
Distributive and relational equality

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Abstract

Is equality a distributive value or does it rather point to the quality of social relationships? This article criticizes the distributive character of luck egalitarian theories of justice and fleshes out the central characteristics of an alternative, relational approach to equality. It examines a central objection to distributive theories: that such theories cannot account for the significance of how institutions treat people (as opposed to the outcomes they bring about). I discuss two variants of this objection: first, that distributive theories fail to account for the importance of how institutions cause good shortfalls and, second, that they fail to account for the normative attitude of social and political institutions expressed in different ways of treating people. The article argues that the causal variant of the objection has only very limited reach, and endorses the expressive variant: the attitudes expressed by institutions in their treatment of persons, such as contempt or neglect, generate potentially unjust social relationships and hierarchies. This should be the focus of a relational egalitarian approach to social justice. The article proceeds to explain how it is possible that artificial agents such as institutions have attitudes and how these attitudes are not reducible to those of the individuals that sustain them, and argues that distributive theories cannot be so modified as to account for such attitudes. It concludes by indicating several directions for the development of more worked-out conceptions of relational equality on this basis.

Keywords

luck egalitarianism, natural versus social inequalities, relational equality, social justice, expressive attitudes

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I. Introduction

Many of the currently predominant liberal egalitarian theories conceive of equality as a distributive ideal. In particular, luck egalitarianism (the view according to which the role of brute luck in people's lives ought to be equalized as a matter of justice) has been prominent in discussions of justice and equality during the past three decades. This article is motivated by the conviction that we should instead aim for a relational conception of equality, whereby emphasis is put on reaching egalitarian social relations rather than the equal distribution of something.¹ With such a motivation in the background, my aim in the article is twofold. My first objective is to argue that luck egalitarianism, in so far as it presents a distributive view of equality, cannot account for the specific importance to justice of the *way* that social institutions create or maintain inequalities between individuals in society – how institutions *treat* individuals, as opposed to which patterns of distribution they bring about. Developing this objection will serve the second aim of the article: to develop and defend a specifically relational outlook on equality delivering constraints on the actions of social and political institutions.

The argument draws on, and further develops, Thomas Pogge's critique of 'purely recipient oriented' conceptions of justice (1995, 2003, 2008: 45–50). Such conceptions view social justice as a matter of what individuals are entitled to get, rather than of how social and political institutions are to treat those to whom they apply. Section 2 argues that distributive conceptions of equality are purely recipient-oriented theories. Section 3 presents a counter-example to purely recipient-oriented theories devised by Pogge. This example will constitute the basis for my further discussion. Section 4 discusses, and wards off, a peremptory objection that concedes that the ways institutions treat people has intrinsic moral significance, but disputes that what is at stake in such cases is *justice*. Section 5 explores a first possible interpretation of the critique of distributive theories qua purely recipient-oriented theories: that they neglect the intrinsic importance to justice of the way institutions *cause* advantages and disadvantages. It argues that this causal interpretation, while not wholly unsuccessful, has only very limited reach. Section 6 argues that a different interpretation of the critique is more successful: according to it, what is primarily justice relevant about the way institutions treat people is the *attitude* towards individuals and groups that is *expressed* in institutional action. The section brings together and links recent research on distributive justice, on collective responsibility, and on expressive theories of law and state action. It discusses what it means for an institution to express attitudes that are relevant to justice and why distributive views cannot account for such attitudes. To conclude, it suggests three different ways in which the expression of institutional attitudes could matter to different strands of relational egalitarianism.

If the argument of the article is successful, it shows that the weaknesses of distributive egalitarianism make the development of a relational conception of equality a worthwhile enterprise. Developing a fully worked-out relational conception of equality falls outside its scope. In order to answer the question of whether we should ultimately be relational egalitarians, it would be necessary to develop at least one such conception in further detail and compare it to worked-out distributive conceptions. This is a task for another

day; this article, however, clarifies some of the conditions that such a theory would have to fulfil in order to be successful.

2. Distributive egalitarianism: Currency theories of equality

In a general form, the objection to distributive egalitarianism that this article wants to discuss is that distributive egalitarianism cannot account properly for the relational dimension of justice: it fails to object to unequal relationships as a potential problem of justice in its own right, that is, to power and status differences independently of their distributive consequences. Variants of this complaint have been brought forward as a criticism of liberal distributive egalitarianism by many writers, recently especially by feminists. Perhaps the most famous of these recent criticisms was formulated by Iris Marion Young (1990: 48–63), who argued that the liberal ‘distributive paradigm’ does not properly recognize and tackle structural injustice as exemplified in the ‘five faces of oppression’: exploitation, marginalization, powerlessness, cultural imperialism, and subjection to systemic violence. Elizabeth Anderson has taken up this point in her criticism of luck egalitarianism (1999: 312).² The concern is not new. Indeed, the first to bring it forward was Marx (2000: 610–17), who argued that the Gotha Programme of the German Social Democratic Party from 1875 wrongly concentrated on the ‘fair distribution’ of material benefits in society, rather than on the qualitative transformation of social relations at which communism aims. But it is a concern that has many facets, and it is not clear what precisely its core is.

For example, some criticisms are concerned with the supposed commitment of distributive egalitarianism to tackling injustices solely by means of cash transfers, and a consequent failure to take into account other remedies, such as changes in the social environment of disadvantaged individuals. In this form, it is an objection to an exclusive focus on redistribution. For example, some of Anderson’s objections to luck egalitarianism depend on taking luck egalitarians to be committed to cash transfers as the only remedy to injustice, and to be unable to recommend, for example, measures that would enhance the social inclusion of the disabled (1999: 305 ff., 333). This is not, however, the most promising version of the relational objection. Distributive egalitarians such as Ronald Dworkin, GA Cohen, and Richard Arneson are not committed to redistribution as the only remedy to injustice. Setting up a specific ideal of distributive equality as a target a society should aim at implies no such commitment; it only implies a commitment to such measures as will *best bring about* the preferred form of equality. Depending on the case, that might well be a change in social circumstances rather than individualized cash transfers.

Hence, concern about redistribution as the only remedy to injustice does not go to the heart of the matter. The core of the relational objection to ‘distributivism’ is not that the latter offers the wrong remedies to injustice, but, at a prior stage, that it is not able to identify properly the intrinsic moral importance of the way social and political institutions act. That is to say that how institutions *treat* people has relevance to social justice that is independent of, or at least not reducible to, the distributive effects of such treatment. This is still a broad way of putting the objection, and I will further narrow it down as the argument proceeds.

To do that, it first needs to be specified in a more precise manner what I mean by a distributive egalitarian theory, and which of the currently prominent liberal egalitarian theories fall in this category. Distributive egalitarian theories share a commitment to three principles of equality. The first principle of equality is the abstract principle of the equal moral worth of persons: persons, qua being persons, belong to the same moral category, so that differences in their entitlements of justice cannot be justified by arguing that they have intrinsically different moral status, for example, because some are born aristocrats or into purportedly higher or lower castes. The second principle is more concrete, and mandates, in Dworkin's famous formulation, that persons are entitled to equal concern by social and political institutions in the assignment of benefits and burdens. Finally, the third principle of equality spells out the distributive requirement according to which people are entitled to some form of equality in the distribution of a certain currency, such as resources or opportunity for welfare.

The first two egalitarian principles are often said to form the 'egalitarian plateau' on which debates about justice in contemporary moral and political philosophy take place (Kymlicka, 2002: 5). Now follows the interesting step for the present argument: distributive egalitarian theories, such as Dworkin's 'equality of resources' and Arneson's earlier 'equal opportunity for welfare', go on to argue that the best interpretation of the ideal of equal concern is to regard people as entitled to equal shares of a *distribuendum*. What it is that is to be distributed equally (that is, which metric or currency to adopt) is the subject of the 'equality of what' debate that was sparked by Sen's lecture of the same name (1979). Luck egalitarian theories are motivated by the principle that brute bad luck inequalities (that is, inequalities in life factors that are not due to circumstances that people can reasonably be held responsible for) are unjust. Hence, as a matter of justice, brute luck ought to be equalized, or at least significantly mitigated. What counts as a relevant brute luck disadvantage is determined by reference to the respective currency of equality. Different currencies, or metrics, have so far been proposed by different members of the distributive egalitarian camp, such as resources (Dworkin, 2000), opportunity for welfare (Arneson, 1989, 1990), or a broader notion of access to advantage, a mixture of welfare and resources.³ Different luck egalitarians arrive at different accounts of what individuals are distributively responsible for, and therefore at differently demanding egalitarian theories. But, in so far as these differences can be traced back to different proposed currencies of equality, they show an underlying agreement that what is required is equality in *some* currency. Furthermore, distributive egalitarian theories, in the sense used here, do not need to demand strict distributive equality or perfect equality of opportunity of some form.⁴ What is needed is merely that a third-stage principle of distributive equality is part of its foundations, so that distributive equality in some currency is taken as the baseline, departures from which can be justified either because they are due to individual choices or for certain other qualified reasons, for example, because overall they are better for everybody.

