflective equilibrium approach and reflects his commitment to the values of equality and liberty. The commitment to free and equal citizens may lead us to conclude that the necessary socioeconomic regime lies somewhere in between capitalism and socialism, somewhere not unlike most economies

in western society. This perceived straddling of the two polar socioeconomic regimes may be what gives rise to the misconception that justice as fairness can be satisfied by a mixture of capitalism and welfare state. But this is to confuse the use of a market economy with the creation of a market society. Of particular significance is the Rawlsian account of private property. While Rawls wishes to promote a market economy based on private ownership (for reasons pertaining to freedom), it is an economy tempered with restrictions relating to the transmission of intergenerational advantage and reciprocity (for reasons pertaining to equality).

Among the basic rights is the right to hold and to have the exclusive use of personal property. One ground of this right is to allow sufficient material basis for personal independence and a sense of self-respect, both of which are essential for the adequate development and exercise of the moral powers. Having this right and being able to effectively exercise it is one of the social bases of self-respect (2001, p. 114).

The unequal inheritance of wealth is no more inherently unjust than the unequal inheritance of intelligence...inheritance is permissible provided that the resulting inequalities are to the advantage of the least fortunate and compatible with liberty and fair equality of opportunity (1999, p. 245).

In the next section we will discuss why Rawls explicitly rejects welfarism and capitalism. However, before we do so it is worth taking some time to reflect upon Rawls' need and desire to utilize a market economy, as it is this commitment that goes a substantial way to generating the false belief that Rawls advocates a WSC.

The first point Rawls makes regarding markets, is to disconnect the idea that the ownership of the means of production dictates the level of public goods distributed. Rawls argues that the two characteristics of socioeconomic regimes are distinct and non-dependent. As such, a public good does not require a public means of production.

“A private-property economy may allocate a large fraction of national income to these purposes, a socialist society a small one, and vice versa.” (1999, p. 239).

This generates two important points regarding private property:

Firstly, governments having decided what to distribute, as public goods, are then free to source said goods on the free market as long as the distribution of such goods remains political, in that distribution retains the characteristics of indivisibility and publicness. Secondly, a commitment to private property does not have to produce large scale inequalities.

The use of a market economy has many advantages for satisfying the principles of justice in that it

1. allows for the free choice of career and opportunities.
2. provides incentives and efficiency needed for contractarian justice
3. can decentralise the exercise of economic power

Rawls argues that given the necessary background institutions a market system can be consistent with equal liberties and fair equality of opportunity (1999, p. 240).

Rawls outlines his account of the socioeconomic regime required by the principles of justice as follows:

First of all, I assume that the basic structure is regulated by a just constitution that secures the liberties of equal citizenship...liberty of conscience and freedom of thought are taken for granted, and the fair value of political liberty is maintained. The political process is conducted, as far as circumstances permit, as a just procedure for choosing between governments and for enacting just legislation. I assume also that there is fair (as opposed to formal) equality of opportunity. This means that in addition to maintaining the usual kinds over social overhead capital the government tries to insure equal chances of education and culture for persons similarly endowed and motivated either by subsidizing private schools or by establishing a public school system. It also enforces and underwrites equality of opportunity in economic activities and in the free choice of occupation. This is achieved by policing the conduct of firms and private associations and by preventing the establishment of monopolistic restrictions and barriers to the more desirable positions. Finally, the government guarantees a social minimum either by family allowances and special payments for sickness and unemployment, or more systematically by such devices as a graded income supplement (a so called negative income tax) (1999, p. 243).

Rawls proposes a POD as the favoured socioeconomic regime with four distinct branches of government of which the first two would work to regulate the market economy and the second would work to minimise inequality. The Allocation branch would keep the price system working competitively and prevent the formation of unreasonable market power. The Stabilization branch would ensure full employment and free choice of occupation. The Transfer branch would be responsible for setting the social minimum and honour claims of need while the Distribution branch would preserve a wide ownership of productive resources and prevent the transmission of intergenerational disadvantage.

With an extensive range of public goods, a social minimum and the continual correction of the distribution of wealth, Rawlsian justice has a lot to offer children and may well go a long way to minimising the brute luck of familial intergenerational transmission, whilst still allowing for individual autonomy and freedom. The question now is whether a commitment to Rawlsian justice requires a restructuring of the Irish economy to reflect that of a POD.

8.2 The Rawlsian objection to Welfare State Capitalism

Rawls admits that a serious fault of *Theory* is that it fails to emphasize the contrast between POD and familiar forms of capitalism, in particular what Rawls refers to as WSC (2001, p. 139). *Theory* does give us a detailed account of the necessary branches of government required by POD (allocation, stabilization, transfer and distribution) however, it is not until *Restatement* that the anti-capitalist implications of POD are given any prominence. While Rawls acknowledges that a liberal socialist regime would also satisfy the principles of justice he chooses to focus the discussion on a comparison of WSC and POD as both allow private property in productive resources (2001, p. 139). Rawls is clear from the beginning that while POD is capable of realising the principles of justice WSC is not (2001, p. 135).

Rawls' objections to laissez-faire and state socialism are fairly uncontroversial claims with both sitting at opposing ends of our equality versus freedom continuum. His rejection of WSC is probably more surprising and highlights quite a "striking and underappreciated fact that John Rawls saw his theory of justice as leading to a

fundamental critique of familiar forms of capitalism” (O’Neil 2012, p. 136). Rawls’ rejection of WSC is both conclusive and comprehensive in that it claims that WSC rejects the fair value of the political liberties and while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed. It permits very large scale inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in few hands. And although, as the name “welfare-state capitalism” suggests, welfare provisions may be quite generous and guarantee a decent social minimum covering the basic needs (\$38), a principle of reciprocity to regulate economic and social inequalities is not recognized (2001, p. 138).

This is an extensive charge sheet with WSC failing to satisfy each and all of the Rawlsian principles of justice. It fails the principle of liberty as it does not guarantee the fair value of the equal political liberties. The idea of fair value is introduced by Rawls to meet the objection that the principle of equal liberties is merely formal, in that while all may have equal liberty those with greater wealth can monopolise political life. The proviso of the fair value means that citizens must be sufficiently equal in their opportunities to hold public office and affect elections. Rawls argues that WSC, by allowing large scale economic inequalities, fails to meet the proviso of fair value in political liberties. WSC also violates FEO as it cannot do enough to ensure that those who have the same level of talent and ability and the same willingness to use these gifts have the same prospects of success regardless of their social class of origin. And finally, WSC fails the difference principle as it provides a mere social minimum rather than meeting the demands of reciprocity that gains to the most advantaged must also benefit the least advantaged.

8.3 Property-Owning Democracy further defined

Rawls’ development of POD is much influenced by the work of Nobel prize-winning economist James Meade. In particular, the 1964 work *Efficiency, Equality and the Ownership of Property* where Meade, concerned with the limitations of Keynesian economics, advocated an aggressive taxation of capital transfers between generations, the redistribution of capital on a broadly egalitarian basis through the widespread ownership of property including human capital. While Rawls’ early work, including the 1967 *Distributive Justice* and the subsequent *A Theory of Justice* are heavily influenced by Meade’s

anti-capitalist approach, this reliance is not brought into perspective until Rawls' latter works particularly *Justice as Fairness: A Restatement*. Although *Theory* provides a detailed discussion of the necessary branches of government the anti-capitalist implications of this are not developed.

