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FREEMAN ON
PROPERTY-OWNING DEMOCRACY

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Freeman on Property-Owning Democracy

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The papers in *Liberalism and Distributive Justice* usually begin from an interpretative question about Rawls; but that is rarely where they end up (Freeman 2018). The core of the book takes forward the Rawlsian project by seriously engaging with its aim: the development of a realistically utopian private property system that is not capitalist. In particular, Freeman has been at the forefront of a specific development from Rawls's work that takes its lead from *Justice as Fairness: A Re-Statement* (Rawls 2001). That is the issue of the specification of Rawlsian justice in terms of overall "social systems", comparable to Weberian ideal types. As Rawls put it in *A Theory of Justice*, "the main problem of distributive justice is the choice of a social system" (Rawls 1971, 242, quoted in Freeman 2018, 137). Given the extent of the secondary literature on Rawls the comparative neglect of this topic has been surprising. In this short paper my aims are two-fold: first, to mine the resources of Freeman's book to explain his deep influence on how we answer this question of our choice of a social system. Secondly, to draw

on his ideas to explain the distinctiveness of pre-distributive, as opposed to re-distributive, egalitarianism.

I

The Choice of a Social System

Rawls's solution to this choice took a disjunctive form: justice as reciprocal fairness is expressed either in the form of liberal market socialism or a property-owning democracy. (Rawls 2001; Thomas 2017, 2020a). However, Rawls believed that determining which of those choices is correct lies beyond the scope of the political philosopher. Working at her level of abstraction, she ought not to resolve the highly contested question of whether the major means of production ought to be publicly or privately owned or in any other way resolve "the property question." That is for individual societies to decide, at the legislative phase of Rawls's four stage sequence, in the light of their knowledge of their own society's traditions and history. Negatively, then, the political philosopher can tell us that *laissez-faire* and welfare state capitalism are unjust, as is command socialism. But no single option can be positively ruled in.¹

Paul Weithman has expressed scepticism as to how Rawls proceeds here: he notes that Rawls works in his typically "internal" way by examining candidate social systems from a relatively brief list (Weithman, 2013). Yet one item on the list stands out. We can point to historical precedents for *laissez-faire* or welfare state capitalisms or for command socialism. There is even some sketchy

¹ I argue that Rawls is mistaken and that only a property-owning democracy is expressive of justice as fairness in Thomas 2017. Chapter eight of that book also argues that, with a property-owning democracy in place, that which we ought to value in liberal market socialism will arise from the spontaneous free choice of citizens.

evidence for large-scale market socialist experiments. However, there seems to be no empirical backing for the existence of a property-owning democracy which is not “worked up” from historical examples. This seems problematic to Weithman, because it seems as though Rawls buys the disjunctive answer to his question cheaply: one disjunct is merely stipulated. It is hardly accidental that this disjunct realises justice as reciprocal fairness as it could not fail to do so.

I think Weithman’s point could actually be expanded to Rawls’s other disjunct: that which Rawls seems to have in mind when he discussed liberal market socialism was Mill’s conception. Mill proposed a society whose economy is dominated by large scale cooperatives of two kinds: producers’ and consumers’ cooperatives (Mill 1871) (This is, in turn, Mill’s interpretation of the utopian socialism of the Saint-Simonians.) The only historical exemplars we can point to here are examples like Tito’s Yugoslavia, where large-scale producer cooperatives were embedded in a command socialism. So here, too, the empirical backing for the historical feasibility of Rawls’ other disjunct is thin.

The best response, in my view, is openly to acknowledge Weithman’s point: Rawls’s aims are avowedly utopian. The only question is whether either disjunct realises a realistic utopia as Rawls understands that phrase. That which both of Rawls’s options have in common is sensitivity to the question of who controls capital (Thomas 2017, 2020a; Freeman 2018, 139) Taking his understanding of capitalism from Marx, Rawls assumes that a capitalist society is one in which a minority of citizens have monopoly (private) ownership of the major means of production. This monopoly allows them to dictate the terms on which others labour – or whether they work at all.