The smooth transition from the second to the third principle of equality makes clear that participants in this debate share a consensus about the underlying *concept* of justice: they agree that finding out what social justice requires is a matter of finding out what people are *entitled to get*. Pogge (2003: 143) calls this underlying concept of justice 'purely recipient-oriented'; I adopt this term. This, rather than a focus on redistribution

or on material goods, is the core feature of distributive theories. Such theories could also be called *allocative*, *currency*, or *metric* theories; I keep the term ‘distributive’ because this is the feature of such views that self-declared anti-distributivists have the most fundamental objection to. It is essential to such theories that they have to measure individual advantage or disadvantage according to the respective metric in order to ascertain whether unjust inequality exists; individual shares are of ultimate concern under such theories.

Hence, when it comes to the question of how to achieve equality, distributive egalitarians might well be concerned about transforming social structures, institutions, and relations. But their *reason* for this is based on the distributive state of affairs of justice-relevant goods that such transformations would generate. Other judgements about justice or injustice are derivative from this; actions and agents are just or unjust in so far as they promote just or unjust distributions (Pogge, 2003: 147).

Such distributive accounts seem to have the attractive feature of offering a simple and rational method for assessing the justice of social and political institutions. As Pogge (1995: 242–6) notes, it is rational to look at how their performance affects individuals’ distributive shares, and to regard institutional design as a matter of achieving the best possible distribution, according to the respective theory. After all, it seems plausible that, from a justice perspective, social and political institutions are merely instrumental to the goal of achieving social justice.

3. Five ways of treating people

Drawing on the account of distributive theories as purely recipient-oriented theories, the remainder of this article explores the variant of the relational critique according to which such theories problematically ignore the way that institutions *treat* individuals. Assuming, plausibly, that health is a basic good that a distributive theory regards individuals as being entitled to, consider the following example, devised by Pogge:

[Now distinguish five] different scenarios in which, owing to the arrangement of social institutions, a certain group of innocent persons is avoidably deprived of some vital nutrient V – the vitamins contained in fresh fruit, say, which are essential to good health. The [five] scenarios are arranged in order of their injustice, according to my preliminary intuitive judgment. In scenario 1, the shortfall is *officially mandated*, paradigmatically by the law: legal restrictions bar certain persons from buying foodstuffs containing V. In scenario 2, the shortfall results from *legally authorized* conduct of private subjects: sellers of foodstuffs containing V lawfully refuse to sell to certain persons. In scenario 3, social institutions *foreseeably and avoidably engender* (but do not specifically require or authorize) the shortfall through the conduct they stimulate: certain persons, suffering severe poverty within an ill-conceived economic order, cannot afford to buy foodstuffs containing V. In scenario 4, the shortfall arises from private conduct that is *legally prohibited but barely deterred*: sellers of foodstuffs containing V illegally refuse to sell to certain persons, but enforcement is lax and penalties are mild. In scenario 5, the shortfall arises from social institutions *avoidably leaving unmitigated the effects of a natural defect*: certain persons are unable to metabolize V owing to a treatable genetic defect, but they avoidably lack access to the treatment that would correct their handicap.⁵

Call this the ‘V example’. This example is supposed to appeal to our intuitions about the justice relevance of the way institutions treat people. Imagine also that the extent of the health shortfall and the number of deprived people are exactly the same in all five scenarios; this is essential to the claim that the quality of institutional treatment is of moral importance in itself, independently of its effects. I find myself in rough intuitive agreement with Pogge.⁶

If the V example has significance, one ought to be able to explain what it is exactly in the institutional treatment of individuals that has such justice relevance independent of its distributive effects. Pogge does not analyse the dimensions of the different scenarios that account for the intuitive difference between them in any detail. He merely suggests that the intuition that the V example seeks to engage has two dimensions: the way institutions *cause* goods shortfalls and the *attitudes* that are implicit in institutional action (Pogge, 2008: 48). Sections 5 and 6 will discuss these in turn. But before that, a possible rejoinder on the part of distributive egalitarianism has to be addressed.

4. A preliminary objection: Justice is not all that matters

This rejoinder is that examples such as the V scenarios do indeed succeed in pointing out that different modes of institutional treatment have intrinsic moral significance, but that such significance is not a matter of justice, but of different moral considerations. Hence, they do not present an objection to distributive theories, because such theories are only intended to account for the requirements of justice on institutions, not for all moral considerations that may apply to them.⁷

Two points can be made in response to this objection. The first insists that what is at stake in treatment cases such as the one introduced above is intuitively well described as a justice concern. The second argues that an approach that integrates the treatment dimension into an account of the requirements of social justice on institutions has important theoretical advantages over an approach that regards the treatment and distributive dimensions as fundamentally distinct.

To address the first point, then. Few people would want to deny that it is important that one does not only receive one’s fair share of goods, but also that one is treated justly by others. For example, if you and I are to divide a bundle of resources among ourselves and I do not consult you as to how you think they should be distributed, but just go ahead distributing them in the way I think is fair, it seems plausible to hold that I am treating you unjustly, because you have a claim to be heard on issues that matter to you: I am violating a procedural right of yours. Similarly, the V scenarios may be described as involving violations of rights, for instance, in scenario 1, a right not to be discriminated against. At the very least, it seems natural to describe institutional action in these scenarios as *wronging* the members of the concerned group. Institutions are violating what looks like legitimate claims the group members have. To be sure, these are only preliminary reflections about some intuitively plausible ways of relating justice, wronging, and treatment. But they suffice to shift the burden of proof back to the objector who seeks to argue that what is at stake here cannot, in principle, be about justice, since it is not about distributions.

Second, a distributive egalitarian might react to this counter-reply by proposing distribution and treatment as different spheres *within* justice. Along these lines, GA Cohen, in his final work, mentions in passing that there are matters of justice that are nevertheless ‘outside distributive justice, such as the just and unjust treatment of individuals with respect to their liberty and privacy’ (2008: 6). This response has the advantage that it accounts for the intuition that treatment has a justice dimension. However, it has the disadvantage that it is not clear, on this view, how the treatment and distributive dimensions of justice are to be related. Note how having to balance the distributive outcome dimension with the treatment dimension of social justice would do away with one of the advantages of purely recipient-oriented theories discussed above: the rationality of focusing on the outcomes produced by institutions when assessing their justice performance. Partisans of the distributive model may retort that this rationality is not a reasonable expectation on their views, and that the relational objection takes them to argue for a more ambitious position than they actually do. However, the likely upshot of a view that regards distributive and non-distributive justice as two separate subjects of investigation is that the two dimensions have to be balanced case by case, without any further general theoretical guidelines as to how to undertake this balancing.⁸ An integrated relational view that managed to unite these two dimensions under an overarching framework of principles of social justice would be a theory with greater explanatory power. It would account for more of our convictions about justice, by making its outcome- and treatment-oriented dimensions shed light on each other. So there is a reason to look for such an overarching conception.

Of course, it cannot be guaranteed in advance that this enterprise of integration will succeed.⁹ But this section has established that there is reason to try, and hence to doubt the peremptory force of the rejoinder that the V example does not apply to distributive egalitarian theories.