The quote below somewhat fleshes out the overall aims and characteristics Rawls attaches to a POD. The italics are mine and hopefully their significance will become apparent as the chapter progresses.

the aim is to realize in the basic institutions the idea of society as a fair system of cooperation between citizens regarded as free and equal. To do this, those institutions must, *from the outset*, put in the hands of *citizens generally*, and not only for a few, sufficient *productive means* for them to be fully cooperating members of society on a *footing of equality*. Among these means is *human* as well as *real capital*, that is, knowledge and an understanding of institutions, educated abilities, and trained skills. Only in this way can the basic structure realize pure background procedural justice *from one generation to the next*. (2001, p. 140).

Drawing on the idea that socioeconomic regimes can be best delineated by questions relating to, who owns the means of production, and, at what level the allocation of public goods is set, helps us to crystallise the important difference between the background institutions required by POD and those typical of a WSC. Rawls claims that

One major difference is this: the background institutions of property-owning democracy work to disperse the ownership of wealth and capital, and thus prevent a small part of society from controlling the economy, and indirectly political life as well. By contrast, welfare-state capitalism permits a small class to have a near monopoly of the means of production (2001, p. 139).

Not only does POD not permit near monopolies, it actively seeks to maintain a wide dispersal of ownership in the means of production by patterning private property. The range of public goods allocated in a POD will have a greater depth and brevity than those distributed under WSC. And lastly, but most strikingly, the mode of distribution necessary for a POD is pre-emptive rather than "after the fact" redistribution, reflecting Rawls' commitment to the idea of the social basis of self-respect.

While both embrace the idea of private property and utilise the mechanism of the market, their background institutions produce strikingly different outcomes for the structure of society. In chapter 5, we discussed Parfit's suggestion that the levelling down objection requires us to choose either equality or priority, with equality reflecting a concern for issues relating to the gap and priority a concern for issues relating to the worst off. A POD is able to address both concerns: the principle of reciprocity requires advantage to be shared with the worst off while the continuing dispersal of ownership of productive resources including human capital restricts the justifiable equality gap. A WSC, on the other hand, can only address issues of priority through the adoption of a thin social minimum and therefore imposes no upper limit on the range of justified inequality. This is further exacerbated by the mechanism of "after the fact" distribution (or redistribution to be precise) that erodes "the footing of equality" promoted in justice as fairness.

In *Property-Owning Democracy: Rawls and Beyond*, Chambers notes

Welfare capitalism redresses the inequalities produced by the basic structure; property-owning democracy offers a redesigned basic structure to ensure minimum or only justifiable inequalities in outcomes (2012, p. 22).

What does this mean for our concern regarding children and justice? In chapter four we put forward an interpretation of the difference principle that presides over a wide range of PSG and applies directly to all children, as a possible remedy for our concerns regarding Rawls' classification of children as citizens in waiting, and his subsequent use of the institution of the family. The availability of this mechanism to Irish policy makers, will be highly dependent on whether we can avail of the ideals of justice as fairness in a society that can be loosely translated as a WSC. To answer this we need to explore two equally important questions;

1. Is Rawls' criticism of WSC valid?
2. Are there less familiar forms of capitalism still available to us?

8.4 O'Neil and the "ex post" requirement of justice as fairness

In *Free (and Fair) markets without Capitalism* Martin O'Neill brings attention to the "striking and underappreciated fact that John Rawls saw his theory of justice as leading to a fundamental critique of familiar forms of capitalism (2012, p. 75). Similarly, O'Neill

is keen to test the validity of Rawls' criticism of WSC and provides strong arguments for why fair equality of opportunity and fair worth of liberty could be achieved by policies implemented within a WSC. However, he asserts that the difference principle, when taken as extending to a full range of social primary goods, can be institutionalized only under conditions associated with POD. O'Neill goes considerable ways towards answering our current questions and it is therefore useful to explore his argument further.

O'Neill's claim is quite specific in that it states

the difference principle as ranging over the full range of social primary goods, can be institutionalized only under conditions associated with POD (or something rather like it), whereas fair equality of opportunity and the fair value of the political liberties could plausibly be achieved under a variety of different socioeconomic regimes (2012, p. 93).

Since our concern regards the difference principle and children we will focus on this part of O'Neill's argument solely, accepting the claims he makes about the remaining principles of justice.

O'Neill outlines the objectives of a POD as follows:

1. The wide dispersal of capital (which O'Neill refers to as *the sine qua non* of a POD).
2. Blocking the transmission of intergenerational advantage.
3. Safeguards against the corruption of democratic politics.

Rawls' first principle, the principle of equal liberty, would be protected by policies relating to the third objective with the second principle being satisfied by policies relating to both the first and second objective.

O'Neill suggests that Rawls' claim that a WSC "rejects the fair value of political liberties...so that the control of the economy and much of political life rests in the hands of the few" at best depends on controversial claims in political sociology and may very well be unsuccessful (2012, p. 81). O'Neill's suggestion is made on the basis that Rawls "...provides insufficient support for the claim that control of political life must

always go hand in hand with control of unequal amounts of productive resources” (2012, p. 81). O’Neill is not disputing that economic and political power often go hand in hand in the non-ideal: he is merely flagging that Rawls’ assumption implies a causal relationship when in reality the relationship may be at most correlative and at best may be responsive to insulation strategies.

It is not sufficient simply to assume that economic power and political power must always go together, with inequalities in the latter being inevitable whenever inequalities in the former have not been eradicated (2012, pp. 83-84).

O’Neill also suggests that Rawls’ promotion of POD over WSC in the attainment of FEO is equally contestable. Remember that FEO is satisfied when

those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin (Rawls, 2001, p. 44).

Attainment of FEO therefore relies on type two policies as outlined by O’Neill: policies that block the transmission of intergenerational advantage. O’Neill acknowledges that while type two policies are needed to secure FEO this does not limit us to a POD. As we have seen in his critique of WSC even Rawls acknowledges the possibility of FEO being satisfied within a WSC. However, we noted in chapter four, that Rawls acknowledged the limitation placed on the satisfaction of FEO by the Family with the suggestion that this may be compensated for by the difference principle. Indeed, it is this limitation and compensation that motivates the interpretation of the difference principle as presented in chapter four. One possible thought is that Rawls views the wide dispersal of capital as a necessary compensation for the structural limitations with FEO. O’Neill’s argument relies on a narrow reading of FEO that does not require type one policies and as such enables him to reject POD as the only possible socioeconomic regime capable of delivering FEO. However, even if we accept a wider reading of FEO, we may still be able to reject the idea of a POD as the only option. We will take this point up later when we consider the role played by a Rawlsian social minimum.

In examining the reasons Rawls rejects WSC, in favour of POD, for the implementation of the difference principle, O’Neill asks us to first consider the role equality plays in Rawls’ framework. O’Neill argues that it is the ideal of equality that commits Rawls to a

POD. Remember the difference principle is the only principle of justice that allows justified inequality (albeit for the unexplored (*in Rawls*) acknowledgement that FEO cannot be fully satisfied, thereby allowing some inequality, presumably unjust.) O'Neill's argument is that the requirements placed on the difference principle by the ideal of equality present the strongest justification for the adoption of POD. While the ideal of equality plays a vital role determining the two principles of justice, it is not until *Restatement* that Rawls explicates why equality is important in itself.

One reason is that, in the absence of special circumstances, it seems wrong that some or much of society should be amply provided for, while many, or even a few, suffer hardship, not to mention hunger and treatable illness (2001, p. 130).