A property-owning democracy is, then, a non-capitalist society because every citizen is a capitalist: each has her own share of a

society's productive capital that is not in the hands of a factional minority. A liberal market socialist society achieves the same end via collective democratic control of a society's total capital stock. For example, in one sophisticated proposal, all capital is owned by the state and leased out to productive enterprises for a fee (Schweickart 2011).

Freeman has not, thus far, devoted much theoretical attention to liberal market socialism. He has, however, been a pioneer in our understanding of what a property-owning democracy would have to be. While the idea has recently received more attention, Freeman's contribution is distinctive in the depth of its understanding of how it is rooted in Rawls's commitment to "deep" reciprocity and also in how we might envisage the ideal being further articulated and expanded.

II

Three Interpretations of Property-Owning Democracy

In a brief exercise in intellectual cartography, the current map seems to me this: like Freeman, I take a property-owning democracy to be a specification of justice as reciprocal fairness. (Freeman, 2018, chapters three, four). It is one solution to the problem of identifying our choice of a social system. However, I differ from him in two respects: my proposal is constitutional, not legislative, and I think only a property-owning democracy specifies justice. The market socialist alternative, to remain liberal, can be implemented only after we have implemented a property-owning

democracy.² (It matters here, of course, that my aims are not interpretative and that I take myself to be a revisionist reader of Rawls).³

My position is, then, an ironic mirror image of that defended by William Edmundson in his recent book, *John Rawls: Reluctant Socialist* (Edmundson 2017) (Once again, Edmundson takes himself to be interpreting Rawls – to have established what Rawls’s position ought to have been had he drawn out all the implications of his commitments). Like Edmundson, I think the basic motivation for addressing the question of our choice of a social system is a concern with stability: whatever conception of justice we choose, it must prove itself to be robust in the face of that which Rawls called the “destabilising special attitudes” (Rawls, 2001). One specific guise of those attitudes is the will to dominate. I follow Edmundson, once again, in believing that a friendly revision to Rawls would have been to include what Edmundson calls the “fact of domination” in the circumstances of justice. This is a sociological fact – that which Rawls elsewhere calls a law and tendency of our social world – that political history tells us that in the competitive space of the political, those with financial, social and political advantage seek to leverage that power to pressurise the political process in their own interests. Critics of this line of thinking are sceptical that the historical and sociological evidence

² Thomas, [2017] chapter 8. I have since revised my view in one respect: I think I neglected the importance of Rawls’s claim that justice as fairness required full employment and also the state to act as the final guarantor of full employment. [Rawls, 1993, p. ivii] See Thomas [2020b]

³ I do not mean to imply that Freeman’s account of a property-owning democracy is not also significantly revisionary of Rawls’s version in some key respects; see, for example, Freeman 2018, 160-161. For an alternative approach to the same issue see Thomas 2020b.

is firm enough to justify this inclusion of the fact of domination in the circumstances of justice; I am drawn to the republican strand of Rawls's thinking because I think that it is – and here I follow Freeman who has expressed similar concerns (Freeman 2018, 144-5). But that is why I share Edmundson's belief that, when we guarantee the fair value of the political liberties, only a constitutional guarantee will prove sufficiently robust. This merely frames the ironic reversal of my own position compared to that of Edmundson's: he believes that a property-owning democracy exacerbates the socially divisive destabilising special attitudes.⁴ (In his view, it may be compatible with justice, if it is relegated to the sphere of petty production, while not being just itself.) By contrast, Edmundson's constitutional proposal is for state ownership of the major means of production – those “commanding heights” of the economy that produce goods anyone needs for a flourishing life and which create the opportunity for private rent seeking (Thomas, 2020a).

Edmundson's proposal is not, then, to disjoin liberal market socialism from a property-owning democracy. The former view, from his perspective, attaches too much importance to workplace democracy and his own version of liberal democratic socialism takes public ownership as its central commitment. I certainly have my doubts about Edmundson's proposal, but more important for current purposes is that his proposal to protect the fair value of the political liberties by placing egalitarian protections in the constitution of a just society is a commitment we share. This is where we both differ from Freeman (Thomas 2020a). But the bases of our disagreement are not the same: Edmundson is, like Freeman, attempting to answer the difficult question of what

⁴ Freeman, I think correctly, takes the opposite view to Edmundson – that an argument from stability is central to the case for a property-owning democracy (Freeman 2018, 152-4).