5. Differing institutional causal involvement

So what is it about the institutional treatment of people that has independent justice relevance? The way institutions cause distributive outcomes or the attitudes they express in their actions? This section discusses the causal interpretation of the relational claim: other things being equal, goods shortfalls are more objectionable the more institutions are ‘materially involved’ (Pogge, 2003: 157) in causing them, and distributive egalitarianism cannot account for that. In the V example, this contrast is exemplified by the low injustice ranking of scenario 5, in which institutions merely fail to react to a genetically caused health inequality; from there, the degree of causal involvement of social institutions increases up to scenario 1, which exemplifies maximum such involvement, that is, actively depriving the individuals in question of V through an explicitly discriminatory law – or so the claim has to go. The remainder of this section will argue that this characterization of the relational dimension of justice is of too limited reach to do all, or even most, of the work required to sustain the relational objection.

The example appeals to a morally salient distinction akin to the familiar distinction between negative duties and positive duties. This distinction mandates that, others being equal, actively causing an objectionable outcome is worse than merely letting it happen.

What is involved in the example must be congenial in spirit to that distinction, but more complex, since it invites us to rank the differing scenarios on a scale of assessment whereby particular cases can allegedly be ordered according to the degree, or quality, of causal involvement (Pogge, 2003: 157).

The distinction between negative and positive duties certainly has great intuitive weight in cases of individual conduct. We object more strongly to a positive, intentional individual action that brings about a certain outcome than to mere inaction in the face of such an outcome – to use a worn-out example, throwing a child that cannot swim into a lake is more objectionable than not saving it when it merely fell into the lake, even though the outcome (the death of the child) is the same in both cases. In the individual case, we regard individual omissions as equally problematic as individual action leading to the same outcome only if we think that the individual in question had a *special responsibility* to prevent that outcome; for instance, a parent who lets her small child starve to death in order to get rid of that child is precisely as responsible for his or her death as if she had shot the child.

Nothing similar is true for state action. Fulfilling the standards of justice is not a special responsibility a state has on top of its personal life; from the point of view of normative political theory, it is its very purpose of existence (see Nagel, 1991: 100). Putting these two considerations together, it is plausible to suppose that inaction on the part of individuals is less problematic, especially if there is a state that does in fact take care of maintaining standards of social justice. Hence, the moral significance of this distinction seems to be much less in cases of institutional action. From the perspective of social justice, social and political institutions exist primarily to implement standards of justice. So why should it matter in itself whether institutions actively bring about goods shortfalls, from the point of view of the recipients of those goods, or merely fail to react to such outcomes? As mentioned, Pogge (1995: 241–7) concedes the plausibility of this perspective, but still thinks the causal interpretation strong enough to overcome it.

Against this, I shall argue that the question of causation has weight only in the special case of sorting naturally generated from socially generated inequality – scenario 5 versus scenarios 1–4. It cannot account for the intuitive differences between the exclusively social scenarios 1–4.

Natural and social inequalities

The V example ranks scenario 5, the failure of social institutions to treat a genetic defect causing V deficiency, as the least unjust, and that seems plausible. It also mentions the reason for that: the inequality in question is natural, and hence not, or at least less, within the domain of responsibility of social institutions. The issue of natural versus social inequalities has received a fair bit of attention in recent literature about equality. For example, Elizabeth Anderson (1999: 288, 309, 312–13) claims that luck egalitarians have missed the point of equality by focusing on compensation for natural inequalities, such as inequalities in talents or physical attractiveness, instead of objecting to social hierarchy, which is by definition socially caused. It is also of importance in Rawls's theory of social justice, even though his comments about the 'arbitrary effects of the natural lottery' (1999: 64) have inspired luck egalitarians: Rawls proposes a principle of fair

equality of opportunity requiring that persons of equal natural talent, and of the same willingness to use such, have equal opportunity to attain desirable social positions, regardless of their class background. Furthermore, this principle enjoys lexical priority over the difference principle, which takes care of the case of naturally unfortunate individuals who lack talents (Rawls, 1999: 62–5). Hence, he regards inequalities due to social background as more unjust than social inequalities of equal extent that are due to underlying natural inequalities.¹⁰

As Nagel puts it, ‘every society is in the business of transcending the state of nature, but how far it is obliged to resist the differential impact of fate and natural variety is a difficult question’ (1997: 305). The V example plausibly assumes that tackling natural health deficiencies and vulnerabilities is one of the most prominent aims of society, because all humans are vulnerable to health risks to some extent. But there is a good reason for holding that justice should be less concerned with health *inequalities* that do not stem from social processes, as in scenario 5, than with those that do, as in scenarios 1–4. This reason is that there is an irremediable tension between the liberal idea that societal cooperation has to guarantee to all those who are under a duty to cooperate the social conditions, especially the liberty, necessary to choose a conception of the good from a suitably wide array of possibilities, and to pursue and modify it, and the idea that people ought to be compensated for disadvantages, whatever their cause (apart from their own choices), up to equality. Duties to such compensation may unduly restrict the array of possible conceptions of the good open to cooperators, and take on the character of a substantive goal for their lives, rather than embodying merely constraints on the pursuit of their own conception of the good. If natural inequality is both pervasive and difficult to remedy, such compensation might amount to a requirement of self-sacrifice on the part of the initially advantaged.

Hence, in order to avoid such over-demandingness, a liberal conception of justice has to limit its concern with distributive inequalities in some principled manner. Limiting concern with natural inequality seems one good way of doing that, since it achieves the desired aim while at the same time fulfilling the intuitive requirement that recourse to such a demandingness restriction is not available if a society has itself caused a morally relevant inequality: if I am causally responsible for your disadvantage, I cannot claim that compensating you would be over-demanding. At this point, it is not necessary to validate one particular liberal theory relying on a version of the natural/social distinction. It is enough to note that the general idea of such theories is sound. As seen, one theory that does limit the scope of objectionable inequality in such a way is Rawls’s, which limits egalitarian concern to socially produced goods.¹¹ Distributive egalitarianism misses the importance of the cause of morally salient inequalities by focusing exclusively on how to bring about an optimal egalitarian distribution. Treating people justly cannot simply mean ensuring such a distribution in cases in which inequality is naturally caused. A demandingness restriction on the duties of social justice hence seems able to provide a coherent rationale for the intuitive salience of the natural/social distinction.

To be sure, this is only a preliminary result. Distributive egalitarians might argue that there are other ways of safeguarding against over-demandingness without drawing this particular distinction. One possibility is the one mentioned in Section 4: distributive justice might be very demanding, but non-distributive justice (especially the treatment of

people with regard to their liberty) might set limits to it.¹² Another is explicitly to incorporate an ‘agent-centred prerogative’ into a distributive egalitarian framework, according to which people may give some degree of priority to certain personal projects over the duty to follow impersonal, egalitarian principles.¹³ But at this point, it is more important to note that the argument so far, if it is sound, supports Pogge’s causal claim only to a very limited extent, anyway. It accounts only for the low injustice ranking of scenario 5 (the case of failure to treat a genetic health defect causing V deprivation) vis-a-vis scenarios 1–4. That is not enough to vindicate the relational claim that there is a scalar ranking of injustice tracking the way institutions treat individuals.

Causal differences between exclusively social scenarios

To be more precise, the problem is not that the natural/social distinction is binary, because that does not mean that it could not justify scalar justice assessments. It could do so in cases in which natural and social causes interact, and account for the outcome to different degrees. Social structures can have very different effects depending on people’s differing natural endowments, and the fact that endowment inequality may be natural does not by itself justify compounding it by social means. Furthermore, socially caused pollution of the environment causes genetic mutations (Pogge, 2003: 155) and class and caste structures influence the mating patterns that create the genetic endowments of the next generation (Rawls, 1999: 92), to name just two examples in which it is difficult to assess to what extent inequalities are really properly regarded as natural.

But scenarios 1–4 are all exclusively socially caused. The causal scale that would allow us to rank scenarios 1–4 according to their injustice would have to be of a different nature. The claim about the intrinsic importance of causes must here rely on distinctions between the different intrinsic qualities of different ways of social causing, such as degrees of immediacy: scenario 1 (deprivation mandated by law) must somehow represent a more immediate causal chain than scenario 2 (merely authorizing private individuals to refuse the sale of V), which in turn must be more immediate than scenario 3 (in which V deprivation comes about as an effect of an ill-conceived economic order), and so on. At least, some such ordering according to the nature of the causal chain in question must be right.

But here, distributivists can pass the buck right back and ask what it is about causal chains that makes them intrinsically relevant in this way, if we are dealing with exclusively social causation. A principled explanation akin to the one just given for the salience of the natural/social distinction has to be provided. Furthermore, they can bolster this challenge by pointing out two additional features of the V scenarios that may account for some of the intuitive differences between them without thereby endangering the distributive point of view.