A second reason for controlling economic and social inequalities is to prevent one part of society from dominating the rest. . . . This power allows a few, in virtue of their control over the machinery of state, to enact a system of law and property that ensures their dominant position in the economy as a whole (2001, pp. 130–131).

A third reason [for regulating social and economic inequalities] brings us closer to what is wrong with inequality in itself. Significant political and economic inequalities are often associated with inequalities of social status that encourage those of lower status to be viewed both by themselves and by others as inferior. This may arouse widespread attitudes of deference and servility on one side and a will to dominate and arrogance on the other. These effects of social and economic inequalities can be serious evils and the attitudes they engender great vices (2001, p. 131).

Rawlsian reciprocity requires relationships that are non-dominating and that facilitate the social bases of self-respect, inequality threatens these requirements. However, the principle of efficiency with its connection to incentives and freedom promotes inequality. Rawlsian justice must then find a way to regulate this mix of equality and freedom.

O'Neill argues that while the difference principle can address income inequality by redistribution through transfer payments (much like the welfare systems found in most WSC), the same cannot be said for issues relating to inequalities in power and status. Illuminating the problem, O'Neill defines transfers normally made in WSC as *ex post* redistribution – redistribution after the fact. O'Neill's claim is that issues of power and status require what he describes as *ex ante* distribution.

O'Neill states that *ex post* distributions cannot address “deep seated social inequalities”. From our discussion on measuring poverty and poverty cycles, in the previous chapter, we have good reasons to accept O'Neill's conjecture. O'Neill further suggests that only *ex ante* mechanisms, mechanisms before the fact, can address inequalities of wealth, power, and status. A POD with its wide dispersal of capital adopts this *ex ante* position in a way that WSC do not. As such, O'Neill suggests, that it is the difference principle that provides the best justification of a POD over a WSC.

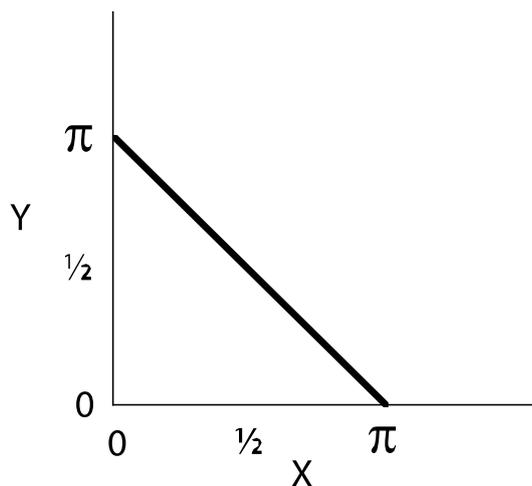
While we find O'Neill's distinction between *ex post* and *ex ante* distribution illuminating it does not necessarily lead us to accept a POD as the only, or the best, socioeconomic regime for advancing the requirements of the difference principle. Indeed, the *ex post* nature of a WSC seems to lie more with the welfare part of the equation and not necessarily the capitalist element. Now you might want to object to capitalism on the grounds that it created and perpetuated unjust inequalities in the first place and you may want to defend welfarism as at least an attempt to recognise the unjustness of capitalism. However, that does not commit us to the O'Neill objection. O'Neill's objection is clearly on the grounds of the *ex -postness* of welfarism rather than the *ex-ante* approach that he attributes to Rawls (or at least to his interpretation of the Rawlsian primary goods when self-respect is included.) What O'Neil fails to establish is that a capitalist society cannot implement an *ex ante* difference principle. We take this up in the following section by exploring how the idea of a social minimum is essential to the Rawlsian framework justice and by suggesting that it is a direct expression of the difference principle.

8.5 Excavating the Rawlsian Social Minimum

The main thrust to justice as fairness is its reliance on the contractarian framework, so we need to understand the circumstances that would entail to motivate individuals to

enter into a contract for social cooperation. If we imagine a zero sum situation where there is a fixed stock to divide among participants then Rawlsian justice would tell us that the parties to the original position would not choose anything less than perfect equality: being motivated by self-interest and behind a veil of ignorance where none had a bargaining power over the other we cannot concede any other arrangement than strict equality.

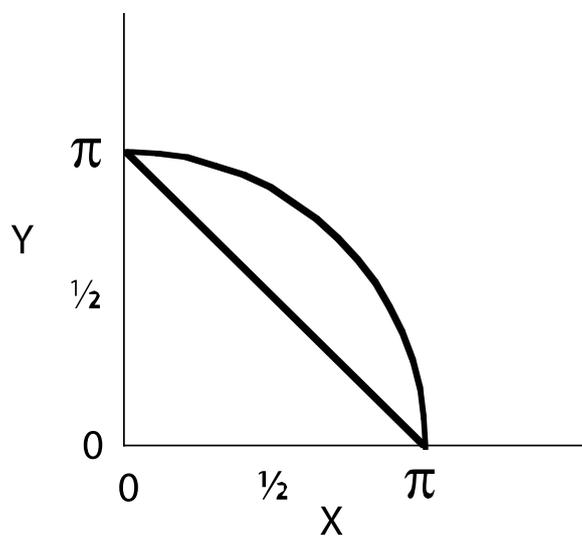
Figure One: Zero – Sum



In this situation we have a fixed stock of goods π which we want to justly distribute to X and Y. Drawing on the principle of efficiency first, any point that represents a full distribution will be acceptable. A system is efficient or Pareto optimal if there are no alternative arrangements that improve the situation of one without worsening the situation of another (Rawls 1999, p59). In general, there are many arrangements that are efficient in this sense. A fixed stock of π gives us several efficient distributions ranging along the line from $(\pi, 0)$ to $(0, \pi)$. Put simply as one person gains another loses. While the points along XY line are comparable in terms of efficiency they have nothing to say about what represents a just distribution, with all to X and none to Y being as equally acceptable as any other distribution along the line of efficiency. We need something else to determine the most just arrangement and in the Rawlsian framework that comes from the principle of reciprocity. Given the Rawlsian setup the parties to the original position, behind the veil of ignorance in a zero sum situation will always pick an equal split $(\frac{1}{2}\pi, \frac{1}{2}\pi)$ as there is no incentive or bargaining power to do anything else (1999, p. 130). This is the idea of background equality at play.

However, since the parties to the contract are aware of basic economic facts they know that social cooperation can bring with it gains (and potentially losses) in the social product: it can increase the social pie, so to say. The question of how to share this increase now becomes less clear cut for the parties, as there are some arbitrary and non-arbitrary factors involved in how the efficiency is gained. Given the contractors' general economic knowledge, they will be aware that inequalities in the social and economic realm "act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on" (1999, p. 68).