Rawls actually thought. I certainly detect some strain in Edmundson’s claim that Rawls ought to have been a socialist – however “reticent”.

III

Making Sense of Pre-Distribution

The first major divergence, then, between Rawlsian revisionists and Freeman is over the issue of constitutionalisation. Relatedly, there is further issue of the extent to which a property-owning democracy can be a distinctively predistributive form of egalitarianism. Freeman’s book is replete with examples of why Rawls’s conception of justice is pre-distributive and not re-distributive even if this is not an emphasis of his work. Here I draw his various remarks together to strengthen the case that justice as reciprocal fairness is a pre-distributive view.

Why does this issue matter? Because I have repeatedly claimed that the distinctiveness of Rawls’s proposal has been eroded even by sympathetic commentators (but not by Freeman) (Freeman 2018, 144-5)] This distinctiveness is undermined in two, related, ways. The first way is to claim that a property-owning democracy is, in practice, a hybrid social system: the institutions characteristic of welfare state capitalism with some ad hoc, asset based, extensions (O’Neill 2012, 2017, 2020). A sympathetic exponent of the view, such as Martin O’Neill, can hold this view in order to defend it, while a critic of the view, such as Kevin Vallier, understands the view this way in order to critique it (Vallier 2015).⁵

⁵ Vallier’s thought, simply, is that if the view is a hybrid then it contains all the interferences with freedom characteristic of welfare state capitalism plus the further interferences with freedom extended to assets (thereby interfering with

The mirror image of this view is that a property-owning democracy can only be wholly disjoined from welfare state capitalism: they can have nothing in common. So it becomes the starting gate egalitarianism of the Reagan/Thatcher revolution. Citizens receive “predistributed” capital to level the playing field, and to secure fair of equality of opportunity, but then free market outcomes fall where they may – there can be no further egalitarian complaints about the upshot of the distribution that results. (Schemmel 2015). This somewhat unflattering account of a property-owning democracy as a form of individualism also plays a role in Edmundson’s doubts about its capacity to contain the destabilising special attitudes (Edmundson 2017).

It is this second interpretation of property-owning democracy that is my primary focus here: I would like to draw on Freeman’s subtle discussion, and a complementary paper by Katrina Meshelski, to respond to it (Meshelski 2020).

Let me begin with Freeman’s account: given the Rousseauvian and Hegelian influences on Rawls, it is not surprising that after gaining insight into our concept of justice, we collectively face a practical task of creating a social world to which the full expression of our two moral powers can be “reconciled” (to use Rawls’s avowedly Hegelian language).⁶ Relating to each other in the light of an overall model conception of free and equal citizenship is both to draw on an idea that we find in our public political culture, and yet something we also jointly construct. To put it in Hegelian

the price signals that determine patterns of capital investment) (Vallier 2015). The republican component of my liberal-republican view argues, by contrast, that a just regime of law is freedom enabling and no restriction on freedom at all.

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language, we re-make our social world so that reason finds a home in it.

At various points in this book Freeman draws out the consequences of this dimension of Rawls's proposals as a project of practical reason. It places substantive constraints on Rawls's principles: they must be tailored to a public role – and to an “educative” one – if this conception of justice is to entrench itself over time and become stable. The principles must be capable of engaging with our natural sentiments, so they are convergent with the class of “moderate moralities”, and able to function as a presupposition of an agent's more specific ethical projects.⁷ We can describe both of these functional constraints as “developmental”: part of the dynamic perspective in which the individual regulates her personal ethical projects, and the social context in which they are embedded, by justice.

Further, this orientation to practice explains how we can act in the light of a fiction: the central fiction is that involved in accepting the difference principle itself. The libertarian need not fear that the talents of the talented are going to be sequestered by the collective agency of society a whole. (The basic liberties principle offers reassurance that, if the metaphor of ownership has any traction here, is it the individual who owns her talents.) But to accept the difference principle is to treat the pool of talents across society as a whole as a collective asset, when they are literally not, such that any market entitlement traceable to talent must benefit the representative worst off person (Rawls 2001, 124; Freeman, 2018, pp. 148-149).