First, the V scenarios could prompt one to make different assumptions regarding the *knowledge* of institutions about the goods shortfalls in question. Where an agent actively and intentionally brings about an outcome, as in scenario 1, no further investigation is needed to ascertain that this course of events was avoidable and foreseeable for the agent. The less actively involved the agent in question is, the more difficult it becomes to ascertain whether this is the case (for example, in scenario 4).¹⁴

Second, information about the *costs* of institutional remedial action in each scenario is missing. These would also have to be equal to make a case against distributivism, because there is no reason to suppose that they cannot, as a matter of principle, be incorporated into distributive metrics; this would seem to depend on the particular metric that is chosen. However, the different scenarios may lead us to think that different costs are involved. For example, it seems highly plausible that it would cost very little, if anything at all, to stop officially mandated discrimination against a group of people such as those in scenario 1, but considerably more to gear the economic order towards avoiding the poverty due to which the people in scenario 3 are deprived of V – all kinds of things can go wrong in attempting to reform an economic order. Similarly, where different agents are involved, such as in scenarios 2 and 4, in which private individuals refuse to sell V, it is plausible to suppose that it would cost much more to enforce a prohibition of their behaviour than it would to repeal a law and call back the policemen, as in scenario 1.

These rejoinders underline the strength of the ‘purely recipient-oriented’ view. If A and B suffer a goods deprivation of precisely equal extent, as a result of two different institutional measures, and it was equally easy or difficult for the institutions to foresee in both cases that the measures would have this effect and if it had been precisely equally costly to avoid the disadvantage in both cases, then why should we think that one has been treated more unjustly than the other simply because the causal chains in question have happened to take different routes? As mentioned above, we might have good reasons to assess individual responsibility for particular outcomes according to the precise nature of the causal connection between an individual and that outcome, for example, in matters of criminal justice. But it is not clear what such reasons could be in the case of institutions.¹⁵

But still, the V example has bite. There is a justice difference between a state legally authorizing private discrimination (scenario 2) and the state merely failing to enforce the prohibition of such behaviour (scenario 4), even if all the dimensions of assessment discussed so far (the extent of the goods shortfall, number of victims, foreseeability and avoidability of outcome, and costs of remedy) are exactly equal in both scenarios. Instead of focusing on supposed qualitative differences between types of causal chains, I shall argue that this can be better explained by focusing on the *quality of the attitude* that is expressed in such different modes of actions. To put the matter into the venerable terms of traditional moral philosophy, what has weight in the different scenarios is less an institutional equivalent to the doctrine of doing and allowing, but rather an equivalent (suitably modified) to the doctrine of double effect.

6. Differing institutional attitudes expressed in treatment

This second interpretation of the relational claim goes as follows: the attitudes of social and political institutions towards people expressed in the way such institutions treat them are relevant to justice, and they are not ultimately reducible to distributive considerations.

According to this interpretation, the intuitively different degrees of injustice in the example are accounted for by the fact that, in each case, there is a different normative attitude implicit in the different ways social and political institutions treat people. Here

are some suggestions as to how an assessment of the expressive dimension of institutional treatment in the cases in question could look (to confirm them, more information than is given in the example would be necessary, especially about the reasons institutions were acting on in each scenario). In scenario 1, in which the V deprivation of a certain group is mandated by law, social and political institutions express outright *hostility* towards the group in question, because the state aims at bringing about the deprivation:¹⁶ it regards itself as required to prosecute and sanction members of that group who seek to procure themselves V against the prohibition. In scenario 2, in which sellers of foodstuffs may lawfully refuse to sell food containing V to members of the group, what is expressed is plausibly described as institutional *contempt*: the state allows other individuals to discriminate against members of the group, so it regards members of the group as not worthy of its assistance in such cases. That, however, does not happen in the more negligent and clandestine way of scenario 4 (in which the state officially recognizes that such conduct by sellers of foodstuffs is illegal, but then does not do enough against it), but in an open and public way: in scenario 2, it is explicitly declared permissible to deprive group members of V, so the state is conniving with the discriminators. Scenario 5, in which the state fails to offer treatment of a genetic defect leading to V deprivation, plausibly expresses only *neglect*, in cases where the state, for example, avoidably fails to gather information about people suffering from the defect and is hence unaware of their existence.

In all scenarios, in so far as they successfully single out an injustice, institutions demonstrate an attitude of disregard, or disrespect, towards the unjustly disadvantaged. What accounts for the justice difference between the scenarios are the different material attitudes that are expressed in them, ranking from open hostility to mere neglect. According to these material attitudes, unjustly treated persons are assigned differential moral status by institutions: in scenario 1, they are regarded as of such inferior moral worth that their disadvantage may be openly and publicly mandated by the law and enforced; in scenario 2, they are still regarded as inferior enough openly to deny them any assistance should they be discriminated against by other individuals. As opposed to that, in scenario 4, institutions do not officially condone the discrimination of sellers of foodstuffs against these people, such that a refusal to sell V could not, for example, regularly take place in the immediate presence of a police officer (imagine she is next in the queue in the supermarket), but they do not regard them as important enough to spend significant resources on coming to their help by, for example, actively searching out such cases of discrimination. The different scenarios hence present different implicit institutional judgements about the worth of those disadvantaged, and the claim is that, other things being equal, our different intuitive reactions to the different scenarios rest on our perception of these judgements. In each such case, social hierarchies are instantiated or made possible by such implicit judgements of worth, and this is what the relational egalitarian primarily objects to.

This expressive interpretation of the relational objection fits well with the claims of past and present egalitarian movements, such as movements for the equality of women, of homosexuals, and of ethnic minorities. Such movements generally demand treatment that affirms their equal moral status. What they are after is the confirmation that the people they represent are not, by virtue of belonging to a group such as women or gays, of inferior moral worth, and, accordingly, they demand state action that makes this clear.

But before we move further, it is necessary to take several steps back again. The expressive perspective on the justice of institutions requires further explanation, along three dimensions. First, does it really make sense, both conceptually and morally, to ascribe attitudes to *institutions*? Which formal conditions do institutions have to fulfil in order to be appropriate targets for such ascriptions? Furthermore, why should we focus on their attitudes and not on the attitudes of those individuals that uphold and sustain them? Focusing on institutions might seem fetishistic. Second, even if expressive assessment of institutions is meaningful and irreducible to expressive assessment of the actions of individuals, why can distributive egalitarianism not account for these attitudes and why can it not be amended, or modified, so as to account for them? Third, if expressive assessment of institutions is meaningful and morally warranted, what implications does it have for the substantive content of relational egalitarian conceptions of social justice? How would possible candidate views flesh out the expressive perspective? The following subsections will tackle these questions in turn.

Institutional versus individual attitudes

First, then, to the questions of whether institutions can express attitudes in their actions and why, from the point of view of justice, we should ascribe ultimate importance to them and not, or not only, to individual attitudes towards each other as expressed in the creation and upholding of institutions. Regarding the first of these questions (whether institutions are formally of the right kind to be carriers of attitudes), I mainly refer the reader to recent scholarship on collective action and group, or institutional, minds.¹⁷ Such scholarship has established the following. In collective intentional action, individual actors properly regard themselves as engaged in a common enterprise, and that common enterprise generates claims on each of them to behave in certain ways in support of the common enterprise. Together, they act in ways that enable the collective agent in question to form its own beliefs and intentions, and to act on these (see Gilbert, 1989). These beliefs and intentions in turn are subject to moral assessment: just as in the case of individual action, acting with the right attitude towards the object of one's actions means taking the right considerations as reasons for actions regarding that object (see Anderson and Pildes, 2000: 1510).