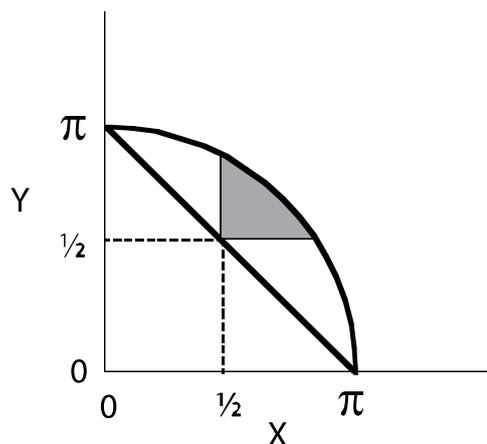
Figure two: Non zero sum



The strict definition of a non-zero sum situation is where the parties' aggregate gains and losses are either less than or more than zero, and as such may not be Pareto optimal. In short improvements for some do not have to come at the cost of losses to others. Does this imply that the increases in social product are owed to certain individuals alone: those that were incentivised to increase social product? If so, how likely are we to be able to determine who these individuals are? In our XY scenario it may be possible to establish who has brought about efficiencies in social product, however, in a dynamic social structure we would have to apply hard and fast rules that may result in unjust reward with the potential of thwarting both the principle of efficiency and reciprocity. This is before we even factor in the further requirements of reciprocity as required by the arbitrariness of natural endowments and social contingences that justice as fairness establishes. Once we accept the arbitrariness

argument we must conclude that increases in social product can only be partly attributed to individual effort and therefore should only be partly rewarded by an incentive model – the remaining increase belonging to the society as a whole and as such distribution needs to be a mix of incentive and entitlement corresponding to the prior principles of efficiency and reciprocity respectively. This idea of efficiency is harnessed in the Rawlsian framework in such a way as it becomes possible for the better prospects of the better off to improve those of the worst off. The parties to the original position will accept an unequal distribution if it means they received a larger portion to the equal share they would have received in a zero sum situation: if an unequal split now represents an improvement over the equal split they would have initially received as measured in primary goods. Unless there is a distribution that makes both persons better off an equal distribution is to be preferred. The implications of this are that the area on the graph which now satisfies both the principle of efficiency and reciprocity is limited, at the lower bound, by the initial setting of equality:

Figure three: The inherent minimum



The implication here are clear, inequality acts as an incentive to achieve efficiency gains that benefit all. As we said earlier a non-zero sum situation can be either positive or negative and it seems likely that the parties to the original contract given their economic knowledge would seek to protect themselves from the negative implications. The only way to do that is to reinforce the idea that equality is preferable unless inequality is better for all. Once we accept this then we need to establish the original zero sum equality as a minimum threshold through which no one should fall. Taken on its own this says little about the level of initial equality and as such, how low the threshold can be set. However, the upper limit on inequality will be established by FEO and the

principle of liberty (shaded area in figure above). When taken together the principles of justice work to provide an upper and lower limit on justified inequality, (as seen in the shaded area on figure three).

What happened to the social minimum?

In his 1967 paper, *Distributive Justice* Rawls brings together the motivating ideas behind justice as fairness and the paper is to shape much of what followed in *A Theory of Justice* and so it is to this we now turn to look at the origins of the difference principle and the initial role Rawls wished it to play in his theory of distributive justice. *Distributive Justice* reads much like a pamphlet, in that as well as setting out the theoretical foundations necessary for Rawlsian justice, it also provides a detailed account of how such justice could be implemented in the basic structure of society. We are given an account of the criteria necessary to determine increasing levels of the just society: just throughout and the perfectly just society.

The basic structure of society is just throughout when the advantages of the more fortunate promote the well-being of the least fortunate, that is, when a decrease in their advantage would make the least fortunate even worse off than they are. The basic structure is perfectly just when the prospects of the least fortunate are as great as they can be (1967, p. 138).

Rawls goes on to sketch the government departments that would enable the realisation of the two principles of justice. It is during this detailed mapping of distributive justice the Rawls frequently refers to a social minimum as a direct derivative of the difference principle.

More fully, if law and government act effectively to keep markets competitive, resources fully employed, property and wealth widely distributed over time and to maintain the appropriate social minimum, then if there is equality of opportunity underwritten by education for all, the resulting distribution will be just (1967, p. 140).

Once the difference principle is accepted, however, it follows that the minimum should be set at the level which, taking wages into account, maximizes the expectations of the lowest income class. By adjusting the amount of transfers and the benefits from public goods which improve their circumstances, it is possible to increase or decrease the total income of the least advantaged (wages

plus transfer plus benefits from public goods). Controlling the sum of transfers and benefits thereby raising or lowering the social minimum gives sufficient leeway in the whole scheme to satisfy the difference principle (1967, p. 145).

The Social minimum would be curtailed by the just savings policy and market efficiency. The ideology is clear: there is a line below which none should fall.

8.5.1 Other arguments for a social minimum

As early as 1973, J.E.J. Altham raised a fundamental objection to the Rawlsian difference principle which he referred to as drawing attention to a difficulty in Rawls's theory and suggesting a possible way forward by adding an "extra element of egalitarianism" (1973, p. 77). Altham's clear and concise note was the beginning of a continuing call for requiring the difference principle to establish a social minimum. Altham's point was simple: where you draw the line matters. By numerically highlighting the problem of defining groups through amalgamation and splitting, Altham aimed to prove that the difference principle should be individualistic in nature and as such could be best served through the establishment of a social minimum (p75-78). In doing so, Altham showed that defining the least advantaged was not as clear cut as Rawls had hoped. Altham's examples are reproduced here for clarification.

	S_1	S_2
A	80	80
B	30	20
C	10	14

Having a choice between societies S_1 and S_2 the difference principle would select S_2 as this maximise the outcomes of the least advantaged group C. However, if we now amalgamate group B and C the difference principle will now select S_1 , as this now provides the maximum outcome for the least advantaged group BC.

	S_1	S_2
A	80	80
BC	40	34

The same difficulty can be seen by splitting the groups. Altham further points out that maximising the expectations of the representative man is subject to the same objection as there may well be a wide dispersion of incomes within the group. Thus anything other than an individualistic approach contains too much arbitrariness for the risk adverse parties to the original position to agree too. We can find clear support for this argument in Rawls' description of how the parties to the original position, behind the veil of ignorance operate on the bases of mutual disinterest.

Put in terms of a game, we might say: they strive for as high an absolute score as possible. They do not wish a high or low score for their opponents, nor do they seek to maximize or minimize the difference between their success and those of others (1999, p. 125).

Given this account, of the parties to the original position, it is clear that the application of the difference principle on anything other than an individualistic account would not meet the criteria of the parties to the original position. Leaving aside contractarian arguments Altham suggests that "...we should intuitively regard it as unfair to maximise the expectations of a representative member of a disadvantaged group, unless we also took care to protect every individual in that group." (1973, p. 77) This concern for every individual is not necessarily a feature of the principle of reciprocity from which the difference principle is devolved. The principle of reciprocity expresses the contractarian idea of social cooperation among equals for mutual advantage.