Most importantly for present purposes, this orientation to practice also explains why reciprocal justice is not merely allocative. Freeman has always emphasised the distinctive narrowness of

⁷ I take the phrase “moderate moralities” from Shelley Kagan (Kagan, 1989).

Rawls's conception of distributive justice. It is not an issue of how to allocate a productive surplus that is, as it were, a prior given. We are dealing here with constitutive rules for an activity: game constituting rules that determine whether there will be a productive surplus at all⁸. To play that role, Rawlsian "productive reciprocity" (Freeman 2018, 253; fn 38, 256) involves an active engagement in productive activity where each makes a (handicap weighted) productive contribution.⁹ Principles to regulate an activity must have an open-ended character: this is the procedural aspect of Rawls's view that seemed to exempt him from Hayek's strictures on "end state" conceptions of distributive justice. (But, as I will shortly explain, Hayek's endorsement is in one respect also misleading (Meshelski, 2019). All of this, I will argue, supplies backing for a robust distinction between Rawls's predistributive egalitarianism and the re-distributive form that he associates with welfare state capitalism. But it is to challenges to this distinction that I now turn.

⁸ This assumption plays an important role in rebutting Philippe van Parijs's claim that Rawls's preference for meaningful work is a Protestant moralistic principle that violates his avowed liberal neutrality (van Parijs 1995). Following Michael Schefczyk, I argue that the constitutive principle of an activity cannot also be a substantive principle with it (Schefczyk 2013, 207; Thomas 2017, 196). (The apposite analogy is Wittgenstein's remark about the role played in the "game" of measurement by the standard meter rule.) See also Thomas 2020/2021. The importance of the point is emphasised in Freeman 2018, 150.

⁹ Footnote 38, p. 256 notes that the phrase "economic reciprocity" is owed to Stuart White as, indeed is my use of the expression "handicap weighted." See, for example: "Each person is entitled to a share of the economic benefits of social cooperation conferring equal opportunity (or real freedom) in return for the performance of an equal handicap-weighted quantum of contributive activity" (White, 1997, 318).

IV

Scepticism about the Distinction

The distinction remains controversial: sceptics are unconvinced that a hard and fast line can be drawn between “pre-” and “re-” distribution. To them, this seems at best to be a relatively shallow distinction of degree as opposed to a distinction of kind. I will set out the main grounds for this scepticism towards the distinction before suggesting four lines of reply.

The first sceptical objection is that the most obvious reading of the prefixes “pre-“ and “re-“ are temporal, but that reading obviously has little to recommend it. Yet a temporal reading seems the interpretation most clearly implied in the original texts by Rawls. For example, it seems to figure in this justification for his interest in a property-owning democracy whose aim he describes as:

[t]o prevent a small part of society from controlling the economy and indirectly, political life as well.... Property owning democracy avoids this, not by the redistribution of income to those with less at the end of each period.... but rather by ensuring the widespread ownership of productive assets and human capital (that is, education and trained skills) at the beginning of each period, all of this against a background of fair equality of opportunity (Rawls 2001, 139).

Rawls here speaks of “periods” – so it looks as if the temporal reading is mandated. Unfortunately, that interpretation of the distinction could only yield a weak distinction of degree and not one of kind. This is because predistributing and redistributing are both continual processes – they both go on all the time with very short intervals — nanoseconds in the case of a financial transactions tax.

Taxes of estates and assets are on-going and continual as are the various tax and transfer schemes that make up redistributive policies. If these two processes are temporally intertwined, how can there be a distinction of kind here?

Furthermore, assets and income are clearly related: those with high incomes build up assets and returns on assets form part of income (loosely speaking) (Kerr, 2017). These two facts seem to point to a relatively shallow distinction of degree between pre- and re-distributive egalitarianism.

How might one respond? In four ways: the first is the most direct and closest to Rawls's own position. Justice as fair reciprocity is one, narrow (but stringent) conception of the concept of justice, but there are others. (This is a point that Freeman emphasises repeatedly in this book to address numerous of Rawls's putative critics.) Rawls uses his narrow conception for a specific purpose; but we can say at least that it is never a conception of justice as a form of redress. So, simply, tax and transfer policies that are grounded on the rationale of redressing inequalities – in a way characteristic of welfare state capitalism – do not fall under it. That may be true, but it is too direct a response and too closely tied to Rawls's reasons for rejecting welfare state capitalism. For more purchase on the sceptic's position I think further arguments would be welcome.