The formation of group intentions may sometimes happen in a spontaneous manner, for example, in the case in which a collection of bystanders to an accident instantly organizes itself in support of the victim by implementing a division of labour, in the common knowledge that this is what they are doing, as part of the group action of 'assisting the victim': one calls an ambulance, another one gives first aid on the spot, a third warns oncoming traffic, and so on (see Gilbert, 1989: 139–40). But the distinctness of group beliefs and intentions is even clearer in the case that is more relevant for this article: institutions. Institutions are non-spontaneous group agents: they form beliefs and intentions on the basis of a constitution of decision rules adopted and upheld by (a sufficient portion of) the involved individuals. Recent research by Pettit and List has demonstrated that a rational reduction of the collective beliefs and intentions of a functioning group agent to the beliefs and intentions of the individuals involved in the group's decisions is not possible even in relatively simple cases. Depending on the constitution of the institution in question, it may adopt beliefs and intentions that are not shared by the majority of

the involved individuals or even beliefs and intentions that are not shared by *any* of them.¹⁸ For an institution to count as a distinct agent, all that is needed is a constitution that allows it to form its own beliefs and intentions, and to display consistency in acting on these over time, such as a legal court does when it develops and upholds a particular doctrine for a field of law as its composition changes. If it is true that institutions can fulfil these conditions, then such institutions can also express normative attitudes in their actions; they do not need to be able to have the mental states that often accompany attitude expression by natural agents, such as *feelings* of contempt, disgust, hate, and so on.

Returning now to the V case, one more thing needs to be noted: institutional agency as such does not suffice to make sense of the possibility of assigning a scalar justice ranking to the respective scenarios. This is because there are different agents involved in the different scenarios: in scenario 1, the perpetrators of injustice are lawmakers and policemen; in scenario 2, it is the same two agents plus the private sellers of foodstuffs; and in scenario 3, it is the economic order of a society. Since a relational view focuses on the justice and injustice of actions, which is, *inter alia*, dependent on such situational factors as the responsibilities and capacities of the respective agents, a variety of involved actors may complicate justice assessment, or even make it impossible. Accordingly, in order to preserve the possibility of a clear ranking of the V scenarios, it is necessary to adopt a *holistic* stance: the primary actor involved must be conceived of as one complex agent. To put it in Rawlsian terms, this agent may be called ‘the basic structure’, that is, ‘the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation’ (Rawls, 1999: 6).¹⁹ Major institutions are ‘the political constitution and the principal economic and social arrangements’ (Rawls, 1999: 6), such as a market economy and the family, or and the family (or at least some dimensions of it). Up to now, for reasons of simplicity, I have used ‘the state’ to refer to the agent whose causal role or attitude and its relevance to justice was being discussed; in the case of a single society, on which this article focuses, it is permissible to regard the state and the basic structure in the relevant sense as co-extensive. Scenarios 1 to 5 may express different attitudes of the basic structure: 1 expresses hostility and 2 contempt, while 3, 4, and 5 may be scenarios of decreasing neglect. Other things being equal, treating people with hostility is more unjust than displaying contempt for them, which in turn is more unjust than neglecting them. A scalar justice ranking of the five scenarios is hence possible if the basic structure in question can be regarded as one institutional agent, unified by one constitution enabling it to act consistently.

This leads on to the second question mentioned above: even if it is possible to regard institutions as agents expressing attitudes in their actions, why should we focus on their attitudes and not on the ones expressed by the individuals that sustain them? If, for example, we are worried about the contempt expressed by an institution for some individuals in its openly discriminatory treatment of them, are we not really worried about the contempt that the people that cooperate in upholding the institution thereby express? Is it not fetishistic to focus on the institutions themselves here?

In a trivial sense, the answer to this question is ‘yes’. On the basic ontological level, institutions consist of nothing else than the people upholding them. But, in a more interesting sense, the answer to the question is ‘no’, as the preceding remarks have already made clear. As Pogge notes (2003: 157), individual attitudes ‘only make a difference

to how blameworthy persons are for their role in imposing' the institutions in question. Anderson and Pildes (2000: 1508) offer the following example: 'lawmakers could pass a law that expresses contempt for blacks by denying them the right to vote even if none of the lawmakers personally feel contempt for blacks, and all are merely pandering to their white constituents'.²⁰ The institutional action in question, because of its injustice, should spur everybody upholding the institutional scheme of which the parliament in question is part into counteraction, and remedial duties fall, in the first instance, most clearly on the lawmakers themselves, both because their contribution to the injustice was greatest and clearest and because they are in the best position to reverse it. But these remedial duties follow from their *responsibility* for the institutional attitude expressed, not from the *identity* of their own individual attitudes with it.

To make the point even clearer, consider the case from the point of view of those who are treated unjustly. Being treated in certain ways by others triggers 'reactive attitudes',²¹ in the case of injustice: resentment and indignation. In the case above, the appropriate object of these reactive attitudes is, in the first instance, parliament, and the overall basic structure into which it is embedded, and that makes it an effective institution. We might say that 'everybody with their citizen hat on' is, to some extent, an appropriate target of resentment and indignation. But little is gained by this. For example, it is not clear to what extent a lawmaker who opposed the law in question is an appropriate target. As a general rule, it does not make sense to charge the people who generally uphold an institution with having the same attitudes that the institution expresses in its actions, just because their upholding makes them possible. Cases of straightforward alignment of institutional and individual attitudes are, of course, possible: take the case of a society whose basic structure is controlled by a dominant group of like-minded people who merely use it to express their pre-existing attitudes towards other individuals and groups. However, what makes this case so straightforward is a prior structural injustice: the undemocratic nature of that society and the unchecked opportunity of the group in question to use that society's basic structure for their private purposes.

One final clarification is needed before proceeding to the question of why exactly distributive views cannot account for institutional attitudes: the above considerations do not suffice to rule out that individual attitudes are *also* an independent object of social justice concern in addition to collective ones. A liberal egalitarian view will insist that standards of appropriateness for individual attitudes are different from those for institutions: it will not subject individuals to as stringently egalitarian demands as institutions, make space for prioritizing individual relationships, and permit inegalitarian personal attitudes in so far as they do not endanger egalitarian institutions. As opposed to that, radical egalitarian views may recognize that institutional settings raise special issues, but will demand that people display similarly stringent egalitarian concern in their private lives. I will briefly come back to the difference between these views in the conclusion of this article, but discussing it in depth is beyond its scope.

Why distributivism cannot account for expressive attitudes

If the argument of the previous subsection is sound, it lays to rest any worries that concern about institutional attitudes is mysterious, or fetishistic, in comparison with concern

about individual attitudes. But the central point of the argument of this section is still missing. It seems that a distributivist may agree on Dworkin's formula (quoted in Section 2) that the state has to express 'equal concern' for those subject to its power, but insist that that it does so best precisely by bringing about an egalitarian distribution. So, first, why is it that distributive views cannot account properly for the justice relevance of institutional attitudes? Second, even if distributive views of a traditional kind (focusing, for example, on the distribution of opportunity for welfare or resources) cannot account for this, why is it not possible to amend them so that they can?

In order to answer these questions, it is necessary to explain in more detail what is involved in expressing an attitude in one's actions; in the course of this explanation, some connections between the relational objection to distributivism and a rather ancient doctrine in moral philosophy will become evident. The expressive interpretation of institutional action delivers an account that is, in some respects, parallel to the traditional doctrine of double effect, according to which the quality of intentions expressed in actions can make a difference to the justice of these actions, even when they produce identical outcomes. It reforms this doctrine so as to hold that the justice of actions may differ because of the attitudes expressed by them.²² The attitude expressed by an action is the right one if the agent in question acted on the right reasons. Actions express intentions, and hence have a meaning; interpreting the meaning of an action is the same as assessing the attitude it expresses. The meaning an action has is not just a matter of what the agent in question meant to express with her action, but also of how those who are subject to the action may reasonably understand it. Here, expressive assessment diverges from the traditional doctrine of double effect. In attitude assessment, it is necessary to look both at the motivations and purposes of the agents and the way the action has been understood by those affected. If the action in question is, for example, the institutional action of parliament passing a law, sources that expressive attachment may draw on are (1) the reasons given for the law by parliament²³ and (2) the way the law has been understood by those subject to it. So, an interpretive assessment of both is needed: whether the reasons given adequately support the law in question and whether the way it has been understood is reasonable. In order for the expressive interpretation of the relational objection to distributivism to be successful, it must not be possible to account for this dimension of meaning as just another distributive outcome.