8.5.2 The importance of the social minimum to Rawlsian justice.

Rawls objects to the idea of a social minimum as interpreted by WSC, a guarantee of a decent social minimum covering the basic needs, yet the idea of a social minimum is integral to the structure of Rawlsian justice. The motivation for, and the structure required by, a Rawlsian social minimum, is far more demanding than that of a WSC. The difference is so vast, they are simply incomparable. While a WSC social minimum may guarantee a basic level of education, health and income, it is often formal in nature and as such, does little to address the issue of the equality or freedom gap. We discussed the theoretical significance of this in chapter five and six (respectively) and we highlighted the quantitative and qualitative evidence of this in chapter seven. The Rawlsian social minimum is motivated by the more demanding principle of reciprocity rather than a principle of need. The principle of need ensures that all receive a basic level of subsistence whereas the principle of reciprocity demands an equal share unless

all benefit from an unequal share. Instead of aiming to get all up to an acceptable basic level of subsistence, the principle of reciprocity demands that a social minimum be structurally integral to the Rawlsian principles of justice. This is evidenced in that each principle, and subset, requires its own minimum: the fair worth of liberty provides a minimum level of political power for all citizens, FEO secures a minimum level of training, education and opportunity, and the difference principle, in the first instance, ensures a minimum level of income and wealth. While these are minimums in their own right what makes the Rawlsian social minimum so unique, is that each minimum plays a part in creating the overall social minimum required by reciprocity: a minimum that meets the reciprocity rule, that inequality is only justified when it benefits all. What we have in Rawlsian justice then, is a social minimum that regulates the equality and freedom gap. As we have seen in our earlier section the gap is bounded by pre-cooperative equality at the lower limit and the requirements of reciprocity at the upper limit. We also know from Chapter 3 that Rawls sees the difference principle as the greatest expression of reciprocity, ranging over a variety of social goods, including the social basis of self-respect. Rawls advocated a POD as the most appropriate socioeconomic regime for achieving this social minimum and while O'Neill argues that the principle of liberty and FEO could be achieved in a WSC the difference principle could not. In answer to O'Neill we now want to explore what if any form of the difference principle could be implemented within a capitalist socioeconomic regime.

8.6 *Asset Based Egalitarianism*

In chapter six we discussed the work of Philippe Van Parijs *Real Freedom for All*, that advocates the idea of a basic income for all as a way to achieve real freedom and legitimise capitalism. The basic income approach advocates a universal and unconditional government guarantee of a minimum income to meet basic needs. In his work, Van Parijs suggests that the basic income model can be an interpretation of the Rawlsian difference principle. While the basic income model avoids O'Neill's ex post objection, in that it is not a form of redistribution, it cannot avoid the wealth over income argument of relational justice and as such cannot avoid O'Neill's concern for the social basis of self-respect. A similar though less established approach is the idea of a basic capital. In much of the literature this takes the shape of a one off capital grant to each young adult repaid through some form of delayed taxation. One immediate benefit of the capital over income model is that it would work to satisfy Rawls' requirement for

a wide dispersal of capital and meet O'Neill's concern for social bases of self-respect. It also has the potential to work some way towards the amelioration of the circumstances of childhood and in particular the transmission of (dis)advantage from parent to child.

The idea of a basic capital was first put forth by Thomas Paine in *Agrarian Justice* 1797. Paine endorsed the natural law thinking that advocates the earth in its natural state as the common property of humankind. As such, every child born into the world has ipso facto an inalienable right to an equal share in the common inheritance. Civilised society with its reliance on the mechanism of private property truncates this inalienable right firstly by absorbing property that ought to be of joint ownership and secondly by transferring the advantage through inheritance. Paine argues that return to a natural state is not possible once a society has been civilised, mainly as a natural society cannot facilitate the size of population that a civilised society creates, therefore justice demands that the inalienable right of common inheritance is in some way protected from the truncation of private property. Paine suggests

To create a National Fund, out of which there shall be paid to every person, when arrived at the age of twenty-one years, the sum of Fifteen Pounds sterling, as a compensation in part for the loss of his or her natural inheritance by the introduction of the system of landed property; and also the sum of Ten pounds per annum, during life, to every person now living of the age of fifty years, and to all others as they shall arrive at that age (p. 186)

Paine's idea therefore is a mixture of basic capital and basic income, composed of firstly a one off lump sum on maturity and then an annual income not unlike the state pension. For our purpose we will concentrate on Paine's idea on maturity. His argument is based on the idea that while people ought to be joint proprietor of the earth in its natural state, this does not imply that they need be a joint proprietor of cultivated earth. What it does do (much like Rawls' idea of reciprocity) is to give everyone a right to a share of cultivated property based on the inalienable right to a share of natural assets. The distinction is important and necessary, as Paine wants to retain the idea of private property and the right to bequeath, while maintaining the principle that humanity is the common owner of the earth in its natural state. The idea of private property and common ownership do not conflict as each relates to a different type of society: common ownership to the state of nature and private property to a civilised society.

From Theory to Practice

Since a civilised society evolves from a natural state it must represent an improvement for all. It can only do this if it acknowledges the claims of joint proprietors established in the state of nature. This seems very similar to Rawlsian conception of justice where differences from equality are only justified if they are to the benefit of all. Paine suggests a ground rent, paid by property owners through inheritance tax. The taxes collected would fund the national trust as outlined above and as such would represent

A plan for meliorating the condition of man, by creating in every nation a national fund, to pay to every person, when arrived at the age of twenty-one years, the sum of fifteen pounds sterling, to enable him or her to begin the World! (White 2012, p. 62)

In recent years this idea of a basic capital on maturity or as Paine describes it on beginning in the world, has been advanced by the American theorists Ackerman and Alstott. In *The Stakeholder Society* they advocate a one off capital grant of \$80,000 dollars to all US citizens on maturity. The amount is selected to correspond with the average cost of a third level education in the US. However, the possible uses of the grant, although somewhat restricted, would have a wider remit allowing investing in business as well as education and training. The immediate implication of this is that a basic capital policy benefits a much wider audience than any alternative, including the current Irish, free education system. In the previous chapter, we highlighted the work of P Clancy that showed the growth in participation in higher education in Ireland to be hugely skewed in favour of children from professional backgrounds. The alternative of a basic capital has no such inbuilt skew and is therefore more egalitarian by construction. While the Ackerman and Alstott model allows for early access to finance higher level education, the normal stipulation would be that young adults would only get full control of the capital in their early twenties and subject to completing High school and not having a criminal record. This allows young adults to choose whether they invest in physical assets or human capital. The motivation for such a proposal and other similar asset based egalitarian social policies is to address issues of transmission of disadvantage and as such fits well within the remit of a POD as a socioeconomic regime that advances the needs of free and equal citizens. Basic capital aims at freedom in that it allows young adults to detangle themselves from their parent's wealth (or lack of) and preferences. It also aims at equality in that it readdresses some of the inequality in initial endowments of financial assets. We might object on the grounds that since basic capital

is aimed at young adults it does nothing to address the needs of children. This would be to ignore the potential within basic capital to secure the opportunity of freedom that we discussed in chapter six. Stuart White suggests that there is a dimension of freedom in play in Ackerman's and Alstott's case for basic capital, which he calls "opportunity for ambition formation" (2012, p. 63). White argues that we have a strong interest in being able to meaningfully consider the question "What do I want to do with my life", in early adulthood, as this is when we make key life shaping choices. White links assets ownership to the "opportunity for ambition formation" in two ways. Firstly, in what he terms the "distraction effect", the struggle to make ends meet prohibits reasonable consideration of the question and secondly, in what he terms the "horizons effect" when we do think about our life's goals, the lack of assets can limit one's ability to think big. White's "opportunity for ambition formation" can be seen as an expression of Rawls' moral power requiring the capacity for a conception of the good

...it is the capacity to have, to revise, and rationally to pursue a conception of the good (2001, p. 19).

On this reading, while basic capital would materialise at the stage of young adulthood its effect would reach backwards into childhood by decoupling the horizons of children from that of their parents. In this way, it would facilitate the development of an "opportunity for freedom" that is not dependent on familial relationships, and therefore, go some way towards the amelioration of the circumstances of childhood.