Thus a second framing of the distinction looks at Rawls contrast between his principles and the background conditions that enable them. The distinction between reasons and enablers has become familiar from Jonathan Dancy's pioneering work (Dancy 2004). We can explain pre-distributive egalitarians as primarily concerned with these background conditions and their on-going adjustment to maintain background fairness – as Freeman, once again, does so.

I think Dancy's distinction is helpful, as it explains why attention to what Rawls called "adjusted procedural justice" is not a concern with redistributive reasons. Some considerations, as Dancy explains, enable other considerations to be reasons without themselves being reasons. So, correctly interpreted, the idea is not that the pre-distributivist keeps her conception of justice on track by implicitly being committed to an on-going process of redistribution, but hidden in the "background". To adjust the background conditions for justice is to focus on enabling conditions, not reasons. What matters is not whether or not this process of adjustment is temporally continual or not, but whether there is still point to a contrast between the principles that form justice as fairness and the background against which they operate construed as a set of Dancyan "enablers".

Freeman's focus on how principles of justice must meet a publicity condition helps to reinforce this distinction between their justificatory role and the role of background adjustment to their enabling conditions. As he emphasises, Rawlsian principles are public, reflexive and commonly known so that they can act as a salient focal point for multiple agents seeking to co-ordinate their actions in a mutually assured way that secures reasonable expectations about the future. The correct conception of justice non-accidentally stabilizes social co-operation and the basis of expectations when it comes to future interactions between distinct agents by being commonly known.

This takes us immediately to a third defence of the distinction from Christopher Bertram:

Rawls has an idea of a feasible utopia, a well-ordered society, taking the form of a property-owning democracy in which distributive outcomes are programmed into the basic institutions via incentives attached to rules such that citizen, pursuing their own good within

those rules, are led to bring about those outcomes ... the system as a whole is designed such that the invisible hand brings about just (or at least tolerably just) outcomes. A Rawlsian feasible utopia therefore satisfies someone like Hayek's understanding of the rule of law: the government isn't constantly intervening, trying to realise some antecedently decided upon distributive pattern; rather the preferred distributive pattern emerges automatically from the normal operation of the system. (Bertram 2012, quoted also in Thomas 2017, 409, fn. 12).

Yet, at this point, the mention of an "invisible hand" – and Hayek – begin to raise a couple of red flags. This defence of a distinction between predistribution and redistribution seems to reinforce Schemmel's interpretation of the former as concerned purely with a "starting gate" of equal basic liberties, and fair equality of opportunity, and not with the upshot of market activity. What is it about Rawls's view that appealed to Hayek – and was his endorsement based on the correct understanding of Rawls?

The appeal of Rawls's view to Hayek can be explained as follows: the latter's extended polemic against the "mirage of social justice" (the title of volume 2 of *Law, Legislation and Liberty*) specifically exempts Rawls from its scope. Hayek singles out a sentence from Rawls's "Constitutional Liberty and the Concept of Justice" (*Nomos*, IV, 1963): "It is the system of institutions that has to be judged and judged from a general point of view". [Hayek 2013, 335, fn. 44) Rawls's sentence is followed by:

[t]he principles of justice define the crucial constraints which institutions and joint activities must satisfy if persons engaging in them are to have no complaints against them. If these constraints are satisfied, the resulting distribution, whatever it is, may be accepted as just (or at least not unjust) (Rawls 1963).

Hayek comments approvingly: “This is more or less what I have been trying to argue in this chapter”. This seems to be a convergence between Hayek’s claim and Rawls’s claim that in a society well ordered by justice, with “background justice” in place – “the distribution of wealth that results is just whatever it is”. (Rawls 1971, 249, emphasis added). Yet, in an insightful recent paper, Kristina Meshelski points out that this superficial alignment between the two views is a misunderstanding on Hayek’s part. (Meshelski, 2019) (Good news, then, for the predistributionist.).