Three examples may serve to clarify what is at stake in the expressive assessment of institutional action and to elucidate the challenges it poses to distributivism. First, take the example of *group inequalities*. Here the relational claim goes as follows. Other things being equal, it is more unjust if, due to some state measure, among a group of disadvantaged people (say, a group lacking adequate access to the health-care system) there are a significant number of members of a pre-identifiable group (such as women or blacks) than if the disadvantaged group consists of random people (men, women, whites, blacks, Asians, and so on) who are not unified by any common ascriptive characteristic (see Pogge, 1995: 251–5).²⁴ The problem is not restricted to ethnic or gender groups; it is the same in the case of social class.²⁵ Such state action gives rise to an additional, irreducible grievance on the part of the members of such groups because it is reasonably taken as the expression of an objectionable attitude of institutions towards them: institutions do not, in their actions, regard the members of the group in question as equals. So, in the V

example, under the assumption of an effective basic structure, the respective injustice of the different social scenarios 1–4 would increase if we were to assume that the disadvantaged group in each scenario consisted of people unified by a common characteristic other than the disadvantage. Note that for such a group grievance to arise, it is not necessary that the disadvantage in question really comes about, as a matter of fact. Even if it is prevented by some accident, it is enough that, at the decision-making stage, the information that it would regularly ensue has been taken into account by the institutions, or should have been taken into account, given reasonable requirements regarding the collection and use of information. This is nothing else but to say that the *action* itself expresses the attitude, even if it should not produce the intended, or foreseen, result. Injustice varies with the way that the outcome figured at the decision-making stage: if the institution aimed at it, the action is more unjust than if it merely knew about it or should have known about it.²⁶

A second example clarifies further how the injustice of institutional action may vary with the adoption of certain means towards intended outcomes. Consider the case of a government aiming to improve the ‘competitiveness and efficiency of the country’s economy’. One policy choice towards this aim is not to intervene in the conflict between owners of the means of production and trade unions. The owners then manage to strike a deal that allows them to worsen the contracts of low-skilled workers, lowering their pay and making their position more precarious. The result is due to the present balance of power in this conflict, which is entirely known to the government. Owners win by threatening to close the factories in question and to move production abroad; given that the global economic situation makes this threat credible, the trade unions give in. The second policy choice is to abolish the laws establishing collective contract negotiations for the workers in question. With such institutional protection withdrawn, they all individually agree to the new conditions imposed by owners. *Ex hypothesi*, the distributive outcome here is exactly equal, as is, let us suppose, the overall cost of both policies. Yet, the second policy is more unjust than the first.²⁷

Third, consider cases of the collective communication of attitudes, as a subclass of cases of collective attitude expression. Anderson and Pildes (2000: 1526) mention the example of token compensation of (justly) expropriated owners, which serves to communicate the state’s awareness that it is imposing a considerable sacrifice on them. Alternatively, take cases of public apology in which a state recognizes the grievances of those against whom it has committed injustices. Of course, most such apologies also have distributive consequences, such as compensation payments. But the apology itself serves as an invitation by the state to the aggrieved individuals or groups in question to regard their relationship as altered by accepting the apology – as it does in the case of apologies between individuals, which aim at dissolving reactive attitudes of resentment and at reinstating attitudes of mutual goodwill. This point leads back to the one discussed at the end of the previous subsection: if we think that states can apologize meaningfully, it must also make sense to regard them as appropriate targets of reactive attitudes.

In the case of communicative action, the role of intentions is even clearer: knowledge that an apology is unintentional destroys its value for the addressee. Take the case of somebody who wants to insult a foreigner because she thinks their collision on the street was his fault, but instead apologizes to him, since she confuses the respective expressions in his language.

If these examples are sound, then how could distributive theories react to them? One possible strategy is, of course, simply to dig in one's heels. Distributivists focusing on the traditional currencies of justice mentioned in Section 2 (opportunity for welfare, resources, or a mixture of both) could insist that, since the point of institutions is to produce a just outcome, any meaning that institutional action may have, or any attitude it may express, should be understood in these terms: there is simply no principled reason why, if an institution is in a position to foresee and avoid an unjust outcome, and yet does not avoid it, this should not be, from the point of justice, fully on a par with intending that result (see Enoch, 2007). Accordingly, any contrary intuitions we might have about the examples above must either be unreasonable or ultimately rest on empirical beliefs. A distributivist might respond to the *group inequalities* case that, in many cases in the real world, common disadvantage in one dimension leads to common disadvantage in other dimensions as well. For example, if women earn less for doing the same jobs as men, they will presumably also have worse access to positions of influence than men. So it might be said that our intuitive objection to finding more people of one kind in one disadvantaged group merely reflects an implicit assumption that there will be similar findings for other dimensions of disadvantage as well, so that they are very likely to be distributively disadvantaged overall. This is largely true; disadvantages tend to 'cluster' (see Wolff and De-Shalit, 2007: Chs 5–7). Similarly, in the 'no collective bargaining' case, we might find it probable that a government withdrawing one kind of institutional protection for low-skilled workers will also withdraw other kinds, so that more distributive disadvantage will ensue.

These responses on the part of the distributivist are empirically sound, in the first case, or at least superficially plausible, in the second. But, to put it cautiously, it is at least an open question whether a plausible such empirical counter-strategy is available in every significant problem case. For example, it is hard to see how it could work in public apology cases. It is a further open question whether the possibility of hypothetical counter-examples, as long as they are reasonably realistic, would not nevertheless raise problems for theories of justice that aim at delivering fundamental principles, as the distributive theories mentioned in Section 2 do. There is no reason why cases in which overall distributive advantage is equal, as it is in all examples employed in the previous sections, cannot arise.

A second strategy is to try to deal with expressive considerations by extending one's metric of justice so as to include a special class of social, cultural, and psychological consequences of institutional action.²⁸ For example, one might seek to incorporate purely psychological notions of self-respect and self-esteem, focusing on how positively or negatively people view themselves and their way of life as a consequence of state action.

But this would be to incorporate expressive considerations in the wrong way. Legal discrimination against a group, for example, constitutes a particular kind of objectionable inegalitarian relationship between the state (or 'us with our citizens' hats on') and the members of that group: the assignment of inferior legal status. Even if it will regularly happen, in the case of a generally effective legal system, that such laws lead to overall social inferiority of the members of the group in question, because other individuals and groups take them as reasons to treat them in objectionable ways, this need not be the case for them to be unjust. They would not cease to be unjust even if their targets

experienced a *boost* in self-esteem, for example, due to their solidarity in indignation. Conversely, people who merely *feel* disadvantaged because of a just policy would suddenly have a legitimate grievance against the state (Anderson and Pildes, 2000: 1574). Just take the case of people objecting to laws instituting special protections for ethnic or sexual minorities because ‘nobody cares about ordinary people anymore’.

A third and more promising strategy overcomes strict distributivism by including certain social and political relationships into an objective list of goods that should be equalized as a matter of justice. Examples of such theories are capability views including the factor of effective access to social and political institutions, for example, Nussbaum’s.²⁹

But this strategy still encounters its own problems. From a distributive point of view, the question to ask is why this factor should figure in a list of things that justice should be ultimately concerned with: why should it be an *intrinsic* problem of justice that some people lack effective access to social and political institutions? Why have such institutions ceased to play a merely instrumental role, that of enabling people to get what they are entitled to?³⁰ In order to answer this question, such capability views have to claim that access to political institutions is a constituent part of what is objectively good for people. What is at stake is, then, still an essentially recipient-oriented consideration, just one of a moralized kind: the views in question have to commit to a conception of the human good that includes an element of civic perfectionism.³¹ But this is a very controversial view. People may well need meaningful relationships with others in *some* social institutions, but why in political institutions wielding coercive power? On the expressive view, no such perfectionist claims are necessary to account for the intrinsic importance of access to political institutions: by granting such access, institutions are merely expressing proper respect for those subject to their power, whether such access is also intrinsically good for people in any more substantive sense or not.³²

To make the difference even clearer, consider once again the role of intentions. On the civic perfectionist view, in the (somewhat outlandish) scenario of access to institutions being granted unintentionally, individuals would still have (a part of) their objective good secured. On the expressive view, the institutions’ failure to grant access intentionally would mean that they have failed to express proper respect. The point of this view is that we do not only have to distribute properly, we also have to treat people properly while doing so: the latter consideration functions as a *constraint* on the former.³³ Finally, it should be noted that this assessment does not depend on taking the capability views mentioned above as *mandating* that citizens do indeed participate in political institutions. They generally do not, and restrict themselves to requiring *opportunities* to participate, just as the expressive view put forward here does. The point is that a justification for regarding precisely these opportunities, as opposed to others, as intrinsically required by justice still needs to be given, and the expressive view can deliver this justification without resorting to the claim that having them is intrinsically good for people.³⁴

Relational egalitarianisms

The argument of this section has made clear that expressive considerations, focusing on the attitudes that institutions express in their treatment of individuals and groups, play an irreducible role for justice that is overlooked by purely recipient-oriented views. One

final question remains to be tackled: in order for the expressive perspective to ground a viable alternative approach to justice, it must be possible to construct worked-out conceptions of justice on its basis. The principles of justice proposed by such conceptions cannot be as simple as those proposed by purely recipient-oriented theories, but they must be able to give both reasonably general and precise guidelines for answering the questions of when and how institutions express proper respect and concern in their treatment of individuals and groups.