The UK Labour government, led by Gordon Brown, enacted a weaker version of basic capital in the Child Trust Fund (CTF) in 2004. Each child on birth was to receive a personal investment account into which an initial grant of £250 was invested (£500 for those in low income families) with a planned top up at age seven. The CTF was one of the first cuts to be made by the subsequent coalition government in 2010. Although the CTF represented a major coup for asset based egalitarianism it was as already suggested much weaker than the basic capital approach. While the governmental investment was minimal the ultimate weakness of the model was that it encouraged family investment and as such rather than limit intergenerational transfer it actually had the potential to promote such inequalities.

Conclusion

The aim of this chapter was to review what Rawlsian justice might mean for Irish social and economic policy. While Rawls advocates a POD we hope to have shown that while we support the wide dispersal of property as a means of creating a society of free and equal citizens this does not prohibit us from endorsing a capitalist society, albeit a heavily regulated one. The key to Rawlsian justice is in attaining a wide dispersal of ownership in productive resources. The way to do this is to provide an upper and lower limit to allowable inequality of income and wealth: in other words to promote a more equal society. We agree with O'Neill that the principle of liberty and FEO can be made to work within a capitalist framework. We also confer that the primary good of self-respect requires ex ante distribution however, we disagree that this cannot be achieved in a regulated capitalist society. By examining how the idea of a social minimum is essential to the principles of justice we hope to have showed at least one way in which a wide dispersal of assets can be achieved. Promoting the idea of a basic capital as a formulation of the difference principle would allow us to apply Rawlsian justice in non-ideal conditions and go a long way towards attaining a more equal society and thereby ameliorating the circumstances of childhood. It would also address the immediate policy concern of poverty among Irish teenagers. In the following and concluding chapter we sketch out further the ways in which a POD can address the circumstances of childhood.

CONCLUSION

This thesis began from the premise that a just state ought to be concerned for how children actually turn out. The basis for this claim is grounded in the contemporary liberal view that each person ought to have the fundamental freedom to lead the life they choose, given an equal right accorded to others. Work in this area by liberal theorist has tended to view this claim from the perspective of independent responsible adults (Archard & Macleod 2012, p. 219). As such, insufficient attention has been given to the claims of children. This thesis attempts to address this by establishing what we owe to children from the perspective of social justice. The resulting obligation will span the divide between what is classed as public obligation, that to which the State should concern itself, and private obligation, that which arises from parental obligations and duties. The focus of this thesis has been to address the first obligation while bearing in mind how this will affect the second obligation. As such, we have not expanded on what constitutes the good parent in any respect; rather, central to our consideration is the effect of raising children in families, a situation that can be captured within our definition of the circumstances of childhood. With this in mind the central aims of this thesis are as follows:

1. To establish why the state ought to be concerned about the circumstances of childhood
2. To determine what is required of justice, and subsequently what types of policy are needed, to successfully ameliorate the effects of the circumstances of childhood.

In order to realise the first aim we undertook a thorough exploration of John Rawls' justice as fairness by asking how it could be made to account for the circumstances of childhood. We followed this up with a review of recent developments in the Equality and Freedom debates. In doing so, our purposes was twofold: firstly, to highlight the importance of Rawls' work and the relevance this brings to the Irish problem of child poverty, and secondly, to establish solutions to the problems we found in what Rawls owed to children.

In order to realise the second aim, we analysed the findings of a study of child poverty in Ireland over the last decade. The aim of this was to establish the extent of the problem, the effects of the problem both on children and the wider society, and to determine, if possible, the root cause of the problem. We then returned to the work of Rawls to establish the theoretical framework of the political economy needed to address our concerns, particularly that of the equality gap.

9.1 Implication

We began with the intuition that political philosophy has tended to focus on ideas of justice and distribution, in terms of what is owed to adults and, as such, has paid insufficient attention to the period of childhood. We found support for this in our investigation of Rawlsian justice and subsequent liberal works on equality and freedom. Liberal theories of justice tend to take a citizen-oriented approach based on ideas of autonomy, responsibility and cooperation. This is not to say that these theories ignore the plight of those without agency, rather the implicit hope is that the citizen framework will be able to accommodate those that are not, for whatever reasons, able to fulfil their role as citizens. The problem with this approach is that implicit in any principles derived are the prior notions that attach to the determination of who counts as a citizen i.e. autonomy, responsibility etc. These prior notions may well not apply to, or account for, children. Perhaps more worryingly, there is an implicit reliance on asymmetrical relationships that fall outside the scope of liberal justice. The consequences of this reliance on asymmetrical relationships are the effects it can have on the freedom to live a life you choose. This thesis describes these effects as “the circumstances of childhood”. The implication of this is that the inattention to children by liberal theories threatens to undermine the ideals at the heart of such theories. To understand this, we consider the most frequent expression of asymmetrical relationship: that of raising children in familial settings. If children, on entering adulthood, are to be free and equal to live the life they chose, then the way in which we are raised must not impinge upon that freedom. We argue that the state can best protect this freedom and preserve equality by blocking the effects of parent to child transmission of (dis)advantage.

For example, Rawlsian justice is based on a society of free and equal citizens, therefore, to be treated as a benefactor of Rawlsian justice we need to satisfy the requirements of

what constitutes a free and equal citizen: we need to develop the two moral powers.

The problem, for Rawlsian justice, is that the development of these powers in children rests within familial relationships and, as such, is outside the scope of Rawlsian justice.

While we found the Rawlsian framework readily adaptable to an Irish context and sympathetic to our concern regarding the transmission of (dis)advantage, it was unclear how Rawlsian justice would apply to children. This led to the need to reinterpret the Difference Principle, so that, like FEO, it could apply directly to children and preside over a wide range of PSG. We argued that only then could fair equality of opportunity be sufficiently achieved; however, lingering concern remained regarding the extent of parental control over the development of the two moral powers.

The luck egalitarian approach developed by Dworkin (albeit Rawls embodies much of the luck egalitarian thesis) provided additional support for our concern regarding the transmission of (dis)advantage by highlighting the difference between brute and option luck. As Dworkin points out, parent to child transmission is a form of brute luck, and, as such, generates a claim for compensation. The stark realities of the extreme libertarian position are that children do not embody the idea of property in person, rather, it can be claimed that they attach to the property right of parents. The implications of this are that children have less, or subordinate, moral status than adults. This seems totally at odds with our foundational liberal values of freedom and equality. As such, the view taken by Nozick and other defenders of the free market only serves to strengthen our argument for why the State ought to consider the circumstances of childhood.

The review of child poverty in Ireland provided the empirical evidence to support our intuition regarding the injustice repercussions of parent to child transmission of (dis)advantage. The chapter unequivocally shows that children currently experience higher rates of poverty compared to any other age group in Irish society, and have done so for several decades. Although Ireland currently has the highest rates of family allowances across OECD nations, this is not enough to counteract the negative effects of parent to child transmission of (dis)advantage. Neither was economic progress. The statistical evidence resoundingly shows that, even in the economic boom years, children consistently experienced higher rates of poverty than adults, and that the effects of child

poverty are multidimensional and far reaching. In particular, the effect of poverty in teenage years has been shown to have a significant impact on the outcomes, not only for children, but for the adults they will become. This age cohort has consistently had the highest poverty rates over the last few decades. Ireland has had some success in implementing policies to reduce consistent poverty among the youngest and oldest in society, however relatively high levels of income inequality ensure the effects of parent to child transmission of (dis)advantage are preserved. This arbitrary transfer from parent to child undermines the nation's founding principles of equality and freedom. The author predicts that unless we make strides to reduce income inequality, child poverty will remain unacceptably high regardless of economic climate or social transfers.