She points out that, to understand Rawls, we need to attend to a pair of distinctions: Rawls’s ideal of pure procedural justice contrasts both with perfect procedural justice and imperfect procedural justice (Meshelski 2019). As an example of perfect procedural justice, consider two parties who must fairly divide up a cake. We implement the rule: first cuts, the second chooses. As Rawls points out, we know what a fair outcome would look like – strict equal division. Derivatively, we can assess the procedures that lead up to that fair outcome: their value is instrumental to the outcome.

By contrast, an example of imperfect procedural justice is our system of criminal trials where we have two independent vectors of assessment: both outcomes and procedures can be held to a standard of fairness. We want to prosecute and convict all and only guilty people. But that standard cannot be met, so we have two aims: to put in place a fair procedure and to bring about a fair outcome (if we can).

Meshelski, like Freeman, emphasises that it is because Rawls’s conception of justice is non-allocative that it is correctly to be modelled as a case of pure procedural justice (Meshelski 2019, 344) We do not have a group of people who have come together to allocate a pre-existing quantum of goods: it is by deciding to enter into this set of mutually productive relations that we create the

reasonable expectations that the benefits and burdens of social cooperation will be shared between us on reasonable terms that all accept:

[I]t seems as if Rawls is saying that we do not know independently what a fair procedure would be, so we simply apply this [procedure], and then accept the results whatever they are. (Meshelski 2019, 345)

But Meshelski persuasively argues that this appearance is incorrect (this error lies behind Hayek's endorsement of Rawls). It is only one contrast: pure procedural justice would here function as the opposite of perfect procedural justice. But this makes it too like imperfect procedural justice: it would be unclear, on this reading, why Rawls is operating with two contrasts, not one.

In perfect procedural justice (cutting the cake) we begin with the independently specified just outcome; fair procedures are those that bring that about. Suppose now pure procedural justice is interpreted as: put in place the fair procedure and you have to accept whatever it produces as fair. That now looks too close to imperfect procedural justice (the criminal trial): both process and product are fair. (Commit yourself to the process and you have to accept the product: both are fair.) Meshelski thinks we only interpret Rawls's pure procedural justice correctly, and respect its distinctiveness, when we note that "both the justice of the outcome and the justice of the procedure are intertwined" (Meshelski 2019, 345). (If it did not invite confusion with the term 'reciprocity', you might characterise their value as 'reciprocal').

In drawing out the consequences of this interpretation, it is striking how similar Meshelki's interpretation of Rawls fits Freeman's account of how the operationalisation of a model conception of free and equal citizenship via our collective agency

both secures mutual recognition of our status, and derivatively determines a fair distribution. We must engage in the productive activity to determine whether the outcome is just. But we need both dimensions of appraisal: the process is not instrumentally valued as a way of getting to the outcome; nor do we intrinsically value both process and product. We need to play the game to produce its upshot: we implement an ideal of free and equal citizenship to produce an outcome justifiable to each one of us engaged in the collective project. So neither the process, nor the product, has value in itself without consideration of the (reciprocal) value of its complement.

In creating a republic of equals we engage in the practical task of securing for each, in a compossible way, the status of free and equal citizenship. That produces a material distribution, but the point of the distribution is to secure this mutual standing, not the distribution. (That is, as Meshelski points out, exactly what the relational egalitarian should say.) The aim is to distribute the material basis of each citizen's self-respect, where "the social basis of self-respect is a primary justification for POD (property-owning democracy) over WSC (welfare state capitalism)" (Freeman 2018, 155).

The determination of an individual's fair share requires nothing less than an appraisal of the system as a whole:

[O]ne's 'rightful' share can only be considered in the context of a particular system of production. Within such a system, people are justified in expecting to get what the system entitled them to, but that system is no better than its outcome... Pure procedural justice requires that economic systems and distributions are evaluated as a whole. Rather than taking pure procedural justice to require that we must consider the result of the procedure just whatever it is, we should understand this as a strict requirement on both procedures

and outcomes such that any injustice in either will taint the other. (Meshelski, 2019, p. 346, emphasis added).

Meshelski's aim, which I believe she achieves, is to spare Rawls's embarrassment at having been endorsed by Hayek. Hayek's proceduralism is not Rawls's; Hayek values the free market for its own sake, and once you are committed to its procedures no further complaint can be entertained about its outcomes – you have to follow the procedures wherever they take you. (In that respect it resembles Nozick's "Ideal Historical Process View"). (Rawls 2001, 52-55).