So, to conclude, here are three directions in which candidate conceptions could go. The first possibility is the radical social egalitarian view already mentioned above: according to such a view, individuals should display attitudes of benevolence and fraternity (or sorority) towards each other both in public and private life, and institutions should express equivalent collective attitudes. A worry about this type of approach is that we may find it unduly intrusive for institutions exercising collective power to act in the name of fraternity, or some similar value.

A second possibility is a view that focuses on the *communication* of institutional attitudes to individuals and groups: on this view, institutions would have to communicate to individuals and groups equal esteem of them and their ways of life, such as some conceptions of the 'politics of identity' demand. However, this view may be in danger of overestimating the importance of institutional communication. Communication is especially important to signal a reversal of past unjust action, such as in apology cases, or to accompany actions that impose sacrifices on individuals and groups, such as in expropriation cases. But if institutions *express* proper concern for people in their treatment of them, they should not also need to *say* this constantly; and if they do not, then communication to the contrary merely seems hypocritical.

A third possibility is that of a liberal relational egalitarian account of social justice, according to which institutions treat individuals with the proper attitude when they offer them adequate and equal structural protection against unjust treatment by *other individuals*, against ending up on the wrong end of inegalitarian relationships. Such a view would, for example, make sure that individuals are not dominated by others, that others cannot interfere with their choices in an arbitrary manner.³⁵ Finally, while the preceding arguments have sought to establish the deficiency of a purely distributive perspective on justice, this must not be taken to suggest that a conception of justice based on the expressive perspective has nothing to say regarding the just distribution of goods. If societies are to be conceived of as cooperative enterprises of individuals of equal status, whose basic social and political institutions determine the pattern of such cooperation (and not, for example, as enterprises that are to reward everybody due to some suitably specified conception of personal contribution), then such institutions can also express proper attitudes towards individuals by distributing social goods in an egalitarian fashion and by aiming at equalizing the influence of social processes on other goods, such as health (see Section 4), while generating inegalitarian distributions only where this is required by qualified countervailing reasons. Such reasons could be the well-known Rawlsian ones: a conflict with prior rights to basic liberties or the fact that an inegalitarian distribution would make everybody better off. Luck egalitarian considerations can also play a limited role within such a view: assigning individuals a limited, but significant degree of responsibility for their own distributive situation expresses respect for their capacity to choose

autonomously between different life options – as long as institutions make sure that consequent distributive disadvantage neither leaves them in destitution nor exposes them to greater risks of falling victim to unjust relationships.³⁶

7. Conclusion

The argument of this article has established that distributive egalitarian theories of justice cannot account for the intrinsic importance of the way social and political institutions treat individuals. It has rejected the first interpretation of the treatment objection, according to which the way that institutions cause distributions has intrinsic justice significance: causality can be shown to matter only where it maps on to the distinction between natural and social inequalities. Instead, it has endorsed the second interpretation, according to which the attitudes expressed by institutions in their treatment of individuals and groups have intrinsic significance for justice. It is both conceptually possible and morally sensible to ascribe attitudes to institutions (not only to individuals), and distributive theories cannot be so amended as to account for them. Thus, the development of a relational theory of equality on the basis of the expressive perspective is a worthwhile enterprise.

Notes

For very helpful comments, I am grateful to Dan McDermott, David Miller, Miriam Ronzoni, Adam Swift, Jo Wolff, and the two anonymous referees for *Politics, Philosophy and Economics*. Further thanks go to the late Jerry Cohen and the participants of the Oxford Graduate Students' Political Theory Workshop, to the audience at a doctoral students' forum of the German National Academic Foundation, and to the audience of the UCL Graduate Conference in Moral and Political Philosophy 2007 (and once more to Jo Wolff, this time as my respondent there), where I presented outlines of earlier versions of this article.

1. For some of the most important contributions to the debate between relational and distributive (and especially luck) egalitarians, see Elizabeth Anderson (1999) and Samuel Scheffler (2003a, 2005) and the responses to Anderson by Richard Arneson (2000) and Ronald Dworkin (2002: 113–8). See also Dworkin's reply to Scheffler (Dworkin, 2003) and Scheffler's counter-reply (Scheffler, 2003b).
2. She replaces 'powerlessness' and 'systemic violence' with 'domination' and 'status hierarchy'.
3. See Gerald A Cohen (1989, 2004). For a related notion of 'midfare', see Cohen (1993: 25).
4. In his most recent works, Dworkin claims that a principle of full equalization of brute luck does not form part of his theory; it merely requires that 'people be made equal, so far as this is possible, in their opportunity to insure or provide against bad luck' (2003: 191). This does not make the above characterization of distributive egalitarianism inapplicable to his theory, because the deviation from strict brute luck equality may be due to the excessive costs of trying to bring it about, which is itself a distributive consideration. See Dworkin (2002: 110) and see also Section 5 below. However, Dworkin also argues that the consolidated version of his theory regards distribution merely as one dimension of equality among others of independent importance, political equality in particular, which might conflict with the distributive dimension (2000: Ch. 4, 2003: 195–6). For discussion of this point, see n. 33 below.

5. Pogge (2008: 47–8, original emphases; see also, with slight verbal differences, 2003: 156). The original quotation lists six scenarios. In the sixth scenario, certain people cause their V deprivation themselves and institutions fail to react to this. I leave this scenario aside because this article focuses on problems related to the distributive nature of luck egalitarianism, and does not discuss the relationship between responsibility for personal choices and distributive justice. See also n. 36 below.
6. In any case, what is needed for the argument of this article is less that the proposed preliminary ordering is exactly right, but that some such ordering is right (for example, that scenario 1 is indeed much more unjust than scenarios 4 and 5) and that distributive theories cannot account for this.
7. For an argument against regarding justice as the only value applying to institutions, see Robert E Goodin (2007).
8. Cohen does not discuss the question of whether, and how, on his account, distributive and non-distributive justice are related in any detail, but his commitment to ‘radical pluralism’ makes clear that this is how he would proceed (2008: 4–5).
9. For some suggestions as to how a relational egalitarian conception of social justice might approach the issue of distribution, see the end of Section 6 below.
10. See Thomas Nagel (1997: 310). See also Pogge (1995: 247–50). The tortuous formulation is necessary because Rawls claims that natural inequalities per se are not unjust at all: ‘the natural distribution is neither just nor unjust’ (1999: 87).
11. Pogge (2003: 154–5) calls Rawls’s view ‘semi-consequentialist’ because it restricts the scope of distributivism in such a manner. I am not convinced that Rawls’s theory lends itself to a clear characterization as wholly distributive about social goods, but cannot pursue this disagreement here. Dworkin’s theory may be an example of such a theory, in so far as resources are intrinsically social goods (but see also n. 33 below).
12. I argue that a ‘radical pluralist’ position, according to which the requirements of non-distributive justice and of egalitarian distributive justice have to be balanced against each other in a case-by-case fashion, cannot give sufficient guarantees against over-demandingness in Christian Schemmel (2009: Ch. 1, Section 3).
13. For the concept of a personal prerogative, see Scheffler (1994). Cohen (2008: 61) mentions it as a restriction on his luck egalitarian view (but does not discuss what exactly it encompasses).
14. One may point out that, strictly speaking, avoidability and foreseeability should not influence the justice of a state of affairs, from a distributive point of view, but only institutional blameworthiness for that state of affairs. But even then, it is not self-evident why institutional blameworthiness is not the right level to focus on in the explanation of some aspects of the V example.
15. Accordingly, there is reason to think that the force of the causal interpretation of the relational claim in scenarios of global (in)justice, on which most of Pogge’s work focuses, has to be due to its successfully disputing the belief that global inequality is relevantly akin to natural inequality (scenario 5). Citizens of affluent states cannot claim that global inequalities are of no concern to them if they are caused by institutions that their states control; the degree of causal involvement in bringing about or maintaining global inequality is relevant to justice, just as the degree to which social measures exacerbate natural inequality is. Nothing similar is true where the inequality in question undisputedly lies within the scope of the institutions responsible for justice, as in scenarios 1–4.
16. I am grateful to an anonymous referee for suggesting this description of scenario 1.