Child poverty is just one expression of the circumstances of childhood; however, while disadvantage has many dimensions, it is closely correlated with lowness of income (Sen, 1999). This gives us good reasons to address child poverty, not just on the intuitive grounds that it is morally wrong for a child to be poor, but also on the grounds of liberal justice directed at citizens, albeit citizens in waiting.

The implication of this is that while we still had some lingering doubts about Rawls' (reinterpreted) ability to account for the circumstances of justice we had enough reasons to explore the nature of a Rawlsian political economy.

The main thrust to Rawls' economic framework is that of the wide dispersal of the ownership of productive resources. Rawls described this as a Property Owning Democracy (POD), a framework that endorses the continual dispersion of productive resources to ensure a wide spread of ownership. This approach directly addresses the equality gap highlighted in chapter seven and has the potential of acting as a block to parent to child transmission of (dis)advantage. Rawls' latter work *Restatement* presented POD as an alternative to familiar forms of capitalism on the grounds that welfare state capitalism failed to satisfy any and all of the principles of justice. If we accept this, then Rawlsian justice has little to offer contemporary Ireland. However, Rawls' anti-capitalist ideas are not fully developed and Martin O'Neill (2012) successfully shows that the principle of liberty and FEO could be implemented in a capitalist framework. Nonetheless, O'Neill argues that the difference principle with its ex post nature could

not satisfy the distribution of the social basis of self-respect. Self-respect plays a pivotal role in justice as fairness, by underpinning the Rawlsian idea of reciprocity, and by the influence it has on attaining the two moral powers. While O'Neill accepts that the difference principle applies to a wide range of PSG, and not just economic inequalities, he is committed to a definition of the difference principle that acts as a redistribution process. The novel interpretation of the difference principle offered in this thesis is not limited in this way. Given that it is directed towards all children, it is pre-emptive rather than after the fact, and, as such, does not impinge on the social basis of self-respect. Rather it enhances the attainment of self-respect and has the potential to block negative parental influence on children's development of the two moral powers. It reduces the equality gap and provides the opportunity for freedom. While there may be still some room in our interpretation for redistribution to adults within the LAG, the focus of the difference principle is now directed towards children, ensuring the equality gap is managed, and reducing the need for redistribution after the fact. This has the benefit of maintaining the positive effects of being raised in families, while making substantial inroads into blocking the negative implications of the circumstances of childhood.

9.2 Application

The potential implementation of a POD are only just beginning to be fleshed out (O'Neill & Williamson, 2012), and are not within the bounds of this thesis. Instead, what we can do is look at recent legal and policy developments in contemporary Ireland and assess their success against the potential of a POD. By taking this approach, we hope to show why successive anti-poverty strategies have failed, and how Rawlsian justice, including our interpretation of the difference principle, would prove more successful.

9.2.1 Children and the legal obligation of the Irish State

Article 45 of the Irish Constitution lays out the principles of social policy and reflects Ireland's liberal democratic tradition. The article lays out the State's responsibility to promote the welfare of the nation and highlights the role of distributive justice with special reference to charity: "The State shall strive to promote welfare...in which justice and charity shall inform all the institutions of the national life" (p. 172). This is the only article of the constitution which is not cognisable by any court and it is intended for the guidance of the Oireachtas only (Bunreacht Na hEireann, p. 170). Article 45 (2) (i)

provides for the right of all citizens to an adequate means of livelihood through their occupation and 45 (2) (ii) the right of the state to distributive policies that best serve the common good. Section 4.1 goes on to outline the role of charity and distributive justice by

The State pledges itself to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged (*Bunreacht Na hEireann*, p. 174).

While the right to an adequate means of livelihood is upheld this right is severely diminished by its lack of referral to the courts. The use of the word livelihood rather than living, limits this right to those who are earning. The right to an adequate standard of living for those without a livelihood is not guaranteed and is dependent on state pledges, contribution when necessary and the ideology of charity.

The rights of children may have a stronger legal force than given in the Constitution as Ireland has ratified the UN Convention on the Rights of the Child (CRC) 1989. The preamble asserts

that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community (p. 3).

While the convention reiterates many of the rights laid down in ICESCR with regard to health and education, Article 27 particularly points to the child's right to an adequate standard of living to be provided by their parents or in absence of this, the state.

1. State Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (Eide 2006, p. xi).

Ireland is therefore legally obliged to address the issue of child poverty and to step in where parental obligation is not sufficient. The state is also obliged to ensure the development of the child, and, as such, to address the circumstances of childhood.

9.2.2 Irish approaches to combating poverty and promoting child well being

The National Anti-Poverty Strategy (NAPS) 2002-2007 and National Action Plan against Poverty & Social Exclusion (NAPincl) 2003-2005 made a commitment to reducing consistent child poverty to 2%, and if possible to eliminate child poverty by 2007 (Corbett 2004, p. 10). The forward to NAPincl 2003-2005 highlights the year 2010 as the target deadline for making a decisive impact on combating poverty and social exclusion. Objective G of the National Children's Strategy (p. 63) stated that children will be provided with the financial supports necessary to eliminate Child Poverty. These strategies and objectives are in line with the European Commission outcomes from the 2000 Lisbon Councils and coincide with their declaration of designating 2010 as the European year of combating poverty and social exclusion. However, the most recent government report sets the goal to reduce the number of those experiencing consistent poverty to between 2% and 4% by 2012, with the aim of eliminating consistent poverty by 2016 (OSI 2007, p. 13). It appears from this that the goal posts, for reducing consistent poverty, move further into the future with each national strategy. It is also worth noting that, while the Government has a target (albeit moving) for the reduction of consistent poverty, it has not set any target for reducing relative poverty (CPA 2005, p. 24). As such, while there is an agenda to address consistent poverty, this will not address the equality gap outlined in chapter seven, and therefore cannot fully address the circumstances of childhood.

For these strategies to be effective a change in welfare policy and budgetary measures is in the very least required. This may involve an increase in expenditure and most likely a change in the type of social welfare expenditure, alongside a reduction in social welfare

recipients. UNICEF reports that while higher government spending on social welfare is associated with lower poverty rates, many OECD countries would appear to have the potential to decrease child poverty below 10 % without a significant increase in spending (2005, p. 5). The Irish statistics show that the percentage of GDP spent on social transfers dropped from 10.2% in 1995 to 7.6% in 2005 (Department of Social and Family Affairs 2006, p. 3). It is significant to note that the countries in the OECD which have the lowest child poverty rates allocate the highest proportions of GNP to social expenditures (UNICEF 2000, p. 2). The Innocenti Report Card No 6 also notes that Ireland is one of only 7 out of 28 countries who have decreased their share of social spending during the period 1990 to 2000 (UNICEF 2005, p. 24). The onset of the global recession forced Ireland to increase this spend from 2009 onwards; with the 2013 spend at 12.4% of GDP (Department of Social and Family Affairs 2014, p. 5). While the number of families and dependent children claiming social welfare has grown, the percentage spent on child related benefits has fallen from 16.8% of social transfers in 2005(2006, p. 2) to 11% in 2013 (2014, p. 4).