But in Rawlsian contractualism, there is no normative endorsement of market processes for their own sake, and reasonable complaints can be entered if a market process produces an unfair outcome. If this is true then we can address Schemmel's (and Edmundson's) concern that the property-owning democrat merely endorses starting gate principles. The outcomes of the free market are not endorsed "come what may". Instead, adjusted background procedural justice reflects this two-way, reciprocal, interdependence of process and product:

The role of the institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place. Unless this structure is appropriately regulated and adjusted, an initially just social process will cease to be just, however fair and free particular transactions may look when viewed by themselves. (Rawls 1993, 266).

I take these three rejoinders to culminate in the final defense of a robust redistributive versus re-distributive distinction: that this is wholly a question of how we model agency on a market.

It is not, in my view, a temporal distinction – except coincidentally. The question is this: how do we model what agents bring to the market? The predistributivist argues that if we are developing a conception of a fair market, then we need to focus on the equalisation of the bargaining power of the agents represented in it. “Pre” here means: prior to market transactions where we are not restricted to temporal priority. This is a distinction in the way in which we model investment, or endowments, in agents that they bring to the transactions that they enter into with other agents. We are interested solely on those forms of market power that we can track through from these endowments.

The re-distributionist will object that this is merely evasive: an economy is a dynamic system. I have, following Freeman, emphasised that the operationalisation of an ideal of free and equal citizenship is a practical project. How can these processes avoid being embedded in time? This objection rests on a misunderstanding: the pre-distributionist models agency on a market so that it will result in a stable equilibrium. But not any equilibrium – that is Freeman’s and Meshelski’s insight – reasonable complaints can be made about unfair outcomes. However, the model itself contains no redistributive elements – this depends on the Dancyan distinction between the implementation of the principles and adjustments to the background conditions that enable them.

I think this focus on initial endowments allows one to address Martin O’Neill’s scepticism about the depth of the pre- versus redistributive distinction in the paper to which I have adverted and to which he has returned in more recent work (O’Neill 2017, 2020) O’Neill points out that any predistributive change to the market power of agents will have further effects that are, *de facto*, redistributive: examples might be expanding the power of trade

unions or introducing a minimum wage. An existing actor on the market (a trade union) becomes more powerful, or more agents are attracted on to the market by the elimination of poverty traps (in the minimum wage case). All of this is, I think, true; but the predistributivist does not have to deny any of it.

The predistributivist is specifically focused on those agency effects that depend on initial endowments. “Initial” endowments sounds as though it introduces temporality again, but as we are simply modelling agency on the market it need not carry that implication. Therefore we can draw a more fine-grained distinction than O’Neill’s: the predistributivist does not focus on all changes in the market power of agents or, for that matter, expansions or contractions in either the number of agents or the scope of the market. His or her focus is on enhancing the power of agency by modelling initial endowments prior to transactions with other agents – again, not limited to “temporally prior”. The aim is a stable, just and efficient equilibrium that has no re-distributive components. That which O’Neill treats as axioms, the predistributionist treats as theorems. Those engaged in what van Parijs memorably calls “social justice guided constitutional engineering” can draw a distinction between the intended consequences of their engineered project and further reasonably foreseeable effects (van Parijs 2011, 38, fn. 19).

Conclusion

Throughout this book, time after time Freeman engages with Rawls’s critics by pointing out that they are simply engaged in different projects wholly orthogonal to Rawls’s concerns. Whatever their independent merits, these critics equivocate between the different conceptions of justice that Rawls distinguishes. Freeman isolates Rawls’s core concern with justice

as “deep reciprocity” and it is in the specification of that conception of justice in a fully specified system that we can, I have argued, wholly dispense with re-distribution. The argument requires further defence and development but any such development will, as always, be indebted to the clarity and originality of Freeman’s pioneering contribution to this debate.¹⁰

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¹⁰ I am grateful to have this opportunity to express my appreciation for Samuel Freeman’s work, which has a deep influence on my own, and for his personal kindness and encouragement. For comments on some of the material in this chapter I am grateful to Bill Edmundson, Kristina Meshelski, and Martin O’Neill.

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