17. A detailed argument against sceptical methodological individualists, who sustain that there can be no such thing as a group agent, is beyond the scope of this article.
18. See List and Pettit (2002, 2006). The simplest case they use is that of a jury of three judges deciding law cases: majority voting on the verdict and majority voting on the premises of the verdict may generate different results. For accounts of the conditions that collective bodies have to fulfil in order to be fit to be held morally responsible, see also Pettit (2003, 2007).
19. For institutional holism, see Rawls (1999: 50): 'a social system may be unjust even though none of its institutions are unjust taken separately; the injustice is a consequence of how they are combined together'.
20. It is somewhat unclear what exactly the absence of *feelings* of contempt on the part of lawmakers is supposed to demonstrate. It is better to stipulate that for no lawmaker did a *conviction* that blacks are inferior play any role whatsoever, consciously or unconsciously, in the formation of the intention to vote for the law.
21. For the *locus classicus*, see Peter Strawson (1974).
22. The following account of attitude assessment is heavily indebted to Anderson and Pildes (2000: 1511 ff.).
23. These differ, in the first instance, from the private reasons that any individual lawmaker may have had for voting for the law in question (see the previous subsection). Such individual reasons may be drawn in at a later stage of interpretation, for example, when it becomes evident that the official reasons do not suffice to motivate the law in question.
24. The phrase 'due to some state measure' means that the disadvantage is not due to natural factors that institutions are not required to offset (see Section 5) or to the free choice of the members of the disadvantaged group, according to a suitable account of free choice that takes into account relevant factors such as the importance of pervasive peer-group pressure.
25. Social class must, of course, be understood in terms other than that of simple distributive position.
26. In recent work, Scanlon argues, against the doctrine of double effect, that the agent's intentions in performing an action do not, in many cases, ultimately matter for its rightness or wrongness. What they matter for instead is the assessment of the agent's moral performance in carrying out the action in question, as distinct from the question of its permissibility. See Scanlon (2008: 1–87). As said, this article does not defend the doctrine of double effect in its traditional form, but focuses instead on the meanings that institutional actions express. Scanlon (2008: 79) concedes that such meaning may, depending on the relationship between the agent and the 'recipient' of the action, influence rightness in some cases. Whether, on his view, the relationship between institutions and those subject to their power, on which this article focuses, is to be regarded as among these would be an interesting subject for further investigation. In any case, Scanlon (2008: 69–74) agrees that discrimination is a case in which meaning can influence rightness, because of the judgement of inferiority expressed by it. A more detailed examination of Scanlon's argument is, unfortunately, beyond the scope of this article. I thank an anonymous referee for drawing my attention to it.
27. What if the best interpretation of the first scenario established that the state was motivated by the best of intentions, say, it genuinely believed that non-intervention aimed at enhancing economic efficiency in this and similar cases would ultimately be in the service of all its citizens and to a reasonably equal degree? Would the expressive view not have to admit that, in such cases, the state commits no injustice at all (which seems hard to swallow for egalitarians)? The answer is that it depends. If the state decides not to intervene because all reasonably accessible

evidence favours this course of action, it indeed does not express any disrespect. Unregulated global competition may, after all, present states with tragic choices; on a relational view, they should not be charged with injustice if they choose the lesser evil (injustice may reside elsewhere, for example, in global institutions or in the absence of such institutions). If, on the other hand, the state's choice not to intervene is based on a false belief that it could have avoided, it is unjust; the degree of its injustice depends, *inter alia*, on how hard it would have been to avoid the error. Thanks to an anonymous referee for pressing for clarification on this point.

28. For some suggestions along these lines, see Matthew D Adler (2000: 1434 ff.).
29. See Martha Nussbaum (2000: 78–80). Wolff and De-Shalit (2007: 56) adopt and expand this list.
30. For a refreshingly die-hard instrumental account of democracy, see Richard Arneson (2004). See also Arneson (2000: 342): ‘the quality of relationships is itself reasonably regarded as instrumental to well-being, not morally important in itself’.
31. Sen's capability view might be able to escape civic perfectionism to the extent that he regards political rights as non-instrumentally valuable because of their *constructive* role in conceptualizing other basic capabilities (1999: 153–4). However, he seems to hold that they also have non-constructive intrinsic value—without giving an argument for this, apart from pointing out that people do in fact seem to value them (Sen, 1999: 151–2). As far as I can see, this may well be because they recognize their instrumental and constructive roles or understand that they express respect.
32. For a recent defence of luck egalitarianism that hovers between the second and the third strategies, see Nicholas Barry (2006: 89–107). Barry concedes that luck egalitarian theories focusing on resources or opportunity for subjective welfare cannot account properly for the injustice of relationships such as oppression and marginalization, and hence recommends that luck egalitarians switch to an objective account of individual well-being, including factors such as effective access to social, political, and cultural institutions. But, despite his claim that luck egalitarianism so revised goes ‘beyond the distributive paradigm’ (Barry, 2006: 93), he still puts forward a recipient-oriented view, claiming that ‘oppression is a form of bad brute luck that lowers the well-being of individuals’ (Barry, 2006: 93) rather than a form of unjust treatment. At times, he also seems to suggest the second strategy: ‘An objective account of the good life . . . is sensitive to the effects of social oppression’ (Barry, 2006: 96). If oppression is intrinsically unjust, it is wrong to focus on its *effects*.
33. Dworkin has objected to a classification of his theory as purely distributive along similar lines: he argues that the consolidated version of ‘equality of resources’ offers a multidimensional theory of equality as the best interpretation of what it means to treat people as equals (2003: 190). Rights to democratic participation are of intrinsic importance to justice because they express respect for individuals as agents, and they might require tolerating deviations from distributive equality (Dworkin, 2000: 187). I accept that the argument of this article applies straightforwardly only to the articles on ‘equality of welfare’ and ‘equality of resources’ (Dworkin, 2000: Chs 1–2), which have been at the centre of the debate about the ‘currency of justice’, and that the later version of the theory might not fully correspond to the ideal type of a ‘purely recipient-oriented’ view laid out above. However, I submit that it still offers a valuable perspective for critical assessment of the consolidated theory. For example, Dworkin's account of rights to democratic participation does not require equal substantive opportunity to participate in decision-making, but only minimal such opportunity, ‘enough to make political effort something other than pointless’ (2000: 203). Relational egalitarians will object that this underplays the importance of substantively equal rights to political

- participation for people's standing as equals in society. The argument of this article helps to see the force of this objection.
34. On how a capability view such as Sen's might escape civic perfectionism, see n. 31 above. Thanks to two anonymous referees for pressing for clarification of this point. Similarly, if the objection to oppression is taken to be that it is intrinsically bad for people (see above n. 32), then an explanation of its inherent connection to individual well-being is needed. The expressive view, on the other hand, insists on equal status independently of its connection to well-being; it argues that oppression is unjust because to subject a person to arbitrary exercises of power is to disrespect her personhood.
 35. See Philip Pettit (1997: 52 ff.). Pettit proposes that the state maximize non-domination in a consequentialist fashion; with this, an expressive view has to disagree.
 36. Thanks to an anonymous referee for suggesting this clarification. As noted before (especially in Section 5), the target of this article is the purely recipient-oriented nature of luck egalitarianism, not its focus on individual responsibility. For a recent reformulation of luck egalitarianism that proposes to apply it only to institutional action, see Kok-Chor Tan (2008). To what extent this proposal is best understood as a 'defence' is, however, an open question; if the argument of this article is correct, such a reformulation amounts to a fundamental change in the underlying concept of justice. On this, see also my response to Tan (Schemmel, forthcoming).

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