The success of national anti-poverty strategies can be gauged by the trends in poverty levels. A review of AROP over the period 2004-2010 (Table C Chapter Seven) highlighted that the AROP rates for families with children remained fairly unchanged at an approximate annual rate of 19-20%. However, the rate at which families are dependent on social transfers, to keep them above the poverty line, has steadily increased, with the AROP doubling on removal of social transfer. It would seem then that NAPS has had little effect on addressing AROP rates. Table D in the same chapter highlighted that during the period 2004-2010 headline rates for children living in consistent poverty remained unchanged (2004 6.6% compared to 2010 6.2%). While some success was made in the intervening years (notably the low of 4.2% in 2008) it was not sustained in successive years. It must be acknowledged though that significant inroads were made in the preceding years with the rates of children living in consistent poverty falling from 24% in 1994 (CPA 2001, p. 2) to 6.6% in 2004.

Since most of the government initiatives were introduced towards the end of the 1990s it is debatable just how responsible they are for this decrease in consistent poverty, reflected in the period 1994 through to 2001. It could be reasonably argued that the growth of the Irish economy, with its unprecedented growth in the labour force to

almost double the 1994 levels (NCC 2006, p. 7), as more likely to be responsible for the decrease in consistent poverty than anti-poverty strategy and changes to welfare policy.

This leads us to question just how successful, if at all, these successive anti-poverty policies have been. With unemployment levels remaining steady and living costs and inflation continuing to rise, the 2010 objectives have come and gone and any gains made during the boom years are receding. It is clear that a change of policy is needed to halt the further erosions of previous gains.

9.2.3 Irish Economic Policy: Building a Schumpeterian Workfare State

The Anglo Irish free trade agreement was signed in 1965 with the Fianna Fail government supporting a rapid economic development for Ireland. One thrust to this was the Investment in Education programme introduced in 1966. The idea behind this was to promote education as a way of promoting the economy. If Ireland were to compete in the open market it would need to have a resource of educated and skilled workers available to fill the expanding job market. Ireland, like other post-colonial countries, had little indigenous wealth; therefore a highly educated and skilled labour force with competitive wage requirements was seen as a key element in encouraging global capital, and in developing an export platform (Drudy & Lynch 1993, p. 214). This economic policy reflected the on-going global changes in the trade market cumulating in the rise of neo-liberalist economic ideas. This represented a shift in the world economy which rendered Keynesian Welfare State (KWS) policies redundant and called for a transformation of the role of the state. The Irish government heeded this call and modelled the Irish economy on the Schumpeterian Workfare State (SWS). The main objectives of SWS, as outlined by Jessop are:

- 1) To promote product, process, organisational and market innovation in open economies in order to strengthen as far as possible the structural competitiveness of the national economy by intervening in the supply side.

- 2) To subordinate social policy needs to the needs of labour market flexibility and or the constraints of international competition (Jessop 1993, pp. 18-19).

This represented a move from closed to open economies, national to international markets, demand led policies to supply led policies, from labour as a source of market

stimulation to a production cost subject to global competition. It represents the demise of KWS and a paradigm shift in economic policy. In this sense, it marks a clear break with the Keynesian welfare state as domestic full employment is downplayed in favour of international competitiveness and redistributive welfare rights take second place to a productivist reordering of social policy.

SWS policy drove the economic boom and was built on a focus on innovation and education. This reflects what Esping-Andersen describes as the liberal model, which involves minimal intervention in the market, strict entitlement rules for benefits and where welfare policy can best be described by market based insurance for the wealthy and means testing for the poor (Macionis 2002, p. 251).

As the empirical evidence shows, this approach failed to tackle consistent poverty over the long run. While the Celtic Tiger lifted substantial numbers out of consistent poverty it could not maintain this progress in the leaner economic years. Also, as highlighted in the HEAP Chart and Booklet, the equality gap grew during this period. As the recession took hold, 85% of adults surveyed believe that the government should take steps to reduce income inequality (McDonough and Loughrey 2009, p. 2).

It is clear that while SWS brought increases in wealth, this was not sustainable economic growth and it only served to widening the equality gap. Property owning democracy ensures two things that SWS, or previous economic policies, cannot:

- 1) A wide dispersal of public goods
- 2) A wide dispersal of ownership of productive resources

The aim of POD

is to realize in the basic institutions the idea of society as a fair system of cooperation between citizens regarded as free and equal. To do this, those institutions must, *from the outset*, put in the hands of *citizens generally*, and not only for a few, sufficient *productive means* for them to be fully cooperating members of society on a *footing of equality*. Among these means is *human* as well as *real capital*, that is, knowledge and an understanding of institutions, educated abilities, and trained skills. Only in this way can the basic structure realize pure background procedural justice *from one generation to the next* (2001, p. 140).

POD then has the ability to go a long way towards addressing the circumstances of childhood and in particular the ability to block the parent to child transmission of (dis)advantage. We suggested, in Chapter eight, that a move to POD would not require a rejection of capitalism or extensive shifts in economic policy. Given Ireland's commitment to education and training, the implementation of FEO would not necessitate substantial changes. The wide dispersal of ownership of other productive resources would require increases in wealth and inheritance taxes, and would necessitate an alternative mechanism for distribution, other than the existing labour and investment markets. In chapter eight, we suggested one possible distribution mechanism in the form of a basic capital grant. The distribution of productive resources could be financed by capping wealth through progressive tax policies and by reshaping the current spend on public goods. The move would not be as radical as it first appears, in that for most citizens life would remain pretty much the same; what it would do is limit the upper and lower levels of acceptable inequality by narrowing the equality gap in both income and wealth. The real change would be in the ability of a POD to block the parent to child transmission of (dis)advantage.

9.3 *Conclusion and further questions*

This thesis has shown that liberal theories of justice cannot account for the circumstances of childhood. While we recognise that the issue of obligation towards, and responsibility for, children is frustrated by the conflicting demands of the family and the State, it is nevertheless a dilemma that Irish society must address. We have shown, in chapter 7, that poverty in Ireland is strongly related to income inequality and, as such, Ireland, for the benefit of the nation's children, must begin to address the equality gap. This gap is continually reinforced by the parent to child transmission of (dis)advantage and remained steady during the economic boom of the SWS years. This strongly tells us that economic success alone will not address the issues of child poverty. A change in Ireland's economic and social outlook is required. This thesis presents a Rawlsian perspective, as not only a way of combating child poverty, but also as a way of addressing the circumstances of childhood. Given that Ireland is bucking the trend in increasing OECD inequality rates this may not require a drastic change in economic landscape. The recent report from the OECD, *Divided We Stand*, calls for more investment in training, education and up-skilling to address rising inequality. These are

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policies that Ireland has pursued over the last few decades. Minding the equality gap for Ireland may, therefore, be best pursued by ensuring that the lives of children are not dependent on the past of their parents. While this would require considerable change to social and economic policy we have shown that Rawls' Property Owning Democracy provides a feasible framework for achieving this aim. While our interpretation of the difference principle and our suggestion for implementing a POD speak directly to children, there remains some lingering concern for the moral status of children. A POD would make substantial inroads into addressing the conflict between the resource entitlements of adults and the independent resource entitlements of children. It could, however, be argued that Rawlsian justice, given its contractarian framework, still retains a semblance of the citizen in waiting approach. As such, we have not yet found a way to equate the moral status of children to that of adults. But the reinterpretation of the difference principle presented in this thesis would allow Ireland to take significant steps in this direction by creating a more equal society through the blocking of parent to child transmission of (dis)advantage. When children's lives are not dependent on the outcomes of their parents, we can be said to have fulfilled the democratic ideals of our founding fathers.

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